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<http://www qltr.gov.uk>

Your ref:

Our ref: GE/7/18

Date: 25/09/2018

Dear Sirs

FREEDOM OF INFORMATION REQUEST

Thank you for your request dated 5 September 2018 under the Freedom of Information (Scotland) Act 2002.

Your request

Your request is quoted below in italics:

- 1. How many notices has the QLTR received from prospective claimants under section 43 of the Land Registration etc. (Scotland) Act 2012;*
- 2. With regard to the notices received, how many has the QLTR opposed as the QLTR deem to have an interest in the land specified in the notice; and*
- 3. How many notices were responded to notifying the prescriptive applicant that QLTR do not oppose the notice?*

Response to your request

While our aim is to provide information whenever possible, in this instance the costs of locating, retrieving and providing the information requested would exceed the upper cost limit of £600.

QLTR's case management system does not contain functionality that would allow for the efficient extraction of information required in order to accurately respond to your request within the upper costs limit. Instead, manual review of all case files reported to QLTR with activity since the introduction of the 2012 Act, and categorised as "heritable", would be required in order to produce accurate responses to your request.

Under section 12 of FOISA public authorities are not required to comply with a request for information if the authority estimates that the cost of complying would exceed the

upper cost limit, which is currently set at £600 by Regulations made under section 12 of the Freedom of Information (Scotland) Act 2002.

We note that the QLTR's policies, including in respect of "Section 43 Notices" received to this office, are published online at <http://www.qltr.gov.uk>. Whilst not formally requested by you, we have undernoted the relevant policy BV7, in case that is of assistance.

If you are dissatisfied with the way in which your request has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please write to The QLTR, Scottish Government Building, Victoria Quay, 1B-Bridge, Edinburgh, EH6 6QQ, or for requests sent by e-mail to coqltr@copfs.gsi.gov.uk.

The review will be undertaken by staff not involved in the original decision making process. If our decision is unchanged following a review and you remain dissatisfied with this, there is a right of appeal to the Scottish Information Commissioner under section 47(1) of FOISA. Should you subsequently wish to appeal against the Commissioner's decision on such an appeal, there is a right of appeal to the Court of Session on a point of law only.

Yours faithfully

Kyle McAra,
Solicitor, for QLTR

UNDERNOTE

BV7. PRESCRIPTIVE CLAIMANTS – SECTIONS 43-45 OF THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

This mechanism makes statutory provision for the situation where a person is seeking to register an *a non domino* title (a title not granted by the person with the right to the subjects which can become good if registration is followed by possession for the prescriptive period).

Where the QLTR is notified under this statutory mechanism (the QLTR will be notified where the property is *bona vacantia*), the QLTR will adopt the same approach as for the situation where the Keeper of the Registers of Scotland had directed any person, under the practice applying prior to the 2012 Act, to the QLTR where they were attempting to register or record an *a non domino* disposition affecting any *bona vacantia*.

The QLTR would appreciate being approached about the matter in advance of any notification under section 43 of the 2012 Act with relevant titles, searches and an explanation as to why it is considered that the property may be *bona vacantia*. At the very least those items should be provided along with the section 43 notification to the QLTR. It must be appreciated that the QLTR usually has no prior knowledge of the subjects in question and those items are required to bring consideration to the matter.

In a case where it is suggested the Crown interest arises because no title to the subjects can be traced in the property registers, the QLTR will expect evidence of appropriate efforts to trace a title. We will therefore expect to see evidence of investigations by appropriately qualified persons (such as professional title researchers or Registers of Scotland themselves) who in either case will have been provided with an appropriate budget to enable full and proper investigation into the title position to have been carried out,

Failing that, it is likely that the QLTR will respond requesting those items (or requesting evidence of appropriate efforts to trace a title) and without reasonable sight of those items it can be anticipated that the QLTR is likely to consider it appropriate to object under section 45 of the 2012 Act when subsequently notified by the Keeper of any application.

Reference is also made to the QLTR's policies on the disposal of heritable property and in particular that the QLTR normally expects to do so for value (in the event that the QLTR considers it appropriate to consider a disposal to those making the approach). As such it is unlikely to be considered appropriate for an applicant to be able to seek a title to *bona vacantia* under sections 43-45 of the 2012 Act. That was also the QLTR's policy in regard to any attempt to record or register an *a non domino* title prior to this legislation.

The main exception to that is where it is suggested a relevant genuine error has arisen - see Section BV5 "APPROACH TO QLTR WHERE IT IS SUGGESTED A GENUINE ERROR HAS ARISEN" above. Where it is suggested that such an error has arisen and the Crown is being invited to forgo potential benefit, the QLTR would expect to be approached in advance of the section 43 notification to the QLTR. The approach should include all of the documents, information, evidence and explanation referred to in Section BV5. If not provided so that the QLTR has to request these items, that is likely

to be reflected in the fee the QLTR will charge for considering the matter if ultimately the QLTR is prepared to consider forgoing the potential Crown benefit.

Please particularly note:

- If the QLTR is prepared to consider forgoing the potential Crown benefit (on grounds of relevant error), the QLTR will have an administration fee (see Section BV2 "FEES" above) for consideration of the approach
- In that event, the QLTR is likely to consider it appropriate to disclaim any Crown interest in the property - see Section BV5 above and this is also likely to be considered appropriate against the terms of section 44 of the 2012 Act
- where those affected are connected with the dissolved company, restoration under the mechanisms in the companies legislation is likely to be considered to be their remedy - on restoration that would remove the QLTR's locus; the QLTR does not consider that the QLTR should be used as a device simply to avoid the payment of any penalties which would arise on administrative restoration of the company or to save the need for those behind the former company to petition the courts to achieve restoration upon which they can then deal with their own property
- the provisions in the 2012 Act introduce a requirement for 1 year's possession prior to an application which did not previously apply; that is a statutory requirement and not a matter in respect of which the QLTR has any locus.

Any objection by the QLTR to an application by a prescriptive claimant should not be construed as an act of possession by the QLTR. Any such objection is under reservation of all options of the QLTR (including the QLTR's discretion to disclaim any property falling to the Crown as *bona vacantia*).