

LAW SOCIETY OF SCOTLAND - REGISTERS OF SCOTLAND

JOINT CONSULTATIVE COMMITTEE

MEETING ON 7 December 2005

Present: Mrs J Wilson Mr J Meldrum, Keeper
Mr D J McNeil Mr B Beveridge
Mr L Most Mr F Manson
Mr J Ness Mr I Davis
Mr M Hollingsworth (Secretary)

Opening remarks

The Keeper opened the meeting at 1:20 p.m. and thanked members of the Committee for their attendance.

1. **Apologies**

Apologies for absence were received from Professor Rennie.

2. **Minutes of Last Meeting**

The minutes of the meeting held on 10 August 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 commented on the Scottish Law Commission's second discussion paper that had been published in August 2005. He advised that the Commission's proposals had addressed the key issues contained in the Keeper's submission to them in 2002.

The Commission had proposed in the discussion paper that RoS be required to register souvenir plots in the Land Register and requested consultees' views on the matter. Mr Davis advised members that RoS was against this for practical reasons and there were also policy issues that SEERAD may have an interest in. The Law Society members of the committee agreed that RoS should not be required to accept registration of souvenir plots. Mr Davis commented to members that he thought that the discretionary powers that RoS currently had under section 4 (2) (b) of the 1979 Act seemed to work well. Other members agreed.

3.2 **Automated Registration of Title to Land**

Mr Davis gave the Committee a brief update on the progress being made with the project. Mr Ness referred to the timescales needed for the Law Society to be able to advise the

profession timeously on the Terms and Conditions for ARTL. Mr Davis advised that the Key /

Key Stakeholder Representatives had the matter well in hand and that they should have the documentation ready early in 2006.

Mr Davis informed the committee that 9 responses had been received so far to the consultation document on the legislative changes proposed in the draft Order under section 8 of the Electronic Communications Act 2000. Initial indications were that the responses seem to indicate general satisfaction with RoS's proposals, but they were now being analysed in more detail. Mr Ness commented that the profession were more aware of ARTL now and that solicitors seemed to be looking forward to its introduction.

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, despite the genuine improvements made so far, RoS were not complacent about the quality issue, especially with regard to existing records. RoS continue to strive to find further ways to improve the quality of both existing and future records. RoS was now working with BT to find ways of locating existing records that may be incomplete and amending them, if that proved to be necessary. In particular, RoS was looking for inconsistencies in the records.

It was noted that the rate of rejection of applications at the Intake stage remained at around 12%, except for those firms that had taken part in the direct debit payment pilot scheme. On behalf of the Law Society, Mr Ness offered to help promote the scheme to solicitors, once RoS were ready to take on more users.

3.4 Abolition of Feudal Tenure etc

Mr Beveridge updated the committee on the responses received to the series of Feudal Abolition seminars presented by RoS staff. All of the feedback received had been positive. He advised that the RoS web site had been updated to include all of the papers presented at the seminars. The FAQs section of the web site had also been updated to include all of the points raised in questions asked at the seminars.

He acknowledged that some unease remained where a Land Certificate had not yet been updated. Members agreed that in the meantime it would be a matter for consultation between solicitors and their clients to judge whether a particular burden might remain enforceable.

3.5 Registers of Scotland Information Fees Consultation

Mr Beveridge advised members of the results of the consultation exercise undertaken by RoS. There were four formal responses, all of which either expressed no opinion or were in favour of the proposed changes. No-one raised any objections to any of the proposals. He noted that the Law Society had informally indicated their approval of the proposals. He informed members that the Fee Amendment Order had come into force on 28 November.

4. Report by the Keeper

The Keeper informed members that RoS's targets were all being met. He was pleased to advise that 54% of the legacy casework to the target date had now been completed. He commented on the results of the Market Research exercise recently completed on RoS's behalf. He particularly noted respondents views with regard to the key areas where they wished to see further improvements in the services provided by RoS.

Mr McNeil asked whether RoS should consider threatening legal action to recover unpaid fees, rather than to indicate to solicitors with unpaid bills that they would be reported to the Law Society. Mr Beveridge advised that RoS would prefer not to raise Court proceedings, except as a last resort. Mr Ness commented that certain financial institutions seemed to be ready to report solicitors to the Law Society, often where the cause of the perceived problem was outwith their control. However, members agreed that the current practice did seem to be effective, as RoS had not had to carry it out recently against any solicitors.

Law Society members agreed in particular with one of the findings of the survey. This was that, in general, Dealings with Whole and First Registration turnaround times were very good. However, they felt that they would prefer it if the legacy backlog was further progressed, even if it was at the expense of a delay in the completion of some of the more straightforward cases. Mr Manson advised that for the longer term RoS was considering the introduction of an absolute time limit within which cases should be turned around, with the exception of cases where the reason for the delay was outwith the control of RoS.

5. **Registration Fee Review**

The Keeper gave members an outline of the aims that RoS had for the review. It was particularly intended to address fees for ARTL cases. He invited the Law Society members of the committee to express their views on the subject.

Mr Ness felt that simplification of the fee structure would be the most welcome, together with a reduction of fees for cases submitted via the ARTL system. Mrs Wilson said that, as RoS had benefited from the link between the current *ad valorem* fees and the rise in house prices, solicitors would be looking for significant reductions in the fees.

The Keeper and Mr Beveridge both advised that the current fee structure was what had enabled RoS to deal with the increase in workload brought about by all of the legislative changes and the extension of the Land Register. Mr Manson commented that there had been no change in fee rates for more than 10 years. RoS were now looking to reduce fee rates, but that any reduction would have to be sustainable.

6. **Extracts from the Books of Council and Session**

The subject of the quality of official Extracts of deeds produced from the Books of Council and Session was raised by Mr Ness on behalf of a solicitor who had complained to the Law Society. Mr Manson advised that, in his opinion, it was the service provider who was ultimately responsible for the quality of the material provided to a client and not necessarily the supplier of the product. The Extracts in this case had been produced by the National Archives of Scotland (NAS) for Millar and Bryce who had supplied the solicitor in question. Mr Manson undertook to take the issue up with NAS on behalf of the Law Society.

Mr Most observed that, in his experience, there was an element of inconsistency in the way that applications for registration that included a request for Extracts were dealt with

by RoS Intake sections. He advised that, in up to half of such applications recently, he had had to make a second request for the Extracts before they were produced.

Mr Most also asked for clarification of for how long a period after the submission of a deed for registration in the Books of Council and Session would a request for a further Extract be dealt with by RoS. Mr Hollingsworth advised members that registered deeds were transmitted to NAS approximately fortnightly from the Books of Council and Session but that /

that, due to the rapid turnaround of work by that section, it might only be a few days after the deed was submitted for registration before the deed was outwith the control of RoS.

Action Point for RoS: Intake staff to be reminded to be on the lookout for requests for Extracts of deeds submitted for registration.

7. **A.O.B.**

Mrs Wilson asked if there was any news that RoS could give them on the Accommodation Review. Mr Manson advised that there had been no reply from Ministers so far. The Keeper reminded members that any moves were expected to be partial and phased: no wholesale relocation of staff was expected.

Mr Most referred to a recent English case where the loss of land via adverse possession was considered a possible breach of the former owner's Human Rights. Members agreed that, as the loss in that case was founded on possession without title, that decision would not directly impact on Scottish Law where a registered title was first required on which possession could subsequently be founded.

8. **Date of Next Meeting**

The next meeting of the Committee will be held on Wednesday 5th April 2006 at 12:30 pm for 1:00 pm. The Keeper closed the meeting at 3:15 pm.