

LAW SOCIETY OF SCOTLAND - REGISTERS OF SCOTLAND

JOINT CONSULTATIVE COMMITTEE

MEETING ON 11 April 2005

Present: Prof. S Brymer
Mr D J McNeil
Mrs J Wilson
Mr J Ness

Mr J Meldrum, Keeper
Mr B Beveridge
Mr A Smith
Mr M Hollingsworth (Secretary)

Opening remarks

The Keeper opened the meeting at 4:10 p.m. and thanked members of the Committee for their attendance.

1. **Apologies**

Apologies for absence were received from Professor Rennie, Mr Manson and Mr Davis. The Keeper advised that Mr Smith was attending the meeting in place of Mr Manson.

2. **Minutes of Last Meeting**

The minutes of the meeting held on 1 December 2004 were approved.

3. **Matters Arising**

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

The Committee were updated on the progress being made with the review. RoS expected that the Scottish Law Commission would shortly consult on a range of issues, both legal and practical.

A Law Society member then advised that, in his opinion, the draft consultation paper was very balanced and was encouraging for reform. He felt that the approach taken was a balanced way forward and would, if adopted, correct a number of the anomalies and inconsistencies in the legislation.

RoS advised that after the consultation period and a final report, a draft Bill would be prepared. However, no timescale could yet be determined for the Bill to be considered by the Scottish Executive and Parliament.

3.2 **Automated Registration of Title to Land**

The Committee were updated on the progress being made on the project, particularly with respect to SDLT and tax legislation. The Committee were advised that a truncated version of the Finance Act had been passed due to the dissolution of the Westminster Parliament. It was expected that a further Finance Bill would address the non-core aspects of the previous Bill after the election, including SDLT arrangements.

The ARTL Steering Group had commenced meetings. There were some teething problems, but the healthy debate that was taking place promised well for the future.

A Law Society member requested that RoS notify them as soon as possible if there was likely to be any slippage in the delivery of ARTL. This was necessary because the timetable for drafting of guidance notes for solicitors was very tight.

3.3 Quality of Land Certificates

The Committee were updated on the progress being made by RoS towards the improvement of the accuracy rate of registrations. It was noted that RoS had achieved an accuracy rate of 98.63% for the full year. The Keeper advised that he did not take the issue of accuracy lightly, but that he felt that the figures were an encouraging demonstration of progress.

A Law Society member stressed how important it was for solicitors to check their Land Certificates properly on receipt for accuracy. The Committee agreed that continual vigilance was required by all parties in order to secure continuous improvement in the standard of the title sheets.

3.4 Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003

The Committee were advised that there had initially been relatively few applications to register the new deed types, but that numbers were progressively increasing. The main focus of attention for RoS would now be on the ten-year transitional period. A six-month trial was commencing to gather data and test out methods, and then the full programme would be developed based on the results of that trial.

The release of the latest update on the project on the Agency website was due imminently, and further updates would be given in the autumn.

A Law Society member commented that there was a need for recommended styles of deeds to be developed to guide solicitors when they were drafting deeds. RoS agreed to supply the Law Society with "anonymised" versions of several deeds that had recently been submitted. These would form a starting point for discussion. Members agreed that such recommended styles would reduce confusion and save time.

3.5 Register of Community Interests in Land

The Committee were advised that the number of applications received was relatively low, but that it was too early to tell if applications would continue at this level.

4. Report by the Keeper

The Keeper advised the committee that the intake forecasts were higher than turned out to be the case. RoS had met most of its Ministerial targets, including all of those relating to turnaround times. Although the internal target for completion of the Legacy casework had not been fully met, RoS expected to complete the remainder of these early in the next financial year.

The Keeper also commented that he was pleased with the joint efforts being made to improve the quality of applications submitted and the accuracy of Land Certificates.

The Keeper also advised the Committee that RoS was looking at how coverage of the Land Register could be increased.

5. **Opinion of the Court in Aberdeen College -v- Stewart Youngson**

A Law Society member advised that numerous views on the ruling in this case had been advanced, but that not all of them were helpful. It was noted that the time for an appeal to be made had passed without one being lodged.

The Committee were advised that RoS was considering whether Dispositions by A to A should continue to be accepted in either register. Any policy changes would be passed on to the profession in an update published on the Agency's website. The Committee agreed that, while the validity of Dispositions of this type may be open to challenge, it is not for the Keeper to take any action in that regard other than to revise the applicable policy.

6. **Certainty of identity in Personal searches**

The Committee were advised on RoS policy on the disclosure of matches in searches made by the Keeper's staff in the Register of Inhibitions and Adjudications. They were also advised on the Keeper's understanding of the slightly differing policies adopted by some firms of Private Searchers.

A Law Society member observed that it was difficult to prove a negative, i.e. how do you prove that your client is not the party disclosed in the search. Law Society members indicated that they would be particularly interested to learn how RoS determined exact matches and near matches. It was agreed that this would be discussed separately.

7. **Delays with SDLT certificates**

Law Society members felt that it would be helpful if the Keeper could define the statutory barriers to RoS accepting an application without an SDLT certificate. RoS undertook to pass on what advice they had been given with reference to the statutes.

8. **The Keeper's policy on Mandates and ARTL**

The Law Society members of the Committee advised that they were encountering much speculation on what policy might be adopted by RoS on the issue of Mandates. The Keeper agreed that, once RoS policy on this matter had been formulated, this would be promulgated to the ARTL and Conveyancing Committees.

9. **The Keeper's position on the introduction of primary legislation to allow electronic discharges**

Law Society members advised that this topic had arisen from discussions on ARTL. The Committee were advised that RoS felt that this was a Property Law issue, rather than one for the review of the Land Registration (Scotland) Act 1979. Law Society members advised that they wished to see the facility to have electronic discharges introduced at nil cost and that they may consider asking that this be introduced into the 1979 Act Review.

The Keeper advised Law Society members that RoS would be happy to engage in further discussion on this topic.

10. **The execution of Discharges by a Solicitor by delegated authority**

The Committee noted that lenders had mixed views and had adopted differing policies on this topic. Dialogue was ongoing with lenders with a view to increase the use of this facility.

11. **AOB**

It was agreed that there was no other business to discuss. The Keeper noted that, as Professor Brymer was demitting office as a member of the Conveyancing Committee, he understood that this would be the last meeting of the JCC that he would be attending in his current capacity. He thanked him for his considerable contribution to the committee. Professor Brymer replied that he had been honoured, through the Conveyancing Committee, to become involved with the JCC.

12. **Next Meeting**

The next meeting of the Committee will be held on a date yet to be arranged. The Keeper closed the meeting at 6:10 p.m..