



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Tuesday 29 January 2019**

**Session 5**



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Pàrlamaid na h-Alba

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### **ECONOMY, ENERGY AND FAIR WORK COMMITTEE 4<sup>th</sup> Meeting 2019, Session 5**

#### **CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

#### **DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

#### **COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Angela Constance (Almond Valley) (SNP)

Jamie Halcro Johnston (Highlands and Islands) (Con)

\*Dean Lockhart (Mid Scotland and Fife) (Con)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Andy Wightman (Lothian) (Green)

\*attended

#### **THE FOLLOWING ALSO PARTICIPATED:**

Janet Egdell (Registers of Scotland)

Jennifer Henderson (Registers of Scotland)

Tom Mason (North East Scotland) (Con) (Committee Substitute)

#### **CLERK TO THE COMMITTEE**

Alison Walker

#### **LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Economy, Energy and Fair Work Committee

Tuesday 29 January 2019

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning and welcome to the fourth meeting in 2019 of the Economy, Energy and Fair Work Committee. I ask all those in the gallery to turn off their electrical devices or anything else that might interfere with the broadcasting system.

Agenda item 1 is a decision on whether to take in private items 3 and 4. Does the committee agree to take those items in private?

**Members indicated agreement.**

## Registers of Scotland

10:00

**The Convener:** Agenda item 2 is on Registers of Scotland. I welcome Jennifer Henderson, who is the keeper of the registers of Scotland, and Janet Eg dell, who is the operations director and accountable officer of Registers of Scotland.

Jackie Baillie will start off members' questions.

**Jackie Baillie (Dumbarton) (Lab):** I will explore Registers of Scotland's status and accountability. I understand that it is a non-ministerial department. What does that mean in practical terms? To whom is it accountable?

**Jennifer Henderson (Registers of Scotland):** Registers of Scotland is accountable to Parliament, and sessions such as this are part of that accountability. Our status as a non-ministerial department means that we are not subject to ministerial direction for our day-to-day operations, so ministers are not directly involved in any decisions that I make on registering people's property.

Our framework document sets out a number of roles that ministers play in relation to the legislation within which we operate—laying Scottish statutory instruments to put in place various regulations on our fees, for example. Once that legislation is in place, day-to-day operations are not subject to ministerial direction.

**Jackie Baillie:** A non-ministerial body is quite unusual. How many are there in Scotland?

**Jennifer Henderson:** I do not know exactly how many there are, but there are a few. They all have similar arrangements to ours, in that they make decisions on matters about which it would be inappropriate for ministers to have direct involvement.

**Jackie Baillie:** Ministers are responsible for policy and you are responsible for the day-to-day operations. Surely the two elements should be combined, rather than being separate. Have any problems arisen because those elements have not been combined?

**Jennifer Henderson:** I do not think so. We deal with quite a bit of correspondence from people on the registration of their property and exactly where the boundary is. I think that it is appropriate that ministers are not directly involved in those decisions and that I am the one who makes them. I look at the legal basis on which people write to me and what the law says in that regard. I make decisions in accordance with the legislation that is in operation and I am not subject to any other influences in doing so.

As an organisation, we support the delivery of policy objectives. Our big thing at the moment, which we are working towards, is completing the land register, but it is in our gift to determine the practicalities of how we do that.

**Jackie Baillie:** Surely having policy alignment with how you implement something is a good thing, because you ensure that the policy happens. How do you ensure that that alignment happens if ministers are not jointly accountable for both areas?

**Jennifer Henderson:** I will use the completion of the land register as an example. We keep ministers informed of the progress that we are making. We would raise with ministers any issues that we were experiencing if we felt that any legislative input was needed in order to support the delivery of a policy, but I do not think that, with the actual day-to-day operation of policy delivery, we have any problem moving forward on our own.

**Jackie Baillie:** You may be aware that some of your colleagues at the United Kingdom level have been criticised because their non-ministerial department status means that they lack accountability to Parliament in practice. How have you been accountable to the Scottish Parliament? I have to confess that this is the first time that I have seen you appear at committee, and if your organisation has a sponsor committee, it is this one. I am unclear about how you ensure that accountability happens.

**Jennifer Henderson:** I am delighted to be here today. I am relatively new in the role—I have been keeper since April last year—and I would happily come to the committee as often as I am invited. We have had input into other committees. At the end of last year, I appeared in front of the Environment, Climate Change and Land Reform Committee to give evidence on regulations on the register of controlling interests.

Outside of formal events such as this, there is accountability to individual members of the Scottish Parliament. My office deals with a large amount of correspondence from MSPs, who can write to us if their constituents have raised anything. We also answer parliamentary questions as and when they arise.

I would be happy to do more. Since coming into the role, I have been keen to ensure that my organisation is held to account for what it does. I have been pushing forward on broader accountability to the Scottish public and our customers, to ensure that the people who use our services can challenge us on whether we are doing well enough and that we are answerable for anything that is not going as well as it should. I am happy to do as much as we are invited to do.

**Jackie Baillie:** I suspect that the people who use your services the most are lawyers. How do you ensure that you are accountable to them? If they were to give you a score out of 10, what would it be?

**Jennifer Henderson:** I can tell you exactly what they would give us, because we do a customer satisfaction survey. Our customer satisfaction is currently at 62 per cent. A questionnaire goes out to ask people how satisfied they are with various aspects of our service. We have service standards in relation to the various services that we offer, and we regularly publish information on how we are performing against them.

More informally, I produce a monthly newsletter that goes to anyone who has signed up for it. There are about 20,000 recipients, who are not just solicitors but other members of the public. The newsletter provides an update on how various things that we have been working on are coming on.

I have just completed a three-month tour around Scotland to ensure that we get out and talk to our customers where they are rather than, in terms of face-to-face contact, relying on their having the means to come and see us in Edinburgh or in our offices in Glasgow.

We also deal with an awful lot of correspondence from our customers. Our customer services centre receives many phone calls and letters every day from people asking for updates on various individual cases.

All that adds up to an approach of transparency on how we are performing as a business. We answer any questions about the degree to which we are providing the service that our customers expect.

**Jackie Baillie:** I have one final question, after which I will allow other members in to develop the details.

You referred to letters and parliamentary questions from MSPs as part of the accountability piece. You might not have this information here but, in any given year, how many letters do you receive from MSPs and how many PQs are you asked—aside from those from my colleague Andy Wightman? By your account, you have attended one committee in a year. It would be helpful if you could provide that information.

**Jennifer Henderson:** I can provide the detail, but I will have to do so offline, if you do not mind. Typically, we respond to between one and five pieces of MSP correspondence each week—it depends on the week. In the past year, since I have been in post, we have probably dealt with about 10 PQs. I will have to provide the exact detail later, if I may.

**The Convener:** Please do.

Does the customer satisfaction rating of 62 per cent apply to all customers or to those who responded to the survey? If it is the latter, what percentage of those surveyed responded? Will you also provide us with the details of that figure?

**Jennifer Henderson:** I can certainly provide more detail. The sample that we used to reach that number was 400 customers. We can provide more detail on how many people we asked for input versus how many responded. Again, I would like to take that offline, if I may.

**The Convener:** We would also like to know what percentage that is of the total customer base.

**Jennifer Henderson:** Yes.

**Andy Wightman (Lothian) (Green):** I want to follow up on Jackie Baillie's question about accountability. I am interested in the fact that the Scottish ministers set a target to complete the land register by 2019 for public land and by 2024 for the rest.

Your framework document of July 2018 sets out the role of Scottish ministers to prescribe things by SSI, to make SSIs, to appoint you, with the consent of the Lord President, and so on. You said in your opening answer that ministers do not direct you. Under what authority do ministers require you to complete the land register by 2019 for public land and by 2024 for everything else?

**Jennifer Henderson:** There has been no legislation for that. Part of what we are doing anyway is moving towards completing the land register.

I am a firm believer that a target is a good thing that incentivises everyone involved to pull out all the stops to make something happen in the most realistic timeframe possible. However, that direction, which pre-dates me, has not been legislated for. We are working as hard as we can to meet that target.

Meeting the target is clearly not completely within the gift of Registers of Scotland. The completion of the land register requires lots of organisations to submit information to us. In most cases, ministers do not have the ability to direct those organisations, so work towards meeting the target is a collective effort.

We are doing everything that we can to fulfil our part of that effort. It will suit us as an organisation to reach the point at which we have a complete land register. That will allow us to change some of our operations and the types of cases that we handle. It is therefore in our interests to get there as quickly as possible, so it is helpful to us that ministers set out that aspiration, and it has given us licence to go out and have some conversations

with organisations. In particular, we have been having conversations about voluntary registration, which was not happening on any great scale prior to the target being set, with some of the large landowners, encouraging them to accelerate going on to the land register. A number of those landowners have been willing to do that. It suits them to get their land out of the sasine register and on to the land register.

It has been helpful to all parties involved to have a goal, rather than something that was just rumbling on and taking its time.

**Andy Wightman:** Goals are useful, but it is worth noting that, during the passage of the Land Registration etc (Scotland) Act 2012, which was considered by our predecessor committee, the Government—it was Fergus Ewing, as I recall—rejected amendments that would have set targets in primary legislation.

The target is to register all public land by 2019. As you are aware, this is 2019. The Environment, Climate Change and Land Reform Committee recently wrote to a large number of Scotland's public authorities to ask how they were getting on. The City of Edinburgh Council said that it is "not likely" that its work will be completed by 2019. It said:

"The Council has neither the resources nor the budget to accomplish the task in the envisaged timescale."

It also said:

"The Council understands that all other local authorities in Scotland would be faced with a similar scale of task to complete registration of their land by 2019".

Stirling Council said that

"the Council will not complete the registration ... by 2019."

Aberdeen City Council said that it is not able to do that because

"We have no resources available".

It also said that it met Registers of Scotland's voluntary registration team along with Aberdeenshire Council, Moray Council and Angus Council on 8 December 2016, when similar concerns were raised.

The bottom line is that councils have not met the target and there is no way that they will meet it. What correspondence was had with the Government in 2016 about any failure to meet the target, and who is accountable for that failure?

**Jennifer Henderson:** Perhaps it would be useful if I gave an update on where we are with the 2019 target. You have rightly identified something that we have known ever since the target was set, which is that the parties involved—the people who own the land and us—have to come together to complete the registration process. We cannot do that unilaterally, and

therefore we have been working hard to support all public bodies to do two things. The first involves voluntary registration, which is where the owner of land needs to provide us with a bunch of information and pay for the registration. The second, which came in under the 2012 act, involves keeper-induced registration, which means that if the body provides me with the information, I can undertake the registration without charging a fee. However, that still requires the body to provide information.

A number of public bodies have provided information to support keeper-induced registration—that is particularly true of public bodies that own housing association properties—which has supported us to get a large number of titles on to the land register.

For some public bodies that own large areas of land, the challenge is in providing us with all the information for voluntary registration. As you rightly said, some bodies say that they do not have the resources to do that. That is not true of every local authority; some will be able to do what is needed within the timescale.

We have updated ministers regularly on how the land register completion is progressing and on how we are getting on with the private, as well as the public, stuff. We are thinking about how else we can support local authorities that do not have the resources. We have been focusing on the public bodies that own the biggest areas of land in terms of land mass coverage. I single out the Forestry Commission as a particularly excellent organisation that we have been working with. It will absolutely hit the 2019 target and register with us all the land that it owns. However, we will need to work slightly more closely with the public bodies that have not had the resources to do the work that they need to do to hit the target.

10:15

**Andy Wightman:** Has any local authority intimated that it will hit the target?

**Jennifer Henderson:** Yes. I cannot recall off the top of my head which ones will finish the job this year, but some of them will.

**Andy Wightman:** Highland Council says that a conservative estimate of how much it will cost to do the work is £8.5 million. In 2014, what assessment was made of the feasibility of achieving the target and of the pathways to achieving it? I appreciate that you were not in post at the time, but it would be useful to know of any correspondence or evaluation that was made. This cuts to the heart of the question of accountability. Registers of Scotland is a self-funding organisation, so it would be interesting to know what assessment it made of the request by

Scottish ministers, which it acceded to and did not in any way kick back on.

**Jennifer Henderson:** Janet Egdell might be able to pick up on some of those points because she has been in post for longer than me.

There are two parts to the registration process for completing the land register. There is the work that the bodies that own the land need to do, which involves a large amount of legal work in pulling together all their deeds, ensuring that they have an accurate plan of what they own and providing that information to us for registration. Registers of Scotland is completely comfortable that we have the relevant resource to register all the land if the information comes to us over the next five years. We have been working on ways of automating some processes so that the work is not so manpower intensive.

When the target was set, our assessment was that it would be a big effort, but that we could do the job that was required of us. That is why it is particularly important to emphasise voluntary registration. We cannot afford to do keeper-induced registration for everything for free, because I have to pay staff to be there and to do the work. We can do a certain amount of keeper-induced registration—for example, we can register a large number of titles in one go with relatively little effort from our staff. However, registering big, complex pieces of land is a very manpower intensive process for me, so I need to be funded to do it.

Registers of Scotland was comfortable, internally, that we could do the job. I am not sighted on correspondence with public bodies, which need to keep their part of the bargain, so I do not know what was said at the time about whether it was possible for them to do the work. All that I can say is that Registers of Scotland has been pulling out all the stops to do everything that we can do to move as quickly as possible towards the target.

We are making encouraging progress. In the building, we are working on another 16 per cent of the land mass. If we can get that work completed in the near future, that will be a significant step forward in relation to the land mass coverage of Scotland.

As well as needing to get a map of what they own, the owners of property have the challenge of getting all the legal deeds to back up their ownership. The map is the most useful thing in relation to policy decisions on land ownership and potential land reform, so we are working on pulling together what we will call a pre-registration layer. When bodies have their maps together, they will send them in, so we will be able to build a map of Scotland, which will show, to a reasonable degree

of certainty, who owns everything. We will need to progress to registration before we can say where the boundaries are exactly, but we feel that that interim step will be useful for some of the decisions that a complete land register is intended to support.

**Andy Wightman:** Are you saying that you were comfortable that you could do your bit of the bargain?

**Jennifer Henderson:** Yes.

**Andy Wightman:** It sounds as though there was no consultation with the public bodies, some of which own land. Perth is 800 years old—there is a lot of land that is not even on the register of sasines and there are no Latin deeds because they are lost.

**Tom Mason (North East Scotland) (Con):** I want to extend the conversation on alternative methods of accessing and viewing information about land, taking a much more scientific approach by using aerial photography and so on. How far are you progressing on that? It may not have legal standing at the end of the day. Is that part of the interim process or do you need to go further than the general perspective and into legal detail?

**Jennifer Henderson:** We recently introduced aerial photography as one of the layers on our Scotland's land information service—ScotLIS—system, because people have said that that is useful when they are trying to understand where boundaries sit and so on. However, it is important to emphasise that the legal basis on which someone can assert that they own a piece of land is that it is in the land register—or the register of sasines, although we are transferring that across—and the boundaries have to be mapped to the degree of accuracy of the underlying Ordnance Survey map.

Although the legal basis on which people can transact on land will always be about completing their title on the land register, Registers of Scotland fully recognises that, to inform and support the wider debate on land ownership and land reform, there could be a more aggregate-level view of what people own and what the concentration of land ownership is and so on, which does not need to be at the level of accuracy that the registration itself provides.

I am not sure whether that answers your question.

**Tom Mason:** It is unlikely that you will achieve 100 per cent registration. At the end of the day, that is an impossible task because there will always be some wall or bit of land that has not been included. Most of the problems relate not to the landmass itself but to the detail around the

edges—fights over who owns what and so on. Will the alternative methods of viewing the land contribute to solving those problems or will it always be down to the legal detail and physical measuring?

**Jennifer Henderson:** The biggest correspondence that comes through our office from MSPs and others is about helping neighbours sort out boundary disputes, and those will always come down to the legal detail of exactly where a boundary sits and whether people are satisfied that a fence is where the boundary is. I do not think that there is anything that we can do to get away from that.

The alternative ways of viewing land ownership in Scotland will allow us to see the concentration of land ownership and how much land in particular areas is owned by certain types of body. However, if we get down to the boundaries, it will be about the specific legal registration and we will continue to need to do that so that people can transact safely on their land.

**Tom Mason:** Given that you will never get to 100 per cent registration, what figure will you be satisfied with in the timescale that you have been allowed?

**Jennifer Henderson:** We use the phrase "functional completion". You are right to say that we will end up in a situation where, to take a simple example, someone registers the land that they own and we draw the map, and then someone else registers the neighbouring property and we draw the map, and if those two parts do not exactly join up and there is a slither of land in the middle, it will not be clear who owns that. Some very learned lawyers are currently debating what will be the best way to deal with all those little parts of the map, once we know where they all are.

We will get to a percentage in the high 90s covering what people can absolutely assert they own and provide us with the relevant deeds for—subject to Mr Wightman's questions about the ability of bodies to provide us with the information. There will need to be a decision on all the little bits of land where, over the years, the owners have been lost, on how to get those registered so that people can use them appropriately.

**Tom Mason:** You say that you will reach the high 90s, but could you commit to 98 per cent?

**Jennifer Henderson:** I commit to that, subject to people providing us with the information that we need. I can tell the committee why I have that level of confidence. We have set an internal target that states the landmass and the number of titles that we need to add to the register every month. If we draw the line out to the end of 2024, we are currently on target. At the moment, we are getting

in a volume of business that allows us to work through it and to get things on the land register. However, as I said in response to Mr Wightman's question, that relies on people continuing to flow information to us.

Our voluntary registration team works extremely hard to get out and keep such work coming in, but we cannot predict that we will not come to a point at which people will start to say, "I'm not interested in participating in this process, so I'm not going to send you the information." At that point, we will not be able to register their land. As I have described, we will be able to have a pre-registration layer that says, "Well, we think that we know who owns this land." Although they have not been able to provide us with the deeds and they are not interested in participating in voluntary registration, we could mark on a pre-registration layer that we provisionally expect that, eventually, the land will end up being registered to X, which is information that it would be helpful to provide.

**The Convener:** Will the register of sasines remain for the 2 per cent or do you hope that a decision will be taken about those other bits of land so that that register can be closed and everything will be in the land register? What is your goal on that?

**Jennifer Henderson:** My ambition is to reach a point at which we can close the register of sasines. It costs us time, money and effort to keep open every register that we have, so our being able to fully close the register of sasines would be a good thing. We will need to work on that over the next few years to agree what the position will be for all the little pieces of land that are not registered in the land register by 2024. However, that will be a matter of law, and bodies such as the Law Society of Scotland and the Scottish Law Commission will need to be involved in discussing what might be the appropriate way of dealing with it legally. If there were to be no legal solution, we would keep the register of sasines open for as long as it needed to be, while land was legally registered in it.

**Andy Wightman:** I want to go back to another policy initiative: the ScotLIS project, which was first talked about in the 1990s. Again, my question relates to accountability and direction. In July 2015, John Swinney asked Registers of Scotland and others to report on creating Scotland's land information service. The report that was produced said:

"The purpose of ScotLIS is to enable users to access, quickly and easily, information about any piece of land or property in Scotland through a single, online enquiry point."

At the time, the terms of reference that were set by Registers of Scotland aimed to have the first wave of data sets in place by October 2017. For solicitors, those were to include Registers of

Scotland's own data on inhibitions and the land register; other data on planning, contaminated land, drainage and listed buildings; information from Companies House; and data on public rights of way, utilities, energy performance and so on. For the public, they were to include data on school catchment areas, local healthcare, council tax bands, planning consents and so on. By 2017, you had published something. I am looking at the document now, and it does not cover any of those things apart from your own data. Why was that process not completed by 2017? Who is accountable and in charge of taking it further forward?

**Jennifer Henderson:** I will set out what we have been seeking to achieve on ScotLIS. As far as I am concerned, it has two purposes. The first is to support solicitors in fulfilling their conveyancing role. Registers of Scotland was operating an old system called registers direct, which had been in place for quite a long time. It enabled solicitors to access the most fundamental thing that they need in the conveyancing process, which is the title information. Therefore, when we launched ScotLIS, our first priority was to get such information moved across. We then spoke to solicitors and asked them what they wanted next. They replied that they wanted all our other registers to be added, so, since we launched ScotLIS in October 2017, that has been the priority.

It is very important to emphasise that the ScotLIS system is constantly evolving, through the feedback that solicitors can provide. Every week, there are multiple subtle updates to the system, in which solicitors get hold of us through our feedback form and say, for example, that it would be great if they could zoom in on the map in one way or pull out information in another. Therefore, in the past year we have been very much user led in how we have developed the system, and we can say to solicitors that we will do what they need in order to make it useful to them.

10:30

The other half of where we are trying to go with the system relates to the citizen, because it is extremely important that we think about how our information is available to them. Again, we want to be user led, so we have been running citizen workshops to understand what citizens would like ScotLIS to be, and in the coming couple of months, we will be rolling out a new citizen version of ScotLIS that responds to their requests about the kind of information that they want to access and how we might build up those information layers.

As for your question about other types of information, we have been looking at that issue.

For example, we looked at how we might pull Coal Authority data into ScotLIS, but we have encountered some challenges with the resolution of that data and how it does or does not fit with the system. At the moment, therefore, we have decided that putting that information on is not the priority and that we would rather keep working on responding to what solicitors and now citizens need and giving them what is most useful. My aspiration is definitely to keep building layers on to ScotLIS, but I see no point in putting on stuff for which there is as yet no defined user need.

**Andy Wightman:** User need was defined in the first-wave data sets in the terms of reference. As I understand it, this was all stimulated by the Norwegian land information portal. Norway is, I think, at number 5 in the World Bank's doing business ranking, while the United Kingdom is 42nd; Georgia is at number 4, Armenia 14 and Moldova 22. I have just gone online, and I am looking at 150 different bits of information about the state of Montana in the US. My understanding was that ScotLIS was supposed to be a portal providing the kind of data that we are talking about, on things such as rights of way, utilities and planning.

I appreciate that that has not been achieved by the target date, but my question is why Registers of Scotland is in charge of this. It sounds as if you are speaking just to solicitors. I have constituents who want to find out who owns certain flats in their tenement, as they are short-term lets that are causing them problems. It costs them £30 a time to get that information—or what might be £180 in total, which they cannot afford—but they also want all sorts of other information such as whether a flat has planning consent as a short-term let and whether the owners are paying non-domestic rates.

I understood that ScotLIS was to be a one-stop shop where people could find that information; as such, its development should be governed by a broad board drawn from across the public sector, including the Scottish Assessors Association, the Convention of Scottish Local Authorities, Scottish Water and various other organisations. You are implying that you are running the system and that you will therefore develop it according to your perception of what your customers want. Am I correct in that, or is there a broader board with a governance role in that respect?

**Jennifer Henderson:** There is no broader board. We are developing the system and funding its development, but I would be delighted if other organisations wanted to co-fund it with us. At the moment, however, only Registers of Scotland is putting money into it.

I 100 per cent agree that we want to build a system that gives the citizen useful information.

Something that we will be able to do very soon—within the next quarter, I hope—is to enable the citizen to download their title sheet through ScotLIS for the same £3 charge that a solicitor currently pays, which I think will improve things for people who want to find out who owns the properties around them and for a much lower cost than at the moment. Currently, all we can offer people is the ability to call up our customer services centre or to come into our offices in person, and having to go and find that information incurs time and effort on the part of my staff. That is why the charge is higher for such requests. Offering the citizen this service for the same price that a business user currently pays will, I think, be good progress.

However, the citizen panels that we are running are about understanding what else the citizen needs. One piece of feedback that we have received—and which, I note, was picked up in Community Land Scotland's "Towards Land Ownership Transparency in Scotland" report—was about the challenge that the average citizen faces in understanding the very legalistic information that is provided with the title certificate. As a result, we have been working with the citizen panels on how we can provide an appropriate explanation to ensure that, when a citizen pays the £3 and downloads the title sheet about their neighbour's property, they can understand what it is telling them without, one would hope, having to consult a lawyer. For me, that is a greater priority than adding other layers of information—I would rather get some basics in place first.

As I said, I would be delighted if other organisations wanted to come in but, to date, no interest has been shown in co-funding, so we are working as hard as we can within the bounds of what we can do to move the system forward.

**Andy Wightman:** That gets to the heart of my question, which is about who is governing the process. You said that no one wants to come in, but I presume that that is because no one realises that they could come in if they wanted to. As things stand, the project is complete as far as John Swinney and the Scottish Government are concerned, but no one seems to be taking a lead in taking it any further forward.

You mentioned the citizen being able to download a title sheet for £3. It was always a curiosity to me that solicitors and people with money could access that information for a tenth of the price that ordinary citizens had to pay. Denmark, for example, has developed a free-to-use model, which an economic impact assessment has evaluated to be worth £800 million to the economy compared with a pay-to-use model.

You said that you intend to roll out the system so that the citizen can access their own title, but you went on to talk about their being able to access titles around them. Will they be able to access any title?

**Jennifer Henderson:** Yes, they will be able to access any title. Ours is a public register.

**Andy Wightman:** Would you need a new fee order for that?

**Jennifer Henderson:** No, we would not. The fees that we charge for ScotLIS are not subject to our fee order, which prescribes the cost of people accessing our information by phoning our customer services or coming in in person. It is good news that, by building out a digital system, we will be able to provide information at a much lower cost than that. Therefore, we would not need a new fee order for that.

**Andy Wightman:** Years ago, I accessed information for free on the basis that I needed it for research, but Audit Scotland told you that you had no legal authority to provide free access and that you could provide access only on the basis of what was in the fee order. Therefore, I am a bit surprised to hear you say that you can make up the rules for ScotLIS outwith the fee order.

**Jennifer Henderson:** That is because ScotLIS is not a statutory service. The fee order applies to the statutory services that we provide.

**Andy Wightman:** But once someone gets in through ScotLIS, they can get to land register titles.

**Jennifer Henderson:** That is correct.

**Andy Wightman:** At that point, surely the fee order governs the price being paid.

**Jennifer Henderson:** It does not. Our statutory requirement is to provide access to the register through a customer services centre or to people who come in in person. We are in the good position of being able to provide an alternative way of accessing the register that is more economic for the user, but that service—ScotLIS—is not statutory.

**Andy Wightman:** In theory, you could make it free, if you wished to.

**Jennifer Henderson:** In theory, we could make it free but, in practice, that would not be practical for us, because building and developing ScotLIS is costing us a substantial amount of money. To fund that service and keep it up to date, we have to charge a price for the information that is accessed through it.

**Andy Wightman:** You say that ScotLIS is costing you a lot of money. Given that it was the Government that wanted you to develop ScotLIS,

who is accountable for all that money being spent on developing the system? It was a Government initiative, not an ROS initiative, but, as I understand it, the Government has put no money into it.

**Jennifer Henderson:** It is true that the Government has put no money into it. We are self-funding it, which is why we are recovering our costs by charging for the information that is provided.

It is also worth saying that we provide a certain amount of information for free. Through ScotLIS, people can access some information for free, but we charge for people to access the title sheet. Janet Egdell is in charge of the finance side of things, and I am sure that she could go into that in a lot more detail offline, if you would like to explore the issue further.

**Andy Wightman:** Thank you.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I want to take a look at digital services, starting with the historical side. Back in 2011-12, when I was a member of the Public Audit Committee, there was a tremendous problem with Registers of Scotland's information technology and the BT contract that went with it. What lessons did you learn from that that you are implementing now?

**Jennifer Henderson:** We are no longer with BT, as I am sure you are aware. We are doing our digital services in-house, which gives us much more control over the ability to respond more dynamically. We have a big programme of digital activity under way. As well as the work that is being done on the provision to our customers of external-facing digital services, we are doing a lot of work to enhance our digital tooling internally.

We are also doing some fantastic work on the resilience of our services to ensure that we have good disaster recovery. As a 24/7 operation, we have to ensure that our services are up and running for anybody who wants to use them at any point of the day or night. It is also a priority for us to be able to instantly recover if there is a power outage. We have learned lessons about how we specify what we need to ensure that we are controlling it effectively. As the accountable officer, Janet Egdell can pick up on that.

**Janet Egdell (Registers of Scotland):** We have learned that we need to resource in quite different ways for digital. We have tried a lot of different mixes of resources. We would love to have people on our payroll who are digital experts. We cannot get enough of those at civil service pay rates, so we have always had a mix of resource that comes from contractors, companies working on bespoke pieces of work and in-house staff. We learned the lesson that outsourcing all our

intelligent client capability did not work for us under a long-term contract, and so we brought that mix in.

We have learned to be a lot more flexible over the past few years. We have done a lot of different kinds of transformation; some of it is about the tech, but a lot of it is about getting the tech ready with the processes and the people. It is that mix that delivers for us. We have put a lot of effort into that.

It is true that we have developed ScotLIS in a way that is different from the original business case. From my point of view, with my accountability hat on, that has worked. To get value for money, we need to keep listening and not to think that our original idea is always right. ScotLIS was a good example in which we went out to more users, got quite different feedback and have taken it a bit more slowly. We have a really good digital discharge service in place now that is working very quickly between lenders, solicitors and ourselves. We used to have deeds floating by post and it would take several weeks to get something discharged, but now it can be done within minutes, and everybody can get on to the same online system. That has worked much more effectively for us.

We thought that we would go on from that to develop a digital security service. We have talked to the lenders and to the solicitors who would be using it, and they are not ready for it. They are not ready for the digital signatures that would sit behind that service. It is a level of risk for which that are not ready.

Over the past years we have learned to listen and, rather than just pushing ahead, we now understand that sometimes we have to slow down or stop and take our users with us.

**Colin Beattie:** I take it that having brought everything in-house, all your systems development is done by your own staff and contractors.

**Janet Egglestone:** Yes. We occasionally use professional service companies for discrete pieces of work, but mostly we use contractors, and we are trying to buddy up our contractors with our in-house people to grow our own people through that process.

**Colin Beattie:** If you do everything in-house, obviously you are a bit isolated in what you are doing. There must be off-the-shelf systems that you can bring in-house and adapt to your own needs. Surely you are not developing everything from scratch.

**Janet Egglestone:** You are quite right. I did not mean that we are not buying off-the-shelf services. For example, in case management we use digital case bags rather than physical paper case bags.

That is an off-the-shelf system. The work for us has been in adapting it to suit our needs.

**Colin Beattie:** You touched on its being quite difficult to get IT specialists, which is the case across the whole public sector. Do you offer incentives to attract people?

10:45

**Jennifer Henderson:** One of Registers of Scotland's aspirations is to be an employer of choice: for someone who is thinking about a civil service career, we want Registers of Scotland to be where they want to come and work. The feedback from some in-house digital folk is that our work is exciting: the digital services that we offer are exciting to build, we innovate in how we do that, and there is a lot of customer contact, so we are an attractive place to come and work.

We do not offer other incentives: civil service terms and conditions are standard, so we need to ensure that people want to come and work for us because the work will develop them and give them new skills and the opportunity to do something that they would not get a chance to do elsewhere in the civil service.

I also find it comforting that our people tell us that there is a public service ethos—they want to work for us because they feel that our job matters and makes a difference to the country. That is an incentive for them to apply their skills in-house with us rather than out and about in the wider private sector.

**Colin Beattie:** In the light of difficulties with IT projects elsewhere, the Scottish Government has set up a unit—I cannot remember its official name—to provide the project management skills that individual departments might not have internally. Do you make use of that service or do you work separately?

**Jennifer Henderson:** I have a regular catch-up with the digital director to make sure that Registers of Scotland's internal work fits in with other things that are going on. We have made use of the assessment process whereby people can be sent in to go over our digital plans to make sure that they are in accordance with best practice. We follow Government digital standards—we do not do our own thing in isolation. We follow best practice and join up with other parts of the Scottish Government, when appropriate, to share knowledge, skills and ideas about how to approach things. Some of our people offer their services as assessors to other parts of the Scottish Government. We are recognised as doing leading-edge work, so our people can offer something by reviewing programmes and providing advice on how their approach to digital projects could be improved.

**Colin Beattie:** You reckon that you will be fully digital by 2020. The other side of the coin is to ask what you are doing to make sure that your customers will be fully digital. If they are not, your being digital will not be very effective.

**Jennifer Henderson:** As Janet Eggle said, that is the interesting challenge. When we ran the consultation about the customer-facing part of our proposed roll-out of digital services, there was a lot of appetite to bring in digital securities and a digital disposition service. We have rolled out digital discharge, which has been very successful, but we still do not have all the lenders signed up. They are gradually coming on board, but we cannot make them sign up to the process. They have to make potentially large changes to make their IT systems fit in with our new system. That is happening.

When we started to talk to customers about the practical realities of a digital securities system, they realised that some of their ways of working would not fit. We are exploring with them how we can build a system that suits us and still supports them in their work. There is clearly no gain to us if we bring in a system that our customers cannot use and which just slows them and the conveyancing process down.

Digital discharge has been an exemplar with regard to working closely with our customers throughout. We have brought in a system that allows them to work much faster and we have factored in a way to deal with lenders who are not yet on the system so that our customers still work faster, even in those cases.

**Colin Beattie:** Realistically, are you and the customers going to be ready by 2020?

**Jennifer Henderson:** The 2020 target relates to two things. With regard to services for our customers, we will not have fully brought in digital securities and digital disposition services by 2020 because our customers will not be ready to work in a fully digital way. We will have made advances in some elements of how they work digitally with us, but we will not be fully digital by 2020.

The other half of our digital programme is the tools that we provide internally to our people to do parts of their job. For example, we used to have a manual process for getting paper applications on to our system, but just before Christmas we brought in an internal tool that provides an automated way to do that. Now, when a paper application comes in, it goes through our scanners and a digital application is automatically created on our record. That is a massive step forward internally, because it means that people do not have to retype information from bits of paper that arrive in the post.

The long-term goal is that no post will come into the building and that solicitors will fill in everything at their end and press a button so that the information automatically comes through to us, but we need to overcome bigger challenges of digital signatures and other things before we can reach that point.

**Angela Constance (Almond Valley) (SNP):** I am one of the MSPs who have recently been in correspondence with you.

On registration processing times, the figures for the backlog of applications for registration suggest that, despite reassurances that the keeper gave the legal profession in June 2018, the backlog is growing rather than decreasing. Last year, about 43,000 cases had been missed, as at the end of July. The number increased to about 45,000 in August, to about 46,000 in September, to 47,000-odd in October, to about 49,000 in November and to 51,000-odd in December. Will you explain that and say what you are doing to address the situation?

**Jennifer Henderson:** When I arrived last April, I picked up quickly that we were not operating within our service standard on some types of work. For the vast majority of what we deal with, we operate within the service standard—91 per cent of everything that we deal with goes out within 20 working days. However, we were not hitting our service standards on first registrations and transfers of parts of registered titles. I and others had lots of conversations with the registration staff to understand why, so I can explain why we came to have that problem.

You also asked what we are doing to fix the problem. The feeling was that we needed to stabilise, which meant that the situation would get slightly worse before it got better. I asked the registration staff to forecast the point at which they would stabilise, which they said would be about now. We have had two weeks of achieving stability, which means that more cases will go out the door than come in. If we achieve that, the backlog will start to go away. We always knew that it would take us six months to stabilise. We slowed the rate at which arrears were growing until we could turn the situation round. That required different ways of working and innovation by the registration staff in how they deal with complex casework.

In parallel, we tried to factor in the age of the application. The biggest issue that solicitors raised with us was cases that we had had for more than two years, so our priority was to stabilise and to get rid of all the 2016 cases. We are putting an awful lot of effort into working through the oldest cases—they are the oldest because they are the most complicated—and bringing them in.

**Angela Constance:** Do you have a breakdown of cases that are woefully overdue—those in the two-year bracket—and of cases that are a year overdue or six months overdue?

**Jennifer Henderson:** We regularly review the situation. At the most recent look, just over 4,000 cases that were two years old were left. We expect to get rid of them in the next couple of months. For some very complicated cases, we will have to work with the submitting solicitor, because what they have sent us does not allow us to complete the registration process.

We brought in a policy change such that when we have had a case for more than three months, we will not reject it if it has flaws, although we are entitled to do that under the Land Registration etc (Scotland) Act 2012. We thought that to do so would not be helpful, so we changed the policy to say that we will not reject stuff. Unless the case has a fatal flaw, we will work with the submitting solicitor to get what we need to complete the registration process.

**Angela Constance:** How long will it take you to clear the backlog?

**Jennifer Henderson:** With our current level of staffing, and using our current approaches, it could take us up to 18 months to get everything back within service standard. However, we are looking at innovative ways of working, so we might be able to do the work in 12 months. If we choose to boost our staff, we could do it more quickly than that.

We are reflecting on the necessity of clearing the backlog. It is clearly not acceptable that we have a backlog of cases, but we have to consider the practical difference that it makes to people with properties. In almost every case, a person's case not being registered does not cause problems for them. From a legal standpoint, we take on the case on the day on which we receive it; the registration, when it happens, is backdated to that date.

We introduced an expedite process through which anyone who is experiencing difficulties can have their case accelerated. The legal profession is telling us that there is no great rush to clear the backlog, provided that we carry on not rejecting cases, and that we continue to have the expedite policy, so that we can accelerate the small number of cases that need to be accelerated—

**Angela Constance:** I am sorry, but I am keen to move on. Forgive me for interrupting, but I am conscious of time and there are other issues that I want to raise. You said that the worst-case scenario is that it will take 18 months to clear the backlog.

You talked about issues that you deal with in relation to boundary disputes. I am sure that, over

the years, every member of Parliament has written to you about such cases. I want to focus on the processes. Registers of Scotland regularly receives map updates from Ordnance Survey. Are you obliged to use the most up-to-date OS map as the base map?

**Jennifer Henderson:** Yes, that is correct.

**Angela Constance:** Therefore, would you proactively advise landowners of a change to the base map?

**Jennifer Henderson:** We would not. When the map tile is updated, our map maintenance people look at the titles that sit on top of that map tile. For example, if, after a map tile update, the property boundary no longer sits on top of the map tile boundary, we make the adjustment—we say, "That is clearly where it is meant to be"—and because that does not materially change anything for the property owner there is nothing to notify them about.

If there is something more significant and we feel that we cannot make the change to reflect the base map and show the property boundary in the correct place, we correspond with the property owner. However, we deal with such matters case by case—we do not routinely notify people when we make minor adjustments.

**Angela Constance:** Okay. So, you undertake an assessment process every time the base map is updated, including consideration of whether the update has an impact on title deeds.

**Jennifer Henderson:** Yes; we have a small team of people who look at the updated map tile and ask what the update does to the properties that sit on top of that map tile. Do they now all look slightly skew-whiff relative to the underlying base map, and do we need to make an adjustment? The team might decide that there is no adjustment to make.

Ordnance Survey sends us 400 updated map tiles every week: we do not get to all 400 in the week, so sometimes we are running with a bit of a lag. Again, if it is brought to our attention that someone is trying to transact on a property that sits on top of a map tile in relation to which the base map has not been updated, that map tile goes to the front of the queue of cases for us to deal with. I am happy to explore that with you in more detail.

**Angela Constance:** Can you see the problem that would arise if the base map had been changed some years previously and someone discovered only when they tried to sell their house that their title deeds were out of sync with the base map?

**Jennifer Henderson:** That would be the point at which we would update the base map, if we had

not reached the relevant map tile. We would make the adjustment. That should never make a material difference to where someone's boundary sits. The deed that was used to register someone's property and the map as originally drawn will describe things like the eastern boundary being against the fence line. If the map tile updates and shows the fence line as being a little bit further over than it had been, because of Ordnance Survey surveying techniques, it is appropriate for us to align the property boundary.

We would not do that only if the fence line in the new survey had moved by many metres. We would then wonder whether it was a new fence or whether something strange had happened, and we would need to make sure that we were drawing the property boundary accurately and not suddenly allocating people new land that was not theirs.

11:00

**Angela Constance:** I will probably reflect on your evidence and come back to you on that.

Can you confirm whether Registers of Scotland is subject to the Gender Representation on Public Boards (Scotland) Act 2018?

**Jennifer Henderson:** Oh my goodness! I do not know the answer to that.

**Janet Egdell:** We certainly meet its requirements. I am sure that we are 50:50, but I do not know.

**Jennifer Henderson:** I am sorry, but I do not know.

**Angela Constance:** Goodness. Well, it is a wee bit worrying that you do not know whether you are subject to the act. Tell me about the diversity on your board. What size is your board? How many board members are men and how many are women?

**Jennifer Henderson:** My board has four non-executive directors, three women and one man. The executive members are two women and two men.

**Janet Egdell:** We are as close to 50:50 as you can be. If we had one more male non-executive director, we would be exactly 50:50.

**Angela Constance:** What about your risk and audit committee?

**Janet Egdell:** It is made up of three women and one man.

**Angela Constance:** As a matter of interest, what is the balance in your overall workforce?

**Jennifer Henderson:** It is almost exactly 50:50. We have slightly more men than women overall. Our gender pay gap is 98 per cent.

**Angela Constance:** 98 per cent?

**Jennifer Henderson:** Do I mean that?

**Janet Egdell:** You mean the other way around.

**Angela Constance:** Talk us through that.

**Jennifer Henderson:** I am sorry; I got that wrong.

**Janet Egdell:** The pay gap is very small. It is at 2 per cent.

**Jennifer Henderson:** It is either 2 per cent or 4 per cent. It is within that boundary. The women earn 98 per cent of what the men earn.

**Angela Constance:** There was a sharp intake of breath from the two accountants who are sitting on either side of me.

In terms of diversity in the broader sense, how many people who have disabilities, who are younger or who come from a black and minority ethnic background are there in your overall workforce?

**Jennifer Henderson:** Janet Egdell is just pulling out that information. It is information that we publish in our annual report.

Shortly after I joined, I asked for an update on diversity. That looked at the diversity of the organisation versus the diversity of the population in Scotland to understand whether any aspects meant that our workforce did not match the population.

One of the challenges that we have—as do a number of organisations—is people's willingness to declare various diversity characteristics. We have made a big push to get accurate data to make sure that we are helping people to feel comfortable with declaring all those things that will allow us to do that analysis accurately and understand whether there are any issues.

We have an inclusion network in the organisation. A group of staff came together to champion inclusion and we take input from that group. We are setting up staff networks to champion individual aspects of diversity.

From the evidence that I have seen, diversity is not something that we have any particular issue with.

**Angela Constance:** What are the numbers? Around 20 per cent of the population live with a disability. In some parts of the Scotland, the BME community is as high as 12 per cent, although the average is about 4 per cent.

**Janet Egdell:** We have 7.5 per cent declared disabled in last year's annual report. Similarly, only 1.5 per cent have declared themselves as being from a BME background. We also have a fuller equality mainstreaming report.

**Angela Constance:** Would you like to improve those figures?

**Janet Egdell:** We would certainly like to improve our reporting. We are not sure that they are accurate, because they are declared. We have done some work to improve our retention of statistics. We gather a lot of statistics when we are recruiting but, for good reasons, we do not keep them unless we have asked people whether we may do that. People may think that they have already declared to the organisation, but we do not hold that information. We would like to know the position better and we would certainly like it to be representative.

**Angela Constance:** I have read a little bit about your appointment process for your various boards and it sounds fairly routine. I would be interested to know a little more about how you, as an employer, seek to reach out and tap into the wide range of talents that exist, particularly in groups that are underrepresented.

**Jennifer Henderson:** Are you interested specifically in the board or in recruitment to the organisation in general?

**Angela Constance:** Well, both.

**Jennifer Henderson:** I will start with the board and the audit and risk committee. We advertise widely in a variety of media including the civil service jobs website and various public pieces of media, and we get a good number of people wishing to participate in the process. We have representation from various parts of the UK. Our board does not just come from Scotland; we have people representing other parts of the UK and indeed Ireland. That is useful, because it means that we bring in people who have experiences of working in different parts of the jurisdiction.

I do not really know what else to say about how we reach out. We feel that we advertise widely and we get a good number of people. When the Civil Service Commission came in recently and looked at our recent non-executive director recruitment process for the audit and risk committee, it was very satisfied that it had been done appropriately and met all the relevant requirements.

**Angela Constance:** It all sounds as if it is very much done by the book, if you do not mind me saying so. I am conscious that, for your advisory board's non-executive members, for example, you are not regulated by the code of practice for ministerial appointments to public boards. I

wonder, therefore, where the independent and external scrutiny and support are for finding different and better ways to reach out to those who are perhaps a little less likely to be within the current civil servant loop.

**Jennifer Henderson:** Our existing board members—our non-execs—are absolutely not all ex-civil servants. One of them is an artist from Northern Ireland, so she brings a very different perspective to the board. She works with technology start-ups. I feel that we have good representation on the board of people who come from different backgrounds and can give us good challenge and advice on the work that we do. I do not feel that we have a board of people who all bring a similar view and that, therefore, we are not getting the breadth of input that we need.

**Angela Constance:** However, your statistics show that you are not necessarily representing Scotland in all its diversity in your broader workforce. I suppose that I am pressing you on what you are prepared to do that is a bit different, as opposed to the same old, same old.

**Jennifer Henderson:** I feel quite strongly that the best way for an organisation to get a diverse workforce is for it to show that it supports its workforce and to lead on thinking around such things. For example, in relation to the lesbian, gay, bisexual and transgender community in ROS, it is about really making sure that we understand what we need to do to support people, such as making sure that we have gender-neutral toilets and a process for people who want to transition at work.

The best approach is to show that we, as an employer, are trying to do everything that we can do to provide a supportive and inclusive environment. We hope that people who are looking at options for where they want to work will choose to come and work with us because they feel that our environment and our organisation will support them in all their diverse characteristics. I do not think that it would be right to reach out and try to bring people in without providing the right environment to support them when they get here.

**Angela Constance:** Finally, how many young people under 25 do you employ and how many modern apprentices do you support?

**Jennifer Henderson:** I cannot say off the top of my head. Certainly, we have supported the modern apprentice programme. Janet Egdell is looking to see whether we have that information to hand. If not, we will come back to the committee on that point.

When we looked at the diversity of the workforce, we had a good spread of people in the young, medium and more mature age bands across the organisation. We have been successful in having people come in as modern apprentices,

participate in that programme and choose to stay on and make a career in Registers of Scotland. We will be happy to respond offline on the specific numbers.

**Janet Egdell:** I cannot answer the question directly. In 2014, 7 per cent of the workforce was under 30; the workforce was stable, with a number of people having been with us for a long time. We have now improved to 17 per cent under 30. We brought in about 50 modern apprentices over a period of years, many of whom are still with us and have become permanent members of staff.

**The Convener:** Did I understand correctly that the balance on the board is more female than male?

**Jennifer Henderson:** Yes.

**The Convener:** Have your employees been reluctant to provide you with information about protected characteristics?

**Jennifer Henderson:** As Janet Egdell said, people felt that they had provided that information as part of the application process when they applied to join us. They have not realised that, because of data protection, we cannot transfer that information on to our systems. They need to redeclare, and we are pushing people to do that. We need to create a positive, virtuous circle around that. We need to explain to people how we are using the information, what difference it will make if they provide the information and what decisions will be based on it, so that people feel that it is worth providing the information to inform good decisions in the organisation.

**The Convener:** Do people perhaps feel that it is private information that they do not wish to share with their employer?

**Jennifer Henderson:** Potentially. The leadership community in the organisation must explain why we want to know not about individual people but, at an aggregate level, about the percentages of people from different backgrounds, so that we can support them appropriately and ensure that they have a voice in the organisation to raise any concerns.

**The Convener:** More broadly on staffing, over the past 10 years, the number of permanent civil servants you employ has decreased by about 200, from just under 1,300 to just over 1,100. Is that correct?

**Jennifer Henderson:** Yes.

**The Convener:** Over the same time period, agency staff costs, which were about 1.4 per cent of your revenue—quite a small proportion—in 2009-10, rose to £15.5 million, or over 21 per cent of your revenue, in 2017-18. You have explained that BT no longer works with you, so you have to

do the work through agencies and contractors instead. The number of contractors has risen from 31 in 2009-10 to 161 in 2017-18. Is spending so much of your revenue on contractors and agency staff an efficient use of your budget, at the same time as you are reducing the number of your own employees?

**Janet Egdell:** It is something that I keep a close eye on in terms of value for money.

It is partly about flexibility when we are doing projects, such as digital developments, that we do not see as long term. We know that, to run our systems on a long-term basis, we will need a certain level of digital skill in the organisation, but we have been investing beyond that. We do not want those people to be with us for the long term; we need them for only two or three years, and we use contractors in those circumstances.

11:15

As part of our automation of services, we expected a reduction in the number of people we needed to do some of our registration activity. However, that automation is going a bit more slowly than expected as our users are not as ready for more automated services as we thought. We have therefore taken on people on a more temporary basis, on one or two-year contracts, because we do not see the need for them in the longer term.

A lot of our income is reliant on the housing market, which runs to a cycle. We are very conscious of our predecessors having to draw down significant reserves in 2008, when there was a big fall in the number of registrations coming in to us. At that point, there was very little flexibility in the workforce or in our costs; we have brought in more flexibility since then so that we can be a bit more responsive to any future changes in the housing market.

**The Convener:** I can understand that to a certain extent, but it seems that a huge percentage of your revenue—more than 21 per cent—is going on agency staff costs at the same time as there has been a reduction in the number of your employees.

To go back to the issues that Angela Constance discussed, you know what terms and conditions your employees are employed on and you can take responsibility for them and how they are treated in terms of fair work, whereas you do not have any say about that for contractors or agency staff.

**Janet Egdell:** We treat our contractors as though they were permanent staff in relation to most of our terms and conditions, although not in terms of the flexitime that we offer, for example,

and they look after their own pensions. However, on a daily basis, we treat them as fairly as we can; we would not treat them differently from permanent staff.

**The Convener:** I am not sure that I understand that. Obviously, you treat them fairly when they are working, but the point in having contractors is that you can get rid of them whenever you wish to.

**Janet Egdell:** To go back to the point about the digital and data skills that we need for the future, we have found that we cannot always recruit permanent staff with those skills, so we need to source some of those skills from contractors instead.

**The Convener:** But is this an efficient way to do it when such a large amount of your revenue goes on agency staff costs?

**Janet Egdell:** As I say, we try to make it as efficient as possible and as short term as possible. We are using those skills for project work that has a finite end. As I mentioned, we are also trying to use those skills to grow our own so that we do not need to use agency staff on an on-going basis. For example, we have brought in some developers from CodeClan, who have been trained up by the more senior developers, and we are getting them on to more of a contract basis and bringing them into a longer-term, more sustainable set-up.

**The Convener:** In the longer term, do you expect the agency staffing cost to decrease as a percentage of revenue?

**Janet Egdell:** Yes.

**The Convener:** When will that happen?

**Janet Egdell:** We can foresee significant digital work for the next 18 months or so. Beyond that, our digital skills needs will probably be significantly reduced.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** To continue looking at the numbers, over the past five financial years, the organisation has made a net profit on three occasions and a net loss in the past two years; the figures range from a £10.9 million profit in 2013-14 to a £15.6 million loss in 2017-18. Given that your revenue increased by £10 million over the same period, what are the main factors for that large variance?

**Janet Egdell:** Our contractors have been a major cost over the past two years, partly because of the work that we have been doing in the digital space such as the development of the discharge service, ScotLIS and so on.

We have also increased our investment in the resilience of our systems. We found that we were not quite as resilient as we thought we were when our Edinburgh office had a power outage and, as a result, we have invested in a data centre at

Saughton house so that we have full failover between the two centres. Over the period, we have invested quite a lot in making sure that the integrity of our data is absolutely at the forefront, and we have also invested in some power support. Over the past year, we have had four power outages, but our customers will not have noticed them.

We have drawn on our reserves not only for those kinds of things but to refresh our workforce. In the past financial year, we spent a large chunk—£6.1 million—on a voluntary exit scheme, but that has allowed us to bring in some younger people and some new skills. Some of our staff found the move from the Land Registration (Scotland) Act 1979 to the 2012 act and the accompanying changes in process to be a big change, and some who were finding those changes more difficult opted to go in the voluntary exit scheme that we offered. That has helped us move on and get the skills that we need for the future.

**Gordon MacDonald:** Your accounts show that staff costs, including the restructuring costs that you have mentioned, increased from £50 million to £64 million. I was surprised to see that 136 people went in your voluntary exit scheme while your agency staff increased by 160. If you are simply replacing those who have left with agency staff, that suggests that you actually needed those staff in the first place.

**Janet Egdell:** We still believe that the voluntary exit scheme will pay for itself within about 18 months. With some of the changes to our processes, we require staff at a different grade. There is no question but that we have done some backfilling. In absolute terms, our staff numbers have not fallen by 136; we have backfilled with different skills and at different grades.

**Gordon MacDonald:** Okay. Looking forward from 2018 to 2021, you suggest in your corporate plan that you will make a loss of £3.7 million this year, a profit of £3.5 million in 2019-20 and a profit of £4.1 million in 2020-21. What factors are leading to a change from your current position? You intend to make a loss this year after two previous years of losses, yet you expect that, in a year's time, things will flip over and you will make a profit.

**Janet Egdell:** It is partly about the investments that we make now for the future and partly about what happens to our income with regard to the housing market. For instance, we have talked about the backlog of cases. We have done some scenario planning around how we would respond to a significant crash in the market, and we are now ready for that.

There is also a delay with regard to the completion of certain work. However, we expect that, after a few years, we might well have the resource to do more on voluntary registration and more work on our data, which we might not have done. We might also need to think about redeploying staff accordingly.

**Gordon MacDonald:** But you are confident that you are going to hit the targets that you have set yourselves.

**Janet Egdell:** We are revising them as we speak, and we are working on what things might look like as we move forward. We will draw down a little bit more from our reserves than we previously thought we would, because we have not got as many cases out of the door as we predicted; therefore, our income will be a bit less than we forecast. We are keeping an eye on that.

**Gordon MacDonald:** Over the past 10 years, your reserves have dropped from £122 million in 2008-09 to £71 million in your latest set of accounts. What is the role of the board in establishing the reserves policy?

**Janet Egdell:** We review the policy with the board every six months, so we keep it under review. We are conscious of the need to keep the reserves partly because of what happens with the markets, in case there is, say, a big drop in our income. In addition, we are investing in land register completion to accelerate that, and the work that we do on keeper-induced registration does not bring a fee with it. We also offer indemnity for our customers, so that, if they have a problem, we will follow up with our warranty, and we need to keep reserves to cover any unforeseen amounts for that. We are also thinking about our workforce planning going forward and making sure that we have the right resources for that.

**Gordon MacDonald:** Given that your reserves have dropped by £52 million in 10 years and your current reserves are at £71 million, what safeguards do you have in place to ensure that appropriate reserves will be held going forward when you have so much fluctuation in both your income and your costs?

**Janet Egdell:** In the period from 2008 to 2012, we drew down £80 million of reserves due to a few factors. Compared with 2008, we have been investing a lot in our processes and systems, and we have new legislation that allows us to work more efficiently than we were able to under the 1979 legislation. We have increased the flexibility of our workforce—I realise that the previously mentioned use of contractors is part of that, but that allows us to be much more flexible. We have also invested in our buildings. In Glasgow, we have moved from an old building with eight floors to one floor of a building—we lease a floor that

has half the space, and that is saving us £400,000 a year. Such measures should see us in good stead, but we look at those alongside our reserves policy to check that we are in a good place.

**Gordon MacDonald:** Thank you.

**John Mason (Glasgow Shettleston) (SNP):** At around £70 million, your reserves are roughly the same as your revenue—so you have 12 months' revenue in reserve. Most organisations aim to have about three months' revenue in reserve, although I take your point that you are a bit more subject to volatility than other organisations. Is your reserves policy that the norm is to have one year's, six months' or eighteen months' revenue in reserve? Do you have a policy in that area?

**Janet Egdell:** We have not phrased it in that way. It partly depends on where we are in the housing cycle, as we would want to flex the reserves accordingly. We need a bit more flexibility at this point, as the market looks as though it is slowing down a bit, so we are looking at that. We also need to see the reserves alongside how much we still have to work on and the backlog of cases. We do not have a firm policy of keeping 12 months' revenue in reserve; we keep the reserves under review depending on external factors.

**John Mason:** Would an alternative model be that the Scottish Government would fund you from year to year? In that way, if you were planning a slight profit or loss over the next few years, either it would pay you some money or you would pay some money back to it, and you would not need reserves at all. Is that a potential model?

11:30

**Janet Egdell:** It is a potential model. Our current model is set out in the Public Finance and Accountability (Scotland) Act 2000. That situation could change, but that is where our current model for how the fees that we earn are retained for the purposes of the keeper is set out.

**John Mason:** You are obviously going to work within the statutory framework, but do you have a preference for what that framework should be, or will you just live within whatever is set out?

**Janet Egdell:** I presume that, when the legislation was passed, in 2000, the thinking behind it related to the volatility of our income, in which respect Registers of Scotland is unusual compared with other bodies. Our income follows the housing cycle, so an annual budget would be more challenging, but it would not be for us to make that decision.

**John Mason:** It strikes me that budgeting is even more challenging for you as a stand-alone organisation, which I consider Registers of

Scotland to be. If your finances were within the Scottish Government's general finances, there would be a bigger pool to absorb the ups and downs. However, I accept that that is not a question for you but for others.

I will try to tease this out a bit more. I realise that the Registers of Scotland is going through quite a lot of change and investment at the moment. Is there a longer-term plan that it will all settle down? Or is the property market so unpredictable that you are always going to have to keep sizeable reserves and cope with a degree of uncertainty?

**Janet Egdell:** We are becoming much more efficient, as our running costs show. That is what some of the investment has been for. There are then choices about whether we should offer additional services. We have taken on additional registers over the past few years, and we carry out work for Revenue Scotland. Whether, as we become more efficient, we should take on more services or shrink the organisation is a tougher question.

**John Mason:** Reducing your fees is one suggestion that Mr Wightman hinted at. Has a decision been made on that?

**Janet Egdell:** Our fees have been the same since 2011, apart from the discount for voluntary registrations. The discount for digital registrations is becoming more important in terms of how many people are gaining from it. Our fees have been reducing in real terms, but we have not reduced them in absolute terms.

**John Mason:** If the decision was made that you should take on more registers, how would that work in practice? Would the Government simply tell you to do that, or would you be involved in the discussion? Has that discussion started?

**Janet Egdell:** We would be involved in the discussion. Under land reform options, we are in discussions about a new register.

**The Convener:** Would it be possible for you to provide a table showing the overall civil servant staffing costs for the same period for which the agency staff costs have been provided?

**Janet Egdell:** Yes.

**Andy Wightman:** I have some follow-up questions. I want to revisit the question of accountability, to get the matter clear for the record. Prior to devolution, the keeper and their staff were accountable to ministers, who were accountable to Parliament. Now, the situation is that the keeper is accountable to Parliament for the operation of Registers of Scotland and the Scottish ministers are accountable to Parliament for policy decisions.

**Jennifer Henderson:** That is my understanding.

**Andy Wightman:** Where does that take us in terms of accountability for the failure to meet a 2019 target or the failure to deliver what was promised in the ScotLIS project? Who is accountable for that failure? Should I ask Derek Mackay to account for that because those were solely policy decisions? Or is the accountability mixed? You say that you are doing everything that you can to deliver those things, and I have no reason to doubt that you are. Should I hold Derek Mackay accountable for those policy decisions and their wisdom or otherwise?

**Jennifer Henderson:** A variety of people are accountable for completion of the land register—public bodies and private organisations need to participate in that. You would need to establish how the original target was set and what the expectations were at the time about the risks of not meeting that target. You are right in saying that we are doing everything that we can to fulfil our part of the bargain.

ScotLIS is a little different in that, as Janet Egdell said, an aspiration for what ScotLIS could be was set out and we were invited to deliver that system. We have always wanted to be customer led and to make sure that what we deliver evolves as customers tell us what is useful to them. We have therefore shifted some of our priorities on ScotLIS. I am fully accountable for that and you should be holding me to account in comparing what was asked for with what is now in place. However, I stand by the view that what we have delivered so far has been a response to what customers tell us they want. We put something out there and ask them whether it is what they need and what else they would like.

**Andy Wightman:** I have three other questions. When Parliament considered the Forestry and Land Management (Scotland) Bill last year, there was an amendment in my name to section 14 of the bill that required ministers to

"publish in such manner as they consider appropriate information on forest holdings in Scotland",

including their area and proprietorship. The night before the stage 3 debate, Janet Egdell wrote a letter to the minister, which was circulated to MSPs, saying that the amendment would cost £600,000. It is not normal to have letters from civil servants circulated to MSPs the night before a stage 3 debate. Can you explain the circumstances in which you were invited to provide that advice to ministers?

**Janet Egdell:** I had a discussion with ministers about what the costs of the amendment might be and was asked to provide that information. That

£600,000 would have been the cost of providing information at that level at our standard cost.

**Andy Wightman:** Do you have a record of exactly what you were asked to provide to Mr Ewing—an email or a letter?

**Janet Egdell:** It was a telephone call, I think. We had a discussion.

**Andy Wightman:** Could you make available to the committee whatever remit you were given? I am interested to know. It is not clear to what the letter responded.

**Janet Egdell:** I was asked what the cost would be if Registers of Scotland provided information at that level on our standard terms, and that is the information that I provided.

**Andy Wightman:** Okay. Last year, we published an inquiry into Scottish economic data and noted that the Scottish Fiscal Commission was paying Registers of Scotland for data that would enable it to come to a view on its forecasts for land and building transaction tax revenues. The committee wondered why one public body was having to pay another public body. The Government responded to our report, saying that the data was being provided

“in accordance with an information-sharing agreement”

and that the cost was modest at £23,000.

That is one example, and the cost was quite modest. Do you see a case for the public sector sharing the information that it requires to do its job at no cost? It seems ridiculous that transaction costs are involved when one public body needs information from another.

**Jennifer Henderson:** Under our current funding arrangements, it costs us money, time and staff effort to provide that information, and we need to operate on a cost-recovery basis. As we do not receive money from other sources, it is not viable for us to do the work free of charge, because there is a cost to us.

**Andy Wightman:** That is fair enough.

I have a final question. The European Union infrastructure for spatial information in the European Community—INSPIRE—directive, on which the committee recently considered a Brexit statutory instrument, is an EU directive to make geospatial information available. It was implemented by Registers of Scotland in November 2017, three days after the deadline. It had been implemented by the UK HM Land Registry in 2014, three years earlier. Is there a reason why its implementation was so delayed?

**Janet Egdell:** That may have been due to our digital systems and the investment needed to get the data out. I cannot speak for HMLR, but we are

still reliant on a 1996 digital mapping tool, and it is quite a job for us to put the information on to a better basis. That is part of the investment that we are making, and it is why we need digital skills at the moment. The difference was probably due to the difference in our base systems.

**The Convener:** To clarify the point about the letter on the £600,000 cost, to which Mr Wightman referred, you were asked by the minister to provide the information and you did so by letter, but it was not you who circulated the letter.

**Janet Egdell:** No.

**Dean Lockhart (Mid Scotland and Fife) (Con):** I have a follow-up question on retained profits as set out in Registers of Scotland’s financial statements. When you refer to retained profits, are you talking about an accounting entry or is it real money that is sitting in a bank account somewhere?

**Janet Egdell:** It is close to what is in a bank account, but there are some accounting differences between retained profit and cash.

**Dean Lockhart:** How is that money invested? I notice that the interest received has fallen from around £6 million about 10 years ago to £64,000 last year. How is that money invested?

**Janet Egdell:** Under normal Scottish public sector banking arrangements, we keep enough in a bank account to cover our on-going costs. Any money that we do not need for the shorter term is invested in the national loan fund.

**Dean Lockhart:** Who sets the investment guidelines? Do you follow public sector investment guidelines?

**Janet Egdell:** Yes, we follow the “Scottish Public Finance Manual”.

**Dean Lockhart:** I am curious. The interest received last year was £64,000. If your retained profits are £70 million, that seems a low yield on your investment—it is about 0.01 per cent, which is quite a low return even from a bank account. Is there a particular reason why the yield is so low?

**Janet Egdell:** The figure that you are citing is the net interest. We also have a loan that was taken out on behalf of Registers of Scotland in 1996, when the trading fund was set up, and we are still paying interest on that 40-year loan. So, interest is being paid out as well as paid in. We are getting standard national loan fund rates on whatever amounts we have invested for terms of two to six months.

**Dean Lockhart:** So, that is a net number. What size is the loan that was taken out?

**Janet Egdell:** It is now £2 million.

**Dean Lockhart:** Are you able to provide the numbers for interest that is being paid out and interest that is coming in? If the loan is £2 million and it is offsetting interest received on £70 million, that might seem a mismatch in terms of the yield that you are getting.

**Janet Egdell:** We have looked before at whether it would secure value for money to pay off the loan early. The argument is evenly balanced, because we would pay the future interest, more or less, rolled up in the loan, so it would cost us perhaps £3 million to pay off the £2 million early.

We can provide you with the figures. We have looked at the issue and keep an eye on whether it would secure value for money to pay the loan off early.

**The Convener:** That concludes questions from committee members. I thank the panel for coming in.

11:43

*Meeting continued in private until 12:33.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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