

# **Property Law**

## **The Solicitors Qualifying Examination – SQE**

Sample Material – Unregistered Land

# UNREGISTERED LAND

This chapter looks at the seller's obligation to show a good title to the property and how this is done in the case of unregistered title.

## 8.1 DEDUCTION OF TITLE

This is the traditional system, under which the seller must “deduce his title”, i.e. he must furnish to the buyer – at the seller's own expense – documentary evidence as to his good title to the property, by supplying copies of the title deeds (which are documents showing ownership, rights, obligations or mortgages on the property) accompanied by an “epitome” or list giving, in chronological order, the date, parties and nature of each document in respect of which a photocopy is supplied. These deeds will take the form of all those documents by which the seller and his predecessors in title have acquired the estate.

From this collection of deeds, an unbroken chain of transmission of the seller's estate will need to be shown, from one owner to the next, in the form of past conveyances and other documents attesting to the previous ownership of the land, culminating in the conveyance to the current seller. At least 15 years' undisputed ownership, before the present sale/purchase transaction (i.e. at the date on which contracts are exchanged), must be proven. Once the transaction is completed and the purchase price paid, the seller then hands over the title deeds to the buyer.

## 8.2 GOOD ROOT OF TITLE

In order to deduce title, one needs to start with a “good root of title”. This is a document which deals with both the legal and beneficial interest in the property being conveyed and which contains nothing to cast any doubts on the validity of the seller's title. Normally, a conveyance which evidences a sale or a legal mortgage will be sought, because it can be presumed that the purchaser (or legal mortgagee) in that transaction himself investigated the title for the necessary period, and the fact that he took the conveyance or agreed to lend money on a mortgage indicates that he found no defect. Voluntary conveyances or specific assents will also suffice as a good root, although the drawback, here, is that no

money has actually changed hands, and it cannot be assumed, therefore, that the title has been checked out<sup>1</sup>.

If the property has not been sold for many years, the root of title could be much longer than 15 years old; for example if it was simply passed down by succession within the same family. This process must be repeated every time the land is sold. Furthermore, there is no guarantee that no-one else will show a better claim to the land, on the grounds that his rights were usurped by the current owners, or there are defects in the title deeds.

If a “short root” is accepted, the buyer runs the risk that he may find himself bound by encumbrances which predate the root and which he is unable to discover or investigate. It would also reduce his chances of being registered with absolute title on the Land Register.

### Description of the property

A good root of title will also contain a description by which the property can be identified. For example:

“That the Seller as beneficial owner hereby conveys unto the Purchasers ALL THAT piece of land situated at Sandhill Drive, Leeds, *more particularly described in a Conveyance dated 21 July 1970 made between Tony Brookes (1) and Maureen Brookes (2) WITH THE BENEFIT of a right of way with or without vehicles over the land shown hatched blue on the plan annexed hereto*”.

A conveyance which does not contain a full description of the property may not be a good root of title.

## 8.3 PRE-ROOT TITLE

LPA 1925 prevents the buyer from requiring the production of a copy or abstract of any deed, will, or other document which forms part of the pre-root title. Nor can the buyer raise any requisitions or objection to such documents. Where, within the statutory chain of title, the buyer comes across a recital referring to a pre-root document, the buyer must assume that the recitals are correct and that each document was duly executed.

However, the buyer *is* entitled to require the production of an abstract or copy, and requisitions can be raised on the following pre-root documents:

- a pre-root power of attorney, under which any abstracted document was executed (the buyer will need to check that the power was of the correct type and that it actually authorised the transaction);

<sup>1</sup> Albeit that the older such documents are, the less of a risk there will be of anyone else being able to prove a better title to the property.

- any matter of obligation which affects the property and which appears on the abstract and may have survived the root of title (e.g. pre-root restrictive covenants, leases or easements);
- where the property is described by reference to a plan in a pre-root document, the buyer is entitled to see the plan.

#### 8.4 DOCUMENTS OF POST-ROOT TITLE

Once a good root of title has been shown, the seller must abstract and produce copies of every deed, after the root which has affected the property, i.e.:

- conveyances on sale;
- legal mortgages affecting the property;
- receipts on legal mortgages (these prove that the mortgage has been properly paid off);
- transfers (“assents”) by personal representatives of a deceased landowner to the person entitled under his will or intestacy;
- grants of probate (confirming the right of the executor under a will to deal with the property) and letters of administration (which vest the legal estate in the estate administrators);
- deeds of gift (however, voluntary dispositions may be overturned by the court, if the donor becomes bankrupt within five years of the gift);
- trust deeds<sup>2</sup>;
- leases which still affect the property, including those leases which have been expired before their time, e.g. by forfeiture or surrender, to enable the buyer to check that they have been properly killed off;
- court orders which affect the ownership of the property, e.g. an order appointing a trustee in bankruptcy who acquires title to the legal estate, as well as (retrospectively) to the act of bankruptcy;
- powers of attorney, under which any abstracted document has been executed (the buyer must ensure that the power has been validly granted and not been revoked).

Certain documents should **not** be abstracted. These include:

- those deeds affecting the equitable interests which will be overreached upon the sale (e.g. beneficial interests created under a deed of trust);

<sup>2</sup> A trustee’s deed of appointment will double up as a conveyance of the trust property to the new trustee. A trustee’s deed of retirement will similarly, automatically, transfer his interest in the legal estate to the continuing trustees.

- ☒ wills where the testator died after 1925 (only the grant of probate will enable a legal sale to be completed, while the beneficial entitlement under the will is a matter strictly between the PR and the beneficiary and of no concern, therefore, for the buyer); and
- ☒ leases which have expired due to the effluxion of time.

Equitable mortgages, even though they have been discharged or will be paid off on completion, are not, in practice, abstracted, unless the mortgage is referred to in another abstracted document, or is registered as a land charge. By contrast, legal mortgages should always be abstracted, including those that have been discharged, in which case, the receipt is also abstracted.

Other matters which are covered by the principle of “caveat emptor” remain the buyer’s responsibility to check, e.g. local land charges, and need not be disclosed either.

Any entries in the Central Land Charges Register need not be abstracted (being a matter of public record which the buyer can easily obtain); however, as they affect the title, the buyer needs to be aware of any such entries, and the seller’s solicitor will disclose any certificates that he has on file to the buyer, as a matter of courtesy. Similarly, where there has been a death or marriage which affects the title, the buyer will request proof of this.

## 8.5 ENCUMBRANCES

As mentioned in paragraph 8.2 above, certain encumbrances may be discovered during the buyer’s examination of the seller’s title. Indeed, the seller must show any documents which create encumbrances independently of the above deeds, e.g. deeds of covenant, deeds of easement, leases or tenancy agreements which have not expired and which still, therefore, affect the property; and leases which have been surrendered or forfeited, before the end of their term (to enable the buyer to check that they have, in fact, been properly killed off).

However, other enquiries and inspections will also be required, before the exchange of contracts, to enable the buyer to take possession free of other rights of which he is unaware. Making such enquiries can be highly time-consuming and the 1925 legislation, therefore, introduced a system of registering certain encumbrances as land charges, thus enabling the purchaser to search the appropriate register. The search should be made against the *names of the current and previous estate owners*, not the property.

Other rights – notably those still governed by the general equitable doctrine of constructive notice – will continue *not* to bind a bona fide purchaser for value without notice, provided he can show that he has not discovered them.

Furthermore, in *Midland Bank Trust Co Ltd v Green* [1981] AC 513, it was held that the knowledge of the purchaser of the unregistered interest governed by LCA 1972 is irrelevant and will not bind him. The consideration paid by the purchaser should be valuable, although the court should not inquire as to what is adequate consideration.

### 8.5.1 Interests Registrable Under the Land Charges Act 1972

Land charges are almost all equitable interests in land which are set out in LCA 1972. To bind a purchaser, these interests need to be protected – against the name of the estate owner, at the time the charge is created – on the Central Land Charges Register<sup>3</sup>, at the Land Charges Registry, which is held on a computer in Plymouth. If they are not registered, before completion of a subsequent sale, they will be void against a purchaser of a legal estate in the land. The main classes of land charge are as follows:

#### 8.5.1.1 Class C(i)

A so-called “**puisne mortgage**” – i.e. a mortgage which is not protected by the deposit of title deeds. In practice, this will be a *second* legal<sup>4</sup> mortgage (because the first mortgagee will have taken the deeds away from the estate owner to prevent him dealing further with the property). A mortgagee who does not take the deeds should, therefore, register his mortgage as a Class C(i) land charge against the mortgagor.

#### 8.5.1.2 Class C(iii)

**General equitable charge** – All equitable charges on property which are not specifically excluded by the Act itself from this class of land charge. It includes charges not protected by deposit of title deeds, e.g. an equitable mortgagee who does not have the title deeds to the property; an informal mortgage to the bank to secure a temporary loan; a charging order to secure a judgment debt; a seller’s lien on the land for an unpaid purchase price.

#### 8.5.1.3 Class C(iv)

**Estate contract** – Any contract to create a legal estate in land or any option to purchase a legal estate. It includes a contract to convey the legal estate in land (this will give the buyer an equitable interest in the house, before completion of the sale, at which point the buyer will become the legal owner of the property as well); a contract to create a lease (an equitable lease); an option to take or to renew a lease; an option to purchase the fee simple.

<sup>3</sup> The Central Land Charges Department actually keeps five separate registers under LCA 1972, of which the most important are: (a) the land charges register; and (b) the register of writs and orders affecting land (which will reveal whether any bankruptcy orders have been, or are in the process of being made against, the sellers).

<sup>4</sup> Unlike most other land charges which are equitable or statutory interests.

#### **8.5.1.4 Class D(i)**

**HMRC charge** – This is a charge in favour of HMRC where a liability to pay inheritance tax in respect of land has not been discharged.

#### **8.5.1.5 Class D(ii)**

**Restrictive covenants** – Any covenants or agreements which are restrictive of the person using the land and which were created after the 1<sup>st</sup> of January 1926, other than those made between a landlord and a tenant, e.g. a covenant not to keep pigs on a particular property.

#### **8.5.1.6 Class D(iii)**

**Equitable easements** – Any easements, rights or privileges affecting land which were created after the 1<sup>st</sup> of January 1926, and which are equitable only. By contrast, legal easements are not registrable as land charges.

#### **8.5.1.7 Class F**

**“Matrimonial home rights”** – Registration under this head confers on a spouse who is not a co-owner of the matrimonial home (and whose right does not, therefore, appear on the legal title) the right to occupy the matrimonial home<sup>5</sup>. Where the right is protected in this manner, it will bind anyone who acquires the legal estate in the property.

[*Note: The Land Charges Registry registers **third party interests** (encumbrances) on unregistered land; it has nothing to do with HM Land Registry which registers **title** to registered land!].*

### **8.5.2 Legal and Equitable Interests Not Registrable as Land Charges**

It is clear that there are many other third party rights to unregistered land which do not fall into any of the above classes of land charge. These include: legal and equitable mortgages which *are* protected by a deposit of the title deeds; the rights of beneficiaries under a trust of land; and rights created *before* January 1926.

#### **8.5.2.1 Legal Interests**

Most legal interests are not on the land charges list and will *automatically bind a purchaser*, being rights “*in rem*” which are “good against the world”. So, a purchaser will still be

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<sup>5</sup> This right is independent of any equitable interest to which a spouse or other person may be entitled as a result of contributing to the purchase price of the property.

bound by legal easements and legal leases; or, if an estate is subject to a legal mortgage which is protected by a deposit of title deeds, the purchaser will take the estate, subject to the mortgage, *even if he did not know of its existence*.

### 8.5.2.2 Equitable Interests

As we learned earlier, equitable interests will bind everyone, *except* a so-called “bona fide purchaser for value of a legal estate without notice of the equitable interest”, i.e. ***a person who buys the legal estate in ignorance of the fact that it is trust property*** (or some other equitable interest exists in the property), *despite having made all the appropriate enquiries* (i.e. correctly investigating the seller’s title by examining the title deeds and by inspecting the land itself). ***Such a purchaser will take possession free of any equitable interest of which he does not have notice.***

#### 8.5.2.2.1 Overreaching

We touched on this concept in previous chapters. Under the overreaching procedure, when land is sold, the interests of beneficiaries, under a trust involving the land, can be lifted from the trust property and attached, instead, to the capital sum paid by the purchaser. The trustees – at least two are required, or a trust corporation – will then either distribute the capital money among the beneficiaries, or will invest it so as to provide income for them. The purchaser will then take the legal estate free of the beneficiaries’ interests, ***even if he has actual notice of these interests***, and he need not concern himself with the distribution of the cash. The interests of the beneficiaries are cleared off, even without their consent, and no beneficiary under the trust will have a claim against the purchaser.

It is worth noting that while, as stated, a minimum of two trustees are normally required to effect the overreaching process, a sole executor under a will can give a valid receipt to a buyer, to enable a buyer to acquire a conveyance free of the beneficiary’s interest.

**How can one ascertain whether or not a trust exists?** Most crucially, by examining the land, as *the physical presence of a beneficiary will put the purchaser on notice of the existence of the trust*; for example, the borrower’s wife may have an equitable interest in the property, by having contributed to the cost of acquiring the matrimonial home, even though the legal estate is vested only in her husband. If the land is registered, the result would be the same: the wife will be deemed to have an “overriding interest” in the land, which will bind the purchaser, regardless of notice, unless he pays the money over to a minimum of two trustees.

### 8.5.2.3 Rights Created Prior to 1926

For example, **pre-1926 restrictive covenants**; these will bind the purchaser, where it can be established that he was aware or ought to have been aware (i.e. he had constructive notice) of their existence.



## 8.6 LAND CHARGES – APPLICATIONS FOR REGISTRATION, OFFICIAL SEARCHES, OFFICE COPY AND CANCELLATION

### 8.6.1 The Land Charges Department – Introduction

Under s. 1 Land Charges Act (LCA) 1972, the Land Charges Department (**Land Charges**) maintains various registers, as well as an index whereby all entries made in any of these registers can easily be traced. The registers that Land Charges keeps are as follows:

- land charges;
- pending actions and pending actions in bankruptcy;
- Writs and Orders affecting land and Writs and Orders in bankruptcy;
- Deeds of Arrangement affecting land; and
- annuities.

The overriding role of Land Charges is to protect a person's – or an organisation's – interest in **unregistered land**. Any registration under the LCA 1972 does not apply to registered land. In addition, Land Charges maintains the bankruptcy index for England and Wales.

It is important to note that the Land Charges index does not record ownership of unregistered land: a person who owns unregistered land will have title deeds that can be produced as evidence of ownership. Land Charges also does not register first mortgages because the mortgagee of unregistered land (who will have a first mortgage) holds the title deeds as security, thus preventing the owner of the land from selling it without contacting the mortgagee.

However, there are numerous situations where a person or organisation has an interest in land but does not hold the title deeds as security. These may be interests like:

- second or subsequent mortgages (where the mortgagee does not hold the title deeds);
- restrictive covenants;
- estate contracts including option agreements; or
- matrimonial or civil partnership home rights.

These situations are where Land Charges plays a vital role. In these circumstances, the person or organisation with an interest in the land should apply to register that interest with Land Charges.

It should be noted that, under the LCA 1972, an interest under a trust of land or settlement cannot be registered (and therefore this kind of interest is not protected).

If a person who has an interest which is eligible for protection by registration fails to register it under the LCA 1972, the interest will be void against certain purchasers of the land: see *Midland Bank Trust Co Ltd v Green HL* [1981] AC 513, [1981] 1 All ER 153.

Registration of any instrument or matter under the LCA 1972 does not, however, automatically make it valid. The accuracy or validity of any application made for registration is not investigated by the registrar of Land Charges.

All Land Charges registers are public information and anyone may apply to search their contents. A solicitor should, as a matter of course when acting for a client wishing to purchase unregistered land, apply for a search against the vendors and previous owners of the land in order to ascertain whether there are any land charges that have been registered and, if there are, to obtain details of them. By doing this, the solicitor can then verify, for example, that any mortgage over the land that has been discovered is in fact cleared. They will also have the required information to enable them to advise their clients on any other issues (such as restrictive covenants or equitable easements) that may be revealed.

Likewise, by searching Land Charges registers, a potential lender can make sure that the borrower is not in fact bankrupt. In cases where a solicitor is acting for a lender, a 'bankruptcy only' search should be made against the borrower, even where a registered estate in land is being purchased.

### 8.6.2 Applications for Registration

There are various forms used to submit applications for registration, renewal of registration, priority notice or rectification. The prescribed forms are summarised in the table below:

Form	Description	Notes
Form K1	Application for registration of a Land Charge (other than Class F)	In 'the particulars of charge' section the following must be entered: – the date and full names of the parties to the instrument creating the charge; or – in the case of Class A or B land charges, details of the relevant Act or section; or – if neither of the above, short particulars of the effect of the charge and the date when it arose.
Form K2	Application for registration of a Land Charge of Class F	Details must be given of any subsisting registration of rights of occupation under the Matrimonial Homes Act 1967 or 1983 or home rights under the Family Law Act 1996 which affect a dwelling house and which is protected by a Class F registration under the LCA 1925 or 1972, or a home rights notice or caution under the Land Registration Act 1925 or 2002.
Form K3	Application for registration of a Pending Action	An application should contain particulars of the title of the proceedings and the name, address and description of the estate owner or other person whose estate or interest is intended to be affected. It must also state the court where and the date when the action was commenced.

*(Continued)*

Form	Description	Notes
Form K4	Application for registration of a Writ or Order	An application must contain: <ul style="list-style-type: none"> <li>– the nature of the Writ or Order;</li> <li>– the name of the court and the official reference number;</li> <li>– the title of the action; and</li> <li>– the date of the Writ or Order.</li> </ul>
Form K5	Application for registration of a Deed of Arrangement	An application must contain the date of the deed and the parties to it. (NB: If there are numerous creditors, the first three only should be named and then the words ‘and others’ added.)
Form K6	Application for registration of a Priority Notice	Anyone who has the intention of making an application for the registration of any contemplated charge, instrument or other matter may give a priority notice to the register to which the intended application (when made) will relate, at least 15 working days before the registration is to take effect. If the application is then presented within 30 working days of the registration of the priority notice, the registration shall take effect as if the registration had been made at the time when the charge, instrument or matter was created, entered into, made or arose.
Form K7	Application for the renewal of a registration (not being a Land Charge of Class F)	Registrations in the registers of pending actions, Writs and Orders and Deeds of Arrangement shall cease to have effect after five years from the date on which they were made, but may be renewed from time to time – and, if so renewed, shall have effect for five years from the date of renewal. The application must contain particulars of the original registration, including the official reference number and the date of registration.
Form K8	Application for the renewal of a registration of a Land Charge of Class F	Home rights normally only continue during the existence of a marriage or civil partnership. The Family Law Act 1996 provides that, in the event of a matrimonial or civil partnership dispute or estrangement, the court may make an order during the existence of the marriage or civil partnership directing that the home right will continue despite the fact that the marriage or civil partnership might come to an end. If such an order is made, it is possible to apply for the renewal of the Class F registration as a precaution against the other spouse or civil partner attempting to have the original entry cancelled without revealing the existence of the court order; for example, by proving that there had been a divorce or dissolution. The application must contain particulars of the original entry (including the official reference number and the date of registration), together with the details of the court order and the court where it was made.

*(Continued)*

Form	Description	Notes
Form K9	Application for rectification	<p>If applications for registration are carefully (and legibly) completed it should not be necessary for a registered entry to require rectification. However, when an error that was made in an application for registration has led to a corresponding error in the entry, application may be made to have it rectified.</p> <p>An application for rectification should be signed by, or on behalf of, the person on whose behalf the original application was made or, subject to the production of sufficient evidence of title, by or on behalf of any successor in title of that person. There is no retrospective effect to rectification – meaning that anyone who obtains a certificate from the results of an official search in the index (or indeed an office copy of the register) that was dated before the date of registration will not, in respect of that search or office copy, be affected by the rectification.</p> <p>A rectification will cause the original entry to be stored in amended form.</p> <p>Alternatively, application may be made for the cancellation of an entry that contains an error, and supersede it through an application for the registration of a new entry. This will substitute a revised entry for the cancelled entry.</p>

All applications are scanned and saved as soft copies, so it is vital to make sure that each application form is completed accurately and above all, legibly. Land Charges compiles its registers and index directly from the information given in application forms; as a result any error in the details given, however small, may lead to crucial information either not being disclosed or being disclosed incorrectly in a subsequent search.

Typically, the following details are required when completing any of the prescribed forms:

- full names;
- description of the land charged, which identifies where the land is and the name of the administrative area in which it is located (unitary area, county or district);
- for applications pursuant to a priority notice – the official reference number of that priority notice; and
- certification by the acting solicitor that the landowner's title is not registered with the Land Registry.

In cases where an applicant does not use a solicitor or legal adviser to complete the required form, the applicant should support their application by statutory declaration in **Form K14**.

The following are examples of where Land Charges will automatically reject an application:

- the application form is not signed;
- the application is for the wrong class of land charge;
- the application discloses an interest under a trust or settlement; or
- requisite fees are not enclosed and there is no key number on the form.

Applications for registration, renewal of registration, priority notice or rectification are acknowledged in **Form K22**. The acknowledgment contains details of:

- the type of application;
- the official reference number allocated;
- the date the registration was effected;
- the particulars of the entry made in the register;
- the applicant's reference;
- the applicant's key number; and
- the applicant's name and address.

### **8.6.3 Official Searches**

A solicitor may request an official search of the index in order to obtain details of any entries registered against a particular name or names. A search should always be made in Land Charges by a prospective purchaser of unregistered land (or their solicitor or legal adviser). "Purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land, and "purchase" has a corresponding meaning (s. 17 LCA 1972).

The search should be made against all the landowners whose names appear in the epitome or abstract of title. Where a search certificate against a previous landowner has already been supplied as part of the epitome or abstract, that search does not need to be repeated (assuming that it reveals no adverse entries).

Where a certificate is in favour of a purchaser or an intending purchaser, dependent on its tenor, it shall be conclusive in the positive or negative, as the case may be. Nonetheless, the search itself must be correct in every respect.

Applications for official searches must be submitted using one of the following forms:

- **Form K15** – Application for an official search; OR
- **Form K16** – Application for an official search (bankruptcy only).

The solicitor must provide clear details of the name(s), former and current administrative areas and the period to be searched. A certificate of the result of the search is issued in either **Form K17** (No subsisting entries) or **Form K18** (Entries revealed). **A certificate of the result of the search has no statutory effect regarding registered land.**

### 8.6.4 Office Copies

In order to obtain further details of a registration, it is possible to request an office copy of the entry in the register. An application for an office copy of an entry in the register must be made using **Form K19** and must contain details of the class of charge, registration number, date of registration and name(s) of estate owner(s).

### 8.6.5 Applications for Cancellation

**Form K11** must be used for an application for the cancellation of either the whole or part of an entry in the register (other than a land charge of Class F).

**Form K13** must be used for an application for cancellation of a land charge of Class F (either the whole or a part of).

Again, accuracy is essential in any application for cancellation: Land Charges will reject any applications for cancellation where:

- the application form is not signed;
- the applicant's name on the application form does not match the name of the original chargee and no supporting evidence of devolution is submitted;
- an incorrect Land Charges number is quoted on the application form;
- the 'whole' or 'part' box is not completed on the application form;
- fees are not enclosed and there is no key number on the form;
- there is no indication of the capacity in which the applicant is making the application.

Sufficient evidence of the title to apply for cancellation must also be supplied, unless the applicant is the person on whose behalf the registration was made and is entitled to the benefit of the entry.

#### 8.6.5.1 Class D(ii), Restrictive Covenants

Application for cancellation of a land charge of Class D(ii), restrictive covenant, can only be considered (where there is no appropriate order of the Court or of the Lands Chamber of the Upper Tribunal (formerly the Lands Tribunal)) if it can be shown that:

- the extent of the benefiting land was clearly defined in the instrument that imposed the covenants; and
- all the relevant parties having an interest in that land have executed a sufficient release, or are parties to the application for cancellation.

The registrar is not able to make 'judicial decisions': for example, where a restrictive covenant exists that requires the consent of the covenantee to any building or other works and that covenantee has died or is otherwise unavailable, the registrar will not decide, on the evidence, whether or not the covenant has been discharged. In such circumstances,

application should be made to the Court or Upper Tribunal (see *Mahon v Sims* [2005] 3 EGLR, *Margerison v Bates* [2008] EWHC 1211 and *City Inn (Jersey) Ltd v Ten Trinity Square Ltd* [2008] EWCA Civ 156).

### **8.6.5.2 Cancellation of Whole or Part of Entry**

Whenever a land charge is wholly cancelled the entry is also deleted from the index. If the entry is only partly cancelled, the effect of the cancellation is noted against the entry in the Register and also in the index.

### **8.6.5.3 Special Circumstances**

It is also possible, using **Form K12**, to write to Land Charges and ask the registrar to allow the cancellation of an entry in the Register under ‘special directions’ of the registrar, if it is considered that to apply for the cancellation of an entry in the prescribed manner would (i) result in exceptional hardship and expense, and (ii) the land charge or other matter protected by the entry has been discharged, overreached or is of no effect.

All the relevant facts must be stated and any supporting documentary evidence must be submitted. If the application for cancellation is accepted, Land Charges will issue a direction for cancellation in **Form K12**.

Exceptional grounds must exist in order for a cancellation in **Form K12** to be considered. Land Charges will not issue a direction for cancellation simply because using the prescribed cancellation method is difficult or inconvenient.

An application for cancellation will be acknowledged in **Form K22** (Acknowledgment of an application). The acknowledgment will contain details of:

- the type of application;
- the official reference number allocated to it;
- the date of cancellation;
- the particulars of the entry deleted from the index;
- the applicant’s reference number;
- the applicant’s key number; and
- the applicant’s name and address.

As with any application, it is in the best interests of the applicant to check these details and to notify Land Charges of any inaccuracies.

If confirmation is required that an entry has been previously cancelled, application must be submitted in the prescribed **Form K20** (Application for a certificate of the cancellation of an entry in the Register).

### **8.6.6 Methods of Submitting Applications**

Applications for registration, renewal of registration, priority notice or cancellation can be submitted by post or DX. Details of the postal address of Land Charges can be found on the Land Registry website. Applications can also be delivered in person at Plymouth Office Customer Information Centre (although an appointment and at least 24 hours' notice is required to do this).

Applications for official searches and office copies can be submitted in a variety of ways – post or DX, fax, telephone, Land Registry Business e-services delivered through the portal (being a registered user of this service is required), via Business Gateway, National Land Information Service or in person at Plymouth Office Customer Information Centre. Again, the Land Registry website contains all address and fax/telephone details for these services.

Any fees that are payable in respect of Land Charges applications, official searches and office copies are set out in the Land Charges Fees Rules 1990 (as amended by the Land Charges Fees (Amendment) Rules 1994).



