



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 7 September 2022

Session 6



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Wednesday 7 September 2022

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
REGISTERS OF SCOTLAND.....	2

ECONOMY AND FAIR WORK COMMITTEE

19th Meeting 2022, Session 6

CONVENER

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

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Alexander Burnett (Aberdeenshire West) (Con)

*Maggie Chapman (North East Scotland) (Green)

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

*Fiona Hyslop (Linlithgow) (SNP)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Colin Smyth (South Scotland) (Lab)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jennifer Henderson (Registers of Scotland)

Christopher Kerr (Registers of Scotland)

John Mason (Glasgow Shettleston) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 7 September 2022

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Claire Baker): Good morning and welcome to the 19th meeting in 2022 of the Economy and Fair Work Committee. I have apologies from Gordon MacDonald, and I welcome John Mason who is attending in his place as committee substitute.

Our first item of business is a decision on taking in private items 3 and 4. Are members content to take those items in private?

Members indicated agreement.

Registers of Scotland

The Convener: Our next item of business is an evidence session on the activities and performance of Registers of Scotland. Registers of Scotland is a non-ministerial office and part of the Scottish Administration. It is directly accountable to the Scottish Parliament and responsibility for scrutiny falls mainly within the remit of this committee.

I welcome Jennifer Henderson, keeper of the Registers of Scotland, who is joined by Christopher Kerr, registration and policy director, Registers of Scotland.

As always, I ask members and witnesses to keep their questions and answers as concise as possible. I invite the keeper to make a short opening statement.

Jennifer Henderson (Registers of Scotland): Thank you, convener. It is lovely to see you all today. Thank you for the opportunity to give you an update on ROS's progress and to make a very brief opening statement.

I will start by talking about the volumes of open casework. I am pleased to say that we have successfully stabilised the volume of open casework since my last appearance before the committee. Critically, we have done so against a backdrop of a significant increase in the number of applications. The strategy that we have put in place has meant that, despite a 31 per cent increase in the number of applications in the past year—we had half a million last year, and we have had 655,000 this year—we continue to stabilise the volume of open cases as well as meet or exceed our key performance indicators.

I am also pleased to tell the committee that more than 90 per cent of the applications received continue to be completed within 35 days. However, we know that we have much more to do to reduce the number of open cases, and we are focusing every effort on that goal.

I will briefly mention our performance reporting. The committee will have noticed that we are trying to be as transparent as possible about our progress, which is why we recently launched our new performance pages on our website, offering customers and stakeholders an even greater level of detail on and access to information about how we are performing.

On transparency of land ownership, we continue to make good progress on delivering the benefits of a complete land register. Around 87 per cent of the addresses that regularly transact are now on the land register and our total land mass coverage is now around 80 per cent. In the last period, we have been working closely with Scottish

Government officials on the land reform consultation and have continued our engagement with the Scottish Land Commission.

I will briefly mention the new services that we have introduced. Since we last met the committee, we have delivered new digital functionality, which has been well received by customers, and a new system for customers to digitally submit applications continues to develop. Much to customers' delight, we have introduced the facility for customers to self-serve copy deeds through our ScotLIS for business system, which customers have described as "transformational" for how they work.

I turn to investing in our customers and people. Delivering a high-quality service to customers is always our priority. We consistently receive high customer satisfaction scores, and we have set ourselves a new in-depth benchmark for service that sits above the public sector average. Since our last appearance before the committee, we have won two awards for our delivery. We have maintained our gold investors in people status and are planning to complement that by working towards further accreditations relating to wellbeing and young people.

Finally, on our finances, I am pleased to say that, at the end of the last financial year, we continued to meet our delivery and quality targets and achieved a financial surplus a year ahead of schedule, which makes us a net contributor to the Scottish Government.

Thank you. Chris Kerr and I look forward to answering your questions.

The Convener: Thank you. I take the opportunity also to thank you for the monthly reports that the committee has been receiving. This is an area of interest to the committee, and there are a number of areas that we wish to explore this morning. I hand over to Colin Smyth.

Colin Smyth (South Scotland) (Lab): Thank you, convener, and good morning.

When you last attended the committee, Keeper, I recall asking specifically about staffing levels. The indication was that there would be a 25 per cent reduction in staff, but you said that that was under review, not least given the backlog that the service was facing. Your current corporate plan refers to a planned reduction in staff numbers over the next five years, but there are no references to any figures. What is the scale of the planned staffing reduction?

Jennifer Henderson: It would be helpful if I could put how many people we need in context and then explain our thinking about the reshaping and resizing of the workforce.

First, we are doing some detailed strategic workforce planning. That work is looking at how we crystallise assumptions around what is going to happen to the housing market, which determines how many people we need; the pace with which we will clear our long-standing open casework, which determines how many people, and with what skills, we will need and for how long; and the degree to which we will be successful in converting permanent civil servants into digital people so that we will no longer need to place such reliance on our digital contractor workforce.

Then there are other factors that are outwith our control. For example, customer adoption of some of our new digital systems will determine how many people we need to do the up-front stuff. If we get high levels of customer adoption of our new digital systems, that will allow us to introduce more automation of the processing of applications and we will need fewer people to deal up front with those applications.

I hope that that illustrates that there are lots of variables, and we do not yet know the answer to many of them. We are therefore working through what assumptions we can make about those variables, what that will lead to for future staffing numbers and when those changes might need to happen.

I think that it is appropriate that, at the point at which we reach some answers to those questions, colleagues within Registers of Scotland will be the first people to have those discussions with, so that we can help people understand in detail what some of those changes may mean for their roles in the future.

You will have seen in our corporate plan that we have given indicative changes. We have said that we will need fewer of certain skill sets and that there will be some that we will need more of. However, until we have crystallised some of those assumptions, it is impossible to put detailed numbers on our plan. Also—rightly, I think—our customers expect us to use every person we have available to us for as long as we need them until we have cleared our long-standing open casework. Therefore, I do not want to start putting numbers on future reductions until we are sure that we can be confident about when we will not need people on our long-standing open casework.

Colin Smyth: I think it would be fair to say, though, that the plan is pretty vague when it comes to the skill sets that you need. The plan contains a diagram that seems to suggest that there are some very tall people working for the service and some very small people. There is no detail on your direction of travel. What is the overall aim of the staffing reduction? Is it a budget process? Do you have to reduce numbers in order to balance the books? You have said very clearly

that there will be a planned staffing reduction, but you do not seem to know what the reduction will be.

Jennifer Henderson: The overall aim is to have the right number of people with the right skills to deliver our work in the future.

Colin Smyth: That will be a smaller number of people. You were clear from the start that there will be a reduction; your starting assumption is that you will need fewer people.

Jennifer Henderson: We believe so. Perhaps I can illustrate that.

Currently, we need a certain number of people to deliver on the new cases that come through the door. As we introduce more digitisation to how customers submit to us and more automation of the processing of those cases, which fundamentally depends on customers submitting to us digitally, we will need fewer people to deliver our new registration services. However, if the housing market is very buoyant, we might need more people because there will always be a certain number of new cases coming through the door that will have to be processed by hand.

The purpose of our workforce plan is to have the right number of people with the right skills. We have to quantify how many people we will need. I think that we can be clear on what skills are needed, but quantifying how many people with those skills are needed is determined by factors that we cannot yet put our finger on. It makes a big difference. By way of example, if we are able successfully to automate 50 per cent of the cases that come through the door, that will mean that we will need a particular number of people in the future. If we can automate only 30 per cent of the cases, that will mean we will need more people to process those cases. We have not yet built the automation systems and we do not know how successful they will be, so putting a firm number on how many people we might need cannot be done yet. However, we know that we will need fewer people because we know that we will be able to automate some of the cases that come through the door.

Colin Smyth: That is a quite substantial change from previous reports, which talked very specifically about a 25 per cent reduction. What process are you going through? What is the timescale for the process? Have you consulted with staff? Are you at a point at which you are speaking to people about new jobs? How far advanced is the process, and when will you start to be able to say that this is what you think future staffing will be?

Jennifer Henderson: We are running a strategic workforce planning project and it is doing work to do two things. It is quantifying what we

expect those numbers to be within a range. That is best illustrated with an example.

If we determine that, with automation and digitisation, we will need somewhere between 100 and 200 people to deal with our up-front cases and currently we have a larger number than that, what is the plan for how we will reskill and retrain those people who we will not need for those up-front cases? At the moment, the plan is that we reskill and retrain them to deal with the long-standing open casework, which will eventually be gone. We will then reskill and retrain those people to become our digital people in the future. It is a sort of moving of people.

We will crystallise the detail of that over the current financial year. We expect to be able to provide more detail in our next corporate plan, which will be published in April 2023. However—managing everybody's expectations—I still anticipate that we will be talking about ranges of staff numbers, because we will not know such things as levels of customer adoption of our systems and just how successful our automation will be until we have brought it in and can see it. We do not want to commit ourselves to a particular trajectory for staff numbers until we are confident that that will give the right number of people.

I have one final thing that I would like to say to answer your question. The reason why we have put indicative directions of travel in our corporate plan is that we are already having conversations with colleagues about the fact that we definitely know—we are sure—that we will need more digital people in the future and we want to encourage colleagues to think about taking up the offer that we are putting forward to retrain them in digital. We are still working out how many more digital people we will need, but we know that it will be more than we have now. Equally, on the registration side, we can be clear that we will need fewer people and therefore people can be confident that if they want to work with ROS in the future, getting themselves upskilled in digital is a good thing to do and we have training offerings for them to do that.

Colin Smyth: So when you publish your next plan, you are likely to have projected numbers.

Jennifer Henderson: With ranges—I want to be very clear about that. In our next corporate plan, we will be able to publish some of the assumptions that we are making. We are assuming a level of automation that will be between X and Y, which will determine the numbers that we will need. Realistically, it will take us a couple of years to crystallise the exact numbers. At that point, we will be in a good position to have detailed discussions with colleagues about what that means for future careers within ROS.

10:15

Maggie Chapman (North East Scotland) (Green): Thank you for your opening comments and your answers so far to Colin Smyth's questions.

I want to pick up on staffing and seek a little bit of clarity. I understand what you say about the assumptions, and that there are a lot of unknowns in your current processes and thinking. In the corporate plan you have "Now," "Next" and "Future" plans for staff. Is it the case that the "Future" plan—which mentions registrations, new services, digital, data and corporate services—will become a reality only once you have dealt with the backlog, so the "Next" plan is the transitional phase?

Jennifer Henderson: Yes.

Maggie Chapman: I think you said that the "Future" plan is three years or thereabouts. Is that right?

Jennifer Henderson: The current corporate plan is from 2022 to 2027. Our expectation is that we will be in the "Future" description of the staffing by the end of the current corporate plan.

Maggie Chapman: I would like to unpick, to understand a little bit. You talked in your answers to Colin Smyth about automation and the need, therefore, to shift skills into digital. What is the difference between the staffing that you will need in digital services—I assume that that will support automated registration—and in the new services that you have outlined?

Jennifer Henderson: Let me see if I can explain.

ROS will be doing registration forever: that is our assumption. Jurisdictions that have already delivered digital and automation can automate about 70 per cent of their transactions, so we will always need people with registration skills to manually process the more complex registrations.

As an organisation, we are also being asked to bring in new services. We have brought in the register of persons holding a controlled interest in land, we are providing support to the register of overseas entities, and we expect to be providing support to the register of moveable transactions. There might be other services that we will be asked to provide in the future that will need people—legal colleagues, policy colleagues and so on—with the right expertise to support them. All that will be underpinned by a digital infrastructure, so we will need people to build and develop whatever digital systems are needed. We will need to support, maintain and update those new services; we will not just deliver a system that stays as it is forever.

Our ambition is very clearly to get to the point at which the maximum number of people who can be civil servants in that digital space are civil servants. At the moment—we have discussed this with the committee before—we are hugely reliant on contractors to deliver our digital development. That is appropriate in some cases, because we need more people to do development than to do maintenance, but we are working very hard to reskill colleagues so that they are able to pick up that digital delivery.

I hope that that clarifies the difference between registration services, new services and the digital bit.

Maggie Chapman: That does help. Thank you.

You moved on to talk about contractors. How many contractors do you currently have and how do you see that situation developing, given that some of those things take time, which is unclear or undefined at the moment? How many contractors are currently employed by ROS? What is your ideal, in terms of a reduction, over the next five years?

Jennifer Henderson: ROS has about 1,200 people. It varies slightly, but our contractor workforce is between 10 per cent and 15 per cent at any given time. The reason why it varies is that regrettably, sometimes, we lose permanent colleagues and the best short-term solution is to backfill with a contractor while we see whether we can get a permanent person back in. At any given time, we have 150-ish contractors. Most of them are in the digital space. A decent chunk of those people are doing the bulk of the development that will, when it is done, need fewer people.

To go back to the previous question, I note that the workforce planning also looks at the number of people that we will need for digital, and at the skills within that digital workforce, which will not be the same size and shape as our current digital workforce.

My ideal would be to have potentially two thirds of our digital workforce as a permanent workforce and one third as contractors. The reason why I think that it is appropriate to continue to rely on contractors is that that allows us to access brand-new skills from the market and to bring people in for transient work for which we want a unique skill set. We would want such people to come in and do the work, then transfer the knowledge to the permanent people. We would not necessarily then want them for longer.

It will always be appropriate for ROS to employ a certain number of non-permanent people to meet its digital ambitions, but we would certainly like to shift the balance—I guess we want to flip it on its head—to two thirds of the workforce in the digital space being permanent. That is a big ask:

the ambition to develop the skills and train people, given the very competitive market, is a not insignificant challenge.

Maggie Chapman: How is the “Grow our own” approach going? I presume that that is where the bulk of the work is happening. What impact is that having on these two elements: projected costs for your overall salary spend and associated costs, and staff morale?

Jennifer Henderson: “Grow our own” is going well. The first cohort of people have graduated from the development programme. We have been delighted by how much they have been able to hit the ground running in digital roles and to apply everything that they have learned.

“Grow our own” is very deliberately bringing people in at the bottom of the digital pipeline; it is equivalent to retraining people to start in the more junior digital roles. Broadly, the only way those people will then progress within our digital workforce is through hands-on experience that will allow them to achieve promotion within our digital workforce and to take on the more senior roles.

We are also therefore thinking about what else we need to do to attract people to work for us permanently in the more senior roles. We have had some success. We have some people who have chosen to give a life to public service and want to be permanent civil servants, even if they could earn a lot more in the private sector. We are also looking at more imaginative ways of bringing people in at the more senior levels while our “Grow our own” cohort progresses and develops. We also backfill. We will be running other “Grow our own” cohorts in order to get a pipeline.

We are also thinking—this is true more generally in the round—about the offering that we give to retain people. There is always a danger that we develop people who get great skills then take them off elsewhere. That is not necessarily a bad thing, because it means that we might be supplying wider Scotland with great digital skills, but it is not a great thing for ROS, so we are thinking about how we can provide an attractive employee offering so that people who have been developed as permanent digital people for us will want to stay and give us long enough service to get real value out of them.

The Convener: Ms Chapman, do you mind if I move on?

Maggie Chapman: I asked a question about staff morale.

The Convener: Yes.

I remind witnesses and questioners to be as concise as possible. We want to get through quite a lot this morning. After this, I will bring in Jamie

Halcro Johnston for a wee supplementary, before the next question.

Jennifer Henderson: Staff morale is good. We will know more when we start running our next civil service people survey later this month. We will then have the latest update and will be happy to include it in one of our monthly reports.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have a very quick question. We have been talking about contractors. What is availability of contractors like? How easy is it to recruit them? How easy is it to scale up to meet demand? How flexible is availability in meeting peaks and troughs?

Jennifer Henderson: That has become more difficult; the market has become more aggressive in the past few months. It is proving to be more challenging than it was, but we are still managing to fill our vacancies with contractors when we need to do so.

John Mason (Glasgow Shettleston) (SNP): I have a few questions about finance: Is it the case that your annual accounts and financial accounts will be out fairly soon?

Jennifer Henderson: The publication date is later this month. I want to say 26 September, but I would need to check that.

John Mason: I am guessing that the accounts have been fully audited and approved. Can you tell us whether there was a surplus or a deficit?

Jennifer Henderson: The accounts are still subject to final sign-off at our board meeting next week. The provisional position, which I do not expect to change, is that there is a surplus.

John Mason: Are you not going to tell us how much?

Jennifer Henderson: The surplus is similar to the surplus that we delivered for the previous year.

John Mason: I am new to the committee, so I do not know what that was.

Jennifer Henderson: We delivered a surplus of about £10 million.

John Mason: I think that I am right in saying that when the financial set-up for ROS changed, there was an accumulated surplus that was handed over to the Government. On the whole, you have delivered surpluses; you have not delivered deficits.

Jennifer Henderson: That has been the case, apart from during what I call the Covid year, when we made a loss, essentially.

John Mason: That is kind of expected and acceptable.

For the coming five years in your corporate plan, are you budgeting to make a particular surplus? Is there a target? Is the target just to break even?

Jennifer Henderson: The target is always to break even and to deliver a surplus, if we can. A surplus comes when the housing market is more buoyant than expected. It is not within our gift to predict that accurately, but the target will be to deliver a surplus. It is right that we do that, given the example of the Covid scenario, when we needed to draw down from the Scottish Government because we did not have enough income to meet expenditure. We should always be building up a bit of a surplus and then drawing down on it when we need to.

John Mason: So, although you do not have the surplus, at least it is there, in one sense, with the Government.

Assuming you are making surpluses, the staff reductions we have just been talking about are not particularly driven by a need to increase the surplus or reduce your costs. Is it linked more to the amount of work that you have to do?

Jennifer Henderson: That is correct.

John Mason: We are in a period of quite high inflation—it is around 10 per cent at the moment, as I understand it. What is your position on fees? Will you increase fees by 10 per cent next time round and increase wages by 10 per cent, or is it not as simple as that?

Jennifer Henderson: It is not as simple as that. Our ambition is always to become more and more efficient, but without needing to put up our fees. The last fee review, which we did last year, was the first fee review in 10 years because we had managed to absorb all the cost rises in the previous 10 years by delivering more efficiently.

The organisation looks annually at whether our fees are set at the right level. If we thought that we would not be able to cover our costs with our fees—fees are a matter for the minister—we would be having a discussion about that. In our last fee review we tried to set the fees on a basis that we think will stand us in good stead for the next few years. Part of what we are trying to do with delivering more efficiently with digital is to take our costs down in some areas so that if costs go up elsewhere, we will still be in a break-even position without needing to do anything to our fees.

John Mason: I accept that in a time of normal inflation it is quite nice to keep your fees low—although it has to be said that train fares, Mars bars and most things go up every year, and not just once every 10 years. With inflation at 10 per cent or so, do you need to rethink that model and consider an annual increase?

Jennifer Henderson: We are about to go into our corporate planning process, in which we will look at the finances for the next five years. We will do our cost projections and look at whether we still think we can deliver everything that we have planned to deliver within the cost envelope. We will take expectations around inflation into account. If, coming out of that process, we think that there is no way of balancing the books, we will have a discussion. At the moment, we think that we can balance the books, but we have not done the detailed planning for that yet.

John Mason: Do you negotiate your own pay increases for staff, or is that part of the public sector negotiations?

Jennifer Henderson: ROS is a separate pay bargaining unit, but we negotiate within Scottish Government pay policy. We follow Scottish Government pay policy in terms of what pay increases we are able to offer.

John Mason: Other members will be asking about new cases and arrears and so on in more detail, so I will not go there. Have you asked your users whether they would, for example, prefer a greater fee increase and less in arrears, or a lower fee increase and keeping arrears?

Jennifer Henderson: We have not, because more fees would not solve our long-standing open-casework problem. We have had the money for cases that we are working on and have the money to do that work, so we have not asked our customers that question.

10:30

The Convener: On finances, I understand that the Scottish Parliament information centre requested data on income and expenditure plans but Registers of Scotland was not able, or not willing, to provide it. We also have questions about transparency over staffing. The impression that we get is that less information is being shared than in previous corporate plans. You have set out why there is vagueness on staffing levels—it is because you are undergoing a workforce planning project. We feel that less information is available on income and expenditure projections compared to what we have previously received. Why were you not able to share more of that information with us?

Jennifer Henderson: In our corporate plan, we project a range of income and expenditure. That takes into account the sort of things that Mr Mason asked about. What if costs are higher? What if we can deliver more efficiencies? What if the housing market is more, or less, buoyant? We could provide the current numbers that sit behind each of those ranges, but the purpose in the corporate

plan is to demonstrate the fact that there is that range.

There is a reasonably significant difference between the expenditure that might come in a high housing market and that in a low housing market, and we felt that, for people reading our corporate plan, it was more helpful to understand the kind of envelope that we work in. However, I am very happy to look at what else we could provide to the committee on the numbers that sit behind that.

The Convener: That would be helpful, given the committee's scrutiny role. Perhaps when you share the briefings with us monthly, more information could be provided in those, or it could be done in private, if Registers of Scotland felt that that was important. However, we would appreciate more sharing of the figures—that would be helpful.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Good morning. I would like to look at some of the issues around new cases. The key element is that you anticipate that new registration cases will be dealt with within 35 days. First, when you talk about new registrations, does that include dealings with whole and transfers of part?

Jennifer Henderson: Yes—and first registrations.

Colin Beattie: I understand that your performance for April to June 2022 on first registrations was at 66.8 per cent. The aim is for all new registration cases to be completed within 35 days, but that is by March 2027.

Jennifer Henderson: That is correct.

Colin Beattie: That seems an awful long way off. I do not have any figures here for first registrations. I assume that dealings with whole are less in volume, and similarly with transfers of part—

Jennifer Henderson: It is the other way round. Dealings with whole are by far our biggest volume intake. They involve houses or properties that are already on the land register coming in for transfer of ownership. That dwarfs everything else that we do—there are thousands of such applications a week. Our typical intake for first registrations is about 500 a week. For transfers of part, the typical intake for a week is, I think, 400—I see that Chris Kerr is nodding. Dealings with whole are much the biggest volume.

Colin Beattie: You are at 91 per cent on that, for the April to June quarter.

Jennifer Henderson: Yes.

Colin Beattie: So why will it take until 2027 to get to 100 per cent?

Jennifer Henderson: It will probably be most helpful if I talk about first registrations and transfers of part. They involve different skill sets. A registration officer who can deal with a dealing with whole could not instantly go and deal with a first registration or a transfer of part. Staff need to have additional skills to do either of those roles.

We have set ourselves a target to ratchet up for first registrations and transfers of part each year to get more and more of them done within the 35 days, as we can build additional capacity by skilling people up.

Also, we will never get to 100 per cent for first registrations and transfers of part. Because some of them are so complex, they would not be finished within 35 days even if a registration officer started working on them the moment they came in the door—they can take that long.

We are aiming to get as close to 100 per cent as possible. That will allow us to say to customers, "When your registration comes through the door, whatever it is, we will be able to instantly tell you whether we can do it within 35 days and, if it is not, we can come back to you and agree a timescale." We will have looked at it and be able to say how long it will take us to do it. The customer will then know when they will get it back.

Colin Beattie: I will come back to your bespoke timescales in a second, but the target means that, over the next five years, you do not expect to deal with new cases within the period that you anticipate, and therefore surely you will go into arrears because of the ones that are not picked up. For the next five years, you will be treading water.

Jennifer Henderson: That is not correct. I will bring in Chris Kerr in a minute to expand on this. We have set a 35-day target because it aligns with the advance notice. When a transaction is going through, a solicitor submits an advance notice. That holds the place for them to submit an application for 35 days. The ideal is that they get the application in and it is processed before the advance notice expires. Chris can elaborate on the details of that. It is not a problem if it is not processed in that time, but that is the ideal.

We might have some cases that take 36, 37 or 38 days, so we will not end up with long-standing open casework. It just might be that a small percentage will take us longer than the 35 days.

We could have set the target at 50 or 60 days. We could have a longer target, but customers have said to us that it would be helpful if we could tell them how much we would be able to get done in 35 days. The Law Society of Scotland has said in conversation that it is happy with the approach that we are taking to getting to the point where as much as possible can be done within 35 days, and

anything that falls outwith that is because it will take us longer than 35 days, full stop—that is, there is no way of doing it within 35 days.

Colin Beattie: So 35 days is just a notional target.

Jennifer Henderson: It is aligned with the advance notices. That is why it made sense as a target.

Colin Beattie: It will be five years before you will be where you want to be. That seems like an awful long time, when your performance percentages are already quite high. Why is not possible to do it more quickly?

Jennifer Henderson: We have modelled the time that it takes to skill people up. We also have to deal with the long-standing open casework, so we are not putting all of our resource on to the new stuff; we are also making sure that we keep pace in dealing with the old stuff. We aim to be at 75 per cent for first registrations by the end of this financial year. We might get there more quickly, but the numbers that we are putting out are based on our current modelling of the extra capacity that we can create, what we think the housing market is going to do and therefore what percentage we think we will be at.

Colin Beattie: You project staff reductions in the coming years, but you are talking about training staff and putting in extra resources.

Jennifer Henderson: Dealings with whole is where we will be able to automate. If we can introduce a level of automation in dealings with whole, that will allow us to take more of those people more quickly and retrain them to do first registrations and transfers of part, so that we can get more quickly up to more of those being done within the 35-day target and retrain people to being able to deal with the old cases.

That is part of the reason. There are a lot of moving parts, as well as things that are outwith our control, such as the volume of the housing market and customer adoption of our digital systems. All of that makes it quite difficult to predict accurately, and hence our modelling takes all those things into account and says where we think we will be. If we can do better, we will of course do so, but it is important to be honest with people about expectations rather than predict something that I do not know how to deliver and then let people down.

The Convener: Mr Beattie, a number of members are interested in this area of questioning. Once I have let them in, you can indicate to me if there is something that you wish to come back in on.

I have a question for Jennifer Henderson that follows on from Mr Beattie's questions—it is on the

bespoke timeframe. You said that the period could be 36, 37 or 38 days—just over 35 days—but the website suggests a timeframe of six months for complex cases. What is meant by a bespoke timeframe? Is there a limit set on that?

Jennifer Henderson: It would be agreed with the customer, based on the complexity of the case. I ask Chris Kerr to talk about our most complex first registration cases and how long they take us to work through.

Christopher Kerr (Registers of Scotland): By way of context, the thing that we discuss most frequently with customers, and what customers tell us they want most, is certainty of outcome. So the 35-day period and the bespoke arrangement are designed to give certainty of outcome to applicants. They can have a high degree of certainty that their case will be done within 35 days or, if it is more complex, we will have a bespoke arrangement with them that will take account of the complexity of the transaction.

Sometimes, we have transactions that involve large complex areas of land, such as a large estate, which can have hundreds of properties that have broken off from that estate over the years, so there can be a lot of complexity around exactly where the boundary sits. You will understand that we want to get that right, and that getting that right is more important than doing it in 35 days in that scenario.

In that example, we look at the complexity of the estate title, the number of properties that had broken away from it and the relationship between those properties and the estate title, and we would agree with the submitting solicitor a period that we both thought was reasonable to complete the work. That is to deliver the certainty that customers tell us that they want most.

The Convener: So it depends on the case. There is no upper limit on how long a complex case could take or the bespoke arrangement could be.

Christopher Kerr: It depends on the case. We have it in our minds that it would certainly be no longer than 12 months, and quicker than that if we can, but it depends on the case.

Michelle Thomson (Falkirk East) (SNP): I have some questions about the backlog, which is a matter that I expect other members will want to come in on, too.

When you previously appeared before the committee and were asked about the backlog and how long it would take to clear, you said:

“three years”

or

“a little bit longer”—[*Official Report, Economy and Fair Work Committee*, 2 March 2022; c 10.]

You will have seen the letter from Mr Keith Robertson in which he has extrapolated some figures and—most critical of all—suggests that some cases lodged in 2017 will take 11 years to complete. First, where is Mr Robertson wrong? Indeed, is he wrong?

Jennifer Henderson: Mr Robertson’s numbers are based, as far as I can see, on the number of cases from 2017 that we have processed over a time period. As I think that I have said to the committee, our current approach to dealing with our longer-standing open cases is to ask customers where they want us to focus our effort. We have our expedite service; in fact, 2017 is a good example to highlight, because in the last quarter, we did 5,390 expedite cases. If I had put all of that energy into the 2017 cases, 2017 itself would be gone, because there are fewer than 5,000 cases from that year. However, they are not the cases that customers wanted us to focus on, so we are quite deliberately targeting effort at the long-standing open casework where customers tell us that there is a need to get a case back more urgently.

That has been the position up to now. Coming back to Mr Beattie’s question, I would say that we have put a lot of energy into getting on top of our new cases as well as into making sure that we are keeping pace with the cases in the backlog that customers want us to deal with. We have just reached the position of being able to release some capacity, and we are putting a dedicated team on to 2017, because the next thing that customers have said to us is: “When you have got on top of the new stuff and dealt with all the long-standing stuff that we are asking you to do, work forwards from the oldest case.” As a result, we will start to see an acceleration through the 2017 cases. I cannot tell you right now when that will be, but a team in the office has been going through and looking at all those cases and trying to understand just how long they will take.

I think that Mr Robertson’s calculations are based on the assumption that we will do only the amount of work that we have been doing, but that is not the plan. Instead, the plan is to accelerate. As we release more capacity, we can put more people on to the older cases, and we will then be able to move faster through them.

Michelle Thomson: Am I correct in understanding that the time period for expedite cases does not include the period of time since they were lodged? Has your process changed?

Jennifer Henderson: That is not included, because a case could be submitted today for which there might be some huge urgency to get it

back tomorrow. An expedite request generally comes about when we have had a case for a longer amount of time; it is very rare to get an expedite request for a relatively newly lodged case. They tend to be cases that date from further back than 2022.

10:45

Michelle Thomson: 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.

Jennifer Henderson: 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. As I have said, though, we are now in the position of being able to put some extra resource into the long-standing open casework, which will mean that we can start to go faster through that backlog.

Michelle Thomson: You have said that you spoke to your customers, but what specific feedback did you get from those who still had outstanding cases from 2017? Did they say that they wanted the cases that had been lodged more recently to be dealt with first? Did you break it down in that way?

Jennifer Henderson: Our engagement has been with the Law Society of Scotland’s property law committee, which represents the wider solicitor group, and its answer has been “We want the most urgent cases back.” The fact is, though, that a 2020 case might be more urgent than a 2017 case.

Michelle Thomson: So it is not actually your customers who have said this. You used the term “customers”, but it is a committee of the Law Society that has suggested that approach rather than the customers at the end of the chain.

Jennifer Henderson: I am not sure how the Law Society sought views from the people whom it represents, but we are very clear that the expedite option exists. If people start to ask for lots of 2017 cases to be expedited, that is where we will focus our effort.

Chris Kerr might want to come in on the reasons for expediting cases, but I think that the option makes sense and is relevant if a case that has not been completed is going to cause some sort of problem. There will be plenty of 2017 cases that will not cause a problem and therefore customers will not want us to prioritise their getting done over and above something more urgent. Of course customers want us to get them done—I fully

accept that—but in light of the amount of resource that we have and the fact that we cannot do everything, the clearest feedback that we have had has been, “Do the cases that I need back.”

Michelle Thomson: But surely some customers will not know that there is a problem with cases going back to 2017 until it is uncovered, by which time it will be too late.

Jennifer Henderson: I disagree. A customer might realise that there was an urgency around, say, a 2017 case if there was going to be some element of a further transaction, which might be affected by the case not being completed. However, our expedite system is very efficient; it typically takes nine days. When a customer gets hold of us and says, “I need that 2017 case done”, we have the ability to get it done very quickly.

The problem element that you might be referring to is when we discover that such a case has been incorrectly completed by the solicitor and we cannot register it. In that case, we need to consider whether it should be rejected, but we have a separate approach that involves not rejecting things that we have had for a certain period of time, if that is legally possible, precisely to avoid causing a problem for a customer by our rejecting something some years after they submitted it.

Christopher Kerr is much more of an expert on this than I am, and he can expand on what we do.

Michelle Thomson: I have just one more question before Christopher Kerr comes in. Does the scenario that you have just described in which a problem is discovered later on have a much greater impact, because recourse for customers or clients has diminished over time?

Jennifer Henderson: No. I can give you an example and then Christopher Kerr will expand on the point.

If a solicitor has made a mistake in an application that means that we cannot register it, the mistake already exists, whether we discover it on the day that we look at the application or some time later, and the things that the solicitor will need to do to correct that mistake are the same. What I absolutely accept is that if we are talking about a piece of work that a solicitor has done very recently, it will be fresher in their mind, they will remember the case and it will probably take less effort for them to do the necessary additional work to correct the mistake that they made in the first place. When you get something back that you did some years ago, you have to refresh your memory about the case, how you did the conveyancing and what you will need to do to fix the issue. However, the mistake will not have got any bigger simply by virtue of its sitting there waiting to be processed.

I do not know, but it might help if Christopher Kerr talked a little bit about that approach.

Michelle Thomson: I think the convener is going to come in here—

The Convener: I am looking at the time.

Michelle Thomson: Yes, we are quite pushed for time.

If the convener agrees, I just want to ask on behalf of the committee whether you can come back to us with an outline of your specific strategy for dealing with cases from 2017 and reflect on what threads of that will influence your strategy for dealing with backlog cases from subsequent years. I do not accept the sort of revisionist approach that suggests that by getting rid of the term “backlog”, you can get rid of the backlog itself. If some of these historic cases are not dealt with, it could be “catastrophic”—I agree with Mr Robertson’s assessment here—if a rejection were to occur, hence my asking about your strategy.

Jennifer Henderson: I am very happy to come back on that, but for the record I want to make it very clear that this will not be “catastrophic”. We have many processes in place to ensure that there is no catastrophic impact from a case being rejected after a period of time.

The Convener: Before I bring in Alexander Burnett, I also want to ask about the issue of expedited cases. Do you have any figures in that respect? I see that, in 2020-21, the expedite option had a 54 per cent success rate—that is, only 728 out of 1,359 applications were accepted for the expedite process. Why is the rate of refusal of expedite applications so high?

Jennifer Henderson: We have very clear criteria for an expedite application, and if it does not meet them, we do not accept it. Sometimes it does not meet the criteria because the solicitor has not submitted the relevant evidence or has not made the case appropriately; they then go away, get the necessary evidence and come back to us and we accept the request. We have to be extremely clear with customers about the criteria for expediting things and that if the request does not meet those criteria, it is not appropriate to expedite it.

The Convener: I see that, in 2021-22, 49 per cent of requests were approved, which is actually below 50 per cent. It looks as if the rate might be increasing this financial year, although the number of applications is lower. Nevertheless, it still seems quite high. If it is not appropriate for cases to be expedited because people have made mistakes, can you not try to deal with that situation by ensuring that there are not so many requests coming in? After all, it is your organisation that has to process them.

Jennifer Henderson: That is exactly what we are working on. If someone makes an expedite request but has not adequately demonstrated why their application meets the criteria, they will have a conversation with our customer service team, who will explain what we need. Often the solicitor will go, “Oh, fair enough—I did not understand. It doesn’t need to be expedited. There is a different way of solving the problem.” If they have misunderstood and can then supply the evidence that we need, they will do so. We are trying to educate customers about what we need. My hope—indeed, my ambition—is that we never have to refuse an expedite case, because solicitors ask for it only when it meets the criteria. At the moment, however, we are getting some requests that are not appropriate and which we therefore cannot expedite.

Alexander Burnett (Aberdeenshire West) (Con): I alert members to my entry in the register of members’ interests.

I will start on a positive note: I have had some good feedback from professionals about some of the improvements to the service. I just wanted to pass that on. In a similar vein, I have to say that I am an avid reader of your blog, and I welcome your appearance before the committee and your willingness to share information today.

However, I hope that you will take away from this meeting the disappointment felt by the committee and by SPICe about a lack of transparency or willingness on your part to share some of your data beforehand. Indeed, the question that I would like to pursue now as a follow-up to Michelle Thomson’s questions on the back of Keith Robertson’s letter is about just that: what more data can we get?

For example, can you clarify whom the bespoke agreements are with? Are they with customers? Can you provide some sort of metric or key performance indicator for how many agreements there are and what timeframes are being agreed under them? Is it three months or a year? Are they all under a year, as you have said—and, if so, can we see that? Some of the data suggests that some cases might take 11 years. How can we see that happening?

The question, therefore, is: what further data can you share on those agreements? Also, does anybody have an appeal under them? Is it really a mutual agreement, or is it just dictated to customers?

Jennifer Henderson: Again, this comes back to Mr Beattie’s question, but we should be clear about our ambition with regard to new cases coming in the door and when we might want to reach a bespoke agreement on the timetable for turning them around. We are not there yet,

because it requires us to get to the point where the vast majority of cases are being done within the defined 35-day timeframe. The small number of cases that we recognise instantly cannot be done within that period will then need a bespoke agreement. When we reach that point, we will be more than happy to think about the metrics that we would capture around how many such agreements there are, their average timeframe and so on.

The position at the moment with our long-standing open casework is that there is very much a focus on expedites. When a customer comes to us and says, “I have an urgent need to get this case back”, we will tell them how long it will take. As I said a moment ago, our average turnaround time is nine days, but we have also done something that was very urgent in 48 hours. Colleagues worked through the night to get it done, and I am proud of them for doing so.

If it would be useful, we could provide more information on expedites and their turnaround times. As I have said to Ms Thomson, when we can move additional people over to work on our oldest cases, we should start to be able to predict how quickly we can get rid of that 2017 set of open cases. I will, of course, be grateful to the committee for holding me to account for that delivery. When the team has gone through the 2017 cases and has an estimate of the timeframe, we will be able to be clear on when we can expect those cases to be gone and, beyond that, how we expect that effort to roll forward into 2018, 2019 and 2020. I am extremely confident that the timescale will be nothing like the timescales suggested in Mr Robertson’s letter.

Alexander Burnett: Thank you. I am sure that we all hope that, too. We would certainly be grateful for more data on the expedite process.

How many of the 5,000-odd outstanding cases do you think have bespoke agreements?

Jennifer Henderson: I am sorry—are you talking about 2017?

Alexander Burnett: Yes, the 2017 backlog.

Jennifer Henderson: None will have agreements yet. If someone has requested an expedite, they will have had the case back, and it will be gone from the list.

Alexander Burnett: But how many cases in the 2017 backlog have had bespoke agreements? I am not talking about the expedite process.

Jennifer Henderson: None yet.

Alexander Burnett: When do you expect to have an idea of that? You have said today that you expect all of them to be done within a year, but you have nothing to evidence that.

Christopher Kerr: Just to be clear, the 35-day period and the bespoke agreements that we were talking about are in relation to new applications, not applications that are already in the system. Applications that are already in the system will, as the keeper has mentioned, be dealt with through the expedite process. The improvements that we are making in the up-front space are designed to release capacity so that we can move much more quickly on the cases that are already in the system, with a particular focus on the 2017 cases. However, we do not have bespoke arrangements for them. We speak to the customers who have submitted applications all the time about progress, but the bespoke arrangement that we have mentioned is focused on new applications.

Alexander Burnett: What more information can you provide on the detail of that backlog and when those cases will be completed?

Jennifer Henderson: As we firm up the capacity that we will be able to release to deal with the older cases—in other words, the capacity that will take us beyond just being able to deal with the number requested for expedite—we can be firmer on the timetable for clearing those older cases. At the moment, we can deal with all the expedites that we have approved and some extra; as we release more capacity, we should start to be able to be clearer about the timetable for clearing 2017 and then clearing 2018 and 2019. We will be transparent with customers on that, and that will, I hope, help customers make an informed choice about whether there are additional cases that they would like to request an expedite for, because the timetable that we can commit to will be too long for them.

11:00

I just want to make it very clear that we are in this window of fixing what is a very long-standing problem—and fixing it forever. We will get to the end of our current corporate plan; we will not have long-standing open cases; and everything that comes in the door will be done within a fixed timeframe or done in agreement with the customer if it is going to take longer than that. A solicitor qualifying today will have two, three or four years of experiencing some long-standing open casework with ROS and then that situation will be gone forever. That will represent a huge amount of progress, because long-standing open casework is not a new problem for ROS. It has had this problem forever, and it is just taking us a bit of time to get it gone for good. It would have gone faster, had it not been for the pandemic.

Alexander Burnett: Finally, when do you expect to be able to share that timetable with the committee? Would it be possible to show in your

blog month-on-month or quarter-on-quarter improvements alongside some of those figures?

Jennifer Henderson: On the latter question, definitely. We would really welcome feedback on how the information on the blog and the performance information would help people see improvements.

As for when we will be able to come back with a timetable for our expectations with regard to the 2017 cases, the answer is as soon as we have completed the work of looking at it. That will mean sometime this quarter, I think. Is that right, Chris?

Christopher Kerr: Absolutely, yes.

The Convener: Rejections have been mentioned. There has been an increase in the number of rejections. In 2021-22, which is the last full year, the increase in the number of rejections has been significant; the number of rejections of applications over three months old has more than doubled. Why has it gone up at that rate? Do you think that the number will stabilise? I know that it is a small percentage of all cases, but the rejection rate is on an upward trajectory.

Jennifer Henderson: My understanding is that the rejection rate for applications not older than three months is increasing and, bluntly, that is because solicitors are making more mistakes with what they are sending to us and we need to reject them. Our percentage for applications over three months old is very stable. It is about 0.3 per cent. Perhaps it would be helpful for Chris Kerr to briefly explain why we need to reject applications.

Christopher Kerr: You will know that the legislation sets out what is called the one-shot principle, whereby applicants should get applications right the first time and, if they do not, the keeper should reject them. Our position is that, if we have not spotted an error or a problem with an application within three months, the keeper should relax the one-shot principle and allow applicants to amend or supplement their application, and that is what we do. In any case that is rejected after the three-month period, there will have been a discussion with one of our senior registration advisers and the submitting applicant about the best course to resolution. Sometimes in those cases, the applicant will decide to have the case rejected and to start again, because that is a better solution for them in the circumstances, even though there is an option to keep the application on the record.

The data will include what I might call administrative applications. I can give you an example. A party might submit one deed to us for registration. We might then create two administrative applications to give effect to that deed, depending on what it is doing and the titles that it is being registered against. When we come

to fully complete that registration, we might discover that, in fact, we did not need two administrative applications, so one of the administrative applications will then be rejected and will count as a rejection in the rejection data, but there is no further work for the applicant to do; the deed itself has not been rejected. It is an administrative, in-house rejection rather than an application being returned to the applicant.

The Convener: In 2021, 716 applications were rejected. In the following year, 1,247 were rejected. The number of rejections went up quite a lot. Was that for the same reasons that you outlined, or is there another reason why the number spiked?

Christopher Kerr: No, I do not think that there was a particular reason for the spike. That has just been the outcome of the case-by-case discussions that we have had with the applicants.

Jamie Halcro Johnston: I am seeking a few clarifications. First, is there an additional charge for the expedited service?

Jennifer Henderson: No.

Jamie Halcro Johnston: Thanks.

Until 2020, you operated a trading fund. You were able to build up a reserve and hold a reserve. First, do you still hold that reserve, or is that with the Scottish Government? Secondly, since 2020, any surplus has been handed to the Scottish Government. Is that held in a reserve? You mentioned being able to draw down on it. I do not know whether that means that it is allocated or ring fenced for you. In those two cases, what are those financial figures?

Also, you have a backlog and you have identified that you need to put resources into it in order to clear it. Could you not use some of those funds to deal with the long-standing cases?

Jennifer Henderson: I will deal as quickly as I can with your three points.

We transferred the reserve that we held at the point at which we were reclassified. It was just short of £60 million. It went into the Scottish consolidated fund and is not ring fenced to ROS. The same is true of any surplus that we generate, as that, too, goes into the Scottish consolidated fund and is not ring fenced to ROS.

When we were reclassified, we were very clear that two fundamental risks that ROS was able to manage itself when it held its own reserve had to transfer to the Scottish Government. The first risk was the risk of a downturn in the housing market and ROS not having enough income to cover our costs. That was why, when the pandemic hit, we were able to successfully make a case to the

Scottish Government that we needed budget from it to allow us to continue to pay people.

The second risk that was transferred is the risk of a very high compensation claim. The warranty that I provide is in effect infinite. People could claim against it and, if we got a very high claim, I clearly would not be able to meet it if I do not have money to draw down on. The Scottish Government has accepted that, in that case, it would be liable to pay out.

The amount of money that we are expecting to generate as a surplus over the next few years varies depending on what we think about the housing market. This goes back to the convener's question about the window of our financial projections. We currently expect that surplus, if it is generated, to be between £2 million and £10 million each year, depending on the housing market, but our commitment to the Scottish Government is that we will break even and that we will not therefore expect to be a drain on the Government by needing money to cover our costs. If we generate a surplus, that is a bonus, I suppose.

Jamie Halcro Johnston: Sixty million pounds was passed across so that the Government might have more confidence on that basis.

I do not know whether you have done any analysis of the cost of clearing the backlog. It is part of your plan to do it steadily but, if you wanted to expedite that, do you know how much it would cost? That is why I asked the earlier question about contractors and being able to be flexible on meeting demand.

Jennifer Henderson: It is an interesting question. I have often wondered whether, if we had spent more money, we could have got here faster, and I think that the answer is no. If we had more money and could hire extra people, there would be a big training overhead to get those people effective on the old cases and we would see a dip in the productivity of our existing people, because they would be busy training up the new people. We would go backwards in order to go forward.

We might then have had extra people available to work on the backlog, but what would we do with those people when we no longer need them? It would be irresponsible to recruit a lot of people to solve what is essentially a shortish-term problem of three to four years, and then have a load of civil servants who we have no role for. Our workforce planning is all about having the right number of people to work through the plan that we have in front of us, retraining and reskilling those people as we go for other roles in digital, replacing our contractors, and not ending up with a lot of extra

people who we have skilled up and used for a few years but just do not need in the future.

Jamie Halcro Johnston: So contractors do not come in with the necessary skills but need training.

Jennifer Henderson: There are no people out in the market who could come in and deliver on our registration function. Our contractors are all digital people who deliver our digital skills. The registration stuff requires you to be in-house and understand how to use our systems. Even if we were to hire people from other jurisdictions, they would need a lot of retraining to work with our systems.

Fiona Hyslop (Linlithgow) (SNP): I would like to ask about your risk register. We understand that it is published every month for your board. We can find a June 2021 risk register, but I would like to ask about the transparency of that for scrutiny purposes and access for this committee and also about how it has informed your corporate plan.

Jennifer Henderson: The most recent visibility of the risks that we are covering will be available through the board papers that are published. The last lot of board papers published are the March 2022 papers. We decided quite deliberately not to publish the detail of the risk register, but I would be very happy to provide it privately to the committee if it would be useful for you to see all of our risk register and all the controls and everything else that sits underneath it. We would not want it in the public domain in detail, because it contains some sensitive information about how we are mitigating some of the risks, such as our cyber risks.

As for how the risk register informs our corporate plans, it is a bit chicken and egg. We develop our corporate plan setting out what we want to deliver. We then run a risk workshop with our board and our audit and risk committee to look at risks that would stop us from achieving our plans. We identify the mitigations and controls for the risks and then have processes with the board and the audit and risk committee through the year to ensure that we are mitigating those risks sufficiently. When we get round to the next corporate planning cycle, how much success we have had in mitigating those risks informs what we do in our next corporate plan.

The best example would be some of our digital risk mitigations. Developing our digital systems is partly about providing better services to our customers, but it is also partly about taking out some of the underlying risk from having legacy digital systems that are potentially more vulnerable. That is how it goes round in that cycle of informing what we do but also being part of what we need to manage in order to ensure that

we are successful in what we do—if that makes sense.

Fiona Hyslop: It is fair to say that a lot of your risk management is on the supply side and is about how you operate as an institution and an organisation, but clearly the importance of Registers of Scotland lies in the fact that it is vital to our economy, to our businesses and to individuals. The impact of the risks that you carry can have quite life-changing effects on people. Who manages that outward-facing risk and why does that not appear in your corporate plan or indeed, from what I have seen, your risk register?

Jennifer Henderson: Are you describing the risk of us not delivering effectively and the knock-on effect of that?

Fiona Hyslop: Yes.

Jennifer Henderson: Our whole purpose as an organisation is to deliver effectively, and the risks that we manage as an internal organisation are about making sure that we do so. We are therefore mitigating the consequences of our not being an effective organisation in everything that we do. I suppose that that is the whole point of us—to manage the risk of not delivering effectively so that we give good service to the people of Scotland.

Fiona Hyslop: But there is no obvious transparency about that overall impact to make it clear, whether it should be the board's oversight or indeed the minister's oversight.

Could I give you an example? We have talked a lot about volume and you have talked effectively, I think, about how you are managing volume. However, clearly, if Registers of Scotland or lawyers make a mistake, it could have consequences. I think that the rejections could be seen as a good thing—as gatekeeping potential problems with what has been presented. However, clearly, the risk of that is greater—you have said this yourself—from a 2017 case than it is from a more recent case, because trying to manage that risk, or to rectify a problem, whether it lies with your organisation or with the supply chain of lawyers providing the applications, is more problematic if you are carrying more older cases. The potential severity of that impact needs to be measured somewhere.

I am not sure that that is transparent either in what you have been saying to us today or in your corporate plan, or indeed in what I have seen in the risk register; it is just service inputs as opposed to risk outputs to the economy. We are the economy committee, so clearly we are interested in that. It may not always be you, and it might be individual lawyers. Between you and your major customer base—lawyers; obviously, you work very closely with the Law Society—how do

you manage the risk of things going wrong, as can and does happen? We know that it will not be large cases; it will be small cases, but those cases could have a major impact.

Do you have a duty of care at all and who holds responsibility for any impact on individuals—you will know about mental health issues that we will come to you about—as home owners or indeed businesses? Where does the risk of that impact lie? Where does the accountability lie? Is that with individual lawyers, the Law Society, your board or you as an organisation? There is definitely a risk there, but who is managing that risk and how do we make it more transparent that it is being managed properly?

11:15

Jennifer Henderson: I think that you are describing an ecosystem-level risk whereby, if a mistake happens somewhere in the system, there is an impact on an individual. There is gatekeeping at various stages in the system. Lawyers are professionally trained, and they hold indemnity for the work that they do. Our role as an organisation is to do our job in our part of the chain of what happens in a property transaction as effectively as possible.

That is one of the reasons why we have a quality metric. We measure trying to continuously improve getting it right without needing things to be rectified. We have a warranty scheme so that, if a mistake has occurred somewhere in the system and an individual has lost out as a result, there is recourse to come back to the warranty scheme. It is really important—Chris Kerr speaks better to this than I do—to know that the keeper's warranty scheme is not just about mistakes that I make; it can be about a mistake that a lawyer makes that means that an individual has lost out, but can claim against us. We then sort out behind the scenes whether I should claim from the lawyer and so on.

We are part of a system that manages the risk to the individual of there being a mistake in transacting a property, but we cannot control all that risk. On where our responsibility lies, our whole strategy setting for the organisation is about how we can improve, how we deliver, how we eliminate the possibility of making mistakes, and how we turn things around more quickly so that, if there are problems, they are spotted more quickly and can be dealt with more quickly. I feel that that is what we can do within the system. I am sure that other people in the system will be looking at things.

Rejections are a great example. When we reject, the law firms get individual reports about what has happened with their cases. Are they

seeing more rejections for a particular case? I sincerely hope that those firms take those reports seriously, look at them, and think about how they can improve what they do so they do not make those mistakes in the first place.

I would be very happy to explore in more detail what else we could do to reassure the committee that we take that responsibility to the economy very seriously.

Fiona Hyslop: Somebody needs to do that, and that is probably what people are really interested in. Rather than hoping, it would be very helpful if you could consider some kind of collective oversight—you referred to an ecosystem; it is that—to ensure that those risks and that impact are managed.

The Convener: I will bring in Michelle Thomson, who has a quick supplementary question on that point.

Michelle Thomson: I am sorry—it is not a supplementary question. It is on something entirely different, and it is a quick question for the end.

The Convener: I want to raise a couple of issues before we conclude, so I will come back to you, if that is okay.

The original target for completion of the land register was 2024. I think that the last time you spoke to us, you spoke about the difference between completion and functional completion. Is there a date for actual completion?

Issues around voluntary registration have been raised with us. Voluntary registration is a key part of achieving functional or completed registration. Concern has been expressed about the time that it has taken for voluntary registrations to be completed.

Another issue is excluded categories. I think that SPICe contacted you to look for some clarity on what the excluded categories are and what percentage of the overall land mass is covered by them.

What is the target? Are we aiming for full completion and closure of the sasine register or only functional completion? Do we have a date for full voluntary registrations and information on the time that it has taken for those to be completed? Can we have some more detail on the percentage of excluded categories?

Jennifer Henderson: I will bring in Chris Kerr.

There is not a date for when every last square inch of Scotland will be on the land register—certainly not from our perspective, because that is not within our gift. We cannot make people voluntarily register, and there may be people who

choose never to submit their land to the land register.

On delivering the benefits of a complete land register, that is why we have gone for saying that functional completion benefits people who want to transact. It means that their land is on the land register and that it is a dealing with whole when they want to transact. We have done the unlocking sasines work so that the visibility of the ownership is attached to a map for all the things that are not yet on.

Does Chris Kerr want to say something about the excluded categories for functional completion? Most of that is social housing. That is never going to transact, so it does not need to be on the land register to deliver functional completion. However, there are other odd things, such as telephone boxes and ancient monuments, that will never transact.

Christopher Kerr: I can deal with a couple of things.

Voluntary registrations are subject to the general improvements that we have spoken about. We are trying to speed up the rate at which we go through voluntary registrations. It is important to understand that, in a voluntary registration situation, rights do not change. A party takes its ownership from the register of sasines into the land register, and greater clarity on the boundaries and what it owns will be given, but there is no change of rights in a voluntary registration. That is set against the 2017 casework, for example, where rights are changing. That is just for context. That is swept up in our general improvement approach, which the keeper has outlined.

For clarity, on excluded areas, nothing is excluded from coming on to the land register. If someone applies for a voluntary registration, we will deal with that. If land is triggered through a first registration, we will, of course, process that. When we talk about exclusions, we talk about our idea of trying to set out what we mean by functional completion. We mean by that that properties that tend to transact regularly are on the land register, so they get the benefit of the faster conveyancing that there can be with land register titles—in particular, dealings with whole, which go through in large volumes very quickly. To do that, we look at the number of addressables in Scotland and the total number of addressables. We then take out properties that we think will not typically sell very often.

The keeper mentioned social housing. Things such as garages will not, in general, sell on their own. I know that there are some exceptions to that but, generally, a garage will be sold with a property to which it is attached.

We review that data every six months. Every six months, the address base is updated generally, and we review whether it is right to exclude the things that we have excluded and whether there are data that show that things are being transferred more regularly than we anticipated.

I think that we gave the full list to SPICe. If we did not, we will, because we can—

The Convener: I am sorry to interrupt, but I think that SPICe asked for a percentage of the land mass that is covered by excluded categories. I think that it has an idea of what would come under excluded.

Christopher Kerr: Okay. The answer to that is that we do not know that against land mass, because we do not know the land mass that is covered by things such as ancient monuments, post boxes and post office boxes that have an address, so you would be comparing apples and oranges there. We do not have that.

Michelle Thomson: My question is a supplementary one to that question. Land register completion by local authorities is quite variable. There are some very high completion rates for some local authorities; incredibly, others have a rate below 50 per cent, and some have zero per cent. I want to understand what influence, if any, you have over that completion by local authorities and why there is such disparity in those figures, regardless of whether you separate that from the land register or unlocking sasines.

Jennifer Henderson: In headline terms, local authorities have had two ways of bringing their land on to the land register. They could go through voluntary registration. In some cases, local authorities have chosen to do that; in others, they have not. The most typical reason for not doing that is affordability. I hasten to add that that is not to do with our fees; it is to do with the necessary background work that needs to be done to prepare a voluntary registration application. That is part of the reason for the variability.

The other issue is that we were running a programme of keeper-induced registration, typically for things such as social housing. If a local authority had all the data and could supply us with the information, we were able to do the work at our own expense to put that on to the land register. Local authorities held their data in very variable ways, and only a small number of them had their data in a state that they could give to us so that we could process it. Other local authorities simply did not, so keeper-induced registration was not an option for them. However, at the time of doing that, we spoke to every local authority to understand whether they had data in a form that we could help them with and, if so, how that

approach would work. That describes the variability.

The positive thing that has happened since then is that we have worked with a number of local authorities that were not able to go through voluntary registration or did not have their data in a state that might be appropriate for keeper-induced registration in our unlocking sasines work, so that the data was in a good enough state for us to say, "Can we plot it on a map? Can we tie it to the underlying sasines sheet so that it turns up in that transparency of land mass ownership?" We will continue to talk to local authorities about whether we can help to at least surface some level of information about their ownership through that approach.

Michelle Thomson: Do you have an active plan for the next wave of how to engage with local authorities, given the disparity in the figures? I appreciate that the local authorities have been affected by Covid and are restarting a lot of their operations.

Jennifer Henderson: Yes. As part of our overall unlocking sasines work, we are just above 80 per cent of land mass now covered, so we will be looking hard at the remaining 20 per cent and perhaps targeting local authorities. However, we might get a bigger bang for our buck by talking to some of the big landed estates that have not yet voluntarily registered and saying, "Can we work with you on at least unlocking sasines?" The goal is to get as close to 100 per cent as quickly as possible. We will talk to the right people to do that.

The Convener: Do the keeper-induced registrations mainly focus on local authorities? You also mentioned large landed estates.

Jennifer Henderson: For clarity, we can do keeper-induced registration really only for houses. We had a programme of doing that for private houses. That was not efficient, and we have stopped that now. It is much better to put the people who can do that work on to our long-standing open casework.

We have done what we can with local authorities that had their data in a decent state. There are no more but, clearly, if a local authority came forward and said, "We have our data in a good state. Can we have a conversation about keeper-induced registration?", we would absolutely be open to that. However, we are not currently being approached on that basis.

The Convener: Okay. Thank you. That brings us to the end of this morning's evidence session. I thank Jennifer Henderson and Christopher Kerr for joining us.

11:27

Meeting continued in private until 12:09.

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