

Independent Complaints Reviewer (ICR) for HM Land Registry

Annual Report 2021/2022





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Further information

Full details of the service that the ICR provides can be found in our booklet, *Seeking a fair resolution*, which can be downloaded from the ICR's website at www.icrev.org.uk



Foreword by Andrea Cook OBE

This is my third annual report as the Independent Complaints Reviewer (ICR) for HM Land Registry (HMLR). It covers the period from April 2021 to March 2022.

During this period, my office received slightly more complaints compared with the two previous years. Of those, more proceeded to a formal investigation than before. We maintained our speed of service improvements and exceeded our advertised service standards. Of the 35 formal investigations that we undertook, 11 resulted in findings of maladministration (a failure to carry out proper procedures or to meet published service standards). Details are contained in the Facts and Figures section of this annual report.

As usual, I have included case studies to provide examples of the complaints that people have referred to me and of the approaches that my team and I have taken to find solutions. Some complaints that people asked me to investigate first seemed about service or procedural failures, but the complainants' real aim was to challenge decisions made under land registration law. I explain to complainants that legal decisions can only be challenged in the courts, even though taking legal action can be expensive and time-consuming. In such cases, I usually found that HMLR had given clear explanations of the decisions it had made.

Some of the complaints I upheld indicated systemic problems within HMLR. Complaints that did not proceed to full review have also provided evidence of such problems. In all cases we provide feedback to HMLR's customer policy team so that it can take action. We have seen that, although individual members of HMLR staff are often effective in handling and settling complaints, HMLR's complaint-handling processes and some of its software systems have not supported relevant staff appropriately.

Some examples of complaint handling that we have seen showed a lack of ownership or accountability. Last year, HMLR introduced a new customer records management (CRM) system. Since then, we have seen examples of complaints left 'lingering' for months within the CRM system while the staff originally identified to handle those complaints were on leave or off sick. In other instances, action that could have settled complaints was identified but was then undermined by subsequent administrative failures within HMLR.

A report such as this will inevitably highlight areas of concern and scope for improvement, but it is important to remember that the complaints brought to me are ones that HMLR has not been able to settle through its internal procedure. They do not show a full picture of the generally good service that most HMLR customers might expect to receive. Once again, I have been reassured by the willingness of HMLR's staff to engage with my reports and recommendations and to put matters right.

July 2022

The ICR service for HM Land Registry's customers

Our mission

'To seek a fair resolution of complaints.'

Our purpose

'To provide a free, effective and impartial complaints review and resolution service that settles complaints in a proportionate manner and makes a positive difference for future HMLR customers.'

The principles of good complaint-handling

Our review of complaints about HMLR is based on the Ombudsman Association's principles of good complaint-handling, as set out below.

- Clarity of purpose – for each review we provide a clear statement of its purpose, intent and scope.
- Accessibility – our service is free and available to everyone who needs it.
- Flexibility – our procedures are responsive to the needs of individuals.
- Openness and transparency – we provide public information that 'demystifies' our service.
- Proportionality – investigations and recommendations are appropriate to the complaint.
- Efficiency – our service strives to meet challenging standards of good administration.
- Quality outcomes – our service and recommendations lead to positive change.

We also consider the 'FREDA' principles of human rights:

- fairness;
- respect;
- equality;
- dignity; and
- autonomy.

People can expect the ICR team to:

- be courteous, honest and objective; and
- use 'straightforward' language.

ICR Office

To remain independent, it is vital that I am not a civil servant or part of HMLR. I provide the ICR service under a service-level agreement with HMLR, and I am personally responsible for all conclusions and recommendations that come from our reviews of complaints. I am supported by a small team of staff who are seconded from HMLR but directly managed by me. These staff bring the benefit of their expert knowledge of HMLR's practices and procedures, and the legislation HMLR operates under, as well as their commitment to good customer service.

My role

Anyone who has complained to HMLR and is dissatisfied with the outcome can ask me to review the matter. However, I cannot overturn HMLR's legal decisions or investigate issues that relate to proceedings before the Property Chamber or any other court. Also, I will not generally be able to consider matters referred to me more than six months after the date of

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HMLR's final response to the complaint. All final responses that HMLR issues explain that complainants can contact me if they are not satisfied with the response.

The review process

When I am asked to review a complaint, my team carry out a preliminary investigation to determine whether the complaint is one that I should look into. This investigation may involve discussions with the complainant to find out more about the matter and gain an understanding of the outcome they want. It may also be necessary to ask HMLR to confirm that its complaints procedure has been completed. If the complaint is not one that I can consider, we will give the complainant advice on their options for taking the matter further.

I also consider whether an investigation can provide an outcome that the complainant will find acceptable or useful.

If the complaint is one that I can consider, I first explore the possibility of agreeing a settlement directly between the complainant and HMLR. If a settlement cannot be agreed, we carry out a formal investigation by thoroughly examining HMLR's records and the information we have received from the complainant and HMLR.

After the investigation I produce a report that includes a summary of the background to the complaint and my conclusions on whether the complaint was justified. If I uphold a complaint, I can make recommendations to HMLR for it to do one or both of the following.

- Put things right with some form of redress such as an apology or a consolatory payment (compensation for the non-financial, negative effects of an official error). This payment may be up to £3,000.
- Make practical improvements to its systems and processes to reduce the likelihood of similar complaints in the future.

Both the complainant and HMLR have an opportunity to comment on a draft of the report before it is finalised, and I fully consider any comments.

Case studies

The following section gives examples of the complaints referred to me and the approach my staff and I took.

Boundary disputes

- Mr A disagreed with his neighbours about the position of the boundary between their properties. HMLR had reviewed Mr A's registered title plan and had decided that it accurately reflected the registered land that Mr A had bought. Mr A had relied on a different plan drawn up by a conveyancer to show a right of way, but HMLR had previously explained that the conveyancer's plan had wrongly included land that could never have been sold to Mr A because the seller had not owned it. The land bought by Mr A was an existing registered title, so HMLR had not been responsible for checking the accuracy of the conveyancer's plan.
- Mr and Mrs B were in dispute with their neighbour. They said his fence crossed over their boundary by 20 cm and that he had extended his flat roof over the top of their flat roof. They said that their title plan, prepared in 1971, was wrong because it did not show the extensions to the two houses in their correct position. They also said that their neighbour's surveyor had misused the title plan in court, which resulted in legal costs being awarded against them.

In both complaints, I explained that the purpose of title plans is to show the location of a registered property. Title plans do not depict the legal boundary – the imaginary line that separates where one person's ownership ends and another's begins. Title plans may also not show the true position of physical boundaries, particularly if there have been changes since the title plan was prepared. HMLR uses the up-to-date Ordnance Survey map information when it prepares a title plan, but it does not update the title plans to reflect later changes to buildings or physical boundaries. If people cannot settle boundary disputes by agreement or negotiation, it will sometimes be left to the court to say where the legal boundary should be. I also had to explain to Mr A that it was not HMLR's job to oversee whether the solicitors involved in his purchase had fully understood the details of the transaction or whether they had properly explained matters to him.

However, I did have some concerns about how HMLR had treated Mr A. He had to contact my office on numerous occasions to get his complaint escalated through HMLR's internal process and my staff contacted HMLR's customer policy team for progress updates on four occasions. HMLR also acknowledged internal problems in referring complaints to the correct person. I concluded that HMLR's internal procedures for making sure responses to complaints are sent as soon as possible had not worked well. Therefore, I recommended that HMLR should make improvements to its procedures.

Repairing a shared driveway

Ms C bought a house which shared a driveway with four other houses. Her solicitor had explained to her that all five properties had joint responsibility for the upkeep of the driveway. Unfortunately, a series of conveyancing errors meant that the duty to contribute to the maintenance fund could not be enforced against all the owners. Ms C said she would not have bought the house if she had known there were problems and that HMLR should sort matters out.

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After investigating, I found that the problem had been caused by conveyancing mistakes rather than by HMLR. I also found that Ms C's solicitor could have told her about the problems before she decided to proceed with her purchase.

Buyers are responsible for making sure that the properties they are buying meet their needs. So it is important for buyers to take advice from regulated – and professionally insured – professionals, such as solicitors and surveyors. They should not proceed with a purchase until they are sure that all their questions and concerns have been answered.

Claims of bias

Some people complain to me that they have been unfairly treated.

- Mr D was in dispute with a neighbour who had written to HMLR to ask for help. HMLR wrote to the neighbour and said that Mr D might be in 'adverse possession' (a legal principle that grants ownership to someone who does not own specific land but has used or occupied it for a certain period) but did not have legal title to the land in question. However, Mr D was certain that he did have legal title to the land and, following a formal application, HMLR altered the register in Mr D's favour. I found that HMLR's advice to Mr D's neighbour had made an existing dispute worse. It had also not been accurate. I said that HMLR had not followed its published advisory policy because it had failed to recognise that "others may be affected by what we say". I recommended that HMLR apologise for the harm caused and make a consolatory payment of £1,000.
- Mr E was in a boundary dispute with an HMLR employee. I found that HMLR had followed its conflict-of-interest policy. HMLR made sure that no one in the employee's office was connected with the handling of the case. I was able to reassure Mr E that there had not been bias and the HMLR employee had not received preferential treatment.

When HMLR needs information about a property in connection with an application, it may ask a surveyor employed by Ordnance Survey to carry out an inspection and report back to HMLR. HMLR should tell all people affected that an inspection will take place, but the role of the surveyor can be misunderstood. It is only to give HMLR a report about information received and recorded by the surveyor. It is not to talk to the people involved or gather their opinions.

- Mr F was in a boundary dispute with his neighbour, Mr G. Mr F complained that he had been disadvantaged because the surveyor had spoken to Mr G, but he, Mr F, had not had the same opportunity. I found that Mr F and Mr G, and their solicitors, had been given notice of the inspection and that Mr G had asked to be present but Mr F had not. I was satisfied that the surveyor had acted properly, because, in his report, he had distinguished between what Mr G had said and his own professional observations. Therefore, I did not find that Mr F had been treated unfairly. However, I said that even the perception of unfairness could cause distress and I recommended that HMLR consider how to reduce the risk that a surveyor's visit could contribute to a belief that there had been unfair treatment.

HMLR payments – delayed applications

If HMLR gets things wrong, it should make sure that it does not cause injustice. Sometimes it can make a payment, known as 'indemnity', under its statutory compensation scheme. In

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other cases, the legal requirements to pay indemnity may not be met. In those cases, if a loss can be shown to have been caused by HMLR's maladministration, HMLR should consider making a discretionary (voluntary) payment.

This year I have seen cases where HMLR overlooked or misunderstood this way of putting things right. HMLR staff have also interpreted internal rules to mean that there is a financial limit on the ability to offer such payments.

- Mr H asked HMLR to expedite (fast-track) his applications because they were urgent. HMLR had taken much longer than its advertised standards for expedite cases and Mr H said the delay had cost him £28,000. He asked that HMLR compensate him.

HMLR apologised and said that it would improve internal procedures. It said that it would make a payment for the maladministration but had to do so 'within parameters set by HM Treasury' and offered £500.

I found that HMLR had failed to consider the Parliamentary Ombudsman's principle of seeking 'to put the complainant back in the position they would have been in if nothing had gone wrong' and that it had misinterpreted internal guidance which stated that it required approval from HM Treasury if it was appropriate to pay compensation over certain amounts. I recommended that HMLR look again at the evidence Mr H had provided and decide whether he had shown a direct link between HMLR's service failures and the financial loss that was claimed. Since that time, HMLR has updated its 'Practice guide 39: rectification and indemnity' to explain the circumstances in which it can pay compensation.

- Mrs I also asked HMLR to expedite her application for voluntary first registration of her house. She wanted to 'put her affairs in order' because she said she was elderly and fearful of contracting COVID-19.

Mrs I contacted HMLR on several occasions and was told about the conditions in which HMLR would expedite cases. She told us:

'However, I also said that if you take hardship to include causing stress and distress then that was different; we did meet that criteria in my view. I explained again why we were so anxious to get the paperwork sorted, that we were vulnerable and wanted to ensure our affairs were in order should anything happen to us. At the time I felt that the caseworker was only recognising the Land Registry definition and had not 'heard' my comment. The fact that she says she was unaware of my being upset is evidence of this, I think, as it was having to explain our vulnerability again that was so upsetting.'

I found that in the circumstances that Mrs I had explained, it should not have taken a year for her application to be completed. I recommended that HMLR apologise and make a consolatory payment of £100. I also recommended that HMLR should remind staff that concerns about delay should take into account people's individual circumstances. Responding to my draft report, Mrs I told us:

'If the only consideration caseworkers are trained to take account of is the practical impact of delaying or losing a house sale, then she was quite correct in her actions.'

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However, I would really like to think there is more humanity in the process than that, and a wider understanding of the impact in other aspects should be taken into consideration. I am therefore very heartened by your recommendation that staff are reminded of the need to tailor their response according to the needs of the individual as well as the organisational requirements.'

Poor complaint handling and other administrative failures

- Mr J was unhappy that HMLR had told commercial organisations, such as Zoopla, the price he had paid for his property, and he complained to HMLR. I found that HMLR properly explained that its decisions met with wider government policy and that policy matters could not be challenged through the complaints process. However, I also found that in its responses, HMLR had confused policy decisions with legal requirements. There had been multiple failures in following the published complaints procedure. I recommended that HMLR apologise and make sure that all staff, including those not involved in casework, were trained on how to recognise and refer complaints appropriately.
- Mr K, acting on behalf of a small charity, applied for first registration of a field. However, he left information out of the application form. This meant that he did not receive an automated acknowledgment letting him know the new title number that had been allocated.

Some months later he wrote to HMLR to find out what was happening, and considerable correspondence followed. The lack of clarity and plain English used in HMLR's replies and the way it investigated matters led to further complaints.

I found that if HMLR had followed existing procedures, it would have identified the missing information at an early stage and a lot of the time-consuming correspondence would have been avoided. I found that a series of emails sent by Mr K to HMLR were not received and that HMLR failed to investigate the underlying reason. I also found that the standard of HMLR's communication was poor and that it had used in-house jargon. I recommended that HMLR apologise, make a modest payment to the charity for the unnecessary inconvenience and take steps to avoid similar problems in the future. Mr K commended my office on the 'extremely thorough investigation and very well constructed, clear and concise draft and final reports.'

- Ms L contacted HMLR in September 2021 with an enquiry and received an automated response saying that HMLR would respond to Data Protection Act requests within 40 calendar days. She wrote again and said that the law had changed in May 2018 and HMLR had to reply within a calendar month not 40 days. She asked for an explanation before considering whether to contact the Information Commissioner's Office (ICO).

Although Ms L received an acknowledgment, she did not receive a reply to her question. In fact, although she contacted HMLR on several occasions, she did not receive a response to her complaint until January 2022 and then only after contacting my office and the ICO. The ICO was critical of HMLR's handling of matters. Ms L was dissatisfied with HMLR's response to the first stage of her complaint and asked for it to be escalated. HMLR's response to the second stage of her complaint was issued by the same person who had written the first response.

Ms L asked my office to investigate, and we found several failures.

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- HMLR's customer records management (CRM) system did not appear to be working effectively. At the time I issued my report, the CRM record showed that HMLR's first response to Ms L's complaint was 181 days overdue, and I expressed my concern about how many similar cases there might be.
- HMLR had not followed its own complaints process. For example, the same member of staff should not have reviewed the complaint at both stage 1 and stage 2.
- HMLR had taken four years to make sure its information was legally accurate, even though my office had drawn a related matter to its attention in July 2018.

Among the recommendations that I made was that HMLR should find out who had responsibility for the accuracy of this information. They should then make sure suitable accountability was established so that similar problems should not happen again. I was concerned to see minutes of an HMLR meeting that took place two months after my recommendation that said it was still 'not clear' who had such responsibility.

Ms L welcomed my report and recommendations and my recognition of the public-spirited motive out of which she had pursued the complaint. Unfortunately, HMLR's written apology to Ms L was undermined by a letter which indicated the writer had not understood my report. For that reason, Ms L said she would ask her MP to refer the complaint to the Parliamentary Ombudsman but would:

'make it clear that I was very happy with the way the ICR and her staff dealt with this matter; it is only HMLR's response that I am unhappy with (as indeed I have been unhappy with every response they have given me on this matter at all levels of the organisation)'.

Facts and figures 2021/2022

The small number of complaints referred to me shows that HMLR settles most complaints through its complaints procedure.

The table below gives an overview of the work of my office in 2021/2022 compared with the previous financial year. Of the complaints we received this year, 35 proceeded to a formal investigation.

Complaints referred to the ICR Office

	Complaints received	Formal investigations resulting in findings of maladministration	Formal investigations resulting in findings of no maladministration	Complaints settled by agreement
2021/2022	130	11	24	9
2020/2021	114	11	13	8
2019/2020	120	9	15	11

We carefully examine all complaints that we receive and decide whether we may be able to help, and how. As can be seen from the above table, most complaints do not result in a finding of maladministration (a failure which can cause injustice).

We will not make a finding of maladministration if:

- the complainant has not yet received a final response from HMLR (we will refer the complaint back to HMLR);
- I cannot provide the outcome the complainant wants and that outcome could only be achieved by taking action in the courts;
- the complainant referred the complaint to us after the end of the six-month time limit; or
- we can agree an acceptable outcome with the complainant and HMLR.

We also receive complaints that are not specifically about HMLR. In those circumstances, we guide the complainant to the most appropriate organisation to help them.

Recommendations

My recommendations to HMLR are designed to:

- remedy any distress or inconvenience to individual customers; and
- help HMLR to improve its systems and procedures, to reduce the risk of similar complaints in the future.

In terms of putting things right for an individual, we recommend apologies in most cases where maladministration or poor service has been identified. We may also recommend consolatory payments of up to £3,000, but we usually recommend smaller amounts that reflect the distress and inconvenience an individual may have suffered.

Last year, we recommended nine consolatory payments, for amounts ranging from £100 to £1,000.

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Specific action we may recommend can include, for example, that HMLR should address issues such as rights to compensation or provide extra information to help the customer.

Wider recommendations may be that HMLR:

- provide or improve public explanations for processes or decisions;
- consider changing procedures; or
- provide training or guidance aimed at helping HMLR staff to follow appropriate procedures.

Recommendations made in the reporting year were as follows.

	Apologies for service failures	Consolatory payments	Other specific recommendations for redress (remedy)	Wider recommendations
2021/2022	9	9	6	11

HMLR continues to respond positively to our recommendations, and I am pleased to report that HMLR accepted all recommendations we made for individual redress in 2021/2022.

Speed of our service

We aim to provide a swift response to all enquiries and complaints. However, when we carry out a full investigation, it can take a considerable time to examine the paper and electronic files, which are often large and can date back over many years. We also need to allow time at each stage of the process for the complainant and HMLR to provide comments.

Our published target is to complete a formal investigation within 26 weeks from the date that we agree to look into the complaint. This year, after allowing for delays outside our control, two reports did not meet the expected timescale. It took an average of 17 weeks to complete reports.

Financial information

Although we are independent from HMLR, it pays our overall running costs. We continue to manage our budget as effectively as possible. The figures for the last three financial years are set out below.

ICR running costs	2019/2020	2020/2021	2021/2022
Staff costs (see note 1 below)	£260,531	£210,080	£242,139
Administration (see note 2)	£16,197	£16,725	£28,510
Total	£276,728	£226,805	£270,649

Note 1: Staff costs of 2019/2020 reflect an overpayment of salary which was corrected in 2020/2021 figures.

Note 2: the administration cost shown above includes the costs of office accommodation.

Customer feedback

Feedback helps us to improve the quality of the service we provide. Our service users can fill in an online form to provide feedback. If we send a report by post, we will enclose a paper questionnaire.

Our customers often comment on the work that goes into our investigations. Complaints about HMLR can stem from conveyancing problems, and my reports aim to explain what has happened as well as provide my opinion on whether HMLR's actions may have contributed or added to a complainant's problems. Feedback we have received this year has included:

'I am grateful for the time and effort taken by the Independent Complaints Reviewer and staff in investigating and reporting on this matter. In particular, I am grateful for her recognition that I pursued this to assist both HMLR and its customers.'

'I have used the link below to provide feedback, however I wanted to thank you and the ICR for your clarity in providing me with (process) answers, as well as your fast response to those questions. This has helped me to have confidence in the ICR's review, even before knowing the outcome. Thank you.'

'Let me preface my response to the draft report by saying how grateful I am for the time and trouble you have clearly taken in investigating these complaints so thoroughly and let me also say how impressed I am with the clarity of the draft report. Clearly, I cannot take great issue with a draft report which, in almost all respects, upholds the complaints I made but I would make the following observations..... Finally, and once again, please accept my thanks for the efforts your office have made in investigating these complaints, for summarising them so succinctly and offering such a clear draft report.'

'Thank you for your very comprehensive letter dated September 6, 2021. It is clear that you have spent considerable time on this, and we are most grateful for your efforts both to understand and to be fair in your conclusions.'

'Further to receiving your email and ICR's draft report, we are grateful for your clarification and explanations, and see that only the failure to notify was upheld. It's thorough and we cannot add anything.'

Parliamentary Ombudsman's office

Customers who are not satisfied with my conclusions can ask their local MP to refer the matter to the Parliamentary Ombudsman's office for a final review. These reviews involve external experts looking carefully at our work. I am pleased to report that, in the last year, the Ombudsman did not have any reason to investigate any of my conclusions.



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