



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 14 June 2023

Session 6



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ECONOMY AND FAIR WORK COMMITTEE

19th Meeting 2023, Session 6

CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

DEPUTY CONVENER

Colin Beattie (Midlothian North and Musselburgh) (SNP)

COMMITTEE MEMBERS

*Maggie Chapman (North East Scotland) (Green)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

Fiona Hyslop (Linlithgow) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Colin Smyth (South Scotland) (Lab)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jennifer Henderson (Registers of Scotland)

Chris Kerr (Registers of Scotland)

Richard Lochhead (Minister for Small Business, Innovation and Trade)

Chris Nicholson (Scottish Government)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 14 June 2023

[The Convener opened the meeting at 09:36]

Decision on Taking Business in Private

The Convener (Claire Baker): Good morning, and welcome to the 19th meeting in 2023 of the Economy and Fair Work Committee. We have received apologies from Colin Beattie and Fiona Hyslop.

Our first item of business is a decision on taking business in private. Are members content to take items 4 and 5 in private?

Members *indicated agreement.*

Electronic Trade Documents Bill

09:36

The Convener: Agenda item 2 is consideration of a legislative consent memorandum on the Electronic Trade Documents Bill. This United Kingdom Government bill, which was introduced in the House of Lords on 12 October, changes the law on devolved matters.

I welcome to the meeting Richard Lochhead, Minister for Small Business, Innovation and Trade. He is joined by Chris Nicholson, solicitor and head of the constitutional reform and external affairs branch, legal services directorate, and David Barnes, deputy director, trade policy division, international trade and investment directorate, both from the Scottish Government.

I invite the minister to make a brief opening statement on the Scottish Government's position.

The Minister for Small Business, Innovation and Trade (Richard Lochhead): Thank you very much, convener, and good morning, committee. It is nice to join you this morning.

Thank you for the opportunity to discuss the LCM on the Electronic Trade Documents Bill. As you will be aware, the Government is committed to ensuring that Scotland is a successful trading nation, and we want to create the best possible conditions for our businesses to operate within.

One way of doing that is by harnessing advances in technology, so we are committed to taking advantage of technology-based improvements and to modernising trade processes and practices for Scottish enterprises and, in doing so, delivering benefits for the people of Scotland. It is therefore vital that the Scottish legal system is tailored to helping us to realise those ambitions, to providing a competitive platform on which our businesses can operate and to supporting the businesses of tomorrow that we want to create and ensuring that they are adapted to the modern world.

The Electronic Trade Documents Bill is designed to do just that. It brings trading processes into the 21st century by giving electronic documents used for trade purposes the same legal standing as paper documents. That simple and commonsense measure will immediately remove burdens for businesses that choose to operate in a more digital way and will create a more streamlined and modern trading system—something that Scottish businesses should be able to take advantage of in the future.

The bill has been brought forward by the Law Commission of England and Wales in recognition of the fact that this area of law is in need of reform.

Not only has there been significant engagement with Scottish legal and academic stakeholders, but the bill has gone through an expedited process at Westminster, given its highly technical and uncontroversial nature. We, as a Government, therefore support and welcome the bill's policy intentions, which align squarely with our ambitions for the future of the trading landscape in Scotland.

I should say that, unfortunately, despite our views on the bill's policy intentions, the Scottish Government could not support it as introduced, due to the drafting of the delegated powers. As drafted, the bill conferred powers on UK ministers to make secondary legislation in areas of devolved competence and gave them the ability to, for example, unilaterally disapply parts of the bill's regime in Scotland in devolved areas, so that paper documents would once again be needed. UK ministers would be required to consult Scottish ministers, who might express concern or disapproval but could not prevent the UK Government from legislating in devolved areas. Therefore, the Scottish Government has spent considerable time defending the interests of the Scottish devolved institutions and negotiating with the UK Government to secure amendments to the bill.

The process has been constructive, although it has also been a lengthy one, which led to a delay in lodging the LCM. I apologise to the committee for that delay. I stress that my officials and I recognise the important role that the committee plays in the LCM process. With the benefit of hindsight, had we known that it would take so long to conclude the discussions with the UK Government, we would have lodged an LCM much earlier.

I am pleased to report that amendments to the bill have now been tabled by the UK Government and we anticipate that they will be voted through in the coming days without any concerns being raised. Yesterday, therefore, the Scottish Government was able to lodge a supplementary legislative consent memorandum with the Scottish Parliament, recommending consent to the bill on the basis of those amendments. I am hopeful that those developments will enable us to secure the benefits of the bill: modernising our trade processes and delivering benefits to Scottish traders, those who trade with us and the economy overall.

Once again, I thank the committee for its time. We will do our best to answer any questions.

The Convener: Thank you, minister. I will start with a couple of questions about the process. I welcome your recognition of the delay in lodging the LCM. That seems to be a feature of Parliament at the moment, and it is quite frustrating for

committees not to get proper scrutiny. I accept your apology for the late lodging of the LCM.

You have indicated that, if you had realised that it would take so long, there might have been an option to lodge the LCM sooner. Have lessons been learned from the process and is that something that you might do in the future? There has been a discussion at the Conveners Group about the possibility of having interim LCMs or pre-LCMs as a way to enable committees to be involved earlier.

Richard Lochhead: In answer to your first question, yes, we will do our best to learn lessons. The background is that we are dealing with a technical, uncontroversial bill, but there are issues of concern within it. There were constructive negotiations in order to sort that out, but that took some time to achieve. Clearly, we need to strike a balance between the fact that the bill is uncontroversial and technical and the concerns that we have. However, given that the bill was generally uncontroversial and not about the most highly political issue in the world, perhaps we could have just launched the LCM earlier in anticipation of negotiations being successful.

I am interested to hear that the Conveners Group has been discussing a kind of interim LCM. That could provide a potential solution in such a scenario.

The Convener: Now that the Government has recommended acceptance of the LCM, some questions remain around the Scottish Parliament's role in scrutinising future work or legislation that is attached to the LCM. Where are the opportunities for the Scottish Parliament to look at the proposals that are being made? I understand that the Scottish ministers will be able to introduce measures and that you would be consulted by the UK Government on measures that would affect Scotland, but where do the Scottish Parliament's committees fit into that scrutiny process?

Richard Lochhead: If secondary legislation were used, the process of scrutiny would involve the Parliament's committees. There are also wider policy implications in relation to how we work with trade, moving from paper to electronic format. It is quite difficult to predict any scenarios.

The UK Government has said that it is unlikely to use the powers that it is retaining except in extreme circumstances. For instance, the amendments tabled by the UK Government are not perfect, although they move us much further forward in relation to a recognition of the role of Scottish ministers in devolved matters, but the UK Government has retained the ability to disapply certain parts of the bill in extreme circumstances. For example, if there were a cyberattack or if information technology systems were to fail and a

decision was taken that we had to revert to paper for certain trade documents, the UK has said that it would use those powers—but only under those circumstances. We would have to respond to that at the time.

It is against that comforting background that we are not too concerned about there being many further interventions in terms of changes—but who knows?

09:45

The Convener: There would be instances when the UK Government would consult the Scottish Government but would not necessarily come to Scottish Parliament committees. You are suggesting that that is because that scenario would come around in extreme and rare circumstances.

Richard Lochhead: That is what we anticipate and what we have been assured of by the UK Government. I will, of course, undertake to keep the committee informed should anything arise in relation to that.

The Convener: Thank you.

Graham Simpson (Central Scotland) (Con): If you had introduced an LCM earlier, do you think that you would have been in a position to say yes?

Richard Lochhead: That is a good question, and I cannot give it a clear answer because we do not know how the negotiations would have gone if we had lodged the LCM at the time. What we are trying to convey is that it has been an extraordinary length of time. We could perhaps have envisaged a successful outcome to allow us to have lodged an LCM to give the committee the opportunity and an appropriate timescale to do its work. However, with the way that things have transpired, we are content to support the bill and lodge the LCM.

Graham Simpson: I am quite comfortable with the way in which you have done it. Even though it has taken a bit of time, you have arrived at a conclusion, everybody has got round the table and talked sensibly, changes have been made and you are now in a position to recommend that we accept it. That is a mature way of going about things. Will you explain to the committee what the main sticking points were, originally? I know that they have been ironed out, but it would good for us to understand them.

Richard Lochhead: The main sticking point was the lack of recognition of the ability to give Scottish ministers delegated powers in devolved areas. That was, in essence, ignored so that UK ministers could override and intervene in devolved areas. Members will all be aware of examples where, for many other pieces of legislation, that

has occurred much more controversially and with much more political argument. In this situation, we are dealing with law reform, and the reason why the bill has been expedited in the House of Commons is that Law Commission of England and Wales recommendations in relation to law reform are uncontroversial and technical. That is the background.

Graham Simpson: Thank you.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning. There are two things that I want to ask you about. First, I want to get a bit of an idea of what documents might be included, whether there are any notable exceptions that might be included and how far the proposal goes. For example, does it include any health certificates that might be part of cross-border trade?

Richard Lochhead: In the bill, there is a list of documents that are affected. I am just working through my papers to find the list—I thank David Barnes for handing it to me. In clause 1(2), there is a list of examples, which include

“a bill of exchange ... a bill of lading ... a ship’s delivery order ... a warehouse receipt ... a mate’s receipt ... a marine insurance policy ... a cargo insurance certificate”

and so on. Perhaps, from a legal perspective, Chris Nicholson would like to comment on how wide the list will go.

Private transactions are devolved but, clearly, a lot of this interacts with reserved areas. It is a very complex area because it has been built up over hundreds of years of commercial trading. One of the key points in supporting the LCM is that, if we were to get into an argument over what is devolved and what is reserved, we could be here for years. It would mean untangling hundreds of years of commercial trading to ascertain exactly what is reserved and what is devolved. That is why the bill recognises customs that have built up over time—custom and practice. As I said, Chris might want to talk about the technical detail.

Chris Nicholson (Scottish Government): It is important to note that the list in clause 1(2) is not exhaustive; it is there to give some examples. You will see from the way that clause 1(1) operates that the drafters are trying to apply quite a wide gloss in these circumstances. However, to answer the question, I would need to know what documents normally come with health products and then see whether they come within this definition. It might be the case that they do not and that there may be a simple contract whereby someone who wants to buy medical products just gets them in a straightforward way. Alternatively, it might be the case that, for larger supplies, certain documents might be required. I think that it might depend on the scale and what you might see

customarily in relation to health products. If you have any particular examples in mind, we can look at them.

Jamie Halcro Johnston: It really just comes back to the fact that, in the few years since we left the European Union, there have been a few examples of delays in trade because of paper documents having to be used. I was wondering how far down that goes and whether the bill affects things at the level of, for example, food exports. Some of that process has become digital over recent years, but I wonder whether such parts of the process would be digitised as standard now. I will look further into the issue.

Will there be a uniform approach across the UK single market, or is there potential for having different regulations and requirements within the UK?

Richard Lochhead: The bill certainly smoothes trade. It makes sense for the same laws to apply in common trading areas. Removing the obligation to use paper is clearly in the interests of trade in Scotland, England, Wales and Northern Ireland, so it is a sensible option.

The Convener: Picking up on Jamie Halcro Johnston's question about different requirements within the UK, I would like to know where the Law Society of Scotland's views fit into that. I think that it has made some comments about laws of possession not being identical and the fact that the law around intangible property does not apply in Scotland. Would it be for Scottish ministers to make the required changes in that area?

Richard Lochhead: I will have to ask Chris Nicholson, with his legal mind, to come in again, but I think that the Law Society was keen to emphasise that some issues involved in this area are devolved, and those references to examples of devolved areas were made simply to explain its recognition that this is an area that crosses between devolved and reserved areas. People might think that trade is reserved, and many aspects clearly are—particularly in relation to maritime industries—but private transactions and other aspects, such as the ones that you have just highlighted, are devolved.

The Convener: So, it would be the responsibility of the Scottish Government to make the changes in those areas, to come into line with this legislation.

Richard Lochhead: Yes, and the bill has been amended to give delegated powers to Scottish ministers to intervene and act in devolved areas if they think that they have a reason to do so.

The Convener: Does the Scottish Government have an idea of whether it is going to intervene and make changes in those areas?

Richard Lochhead: Not at the moment, because the thrust of the legislation is to make a sensible move from paper to electronic trading, and it has been ensured that the interests of devolution are protected in the bill should something arise in the future whereby Scottish ministers feel that they have to intervene. We are not predicting any particular scenario at the moment, but it is important to protect the principle that, because parts of the trading environment are devolved, the Scottish ministers retain the legal right to intervene.

Chris Nicholson would like to add something.

Chris Nicholson: On Jamie Halcro Johnston's question and your follow-up, convener, I simply note that there will always be slight divergences between the jurisdictions in the UK about how the documents come to be used, because there are different courts and legal jurisdictions, which means that there will always be different rules and different ways in which the courts apply them.

That being said, as you can see, most of the documents listed are quite commonly known in the UK. Some are devolved for reserved purposes and some have been unified over time at UK level, such as bills of exchange and promissory notes. There is a form of alignment and understanding in the UK about what the documents are and what you are entitled to if you hold one of the documents. How they stand to be applied or interpreted in the jurisdictions sometimes diverges, but that has always been the case. As a result of that, there is not understood to be any need to change that at the moment.

The Law Society's comments were about recognising the benefits of proceeding on a UK basis, so that there would not be divergence if you started to have two different regimes in place.

The Convener: I understand the difference between the reserved and devolved aspects, but I was asking whether it is the Scottish Government's intention to move towards electronic documents once the bill is passed.

Richard Lochhead: We support the policy aim of moving towards electronic trading, and the bill sets the course for that to be legally possible. That is why we support it.

The bill will give Scottish traders the right to use digital when they want to—it will give them the choice. At the moment, the law says that, generally, the documents have to be on paper.

The Convener: Okay. You support the policy intention of the bill, which means that you would encourage traders in Scotland to move towards electronic documents.

The final question is about consent. The committee has dealt with a number of LCMs, and

the Government previously recommended not to give approval to some LCMs because of consent issues. Although there has been compromise on this legislation, it has not gone as far as introducing consent as a mechanism. What would you say is the reason for that, in this case? You explained that this LCM is technical, so has there been a consensus or a compromise reached on this LCM that will form a model for any future LCMs, or is this one too particular?

The committee frequently supports the Government in that approach, but in this instance we have been asked to compromise and not give consent the level of importance that it has been given when we have considered other LCMs.

Richard Lochhead: All legislation has to be looked at on its merits, and—as I said in my opening remarks—this is a technical and uncontroversial issue, because no one thinks that it is a bad idea, in this day and age, to move to electronic trading from paper, given all the benefits of that. However, we clearly know that there are disputes in other areas, so each bit of legislation has to be treated on its merits. In this case, we are pragmatic and open to compromise. The amendments from the UK Government are not perfect, but they are good enough, and for that reason we were content to lodge the LCM.

The Convener: I have not been here for as long as the minister, but is that how LCMs previously tended to operate—would the process have involved negotiation and consensus? We had fewer divisions on LCMs than we have had in more recent times.

Richard Lochhead: I can speak only from previous experience in ministerial roles, when I dealt with many LCMs. Generally speaking, we listen to stakeholders, consider the impact of the LCM and judge each one on its merits.

In the past, I have supported many LCMs because it has made sense to allow the UK Government to take something forward. I have done that for a range of reasons. Sometimes it has been because there is no point in duplicating effort and the LCM has enabled benefits to be delivered more quickly, and sometimes it has been because we would have done the same thing anyway. There are different reasons, but clearly there are many disputes in other areas, because the Parliament ultimately has to defend devolution. I am sure that it is the view of the committee that there will be times when compromise is appropriate and times when it is not appropriate, because devolution has been undermined. It is dealt with on a case-by-case basis.

The Convener: We recognise that the environment for LCMs has changed quite a bit in recent years.

The committee welcomes the evidence that we have heard this morning, and we will consider a report in due course. As no members have any other questions, I will bring this evidence session to an end. Thank you for attending, minister.

Richard Lochhead: Thank you.

09:59

Meeting suspended.

10:02

On resuming—

Registers of Scotland

The Convener: Our next item of business is an evidence session on Registers of Scotland's activities and performance. Registers of Scotland is a non-ministerial office and part of the Scottish Administration, with direct accountability to the Scottish Parliament. Responsibility for scrutiny falls mainly to this committee.

I once again welcome Jennifer Henderson, who is the keeper of the registers of Scotland. Jennifer is joined by Christopher Kerr, who is interim accountable officer and registration and policy director at the Registers of Scotland. I invite the keeper to make a short opening statement.

Jennifer Henderson (Registers of Scotland): Thank you for the opportunity to meet you today and to give you an update on ROS's progress. I am delighted to make a brief opening statement. I am joined today by Chris Kerr, who is now our interim accountable officer and so will be able to offer insight on ROS's finances and who, in his role as registration and policy director, can speak to the detail on areas such as managing casework and delivering the benefits of a complete land register.

I am pleased to tell the committee that we have made progress across all our strategic objectives since our last appearance and that we will be able to accelerate that progress in the year ahead. In April, we shared our delivery plan for 2023-24 with you. The plan provides the year 2 detail for our overarching corporate plan, which takes us from 2022 to 2027. We have set ourselves stretching targets, in particular around processing casework, which remains our top priority.

The strategy that we have put in place has meant that we have stabilised the volume of open cases, meeting or exceeding our targets in both processing new applications and clearing our older casework. We have also increased our processing of first registrations by 5 per cent and transfers of part by 24 per cent.

I acknowledge that we know from talking to customers that we still have more to do to meet their expectations; we do not underestimate the concerns that having an open case can cause. I emphasise that the majority of customers are satisfied with the service that they receive from ROS, as evidenced by our consistently high customer satisfaction scores from both legal professionals and citizens. Last year, we implemented a more detailed customer service benchmarking system, which provides us with

useful insight into what we get right and where we need to improve.

On transparency of land ownership, we continue to make good progress on delivering the benefits of a complete land register. Our total landmass coverage is now 90.7 per cent, which is an increase of 7 per cent since we met in September last year.

To support the effective and efficient delivery of our services, we have continued to build and develop our online offering. Since our last evidence session, we are now able to accept digital applications to the register of deeds. That means that every register that we run now accepts digital applications and can provide digital extracts.

Our workforce planning approach is now fully in place and it has confirmed that the number of colleagues who we need to employ will remain broadly unchanged while we work to clear our open casework and deliver the benefits of a complete land register. However, we will deliver service improvements during the corporate plan and expect to need 10 per cent fewer people to deliver our services by the time that we reach the end of the plan.

I am pleased to say that we are on course to break even again this year for the third consecutive year.

Chris Kerr and I look forward to answering your questions.

The Convener: We move to questions from members.

Colin Smyth (South Scotland) (Lab): Good morning. I will start with some questions on the staffing projections that you mentioned in your opening statement and, in particular, what they mean for your current workforce.

You said that the size of the workforce is expected to fall by 10 per cent by 2027, despite the big challenges of the backlog of work. However, it is fair to say that it has not been it clear to the committee—and, therefore, I assume, to your staff—what your projected fall in workforce means for how many people will carry out which roles.

At the previous evidence session, we commented that your corporate plan had lots of diagrams of big people and little people in each department but no numbers to go with those graphics. You said that, in your most recent delivery plan, you do not project any reduction in staffing until 2025-26, so how will that 10 per cent reduction be achieved by 2027? Are you and, therefore, your staff any clearer about what it means for the exact size of the teams that carry out the different tasks?

Jennifer Henderson: It might be useful to explain some of the things that we are introducing that will replace some colleagues' work—that is, how we will achieve the reduction—and then explain how we expect to deliver the reduction.

One of the biggest changes that will be introduced in the next year or two is that we will automate some of our simplest work. The colleagues who do that work are our most junior grades. We have in place an upskilling programme so that, as that work is replaced with automation, they are upskilled to take on the more complex work.

We have four grades of workers who do our registration work. A huge number of the people in our most senior grade are due to retire in the not-too-distant future. More than 25 per cent of our workforce is over 50 or over 55 and, therefore, will be coming up to retirement. We have a programme to replace that skill set so that, as those people retire, we have the right skills to do the more complex work. That is the work that will still need people because the simpler work will be done by automation.

Therefore, we expect to be able to deliver the workforce reduction through natural attrition, mostly through people retiring, and we have in place the plans to upskill people so that we have the right shape of skills for the work that will be done by people.

Chris Kerr, do you want to add anything to that?

Chris Kerr (Registers of Scotland): No, I do not think so, Jennifer. That was a very full response.

Colin Smyth: To be clear, are you confident that the changes in the workforce will be achieved through the natural process of existing staff moving to new roles or retiring? Are there no plans to carry out any redundancy process?

Jennifer Henderson: No. None of our projections suggest that that would be necessary.

Colin Smyth: You touched on the impact of automation and artificial intelligence on staff numbers. What assessment have you done of the potential impact of AI on service delivery? To what extent is it likely to impact on staffing numbers? I presume that you are carrying out that work at the moment and that its full potential has not yet been determined.

Jennifer Henderson: We have a detailed plan for the introduction of automation and we have estimates from that of the amount of work currently carried out by individuals who will be replaced by computers. As we introduce automation over the next year, the work of between 10 and 20 of our most junior grades could be done by automation. That is good news,

because we have plans to upskill those people so, if we were not replacing their work with automation, we would have to think about hiring people.

In the year beyond that, we expect to be able to extend the automation of the work of between 40 and 60 people. Again, that is good news because that is when some of our more mature colleagues will start to move towards retirement and we can use that pipeline to pull people through.

I caveat that by saying that we are in the early stages of introducing automation so we have to prove that it works. Everything that we are doing suggests that it will work and free up people to be retrained and moved into more senior grades.

Colin Smyth: To be clear, then, you are confident that the 10 per cent reduction that comes later in the final couple of years of your corporate plan will be achieved, but it will have no impact on tackling the backlog.

Jennifer Henderson: That is exactly why we do not forecast the 10 per cent reduction until later in the corporate plan. Our stock of open casework broadly needs more senior people to work on it. The majority of our new work is simpler and it can be done by the more junior grades. If we automate that work, we can free people up, retrain them and have more people working on the backlog, which is how we will be able to accelerate that work. As colleagues start to retire and the backlog diminishes, we will be left with the right number of people to do the complex work. Complex work will always come in to ROS, but not in the volume that we have while we are working on clearing the backlog.

I would be happy to include a specific strategic workforce plan update in our quarterly updates, if the committee would find that useful. We can tell you where we are with the numbers and our projections if it would be useful for the committee to track that between evidence sessions.

Colin Smyth: That would be good.

The Convener: Graham Simpson has a brief supplementary question before I bring in Maggie Chapman.

Graham Simpson: I have a question on staffing. You know that the world of work has changed since the pandemic and a lot more people are now working from home. How has that affected ROS?

Jennifer Henderson: ROS has introduced a hybrid working policy. We have empowered our teams to work out how they best deliver the work that they are charged with doing. That means that we have a mixture of people who are working in the office, working in the office some of the time and working more from home. We have managed

to retain the levels of productivity that we used to achieve in the office with that mixture of working practices. It is particularly pleasing that we have increased the quality of work. We think that that is because the work that many of our colleagues do requires concentration so, if they choose to do it from home, they can really get their heads down and focus.

The changes have not affected our productivity; we have managed to maintain it, so we have recently signed off on a hybrid working policy that says that that is how we intend to work in the future because it works for us.

Graham Simpson: Are people expected to come in for a certain number of days or is that flexible?

Jennifer Henderson: It is flexible. We have said to the teams that they all do different jobs so they can work out which bits of what they do are better done where. For example, we were training some people in new work and that was better done on site and through bringing people together. When we induct new people, we give them opportunities to come on site, but people have the flexibility to do the work that needs doing.

Graham Simpson: Thank you.

Maggie Chapman (North East Scotland) (Green): On your staffing mix, you have previously talked about the contractors that you use and the specialised work that they do, and your corporate plan includes a planned reduction in reliance on contractors. Will you provide us with an update on how that is going?

Jennifer Henderson: Yes. The committee will recall that we have previously discussed some of the challenges that we have with recruiting people into permanent roles. Most of our contractors deliver our digital work and we have largely been delivering recruitment through running something called a grow our own programme for people at the junior grades. That is another example of where we are upskilling junior grades by putting them through an intensive programme to teach them digital skills and deploying them in our digital directorate.

The programme has been very successful but, because it involves growing people in the organisation, it has not yet given us senior people at the digital grades. At the moment, we are working on an attraction strategy, which is about what we need to do to persuade senior people to want to join us. We have had some success—interestingly, some people who have previously contracted for us have chosen to jump across when the opportunity to join us permanently has come up, which is good news—but we need to do more on that in the years ahead.

10:15

It should probably also be acknowledged that our most important focus is clearing our open casework, so we have been doubling down on ensuring that we have the rights skills in our registration staff to do that. As that starts to sort itself out, we want to turn our attention to the thorny problem of the more senior digital staff. Meanwhile, junior staff are coming through and developing, so we are filling up from the bottom as well as seeking to hire into the middle.

Maggie Chapman: That makes sense. It is good news to hear that people who come in as contractors see Registers of Scotland as a good place to work and an attractive proposition, and want to jump on board.

We have previously discussed the fact that cost is one of the reasons given in the corporate plan for wanting to shift the balance away from the use of contractors. Are you still aiming to make cost savings?

Jennifer Henderson: The move away from contractors is about both cost and longevity of knowledge. At the moment, we are doing a lot of building of digital systems. In the future, we will need more digital people to do that. Once those digital systems are built, it is better for us to have a greater number of permanent people responsible for their maintenance. We have had a big programme of work in ROS to reduce what we call our technical debt. We have lots of legacy information technology systems that we have had to unpick and rebuild, and we now want to make sure that our technical debt stays low. The best way to do that is to have a decent proportion of our digital directorate staffed with people who are here for the longer term. By their nature, people who contract for us come in and do a very specific job, then they usually move on to something else.

Using contractors less will result in a cost saving, but it also represents a strategic choice about the best way of maintaining our digital systems in the future.

Maggie Chapman: I suppose that there is also a benefit for staff morale and the integrity of the staff team in having people who are there for the long term. How is morale, given the successes that you have had in dealing with the backlog and the increase of 7 per cent that you mentioned in relation to the land register?

Jennifer Henderson: I think that morale is good. We collect a number of different types of evidence to suit that. For example, last year, we underwent an external assessment in relation to the investor in wellbeing accreditation, which looks at whether staff feel supported in the workplace and able to do their jobs. We came out very well from that assessment—we got a gold

accreditation. We get very good engagement in everything that we do in ROS. We recently ran an all-staff event on site, which there was really good attendance at. That was about the future direction.

Morale is good, but we are mindful of the need to maintain that and get the balance right. That involves focusing on the open casework and thinking about delivering our strategic workforce plan, while—this is very important—maintaining a happy, healthy workforce.

Maggie Chapman: My last question is about your staff and contractor budgets. How are inflationary pressures affecting those budgets? Are there significant challenges there, beyond the general challenges of inflation?

Jennifer Henderson: There are some challenges. Chris Kerr might want to speak about that, because it is a financial question. Although there are some challenges, we work hard to mitigate the impact of financial pressures.

Chris, would you like to say something on cost inflation?

Chris Kerr: I think that that is fair comment from Jennifer. Cost inflation is a challenge for us, but at the moment we project that, this year and going forward, we will be able to meet that challenge out of the fees that we bring in for our services. That is partly due to the good progress that we have made in clearing the open casework and improving the efficiency and delivery of the registration services that drive the income of the organisation. At the moment, we are able to balance the pressures, but there are certainly challenges.

Jennifer Henderson: You do not envisage there being any significant issues with pay settlements in the next year or two.

Chris Kerr: No. We think that they will be manageable.

Maggie Chapman: Thank you.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I will continue that conversation, so my questions might be for Chris Kerr.

When Jennifer Henderson appeared in front of the committee last year, she indicated that there was going to be a surplus of £10 million. It turned out that it was actually £11 million, so that was a good estimate. Are you able to give similar figures for the year just ended?

Chris Kerr: Yes—subject to the usual caveat about final audited accounts. We think that there will be a surplus in the region of £2 million.

Gordon MacDonald: How has that been achieved? Was it because of increased income, reduced costs, or a bit of both?

Chris Kerr: It is the result of a combination of both. Broadly, about a third is from increased income, and the remainder is from cost reduction.

Gordon MacDonald: Okay. One thing that I picked up from your “Annual Procurement Report 2021-22” concerns your savings. Using the Scottish Government’s procurement methodology, you saved £1.96 million, or 6.5 per cent, in annual expenditure, excluding salaries. Was that a one-off, or do you anticipate further savings there? How did you achieve savings of nearly £2 million?

Chris Kerr: That is due to the hard work of our procurement team—who are very high performing—in combination with, in particular, our digital colleagues, as Jennifer Henderson mentioned in her previous appearance. One of the benefits of having contracts in that space is that those colleagues know the marketplace very well, so we have a lot of good information in-house about what rates we should be paying for various things, and we are strong in negotiations with suppliers on costs.

Gordon MacDonald: We have touched on the fact that there is currently huge volatility in the market. There is the high cost of living, on-going inflation and uncertainty about mortgage rates. At least one house builder has said today that there is a 25 per cent reduction year on year in reservation rates. Given that level of volatility in the market, how does your income and expenditure projection show a balance, using the central income projection number for your income? How are you able to achieve a balanced budget year on year?

Chris Kerr: That is because of a combination of the efficiencies that we are delivering and the slowdown in the market that allows us to work faster on open casework, which will release additional income; there is income there to be released. That also turns quite strongly on what happens to the market in a slowdown, in particular. In that situation, the number of applications that come coming to us will quite often not reduce, but the mix of applications will change, in terms of whether they are transfers of part, dealings or remortgage applications.

We have a range of scenarios, and in our mid-line scenario we are content that income will cover costs over the period of the plan. Of course, we have opportunities to raise additional income, if that is required in a very strong market-crash scenario, but at the moment we are not projecting going in that direction.

Gordon MacDonald: My last question is about expenditure. In your four-year projection, expenditure rises by between 1 and 2 per cent year on year. Given that staff make up two thirds of your total costs, and that we are in a period of

inflation, it is unlikely—I would have thought—that pay awards will be settled at the 1 or 2 per cent mark. Will the pay award be predicated on reduced staffing? Is that how you will achieve your budget?

Chris Kerr: We are in line with public sector pay policy, and we are content that in the next year, the 4 or 5 per cent that central Government has mentioned is achievable. In future years we will need to continue to model that. The overall reduction in head count that Jennifer Henderson mentioned, and the reduction in costs that that brings, is a factor. There are other areas where we could look to reduce costs if we needed to, as well as trying to maximise income.

In particular, driving down the open casework more quickly will bring in more income over the period to bridge us to the point at which the head-count reduction comes into play.

Jamie Halcro Johnston: You mentioned the slowdown in the market, and the opportunity to unlock—I think that you used the term “unlock”—some existing casework, which brings in additional income. You talked about bridging and so on. Does that mean that you are not dealing with those cases as quickly as possible? Are they being banked, as it were?

Chris Kerr: No. As, I think, we might have mentioned to the committee the last time we were here, we are putting our capacity into three areas in casework terms. The first is new cases. We are doing that to stop the backlog perpetuating and, as Jennifer Henderson said, that allows us to introduce streamlined processes and automation, which will free up people. The second area where we are focusing our capacity is expedite cases—cases that customers tell us have a degree of urgency—and we ensure that we deal with those. The final area is the oldest casework on the stock, in order to clear that open casework. Plainly, if the cases coming in the door reduce in number, we will have additional capacity that we can deploy to either the expedite or oldest cases.

Separate to, but in conjunction with that, as the keeper mentioned, we have a plan to build capacity across that range anyway. A slowdown in the up-front market allows us to do that more quickly, but the plan is to do that in any event over the duration of the corporate plan.

Jamie Halcro Johnston: Therefore, those cases are not urgent. There will not be much of an impact, in the sense that the cases that are being left are historical cases.

Chris Kerr: All cases are important to us, but those are certainly not cases that we are being asked to expedite by customers, and we are getting through them as quickly as we can. We have accelerated the process this year, and we

plan to do that in the year that we are just going into in order that we will have cleared those cases completely at the end of the period that is covered by the corporate plan.

Jamie Halcro Johnston: Given that the funding model has changed, you do not expect to draw down any additional support from the Scottish Government over the duration of the plan.

Chris Kerr: No.

Jamie Halcro Johnston: You have a number of older cases open, and I think that you have covered how you are looking to clear some of that backlog. You probably will not hit 100 per cent, but when do you expect to have cleared the majority of those cases?

Chris Kerr: We expect to clear those cases over the duration of the corporate plan, which runs up to 2027.

Jamie Halcro Johnston: Are you confident that you will achieve that?

Chris Kerr: Yes.

Jamie Halcro Johnston: I do not know whether you do any assessment yourselves or with some of your customers of the economic impact on their businesses of potential delays to outstanding cases.

Chris Kerr: We talk to our customers all the time, and we appreciate the mitigations that they have to put in place, as we do, with regard to expedite cases and avoiding rejections. Our strong preference would be that there was no necessity for those mitigations. That is why it is a fundamental priority to clear those cases, and we do everything that we can to lessen the impact on customers.

Jamie Halcro Johnston: I think that the business surveys that you did showed quite a high level of satisfaction against the national framework. Is that across all cases, or can you differentiate between clients and look at those who have been waiting for some time, for example?

Jennifer Henderson: I can come in on that. The survey is anonymous, so we do not definitively know who is reporting on it, but one of the reasons why we moved to the greater detail of benchmarking with the Institute of Customer Service is precisely because we get granular detail on why customers are not fully satisfied, if they are not. It is true to say that the speediness of the turnaround of cases is an on-going issue as a reason for dissatisfaction. We definitely see less satisfaction among customers who have to get in touch to chase a case. That tells us that we are doing the right thing to focus on that as our top priority.

On the economic impact, we are always very clear that, if a customer has an open case with us, it does not stop them transacting on their property or remortgaging. If there is an issue with that, which is very unlikely, that is where the expedite service comes in. That direct impact on people is why we are able to mitigate the issue in that way. However, as Chris Kerr said, that impact is also why our top priority is to get rid of the backlog—so that people will never have to chase up a case, because the case will have been dealt with.

Jamie Halcro Johnston: On that, it is important to engage with your customers and look for that feedback, particularly on the business side, but across all sides. I think that there are 2,435 cases open from 2007. You would expect that a higher proportion of those customers might be less satisfied—let us put it positively—than is the case for the 20,598 cases that are open from 2019. I take it that you would expect a higher proportion of customers with those earlier cases to be dissatisfied because of the time that has passed, so why do you not collect that information?

10:30

Jennifer Henderson: We absolutely appreciate that there are individual citizens at the end of those cases, but the main interlocutor for those citizens is the solicitor customer, who will have a range of cases with us. They will have cases that they have sent to us that day, and we are now getting cases back to customers on the same day. If that is the greater proportion of the work that we send back, the number of cases that stand open for longer becomes less significant.

Jamie Halcro Johnston: Would not it be helpful for you to know where the concerns and frustrations are? I appreciate that that information could be anonymous, but there could still be a note of when the case was opened.

Jennifer Henderson: It might be helpful if I add that the customer satisfaction survey is not the only way in which we understand the issues for customers. We have a team of customer relationship managers, who are proactive and speak regularly to all our customers to ensure that they understand the expedite service and to find out whether they have particular cases that are starting to bubble up as something that they are worried about. There was a recent example of a solicitor who was retiring and got in touch. We had a good conversation with him about when he was retiring and how we could ensure that the cases that he had with us were done.

There is on-going engagement with our customers through the anonymous customer satisfaction survey, dialogue and regular webinars. There are lots of ways in which we ensure, day by

day, that we understand what our customers need us to prioritise and there is lots of messaging about what we are doing to clear the longer-standing open casework. I think that that is one of the reasons why the most recent survey shows that our overall customer satisfaction has risen slightly. Customers are seeing what we are doing and that it is having an impact, and they have increased confidence that the problem will be resolved within the timeframe that we are talking about.

The Convener: Before I bring in Graham Simpson, who has a supplementary question, I have a question. In your answer to Jamie Halcro Johnston, you said that the backlog would be cleared completely by the end of the corporate plan period. However, in statements you made in 2022, you said that there is not a strict definition of a backlog and that there will always be some unresolved cases. What is the timeframe for dealing with an unresolved case? Are there service standards that people can expect you to meet? Will there always be a backlog, or do we have different understandings of what a backlog is? What are you aiming to achieve by 2027?

Jennifer Henderson: Chris Kerr and I will answer that question between us. What we want to happen is that cases that come to us are constantly in work. We get some cases, open them up and say, “This is six months’ work”—we know that it will take six months to plough away at the mapping and the legal stuff and deliver the case. Other cases get done on the same day.

Our goal is to reach the point at which the vast majority of cases that we are sent will go back within the 35-day standard that we have set. If it is obvious right at the beginning that a case will involve more work, we have a discussion with the customer about how long it will take and when they will get it back.

That requires us to get rid of all the cases that we do not have full capacity for at the moment and it is why, as I said in answer to Mr Smyth’s question earlier, we are bringing in automation to free people up and give us more capacity for the open cases so that we can reduce the number of cases that have not been moving because they have slipped through the net. We have not had the capacity to deal with some cases.

Chris Kerr might want to come in. The question of how we define “open” and “long-standing open” cases is a thorny one.

Chris Kerr: That is right. As Mr Halcro Johnston said in his question, we might not reach 100 per cent and we might still be working on some cases, but we expect the long-standing open cases to be cleared. As Jennifer Henderson said, we want to move to a position where customers have

absolute certainty about how long an application will take. About 80 per cent of our work involves fairly standard cases that can be done within the 35-day period, which aligns to the period of protection from an advance notice: that is the reason why the target is 35 days.

If there is a case that just cannot be done in that period, perhaps because it is a large estate or a housing development, or because there is some other additional complexity, we reach an agreement at the outset with the applicant, based on their understanding of the application, the amount of work to be done and our understanding of how long that will take.

That is the position that we want to get to in order to give complete certainty to all applicants about how long it will take us to process applications.

Graham Simpson: What is your longest outstanding case?

Jennifer Henderson: Unless it has gone in the past few days, our oldest case is from 3 February 2017.

Graham Simpson: Why has it taken so long?

Jennifer Henderson: Chris Kerr will know exactly what the case is.

Chris Kerr: I might not know the individual case. When the keeper was here previously, she set out the reason for the organisation's having had a backlog prior to the pandemic—for the 2018-2020 period—and the fact that we were making good progress on clearing it. That 2017 case would have been gone but for the impact of the pandemic, which slowed down the rate at which we were clearing cases.

The short answer is that it was because of a lack of capacity, which the pandemic caused, and because of our focus on other cases, for the reasons that I have given around up-front and expedite cases and other old cases. We are now making much quicker progress on 2017 cases, in particular. We have reduced them by—I think—49 per cent in a year; they are coming down quite sharply and we expect them all to be gone this calendar year.

Jennifer Henderson: To build on that, I say that I am keen to ensure that the committee is aware that, last time we met, we talked about whether we would have the capacity to put some dedicated resource on to the very oldest cases. Until that point, additional capacity had been focused on expedite cases; we now have the capacity to put some people on to the oldest cases, which is why we are really driving down the numbers. The 2017 cases will be gone very soon, and the good news is that capacity can shift to 2018 cases. As we bring in automation, more

capacity comes in. Chris Kerr articulated the plan to accelerate the progress that we are making—that is where that acceleration will come from.

Graham Simpson: I accept that things are improving, but it is hard to accept that cases have taken six years. You cannot blame the pandemic for a six-year, five-year or four-year delay. How did we get to that position?

Jennifer Henderson: To put it very simply, we got there by not having enough capacity at the more senior grades to deal with the volume of casework, which is why we are building that capacity and looking at ways to bring in automation. I know from talking to them that solicitors want the expedite service. They do not want us just to start at the oldest case and work forward, because there would then be cases from 2019 or 2020, or even recent cases; we get expedite requests for something that someone has just sent us because it is so urgent that they need it done as a priority.

This goes back to Mr MacDonald's question about the economic impact. The economic impact of our not having an expedite service and just putting everything on the oldest cases would be much more significant because cases that people really need back would be stuck. We are very clear that someone can come forward to request an expedite; there is now a comprehensive list of criteria. It is clearly not the priority for whoever has that 3 February 2017 case to get it back; I suspect that that solicitor has expedited other cases but has not wanted us to do that one.

That is why we want to fix the problem; we do not like having a stock of long-standing open casework and we want to ensure that it is gone.

Graham Simpson: I realise that every case is different—some are really complicated—but, once you have cleared that backlog, what would be the longest time that you anticipate a case would take?

Jennifer Henderson: I defer to Chris, who has direct experience of working on registration cases.

Chris Kerr: In the ordinary run of events, we would not expect anything to last longer than 12 months. That depends on the type of application—one could conceive of a very large estate with potentially hundreds of exceptions from it that need to be mapped, which might take longer. However, generally, around 12 months would be our expectation.

Graham Simpson: Okay. I have one more question, convener, if that is okay.

I was looking through the list of the 21 registers for which you are responsible, some of which sound really quite fascinating. There are all sorts: the register of the great seal, the register of the

quarter seal, the register of the cachet seal—I hope that I pronounced that correctly—the register of service of heirs, and so on. Which one of those registers takes up the most time for you, and are there any that take up no time?

Jennifer Henderson: The land register and the sasine register comprise by a very long way the biggest amount of registrations. Interestingly, the next set of registers, which take up, I think, about 20 per cent of our time, are the register of the great seal, the register of inhibitions and the court registers—that is, the registers of judgments. They take up a bit of time, but they are dwarfed by the volume of transactions.

Applications to the other registers are very few and far between, so they take up almost no time. Clearly, though, we maintain and deliver the service for them.

Chris, do you want to add anything?

Chris Kerr: No, thank you.

The Convener: I call Michelle Thomson.

Michelle Thomson (Falkirk East) (SNP): I thank the witnesses for attending today. You have mentioned this already, but I want to dig a wee bit deeper into your expedite service. I note for the record that the success rate for approvals for the service was, in 2020-21, 52 per cent and, in 2021-22, 49 per cent, with a jump in 2022-23 to 77 per cent, which is obviously good. I want to explore the reasons for that jump. Was it the result of more purchasing power—or, if you like, volume throughput? It would also be useful to understand whether you have changed the criteria for expediting cases.

Jennifer Henderson: This is a really good example of something that resulted from a detailed conversation with a variety of customers. When we first launched the expedite service, we said, “If you are going to suffer financial or personal hardship, request an expedite.” What we have done in the past year that has resulted in a greater success rate has been to set out much more explicitly a set of examples of what that might look like—in other words, the types of deed that you might be registering, the circumstances that you might be in, the things that we might need to see evidence for and the things that we might not. As a result of the much more comprehensive guidance on our website, people requesting an expedite are much clearer about what qualifies for the service and whether they need to supply evidence.

Originally, one of the reasons for expedite requests not being successful was that people were simply asking, “Can I have an expedite, please? This is my problem.” When we said, “Well, to make the process fair for everyone, we need to see some evidence”, they would say, “Here you

go.” They would send the request in again and we would be able to expedite the matter. We have helped customers to understand all sorts of examples of the things that we have seen as expedite requests, but again I emphasise that we will always consider such a request. If something that we have never seen before happens to someone, they can come forward, explain the circumstances and say, “This is why I want to expedite.” The list on the website is just a set of examples; it does not provide a comprehensive basis on which we would expedite.

Michelle Thomson: You will have seen the letter from Mr Keith Robertson, which I will have to refer to, as he refers to me and the question that I asked last time. I will just put it on the record. I said:

“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.”—[*Official Report, Economy and Fair Work Committee*, 7 September 2022; c 18.]

The answer that you gave to that was, “Yes—100 per cent.” However, Mr Robertson asserts:

“This is quite simply untrue. Length of time since submission is not and never has been accepted by RoS as grounds for expedition.”

Can you clear that up? Is he correct or incorrect? What exactly is the position?

Jennifer Henderson: It was a little disappointing to find myself quoted in his letter with half of what I said. For the record, it would be useful if I repeated what I actually said last time in answer to your question about someone coming to us with a request to expedite a 2017 case. I said:

“Yes—100 per cent. The numbers that Mr Robertson will be quoting in his letter will be expedite cases where the submitting solicitor has come along and said, ‘This is a priority. Please could you get this case done’ and we have got it done.”

I was emphasising that the length of time that we have had a case is not a reason for expediting it, but if we have had it since 2017 and someone were to come along and explain why it was a priority, we would expedite it in the same way that we would expedite a 2018 or 2019 case.

10:45

Michelle Thomson: I suppose, though, that that takes you into delay territory. I am thinking about an example in which there has been a delay because there has been a change of circumstances with a solicitor or a client. Will a client always be able to draw on the necessary data required to meet your criteria to have the case expedited after that length of delay? I am thinking of an example from 2017.

Jennifer Henderson: It may well be the case that a problem arises because we have had the title for a long time. A classic case would be a sad situation in which someone has died and the executor now needs to deal with their estate, and having the title fully registered would help that process. That is absolutely the sort of situation in which an expedite would be appropriate. Something might have happened in the passage of time that makes an expedite appropriate, but the passage of time, in and of itself, does not mean that a case needs to be expedited.

The example that I gave earlier of a solicitor retiring is a good example of a situation in which completing the set of cases from that solicitor is a good reason to expedite, because it would cause that solicitor significant personal inconvenience to have to think about what he is going to do when he is retiring and still has open cases. We are talking about a point in time at which getting that title complete and the evidence to support that is particularly important.

Chris Kerr might want to expand on that, as he is more involved in the day-to-day discussions around that.

Chris Kerr: Generally, the expedites that we see concern applicants facing a current and present difficulty—for example, someone who is involved in a future transaction concerning something that they wish to sell on but has found that the purchaser is not keen to complete the transaction without a completed application. The challenge tends to be a present one rather than a historical one, and, therefore, evidencing that is generally not difficult, in our experience. Of course, as the keeper says, we continually speak to our customers about that and, if there are things that we can do to improve the service following those conversations, we do them.

Michelle Thomson: It is interesting to hear that you exercise judgment in those cases. A couple of the examples that you give do not appear to fit into the three criteria that you set out—I am not having a pop; you are clearly exercising judgment. Is it fair to say that, at this point, the criteria for expedition are still developing as you get more data on and understanding of particular issues?

Jennifer Henderson: We are expanding the list of things that sit underneath the set of examples of what constitutes a personal or financial hardship in order to help people to understand when an expedite might be appropriate. However, we still stand by the headline criteria, which are that there should be some personal or financial difficulty that either is arising or could arise. We absolutely accept expedites when people come forward and say, for example, “I am about to do an equity release involving a very specialist mortgage, and I know that the lender really wants titles to be

registered, so I would like my title registered. I anticipate financial difficulties if my title is not registered, and I can provide evidence.” In such a case, we would get on and do it.

I think that it is right that we are exercising judgment. We work with solicitors in that regard—it goes back to what I said about customer relationship managers. When we say no to an expedite, we do not just put the phone down; instead, we engage in a dialogue with the solicitor. We ask them to explain a bit more, make suggestions and see what we can do to help more broadly. The process involves the provision of a service; it is not just a decision that is made.

Michelle Thomson: Do you have any data that will allow you to say whether the expedition process being more fully realised will eventually feed into your ability to start to target the backlog? You have mentioned that some are historical cases that people are saying you need to crack on with. Have you explored that link?

Jennifer Henderson: Expedite cases are—in general, though not always—cases in the backlog, so dealing with expedite cases helps with the backlog. However, what will really help with the backlog is having all that additional capacity able to target cases beyond the expedite ones. That is why, as I said earlier, we now have the capacity to drive down the number of 2017 cases as well as keep on top of all the expedites.

The main thing that customers have said to us is that it is really important that the expedite service works. Part of the feedback that we had from a recent dialogue with customers—this was why we provided more guidance on the website—was that it really matters to them that, when they request an expedite, they get it back really quickly, and they asked us to reduce the time for an expedite. I think that we were taking 22 days for an expedite, and we are now taking an average of six days—I will follow up in writing if I have not given the correct figures. Customers have told us that that really matters because, if they want it back, they want it back quickly.

On top of that, we now have additional capacity to bring in the oldest cases. I hope that, before someone thinks that they need to request an expedite of their case from 2018, it will be back with them because the capacity that we have released means that it has already been done. We are seeking to get to the point at which we overtake the expedite requests, if you like.

Colin Smyth: I have a follow-up question. You mentioned that you work with solicitors to try to tackle some of the challenges. I notice that, in the most recent quarterly update to the committee, from February, you explained that you had an engagement event with the president and chief

executive of the Law Society of Scotland. What was the mood in that discussion? What issues did they raise directly with you?

Jennifer Henderson: At the time, the president and the chief executive were relatively new. That meeting was held to bring them up to speed on ROS's strategy for clearing the open casework and getting to the point of bringing in digital services. They fed back that they had picked up that the open casework was an on-going concern for their members. We said that we were absolutely aware of that—that is why we are out talking to customers about the issue. However, it was a positive meeting. They were pleased to hear about everything that we are doing and were supportive of our engagement with the Law Society. Every month, we talk to the Law Society's property law committee, whose members hear from members in the property sector about what we are doing.

Colin Smyth: I notice that the corporate plan and the delivery plan contain several key performance indicators relating to customer satisfaction. You mentioned the citizens survey. The KPIs relate to the satisfaction of businesses rather than to that of the wider group of citizens. The citizens survey showed that the satisfaction score had fallen from 91.1 per cent in October 2022 to 87.8 per cent in March 2023. Is there a reason why you have a KPI only for businesses and not for that wider group of people?

Jennifer Henderson: There was a reason in that the vast majority of the people who deal directly with us are solicitors, so most people who have an application for registration use their solicitor to send it in. That is also the reason why we measure both things. When a citizen has direct experience of coming to us for something—usually to request information—we are very interested in how satisfied they are with the service.

Until we started working with the Institute of Customer Service, we were not able to differentiate between business and citizen customers; the new way of surveying has given us the ability to split those out. I see no reason why we would not want to set a KPI on citizen satisfaction now that we have had a year of benchmarking. Prior to that, we had no benchmark. We could look to introduce such a KPI in the future. It is important to us that the citizens whom we deal with directly are as satisfied with the service as professional customers, so we could have two KPIs.

The Convener: I am going to change the order of questions a little bit. I will ask the next question, which is on rejections of applications.

There is a commitment to not reject applications after three months, unless it is legally impossible

not to do so. However, the number of rejections of applications over three months old has steadily increased. It looks like there was a slight drop in the most recent year, but there has been an increase over the years, so that more than 4,000 applications over three months old have been rejected. What are the reasons for that? You have indicated that you think that it might be a result of solicitor inaccuracies. How do you resolve the issues that are causing the problems?

Jennifer Henderson: I will start with the high level then I will ask Chris Kerr to come in on the detail. To put it bluntly, when we reject an application, it is because it is not legally possible to proceed to register it in the form that it is in. As the committee will remember, we used to charge a fee for rejecting applications. We do not yet have enough data on this, but we are interested to know whether there is a link between the fact that there is no longer any penalty to the solicitor for having something rejected and the slight rise in the number of rejections.

We do everything that we can to educate solicitors about the mistakes that we typically see, what people are getting wrong, and why we are having to reject applications. We also run a regular webinar called "How to avoid rejections".

I ask Chris Kerr to come in on the detail of typical reasons for rejection and to illustrate to the committee why we have to send things back.

The Convener: Just to add to that before you come in, Chris, it would be interesting to hear why you think the number has increased year on year. In 2018, it was 476 but in the most recent year it was 1,042. I understand that you offer webinars and are trying to educate people on how to use the system, but the numbers are still going up rather than reducing.

Chris Kerr: There are probably a couple of aspects to highlight on that. As you mentioned, convener, our commitment is to not reject applications after we have had them for three months. In general, and in principle, there is a one-shot rule for applicants—that is to say, they should get their applications right first time. The keeper's duty on that side of the equation is to complete the up-front check quickly so as to ensure that we are content that the application can proceed. Applications will have been checked at solicitors' offices and are checked again at the keeper's office. In most cases, we will identify any problems at that stage. The rejection rate there is running at about 10 per cent. Those are cases in which the applicant or the solicitor has made some form of mistake, such as sending the wrong documentation, or perhaps the deed has not been properly signed according to the Requirements of Writing (Scotland) Act 1995. For us, that rejection rate is too high; it should be much closer to 4 per

cent, and lower than that if possible. That is what the keeper was referring to on trying to improve the quality of applications that we are getting in. Pushing applications back the way is not what we want to do—it uses up capacity that could otherwise be clearing applications out of the process.

The other issue is what we might call late-stage rejections, which happen when applications have been with us for a while. We appreciate the difficulty that those can cause, and we want to do what we can to minimise and reduce them. On every single one of those rejections there will be a conversation between one of our senior registration officers and the submitting applicant about the best course to take with that application. Sometimes, the best course will be to start the application again, which will generally be done by agreement reached between our colleagues and the submitting applicant. In some cases, such an outcome can be avoided through the submission of additional information. Where that is possible, we will do it.

The final line of defence is that if a supervening event has happened that means that it is difficult or impossible for the solicitor to provide the keeper with the additional information that she would ordinarily require, it is open to her to take a view on the application and to register the title as it is. That is what we would do in such cases.

The Convener: We previously discussed with the keeper the issue of the loss of the initial registration date, which can cause difficulties. However, you are suggesting that only a small number of people would be affected and that special measures are in place. Have you had to use those measures, or have you taken a different approach?

Chris Kerr: In cases where we use those measures, the possibility of rejection will be highly context specific. It will depend on the nature of the transaction, the problem with the application and the supervening event that might have happened. For example, the difficulty could be the bankruptcy or sequestration of the seller or a similar event. Such cases are low in volume and are context specific, and we have employed mitigations in discussion with the submitting applicant where we needed to.

11:00

Jennifer Henderson: Perhaps I can mention an additional thing that we do to try to help solicitors avoid rejections. In our digital systems, we have tried to design out the possibility of people getting things wrong. Sometimes, solicitors will send us a deed, but it is not the deed that relates to the thing that they are trying to register, and, clearly, we

cannot proceed on that basis. The question is: are there things that we can do in the design of our digital systems to ensure that you cannot upload the wrong deed? You could, at least, be asked, “Are you really sure that this is the deed that you want to send?” before you hit the submit button. We are trying to make it as easy as possible for people, to ensure that they do not make mistakes that mean that we have no choice but to reject things.

The Convener: Thank you.

Is there any advantage in completing the land register over the sasine register? This is a question that we have discussed before. The policy, which was launched in 2014, was to complete the land register by 2024, but it has become clear that that target is not going to be reached any time soon and, from previous discussions, it appears that “any time soon” might well mean “possibly never”. The ambition now in the delivery plan is

“to deliver the benefits of a complete land register”,

but the two systems are still operating. Can you update us on where we are with that?

Secondly, there has been, if I am correct, a change to the way in which properties are registered, with the KPI on property addresses being dropped and the one on land mass being retained. Did that happen quite recently? Can you explain why that decision was made and what its impact will be?

Jennifer Henderson: Chris Kerr and I will answer the question between us.

It might be useful to recap what we are doing to deliver the benefits of a complete land register. A complete land register serves two purposes, the first of which is ensuring transparency of land ownership in Scotland. Some time ago, we realised that not all land is going to come on to the land register, either through sale or voluntary registration. As that is outwith our control, we asked ourselves what we could do with the information that we already hold in order to provide better information to citizens in Scotland and ensure transparency of ownership.

In that respect, we are very fortunate to have the sasine register. However, the problem is that it does not have a map, so we started to think about how we could create the mapping for the register in a way that would allow people to look at a map of Scotland and understand ownership. That is what our unlocking sasines work is about, and it is how, with 90.7 per cent of the land mass of Scotland, we now have a link between a shape on a map and ownership information. As the committee might have spotted in our delivery plan for year 2, now that we have that data, this will be

the year that we start releasing it to people who want to consume and use it and make policy decisions based on it.

That deals with the “Who owns Scotland?” question. We fully acknowledge that it is not as perfect as having everything on the land register, but it is as good as we can do, given that we do not control everything that comes on to the land register.

The other reason for completing the land register is to ensure that anything that is likely to transact is already on the register. That is where the number of addresses comes in. We have dropped that as a KPI, because the number is constantly increasing. For example, every time a house developer gets permission to build a new set of houses, they issue a bunch of new addresses, but because we do not have those addresses for the purposes of registration, there is always a mismatch between the number of addresses out there and the number that we could be receiving for registration. We are still tracking that internally, but it is not a very meaningful figure in an external sense, because it can go up and down. If the Ordnance Survey adds 10,000 new addresses, for example, the percentage can drop, not because things have come off the register but because we have not yet been given those 10,000 things to register.

The Convener: At the moment, it has been paused. What does that mean?

Jennifer Henderson: It has been paused as a KPI while we work out what might be a more meaningful thing to keep reporting on. What I think is meaningful, for example, is the number of new addresses created in Scotland and the number of new addresses added to the register and whether those figures are tracking up in parallel.

As for where we want to get to with regard to getting everything that might transact on to the register, we want transactions to be able to just sail through. It will be invisible to people whether their property has been on the land register for ever, has just come on to it or is not on it at all. However, I think that Chris Kerr can say a little bit about the challenge that we face as we start to reach the limit of properties that have not been sold for a very long time coming on to the register and how we ensure that that process is speedy.

Chris Kerr: I will very briefly pick up on the issue of functional completion. The keeper is right in her assessment. As, I think, we have found with stakeholders and customers, this is not an intuitively simple thing to understand. We were using addresses as a bit of a proxy measure for whether a property was likely to transact, and as the keeper has mentioned, the numbers in that respect are fluctuating all the time.

We think that the better approach is to monitor that internally and to say that the benefit for land register titles is that the application is quick and consistent and that, as we improve the position of first registrations, dealing with them will be equally consistent as dealing with land register titles. That is how we will resolve that problem.

On land mass coverage, we are probably close to reaching the limit of what we can do with unlocking sasines. We can probably add another 3 or 4 per cent through identifying sasine search sheets that relate to areas of land and giving them a spatial extent for people to look at. Beyond that, we are right into the margins of pre-sasine titles, which is land ownership that stems from prior to 1617. We have no source data on some of the ancient universities and other places so we will require to speak to those landowners.

The other challenging area will be the small slivers of land between large estates that might have fallen by the wayside of either title. In due course, we will probably need to have a discussion about how much effort we should expend in trying to identify ownership of those areas and the value of doing so. It gets very difficult and time-consuming when you are in those margins.

The Convener: You mentioned finance. Is it correct that voluntary registrations and keeper-induced registrations were partly funded by the financial reserve model that you had previously? We heard earlier that that is no longer the organisation’s financial model. You said that you are now getting to bits of land that will be difficult and resource intensive to register, so that will also mean a financial commitment.

Chris Kerr: Resource is allocated to completing the unlocking sasines work that we have talked about. We are not spending any resource on keeper-induced registration. Voluntary registrations attract a fee, although it is a reduced fee. When voluntary registrations come in, we process them.

Keeper-induced registration is the only lever that the keeper has and it will depend on making sufficient progress with the backlog, on whether it is affordable at that stage and on whether the titles that we are looking at are susceptible to keeper-induced registration. So far, we have used keeper-induced registration to plug the gaps in housing estates where the boundaries are clear, we know the historic pattern of ownership and we can envision what a title sheet will look like. It is slightly more difficult to envisage how to do that for more complex landholdings, so it is unlikely that keeper-induced registration carries much weight there.

Graham Simpson: I have a supplementary question about the rejection of applications. If I heard you correctly, you said that 10 per cent—

one in 10 applications—were rejected because of mistakes made by solicitors. That strikes me as quite a high number, and it has to be a huge concern. I would not expect you to publish it, but do you keep an internal list of the worst offenders and of the top mistakes that are being made?

Jennifer Henderson: We do both. We get a detailed report on the reasons for rejection every week and we share that report with the Law Society. We do not name the firms, but we show the top reasons for rejecting applications. The top reason at the moment is that the witness has not signed the deed. That is a fairly straightforward thing that needs to be done but we have to send an application back if it is not signed. There is a league table of the different reasons for rejection and they are all the same, which is why we run a regular webinar on the things that are not got right. We know which firms have which issues and our customer relationship managers have conversations with them, when appropriate, to say that they are not getting something correct more often than other firms so that they can think about whether they want to change their processes and iron out those issues.

Graham Simpson: It is extraordinary. It just seems so basic. Signing something should be bread and butter to a solicitor. I know that you said that you do not charge when a solicitor has made a mistake but do you think that the solicitor is charging their client?

Jennifer Henderson: I cannot speak to that. We used to have a rejection fee and would make a charge for having to look at the application and send it back, but we got rid of that because we got to the point at which the administration of the charge was not worth it. I cannot speak to what solicitors do when they have to correct something.

The Convener: Thank you, Jennifer Henderson and Chris Kerr, for coming in this morning. We appreciate your evidence.

11:10

Meeting continued in private until 11:45.

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