

LAW SOCIETY OF SCOTLAND - REGISTERS OF SCOTLAND

JOINT CONSULTATIVE COMMITTEE

MEETING ON 5 April 2006

Present: Mrs J Wilson
Mr L Most
Mr J Ness

Mr J Meldrum, Keeper
Mr B Beveridge
Mr F Manson
Mr I Davis
Mr M Hollingsworth (Secretary)

Opening remarks

The Keeper opened the meeting at 1:15 p.m. and thanked members of the Committee for their attendance.

1. **Apologies**

Apologies for absence were received from Professor Rennie and Mr McNeil.

2. **Minutes of Last Meeting**

The minutes of the meeting held on 7 December 2005 were approved.

3. **Matters Arising**

3.1 **Review of the Land Registration (Scotland) Act 1979**

Mr Davis updated members of the Committee on the progress being made with the review of the Act. He advised that RoS had made an interim response to the Scottish Law Commission's third discussion paper and would shortly be submitting a full response. Law Society members advised that the Law Society would be making their response before the end of the month.

3.2 **Automated Registration of Title to Land**

Mr Davis updated the Committee on the progress being made with the project. He advised that the project remained on target to accept the first application for registration of an electronic deed in November. The introduction of the system would be phased with the initial phase consisting of a digital input by solicitors with a manual check being carried out by RoS staff. The purpose of the manual check was for verification of data only. The system would become fully automated in the Autumn of 2007.

Mr Davis advised that he had been in discussion with Mr Brewster of the Law Society with regard to the authentication workpackage. The project team continue to develop the link with HMRC's systems. HMRC had advised that they expected to obtain approval for the necessary funding to develop their side of the interface.

Mr Ness advised the committee that he had some concerns as to whether HMRC's systems had the ability to cope with large numbers of simultaneous enquiries. He had

received numerous complaints from solicitors that the facility to complete SDLT forms online was frequently not available, particularly at peak periods, and that the online calculator had not been available since the Budget.

Mr Manson said that he would clarify how the ARTL system would interface with HMRC systems and would make arrangements to deal with any possible issues. If necessary, the project team could develop workarounds, for example by downloading data to the HMRC servers overnight. The Keeper thanked Mr Ness for raising this as a possible issue.

RoS had presented a discussion paper on ARTL at the Law Society's recent AGM. Mr Beveridge advised that the delegates had generally received it favourably. The profession were aware that the current focus of attention had been on the top 100 (in terms of volume of deeds presented to the Land Register) conveyancing and re-mortgage firms. RoS now intend to commence an ARTL awareness program aimed at the smaller firms, particularly to those who register at least 500 securities per year.

Mr Ness had some concerns as to whether ARTL transactions might be delayed if a lender was late in dealing with discharges of outstanding securities. He was also keen to see the new iteration of the ARTL terms and conditions so that the Law Society could develop their rules for the conduct of solicitors taking part in an ARTL transaction.

The consultation period for the necessary legislative changes had ended before the committee's last meeting. The responses received had now been considered. No major issues had been raised but some details were currently the subject of discussions with OSSE. Once the final revision of the draft Order was completed, Ministerial approval would be sought to lay the Order.

3.3 Quality of Land Certificates

Mr Manson updated the committee on the activities being undertaken by RoS staff to improve quality. He advised that, in response to a significant fraud perpetrated against another Land Register, RoS would revert to their previous practice where a corporate body had changed its name since taking title to property. A certified copy certificate of change of name would in future be requisitioned if only a photocopy had been submitted. Law Society members had some concerns about this, but agreed to discuss the matter at the next meeting of the Conveyancing Committee.

The direct debit payments scheme was progressing well although the overall error rate for applications for registration was unchanged at around 12%. Data cleansing operations continued and the Keeper advised that a complete rebuild of the Land Register databases was planned which would include a check of blank fields that would normally be expected to be populated with data.

3.4 Abolition of Feudal Tenure etc

Mr Beveridge referred to the recent meeting that had been held to elicit feedback from the profession and to exchange views. He reported that the consensus reached seemed to indicate that RoS's practice and procedures were working. He advised that RoS intended to hold a similar meeting after the introduction of ARTL.

Members agreed that it was applications that required dual registration that seemed to cause most difficulties. Law Society members felt that the Standard Missives should be amended to include a duty to deal with dual registration. The reason for this was due to the high numbers of applications being returned by RoS because of a failure to request dual registration where this was necessary. Mr Davis advised that he was encouraged that the

profession agreed with RoS's interpretation of the legislation and the way in which RoS staff were implementing it.

Mr Beveridge advised that the East Lothian register was currently being cleansed and that RoS would publish its plans for the order in which the remaining counties would be dealt with. The Keeper advised that RoS's IT partners, BT, were investigating whether data mining techniques might assist this process by highlighting title sheets that contain entries which require cleansing.

4. **Report by the Keeper**

The Keeper informed members that RoS had met 10 out of the 11 Ministerial Targets for 2005-2006. He was particularly pleased with progress made with the legacy casework. Out of 4703 cases, less than 400 were now left awaiting completion. All of these were either dependent on the completion of court action or there was active correspondence with the submitting agents that was expected to lead to a resolution of the title difficulties. The Keeper also advised that he was pleased with RoS's progress with regard to customer satisfaction and that RoS had been successful in retaining the Charter Mark.

New targets had recently been agreed with Ministers. There were significant changes to be implemented, particularly during the coming year, so there was an element of caution in the levels at which the targets had been set.

5. **Register of Inhibitions and Adjudications**

Mr Davis spoke to his paper regarding the recent review of RoS practice on searching in the Register of Inhibitions and Adjudications (RoI). RoS had a duty, under section 6 (1) (c) of the Land Registration (Scotland) Act 1979, to disclose in a title sheet any subsisting entry in the (RoI) which is adverse to the interest.

Currently, the search carried out by RoS staff as part of the registration process was a duplication of work in that the applicant's agent would have instructed a pre-registration Report as part of the underlying conveyancing process. If the search carried out by RoS staff disclosed an entry that appeared to be subsisting and was adverse to the interest, they would contact the submitting agent to clarify the position.

In effect therefore, RoS already placed reliance on advice from the submitting agent as to whether a particular entry may be adverse to the interest. RoS proposed to meet the obligation placed on the Keeper by section 6 (1) (c) by means of a certification to the RoI position by the submitting agent. This would be provided by way of an additional question on the Land Register Application Forms.

Mrs Wilson felt that solicitors might be concerned that RoS was passing some of the risk to them, particularly where there were possible matches disclosed in the pre-registration Report. Members also considered that the date of conclusion of missives might be relevant in deciding whether an entry was adverse to the interest.

Mr Davis stressed that there was no greater risk to the agent in certifying the position on the Application Form rather than supplying certification to RoS at a later point in the registration process. Members agreed that, as a consultation exercise was to commence shortly, the topic would best be discussed further in a separate forum.

6. **ARTL.co.uk website**

Members noted that the owners of this website had already made some modifications to the content of some pages to clarify that they were promoting a case management system rather than a form of instant conveyancing. However, there remained some disquiet at the potential to mislead parties visiting the web site and members agreed to discuss the matter further in the future if required.

7. **Voluntary Registrations**

Mrs Wilson had raised this topic as she had some concern over the differing treatment that applications for voluntary registration of various Church properties had received. The Keeper advised members that he would be concerned if there was a lack of consistency of the treatment of such cases by RoS staff. The reasoning behind the RoS policy on voluntary registration was the Agency's ability to handle complex casework in volume.

Mr Manson stressed that RoS need to retain the discretion to accept or refuse applications for voluntary registration as we could otherwise become overwhelmed by them. The Keeper advised that RoS would consider re-wording the section in the Registration of Title Practice Book that dealt with voluntary registrations in order to clarify RoS policy.

8. **A.O.B.**

The Keeper advised members that the Registration Fee Review team had put some proposals to Ministers with a view to conducting a consultation exercise, particularly in respect of ARTL applications. The Keeper also intimated Frank Manson's impending retirement to members who all wished him well for the future. His successor would be Sheenagh Adams, Director of Policy at Historic Scotland, who would take over from Frank as Managing Director of RoS and would also sit on this committee.

9. **Date of Next Meeting**

The next meeting of the Committee will be held on a date to be arranged in August. The Keeper closed the meeting at 3:25 pm.