Neutral Citation Number: [2023] EWHC 1341 (Ch)

Claim No: PT-2022-000569

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY TRUSTS AND PROBATE LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 23/6/2023

Before :

MR NICHOLAS THOMPSELL

Sitting as a Deputy Judge of the High Court

- -

Between :

(1) PAUL RUSHMER	**Claimants**
(2) JENNIFER RUSHMER	
(3) PAUL MARK HARRIS	
(4) LOLA GEORGINA HARRIS	
- and -	
CENTRAL BEDFORDSHIRE COUNCIL	**Defendant**

- -
- -

Mr Paul Wilmshurst for the Claimant

Mr Matthew Feldman (instructed by Pathfinder Legal Services) for the Defendant

Hearing dates: 23-24 May 2023

- -

Judgment

.....

MR NICHOLAS THOMPSELL:

1. INTRODUCTION

1. This case raises interesting questions concerning the extent that a register of common land maintained by commons registration authority is capable of challenge in the High Court.

2. The Claimants are two couples who own adjoining properties on Church Road in the village of Studham. The First and Second Claimants, Mr and Mrs Rushmer, own a property known as "The Forge". The Third and Fourth Claimants, Mr and Mrs Harris own an adjacent property now known as "Madyar".

3. The properties are close to Studham Common and the Claimants have become concerned that the relationship between their land and Studham Common is unclear.

4. The Defendant (which I will also refer to as "**the Council**") is the commons registration authority for the area that includes Studham Common. It inherited this role from the Bedfordshire County Council, the original commons registration authority for the area, following a reorganisation of local government in 2009. As commons registration authority, the Council is responsible for maintaining a common land register open for inspection by members of the public at all reasonable times. It has this responsibility under sections 1 to 3 of the Commons Registration Act 1965 ("**CRA 1965**").

5. The Claimants originally engaged with the Defendant concerning complaints they had regarding the parking of cars near their properties causing a nuisance and blocking access. Adjacent to these two properties to the East is a public house, and adjacent to them to the West is the Studham Methodist Church. The Claimants contended that cars visiting the church or the public house were being parked on common land, that this was prohibited, and that the Defendant, as the commons registration authority, was obliged to enforce this prohibition.

6. In the course of correspondence on this matter the Claimants formed the view that the extent of the common land was not clear. Representatives of the Claimants inspected the Defendant's register of common land on 12 April 2022 and noted a series of anomalies and apparent deficiencies within the register and also that the map purporting to show the bounds of Studham Common was not consistent with certain previous representations made by the Council as to the bounds of the common land.

7. On 4 July 2022, the Claimants filed a Part 8 Claim Form, which was issued the next day, seeking certain declarations as to the extent and boundaries of Studham Common. Under the heading "Details of Claim", the Claimants wrote:

> "This claim concerns the status of land known as Studham Common in the County of Bedfordshire. The Claimants seek certain declarations as to the extent and boundaries of the Common by which it is meant the registered extent according to the register prepared pursuant to the system created by the Commons Registration Act 1965 or within the terms of the Scheme for the Regulation and Management of Studham Common 1911."

8. On 20 October 2022, a hearing took place before Master Kaye. The Master, having noted that the claim form did not set out the declarations sought by the Claimants, required the

Claimants, by means of an order sealed on 28 October 2022, to amend the claim form in this respect. The resultant amended claim form confirmed that:

> "1. The Claimants seek a declaration as to the legal validity of the Commons Register, which is currently kept (pursuant to the Commons Registration Act 1965) open for public inspection and in particular in relation to land known as Studham Common.
>
> 2. The Claimants seek a declaration as to the extent of land known as Studham Common which is registered as common land under s. 1 of the Commons Registration Act 1965.
>
> 3. The Claimants seek a declaration as the extent [sic] of land which is common land under the Scheme for the Regulation and Management of Studham Common 1911.
>
> 4. The Claimants seek a declaration as to the extent to which their properties (namely: The Forge, Church Road, Studham, Dunstable LU6 2QA and Madyar, Church Road, Studham, Dunstable LU6 2QA) are registered as common land under s. 1 of the Commons Registration Act 1965 and/or under the Scheme for the Regulation and Management of Studham Common 1911.
>
> 5. If necessary, the Claimants seek an order for rectification of the Defendant's commons register under s. 14 of the Commons Registration Act 1965 if it is found by the court that no amendment or a different amendment ought to have been made to the Defendant's commons register and that the error cannot be corrected in pursuance of regulations made the said Commons Regulations Act 1965."

2. OVERVIEW OF THE COMMONS REGISTRATION SYSTEM

9. Before turning to the substantive questions to be considered by the court, it is useful to outline the nature and history of the commons registration system in England and Wales.

10. The CRA 1965 came into force on 1 January 1970. It aimed to remove ambiguity about the legal status of the extent of common land in England and Wales. By section 1 CRA 1965, each commons registration authority (usually a County Council) became required to maintain a register of common land. All common land existing at that time had to be registered by 31 July 1970. The final date for submitting applications for such registration was fixed as 2 January 1970[1].

11. If no application for registration was made, and the registration authority did not act of its own volition to create an entry (pursuant to section 4 CRA 1965), then land ceased to be common land (see section 1(2) CRA 1965). Conversely, under section 10 CRA 1965 the final registration of any land in the land section of the register as common land or as a town or village green was to be conclusive evidence of the matters registered.

---

[1] See The Commons Registration Act 1965 section 1(2); and Commons Registration (Time Limits) Order 1966 SI 1966/1470 as amended by The Commons Registration (Time Limits) (Amendment) Order 1970 SI 1970/383, which extended the cut-off from 31 March 1970 to 31 July 1970

12. In the present case, the commons registration authority (originally Bedfordshire County Council) provisionally entered Studham Common onto the register on 28 December 1967 of its own volition. This was unchallenged. Under the scheme provided for under the CRA 1965, the entry automatically, in the absence of any challenge, became final on 4th December 1970.

13. Section 22(1) of CRA 1965 defined common land as:

> "land subject to rights of common whether those rights are exercisable at all times or only during limited periods; or waste land of a manor not subject to rights of common."[2]

14. Where land is finally registered as common land, but no rights of common are registered against it, the land is conclusively presumed to be waste land of a manor and therefore remains common land. This was established in *President and Scholars of Corpus Christi College, Oxford v Gloucestershire County Council* [1983] QB 360, at 369[G]).

15. Lord Denning MR provides a useful summary on page 365 of that judgment of what is meant by waste lands of a manor, as well as some trenchant criticism of the rigidity of the scheme provided for by the CRA 1965 (on page 370).

16. These criticisms have since been largely ameliorated by the introduction of processes within the Commons Act 2006 ("**CA 2006**") allowing some flexibility in amending the register. CA 2006 supplemented and replaced certain provisions in CRA 1965. In particular, section 19 CA 2006 provides further for amendments of a register by registration authorities where there has been a mistake.

17. Registration as common land has various other important effects, in particular:

    (a) the public has access to all registered common land for the purposes of open-air recreation by virtue of section 13 of the Countryside and Rights of Way Act 2000;

    (b) Part 3 of CA 2006 contains a highly restrictive set of provisions requiring special permission of the Secretary of State for many types of work on common land.

18. Given the profound effects that registration has, it is understandable that the Claimants are anxious to resolve any doubt as to the relationship of their properties to Studham Common.

3. STRIKING OUT APPLICATION

19. The Defendant objected to the Claimants' application, and through its own application made on 16 May 2023, asked the court to strike out the Claimants' case under Civil Procedure Rule ("**CPR**") 3.4.

20. Under CPR 3.4(2) the court may strike out a statement of case if it appears to the court–

> "(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

[2] This definition is repealed (but not replaced) by Schedule 6(1) to the Commons Act 2006 but this repeal, at the current time, is in force only in relation to certain pioneering registration areas in England that do not include the area in which Studham Common is situated and so I will ignore the effect of this in considering the case before me.

> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

21. The Defendant based its striking out application chiefly on the basis that the relief sought is beyond the High Court's jurisdiction.

22. The Defendant also supported this with various arguments to the effect that the Claimants are bringing a claim for an ulterior motive to stop illegal parking on the common, and that the stated motive claimed by two of the Claimants, Mr and Mrs Harris, that they wish to clarify this issue in order to be able to move house, was unfounded. However, I do not see that there is anything in these supporting arguments, even if the Defendant's contentions could have been shown to be true on a balance of probabilities (which they were not during the course of the hearing). Here I have regard to the White Book at CPR 3.4.15 which quotes with approval *Wallace v Valentine* [2002] EWCA Civ 1034 in finding that the institution of proceedings with an ulterior motive is not of itself enough to constitute an abuse. An action is only an abuse if the court's processes are being misused to achieve something not properly available to the claimant in the course of properly conducted proceedings.

23. However, the Defendant's main point, that the relief sought is beyond the High Court's jurisdiction, requires more extensive examination.

4. DOES THE COURT HAVE JURISDICTION?

24. Under CRA 1965, Parliament charged the Defendant with determining the extent of commons within its areas. Section 10 CRA 1965 provides that the register maintained by the Defendant is conclusive evidence of the matters registered (except where the registration is provisional only). The High Court has only limited powers to rectify the register under section 14 CRA 1965. These apply only where:

> "(a) the registration under this Act of any land or rights of common has become final and the court is satisfied that any person was induced by fraud to withdraw; or
>
> (b) the register has been amended in pursuance of section 13 of this Act and it appears to the court that no amendment or a different amendment ought to have been made and that the error cannot be corrected in pursuance of regulations made under this Act;
>
> and, in either case, the court deems it just to rectify the register."

25. None of the circumstances in section 14 apply in this case: no fraud has been alleged and there has been no amendment under section 13 CRA 1965.

26. CA 2006 supplemented and replaced certain provisions in the 1965 Act. In particular, section 19 CA 2006 makes provision for amendments of a register by registration authorities. By section 19(4), amendments may be made on the initiative of the authority or "*on the application of any person*".

27. Section 19(7) partly echoes section 14 CRA 1965 in providing:

> "The High Court may order a commons registration authority to amend its register of common land or town or village greens if the High Court is satisfied that—
>
> (a) any entry in the register, or any information in an entry, was at any time included in the register as a result of fraud; and
>
> (b) it would be just to amend the register."

28. Again in the current case, there is no fraud alleged and therefore this section does not provide any power to the High Court to intervene here.

29. In the Defendant's case, the Claimants' application inappropriately challenges the conclusiveness of the commons register and attempts to circumvent both section 10 CRA 1965 Act and section 19 CA 2006.

30. Mr Feldman, for the Council, developed this argument explaining that section 10 CRA 1965 is intended to provide certainty as to the extent of land adopted as commons and section 14 CRA 1965 Act provides, within only limited circumstances where the court can intervene, which in his view are not engaged here. Section 19 CA 2006, in his submission, provided the proper, and only, means of recourse for someone who wishes to correct a mistake in the registration of common land.

31. I will refer to these arguments of the Defendant as the "**argument based on statute**".

32. To understand the implications of the argument based on statute, it was necessary to understand in more detail the case being advanced by the Claimants and Mr Wilmshurst took the court through this. On examining the Claimants' case, it became apparent that the relief sought by the Claimants in relation to the commons register could be considered to fall into three different categories:

    (a) ***Determining the true register***: a declaration as to the true constituents of the relevant commons register that have been adopted by the commons registration authority, and in particular which map should be regarded as the true map of forming part of the register so as to determine the bounds of the Register; and whether what was clearly a photocopy within the physical register for Studham Common could be regarded as part of the register in the absence of the original entry;

    (b) ***Clarifying the register***: if the register (as it is correctly found to be in accordance with paragraph (a)) is unclear as to whether Studham Common extends onto the Claimants' land, a declaration to clarify the position; and/or

    (c) ***Correcting the register***: if necessary to correct the register (as it is correctly found to be in accordance with paragraph (a) and after any clarification provided by the court under paragraph (b)) to remove any boundary of the common that formed part of the Claimants' land to the border of the Claimants' land.

33. In my view, it was necessary to apply the argument based on statute separately to each of these categories.

(a) Does the court have power to correct the register?

34. In my view, the argument based on statute is correctly applied in relation to the third category of relief I have outlined above (correcting the register). The legislation is clear in

defining a limited ability for the court to intervene to correct the register and clearly implies that the court should not intervene outside the limited powers afforded to it by section 14 CRA 1965 and section 19(7) CA 2006. I agree that, outside the circumstances allowed by these sections, the court should not seek to involve itself in correcting a register that has been adopted by a commons registration authority. That process is reserved to the commons registration authority, and decisions of the commons registration authority can be challenged only by means of a remedy in administrative law, where this is available against the relevant authority.

35. The Claimants have obtained an expert report from Julian Mann MRICS. Mr Mann has plotted the various maps showing Studham Common on a measured survey. His report has been useful to the court in explaining the issues at hand but will not as a result of this determination be used by the court to make any declaration. I hope nevertheless that it may remain useful if the Claimants decide to bring any proceedings under CA 2006 to change the boundaries of Studham Common.

(b) Does the court have power to identify the register?

36. Conversely, in relation to the first category of relief sought (identifying the register) I do not think that these arguments apply. The Claimants ask for clarification as to what the register comprises in two respects.

37. The first is whether the register entry (or purported register entry) for Studham Common can be relied upon where this appears to comprise a photocopy rather than the original entry.

38. The second is to resolve doubts about the map to be included in the register relating to Studham Common. The Claimants submit that the map of Studham Common currently maintained by the Council in the physical register of commons, for various reasons I will explain below, does not appear on its face to be the correct map adopted for the purposes of the register. The Claimants consider that there were in existence copies of another map and of an updated version adopted as a second edition of that map which had better claims to be the maps that have been adopted by the Council's predecessor as commons registration authority when the bounds of the common were finally determined in 1970.

39. In my view they demonstrated a good arguable case that there was doubt whether the copy of the map that the Council is currently claiming is the authoritative map forming part of the register (which we referred to in the proceedings as the "**October 1967 map**") was in fact the map that had been adopted for the purposes of the registration under the 1965 Act. They cited the Council's previous apparent uncertainty about this and various clues that suggest that in fact a different map was adopted as the provisional map of Studham Common in 1967.

40. I accept their argument that in order to provide certainty, so that everyone can have confidence in the record, there needs to be a declaration as to which is the correct map and also as to whether the photocopy of the register entry for Studham Common can be accepted as the adopted register entry.

41. If the court makes a declaration as to these points, this is not a matter of taking a decision away from the commons registration authority, but rather is restoring to the public record the true decision that the authority has made. This is within the proper scope of the court's power to make a declaration, as described in *Rolls-Royce plc v Unite the Union* [2009] EWCA Civ 387; [2009] IRLR 576. In that case Aikens LJ explained the principles applicable to the jurisdiction to grant declaratory relief at [120] as follows :

> "(1) The power of the court to grant declaratory relief is discretionary.
>
> (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
>
> (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.
>
> (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.
>
> (5) The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.
>
> (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court.
>
> (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised. In answering that question it must consider the other options of resolving this issue.

42. Of these principles:

(a) points (2) and (3) are in my view satisfied in this case;

(b) points (4) and (5) are not relevant;

(c) point (6) is satisfied, even though a declaration as to the bounds of Studham Common would affect all those entitled to use Studham Common, because the Defendant represents the interests of those interested in preserving the proper bounds of the Common and should be relied upon to put any arguments before the court to preserve the integrity of the Common;

(d) as regards point (7), I am satisfied that a declaration on these matters is the most effective way of resolving the issues raised. The section 19 process is not apt to deal with these points as it is engaged only where there is a mistake in the register of commons. In the Claimants' submission the matter was not so much one of a mistake in the register, but rather that the Defendant is mistaken in believing that what it thinks forms part of the register does in fact form part of the register.

43. Accordingly as regards this category of relief, I agree that the Claimants are not seeking relief that runs counter to the finality required by section 10 CRA 1965 or that is apt to be dealt with under the procedure in section 19 CA 2006. It seems to me that the Claimants have a good arguable claim on this ground, and a legitimate interest in bringing these claims since it would clearly affect the value of their property if there was uncertainty as to the scope of the registered Common – even if the Council was not claiming that the Common extended over the Claimants' land. Applying the principles in *Rolls-Royce plc v Unite*, I consider that this is a matter where the court may use its discretion to make a declaration.

44. I am fortified in this decision by the judgment in *Bettison and Another v Langton and Others* [2002]1 A.C. 27 (2001) ("***Bettison***"), where the court was willing to give judgment on the extent of grazing rights in relation to a particular common. It is clear that the court will get involved in making a declaration where this involves property rights. Accordingly I was not willing to dismiss this element of the claim on the basis of the argument based on statute.

(c) Does the court have power to clarify the register?

45. I found it less clear whether the same issues would always arise in relation to the second heading of relief identified above – that of clarifying the register. This to my mind depends whether the clarification is needed because of a "mistake" in the register (within the extended meaning of that point in section 19(3) of CA 2006 which defines the term to include "*an unclear or ambiguous description*" (which I consider would include a description in the form of drawing on a map as well as a description in words).

46. Where this applies, the correct approach to be made is for the commons registration authority to amend its description under the section 19 CA 2006 process so as to resolve the lack of clarity.

47. I have also considered that that there might be a category of clarification required not because of anything that could be regarded as a mistake, but arising because of the inherent inaccuracy of maps based on Ordnance Survey mapping which for a rural area like this claims to be accurate only to 2.5 metres. When I explained that I would be dismissing the striking out application, I stated that I would be willing to entertain further argument on this point. Having since heard further argument on this point I now agree with the Defendant's case that any question of clarifying an entry or mapping that is included in the commons register should be dealt with as the correction of a "mistake" under section 19(3) of CA 2006, and therefore should be dealt with under that process (or if that process is not correctly applied by means of judicial review) rather than by the High Court.

(d) Summary as to the extent of the court's powers

48. To summarise on this point, I consider that the Defendant is correct in maintaining that the legislation under CRA 1965, as supplemented by CA 2006, is clear in defining only a limited ability for the court to intervene to *correct* the register and clearly implies that the court should not do so outside the limited power provided to it by section 14 CRA 1965 and section 19(7) CA 2006. Parliament has determined that these matters are to be dealt with by the commons registration authority rather than by the court. It would be an abuse of process for the court to seek to approve any such correction.

49. This limitation extends also to the question of any *clarification* of the register. As a result of the extended definition of "mistake" in section 19(3) of CA 2006, the proper process for clarifications also has been granted to the commons registration authority rather than to the court.

50. However, determining what *constitutes* the register, where something casts doubt on whether the documentation held by the commons registration authority is the authentic register, is a determination that the court can make, and should be ready to make.

5. SHOULD THE COURT APPLY *O'REILLY V MACKMAN*?

51. However before dismissing the strike-out application and going on to consider in more detail the substantive arguments, it was necessary to consider another potential objection to this matter being heard within the High Court.

52. I had asked the parties to address me on whether the declaratory relief sought should be dealt with outside the administrative law processes provided for in CPR 54, having regard to the decision in *O'Reilly v Mackman* [1983] UKHL 1, [1983] 2 AC 237, and in particular in view of the dictum of Lord Diplock in that case that:

> "it would in my view as a general rule be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities,"

53. The matter is further discussed in the White Book at CPR 54.3.2 where it is explained that

> "The judicial review procedure has special provisions designed to protect public bodies, most notably, a short time limit and the need to obtain permission. Declarations and injunctions remain available by way of an ordinary Part 7 or Part 8 claim where these restrictions do not apply. The courts have had to consider the extent to which a declaration or injunction may be sought by way of an ordinary claim when the claim raises public law issues that could have been brought by way of a claim for judicial review.
>
> The House of Lords has held that, as a general rule, it is contrary to public policy and as such an abuse of process for a person seeking to establish that a decision or action of a person or body infringes rights which are entitled to protection under public law, to proceed by way of an ordinary claim rather than the judicial review procedure, thereby evading the provisions intended to protect public authorities (*O'Reilly v Mackman* [1983] 2 A.C. 237). If a person commences an ordinary Part 7 claim in circumstances where they should have complied with the judicial review procedure (that is, Pt 8 as modified by Pt 54), the claim will be liable to be struck out as an abuse of process."

54. The CPR 54.3.2 goes on to explain that

> "The precise scope of the rule in *O'Reilly v Mackman* is still a matter of debate. Two main approaches have been canvassed in the case law. One approach is that the rule does not apply to

> claims which are brought to vindicate private law rights even though they involve a challenge to a public law decision or action and may involve determining questions of public law. If this approach is adopted, then the aggrieved person will only be forced to proceed by way of a claim for judicial review where private law rights are not at stake, that is in a case which only raises issues of public law (as in *Trim v North Dorset DC* [2010] EWCA Civ 1446; [2011] 1 W.L.R. 1901, where an individual sought to challenge a notice alleging breach of a condition attached to a planning permission; such a challenge raised only public law issues and a challenge should be brought by way of judicial review not an ordinary claim for a declaration). The alternative approach is that the rule in *O'Reilly v Mackman* applies to all cases where the claim involves a challenge to a public law decision or action or involves determining questions of public law (subject to certain limited exceptions) whether or not the ultimate aim of the proceedings is to vindicate a private law right. In *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 A.C. 624, the House of Lords left open the question of which of these approaches should be adopted but indicated a preference for the first approach."
>
> and
>
> *"In Mercury Ltd v Telecommunications Director* [1996] 1 W.L.R. 48, the House of Lords said that it was important to retain flexibility, that the precise limits of what is called private law and public law are by no means worked out, and that private law proceedings should only be struck out if they are an abuse of the process of the court."

55. CPR 54.3.2 also explains that there are recognised exceptions to the rule in *O'Reilly v Mackman*, whatever its proper scope. These include that:

    (a) it is permissible to litigate public law issues in ordinary private law claims where, for instance, the invalidity of a public law decision arises as a collateral issue in a claim for the infringement of a private law right or where none of the parties objects to the proceedings being continued by way of ordinary claim (*O'Reilly v Mackman*);

    (b) the invalidity of a public law action or decision, which is an integral part of a public body's claim, may also be raised as a substantive defence in civil proceedings (*Wandsworth LBC v Winder* (No.1) [1985] A.C. 461);

56. In the current case there is potentially a conflict between private right (the Claimants' rights of property) and public rights (public enjoyment of the common) and in view of the fluid state of the law on this matter as described in CPR 54.3.2, I consider that notwithstanding *O'Reilly v Mackman*, I am left to decide in the case before me as to whether it is more apt for such matters to be dealt with within the High Court or to refuse to deal with the matter and instead tell the parties that the matter must be pursued under a different action under Part 54 of the White Book.

57. In the current case I consider that I should decide this issue in favour of the Claimants. The reasons for this decision include that:

    (a) I accept a point made by the Claimants that the matters under consideration here do not really relate to a decision or action of a public authority, but rather to providing a statement as to the true contents of the commons register: there is therefore real doubt whether the principle in *O' Reilly* applies at all;

    (b) In cases like *Bettison* it is clear that the High Court has been able to engage itself in similar decisions

    (c) the processes within the High Court are more tailored to dealing with the points in question here; and

    (d) the Defendant's challenge to the authority of the High Court to deal with this point came at a very late stage in the proceedings and it would be contrary to the overriding objective in CPR 1.1 of dealing with a case justly and at proportionate cost if I were to refuse to hear this case now that it has got this far.

58. Accordingly, I determined against the strike-out application on the basis that I would consider the Claimants' case in relation to the correct constituents of the register in relation to Studham Common, but would not accept any invitation to clarify or amend the borders of the Common shown on the register as so determined.

6. THE CLAIMANTS' CASE

59. The core of the Claimants' case is that the Defendant has failed to keep its commons register in good order.

60. First, it appears that the Defendant has lost the written part of the register and now only has a photocopy of the written register entries. To the extent that this could promote uncertainty, the court is invited to end that uncertainty by declaring that the photocopy entry for Studham Common currently in the register should, in the absence of the discovery of the original, be relied on as part of the register. There is no argument against this from the Council and I am content to confirm this point.

61. Further, and more controversially, the Claimants consider that the map(s) of statutory force showing the extent of Studham Common have been replaced, or at least there is the appearance of having been replaced with an alternative. The Claimants challenge the court to identify which out of a number of different contender maps is the one that has statutory effect.

62. For the reasons given above I am ignoring the Claimants' further request that this court should exercise any power to rectify or clarify the register.

7. IDENTIFYING THE CORRECT MAP

63. The Register of Common Land for Register Unit CL. 18 (the entry pertaining to Studham Common) (or at least the photocopy of it) records that a provisional entry was made on 28 December 1967 to the following effect [p. 169 – 170]:

> "The land called Studham Common in the Parish of Studham in the County of Bedford, as marked with the green verge line inside the boundary on Sheet 17 of the Register Map and distinguished by the number of this register unit. Registered by the Registration Authority without application."

64. The register entry was unchallenged and therefore this provisional registration became final on 4th December 1970. As there was no challenge, there would be no reason for any aspect of the registration, including its extent and the land shown on the relevant "Sheet 17" to have changed between 1967 and 1970.

65. The Claimants complain that the Defendant has adopted different positions at different times as to its certainty as to the correct map identifying the registered extent of Studham Common.

66. Initially the Defendant appeared uncertain. In relation to a first pre-action protocol letter sent by the Claimants, the Defendant replied on 24 June 2021 that:

> "You state your clients seek confirmation of the exact extent of Studham Common. I can confirm that unfortunately, those enquiries are still ongoing, as previously stated to you on a number of occasions. When a decision is arrived at on which is the definitive map, you will be informed immediately. Until such a time that the extent of the common is defined and the correct map identified, we cannot proceed to say anything further on this issue."

67. On 31 August 2021, the Claimants wrote to the Defendant asking for "*full and frank disclosure of the material relevant to the issue of the extent of the commons registration*".

68. The Defendant replied that it was taking counsel's advice in respect of this.

69. On 17 November 2021, the Defendant stated in correspondence:

> "As you know, this has been a very tricky issue due to the uncertainty around the extent of the common, which is still as yet unresolved. Whilst the Council does wish for the matter to be resolved, it may take significant time to do, and resources."

70. More recently during the course of this litigation, the Defendant has adopted the position that there is no doubt that the map currently kept in its commons register, which bears a date in October 1967 ("**the October 1967 map**") is the relevant map. This view was first communicated to the Claimants in the witness statement of Mr Chris Wilson, who is the officer in charge of maintaining the register on behalf of the Council.

71. As a result of disclosures made by the Council and its own investigations, the Claimants had come across copies (or copies or photographs of copies) of two maps that the Claimants considered to have been, first the original map adopted for the register in December 1967 and second an updated version of that map adopted into the register in 1983.

72. The Claimants considered that it was extremely probable that the appropriate maps of statutory force were

    (a) the map copies of which were in the trial bundle (at pages 201 and 175) which bore the title "*Provisional Register Map…"* and which was referred to at trial as "**the December 1967 map**", and

    (b) a partial copy of what appeared to be a second edition of that map (based on updated Ordnance Survey mapping) referred to at trial as "**the 1983 map**".

73. In his witness statement Mr Wilson gave little explanation as to why he was sure that the October 1967 map was the correct map, merely noting it has been "*signed, attached to the*

register and has not changed in any way since 1967". Neither did he explain why the previous issues that were "*tricky*" had been resolved.

74. He was incorrect in saying that the October 1967 map had been signed – it had been stamped with the name of S.W. Lynn as County Surveyor, but not signed.

75. I thought it useful for him to be called as a witness. He proved a good witness, clear in his answers and I am satisfied that he answered all questions honestly to the best of his belief and recollection.

76. When quizzed further on the provenance of the October 1967 map, Mr Wilson confirmed that, although in his witness statement he had stated that this map had been attached to the register and has not changed in any way since 1967, from his own knowledge he could only confirm that this map had formed part of the physical register since he had taken charge of the register in 2016 and he could say nothing about what might have happened with the register before then, except that the previous officer having charge of the register had not drawn his attention to any problems.

77. Mr Wilmshurst, for the Claimants, put to Mr Wilson the matters, or most of the matters, I list below as matters considered by the Claimants to demonstrate that the December 1967 map and the 1983 map were more likely than the October 1967 map to have been the original registered map(s). These matters had been fully explained in a witness statement by Sue Rumfitt. Given the scope of Mr Wilson's responsibilities, it was somewhat surprising that Mr Wilson said that he had not seen this witness statement and as a result had not considered these matters earlier.

78. A key point noted by Sue Rumfitt was that that there was a vital deficiency in the October 1967 map. This map does not have any green lines totally enclosing or showing the total extent of Studham Common, as was expected and required by the provisional entry dated 28 December 1967 (which became final in 1970) made on the Register of Common Land for Studham Common, which states that the Common is "*marked with the green verge line*".

79. It would have been contrary to Regulation 16(5)(b) of The Commons Registration (General) Regulations 1966 (the "**1966 Regulations**) for the map not to show Studham Common "*by black lines verged green inside the boundary."* The October 1967 map shows only single green lines. This is suggestive of the map not having been created for the purpose of the provisional entry of Studham Common in December 1967.

80. The fact that the green lines do not fully encircle any area of land, appears to be a serious mistake rendering it impossible to know the bounds of the registered common.

81. Mr Wilson agreed that this was a mistake. For practical purposes the Council had been ignoring this mistake and had been taking the area of the Common to be that denoted by a green shaded area rather than that denoted by a green verge line as required by the register entry.

82. Sue Rumfitt's witness statement had also pointed out other ways in which, unlike the December 1967 map, the October 1967 map does not meet some of the requirements set out in the 1966 Regulations that supplemented the CRA 1965. These included

    (a) *No official stamp, signature, or proper indorsement*: Contrary to regulations 3 and 19 of the 1966 Regulations, the Defendant's map does not bear the official stamp of the commons registration authority but is instead stamped by "S.W LYNN" as

the County Surveyor. It is not signed, although there appears to be some indistinct writing in the top right corner and the date "26/10/67".

(b) *No expected rubric:* Contrary to regulation 19 of the 1966 Regulations, the October 1967 map does not bear the required words "*Provisional Register Map of (Common Land) (Town or Village Greens). (Sheet No. -). This is the edition of this (map) (sheet)*". There is no reference at all on the October 1967 map as to whether it is a first or second edition.

(c) *Wrong date:* The date "26/10/67" written on the October 1967 map does not match the date of the provisional registration, which was made on 28 December 1967.

(d) *Wrong Sheet Number:* According to the (photocopy) register index, the registered map has the sheet number 17. The December 1967 map bears such a number but the October 1967 map shows on what may be a "sheet number" of "27" in the top right-hand corner. This has the appearance of correction fluid having been used on the area. Such corrections would have no statutory basis.

(e) *Other coloured features on the map.* In the vicinity of the Claimants' properties, there are some dotted red lines. Regulation 16 of the 1966 Regulations does not contain a reference to broken red lines. If the October 1967 map were to be held to be the provisional register map (which became final in 1970), the broken red lines would have no defined meaning.

83. By contrast, it was pointed out to Mr Wilson that the December 1967 map bearing the correct heading "*Provisional Register Map*" meets all the criteria for being the relevant statutory provisional register map.

(a) *Correct colours of delineation:* The December 1967 map identifies Studham Common precisely in the manner required by Regulation 16(5)(b) of the 1966 Regulations.

(b) *The official stamp and the date:* The December 1967 map has the official stamp of Bedfordshire County Council affixed to it, and it is dated "28 December 1967", matching the date in the (copy) register entries for Studham Common which show that the provisional registration was made on that date.

(c) *The indorsement:* The December 1967 map has the endorsement required by the 1966 Regulations as "Provisional Register Map". It:

(i) bears the rubric "PROVISIONAL REGISTER MAP OF COMMON LAND SHEET NO. 17. THIS IS THE FIRST EDITION OF THIS SHEET." (the reference to "Sheet 17" correctly matching the register entry for Studham Common;

(ii) is marked "CL. 18", the correct unit number for Studham Common;

(iii) is signed by "John Dawson" on behalf of Bedfordshire County Council;

(iv) bears the words "THIS EDITION OF THIS SHEET WAS REPLACED BY A FRESH EDITION ON 25 MARCH 1983." This again is the wording to be expected under the 1966 Regulations assuming there had been a fresh edition and ties this map together with the 1983 map.

84. This wording follows, to the letter, the requirements of regulation 19 of the 1966 Regulations:

> "19. Every provisional register map consisting of one sheet, and every sheet of such a map consisting of more than one sheet, shall be indorsed as follows:—
>
> "Provisional Register Map of (Common Land) (Town or Village Greens). (Sheet No.). This is the edition of this (map) (sheet)"
>
> and shall be stamped by, and signed on behalf of, the registration authority, and shall then form part of the register and (in the case of a fresh edition) the map or sheet which is replaced shall be marked on its face "This (map) (sheet) was replaced by a fresh edition on (date)", but shall not cease to be part of the register."

85. By regulation 18 of the 1966 Regulations, a registration authority was entitled

> "whenever it deem[ed] it expedient to do so, to prepare a fresh edition of the provisional register map or of any sheet thereof…"

86. The Defendant has in its possession what appeared to be a copy or photograph of a partial fragment of a map which appeared to be the fresh edition referred to in the December 1967 map when it mentions:

> "THIS EDITION OF THIS SHEET WAS REPLACED BY A FRESH EDITION ON 25 MARCH 1983."

87. The Defendant had not accepted that this map forms part of its register either. The photocopied register does not mention a fresh edition provisional register map and there was no reference to a second edition on the October 1967 map.

88. The 1983 map appears to have the official stamp (albeit this has been cropped on the copy available). It appears to have been dated March 1983 (although we have only the "ch" of March) and to have been signed, although again the cropping renders this unclear. It is apparent that the underlying base mapping has been updated as one would expect. What is shown concerning the bounds of the common is materially similar to the December 1967 map.

89. The Claimants suggested that the fact that the 1983 map is mentioned on the face of the December 1967 is good proof that there is a connection between the two maps and that together they form the only two lawful editions of the provisional register map for Studham Common.

90. Mr Wilson agreed after various of the points above had been put to him that the overall effect of these points was that it was "likely", and I think he agreed "very likely" that the December 1967 map was the first edition of the map adopted for the registration of Studham Common and the 1983 map was a second edition of this, also so adopted.

8. DETERMINATIONS AS TO THE REGISTER

91. Once the provisional register became final in 1970, it was not capable of being changed except through statutory processes. The Defendant does not suggest there has been any such change. The Claimants suggest that the only change was the introduction of a second edition of the map in 1983. It should be noted, however, that the 1983 map could not introduce any substantive alteration to the extent of the land within Studham Common.

Regulation 19 of the 1966 Regulations provided that the first edition map "*... shall not cease to be part of the register."*

92. The register having statutory force is that which became final in 1970. Generally one would expect that this would be the same as the one that was currently kept by the commons registration authority. Indeed, in the absence of any evidence to the contrary, there would be a presumption that this is the case. This is the presumption of regularity, which was explained *Calder Gravel Ltd v Kirklees MBC* [1989] 60 P&CR 322 at p.339: (per Sir Nicholas Browne-Wilkinson V-C):

> "The same presumption of regularity can arise where the validity of an act done by a public authority depends on the existence of a state of facts which cannot, with the passage of time, be proved, The presumption is that the statutory authority have acted lawfully and in accordance with their duty."

93. However, where there are facts that call this presumed position into question, the court can consider the matter. If on a balance of probabilities the state of facts is different to that presumed, the court can determine this. If what is currently claimed by the Council to be the register is different to the version of the register that became final in 1970 then this should be corrected.

94. In the current case, the Claimants have raised important concerns as to the provenance of what the Council claims to be the register as it relates to Studham Common.

95. As regards the first concern raised, that what is claimed to be the register entry for Studham Common is clearly a photocopy, I agree with the parties that there is no reason to believe that this is not a photocopy of the original register entry (although perhaps not of the latest version of it, if the same fell to be updated by the inclusion of a reference to a second edition of the register map). As this photocopy is the only evidence available of the original register entry, I agree that the court should order that it may stand at the commons register in respect of Studham Common (referred to as CL18 on the plan. If the original register entry (or something appearing to be the original register entry) should be found the Council should apply to the court for a further order.

96. As regards the second concern raised, that concerning the correct map to form part of the register, the evidence that the copy of the December 1967 map is a copy of the map originally adopted as the Register Map is overwhelming. It bears all the hallmarks one would expect of the map, whilst the October 1967 map fails in its basic duty of delineating the common and fails to comply in various ways with the 1966 regulations. It is unsigned. It bears the wrong date. It does not bear the correct reference number referred to in the statutory register.

97. The only ways in which the October 1967 map has a better claim than the December 1967 map is that it appears to be the original of a map produced in 1967 (whilst we have only an unverified copy of the December 1967 map) and it is known to have been kept within the physical register at least since 2016 when Mr Wilson took over stewardship of the register and probably for a period of years before that. However the December 1967 map also has some provenance in that the copy of this was obtained from a reputable source, The Open Spaces Society which said that it had received this from Natural England.

98. Like Mr Wilson, I agree that it is likely or very likely that the December 1967 map was the map originally adopted for the purposes of the provisional register and which became the

definitive map in 1970. There is really no other explanation why this map, with the markings and imprints that it bears should have come into existence. Conversely, it is easily imaginable that someone, might have withdrawn this map from the register for some purpose (for example to endorse it with the reference to the second edition map) and that when it was later found to be missing from the register it was replaced with the October 1967 map as the only map that could be found at the time that looked to be of the correct age. The October 1967 map itself seems to be more consonant with being an early survey of Studham Common that was drawn upon (literally) to produce the final version adopted for the statutory purposes.

99. Given a choice between two maps, neither of which has undoubted provenance but where one follows the 1966 Regulations and the other does not and even fails on its face to depict the limits of the common, I choose the former. Accordingly, the court should make a declaration to this effect.

100. It is less clear what the court should say about the 1983 map as there is a conflict between the copy we have of the register entry and the copy we have of what I have determined to be the original register map (the December 1967 map). The register entry does not mention a second edition of the map but the copy of the December 1967 map that is available does mention a second edition.

101. There are two possibilities as to why this may be. The first is that the copy we have of the register entry is not a copy of the latest version of the register– the copy was made before a change was made to the register referring to the second copy. The second is that the new edition was never taken into the register. The work was done to prepare for this by endorsing the December 1967 map and preparing the 1983 map but the formal adoption of the second edition never took place.

102. I am not able to determine which of these explanations is more likely. Having regard to this and also that no-one has been able to produce the original or a complete copy of the 1983 map, and that to order otherwise would involve amending the register entry, I do not think I should use the court's discretion to declare in favour of the 1983 map. If further evidence comes to light this can be reconsidered but in the meantime I consider that the court should declare that the photocopy register entry and the best existing copy that there is of the December 1967 map should be regarded as comprising the register as it relates to Studham Common.

9. THE COURT'S DETERMINATIONS AS TO THE 1911 SCHEME

103. The Claimants have also asked for confirmation as to the bounds of the Scheme for the Regulation and Management of Studham Common 1911 ("**the 1911 Scheme**"). This scheme was made under section 1 of the Commons Act 1899 ("**the 1899 Act**") which, obviously, pre-dates the CRA 1965 legislation but was not abolished by it.

104. Any determination by the Court in respect of the effect of a scheme under the 1899 Act is not constrained by the argument based on statute that I have discussed above.

105. Whilst the principle in *O'Reilly v Mackman* could equally apply to any determination relating to the 1911 Scheme, I consider that the reasons I have given at [56] to [58] above apply equally in relation to this question and accordingly I should consider the matter.

106. Section 1(1) of the 1899 Act as originally enacted provided as follows:

> "The council of an urban or rural district may make a scheme for the regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common, and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order on the common."

107. Section 15 of the 1899 Act originally provided, and still provides, as follows:

> "In this Part of this Act, unless the context otherwise requires,—
>
> The expression "common" shall include any land subject to be inclosed under the Inclosure Acts 1845 to 1882, and any town or village green".

108. This does not define "common" but merely clarifies an aspect of the definition.

109. Given this lack of a precise definition, the following question arises. Should the reference to "common" in the 1899 Act (if there be any difference between the two) be taken as referring to what was a common at the time of the adoption of the 1899 Act or as referring to what is a common from time to time?

110. I consider that the answer to this question must be the latter, based on two well-recognised principles of statutory interpretation:

111. The first is the so-called updating principle , as is explained in *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edition) ("***Bennion***") at section 14.1:

> "(1) Acts are usually regarded as 'always speaking'. Here, it is presumed that the legislature intends the court to apply a construction that allows for changes that have occurred since the Act was initially framed (an 'updating construction').
>
> (2) Exceptionally, an Act may be intended to be applied in the same way whatever changes might occur after its passing. An updating construction is not therefore applied to it. "

112. Paragraph (1) of this passage has been judicially approved: *R v Hammersmith and Fulham London Borough Council ex p M* (1998) 30 HLR 10 at 16; and in *Moorthy v HMRC* [2018] EWCA Civ 847 at [58].

113. *Bennion* supports this proposition with a quote from *R v Ireland* [1998] 1 AC 147 where at 158 Lord Steyn said:

> "It is undoubtedly true that there are statutes where the correct approach is to construe the legislation as if one were interpreting it the day after it was passed"… "Statutes dealing with a particular grievance or problem may sometimes require to be historically interpreted." ….
>
> "But the drafting technique of Lord Thring and his successors have brought about the situation that statutes will generally be found to be of the 'always speaking' variety …" in appropriate cases it is the courts will generally avoid adopting a construction

> that creates an anomaly or otherwise produces an irrational or illogical result"

114. *Bennion* further supports this with a reference to *In R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687, where Lord Steyn described Acts that are interpreted historically (that is, to which the updating principle does not apply) as falling within "*the exceptional category*".

115. In its commentary, *Bennion* goes on to list among the categories where the question of an updating construction may apply "*changes in the territory for which an Act is law*".

116. This principle of updating construction does not apply universally. In some cases there may be a reason not to apply an updating construction. Nevertheless one starts from the presumption that an updating construction is to be applied to an Act.

117. The second principle is a presumption against absurdity. As explained in *Bennion* at section 13.1, the courts will generally avoid adopting a construction that creates an anomaly or otherwise produces an irrational or illogical result. *Bennion* goes on to list particular aspects of the construction against absurdity. The presumption against absurdity means that the courts will generally avoid adopting a construction:

(a) if it produces an unworkable or impracticable result (see section 13.3 and the cases cited there);

(b) that causes unjustifiable inconvenience to persons who are subject to the enactment - see section 13.4 and the cases cited there, in particular in *Shannon Realties Ltd v Ville de St Michel* [1924] AC 185 where Lord Shaw said (at 192):

> "Where the words of a statute are clear, they must, of course, be followed, but in their Lordships' opinion where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative to be rejected which will introduce uncertainty, friction or confusion into the working of the system"; and/or

(c) if it creates an anomaly or otherwise produces an irrational or illogical result see section 13.5 and the reference there to Lord Devlin's dictum in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 at [516]:

> "no system of law can be workable if it has not got logic at the root of it".

118. I consider that the updating principle naturally applies to the 1899 Act and that the presumption of absurdity militates against interpreting the Act otherwise. It would be unworkable, impracticable, an inconvenience and anomalous to interpret the 1899 Act as applying to land that was common land in 1899 but is no longer common land at the time the Act is to be applied.

119. As a result of section 10 CRA 1965, the extent of Studham Common is now determined by the commons register which, in accordance with my findings above, comprises in relation to Studham Common the photocopy register entry and the December 1967 map. If the Council were to seek to create a new scheme under the 1899 Act I consider it clear that

this could only be by reference to Studham Common as it exists now, and not as its bounds may have been in 1899 (if they were different then).

120. However, the question before me is not the extent of the powers of the Council to introduce a new scheme under the 1899 Act. It is how the 1911 Scheme should be interpreted if the bounds of Studham Common are different to today from what they were in 1911.

121. The 1911 Scheme defined the common to which it applies as being:

> "The pieces of land with the ponds, paths and roads thereon commonly known as Studham Common situate in the parish of Studham in the County of Bedford and hereinafter referred to as "the Common," as the same is delineated in a plan deposited at the office of the Rural District Council of Luton, hereinafter called "the Council," and thereon coloured green, being a "Common" within the meaning of the Commons Act, 1899".

122. The "plan" referred to in this definition (which I will call "**the 1911 plan**") may be presumed to show the bounds of the common at Studham within the meaning of the Commons Act 1899 as understood at this time. It is not the same as what I have found to be the map that currently defines the bounds of Studham Common (the December 1967 map), although the differences are minor.

123. Given my finding that the term "Common" within the 1899 Act must now be updated, it must be taken to mean, in relation to Studham Common, the common delineated in the December 1967 map.

124. As a result there is now a contradiction between two different elements within the defined scope of the 1911 Scheme. On the one hand the 1911 Scheme defines its scope by reference to the 1911 plan. On the other hand it expressly refers to this being on the assumption that this plan accurately delineates a "Common" within the meaning of the Commons Act 1899, and this is no longer the case insofar as the 1911 plan shows different bounds to the December 1967 map. This contradiction creates ambiguity as to the precise bounds of the 1911 Scheme.

125. In my view this ambiguity should be resolved in favour of the proposition that the 1911 Scheme must be presumed to operate within the bounds of the borders of Studham Common as they exist from time to time. The 1911 plan was indicative of the bounds of Studham Common in 1911, but insofar as those bounds may have changed when the bounds of the common were formally defined in 1970 by the provisional registration by reference to the December 1967 map becoming final, the reference to Studham Common within the 1911 scheme must also be taken to have been accordingly updated.

126. Resolving this ambiguity in this way avoids any finding possibility otherwise arising that the 1911 Scheme might operate outside the bounds of Studham Common as now legally recognised. As I have found that the 1899 Act must be now considered, when it is referring to a common, to be read in accordance with the updating principle, to find otherwise would risk the 1911 Scheme being regarded as having become *ultra vires.*

127. This approach also is consonant with a further principle outlined in *Bennion* at section 3.17:

> "The general principles of interpretation that apply to Acts apply equally to delegated legislation, but with the additional

> consideration that since delegated legislation derives its authority from the enabling Act it must be interpreted in light of that Act."

128. The updating principle and the presumption against absurdity to the 1899 Act thus should also be applied to the Scheme (which constitutes interpretation of byelaws made under the 1899 Act) both because the rules of statutory interpretation apply also to delegated legislation and to satisfy the additional point noted by *Bennion* that delegated legislation should be interpreted in light of the Act enabling it.

129. Accordingly, I consider that the court should make a declaration to the effect that the 1911 Scheme should apply in relation to Studham Common as it is recognised by law in accordance with CRA 1965 Act and if there is any conflict between the 1911 plan and the 1967 map (or any later map that may be adopted in accordance with CRA 1965, CA 2006 or any later legislation) the bounds of Studham Common should be taken as those most recently determined by law.

10. CONCLUSION

130. I will ask the Claimants' representatives to draft and agree with the Defendant's representatives a suitable form of order reflecting the court's findings above, to be dealt with at a consequentials hearing at a convenient time at which any other consequential matters such as costs may be heard.

131. It may be hoped that the determinations above will be helpful in clarifying the uncertainties that have been raised in relation to the register of commons at Studham Common.

132. I must stress however that these determinations apply only to that part of the register. As regards the remainder of the commons register maintained by the Council, and indeed other commons registers, I hope that this judgment does not provoke a flurry of unnecessary challenges to any register. The commons registers remain subject to the presumption of regularity explained in *Calder Gravel Ltd v Kirklees MBC* as I have mentioned above. As a result, I would expect there to be few cases where a challenge to a register would be necessary or appropriate.