

9th June 2023

The Clerk
Economy and Fair Work Committee
Scottish Parliament
Edinburgh

Registers of Scotland and the registration backlog

Dear Sir

I was interested to watch the proceedings before the Economy and Fair Work Committee (EFWC) in September last year and have been following the progress made by Registers of Scotland (RoS) since then. There are certain areas in the evidence given by the Keeper which caused me serious concern and I hope that the following might assist your committee in questioning the Keeper when she appears before the committee next week. These matters can be summarised as follows:-

1. Reporting of the arrear

Each month, the Keeper has produced a report to your committee containing a link to the RoS performance pages. Unfortunately, this link is only valid until the next month's set of figures has been produced, since the figures produced each month overwrite the figures for the previous month. This makes it impossible to go back and compare one month's figures with the previous one. As I have saved each month's figures, I have been able to produce an updated table (see attachment 1) showing a comparison of the current figures with those produced in my table supplied to you last September. It seems to me that it is essential that it should be possible to see an ongoing table such as this in order to get a true picture of what progress is being made in reducing the "ring fenced" rear. I would assume that the Keeper will be well aware of these figures from her own management information. Perhaps your committee would ask the Keeper to produce such a table each month?

2. Progress made in reducing the arrear since September 2022

As will be seen from the comparison within the table, there has been a marked improvement in the reduction rates since the Keeper last appeared before you. Despite that, the projected time taken to clear the whole arrear is still worryingly

large. If these rates are maintained, some 2017 deeds will have taken 8 years to register with some from 2018 and 2019, well over a decade. That is, I think, truly shocking, given that these are customers of RoS who have all prepaid for registration of their title. I cannot imagine that any solicitor treating a client in such a shoddy manner, would not, long since, have been held to account. Perhaps your committee can ascertain whether or not the Keeper agrees that these figures are correct. If she does, it seems to be essential that the monthly reports to your committee showing the predicted times for clearance of the arrear, broken down by year.

3. Effect of these delays in registration

The Keeper in her evidence in September appeared to downplay the possible consequences of the delay in registration, stating that RoS have “ many processes in place to ensure that there is no catastrophic impact from a case being rejected after a period of time.” It is quite clear that the Keeper does not live in the real world. Whilst what she says may well be correct if a deed is rejected within a few months or perhaps even up to a year after submission, dealing with a rejection after five or ten years is a whole different ballgame. The solicitor who originally dealt with in the transaction may well have retired, moved firm or died. The firm of solicitors involved may have gone out of business - Conveyancing Direct in Glasgow being a case in point. If, during those five or ten years the property has been sold on, remortgaged et cetera a rejection will cause the whole house of cards to collapse with serious consequences for all concerned.

One example which may be described as catastrophic would be the situation arising when the original seller has gone bankrupt or into liquidation, a not uncommon scenario when talking about housebuilders. If that happens, and the deed conveying the house from a bankrupt or liquidated company is rejected, the property will revert to the Trustee in Bankruptcy or Liquidator. The property owner would have an ordinary unsecured claim for the money originally paid and would have to negotiate with the Trustee or Liquidator to get a new title. You can imagine the havoc that would cause. Despite her protestations, the Keeper and Registers of Scotland have no solution to such a scenario. For a homeowner, it would be truly "catastrophic

Needless to say, worry about rejection is also not a ground for expedition. **As** Michelle Thompson MSP stated in September, there will be many solicitors and their clients with applications stuck in the arrear who will have no idea whatsoever that there is any problem until their application rejected, years after submission.

4. Applications for expedition

In her evidence in September, the Keeper was asked by Michelle Thomson MSP “*For the record, then, you are saying that if solicitors who lodged cases in 2017 come to you with a request to expedite, because of the time that they have already taken, you will agree to that.*”

The answer given by Jennifer Henderson was “*Yes—100 per cent.*””

This is quite simply untrue. Length of time since submission is not and never has been accepted by RoS as grounds for expedition. (See attachment II - summary of current conditions from RoS website)

No doubt the committee will want to clarify this with the Keeper. RoS own figures show that a large percentage of applications for expedition are rejected. It would be illuminating to know how many of these rejected applications were based on length of time since submission.

5. Priorities of RoS

Given the fact that registration of title is the most basic function of RoS, it might have been reasonable to assume that elimination of this “unacceptable arrear” (Jennifer Henderson’s own words from June 2018, when the arrear stood at 40,000 rather than the current figure of over 100,000) would be the number one priority of RoS. There still appears however to be confusion about exactly what the number one priority is. Previously, it had been “completion of the Land Register by 2024”. This has now changed to “delivering the benefits of a functionally complete Land Register by 2024”.

RoS ‘s own statistics (see attachment 3) show that that goal is unachievable, given the number of titles still requiring to be registered (376,167 out of 2.5 million) and the current monthly rate at which titles are being added to the Land Register (3710 in April 2023). At that rate, it will take over 8 years before functional completion is achieved.

Would it not make sense for Registers of Scotland to abandon this unachievable target and concentrate all efforts on elimination of the arrear?

I hope this letter and its attachments will prove useful in assisting your committee in taking evidence from the Keeper.

Yours sincerely