

From: Ken MacMillan [kenm@patten.co.uk]

Sent: 11 August 2010 12:30

To: Fee Review Consultation

Cc: 'Fiona Gordon'

Subject: ROS Fee review consultation

Attachments: feereview2010_respondent_information_form.doc

Dear Sirs,

Greenock Faculty of Procurators Response

On behalf of the Faculty I would present the views below for consideration;

1. The 100% increases in minimum fees for Dispositions and charges seem extremely high particularly that for charges which would have thought would have involved a lot less work on the registration of the Disposition. The 150% increase in the ARTL fees given the minimum amount of staff work involved seems out of all proportion.
2. The new fee of £30 for applications rejected by the Land Register will potentially lead to the Land Register rejecting applications rather than seeking any supplementary information or documentation thus adding substantially to practice costs. It is noted that we will not be able to charge a fee to the Land Register for the many Land Certificates returned to them due to errors at their end!
3. There is a proposed additional charge of £400 for Dispositions and other constitutive deeds containing real burdens rather than the use of a separate Deed of Conditions. No one I have spoken to quite understands why the Registers of Scotland would particularly want us to use Deed of Conditions rather than a Disposition but there are situations where a Disposition from a practitioner's point of view would be seen as preferable.
4. Introduction of a fee of £50 for pre-registration enquiries seems a false economy. Many pre-registration enquiries save time and trouble not only at the solicitors end but at the Land Register end and the lack of a pre-registration enquiry service will undoubtedly lead to additional rejections thereby creating an enhanced income flow to the Land Register. The absence of a free pre-registration enquiry service is deplored.

Yours sincerely,

Ken MacMillan

Dean of Faculty

Ken MacMillan | Partner

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From: Susan Black [susan.black@bradleycampbell.co.uk]
Sent: 16 August 2010 19:28
To: Fee Review Consultation
Subject: Response to 2010 Fee Consultation

Attachments: Respondent Information Form; ROS Fee Review 2010.pdf

Dear Sirs,

Registers of Scotland Fee Review Consultation
Response on behalf of Bradley Campbell & Co, Solicitors, Greenock

As a partner in this firm, and in reiteration/support of the general response to the consultation forwarded to you by the Greenock Faculty of Procurators, I would present this firm's views as below for consideration:-

1. The increase in minimum fees for the registration of dispositions and charges appear to be disproportionately high in view of the work actually involved. The increase in ARTL fees given the minimal amount of staff work involved seems particularly unreasonable.
2. The fee of £30.00 for rejecting applications is a concern as it could lead to the Registers rejecting applications rather than simply seeking supplementary information documentation which could be easily provided. This rejection fee could lead to a substantial increase in practice costs and is surprising in view that we regularly require to return the Land Certificates for correction where there are typographical or other errors in the issued Land Certificate. With the increased use of e-mail correspondence, outstanding or omitted information or documents could be easily and quickly requested from the submitting agent at little or no cost.
3. The proposed additional charge of £400.00 for recording Dispositions and Deeds of Real Burdens is in our opinion quite outrageous in view of the small fee payable for the registration of Deeds of Conditions. The framing of these constitutive deeds is necessarily complex due to the framing of the relevant legislation however this legislation has been created after consultation with Registers of Scotland and it seems particularly unfair to levy such exorbitant registration costs on submitting applicants. We do appreciate that these deeds require much technical expertise in the processing of same however we do not see that the applicants should be penalised for creating burdens in this document rather than using a Deed of Conditions. At the end of the day, the same result is being achieved. If such deeds cause the Registers such problems then perhaps the legislation should be adjusted but that is a matter for the Registers to take up with the Scottish Government. In many transactions, such as where a property is being sub-divided or a piece of land is being conveyed from larger subjects, a Disposition incorporating common rights and creating burdens will be preferable to undertaking a full Deed of Conditions. In such cases the value of the land conveyed could well be less than the cost of the proposed registration dues.
4. We are wholly against the introduction of the £50.00 fee for pre-registration enquiries. The purpose of pre-registration enquiries is to minimise rejections and issues arising at the time when the application is actually submitted and in many cases the pre-registration enquires highlight errors in the Land Register which are duly rectified before the dealing takes place. If agents are 'put off' utilising this service due to the cost, it is likely that there will be additional rejections of

applications made which would (under the proposed changes) lead of course to an additional income stream for the Registers. We are wholly opposed to the introduction of such a fee.

Lastly, it is worth noting that, at a time when the housing market is struggling, these additional registration costs will only add to the outlays incurred by our clients, more so when you consider the impending increase in VAT. We would have thought that the Registers would be looking to stimulate the market by streamlining and reducing costs to the consumer.

The Respondent Information Form as required is attached to this email and we would lastly again confirm that we wholly endorse the views expressed by the Greenock Faculty of Procurators.

Yours sincerely,

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RESPONSE TO THE REGISTERS OF SCOTLAND FEE REVIEW 2010 CONSULTATION**1 Multiple Applications- sections 21 and 22**

We are concerned to see that it is proposed to remove the provision regarding fees for single transactions effected by more than one deed and/or application which we believe will have a negative impact on our client's portfolio transactions. We calculate that in most cases the registration dues received by the Registers will actually be lower under the new proposals so are uncertain as to why this provision is being removed. Whilst our clients may benefit from reduced fees there are other benefits to our clients under the existing provisions. These include not having to incur the cost of apportioning the purchase price to each property in the portfolio and being able to refer each of the applications for the individual properties back to the main application in which the full consideration is stated.

2 Dispositions containing real burdens –sections 26 and 27

We agree that where real burdens are being imposed on two or more properties the most effective way to do this is by using a deed of conditions. However we wish to clarify whether the additional charge of £400 would apply where new real burdens are being created over just one property (eg on the sale of part of garden ground with new real burdens being imposed on the part sold) when it would seem an unnecessary additional task to have to produce a deed of real burdens as well as the disposition. Please confirm when the additional supplementary charge will be levied.

3 Pre-registration Enquiries- sections 36 and 37

We do not agree with the proposal that pre-registration enquiries should be charge for. We use this service to ensure that we get our applications right first time thereby reducing the amount of time taken to process our applications. Sometimes there is ambiguity about how the Keeper will interpret the Land Registration Act or property law and we would want to be able to clarify such issues prior to making an application without having to incur additional fees for our clients.

McGrigors LLP

**Messrs. W. & J. S. Gordon's response to Registers of Scotland Fee
Review 2010 Consultation**

Rejections

It seems to us to be inequitable for Registers of Scotland to charge a fee for errors by solicitors where there is no reciprocal "penalty" for errors by the Registers of Scotland. It is still the case that solicitors have to spend substantial time checking Land Certificates when returned from the Registers of Scotland to ensure that there are no errors. Errors can and do occur - sometimes major. There is no mechanism for solicitors to recoup costs from the Registers of Scotland in these circumstances which is wholly unfair if the Registers can levy fees on solicitors.

Cancellations

Same comments apply as those specified above in relation to rejections.

Pre-Registration Enquiries

We have always perceived this service as being for the benefit of both solicitors and the Registers of Scotland. It is not always possible to find an answer to a specific query from the Registration of Title Manual or the Registers of Scotland's website. We have only tended to approach Pre-Registration Enquiries where matters are not straightforward and there is not necessarily a simple answer. In many cases there is not an answer until the Registers consider matters and take a view. It seems beneficial to both parties to deal with difficulties at an early stage, rather than applications being submitted and then rejected by the Registers at a later stage (in which circumstances it now appears likely that the Registers could levy a cancellation fee). It is hard to see how this would benefit the public/clients. Pre-Registration enquiries should be looked upon as an essential public service.

REGISTERS OF SCOTLAND FEE REVIEW 2010 CONSULTATION

I have compared what the Council expended over the course of 2009/10 for a number of departments based on current charges and proposed charges.

Department	Current fees	Proposed fees
Housing & Property – Discount Standard Security	£2,160.00	£4,320.00
Planning & Transport – Roads	£158.60	£283.00
Finance & IT (Legal Expenses)	£81.00	£135.00
Social Work (Community Care)	£983.00	£1,919.00

This is a difficult time for the budgets of local authorities and it is not helpful if the charges made by those with whom we do business are increased in the way set out in the consultation paper. The consultation paper reads (page 6, paragraph 8):- ‘As well as conducting this fee review, we are undertaking a wider financial sustainability review that will seek to introduce greater efficiencies to RoS.’ It is important that the Keeper does not simply ‘balance the books’ by increasing fees. Efficiency savings must also be made. RoS should be looking at smarter ways of working and better asset management. It is inappropriate for those who do pay fees to have to bear the cost of an inefficient service.

Page 6 - Proposed Changes to Registration and Recording Fees - and Annex A

On property values of £0 - £50,000 there is a proposed fee increase of 100%. On property values of £50,001 - £1,000,000 there is a proposed fee increase of 20%. There is no increase in the fees charged at +£1,000,000. It is noted that the fees for properties where the consideration is +£1,000,000 are already set at a relatively high level but is there not a case for charging more to those who can pay more for a property?

Page 9 – Rejections

I can appreciate the requirement to charge for work/time incurred during the course of processing an application for registration which is rejected. However, Registers of Scotland should highlight the availability of checklists/guidance notes which assist in the making of a successful application for registration. These checklists should be readily available on the home page for professionals with an appropriate link.

Page 9 – Cancellations

Cancelled applications, no matter the reason for cancellation, will no longer be set at a flat fee of £30.00. It will now cost the same amount for a cancelled application as it does to apply for registration. Surely any charge made for a cancelled application should reflect the time expended on it? Any charge made for rejections should be discretionary and not mandatory; it is not always clear that an application which is made will fall to be cancelled.

Page 9 - Dispositions Containing Real Burdens

As recently as 2003, the Scottish Parliament decided that a disposition containing real burdens was a proper way in which to impose title conditions. This is a device which is used by local authorities. It seems to me that, by proposing a fee charge of £400, the Keeper is effectively seeking to bring the use of this to an end. It seems like the Keeper is making law by policy.

Page 11 – Pre-registration enquiries

Registers of Scotland intend to charge £50.00 for every pre-registration enquiry. Surely the fees likely to be generated by this service should be balanced by the fact that any charge will discourage this type of enquiry but will likely result in more rejected/cancelled applications.

Pages 24/25 - Costs and benefits – Sectors and groups affected

Is there no scope to explore the possibility of a discount system for those who regularly use your services, especially when the service in question is one where there are no alternative service providers?

Is there not some scope for charging a nominal fee for the information that the general public are able to access? This could be off-set against some of the higher fee proposals?

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From: michael a brown[SMTP:LAW@MICHAELABROWN.CO.UK]
Sent: 01 September 2010 12:26:15
To: Fee Review Consultation
Subject: Fee Review Consultation
Auto forwarded by a Rule

I refer to the consultation paper in respect of the above. I attach Respondent Information Form.

I would respond to the consultation paper as follows (using the same numberings as on the consultation paper):-

9. I doubt this is correct but I only have ROS word on this matter as no detailed financial or time information for various transactions has been provided. Additionally, the "free" services such as quarterly statistics and online Scottish house prices must incur in-house costs. How much are these costs?
- 10/12. No comment.
13. No objections, but I would propose a higher fee increase to cover my proposed reduction or negation of other proposed fee changes, in particular Nos 23, 25, 27 and 37 aftermentioned.
14. There must be an in-house cost involved in these matters. See No 9 above.
- 15/17. No comment.
18. It seems reasonable, but I would propose a higher registration fee as per No 13 above.
19. As per Nos 13 and 18 above.
20. As per Nos 13, 18 and 19 above.
21. No comment.
22. This seems a reasonable suggestion on the face of it but will undoubtedly cause confusion and misunderstanding amongst solicitors (and more rejected applications).
23. No rejection fee should be charged. The cost of work in dealing with rejected applications has always been taken into account and absorbed when fixing the registration charges. Conveyancing and ROS regulations are (and will be) far more complex and confusing than the pre-1979 era. There will always be errors and thus rejections. This situation applies to **all** businesses, government agencies and local authorities. The Public Guardian proposed this charge 2 or 3 years ago and it was refused. Now ROS want to propose a similar rejection charge. If ROS succeed in applying a rejection charge, this will simply open the flood gates to every government agency, quango and local authority to charge a rejection fee from everything such as an erroneous passport application/fee to an erroneous planning application/fee and from an erroneous court writ/fee to, an erroneous POG application/fee. This is a fundamental change with far-reaching consequences beyond ROS and should be rejected.
- 24/25. The cancellation fee should remain at £30 or, if necessary, be increased to £60. Any higher fee is excessive. The number of cancellations must be extremely low compared to the number of registrations. However this statistical information has not been provided and therefore this information is missing from the consultation document. The percentage in "stand over" has

been stated. Why not the percentage of actual applications cancelled compared with actual registrations?

26/27. No supplementary fee should be charged for real burdens contained in Dispositions. Presumably, the complicated conveyancing methodology that requires to be implemented by solicitors when creating real burdens in Dispositions under the 2003 Act was designed to assist ROS in registering those burdens and Land Certificates. Now ROS want to charge a flat rate **supplementary** fee of £400. This is unreasonable as well as unfair to the public who would require to pay this supplementary fee.

Deeds of Condition are beneficial where numerous burdens, conditions and/or rights are being created but can be an unduly onerous conveyancing task for solicitors where only a few burdens are being created. A Disposition is often simpler.

The supplementary fee of £400 being proposed is effectively a back door imposition of Deeds of Condition without recourse to amending the 2003 Act.

28. The Keeper charges no fee for a nil return on Registers Direct and no fee/free access to his online Scottish house prices. Why should access to these be free when the Keeper is charging the public for everything else? Is it because there is external competition to the Keeper's online Scottish house prices? Does that mean that where ROS has a monopoly (eg registration of deeds), it can charge what it considers proper and where ROS has no monopoly, it charges no fee yet ROS still incurs substantial in-house costs for this service.

29/31. No comment.

32/34/35. No comment.

36/37. The Keeper may have no statutory duty to provide a pre-registration service but, in my 35 years experience as a solicitor, the Keeper has always willingly and helpfully provided advice in relation to the registration of deeds. This has been mutually beneficial to both ROS and solicitors in that it ensures the smooth registration of complicated deeds. Every business, government agency and local authority provide a free enquiry service. This is a necessary aspect of business life. It assists all parties, reduces costs further down the line and provides a meaningful link between the public and the service provider.

ROS provide a service to the public. Without the public ROS would not exist. Public service by its very name necessitates a provider such as ROS to be approachable for enquiries and advice, especially so when it is in the mutual interests of both parties. If a fee is charged for such enquiries or advice, then that mutual understanding and bond will be broken. There will be a general reluctance by the public to pay a fee, the enquiry service will contract and errors or omissions in the registration procedure will increase. These matters can be avoided if no fee is charged (which is the present position).

ROS say they receive 400-500 enquiries each month. However, ROS do not state how many registrations complete each month. There is therefore incomplete statistical information provided by ROS to calculate the percentage of enquiries against the number of deeds registered.

To my knowledge no other Government agency, quango or local authority charge an enquiry fee. The reasons given in No 23 above apply equally here. If a pre-registration enquiry fee is payable, this will open the flood gates for all other service providers to charge an enquiry fee.

This is a fundamental change which will have far-reaching consequences beyond ROS and should be rejected.

38/39/40. No comment.

In summary, if the proposed fees by ROS in respect of (in particular) Nos 23, 27 and 37 are accepted by the Government, then the present Keeper Sheenagh Adams will go down in the annals of legal history as the first Keeper in nearly 400 years to have severely damaged the excellent working relationship between ROS and solicitors and thus the efficiency of the deeds registration procedure.

Yours faithfully

Michael A Brown

Michael A Brown, Solicitors

17 South Tay Street, Dundee

Tel: 01382 204242

Fax: 01382 204911

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Our Ref: PMD

Your Ref:

Date: 8 September 2010

Registers of Scotland
Hanover House
24 Douglas Street
Glasgow
G2 7NQ

FAO Hugh Welsh, Room 7.11
EMAIL ONLY

Dear Sirs,

Registers of Scotland Fee Review 2010 Consultation

I thank you for the recently provided copy of the consultation paper re the above and would forward the following views for consideration.

1. Whilst I appreciate the need for the Registers to recoup its running costs, I have an immediate concern with the proposed increases in basic registration dues, both as regards its impact within the wider property market and the cost implications for this Council, a public body also under severe budgetary constraints. An increase such as this is a matter which should not be undertaken lightly in the current economic climate. I also disagree with the arguments presented within the consultation that, factoring in inflation, the proposed fees are actually a reduction on those of 1995. I consider this to be a specious argument as registration dues, set either by the consideration or value of the property transferred, will by definition factor in inflation as this value or consideration for a given property increases. A comparison of a registration of a given value in 1995 with the current fee is therefore not an effective like for like comparison.
2. I also have significant concerns with the introduction of fees for Pre-Registration enquiries. Given the historic nature of many of the titles held by this Council and indeed other public bodies, this is likely to have a greater impact on the public sector than elsewhere. In my opinion this is also likely to constitute a false economy resulting in more work for the Registers in the course of applications, as it will be a disincentive to resolving issues prior to submission.
3. I am unconvinced by the reasoning behind the proposals regarding the additional charge for Dispositions containing Real Burdens and would suggest the consultation paper lacks specification on this point. I appreciate that in some circumstances a Deed of Conditions will be the most effective way to proceed, for example the imposition of burdens within a housing or industrial development, where there will be a number of similar units within the site. I can however also envisage a number of situations where

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e-mail: peter.macdonald2@inverclyde.gov.uk



the most effective route will be inclusion within a disposition, a division of one site into two separate parts. In such circumstances I cannot see how an additional charge, were burdens to be included within the split off, would be justified.

4. Finally, I have concerns over the possible impact of the increase in cancellation charges, particularly where a reduced use of Pre-Registration enquiries may result in an increase in cancellations.

In addition to the above I would also endorse comments made by the Greenock Faculty of Procurators on this consultation.

Yours faithfully



11

Elaine Paterson
Head of Legal & Democratic Services

CML Scotland

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Registers of Scotland Fee Review 2010 Consultation Response by the Council of Mortgage Lenders to the Registers of Scotland (ROS) Consultation 8 September 2010 Introduction

1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 109 members and 82 associates comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 94% of the residential mortgages in the UK. In addition, the CML members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing.

2. CML Scotland welcomes the opportunity to respond to [the Registers of Scotland Fee Review 2010 Consultation](#).

Comments

3. We note that the fees which ROS charges are calculated on the basis of cost recovery and that both the downturn in the economy and the housing market have led to ROS dealing with a fewer number of transactions. This together with the reduced registration fees and information fees introduced in 2006 and 2009 respectively has resulted in ROS incurring substantial annual losses which are no longer sustainable.

4. The proposed increase in fees is substantial with some exceeding 100% although we note that taking inflation into account they in the main remain below levels charged in 1995. Clearly any business finding itself in the situation which ROS does would also be looking at its cost base and we note that ROS is undertaking a wider financial sustainability review that will seek to introduce greater efficiencies to ROS. It is a pity that further details about this and potential cost savings are not known as it would have perhaps made it easier to justify the proposed fee increases.

5. We are pleased to note that in the fee review the following 2 important principles remain:

- Deeds filed electronically using ARTL will be subject to a lower level of fees; and
- Fixed fees will remain in relation to any deed relating to a Standard Security and there is no plan to return to banding based on the ad valorem table.

6. It is extremely difficult to comment upon whether the fee increases are justified without understanding the level of losses incurred and whether they together with the potential cost savings will stop the losses presently being incurred.

7. We assume should transaction levels increasing in the future that a further review of registration and administration fees would be undertaken.

Further contact

8. This response has been prepared by the CML in conjunction with its members. Any comments or enquiries should, in the first place, be directed to:

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Date: 9 September 2010

Hugh Welsh
Registers of Scotland
Room 7.11
Hanover House
24 Douglas Street
Glasgow
G2 7NQ

Dear Mr Welsh,

I have been asked to respond on behalf of Transport Scotland to Registers of Scotland's fee review consultation.

Registers of Scotland's position in having a statutory duty to generate fees to cover costs is recognised, as are the difficulties which come with that responsibility. However Transport Scotland in common with other agencies is also experiencing difficulties at a time of budgetary restraint. Any increase in costs simply adds to these difficulties and we have the added problem that, unlike RoS we cannot reduce these increases by passing them down the line. We are in effect a captive market for RoS.

There are normally three aspects to this sort of review, fee increases, review of operational procedures to limit their effect, and the quality of the product which customers can expect in return for increased fees.

It is therefore disappointing to see a fee review which simply concentrates on fee increases, some as much as 100%, without addressing these other areas.

If Transport Scotland is to be subject to these increases, and in practice there is no alternative, we would wish to see a number of quality and operational issues addressed. This is not the place to go into detail, however I am advised that there are issues with Registers Direct 2, accuracy of recording CPO and GVD information and general quality of information.

In respect of the fee increases themselves, I will not go through them on an individual basis. However it has been brought to my notice that the proposed cancellation fee of £400 seems punitive, particularly where the avoidance of this is not always within our control.

In summary, while we recognise reluctantly that a measure of fee increase is inevitable, some of the proposed increases appear excessive, certainly in percentage terms, and Transport

Scotland would also like to see a number of operational and quality issues addressed as part of the overall review. We would be happy to participate in further consultation on these aspects.

Yours sincerely,

A handwritten signature in black ink that reads "Jim Vance". The signature is written in a cursive style with a horizontal line underneath the name.

Jim Vance

REGISTERS OF SCOTLAND FEE REVIEW 2010 CONSULTATION RESPONSE FROM LAW SOCIETY OF SCOTLAND

The Conveyancing Committee of the Law Society of Scotland is pleased to have the opportunity of commenting on the proposed fee increases proposed by the Registers of Scotland ("RoS") in regard to most of the various types of fees charged for the services the Registers as a non-Ministerial Government Department provides.

Whilst it is appreciated that RoS requires to be self-funding and that it has over the last two years faced a large downturn in fee income due mainly to decreased volumes of registrations but also in part to reduced property values, the Committee is not in agreement with all the changes proposed.

The Department does of course benefit by being the monopoly supplier for many of its services and much of its work is viewed as being by nature of a public service rather than a business. Whilst the Committee sees no objection to RoS providing other property related services which are already available from other commercial concerns, it is firmly of the view that RoS should only do so where full economic charges are levied, preferably of a level to bring in profits to help subsidise other areas of work or to assist in investing for the future. The Committee is therefore surprised that RoS proposes to continue providing its Scottish House price service free of charge, particularly when the service used to attract a charge. Although useful as an overview of movements in the entire Scottish market, the time lag caused by registration times does lead to the information being less useful say than statistics of local property sale prices which most solicitors are able to access via their Solicitors' Property Centre. The Committee therefore anticipates that most solicitors will consider that a charge should apply to this RoS service rather than for example the proposed new charge proposed for the Pre Registration Enquiry Service.

Turning to the other changes proposed, the following comments are made:-

1. Proposed Changes to Registration and Recording Fees

The Committee agrees that the current policy of not differentiating between fees for a First Registration and other Dealings should continue. Although it is a policy area outwith the remit of the Committee, it would however comment that, given the pressures in the lower ranges of the market and the larger percentage which the registration dues for the sale of a small area of land or property will bear to the sale price than the ratio for larger transactions, the fee bands do appear rather disproportionately to favour the latter - and by extension better off sellers. The Committee is therefore surprised to note the statement in the Equalities Assessment that the proposed changes will affect all businesses and individuals equally. Whilst Annex A to the Consultation paper shows that, in real terms, the 1995 fee of £34 will increase to £60, the adjusted for inflation 1995 fee for a £700,001 transaction (a section of the market holding up well in many areas) will drop from £1221 to £840. The doubling of the £30 fee will also affect a large number of fixed fee transactions.

The Committee is also concerned by the reduction in the fee differential for using ARTL. The Committee has been active in promoting the use of ARTL to

the profession but, for various reasons uptake, at least for title transfers as opposed to security work, has been slow and the fee change is not therefore seen as helpful to promoting the service.

2. Charges, Miscellaneous Deeds and Other Registrations

The Committee agrees with the proposal to retain the fixed fee structure but regards the doubling of the charge from £30 to £60 as too large an increase. It also considers that the fee charged for rectification of the Land Register should be refunded where RoS agrees that the requested rectification should be made and where the error to be rectified has not been caused by the fault or carelessness of the applicant (or his predecessor in title) or his (or their) solicitor. This seems only reasonable given the proposal to introduce a charge for rejected applications. The Committee would concede that it is disappointing that a significant number of applications have to be rejected, many for minor, easily avoidable causes. Where, as can happen, the reason given by RoS for rejection is however shown to be incorrect, it presumes that the rejection fee will always be refunded?

The Committee has concerns about the application of a cancellation fee where the documentation is deemed not to be supported by basic evidential requirements necessary for registration. It is unclear why such a case would proceed beyond the initial intake check stage and cases of this type should arguably be “weeded” out there. There are many reasons why additional information may have to be requisitioned and particularly in First Registration cases it is not always possible for the submitting agents to know what may be required. (This is likely to become even more a problem if a Pre-Registration enquiry fee is introduced). The Consultation Paper is unclear as to when such information will be requested or when the application will simply be cancelled. Presumably therefore the decision will be at the discretion of the RoS staff with the likelihood of variations in such policy decisions and dispute and acrimonious correspondence with agents. The Committee presumes that some form of appeal/complaints procedure will be put in place to resolve such difficulties? Given the potential for dispute, the Committee would suggest that such a potentially high increase in cancellation fees be reconsidered.

The Committee is opposed to the proposed introduction of a supplementary £400 fee for constitutive deeds creating real burdens. It is not always feasible/sensible to create such burdens in a Deed of Conditions – for example where a small piece of ground is being sold off a larger area and it is desired merely to regulate future maintenance of the new fence separate the two areas. In practice most Dispositions which create new burdens do so in a schedular form and there should not be an additional fee for this, beyond the cost of dual registration. Presumably the creation of new servitudes which also require dual registration also cause equal additional work but it is noted that no such supplementary charge is proposed for that situation. The Committee would urge that if there is to be a new charge, it is restricted to Dispositions where the new burdens are set out in the body of the deed, rather than in a separate schedule.

3. Information Fees

The Committee is pleased to note that it is proposed to retain the nil charge for Registers Direct when the search has proved unsuccessful.

The Committee is particularly disappointed at the proposal to introduce a £50 charge for use of the Pre-registration enquiry service which it consider operates for mutual benefit of RoS and solicitors and their clients. It notes the following advice currently provided by RoS to solicitors:-

“Prior to receiving an application for registration, the Keeper is always willing to offer guidance to solicitors on issues relevant to the application. To facilitate the growing number of general enquiries of this nature, a centralised section known as Pre-Registration Enquiries has been established to deal with more complex enquiries. Accordingly, requests for guidance in connection with a forthcoming application for registration should be directed to Pre-Registration Enquiries at the address noted below. Guidance should be sought from Pre-Registration Enquiries on specific matters of concern stemming from a proposed or actual conveyancing transaction which will induce an application for registration. Guidance offered can include, for instance, views on defects in title, possible exclusions of indemnity, remedial conveyancing or additional evidence that may be required in a given case..... Pre-Registration Enquiries will not answer hypothetical questions, nor will they undertake a full examination of title. Similarly, guidance of a less complex nature for example, relating to fees, or the appropriate application form, etc., or information in connection with an application already lodged with the Keeper may be obtained from the relevant Customer Services Centre in Edinburgh or Glasgow. “

The Committee accordingly views the new charge as counter-productive. It will inevitably deter solicitors from using the service and this in many cases will merely postpone the research time which RoS staff will have to undertake, with the likelihood of more applications having to go into standover whilst necessary enquiries are pursued with the submitting solicitors concerned. It should be noted that, presumably to avoid “double” research, the practice by RoS staff, when giving advice, is to request that copies of the relative correspondence be submitted subsequently with the application for registration. The Committee would argue that most enquiries are not related to the workings of the Land Register as such as is suggested and such enquiries would probably be for the Customer Services Centres in any case which will presumably continue to handle these enquiries free of charge. The types of properties which remain in the Register of Sasines now tend to be of the more complex variety which do not change hands frequently and where title discrepancies, title defects and other specialities are likely to be more prevalent.

The Committee would therefore urge that the new charge should not be introduced.

The Committee has no comments to make on other changes to Information Fees.

5. Miscellaneous Services Fees.

The Committee notes the doubling of an office copy fee to £30 which, given the presumed savings with digitalisation, seems high.

6. Chancery and Judicial Registers

The Committee notes that no increases are proposed for these fees in these registers as full cost recovery is currently being achieved.

9 September 2010

From: Duffy, Rosemary[SMTP:ROSEMARY.DUFFY@EAST-AYRSHIRE.GOV.UK]
Sent: 09 September 2010 18:52:43
To: Fee Review Consultation
Cc: Gallagher, Anna
Subject: Registers of Scotland: Fees Consultation
Auto forwarded by a Rule

Further to the above, I would respond as follows to the above.

The increased level of fees will have a significant impact on local authorities in particular, who incur significant expenditure in relation to the recording/registration of discount standard securities (in relation to council house sales), charging orders, notices of improvement/repairs grants etc. As much of the land owned by local authorities was acquired historically and, as such, is not land registered, the possibility of benefiting from the reduced ARTL fees is not an option in many cases. In effect, expenditure on registration dues will be doubled, with only minimal savings being available by the use of ARTL.

Similarly, the increase in the fees for Registers Direct searches will also have an impact, particularly given that the fees were only reduced to the current level on 31st May 2009 following the Fees in the Registers of Scotland (Amendment) Order 2009.

Of more importance however, the proposal to impose a £400 penalty for Dispositions constituting real burdens will place any seller but, in particular local authorities, in a position whereby they require to execute a Deed of Conditions/Deed of Real Burdens in situations where it would not be considered previously i.e. in sales of individual stand alone properties. There are many circumstances in which a Deed of Conditions/Deed of Real Burdens is not required and where there is no benefit to the owner/seller in executing such a Deed.

East Ayrshire Council includes two former District Councils – Kilmarnock and Loudoun District Council which executed Deed of Conditions in the 1980's and Cumnock and Doon Valley District Council which, in contrast, operated by individual Feu Dispositions narrating burdens in full – we amended our council house sales procedures following feudal reform to execute Deeds of Real Burdens for properties in the former Cumnock & Doon Valley areas where the Council retained more than one property i.e. where there was a benefit in doing so; if we are selling the last property in a block, the burdens are simply narrated in full in the Disposition. The proposal to impose a penalty will mean that, even when a single burden is being narrated in a Disposition (presuming s53 of the Title Conditions (Scotland) Act 2003 does not apply), the Council will require to execute a Deed of Real Burdens – this appears to be contrary both to the purpose and principle of the 2003 Act and to accepted conveyancing practice.

The proposal to make Sasines deeds available on Registers Direct would be welcomed and will allow a cost saving to the Council, presuming that a significant proportion of Sasines deeds are available in this way.

Again, as local authorities deal with more complex legal issues, the proposal to charge for pre-registration enquiries will have a cost implication to the Council although the fee proposed does not seem unreasonable for the work involved in such enquiries.

Rosemary Duffy
Solicitor

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Your ref:

Our ref: GMB,PJA



FIRST CLASS

Hugh Welsh Esq
Registers of Scotland
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24 Douglas Street
Glasgow
G2 7NQ

ALSO BY EMAIL TO: FeeReviewConsultation@ros.gov.uk

10 September 2010

Dear Sir

Registers of Scotland Fee Review 2010 Consultation

We refer to the consultation paper issued by the Registers of Scotland regarding its Fee Review 2010. Our comments on various changes which have been proposed in the consultation paper are set out below.

Charges, Miscellaneous Deeds and Other Registrations (para. 17 – 20)

We act as legal advisors to a number of financial institutions which regularly enter into agreements to sell portfolios of mortgage loans. In Scotland, such sales will of course frequently involve the transfer of large numbers of standard securities by assignation. The proposed increase in the fee for registering a dealing with a heritable security, from £30 to £60 for paper-based applications and from £20 to £50 for ARTL applications, would fall very heavily on such transactions.

Broadly speaking, the consultation paper envisages that transfer fees for registering a dealing with an interest in land, other than a heritable security, will rise by 20%. In a residential conveyancing transaction, an increase of £30 in the fee for registering or recording a standard security is unlikely to constitute a significant additional burden on the purchaser. However, in the context of a bulk assignation of standard securities, the proposed change would mean that the cost to the purchaser of the mortgage portfolio of completing title to the standard securities would be at least twice what it is at present. In a portfolio comprising perhaps several hundred mortgage loans, this 100% increase in registration fees could have a materially adverse effect on the viability of undertaking such transactions in Scotland – even under the present fees regime we are aware of instances where mortgage book purchasers have debated the inclusion of Scottish loans within a transaction on grounds of comparative costs.

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We would urge the Keeper to consider alternatives to the proposed increase in the registration fee for heritable securities. Increasing the fee by a lesser amount, such as 20%, would align the change with the increase in transfer fees for other interests in land and, accordingly, would share the burden of the increase in fees more equally across all types of transaction. Another option would be to increase the registration fee for a dealing with a heritable security as proposed, but introduce a reduction or discount in fees based (perhaps on a sliding scale) on the number of titles affected by a single transaction. However, we note that in the case of ARTL, the latter approach would require a means of demonstrating that separate applications form part of a single transaction, because it is not possible to submit a bulk assignation of multiple standard securities as a single application using ARTL.

Rejections (para. 23) and Personal Presentments (para. 35)

The consultation paper proposes that a fee of £30 be charged for each application which is rejected at the initial intake stage. We are aware of a significant number of instances on which applications have been rejected, not due to an error or omission in the application itself, but rather as a result of a mistake or misunderstanding on the part of the Keeper's staff. By way of example, we mention our recent experience of applying for additional information to be noted on the title sheets of registered property. It is clear from the Land Registration (Scotland) Rules 2006 and the Registration of Title Practice Book that applications for noting additional information on a title sheet should be submitted on a Form 5. Nevertheless we have experience of such applications being rejected on the grounds that they have not been submitted on a Form 2, despite our pointing out that the latter form is inappropriate in situations where there has been no "dealing" with the property.

If rejection fees are to be charged automatically, without affording presenting agents the opportunity to correct any mistake or misunderstanding on the part of the Keeper's staff, we anticipate that there will be a sizeable number of requests for refunds of unwarranted rejection fees. Making a request for a refund will be an unwelcome inconvenience for presenting agents, and processing such requests an unnecessary burden on the Keeper's staff. We would, therefore, question the wisdom of introducing rejection fees.

In addition to the new rejection fee, it is proposed that a fee of £15 be charged for each application which is personally presented at one of the Customer Service Centres of the Registers of Scotland. The interaction between the rejection fee and the personal presentment fee is not clear from the consultation paper. We assume that, where an application, on being personally presented, is rejected by a Customer Service Centre, a rejection fee will be charged, but no personal presentment fee. In those circumstances, the application will not have been scanned and created on the Application Record, and so the applicant can scarcely be said to have received any additional service which justifies a personal presentment fee. Conversely, if, in those circumstances, a personal presentment fee will be charged, but no rejection fee, there will be an incentive to personally present all applications, because the fee would be lower if the application were not accepted onto the Application Record. We would urge the Keeper to clarify the interaction between these two fees.

We would also welcome clarification on whether a single deed affecting multiple titles, such as a bulk assignation of standard securities, will attract one personal presentment fee, or whether a separate personal presentment fee will be charged in respect of each title which is affected by the deed.

Pre-registration Enquiries (para. 36 – 37)

The lacunae in the current legislation on land registration are numerous and have been documented by many, including, latterly, the Scottish Law Commission. These shortcomings in the law mean that practitioners often have to establish what the Keeper's policy is on issues of land registration for which there is no legislative or judicial authority. The service provided by the Keeper's Pre-registration Enquiries team is of great assistance in this regard, particularly in view of the fact that the Registration of Title Practice Book is now badly out of date.

In our experience, we have encountered instances where the advice given by a member of the Keeper's staff in response to a telephone enquiry about a particular issue differs entirely from the advice given by another member of her staff in response to a subsequent enquiry about exactly the same issue. By way of example, we mention the conflicting advice which we have in the past received on whether, in the Keeper's view, a property extends *ad medium filum* of a road by which it is bound, where the title deeds are unclear as to the position of the boundary and the road has been stopped up. In situations such as this example, it is very useful to be able to obtain written confirmation of the Keeper's view, before presenting an application for registration, and contacting Pre-registration Enquiries is generally the only way of doing so.

Given the need for such information and the absence of any other means of obtaining the same, we would urge the Keeper not to introduce a fee for pre-registration enquiries. A free pre-registration enquiries service reduces the number of applications which are rejected because they conflict with the way in which the Keeper chooses to exercise her discretion. It also accords with the stated aims of the Registers of Scotland in achieving openness and accountability concerning the decisions taken by the Keeper in the discharge of her statutory duties.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'J. Murray', is written over a faint circular stamp.

Partner
for Tods Murray LLP

From: Bruce Renfrew[SMTP:BRENFREW@THORNTONS-LAW.CO.UK]
Sent: 10 September 2010 16:14:25
To: Fee Review Consultation
Subject: Registers of Scotland Fee Review 2010
Auto forwarded by a Rule

CONFIDENTIAL EMAIL - INTENDED RECIPIENT ONLY

Dear Mr Welsh

Fee Review Consultation

I refer to the above matter and enclose the Respondent to Information Form and would comment as follows in respect of the consultation paper and using the same numbering referred to therein: -

23. No rejection fee should be charged. The cost of dealing with these has been covered by the "general fees" and that should continue.

24/25. The cancellation fee should remain at £30. Any higher fee is excessive.

26/27. No supplementary fee should be charged for real burdens contained in Dispositions. The fact that a Disposition contains real burdens should be irrelevant for the feeing structure. If the logic is followed for charging more for complex cases, then complex titles would generate a higher fee. That is not contemplated by The Keeper and is unacceptable, so why should it apply to Dispositions containing real burdens?

36/37. The pre-registration enquiry service is beneficial to both the solicitor and The Keeper in that it assists with the proper preparation of Applications for Registration in advance and deals with queries which otherwise might have to be dealt with during registration. This should reduce The Keeper's workload in dealing with complex cases. This service has always been provided free of charge, with the cost being covered by the general fees.

Yours sincerely

Bruce N Renfrew
Partner
For Thorntons Law LLP



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Hugh Welsh
 Registers of Scotland
 Room 7.11
 Hanover House
 24 Douglas Street
 Glasgow
 G2 7NQ

If calling, please ask for: Diana Thurston Smith
 Direct Dial: 0131 625 7231
 Fax: 0131 625 8030
 Email: diana.thurston@andersonstrathern.co.uk

Our Ref: Diana Thurston Smith
 Your Ref:
 Date: 10 September 2010

Dear Mr Welsh

Registers of Scotland Fee Review 2010 Consultation

We refer to the above. We have just one point which we wish to draw to your attention in relation to the section entitled "Dispositions Containing Real Burdens". We note that where new real burdens are to be created the Keeper's preferred method of achieving this is either a separate Deed of Conditions or a Deed of Real Burdens, rather than creation in the Disposition itself.

We understand that if the Disposition does not contain schedules it may be time consuming to work out how the burdens and servitudes are to operate. However, if the Disposition is a schedule Disposition with the Schedule running to seven parts, we cannot see that that form of deed should be more difficult to deal with than a Deed of Conditions or Deed of Real Burden plus the Disposition itself.

In our standard Schedule Dispositions Part 1 of the Schedule includes a detailed description of "the retained property", and definitions of "the disposed property", the disponent and the disponentee. Any real burdens which are to be imposed on the retained property are dealt with in Part 2. The servitude rights in favour of the disposed property are contained in Part 3 and include access over the retained property for repairs, water, drainage and pedestrian and vehicular access to the disposed property. Part 4 of the Schedule contains the servitude conditions which relate to the servitudes of Part 3 outlined above. Servitudes imposed on the disposed property in favour of the retained property are dealt with in Part 5 and Part 6 contains the conditions which relate to Part 5 servitudes. Finally Part 7 includes all the real burdens being imposed on the disposed property.

If there are clear definitions in Part 1, we cannot see that giving effect to all parts of the Schedule is more time consuming than dealing with a Disposition and a separate Deed of Conditions or Deed of Real Burdens and that therefore a recording fee of an extra £400

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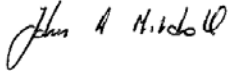
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where the burdens are in a Schedule Disposition is justified. From the point of view of the sellers and the purchasers' solicitors it is much simpler to have everything in the one deed.

Yours faithfully

A handwritten signature in cursive script that reads "John A. Mitchell".

John A Mitchell
Partner
For and on behalf of Anderson Strathern LLP

OUR REF

YOUR REF

FAO Hugh Welsh
Registers of Scotland
Room 7.11
Hanover House
24 Douglas Street
Glasgow
G2 7NQ

10 September 2010

Dear Sirs

REGISTERS OF SCOTLAND FEE REVIEW 2010 CONSULTATION

I refer to the above and enclose my respondent form for your attention.

I do not agree with your proposal to charge an additional fee of £400 in addition to the registration dues for constitutive deeds creating new real burdens which are not deeds of conditions or deeds of real burdens. Will this relate to deeds which merely create burdens in respect of a single burdened/benefited property or is this intended only to catch applications where the same burdens will affect several titles over time, for example in housing developments? I act for clients who frequently dispoise individual plots or houses from large landed estates. In those circumstances each plot or house may require different, albeit similar, burdens and/or servitudes.

In such cases the facility should be retained, at reasonable cost, to create such burdens and servitudes within a suitably framed disposition. The alternative proposal, i.e. registration of a deed of conditions or real burdens on the subjects is simply not appropriate when dealing with the sale of a small piece of ground or a single house plot from a larger piece of ground.

The standard form of disposition which is used by the majority of agents in these circumstances clearly specifies and defines the benefited and burdened property. In my view the additional £400 fee is disproportionate to the time required to record the conditions etc. against respective title sheets. I would therefore be against this levy.

In relation to the proposed fee for cancelled applications, this should not be imposed on transactions which have been cancelled due to an error or omission by Registers of Scotland. Also, complex first registration applications can take several years to be completed and the Land Certificates issued- indeed in some

instances new legislation may mean that registration requirements change (as per the appointed day in 2004) and applications which are submitted prior to that change are not considered for registration by Registers of Scotland until after any transitional application period has passed.

I would therefore propose that any change should not be retrospective and that applications which meet the requisite registration requirements at the date at which they were submitted should not be subject to such a charge or any additional fees. Also if Pre-Registration Enquires had been consulted prior to the application being submitted and they had agreed to a course of action being taken, should the application be rejected at the registration stage (having followed Pre-Registration's suggestion), then no cancellation fee should be levied.

I suggest it would be more effective for Registers of Scotland to notify the presenting agent of any issue with their application and then give them the opportunity either to work with Registers of Scotland to rectify the issue (at a time on line cost) or to cancel the application entirely with a charge to the agent. In any event simple retention of the application fee in respect of cancelled applications is arbitrary and disproportionate.

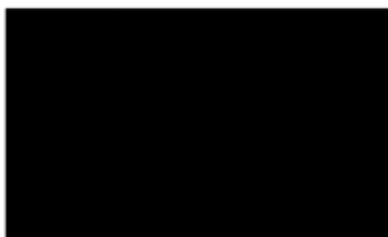
Cancellation fees could be levied on a sliding scale, dependant on the stage of the registration process reached prior to cancellation, e.g if any application is cancelled at mapping stage a 25% retention of the application fee might be appropriate as a cancellation fee, at legal stage a 50% fee appropriate and so on.

Any cancellation fee should reflect the work carried out by Registers of Scotland prior to cancellation. In cases of cancellation the agent should be notified of the steps completed in the registration process and reasons given for the cancellation together with a note of the cancellation fee. This information could then be submitted along with any amended application to avoid duplication of work on re-presentation and a reduced "re-application" fee charged in such cases.

In any event, no application for registration should be cancelled without consultation with the presenting agent with a view to rectifying the issue.

I look forward to receiving a copy of the outcome of the consultation which I hope will address my concerns.

Yours sincerely

A large black rectangular redaction box covering the signature area of the letter.

9057995v1

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From: Liz Kilvington[SMTP:LIZK@ABERDEENCITY.GOV.UK]
Sent: 10 September 2010 17:05:10
To: Fee Review Consultation
Subject: Registers of Scotland Fee Review 2010 Consultation Auto forwarded
by a Rule

Dear Sirs,

I have been asked to respond to the above on behalf of Aberdeen City Council and do so as follows:

1. Proposed Changes to Registration and Recording Fees.

I note the proposal to charge lower fees for ARTL applications. Whilst appreciating that less work is involved for Registers staff in processing electronic applications and the lower fees may offer an incentive to parties to consider uptake of ARTL, it is still of very limited use to ourselves (and probably most other Local Authorities) since we do more selling than purchasing and the bulk of our titles are in the Sasine Register. In a sense, therefore , we are being penalised for continuing to go down the paper route when we have no real choice but to do so.

2.Charges Miscellaneous Deeds and Other Registrations With regard to the £60 standard fee for miscellaneous deeds, my one comment would be that, in relation to Improvement Grants etc, the money is normally retained from the grant and so, whilst the council will not be affected by the increase, the recipient of the grant, who is relying on the grant monies to improve their property, will be. It is appreciated that the amount is not particularly large (although it is a 50% increase on what it was) but feel this is still a point worth making.

3.Dispositions Containing Real Burdens.

Whilst it is appreciated that it may cause ROS more work and take longer to deal with Dispositions creating Real Burdens which have to be dual registered against one or more other properties, than to deal with applications submitted with a separate Deed of Conditions or Deed of Real Burdens, it is none the less felt that £400 is a significant charge to make for following a procedure, which is, after all, provided for by statute. It may almost be seen as an interference in the operation of the law by imposing what, in effect, becomes a penalty for so doing. Whilst having a separate deed containing the burdens may be administratively easier and cheaper for the Registers, it is extra paperwork for the solicitors which, in turn, may lead to increased and, arguably, unjustified ,fees requiring to be imposed on their clients. Nothing is mentioned about Dispositions containing Personal Real Burdens, such as Economic Development Burdens, where there is no benefited property and no need for either dual registration , nor any particular advantage in the burden being contained in a separate deed. Presumably, the application to register the Disposition would just attract the normal registration dues and the above would not be of relevance.

4 Customer Service Centre Charges.

It is not entirely clear why the cost is lower when search requests are submitted by letter, fax etc than when search requests are made in person as one would assume the work is essentially the same .

5, Pre-registration Enquiries.

The proposal to introduce a charge £50 for the above does not seem unreasonable, particularly in relation to complex queries. However, sometimes a quick telephone call is all that is needed to ensure the correct

procedure re an application is followed (and so saves time for both parties in the long run). Would the intention be to charge £50 for such a call ?

I hope the above is of assistance.

I attach the Respondent Information Form.

Yours faithfully,

Elizabeth S Kilvington

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Corporate Governance
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The Keeper,
Registers of Scotland,
Fee Review 2010 Consultation,
EDINBURGH.

Hugh Welsh
13 September 2010

e-mail – hugh.welsh@ros.gov.uk

Dear Sirs,

Registers of Scotland Fee Review 2010 Consultation

I have read your consultation paper and appreciate the work carried out by the Registers of Scotland and by the very dedicated staff that work there, however, while I have no problem with the proposed increase in most of the fees I am extremely concerned about Clause 23 of the proposals which suggest charging a fee of £30 for rejected applications. I do not think that this is justified although I appreciate that a large number of the applications have to be returned because of fundamental legal errors or omissions. Perhaps a double checking system could be introduced in Solicitor' offices to reduce the number of applications submitted in-correctly but the introduction of a fee is just penalising already severely pressured legal firms who have been very hard hit by the recession.

As far as Clause 25 is concerned the cancellation charge of £30 would seem to cover admin costs and to charge a cancellation fee at the same rate as the application fee even with a cap of £400 is again just penalising the profession.

I also feel strongly about the pre-registration enquiries. In many cases the pre-registration enquiries involve errors which may have been made by The Keeper and a pre-registration enquiry helps to clarify problems that may arise later and cause even more work for the Registers of Scotland staff. I feel our profession has been penalised very severely over the years and is just going to be penalised yet again by the costs involved in introducing ARTL and these additional proposed costs.

I have no objection to any of the other charges proposed by the Consultation paper.

Yours faithfully,

