

Why the United Kingdom does not have a cadastre – and does it matter?

Presented by Duncan Moss

**based on the work of Dr Richard Grover
UK Delegate to FIG Commission 7**

Introduction

- High level overview of land registration as concept
 - State guarantee of title rather than precise boundaries/extents
 - Land Registration now in operation for all Home Countries of the UK
 - Scotland had Register of Deeds from 1617
 - Land Registration in England and Wales from 1925 onwards
 - Land Registration in Scotland from 1979 onwards
- Similarities and differences in both land law and registration practice across UK
- The economic case for moving to a numerical cadastre
- Improving Land Registration and mapping

As close as most British surveyors come to a cadastre!



Eau de Cologne
4711 (Cadaastre
parcel number)

What is a cadastre?

A cadastre is normally a parcel based and up-to-date land information system containing a record of interests in land (eg rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, the ownership or control of those interests, and often the value of the parcel and its improvements. (FIG Statement on the Cadastre)

What UK lacks is:

- A parcel-based system
- Accurate records of the geometric descriptions of the areas for different interests in land

Does the absence of a cadastre matter?

- Does it harm economic development?
- Does it damage the functioning of the property market?
- Is it a case of local eccentricity?
- Is it the result of an historical accident?
- Or has UK found alternative ways of achieving a cadastre's function of protecting property rights?
- Does UK have a philosophy of property rights and their legitimisation that is incompatible with a cadastre?

No cadastre! Another example of charming British eccentricity?



The estate: the building block for land information

- No legal concept of the ownership of land itself
- Ownership of an estate or rights over land
- Estates are a 4-dimensional concept – length, breadth, height, time
- Several estates can exist at any point in time e.g. reversionary interests alongside an estate currently exercising its rights
- Estates can exist in the same physical area at a single point in time e.g. rights of grazing, hunting, cutting timber in a woodland can be in different ownership; rights that apply at certain times
- Registration is of a proprietary estate not a parcel
- Taxation of a hereditament not parcels – economic unit with single occupier, single geographical unit capable of separate occupation and put to single use

Overview of Land registration

- HM Land Registry in England & Wales with separate registration bodies for Scotland and Northern Ireland
- Torrens-style register with proof of title through entry in register – access 24/7 through internet includes data about price paid
- Replaced deeds system – but no deeds register in E&W, but Sasine Register in Scotland since 1617
- Compulsory registration since 1926 but on sporadic basis – 59% of land in England & Wales registered but 85% titles, Scotland progressive since 1979
- 1925 move to statutory based system of rights on which land registration is based
- Potential loss of non-statutory unregistered rights

TITLE NUMBER : CS72510
PROPERTY REGISTER

CORNSHIRE : MARADON

1. (29 August 1974) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 23 Cottage Lane, Kerwick, (PL14 3JP).
2. (29 August 1974) The land tinted yellow on the title plan has the benefit of the following rights granted by the Conveyance dated 27 July 1968 referred to in the charges register:-

“TOGETHER WITH the benefit of a right of way on foot only over that part of the shared accessway belonging to 25 Cottage Lane.”

3. (29 August 1974) The land has the benefit of the rights granted by the Transfer dated 21 August 1974 referred to in the Charges Register.

END OF PROPERTY REGISTER

TITLE NUMBER : CS72510 PROPRIETORSHIP REGISTER -
ABSOLUTE FREEHOLD

-
1. (18 December 2001): PROPRIETOR: PETER ANDREW BARTRAM and SUSAN HELEN BARTRAM of 23 Cottage Lane, Kerwick, (PL14 3JP).
 2. (18 December 2001) The price stated to have been paid on 3 December 2001 was £128,000.
 3. (18 December 2001) Except under an order of the registrar no disposition by the proprietor of the land is to be registered without the consent of the proprietor of the charge dated 3 December 2001 in favour of the Ilkingham Building Society referred to in the Charges Register.

END OF PROPRIETORSHIP REGISTER

TITLE NUMBER : CS72510 CHARGES REGISTER- ABSOLUTE FREEHOLD

1. (29 August 1974) A Conveyance of the land tinted pink on the title plan dated 14 February 1965 made between (1) Archibald Henry Dawson (Vendor) and (2) Thomas Yorke (Purchaser) contains the following covenants:-

“THE Purchaser hereby covenants with the Vendor so as to bind the land hereby conveyed into whosoever hands the same may come that the Purchaser and his successors in title will not use the premises hereby conveyed for the retail sale of grocery or as a butchers shop.”

2. (29 August 1974) The land in this title is subject to the following rights reserved by a Conveyance dated 27 July 1968 made between (1) Maradon Borough Council (Vendor) and (2) John Robertson (Purchaser):-

“subject to

- (i) An exception and reservation in favour of the Vendor of the right to enter upon the land hereby conveyed for the purpose of constructing a public sewer the approximate line of which is shown coloured red on the plan annexed hereto and at all times hereafter for the purpose of inspecting cleaning repairing or renewing the said sewer.”

NOTE:- The red line referred to is shown by a blue broken line on the title plan.

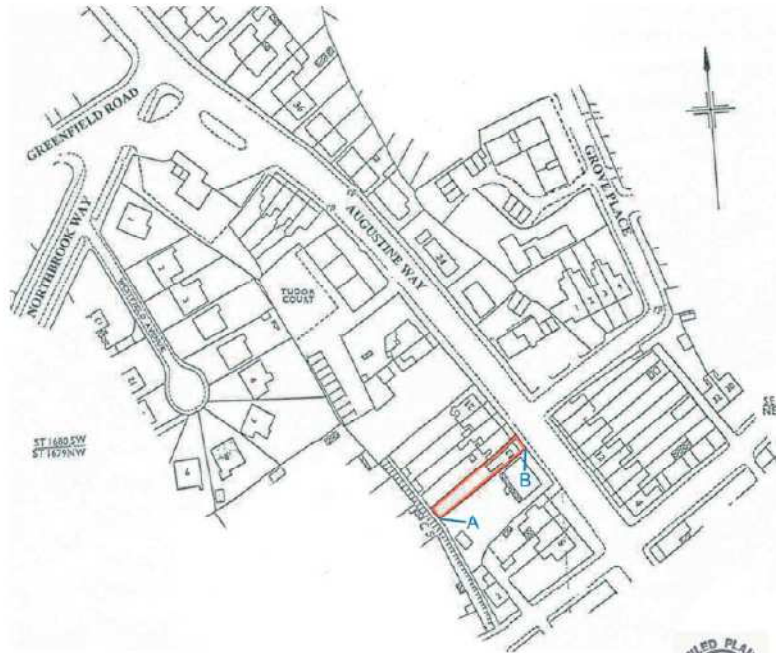
3. (29 August 1974) A Transfer of the land in this title dated 21 August 1974 made between (1) Henry Smith and (2) David Stanley Charles and Susan Charles contains restrictive covenants.

NOTE: Copy in Certificate.

4. REGISTERED CHARGE dated 3 December 2001 to secure the moneys including the further advances therein mentioned.

PROPRIETOR Ilkingham Building Society of 101 Cambridge Street, Ilkingham IL1 3FC.

H. M. LAND REGISTRY		TITLE NUMBER		
		CS72510		
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID	SECTION
	CORNESHIRE		ST 1680	K
Scale: 1/1250	MARADON		© Crown Copyright	



This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - *Title Plans*.

This official copy shows the state of the title plan on **9 December 2003 at 11:44:12**. It may be subject to distortions in scale. Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original. Issued on 9 December 2003.

This title is dealt with by **Land Registry, Maradon Office**.

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NOTE: This plan is a reduced copy of the original and has been produced for illustrative purposes only.

Concept of General Boundaries (E&W)

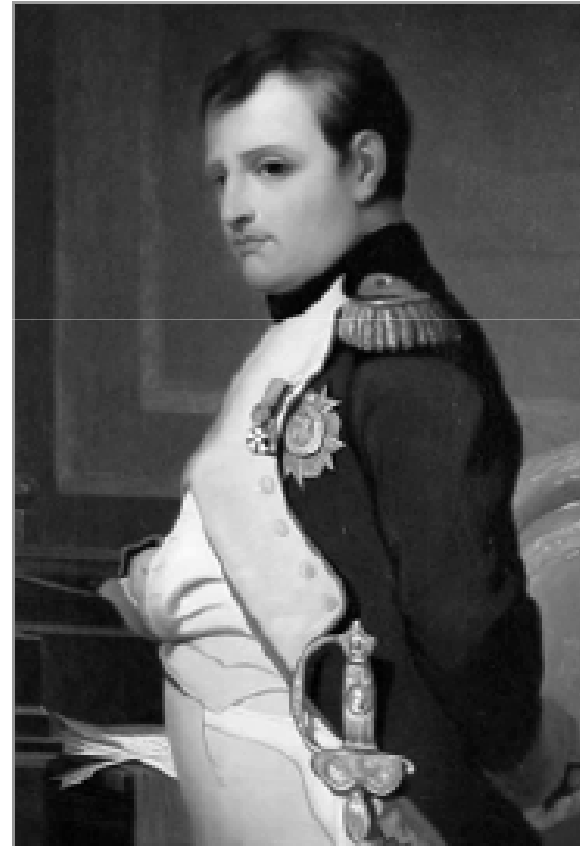
- Land Registry maps identify location of property and show a general boundary – need reference to other evidence, including common law rules, to determine exact boundaries
- Ordnance Survey has mapped boundary features since 1841 but has no power to fix private boundaries
- No government record of boundaries of estates – boundaries and boundary disputes are a private matter between neighbouring landowners
- State guarantee of Title rather than extent, however some legal and practice differences with Scotland

The two men who did most to promote mapping in Britain



Prince Charles Edward Louis John Casimir Sylvester Severino Maria Stuart, would-be “King Charles III”

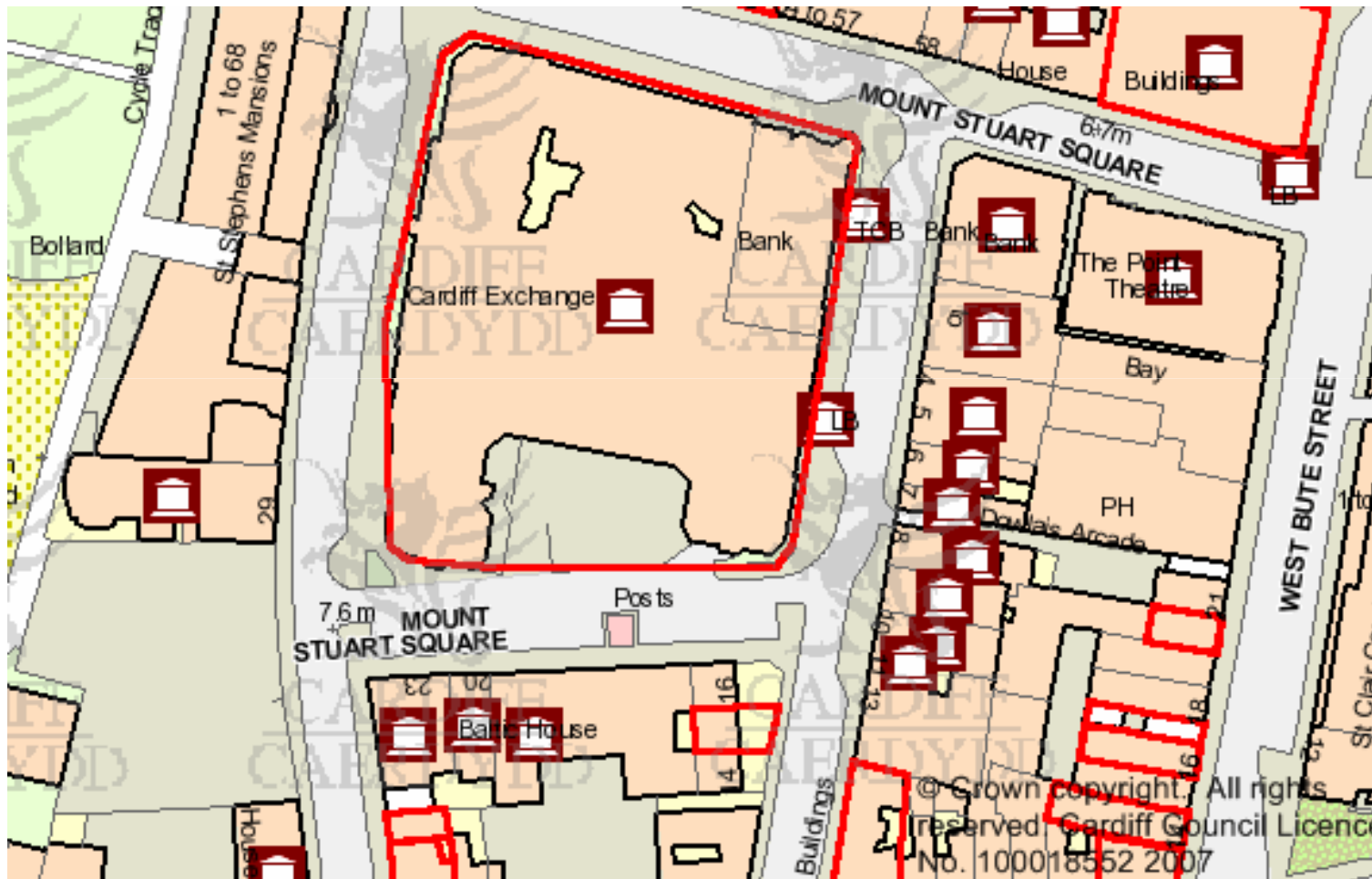
Napoleon Bonaparte



Ordnance Survey

- Mapping initially a response to military threat – 1745 Jacobite Rebellion, Revolutionary and Napoleonic Wars against France - Military involvement ceased 1983
- Large scale civilian mapping began in 1841 in response to needs of urban society.
- OS can map but not fix private boundaries.
- Since 1991 Executive Agency run on self-financing basis using fees charged to users
- 2001 OS Master Map – geo-spatial database with layers to which information can be added by outside users. Linked to postal addresses

Listed buildings and planning applications in part of Cardiff: An example of overlay on the Ordnance Survey database

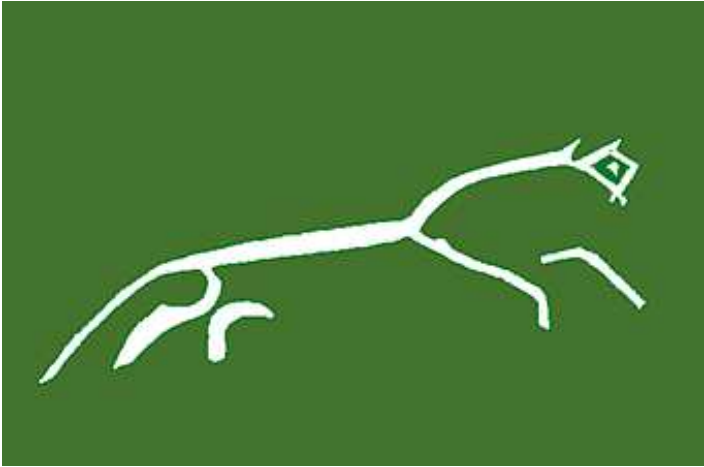


Why General Boundaries* (E&W)?

- Britain is an old settled country with reuse of past boundaries
- Common law rules exist about how to interpret evidence e.g. physical construction of boundary
- Doctrine of Adverse Possession* enables land to be claimed by the occupier after a period of peaceful enjoyment – limits ability to start a boundary dispute by ruling claims as out-of-time
- Eighteenth century enclosure movement brought about land consolidation in areas of open field farming
- Survival of tenures derived from feudal villeinage (copyhold) until 1925 and of manorial courts to resolve boundary disputes
- Boundaries and boundary disputes viewed as being a private matter and not of public interest
- Resistance to notion that state permission is needed to change boundaries or consolidate or subdivide properties
- *1 Scotland – approach in Scotland to try to guarantee boundaries within map limitations
- *2 Scotland has a 'A Non Domino' title but this requires a disposition

White Horse, Uffington, Oxfordshire – 3,000 years old but maintained continuously since construction

Dept. of Real Estate & Construction



The re-use of knapped flint field boundary wall by Victorian house-builders in Winchester

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Open field system, Laxton, Nottinghamshire – 900 acres in 3 open fields with approximately 30 tenants in each, divided into 1,200 plots – a rare survivor of pre-enclosure days



Increasing importance of Remote 'managed' landscapes



Dept. of Real

Increasing importance of Remote 'managed' landscapes

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True 'mountain and moorland'



Dept. of Real Estate & Construction

Specialist 'cadastres' in UK

- **Rural Land Registers or LPIS** – used to make payments to farmers based upon land area farmed under the European Union's Common Agricultural Policy. Parcel based
- **Business rates fiscal cadastre.** Used to collect the annual tax on non-domestic property, including government property. Assessed on annual or rental value. Revalued every 5 years by Valuation Office Agency. Tax liability falls on occupier. Hereditament based.
- **Council tax fiscal cadastre.** Used to collect annual tax on residential property. Assessed on capital or sales value. Properties placed in bands for tax purposes. Valued in 1991 by Valuation Office Agency but no revaluation. Tax liability falls on occupier. Hereditament based.

All three record occupation of property and not ownership.

Almost all property is recorded on one of the three.

Does the absence of a cadastre harm the British property market?

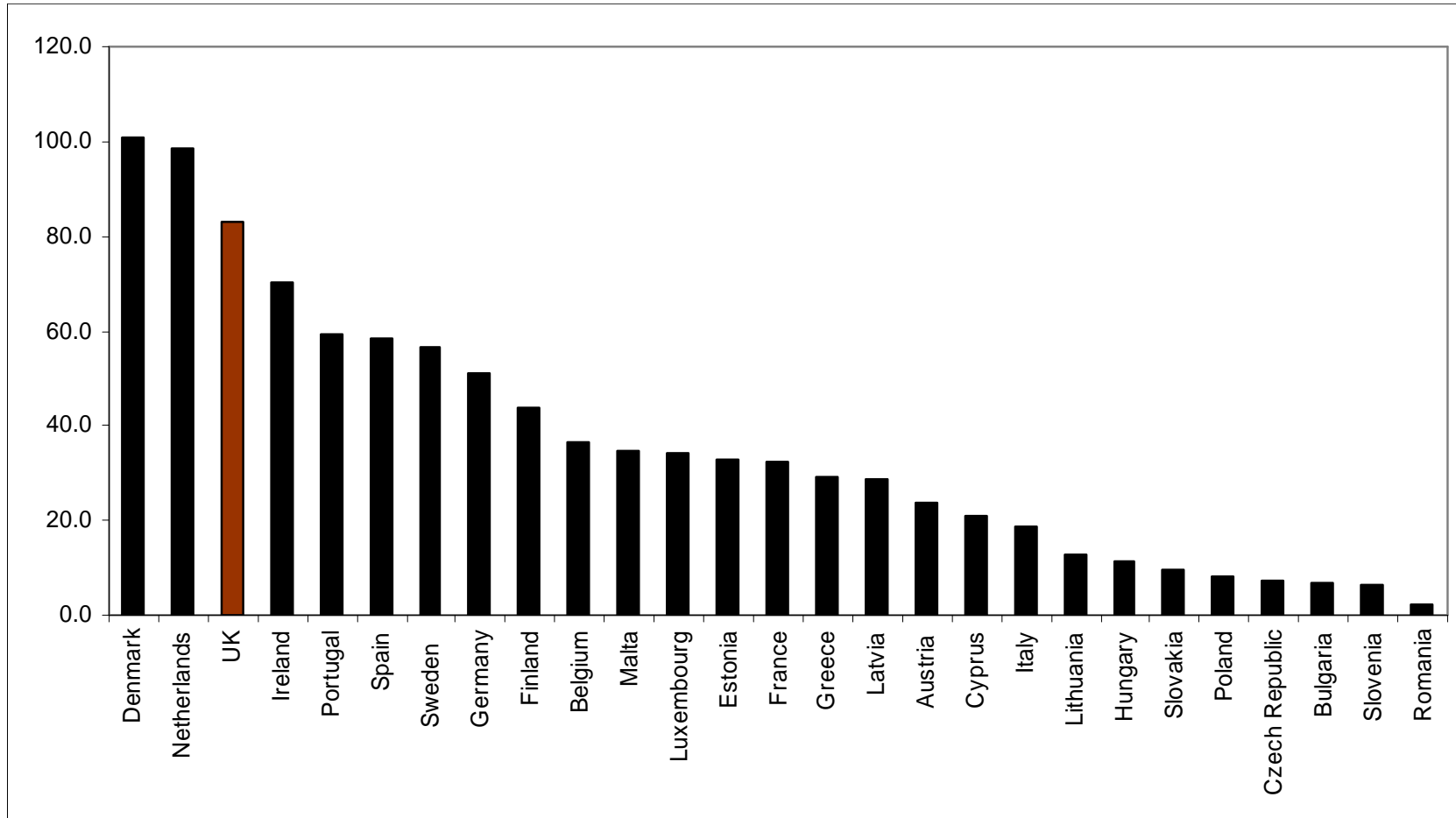
- High score on indexes like Jones Lang LaSalle Real Estate Transparency Index for openness and transparency of property market, corporate governance and ethical and professional standards
- High ranking for rule of law and protection of property rights from surveys like World Bank Governance and Index of Economic Freedom
- UK raises a relatively large proportion of tax revenues from real estate taxes – 11% net tax revenues (4% GDP) with 9% net tax revenues from the two annual property taxes
- High level of mortgage debt relative to GDP – one of the highest in the EU. High level of mortgage equity withdrawal. Also widespread use by industry of real estate assets as security for debt
- High level of housing transactions as a proportion of owner occupied housing stock
- Highly developed valuation infrastructure – numbers of valuers, education standards, valuation standards, professional and ethical standards, enforcement of standards

Most transparent property markets in the world

2010 Composite Rank	Market	2010 Composite Score	2010 Composite Tier
1	Australia	1.22	1
2	Canada	1.23	1
3	United Kingdom	1.24	1
4	New Zealand	1.25	1
4	Sweden	1.25	1
6	United States	1.25	1
7	Ireland	1.27	1
8	France	1.28	1
9	Netherlands	1.38	1
10	Germany	1.38	1
11	Belgium	1.46	1
12	Denmark	1.50	1

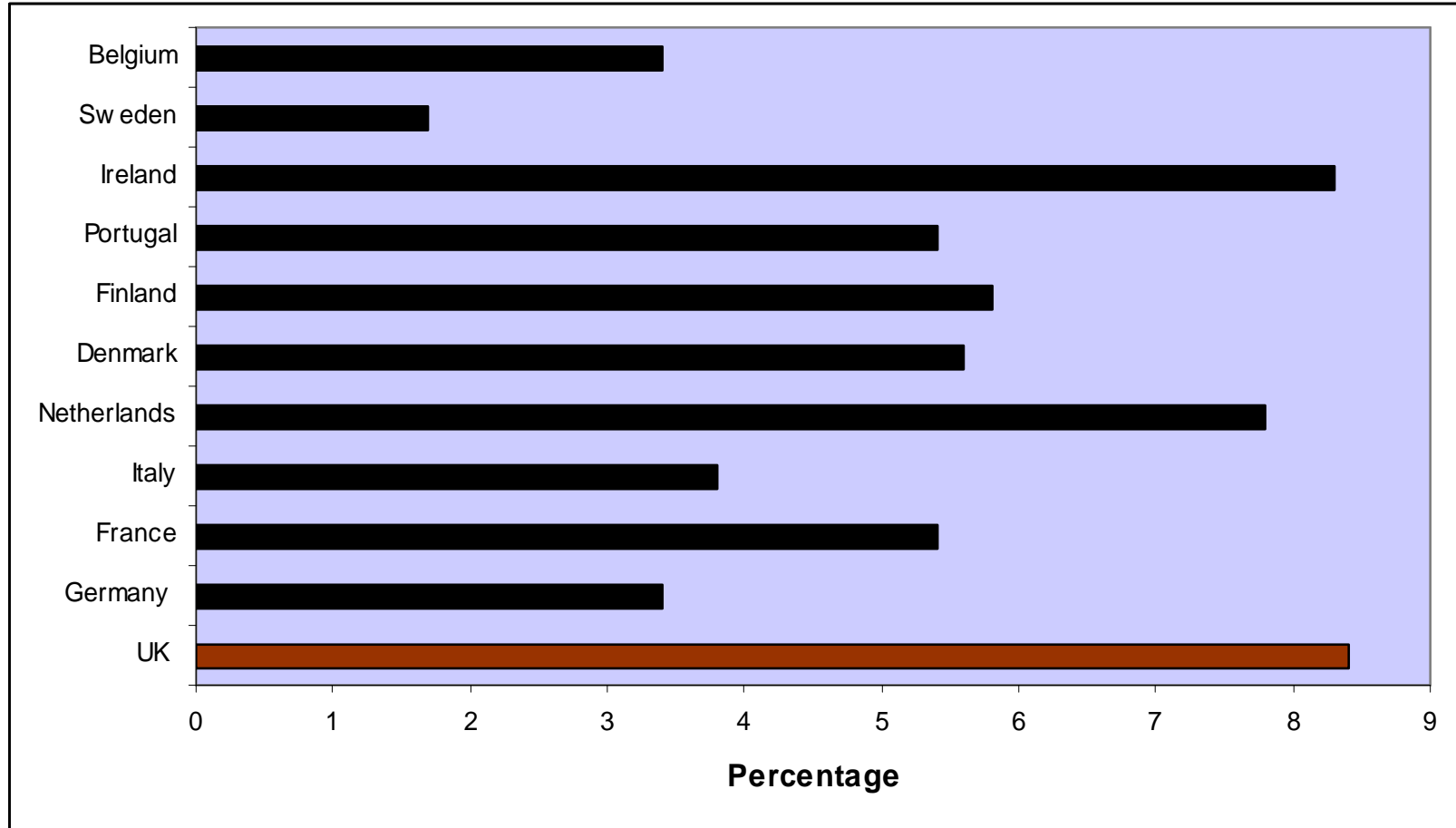
Source: Jones Lang LaSalle (2010) *Real Estate Transparency Index*

Residential mortgage debt as % of GDP 2006



Source: European Mortgage Federation

Housing transactions as percentage of owner occupied housing stock, 2000



Source: HM Treasury (2003)

Does the UK need a cadastre?

- Absence of parcel-based land information system and central register of accurate boundaries
- Active and efficient property market indicates that value these would add is limited relative to cost
- Long before there were accurate means of mapping the land, solutions were found to describing complex ownership patterns and solving boundary disputes
- Huge task for any government to persuade public that cost would be worthwhile
- Boundaries and property rights are regarded as being a private matter for which government permission should not have to be sought to change them – the Crown has sovereignty over the land but does not own it or have a proprietary title
- Rule of law, security of property rights and a developed property market, finance and valuation infrastructure may be more important to an efficient property market than having a cadastre

Improvements in mapping and land registration

- A new Land Registration Act 2002 in England and Wales
- A Land Registration Bill (Scotland) currently progressing through the Scottish Parliament
- Positional Accuracy improvement programme for 1:2,500 mapping undertaken by Ordnance Survey from 2001-2006
- A new programme to upgrade 1:10,000 mapping now under development
 - Explicitly customer driven
 - Working closely with Registers of Scotland, RICS and other stakeholder to define specification, extents and programme

Questions

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