

## Letter received from Mr J Keith Robertson

### Registers of Scotland and the registration backlog

The Keeper of the Registers of Scotland, Jennifer Henderson, appeared in March this year before the Economy and Fair Work Committee (EFWC). As a solicitor, recently retired after forty-five years in conveyancing practice in Kingussie, I have taken a keen interest in the ever increasing backlog of cases at Registers of Scotland, a backlog which, this month, reached over 107,000.

Having viewed the evidence given by the Keeper on your website and having read the follow-up monthly reports provided by her, it seems to me that certain facts should be brought to the attention of your committee members before the next occasion on which the Keeper is called before your committee, in particular, the rate at which the “ring fenced” backlog is being eliminated.

Using the figures provided by the Keeper, I have produced the following table showing how quickly applications are being eliminated and when, at that rate, it can be expected that the backlog will be cleared. The timescale appears to be markedly different from that provided by the Keeper in her evidence, “3 years or a little bit longer”. This is particularly concerning in relation to applications lodged in 2017, which have already been outstanding for 5 years. I would mention that the 2021 figure for these has been taken from a letter from the Keeper to your committee dated 15 March, 2021.

<b>Total dispositions out of service standard</b>				
Lodged in:	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
FR and TP applications outstanding at 08/03/2021	3744	Not available	Not available	Not available
Dispositions outstanding at 01/05/2022	3130	11778	14451	15869
Dispositions outstanding at 01/06/2022	3081	11661	14281	15580
Reduction over period	663	117	170	289
Monthly reduction rate	44.2	117	170	289
Months to eliminate backlog	69.71	99.67	84.01	53.91
Years to eliminate	5.81	8.31	7.00	4.49
ie backlog eliminated by the year	2028	2030	2029	2026
Number of years since lodged	11	12	10	6

As you will see from these completion rates, it may take over a decade to actually register some of these deeds. Apart from 2017, these figures are based on only two months figures and may, of course, vary drastically over a longer period. The 2017 figure, however, includes data provided by the Keeper to the EFWC in March 2021 and therefore gives an accurate picture of what progress Registers of Scotland have made over the past 15 months in reducing the oldest part of the backlog. Projecting that forward shows that it will take over a decade for some 2017 applications to be completed by Registers of Scotland, without even considering the 2018-2020 cases.

The Keeper, in her evidence, appears to indicate that these delays do not really matter as registration back dates to the date of receipt. Whilst it is true that, if registration is completed, the date of original date of receipt of the application will be treated as the registration date, that ignores the critical possibility that any of these applications may be rejected and lose its place in the queue at any time before registration is completed.

The possibility of rejection is not a remote one. Although Registers of Scotland do not normally publish their rejection numbers, in July 2021, the Keeper provided in her blog the figure for rejections. There were 1363 rejections during the 32 months from October 2018 to June 2021, i.e. an average of over 40 cases rejected per month, hardly an insignificant number. If registration were to take ten years or more, rejection could prove catastrophic due to supervening bankruptcy or liquidation of a seller.

The Keeper, in her evidence also suggested that that expedition is possible “where that is necessary.” There are however stringent requirements which applicants must meet before having an application expedited. In 2020-21, only 728 requests for expedition were granted out of 1359 applications, a 54 percent success rate. That is because the grounds for expedition are quite restrictive, length of delay in registration not being one of them.

I would ask you to pass this to members of your committee and would hope that it will be useful to them in future deliberations.

Yours faithfully

J Keith Robertson  
17 June 2022