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ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 25 January 2012

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE
3rd Meeting 2012, Session 4

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Chic Brodie (South Scotland) (SNP)
*Rhoda Grant (Highlands and Islands) (Lab)
*Patrick Harvie (Glasgow) (Green)
*Angus MacDonald (Falkirk East) (SNP)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Stuart McMillan (West Scotland) (SNP)
*John Park (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sheenagh Adams (Registers of Scotland)
Alan Cook (Scottish Property Federation)
Gary Donaldson (Millar & Bryce)
Gavin Henderson (Registers of Scotland)
John King (Registers of Scotland)
Ann Stewart (Scottish Property Federation)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 25 January 2012

[The Convener *opened the meeting at 10:01*]

Land Registration etc (Scotland) Bill: Stage 1

The Convener (Murdo Fraser): Good morning, and welcome to the third meeting in 2012 of the Economy, Energy and Tourism Committee. I welcome committee members, witnesses, and guests in the public gallery, and I remind everyone to turn off all mobile phones and other electronic devices. We have received no apologies for absence.

Agenda item 1 is a continuation of our evidence taking for stage 1 of the Land Registration etc (Scotland) Bill. I am delighted to welcome Gary Donaldson, business development manager with Millar & Bryce; Alan Cook, chairman of the Scottish Property Federation commercial committee; and Ann Stewart, member of the Scottish Property Federation commercial committee. Thank you for coming.

Normally, before we move to questions, we ask witnesses whether they want to say something by way of introduction. I believe that Mr Donaldson wanted to say something.

Gary Donaldson (Millar & Bryce): Good morning. Millar & Bryce is a private search firm—the largest in Scotland—and we were formed in 1875. To give committee members some context, private search firms supply reports and information to solicitors, which are used as part of the conveyancing process. Millar & Bryce supply conveyancing reports in approximately 60 per cent of residential transactions in Scotland, and approximately 90 per cent of commercial transactions in Scotland. We use a variety of data sources in compiling our reports but, for property reports and transactions, our main data supply is from Registers of Scotland. Like other private search firms, we use the keeper's online system—registers direct—to access information on both the land and the sasine registers. I understand that we are one of the largest users of registers direct and that, last year, we made approximately 170,000 searches against both the land register of Scotland and the general register of sasines.

As private searchers, we are in the interesting position of being not only significant customers of the keeper but competitors of the keeper—providing the same kind of reports for use in conveyancing transactions.

Broadly speaking, we are very supportive of the changes that proposed in the bill. Should they be accepted, there will be a significant impact on us, with changes to process within our business and our peers' business, but we believe that the end result will benefit our customers. However, we have concerns over some specific proposals to grant wider powers to the keeper in relation to commercial activities and fee setting.

The Convener: Mr Cook or Ms Stewart, do you wish to say anything by way of introduction?

Alan Cook (Scottish Property Federation): No.

Ann Stewart (Scottish Property Federation): No.

The Convener: In that case, we will move straight to questions.

This question is for all the witnesses. How much priority should be given to the completion of the land register? By completion, I mean having all—or as much as is practicable—of the land in Scotland transferred to the register. What advantages might accrue? Should the bill include a target date by which the land register should be completed and the general register of sasines closed?

Ann Stewart: Speaking for businesses and the profession, I think that eventually having all of Scotland clearly mapped and identified in the context of the land register is a good aim. I would not say that it is an excruciatingly high priority. It has to be done in a way that allows businesses to transact swiftly and efficiently. It should certainly not be an overarching priority that might get in the way of normal transactions. It would be quite dangerous to set a target date for this work: instead, it should be phased in sensibly with some easy wins that can be made without too much disruption and within Registers of Scotland's resourcing capabilities.

The Convener: Do you have a view on this, Mr Donaldson?

Gary Donaldson: I share Ann Stewart's views. Accelerating the programme will be beneficial; indeed, it is clearly more efficient to search against one register rather than two and, in general, the land register is easier to interpret. This move will make things more efficient.

John Wilson (Central Scotland) (SNP): This is a major piece of legislation that, as the submissions make clear, will impact severely on some organisations. Indeed, concerns have already been raised. What are the current land register's shortcomings? Does the bill do enough

to address any such shortcomings, or does it need to do more? Are there any additional issues that it should address to ensure that we have a piece of legislation that will take us forward?

Alan Cook: The main shortcoming that the bill addresses is the lack of detail in so many aspects of the Land Registration (Scotland) Act 1979, as a result of which the keeper has had to create certain administrative processes and procedures. Although what has in many respects been a very pragmatic approach has allowed the land registration system to work over the years, it is less than satisfactory that so many quite important issues are being dealt with at what is in effect an administrative level. As the debate over the bill has made clear, many of those issues, such as dealing with a non domino dispositions and mapping, are significant.

The Scottish Property Federation's overall message is that it supports the bill's aims and purpose. I am not going to list the many good things about it but, at random, I highlight the move to bring territorial waters into the land register. Although the number of offshore renewable energy developments is rising, there is, at the moment, no way of registering Crown Estate leases in territorial waters. As that could stand in the way of the ability to fund such developments or grant standard securities over the interests, we very much support moves to unlock that.

We also support the progress that the bill makes on mapping. We might discuss this later, but some issues can arise with the level of detail in Ordnance Survey maps.

In short, there are plenty of shortcomings to deal with and, in that respect, some of the bill's aims are laudable. There are also some things that we need to discuss, but we think that it will serve a very useful purpose.

Gary Donaldson: From our point of view, there are no major shortcomings in the existing system. However, I can certainly see the bill's wider benefits to our customer base.

John Wilson: Are the witnesses content that the bill will tidy up all the loose ends from the 1979 act and give us a piece of legislation with which the industry and the public can be happy?

Is anything not in the bill that we should consider? We are at stage 1 of the bill, and it would be useful to know now whether any other issues should be covered in it, so that we can dig into them to determine whether other sections need to be added or other measures need to be identified to allow the bill to become an act that is workable for some time. We do not want to have to revisit it in 20 or 30 years.

Ann Stewart: The bill is a framework. It gives us a structure. It does not throw away our existing system and replace it with something new; it improves the existing system by filling in the legislative gaps but does not fundamentally alter the process that we know.

Much of the detail will be in regulations that will follow the bill, and some finessing points may be incorporated into those. However, as a framework bill, there are no obvious omissions.

Alan Cook: Provisions relating to provisional shared plots were in the Scottish Law Commission report but are not in the bill. Those were drafted in response to the case of PMP Plus Ltd v the keeper of the registers of Scotland a couple of years ago. I do not know whether the committee is familiar with that case. It is to do with the fact that, in the past, housing developers and the like have sought to maintain flexibility over the extent of common areas within large housing developments. When they have given individual owners common rights to those shared areas, the order of events in the land registration system has caused some difficulties with the rights that people are given or not given.

That issue came to a head with the PMP Plus case a couple of years ago, following which the SLC published some thoughts and proposals on how the problem might be addressed. Those have not made their way into the bill, and it is probably fair to say that much of the profession is quite relieved that they have not done so, because we could see many shortcomings and problems with how they would work in practice. We are quite pleased not to see those provisions in the bill. Ann Stewart is involved in discussions in the legal profession to find other solutions to deal with the issue.

Patrick Harvie (Glasgow) (Green): I find the tone of some of what has been said so far a wee bit ambiguous. We heard that the completion of the register should not be considered an "excruciatingly high priority"—I think that that was the phrase. However, previous witnesses made the case that progress so far has been excruciatingly slow. Mr Cook said that he agreed with the comments about completion not being an incredibly high priority, but then he said that he strongly supported the aims of the bill. The policy memorandum says:

> "Completion of the Land Register is considered to be the most important policy aim of the Bill."

If the witnesses support the aims of the bill and that is its most important aim, why should we not set a clearer expectation that we do not want to wait another century for the register to be completed?

Alan Cook: I agree with you. We support the bill's overarching aim, which is to achieve a complete system of land registration in Scotland.

The experience of the past 30 years of the land register's operation is that the process has been slower than was anticipated. There are many reasons for that. I guess that the most significant one is the triggers for land registration, which the bill extends. In addition to that, there was a slow roll-out of the operational areas for land registration. That was to do with resourcing in Registers of Scotland. There is a resourcing issue as to how registration can be completed. That is a policy matter—it is for politicians to decide how they resource the land register and Registers of Scotland to facilitate that.

10:15

I completely agree with Patrick Harvie. From the perspective of business and the legal profession, we support that end and want to move towards it. As a property lawyer, your heart sinks when the title deeds for a property come in and it is a box of old sasine titles. From a client's perspective—that is, the point of view of business—there can be significant costs in getting lawyers to go through a large box of title deeds. That box might have all sorts of problems in it, many of which could be ironed out through the land registration process. Leaving aside the other issues such as who owns Scotland, that is the benefit that land registration achieves.

Rhoda Grant (Highlands and Islands) (Lab): I want to return to the issue of shared plots. The bill introduces separate title sheets for plots that are shared between properties, for access and the like. Is that a move in the right direction, or does it add a layer of complexity to the process?

Ann Stewart: Personally, I cannot see the point of that measure, although there might be circumstances in which it would be useful to have a separate indication of areas that are owned in common. However, I cannot see the advantages in setting up a whole new title sheet for that. For example, at present, if two, three or four home owners share an access road, the title plan of their houses will probably show a right in common to the access that is shown coloured pink, or something like that. That situation is already clear. I am sure that those who have come up with the proposal could give plenty of examples of circumstances in which it would be an advantage but, as a practitioner, I am not sure that the absence of a separate title sheet that shows shared areas is a problem.

As I say, it might be useful. To return to an issue that Alan Cook mentioned, in a development of 200 units, each owner might be given a share in common amenity areas. As the plots are sold, those shares accumulate so that, on day 1, perhaps only one person has a share of ownership, but three, four or five years later, 200 people will have shares. There could be a separate record of who owns those shares. That might be useful information to have but, as practitioners, we have not necessarily noticed the lack of it.

Gary Donaldson: To take a different perspective, we often receive queries about establishing common ownership. From our point of view, a separate title sheet would assist in identifying that ownership.

Rhoda Grant: To continue along the same lines, we have received evidence about servitude rights and burdens not always being noted on the title sheet of every property on which they impact. If someone has rights of access on a property, that might not be on their title sheet, although it will be on the original sheet. Does that cause problems?

Ann Stewart: It can cause problems. The issues that you talk about predate the Title Conditions (Scotland) Act 2003, which came into effect on 28 November 2004.

Since that date, newly created burdens and servitudes have to be registered against the title of both the burdened property—in other words, the property that has to suffer or perform the burden or to which the servitude is applied—and the benefited property, which will cover the people who own the property or who are entitled to exercise the right of access or to see a particular burden performed. In future, those issues will become less and less important. However, in many titles predating 2004, servitudes have been created in the burdened property without the benefited property being identified. In many real burdens, it is unclear who has—or the number of people who have—enforcement rights, even though that forms a fairly major part of a practitioner's title examination process.

Of course, it is perfectly valid to create servitudes without any documentation; they can, for example, be acquired through exercise or prescriptive use over a requisite period of years. In other words, a right can be perfectly valid, but there might be nothing on the title sheet to say so. These days, however, conveyancers tend to see that as a flaw in the title and a lot of hoops have to be gone through to establish the validity and exercisability of those sorts of servitudes.

As I have said, problems can arise when these things are not apparent on the titles. Much more work and examination is required to get to a not entirely conclusive point, after which a risk assessment is undertaken as to whether that will be okay from the purchaser's point of view.

Rhoda Grant: I have a final question along the same lines. The bill allows for advance notices—

The Convener: Before you go on to that issue, I believe that Mike MacKenzie has a question on servitude rights.

Mike MacKenzie (Highlands and Islands) (SNP): Going back to Rhoda Grant's first question on separate title sheets, I have a potential concern about problems arising in the fairly common situation in which someone's garage, say, is situated away from their dwelling-house. If there are separate title sheets and the owner dies, the title for the garage might get lost in the bureaucracy and it is possible that no one will realise that the two properties go together. Might that sort of thing happen if there are separate title sheets?

Ann Stewart: I am not sure that that is the same as the situation with shared plots. As I understand the proposals, both titles will have a note making clear that each is connected to the shared plot.

Mike MacKenzie: I know that it is not the same point, but it might be related as far as the format of the title sheets is concerned.

Ann Stewart: It would depend on how far away the garage was. If you were acquiring both properties together, you might expect them to have the same title number.

Mike MacKenzie: My understanding of the bill's proposals was that, if the plots were not contiguous, they should have separate title sheets.

Ann Stewart: It is certainly possible to put different bits of land on separate title sheets. If none of the sheets had a marker to make it clear that, say, this garage half a mile down this lane went with this house, one could be sold without the other. However, that can happen anyway. If you perceive that to be an issue, I suppose that the same kind of marker could be put on the title sheets, making it clear that there was a related plot. That is certainly the intention with regard to shared plots, but the difference there is that one plot is entirely owned by a single owner or proprietor while another related plot is in common ownership and the issue is the relationship between the two. What you are talking about is perhaps two separate bits of property that happen to be owned by the same person but which are not adjacent.

Mike MacKenzie: Possibly—or it might be one property in individual ownership, and then one in common ownership that appears on a separate sheet. Could it be that a second sheet might disappear from knowledge, as it were, and that ownership might therefore lapse?

Ann Stewart: That would be possible but, as I understand the bill's provisions, there will always be a connection. Cross-referencing will keep things together.

Mike MacKenzie: That is reassuring.

Rhoda Grant: The bill makes provision for advance notices. Do the members of the panel support such notices, or do they feel that combining shared plots, title sheets, burdens and servitude rights with advance notices makes the whole thing complex, with a greater likelihood of errors?

Ann Stewart: I do not know about errors. Practitioners in the industry enthusiastically support the system of advance notices; we think that it is one of the best things in the bill. There has always been a gap between completion and registration, and that gap can be fraught with risk. One of the unique features of the Scottish conveyancing system is the provision of letters of obligation—when firms of solicitors take on the risk of the registers being clear for the gap period between the handing over of the payment of the price of the property and the purchaser's title being made real by registration in the register. The legal profession has to pay high premiums for professional indemnity insurance, and that covers the provision of those letters. The cost of the insurance is one of the overheads that affect the cost of conveyancing.

If it is applied across all transactions, the system of advance notices ought to render the letter-of-obligation procedure redundant, which should lead to improved risk management, improved perception of risks, and improved protection of purchasers against the risks that can arise during the gap period. It would certainly improve confidence among purchasers and lenders if they had a clear indication of some kind of protection for the risk period, even if that period is sometimes very short.

Alan Cook: A point of detail arises in relation to advance notices. Others have raised the point, but it is worth repeating, and the Scottish Property Federation endorses it. There is uncertainty over whether a disposition of land, followed by a grant of a standard security by the purchaser, would need one advance notice or two advance notices. In some quarters, the view is that one advance notice is adequate for both parties—in effect, the lender can rely on the advance notice that the purchaser has registered or submitted. However, a concern is that lenders might be exposed to the actings of the purchaser. For example, if the purchaser—by fair means or foul, probably foul—decided to grant two standard securities at the same time to different lenders without their knowledge, we would get back to the race to the register. The first lender to get their standard

security registered will have won, while the other will have lost out on their security. We would prefer it if the system were clarified. For example, if a single advance notice is to cover both, it should be clear that the protection is for the benefit of any granter of a standard security that has been granted at the same time.

10:30

Ann Stewart: On a slightly different but related point, we need clarification of the actual effect of advance notices. The bill's explanatory notes suggest that the effect of an advance notice in respect of a particular transactional document would be that, if any other document appeared on the register during the advance notice period but in advance of the document to which the notice related, then once the document to which the notice related hit Registers of Scotland, the other document would be treated as not registered at all. However, that does not appear to be the effect in some of the examples given in the explanatory notes. If a disposition—in other words, the document that transfers title—were protected by an advance notice and another disposition had gone in previously, when the proper disposition hit Registers of Scotland the earlier one would be regarded as not having been registered, whereas the effect with standard securities is that both would stay on the register but the priority of their ranking might change.

Another example is that, if a deed of servitude granted by the seller were followed by the disposition to which the advance notice related, the deed of servitude would be removed from the register. In fact, both deeds might be required for whatever transactional arrangements had been put in place. We need a lot more detail about how the advance notice will work and the different permutations of documents that might appear. It is not always—indeed, it is not often—the case that a bogus deed will appear. In the majority of transactions, the documents that hit the register are those that will actually implement the transaction and, particularly in commercial transactions, a complex combination of documents might well be required. There needs to be a bit more thought about the effect of these advance notices in the overarching approach to purchaser and lender protection.

Rhoda Grant: I assume that, to make that legally binding, the bill would have to stipulate which of the documents—the deed or the advance notice—would have priority. That could not be done in guidance.

Ann Stewart: With regard to the legislative competence of what you can or cannot say, I think that we are talking about a lot of detail that it might not be appropriate to include in the bill. However, it could expand on the combination of effects that might arise without necessarily having to provide pages and pages of examples. We need more clarity about what we are trying to achieve with the interaction of documents.

Alan Cook: For example, it could be acknowledged that, if the applicants of a suite of documents collectively asked the keeper to follow a certain order of events for their registration, the keeper would pay heed to that. I have not stopped to think this through, but advance notices might complicate that order. About a year ago, Ann Stewart and I were involved in a complex project that required the registration of dozens of documents all at once and the order in which they were to be registered was carefully expressed for the keeper's benefit to ensure that everything made sense and to tell the story of what was going on. We would not want advance notices to stand in the way of that process.

The Convener: Mr Donaldson, do you or your company Millar & Bryce have any concerns about the quality of the information technology systems at Registers of Scotland? On a second, related point, do you have any issue with the quality of the maps on which the register is based?

Gary Donaldson: On the IT systems, we have had a lot of dialogue with Registers of Scotland and its IT supplier on the use of its online system. It was problematic when it was introduced and, although it has significantly improved, it is still quite deficient in some cases. From the user perspective, the technology is not great by any means.

There are some specific issues with the quality of the maps, but in general the quality of the mapping that we use is okay.

Chic Brodie (South Scotland) (SNP): You are suggesting that the IT system is not fit for purpose, on the basis of the way in which it was developed. Why has the uptake been so disappointing?

Gary Donaldson: It is a complex system with a large back-office database and large amounts of data, and it is not delivered in a particularly slick way. We find that there are delays when we access information, which impacts on our efficiency. We have to access scanned registers, which can take a significant time to come up. An image might take six to eight seconds to come up. That might not seem a long time but, in the context of our doing 170,000 searches a year, the time adds up.

Chic Brodie: How involved were users of the IT system in its development? Were they involved at all?

Gary Donaldson: There was little involvement in the development. We were consulted at the

stages of testing and roll-out and we fed back our issues to both Registers of Scotland and its IT partner. There is no doubt that some of them have been addressed, but the end result is still a system that is far from perfect.

Chic Brodie: Given the discussion that we have just had on advance notices, how open is the system to possible fraud and forgery?

Gary Donaldson: I do not have any concerns on the security side. Our concern about the system is about the operational performance.

Chic Brodie: Thank you.

Mike MacKenzie: I have a question for all the witnesses. I was slightly surprised to hear from Gary Donaldson that he is happy with the Ordnance Survey maps, because we have had a lot of evidence from various witnesses about their limitations. For example, there are varying scales in urban and rural areas, the maps assume a horizontal plane, and inaccuracies have come to light because modern surveying methods are much more accurate than they were when the maps originated. I accept that, at present, you have to use the OS maps as supplied, but do you believe that improvements can be made over time?

Gary Donaldson: We use our own version of Ordnance Survey mapping as well. Although we might take information from the keeper, we might overlay it on to our Ordnance Survey map. For internal business purposes, we just look at electronic scanned or digitised maps. In a commercial transaction, where mapping and boundaries are important, we are likely to use our own version of the Ordnance Survey map to create a deed plan, so it would not be the keeper's version of the map anyway.

I suppose that the underlying issues of the relative accuracy of Ordnance Survey maps lie not with the keeper but with Ordnance Survey. As you suggest, one issue is the scales at which the maps were captured. Ordnance Survey has invested heavily and is improving the accuracy of the maps, but there is an inherent problem with the scale of data capture. That is not necessarily the keeper's problem.

Alan Cook: We are aware of some problems that have arisen recently in relation to rural areas. They arise from the margin of error in the scales that are used for Ordnance Survey maps. In moor and mountain areas, the scale is particularly large. The problem has arisen particularly because of the increasing appearance of wind farm developments in rural areas. Suddenly, we need a more precise level of detail in the mapping in order to understand the boundaries of ownerships, but Ordnance Survey is not performing the necessary function to enable us to achieve that.

The keeper has found workarounds, such as the use of supplementary maps. As well as having the Ordnance Survey map as the title map, copies of the title deed maps are added to the land register. However, that is not really done to give that additional level of detail, and it takes us away from the whole point of having an overall cadastral map as a single point of reference that shows the extent of ownerships. The keeper and Ordnance Survey are aware of that and a working party is dealing with it. We would certainly like the issue to be resolved.

Mike MacKenzie: That point is interesting and leads to my next question. You will probably be aware that some of the sasines titles include maps at a larger scale than is available from Ordnance Survey. Should those not routinely be included as supplementary plans to help resolve potential problems, at least in some cases?

Alan Cook: Supplemental maps can be useful to express points of detail that the land register would otherwise struggle to describe. For example, I have been involved with a building in Edinburgh that has a strange arrangement with a stair that goes round the back. It is described as an interleaved stair. In effect, it is a double staircase that is a double spiral. One spiral is for one building and the other one, which follows the first, is for the other building. The land register has used the original sasine maps or drawings that show, level by level, the extent of the ownerships. Without that, the land register would have struggled to show what is going on there. Therefore, I agree that supplemental maps can have a role. However, when we start relying on them to get over problems with a margin of error that arise because of scaling, that is taking the approach further than it needs to be taken.

Mike MacKenzie: It is interesting that you mention flats, because I was going to move on to that issue. Witnesses have told us that, in some tenements, there is a problem with identifying flats and that there are no agreed conventions on that. Some flats are described as being on the left or on the right, but it can be difficult to understand what that means and which perspective that is viewed from, which gives rise to confusion. Do you support that point and agree that a plan that clearly identifies the location of flats in tenements and other flatted buildings could be usefully appended to title certificates?

Alan Cook: Perhaps. Because tenements are such a huge feature of property ownership in Scotland, they have always been dealt with in a particular way, namely that the tenement building within which a number of flats are held is outlined on the map that is used for the purposes of land registration and then the text in the title sheet describes the specific flat to which the individual

title relates. I agree that there is quite a lot of scope for uncertainty because of the use of terms such as “left” and “right” to describe which flat is which. I am not aware of any protocol that is supposed to be followed in expressing that. If there was a clear protocol that had to be followed, that would perhaps overcome that particular problem.

The Convener: We can put that question to the keeper later.

10:45

Stuart McMillan (West Scotland) (SNP): I want to ask about electronic registration and other IT issues. Obviously, IT issues are here to stay. Mr Donaldson said that, so far, the system has not been perfect and there have been issues. What should be done to ensure that the system is fully operational for all concerned?

Gary Donaldson: I should probably say first that we cannot really comment on electronic registration. From our point of view, it is really a matter of the electronic access of information. Those are two separate things.

We would have liked to have been consulted by the keeper far earlier when the new system was coming in so that our views could have been fed forward. As I said earlier, there have been some improvements, but I would have liked those improvements to have been more dramatic and to have been given a higher priority.

Stuart McMillan: Obviously, the register will increase as properties go on to it. What would you like to see happening to ensure that the system is robust enough to help the industry and the register keeper?

Gary Donaldson: Good stakeholder engagement is essential to ensure that performance issues are addressed as they arise. If the proposals are accepted, I suppose that there will be less reliance on the sasine register, with which we have many of our main problems, and more reliance on the land register, which is more efficient and seems to work better in the IT environment anyway. Feeding back issues and those issues being addressed are key to ensuring that successful delivery can be scaleable.

John Wilson: I have a question for Mr Donaldson. If I picked up correctly what you said earlier, you are in competition with Registers of Scotland on title searches. Can you define that competition and indicate whether you think that that may be part of the reason why the IT system is not as accessible as you would like it to be?

Gary Donaldson: Absolutely.

The Convener: You should bear in mind that the keeper is sitting right behind you. [*Laughter*.]

John Wilson: I want to try to explore that question. It is clear that, if individual organisations or companies are trying to use information that they think should be publicly available, we need to explore how that can be done not only to make company searches more accessible but to provide more accessibility for individuals who wish to search titles.

Gary Donaldson: I am trying to think of a scenario. Statutory reports are required for standard conveyancing transactions. The keeper provides exactly the same type of reports that we do in respect of forms 10, 11, 12 and 13. My understanding is that there is a level playing field and that the keeper’s staff will use the same systems that we use to prepare those reports. Therefore, I am not concerned that any nonsense is going on in the background. To emphasise that, I can speak only for my own business, but we managed to achieve around a 60 per cent share of residential transactions. The keeper’s share is therefore certainly smaller. I do not think that there is any competitive leverage there.

Chic Brodie: On the basis that you are in competition with the keeper and any good competitor will determine their commercial and financial outcomes in relation to the competition, where are you better than the keeper?

Gary Donaldson: We are far more flexible. We provide a richer product, and we look at various data sources to supplement it, rather than just reporting from the register. Because there is competition from the public sector, we have had to ensure that we add value to our products over the keeper’s products. It is probably worth noting that, commercially, we do not compete on price. In general, our products are probably more expensive than the keeper’s. It is a matter of service delivery and the quality of product.

The Convener: That was a very good sales pitch.

Chic Brodie: It was a good answer.

The Convener: If there are no other questions, I have a final question for the Scottish Property Federation. Is there anything that we have not talked about in relation to the bill that causes concerns to property owners or businesses that deal in land?

Alan Cook: We are quite interested in the proposals on the prescriptive acquisition of land and a non domino dispositions. We have an interest in having a system that is workable, practical and pragmatic because we are trying to get on with life, if I may put it in that way.

It is completely understood and acknowledged that the bill has to button down certain mischiefs and ensure that people cannot make them for nefarious purposes. We think that a non domino dispositions are useful in dealing with title glitches and historic problems and enabling sites to be unlocked for development, but we are concerned about the workability of the proposed processes, including, for example, the need to satisfy the keeper that the owner has not possessed the land for the previous seven years. It is the old problem of trying to prove that someone has not done something. The keeper might be able to provide some guidance as to how that requirement might be satisfied, but we are concerned about putting a burden on people who might have no knowledge about the land over a seven-year period.

We are also concerned about the need to notify owners. In perhaps the vast majority of cases in which the commercial property industry seeks to utilise an a non domino disposition, the whole point of doing so is that one cannot identify the owner. In a typical situation, an individual might be trying to put together a large development site by piecing together a number of pre-existing title ownerships. There might be one ownership to the left and a different one to the right but, because of inaccuracies in the plans that were drawn up 100—or even 10 or 20—years ago, the jigsaw does not go together properly. If we present all that to the keeper, she might take a pragmatic approach to the mapping—we can speak to the keeper's office about all that. On the other hand, the gap can be filled with an a non domino disposition. No one is trying to pull a fast one or steal someone else's land; it is simply a technique. In such cases, the need to notify the Crown raises questions about how the Crown itself views that gap and whether it will see some value in that. As for the need to demonstrate that an applicant has occupied the land for a year before the application can be submitted, I am not quite sure how that would work with a developer who is trying to piece together land in which he has had no prior ownership interests.

The whole point of the process is to get to the point where one can register an a non domino disposition, after which 10 years' prescription can run openly, peaceably and without judicial interruption before one can lay claim to a good title to the area in question. The conveyancing process tends to deal with the risk of something arising during those 10 years through title indemnity insurance and we are concerned about the effect of notification on the availability of such insurance. Up to now, a pretty invariable requirement of title indemnity insurers is that insurance will be offered only if no one who can possibly lay claim to the area has been told about it, and notification might stand in the way of securing such insurance, which is quite an important leg in making prescriptive acquisition of land work at a practical level.

Patrick Harvie: Mr Cook has explained fairly clearly why his members regard the a non domino disposition mechanism as convenient and useful and he has given us a fairly thorough description of some of the circumstances, which I am sure we all understand. However, is there a reason in principle why the first bid that is in the door is the only one that has any chance of securing the title, as has been suggested to us? Given the 10-year delay until people have a good title, as Mr Cook put it, is it not at least reasonable to add perhaps six months at the beginning to advertise a site so that other potential claims, including those from local communities in some circumstances, could be entertained?

Alan Cook: We are not trying to hoodwink anybody in the process, so I have no problem in principle with a site being advertised or with people knowing about it—leaving aside the concern that I expressed about the impact on the availability of title indemnity insurance. The issue is more about the timescales that the process demands, as against the realities with which we work in dealing with a property development, for example. It might not be practical to identify the problem, work out your strategy, start to advertise and then have a six-month standstill while you wait to see what comes out of the woodwork, before you can move on to the next step of pressing the button on your property development.

Patrick Harvie: Even your phrase, "your property development", assumes that there is one party with an interest. Is there a reason in principle why the first claim that is in the door is the only one that should be considered to have any merit?

Alan Cook: That depends on the circumstances. I mentioned one circumstance in which a non domino dispositions might be used—when a jigsaw of titles with different ownerships comes together and each title is being sold to a property developer who will create a wider development on a larger area. In that case, it is hard to know who could have a claim to the title glitch area, other than the people on either side, who are co-operating with the developer in any event.

I recognise that there are other potential scenarios in which somebody might come out of the woodwork. For example, that could apply to a series of transfers of ownership through the sasine register that involved lots of fiddly little references to bits of a coal bunker, first-floor landings and little corners of land here and there. At some point in the process, somebody's eye could have skipped a line and the last recorded title might miss one reference. The jigsaw would be

complete, but a tiny bit in the middle would be missing from the complete title description for the overall area. The a non domino disposition technique could be used in that case.

If you were being comprehensive, suspicious or cautious, you might ask how you knew that the person who granted the relevant title did not deliberately leave out that area as a ransom interest that they thought would have some value. I do not know whether that potential scenario ties in with your point that the first person who manages to get the title is home and dry, after the 10 years are up. However, if people can be identified, notification will pick up that situation.

Patrick Harvie: If substantial and reasonable effort is made to identify the owner, that will take a certain amount of time. I see no reason in principle why the same time should not be used to advertise the matter publicly.

11:00

Alan Cook: I can think of no problem in principle with advertising, because nobody is trying to hide anything.

John Wilson: I will comment on advertising.

Mr Cook, you referred to planning applications and developments. For any development, a planning application must be made and it should include neighbour notification. You gave the example of a coal bunker that someone may use surreptitiously as a ransom strip. Would it not be advisable to apply the same principle as we would with a planning application and give neighbour notification to surrounding landowners to say that title has been sought for that piece of land, rather than simply to display a public notice? That might help to speed up the process. Somebody could come back and say that the land belonged to them and they had title to it.

I was surprised to hear you say that it was in solicitors' interest not to raise the issue because it might impact on the title indemnity insurance. Would it not be advisable to introduce a requirement for neighbour notification when title is sought for a piece of land for which there is no identified owner?

Alan Cook: Leaving aside the point about title indemnity insurance, I think that there is no problem in principle with that. If what you propose is purely about trying to notify owners who have been identified, then, if someone who seeks title to a piece of land has been through the process and not been able to identify the owner, they can notify only the people whom they have identified. We would not have any problem in principle with a wider process—such as advertising, neighbour notification or putting notices on lamp posts—that would give people the maximum opportunity to put their hands up and say that they had an interest in the area. However, we would have to ensure that it did not stand in the way of what we would regard as reasonable use of the process.

Ann Stewart: If the point of the proposal is to identify the true owner, that would be the first stage of the investigation anyway and, if the person who seeks title can locate the true owner, they will, in all probability, engage with that person. It is not about some kind of land grab. However, if the point is to ask why the developer should be the one who gets to have the gap site just because they own land in the vicinity, why there should not be a free-for-all and why other people should not get the opportunity to acquire the piece of land, that is a different issue.

We would need to be clear whether the object of the exercise was not to disenfranchise the true owner or whether it was to give anybody who might be interested in having a nice little patch of land, thank you very much, the opportunity to do so. Those are two different matters.

The Convener: There are no further questions, so I thank the witnesses for coming along. It has been extremely helpful and I am grateful to them for their time.

We now suspend for a couple of minutes to allow for the changeover of witnesses.

11:03

Meeting suspended.

11:07

On resuming—

The Convener: I am delighted to welcome our second panel of witnesses: Sheenagh Adams, the keeper of the register; Gavin Henderson, the bill team leader; and John King, the director of registration at Registers of Scotland.

We have quite a lot of ground to cover, so I exhort members to make their questions brief and to the point. We start with mapping, which is an issue that many witnesses have referred to; some of you will have heard us address it earlier.

Mike MacKenzie: Good morning. It is a great pleasure to meet the panel, even from the other end of the table, because it gives me the opportunity to thank you for a gift of some extra land that you gave me, or attempted to give me. I am certain that it was an error and I have asked my solicitor to get in touch to say, "Thank you very much, but we can't accept this gift."

The Convener: I should say that we do not expect panel members to have knowledge of every land transaction that they have dealt with.

Mike MacKenzie: Of course not, but it was in the keeper's name so I felt it only proper to thank her.

I am sure that you heard the questions earlier. A number of witnesses have told us about problems with inaccuracies in the Ordnance Survey maps. There is sometimes a problem with the scale, particularly in rural areas. We accept that you are obliged to use the maps—they are the only game in town at the moment—but could there be improvements in the future?

Sheenagh Adams (Registers of Scotland): For the vast majority of registrations, the mapping that we have is fine. It works well and the scale is suitable. However, we accept that, at times, there are problems with using the Ordnance Survey map, and rural areas are a particular concern because of the scale that is used.

The Ordnance Survey map is just the starting point for us when we map the legal extent of a property, as we avail ourselves of a range of maps. We use the old county series maps to find out how things were mapped a long time ago, we use aerial photography, and we even use Google street view when that is appropriate to help us to identify the legal title. John King's staff include specialist plan staff, so I ask him to say a little about how we do mapping and how we address the issues.

John King (Registers of Scotland): The mapping of a title into the land register is a skilled task. There is a skill in interpreting the description of the property in the conveyancing deeds that come to us. The first evaluation that we have to do is to consider whether the deeds are acceptable and whether they give us enough information as a starting point, and we then look at the Ordnance Survey map. Sometimes the deeds give us enough information and sometimes they do not. We have a set of guidelines for our staff to follow.

On the relation of property to the Ordnance Survey map, you are absolutely right to say that the map suffers from limitations of scale. The challenge for us is to ensure that our staff understand what those limitations are, how they can work within them, and how the three scales that we have to use differ. In general, we do not have major problems in towns and areas surrounding them. In those places, we find the scale of the maps and the level of detail that Ordnance Survey provides to be adequate.

I emphasise that the Ordnance Survey map is not a static map. Ordnance Survey aims to update the map with changes on the ground within six months, and it provides us with updates to the map on a weekly basis. We then base our examination of title on that information.

We have more of a challenge in mountain and moorland areas, which are covered on the 1:10,000 map. Figures from Ordnance Survey suggest that only about 1 per cent of titles in Scotland are affected by the 1:10,000 scale map, so although it covers a significant landmass, the impact on property titles is more contained. That is helpful to us because it means that we can take a more involved approach to mapping in those areas.

We have developed a number of techniques that we can use to supplement the map. Someone mentioned the use of supplementary plans in the previous session, and that approach is important and helpful. If we have additional data, we believe that we should use it where it is appropriate to do so. In addition, if there is an issue with a particular boundary line, we can add enhanced information from the Ordnance Survey map or based on what the solicitor has provided to us.

I emphasise that we recognise the challenges in mapping. On the training that we give our plan staff, we have aligned the training that they go through with the Scottish credit and qualifications framework. The basic standard of plans training is equivalent to, in the old terms, a higher national certificate, and our slightly more advanced training is equivalent to a higher national diploma. We invest a lot of time to ensure that our people are aware of the issues and can map appropriately.

Mike MacKenzie: I am still slightly concerned. That almost sounds like a patchwork approach. You look at various maps, such as Google maps and the Ordnance Survey map, and you try to put together something that is accurate. Do you agree that, given that modern surveying techniques are easily capable of surveying to a high degree of accuracy in any part of the country, rural or urban, it would be useful to move towards a much more accurate map in future? Do you have any plans to do that?

11:15

John King: The advantage of the Ordnance Survey map is that it is the only national map of Scotland, which means that we can map neighbouring properties on a consistent base. I agree, though, that we have to acknowledge new technologies and think about how we apply them to the Ordnance Survey map to supplement what is already there. Last year, we, the Law Society of Scotland, the Royal Institution of Chartered Surveyors and Ordnance Survey set up a plans working group, the remit of which includes considering how best to use new technology in the

conveyancing process and in registering titles on the Ordnance Survey map.

Mike MacKenzie: Previous witnesses have suggested that some of the old title plans in the register of sasines should be included as supplementary information on the new title sheets.

John King: We have done that, where appropriate, for a number of years and intend to continue to do so.

Mike MacKenzie: I am sure that you heard the previous witnesses' concerns about identifying flats. Should we encourage the notion that in all cases flats should have plans that allow accurate identification, or is there some convention for describing them consistently to ensure that there is no ambiguity about their location?

John King: We would certainly welcome a standardised property description for flats, particularly for the older tenements in Scotland's cities. However, the fact that there is wide variation in flat descriptions has not necessarily caused problems. Our experience is that although there have been some issues, there have not been many, and they have tended to arise where two flats have been described in the same way—as, say, "the northmost flat" on a particular floor—or where the description is so vague that it does not relate to any of the flats on a particular floor. Where such problems arise—I should emphasise that that happens very infrequently—we suggest that the solicitor contact a surveyor. We are not necessarily looking for a map of the flat or of its location, but the surveyor should be able to indicate with some precision where a flat sits in a particular tenement, and we would give effect to that as well.

We have fewer difficulties with newer flatted properties, because their descriptions tend to be more precise and less vague. Sometimes floor plans are submitted to us and on occasion we use those to supplement the information on the land register title plan.

Mike MacKenzie: Going back briefly to inaccuracies in rural areas, I have no doubt that you will have heard the apocryphal story of the crofter whose hen had laid an egg on another crofter's land. When the dispute was over the ownership of an egg, it did not really matter as much. However, with certain very valuable investments in renewable energy developments, associated infrastructure and so on, would it be of benefit in rural areas to work to a much more accurate map than the current Ordnance Survey map?

John King: Our experience is that, in such circumstances, there is an issue with the description of the property in the conveyancing deeds. The worst example that I have seen was a property described only as "Shore Cottage, Argyll"—which, of course, could have been anywhere in the area. A view had obviously been taken that the description was adequate for conveyancing purposes and clearly someone had possessed the property; however, it is impossible to map that property for land registration purposes. In such cases, we would have to ask the solicitor for more accurate information, which brings us back to the need for a plan that is sufficiently specific and detailed, meets our published deed plan criteria and enables us to plot the property accurately on the Ordnance Survey map.

Sheenagh Adams: Where we are not happy with the scale of mapping in rural areas, we have the facility to get Ordnance Survey to go out and map the area to a more detailed scale. We can also send out our own surveyor to look at issues on the ground if we cannot get the information that we need to make an accurate registration.

John Park (Mid Scotland and Fife) (Lab): If you were to move away from what Mike MacKenzie described as the current patchwork approach towards a modernised, more consistent system, would the net result be an improvement for users, be they individuals or organisations? Any modernisation project that you carry out would obviously have a cost element. Would you absorb that cost or would it be passed on to people who use the system?

Sheenagh Adams: On the first point, the introduction of the land register has been the big improvement in enabling people to access information about who owns a particular piece of land and, because it is a map-based register, to look at it. Extending the land register will have the biggest benefit.

Any move to improve mapping would involve a cost, which would be passed on to users. Registers of Scotland is a non-ministerial department. We are the only trading fund in Scotland, which means that we are self-financing and must earn all our income from the fees that we charge for registration activities and information provision. Ministers set the level of fees that we can charge and we must balance our books year on year, although there are no annuality issues. The cost of any improvements would be passed on to the users of the service.

Stuart McMillan: We have heard the phraseology of a patchwork. To me, that indicates that, of all the systems that are out there, none is suitable or perfect for the activity that you undertake. Is that correct?

Sheenagh Adams: I do not think that I would accept the word "patchwork". We use different sources of information to get the best result to plot a legal title on to the Ordnance Survey map. As

John King said, the Ordnance Survey map is the sole and main map for Scotland and, at the end of the day, people can access that.

The Convener: If there are no further questions on mapping, we will move on. I am amazed and delighted that members have adhered to my exhortation to brevity. Let us hope that the trend continues.

The next issue is the timetable for completion of the register.

Stuart McMillan: What are the main practical obstacles to quick completion of the land register?

Sheenagh Adams: That depends on how you define "quick".

Stuart McMillan: I mean as speedily as possible.

Sheenagh Adams: The land register has been around for just over 30 years. The overall national position is that about 55 per cent of titles are on the register and it covers about 21 per cent of the landmass of Scotland. In Renfrewshire, which was the first county in which the land register was rolled out, we have registered more than 70 per cent of titles and more than half of the landmass. However, that has taken 30 years.

At present, properties come on the land register only when they hit the trigger that causes first registration, which is a sale for value. While that remains the case, the process will continue to be slow. At the height of the property market boom, about 2 to 3 per cent of titles came on to the register each year, but at present the figure is only about 1.5 per cent, which reflects the continuing sluggish performance in the property market.

The bill provides for additional triggers that will bring in more registrations—we estimate that it will be about 7,000 a year from the new triggers. However, the general register of sasines was introduced in 1617 and was never completed. Nearly 400 years later, some properties have never made it on to the register of sasines. Obviously, we cannot give you a list of them, because they have never been registered, although Gavin Henderson told me yesterday that the University of St Andrews is one good example.

As I said, the additional triggers will speed up the increase in the land register's coverage. It is also supported by voluntary registrations, for which we already have a system in place. Last year, about 5 per cent of first registrations were voluntary. For example, the Grangemouth oil refinery was a big voluntary registration. We did that because it was a condition of Chinese investment that there was a secure land register title.

Many of the titles that still have to come on to the land register will be fairly complex, because the easy stuff has been sold and transacted on. Complex title registrations involve specialist staff resource in Registers of Scotland. We have been growing that resource. We have to do it ourselves, as we cannot advertise for somebody with expertise in land registration in Scotland because, basically, that is us. Therefore, there will be time constraints because of the need to increase staff numbers and to train people to do that complex work.

Chic Brodie: Last week, we were told that, back around 1910, Lloyd George was able to get all the land in the United Kingdom registered in four years. What financial resources do you have, and what would you require to complete the land register in a much shorter time? What surplus do you carry? What would it cost you to compile the land register quickly? I understand that much of the work might require voluntary registrations.

Sheenagh Adams: We do not carry a surplus as such, but we have reserves that we can use.

Chic Brodie: What are your reserves?

Sheenagh Adams: At the moment, our reserves are declining. Obviously, we have been using them to cover costs because of what is happening in the property market.

For the next property decline, we should have something like £75 million in reserves. Our reserves have fluctuated: at one time, they were in excess of £100 million—at which point, ministers brought in deliberately loss-making fees to help to reduce the reserves. Obviously, that was successful.

We hold reserves both to invest in the different registers for which I am responsible and to cover indemnity costs. Entry in the land register provides a person with a state-backed indemnity, so, if something goes wrong, we pay out. At the moment, we pay out hundreds of thousands of pounds, but that will increase as the land register increases. We expect to need to hold about £6 million in reserves. However, I should point out that the single biggest payment that our colleagues south of the border have had to pay out from their indemnity fund was £8 million. We have therefore been quite lucky.

Chic Brodie: Let me be clear. I understand about indemnities, but you have reserves of £75 million. According to the financial memorandum, implementation of the bill will cost £3.9 million. What will you need to do—including using some of those reserves—to complete the register much more quickly than the 30 years that we have heard about?

Sheenagh Adams: Two or three years ago, we did some research into that. At that time, the figure that we arrived at was about £50 million to undertake a programme of voluntary registration to speed up the increase in the land register's coverage. One power of the present bill is keeper-induced registration, and John King and I are looking into that at the moment. Over the years, we have done a lot of pre-mapping in research areas; we considered all the burdens and servitudes, and all that sort of thing. We think that something like 720,000 titles in those research areas are not yet on the land register. Compared with some voluntary registrations, it would be quite easy and cheap to work on getting those titles into the register. We will be looking into the cost of that, and talking about it to the minister.

Chic Brodie: When will that happen?

Sheenagh Adams: We are working on it at the moment. We will be putting a policy—

Chic Brodie: What is your target date for completion of the exercise?

Sheenagh Adams: For the land register, John King is planning to present a paper to the Registers of Scotland board in March. The paper will consider costs in the research areas.

I am keen that the land register should move on. Keeper-induced registration of the properties in the research areas would bring land register coverage of titles up to about 75 per cent. That would obviously be a big improvement.

The Convener: Stuart McMillan wants to raise another point, but I would like to ask a follow-up question on costs. Various witnesses have talked about the costs of keeper-induced registration. From what you say, you could make progress with keeper-induced registration, using your resources to avoid charging fees to property owners. However, as we have heard in previous evidence, that is not the end of the story. With keeper-induced registration of a large and complex title, the owner may well incur substantial legal costs because they would want to work with keeper staff. Thought may have been given to the level of fees, but has thought also been given to the payment of a property owner's legal costs—or at least to making a contribution towards them—when there is keeper-induced registration?

Sheenagh Adams: There is no provision for that in the bill. However, if keeper-induced registration ended up being wrong, there would be provision under the indemnity fund to cover legal costs, in order to help to put that right.

11:30

Gavin Henderson (Registers of Scotland): Section 80 of the bill provides for reimbursement of extra-judicial legal expenses on rectification. The issue would be whether things had been done wrongly or not. If everything had been done correctly, no payment of costs would be due.

The Convener: I understand that, but even if the keeper does everything correctly, you will appreciate that, for a complex title, the property owner may incur substantial legal costs simply through wanting to check the work that is being done in the process of registration. Many hours of work may be involved in checking a newly issued land certificate. Even without a fee, the exercise is not necessarily cost free for the landowner.

Sheenagh Adams: That would be the landowner's choice.

The Convener: Not in a keeper-induced registration.

Sheenagh Adams: But the effort and investment that a landowner wanted to put into checking the outcome of a keeper-induced registration would be their choice.

The Convener: It would not be unreasonable for a landowner to want to check the work that had been done.

Sheenagh Adams: No, of course not.

The Convener: Thank you—I will go back to Stuart McMillan.

Stuart McMillan: There is the new power of keeper-induced registration, but there is also voluntary registration. The convener asked about keeper-induced registration, but before today we heard evidence suggesting that there could be a reduced fee for voluntary registration. Would it be advantageous to have a reduced fee for voluntary registration?

Sheenagh Adams: Her Majesty's Land Registry covers England and Wales, and it has gone down the path of having reduced fees for voluntary registration. However, as I have said, it is for the Scottish ministers to set fees. A policy decision on reduced fees would be a matter for ministers, not for me as keeper.

Stuart McMillan: Have you made any recommendations to Scottish ministers?

Sheenagh Adams: No, not yet. The bill makes changes to the fee powers, and we would intend to hold a review of fees once the new fee powers were introduced. Obviously, we would assist Scottish ministers in consultation on options for fees that they might want to introduce.

Stuart McMillan: Would any properties—ones not currently on the land register—be particularly worth while or easy to get on to it? If so, will you target those properties?

Sheenagh Adams: I mentioned the properties in the research areas. For example, there might be one remaining flat in a block of flats, or one or two houses in a development. My own house is in an estate of 188 houses; we are not on the land register but all the neighbouring properties are. Completing particular areas would allow us to have whole map tiles on the land register. That would be beneficial, because obviously it is costly to run two systems. John King and the rest of us will consider the issue and come to a view, and we will discuss the priorities with Scottish ministers. The outcome of this committee's deliberations will influence that.

Registrations such as the ones in the research areas will be the easier ones to do. Much of the work has already been done, and those properties would have quite a big impact in terms of title coverage, which is where the advantage lies for future conveyancing costs.

Stuart McMillan: Should there be a statutory target—or even a series of targets—for a phased completion of the land register? Obviously, I do not expect you to give an answer of 400 years, similar to the sasines register.

Sheenagh Adams: There can be advantages and disadvantages in having targets. If they are in the bill, disadvantages could arise if things go wrong and the targets are not met. Furthermore, not enough research has been done into what a reasonable target might be, and into the balance between cost and advantage.

For Registers of Scotland, I set targets for turnaround times and so on. However, we have never set a target for the numbers of titles or the percentage of landmass to come on to the register.

Stuart McMillan: Would it be beneficial to target two or three areas and focus on getting many more properties on to the register?

Sheenagh Adams: We would have to marry such targets with the various mechanisms such as triggers, voluntary registrations or keeper-induced registrations. After all, there has to be some mechanism for getting properties on to the land register. Obviously a lot of those matters are for Parliament and ministers. If a target is set, my job as keeper will be to deliver it.

Stuart McMillan: As far as you are concerned, would it be more beneficial to get more land or more properties on to the register?

Sheenagh Adams: It depends on what you are trying to achieve. If you want cheaper conveyancing, my answer would be to concentrate on titles; if you want to get a complete picture of who owns Scotland, you will need more of both. Of course, some properties never change hands—they are either inherited or owned by bodies such as the Crown, local authorities or the churches that still exist. Getting those properties on to the register will probably not be of much benefit as far as conveyancing costs are concerned, because they are not being conveyed. However, there are other policy issues to take into account. In some ways, it will be a policy decision for Scottish ministers but, as I have said, it all depends on the objective.

Stuart McMillan: Have you made any recommendation to ministers on which is most important?

Sheenagh Adams: I have not discussed the matter with Mr Ewing, but if he asked my advice obviously I would tell him the pros and cons.

Patrick Harvie: On the idea of having a target date or series of target dates, you suggested—quite reasonably, I suppose—that if there were a statutory target there would be a problem if something happened that meant that it could not be met. Perhaps I can draw a comparison with the statutory target for eradicating fuel poverty. Things have happened to make meeting that target date much more difficult; indeed, if energy costs continue to rise, it might well be impossible to meet it. However, the law says that ministers must do everything practically possible to meet the target date and, even though energy costs are rising, those duties on ministers continue to exist. In this legislation, we would not be saying simply that, by a certain date, the register will be complete; instead, we would be placing duties on either ministers or public bodies such as yours to meet the target date. Is that not a reasonable approach?

Sheenagh Adams: Yes. Obviously, you would have to weigh the benefits against the disadvantages, but such an approach is perfectly feasible and reasonable.

The Convener: John Wilson has questions about errors on the register.

John Wilson: Some witnesses have said in evidence that there is a relatively high error rate in accuracy of first registrations. How can Registers of Scotland resolve such errors and how can we work more closely with solicitors and others who make such registrations, in order to reduce the number?

Sheenagh Adams: I think that the error rate in the register is very low. Of course, any error is unacceptable. As keeper, my aim—indeed, my statutory responsibility—is to have an accurate register.

We take quality and accuracy very seriously and spend a lot of time and effort on training staff to keep errors to a minimum. Recently, we have

been doing a lot of work on quality issues. As John King has been leading on that activity, I ask him to talk about it briefly.

John King: We have always emphasised quality, and maintaining the integrity of the register is paramount. People must have confidence in the register. We ensure that staff are aware of the consequences of making errors; they are fully trained so that they have the skills not to make errors.

There are more than 1.4 million registered titles, and we receive more than 250,000 applications a year. We also receive between 250 and 350 applications a year to rectify inaccuracies in the register. We reject an application if we take the view that there is patently no inaccuracy in the register. When we have made such a decision and another party has disagreed, but we still think that our decision is right, we cannot adjudicate; that is for the Lands Tribunal for Scotland or another court. Having set that context, I echo the keeper's sentiment that we are confident that our staff have the skills and that our absolute number of errors is low.

To ensure that we have a clear picture of what staff are putting out, we take a holistic approach to quality. We use a recognised international standard that is used in other industries—ISO 9001. One part of that involves sampling our work in a more structured and formalised way. With first-registration applications, we sample the key things that we know can create errors. That is based on feedback from customers. For instance, we ensure that we get right the names of proprietors and standard security holders, and we ensure that the mapping conforms to what we expect. That allows us to have a fairly clear view of our internal performance.

Externally, we get feedback from solicitors and we get rectification applications. On a lower level, there are also administrative mistakes, such as typographical errors. Solicitors may send in a request to have a title updated in a way that would not impact on the legal effect. It may be that we have made an irritating mistake; they are irritating, and we are always disappointed when we make them.

We aim for a 98.5 per cent accuracy rate, and we tend to be there or thereabouts. When low-level issues come back to us, more than half of them relate to errors that were made a significant time previously, and not to current applications that have only recently been completed and returned to the solicitor.

We take the issue very seriously. We are confident that our level of quality is good and that an effective form of quality control is in place to minimise the number of errors or inaccuracies.

John Wilson: For clarification, you say that your target is 98 per cent accuracy. I will repeat your figures; if I am wrong, you can correct me. You say that you deal with 250,000 applications a year for first registrations and that, of those, there are only between 250 and 350 applications in which identified errors are being made. Is that the case?

John King: Annually, we receive between 250 and 350 applications for rectification—applications in which a solicitor says that there is a legal inaccuracy in the land register title. Outwith the figure of between 250 and 350, land certificates or charge certificates are returned to us in which we have made administrative error—for example, there may be a spelling mistake, or we may have missed out a middle name. Our 98.5 per cent target rate relates to clerical administrative errors.

John Wilson: How many applications relating to spelling mistakes or typos are returned from solicitors? I would like a figure, not a percentage, for the mistakes over and above the 250 to 350 that you have mentioned.

John King: If it is okay with the committee, I will forward accurate error information based on data from last year and this year.

John Wilson: I am sorry to pursue this issue, convener, but it may relate to some evidence that we have heard from solicitors and others, who suggested that higher rates of mistakes are being made—which leads me on to my next question.

The bill imposes on the keeper a duty to protect the register from interference, unauthorised access and damage. Should there also be a duty on the keeper to protect it from inaccurate entries?

11:45

John King: We certainly consider that that duty is implicit in the keeper's duty to maintain the land register and that an accurate land register must be maintained, because it would be worthless without the level of confidence that the conveyancing public have in it.

Sheenagh Adams: That is right.

John Wilson: Section 108 would make it a criminal offence for solicitors or their clients knowingly or recklessly to make false or misleading statements in applications for registration. There is an issue relating to that. How does that tie in with what may be seen as errors that have been submitted? Would that be covered under the errors to which you have referred? How would you confirm that solicitors or agents who were being pursued were, in fact, making false claims and were involved in what may be perceived as criminal activity?

Gavin Henderson: The first thing to say about the offence is that the bar for being caught by it is relatively high; the behaviour must involve a false or misleading application. I accept that that could be due to an error, but the information has to be recklessly or intentionally provided.

"Recklessness" is a pretty clear term in Scots law. It is much more than carelessness and more than negligence—it is beyond that. A solicitor's genuine error would be unlikely to fall within the ambit of recklessness, unless it were something that had a potentially serious effect. Although an error could be caused by wilful blindness to a fraudster's application, it should be remembered that solicitors, as gatekeepers of the land registration and application forms process, ultimately have a responsibility to ensure that what passes their desks is accurate. There is an underlying message about the accuracy of the register, the integrity of the keeper's indemnity, and fraudsters getting access to funds from lenders or elsewhere.

John Wilson: What evidence do you have—if any—that makes it implicit that section 108 has to be contained in the bill?

Sheenagh Adams: Obviously, section 108 has been included in the bill on the advice of the police force, those who are responsible for dealing with serious crime and the Lord Advocate. Indeed, the judicial factor in the Law Society of Scotland has taken the view that the section is a necessary and helpful addition to the tools that are available to combat fraud.

I know that there is particular concern about mortgage fraud. As Gavin Henderson said, I am obviously concerned about the impact on the indemnity funds that we hold, so we have no reason to believe that section 108 should not be included in the bill. It has been strongly supported by those who are responsible for pursuing fraud and fraudsters.

Patrick Harvie: Is there some ambiguity about what the word "misleading" means in this context? Some people might make the case that an application that fails to disclose the ultimate or beneficial owner could be regarded as being misleading and that, again, that relates to areas in which money laundering or the use of offshore tax havens and the state's ability to collect taxes that are due could be issues. Do you have a response to the various proposals that have been suggested on that, either on requiring declaration of the beneficial owner or on limiting registrations in the name of offshore companies?

Sheenagh Adams: That is not an issue that has been raised with me in my two and a half years as keeper. The issue has come up only since the bill was published; Gavin Henderson has been considering it.

Gavin Henderson: I am not aware that the law requires a beneficial interest to be declared on an application form now, so it would not be misleading not to include that. What I have heard in evidence is that the idea of requiring it to be declared in the land register is being considered. If that were to become the law, to not include it would be a false or misleading statement.

Patrick Harvie: I suppose that there is a difference between what people would understand as being misleading and what would be regarded as being misleading if the offence were being prosecuted.

Gavin Henderson: If people are not required to provide that information, it is not misleading not to provide it.

The Convener: I want to pursue a further question on the section 108 offence. We have heard quite a lot of evidence from people in the legal profession who are concerned about the new offence and its implications for them. Clearly, agents are already covered by the money-laundering regulations that require them to take reasonable steps to ensure that they properly identify their clients and so on. From a practical point of view, what more would lawyers have to do in order not to be caught by the new offence?

Sheenagh Adams: Lawyers will have to continue doing what they are doing, in general. We in Scotland are lucky in that our legal profession takes its duties seriously and tries to ensure that clients are who they say they are. I was surprised that members of the legal profession were so uptight about inclusion of section 108. As I said, there is support for the provision from those who are responsible for pursuing fraud. I do not think that the legal profession should be worried by it; the vast majority of practitioners will not be affected by it because they take their duty of care seriously.

The Convener: The clerk has reminded me to declare my interest as a member of the Law Society of Scotland, although I am not currently practising.

I am interested by your response that lawyers should keep doing what they are doing. If the offence already exists under money-laundering laws, why do we need another offence that says the same thing?

Sheenagh Adams: That is the advice of the Lord Advocate, the Association of Chief Police Officers in Scotland and those who are responsible for dealing with serious crime. Also, the existence of the tool is seen as being a deterrent in itself.

The Convener: I understand that, but it is a deterrent only if it is clear what steps need to be taken to avoid being caught by the offence.

Sheenagh Adams: I think that solicitors would be clear about the steps that they would need to take.

The Convener: That is not what they told us.

Sheenagh Adams: I think that solicitors understand what they would have to do, and those who are honest—the vast majority of solicitors in Scotland—will have no problem with the provision, which is aimed at people who are recklessly or knowingly participating in fraud.

Gavin Henderson: There are some issues about the prosecution of mortgage fraud—in particular about how difficult it is under existing law. That issues include proceeds of crime, money laundering and the common law of fraud. In each case, knowledge of someone's state of mind must be proved—there must be proof that they suspected something. I understand that that is difficult to do. The offence in the bill would change the prosecution element to recklessness. Whether that is good or not is a matter for the minister.

My understanding of the difference is that, if a case has been established to that standard, the use of the recklessness provision would mean that the burden of proof would be on the accused, who would have to explain why they had acted recklessly. Of course, such a defence could be established—to my mind, the defences in the bill would be pretty robust and relatively easy to establish, especially for solicitors who were relying on information from their clients or were otherwise themselves the victims of the fraud, rather than being part of any conspiracy.

The Convener: Thank you, that is helpful.

On a related point, which involves the question of errors in the register, I understand that, at the start of last year, Registers of Scotland introduced a £30 fee for when a register application is rejected for being inaccurate. That is perfectly reasonable, because that incurs more work. We have heard evidence from the legal profession that that is fine, as a principle, but that it should perhaps also apply the other way, so that if you produce a certificate that has errors in it and lawyers have to incur expense in making a fresh application to rectify it, you should pay their costs.

Sheenagh Adams: There is a provision for us to pay legal costs if the register needs to be rectified. The Law Society of Scotland strongly supports the rejection fee, which was introduced by the Scottish ministers, who set the fees. It was designed to catch simple but regular errors, such as solicitors putting in the wrong form, not signing forms, putting in the wrong date, not being able to calculate fees if they are not on direct debit and sometimes not knowing what year it is. That has reduced the rate of rejections by about 50 per cent.

We are part of the Crown and have no income other than what we charge in fees for registration and provision of information so, if we had to pay a fee for the type of errors about which John King talked, it would have to be passed on to fee payers in general.

The Convener: It might act as an incentive to reduce the number of errors.

Sheenagh Adams: As John King said, we take that seriously. As keeper, I want an accurate register. We are doing a lot of work to minimise our errors. Our error level, about which John King will write to you, is already low and, from my knowledge and that of previous keepers, has been consistently way below the level of errors for which solicitors have been responsible.

Mike MacKenzie: Earlier, I mentioned the gift of land that you tried to give me. In my short life and with a relatively small number of transactions, I seem to have encountered a great number of errors. Is it possible that you are talking about reported errors, rather than errors that may be latent and are yet to manifest themselves or become obvious?

Sheenagh Adams: As John King said, many of the errors that we see now were made in the early days of the land register. The error rate of registrations that we send out now is way below the 1.5 per cent that is allowed for in the targets.

Mike MacKenzie: Part of the impetus of the bill is a desire to hasten completion of the register. We heard words to the effect that much of the low-hanging fruit has been picked—many of the easy titles have been dealt with—so do you anticipate an increase in the error rate with an increase in complexity and in the pressure to complete the register? Might that pose a problem?

Sheenagh Adams: That risk exists, but our job is to manage it and to ensure that what we register is accurate.

Sometimes, people talk about the register being wrong when, in fact, the register is right and they just do not agree with it. Many of the complaints that we get are from people saying that they do not think that we should have registered a piece of land. I regularly see correspondence on one case about the loft space in a garage. Somebody used the space because the old lady who used to own it allowed them to use it. She died, the property was sold and the new owner said, "Get your train set out of my garage." The person's view is that the register is wrong because it should show that they

have ownership of that loft space through use, but my view as keeper is that it is not wrong.

There can be debate about what we mean by accuracy and whether the register is right.

The Convener: I want to clarify one point about the section 108 offence. Mr Henderson, I think that you said in response to a question from me that "recklessness" is a well-recognised concept in Scots law. That is not the advice that I have just had. Do you want to reflect on that?

Gavin Henderson: "Recklessness" is included in common-law and statutory offences across the statute book. You can take advice about whether the term "recklessness" has itself caused systemic problems in Scots law. The Law Society's submission said that use of the term "recklessness" is not compliant with the rule of law. Clearly, that is to overstate things. If the term was not compliant with the rule of law, it would not be compliant with the European convention on human rights and half of Scots law would need to be changed.

The Convener: That is interesting. I am just looking at the evidence that we received from Ross MacKay of the Law Society. He was explicit that

"The word 'reckless' is not known in Scots law".—[*Official Report, Economy, Energy and Tourism Committee*, 11 January 2012; c 774.]

Gavin Henderson: We would not agree with that.

12:00

The Convener: There are no more questions on the rectification of the register, but I have a brief point to make on dispute resolution. We will then move on to other matters.

In hearing evidence, the committee has been quite interested in how we resolve disputes—not disputes involving the keeper but between property owners, when there is a discrepancy over a boundary. We understand that in England and Wales there is an independent adjudicator on disputes in respect of registration of land. Are the current arrangements, which require the parties involved to raise a court action, sufficient? Do we need to simplify the process? For example, might there be value in allowing the Lands Tribunal for Scotland a role?

Sheenagh Adams: Most cases of dispute should go to the Lands Tribunal for Scotland. The adjudicator in England is set up on the same basis as the tribunal rules, so there would not be much difference in having that kind of set-up. People can challenge the decisions of the keeper in court, but the Lands Tribunal would be the normal place to have such issues dealt with.

Gavin Henderson: The bill already provides for appeals against the keeper to go to the Lands Tribunal in all cases. At its most extreme, that might be for a refusal to rectify the register. Underlying problems with a title in property law may still need to go to the Court of Session for declarator. At the moment, the keeper might exclude indemnity in relation to a title because the position in property law is unclear. The question whether that, in itself, is overly expensive is worth considering. In such cases, an additional role for the Lands Tribunal may be of help, but that is a matter to put to the minister next week.

Rhoda Grant: I have a small point to make on that. We are moving to questions on a non domino titles. In the evidence that we received earlier, which you will have heard, a reason was given for requiring those titles where a strip of land is wrongly mapped and there is a gap. Could the situation not be dealt with in the same way as errors in the register—in fact, could it not be seen as an error in the register—when mapping is not joined up? It would be down to the keeper to resolve that and, failing that, the matter would go to the Lands Tribunal.

Sheenagh Adams: I do not think so: I would have no way of knowing whether it was an error or whether there was an owner of that land. I would not be able just to say that it must have been a mistake and include it in the register. There would have to be proper procedures to cover that situation; it could not be viewed just as an error.

The Convener: If members are content, we will move on to electronic registration and IT systems, on which we have heard quite a lot of evidence.

Chic Brodie: I ask the following questions acknowledging that you have been in situ only since July 2009. They are also predicated on my desire to see the land register completed sooner rather than later. I would like much more proactivity than the passivity that is suggested by, for example, voluntary registration.

In an article in *JournalOnline*, Ms Adams writes:

"Registers of Scotland is a key part of the infrastructure that supports the Scottish economy, underpinning a property market worth over £20 billion."

We have received other submissions that say clearly that

"effective management of the use of land"

and the knowledge of land are required

"in support of economic, social, and environmental sustainability."

My first question addresses the IT and commercial aspects. We heard earlier that Millar & Bryce is in competition with Registers of Scotland. Why was it possible for it to enter the market in competition

with a public concern such as Registers of Scotland?

Sheenagh Adams: Millar & Bryce has been in business since the 19th century—predating the land register—and provides information not just from the land register but on a range of things, including planning applications and information from the Coal Authority. It provides a much wider range of information. Millar & Bryce is our customer—in complex cases it will sometimes outsource the work to us. We do not see ourselves as being in competition with the company. We provide a service and people can use it. Obviously, Millar & Bryce does far more in the market on this than we do, but some people choose to use our service. John King might want to add something because he has been involved in providing that service a lot longer than I have.

John King: When the land register was first set up, we had a monopoly on completing reports and provision of information. That changed at some point in the 1990s. I cannot remember the reason why it changed but Millar & Bryce or another search company must have made a pitch to ministers, directly or via the keeper. It was agreed that it would benefit conveyancers and their clients to have competition in the marketplace. An active marketplace can regulate the price of reports.

Chic Brodie: I understand the value of service and efficiency in organisations.

I come to IT. You kindly provided information about the ARTL—automated registration of title to land—system. We heard two weeks ago that it is unfit for purpose and a written submission from the Council of Mortgage Lenders expresses the same opinion, yet we have spent £7 million since 2007 on developing and implementing ARTL. You have a contract with the suppliers for 10 years from 2004. Why has the uptake of ARTL been so bad and why has the impression been created that it is not fit for purpose? How involved were the users in the development of the system?

Sheenagh Adams: ARTL was first looked at as a proposition back in the late 1990s; indeed, Scotland was only the second country in the world to have a system of that nature. It is not a product that one can just buy off the shelf.

ARTL is fit for the purpose for which it is designed and is being used by people, although not as many as had been anticipated. The problem with ARTL is that it is not Amazon—its operation is extremely clunky. The system was developed in a close partnership between Registers of Scotland and the Law Society. In many ways the problem with ARTL is that it reflects what lawyers wanted at that time. The legal business and IT have moved on considerably since then and ARTL is now behind the times in how it operates and what it offers.

Chic Brodie: But it has been in use for only a few years.

Sheenagh Adams: Yes, but unfortunately the design and specification were decided way earlier. I understand that it took quite a while to develop. I should make it clear that Millar & Bryce uses not ARTL, but registers direct; the earlier comments from its representative were about a different system.

ARTL was designed to be used primarily for relaying and discharging of standard securities when the remortgage market was at its height. It is very good at that—that is what it is being used for—but just after it came in the remortgaging market pretty much collapsed, so the business that it was designed to cover is no longer there, which explains why the number is reduced.

Chic Brodie: A slightly different view was expressed to the committee.

Leaving that for a minute, let us concentrate on IT, and management and efficiency. The 2010-11 annual report and accounts for the Registers of Scotland says:

> "This year two projects in the change programme were reviewed and cancelled principally on business benefit and affordability grounds. Our eSettle project and our Content Management System have both been halted resulting in constructive losses, which are declared in our accounts."

We are told by some users that ARTL is not fit for purpose, and you have just cancelled two projects. You are involved in a contract for 10 years with the same supplier that produced ARTL. Where are you going on IT systems that will give people the security that they will be able to get the information that they need and want, sooner rather than later? What confidence can you give the land community that the systems that you will develop will be fit for purpose?

Sheenagh Adams: One of the big issues is that Registers of Scotland has not had an intelligent client function or, where it did have an intelligent client function, it was not fit for its purpose as the client side of the IT equation. When I became keeper, I appointed a new IT director and finance director. We had two IT directors and one person moved on to a different position. The current IT director took up his place last summer and he is creating a team that will have the skills to develop or commission the systems that we need. We are also in discussion with our current supplier about changes to the contract, where it goes, and whether it lasts for the full 10 years.

None of us on the Registers of Scotland board were involved in agreeing to that partnership and its contractual terms. Obviously they have not

delivered what the organisation wanted. We are, however, absolutely clear that we have done all the proper project reviews of what was done—

Chic Brodie: I am sorry to interrupt, but has the supplier been penalised? Did the contract contain penalty clauses?

Sheenagh Adams: Late delivery charges were provided for within the ARTL contract. We levied those against the supplier and billed it for about £1 million for late delivery charges. Unfortunately, that was the only project within the contract that provided for such charges to be levied.

Chic Brodie: It might have been worth paying a penalty to get out of the contract.

Section 96 of the bill allows for provision to be made for registration. We have heard—

The Convener: Before we leave that point, I would like to interject. Our information is that the best part of £7 million has been spent on ARTL, which does not work. All the evidence that we have heard is that it is not fit for purpose. That is pretty damning—

Sheenagh Adams: I disagree with that. It is being used. For example, Glasgow City Council uses it regularly to lodge repair notices and it has benefited from the reduced fees that are charged for using ARTL. One of my colleagues told me that Glasgow City Council has saved something like £60,000 through its use of ARTL.

It is therefore fit for some purposes and is being used. Obviously, some type of transaction will not go through and dispositions require both solicitors and all the lenders to be signed up for and willing to use ARTL. There were flaws in the system's design, but they reflected what the legal profession said it required at that time. It is fit for purpose and is being used as we speak.

The Convener: Well, you said that it is fit for some purposes, which suggests that it is not fit for others. What I am getting at is the fact that a lot of public money has gone into it and it is not working. Who in Registers of Scotland has been held responsible for that?

Sheenagh Adams: We are providing evidence to the Public Audit Committee on that. The people who are on Registers of Scotland's executive management team are new.

The Convener: What has happened to the old ones?

Sheenagh Adams: They have gone.

The Convener: To better jobs with more money elsewhere in the public service.

Sheenagh Adams: A variety of people have gone to a variety of places. Some have retired and some have moved on to other jobs. As keeper, my concern is to ensure that the organisation has a proper intelligent client function so that, in future, we get systems that people are desperate to use, love using, and offer real value for money.

The Convener: I know that Stuart McMillan wants to come in, but I will make an observation. Having spent many years on the Public Audit Committee, I know the familiar saga of it all going wrong in the public sector and huge sums of public money disappearing into black holes because of things that do not work properly while those responsible move on to better-paid jobs elsewhere in the public sector.

Patrick Harvie: That never happens in the private sector.

The Convener: Sadly, we are not responsible for overseeing the finances of the private sector, Mr Harvie.

Patrick Harvie: I wish we were.

The Convener: We are responsible for overseeing the finances of the public sector.

Stuart McMillan: It would certainly be useful for the committee if we could obtain a report that gave a monthly breakdown of the usage of ARTL from when it started. That would give us a fair indication of usage across the country.

Sheenagh Adams: I would be more than happy to do that. We provide a monthly report in the *Journal of the Law Society of Scotland* on the number of people who are signed up for ARTL and what its use has been over the previous period. We would be happy to provide a detailed breakdown of the numbers and who uses it.

Stuart McMillan: Will that include the number of transactions?

Sheenagh Adams: Yes.

12:15

Chic Brodie: I admire your defence of the system. You said that it was predicated on the remortgage market, yet we have a submission from the Council of Mortgage Lenders that says:

"the ARTL system has had limited use and questions are regularly raised of whether it is fit for purpose."

I will let that lie.

My final question is, given that we have spent £7 million on ARTL, will it be binned or upgraded, or will you replace it with something else?

Sheenagh Adams: ARTL has a number of elements, one of which is the digital signature element—the public key infrastructure part—which accounted for about a third of the expenditure. We are fairly sure that it will be possible for that to be

reused. I am not a technical person, but that works very well and is very secure, so we envisage it being a feature of any future system.

At the moment, ARTL is clunky because, for example, you have to go in several times and put in your digital signature, which users do not like, especially the bulk conveyancers, who want to be able to go in at the end of a process and sign off a large number of transactions—50 or 100, say. The way in which it is presently structured is based on what the legal community wanted.

I am surprised that the Council of Mortgage Lenders takes the view that you cited, because it was involved in ARTL's development—indeed, one of its members participated, along with Mr Swinney, in the official launch in 2009. The Council of Mortgage Lenders was fully involved in the development of ARTL and has continued to be involved in it through stakeholder engagement with Registers of Scotland.

John Park: The issue of access to the land register for the public is one that we need to consider as part of our deliberations. From my experience of working with a variety of community groups that can access a range of information about decisions that their organisations want to take, I know that it is difficult to access information about the land register. In my experience, it is something that they would need direct assistance with. There is a lack of knowledge and understanding about what can be achieved.

That ties in with the services that you provide online but, in addition, there needs to be an awareness of what people can find out and how they can find the information that they want. Have you done any analysis that you could share with us of the engagement that the public have had with the system? Are there any gaps or areas in which there is room for improvement?

Sheenagh Adams: We could talk about a range of things in that area. Until I took up the post of keeper, Registers of Scotland was an organisation that wanted to stay way below the radar. The view was that, as long as the solicitor community knew who we were, that was okay. My view is that we are a public body—a public service organisation—so citizens need to know about the service that they get from us.

For example, we have talked about indemnity. Most people around the table are probably house owners. Many of your properties will be registered on the land register—we know that Mr MacKenzie's definitely is—but people do not know what that means. They do not know that that provides them with an indemnity—a kind of insurance policy from the state. As keeper, I want to do a lot more on that.

One of the big areas on which we interact with the public is that of house prices. We used to charge for information about house prices, but that is now a free service. We have done a lot to publicise that as a way of publicising the organisation so that people find out about us and can then find out about the other information that we can supply.

We would like to see an online system that the public can access and from which they can find out information easily. At the moment, they would have to come through our customer service centres, as the registers direct system is designed for use by businesses such as Millar & Bryce, which are obviously bulk users.

People can phone, e-mail or call into our customer service centres and get the information, but obviously we have to do more to publicise that. I would like to see any new system that we develop being more citizen centric and able to provide the public with the information that they need. Community groups sometimes come to us through their MSPs and get information that way, and we are obviously happy to help.

The Convener: If members have no further questions on that aspect, I want us to move on to the final main topic, which is the question of a non domino titles. We have had a lot of evidence on that from different parties.

Patrick Harvie: First, will you tell us your general attitude to the provisions in the bill on notification of the owner or, when the owner cannot be found, notification to the Crown? Those provisions were not in the Scottish Law Commission's proposals but they are in the bill. Do you have a response to that, or any comments on how they would work in practice and what their effect would be?

Sheenagh Adams: Our view is that a non domino titles are a useful tool in property law and conveyancing in Scotland for a variety of reasons, including both the jigsaw that the previous panel talked about and bringing land back into productive use. I am keen to ensure that people develop an understanding of how the tool works and of its purpose and that it is seen to be fair and not a sneaky legal means of stealing somebody else's land.

The way that the system works has developed through custom and practice as the current land registration legislation is not specific enough. I think that, through the new bill, ministers are hoping to achieve a balanced approach to rights and bringing land back into use. I ask Gavin Henderson to talk about the detail.

Gavin Henderson: The committee will be aware that the bill includes some proposals that were included in the Scottish Law Commission

report—those related to the seven-year and one-year periods—and additional provisions that are pre-existing Registers of Scotland practice, which are the notification provisions.

John King may be able to tell you more about the practical issues with the notification process, which is designed to track down the true owner. The committee heard from the earlier panel of witnesses that tracking down the true owner is something that they do anyway, thereby making a non domino titles redundant. However, I have seen a real life example in which one of the big firms in Scotland wrote to the Registers of Scotland to ask for a non domino title over a particular part of development land. The Registers of Scotland replied that the firm had to contact the true owner and provide proof that it had done so, and a couple of months later a letter came back to say that the firm had found the true owner, which had sold it the land, and the file could be closed.

That is the intention behind the notification process: to ensure that the true owner is searched for properly and that the process is sufficiently transparent. The committee may wish to consider whether we want to go further down the road of transparency, which the advertising suggestion and neighbour notification would do. The question is one of balance: how do we balance the rights of true owners with the interest in the land being reused? The committee might want to ask the minister about that. If landowners and the Scottish Property Federation have no objections to advertising, perhaps that is a legitimate route to go down.

John King: During the first 15 years of the land register, we had no policy on a non domino dispositions or titles. If a solicitor submitted one, we accepted it. In the mid-1990s, we became aware that a number of people were doing that on a speculative basis: they were identifying land that, on the face of it, was abandoned and submitting a title through a solicitor. That caused a minor furore, particularly in the Edinburgh area, and prompted us to review our approach.

In conjunction with the Law Society of Scotland, we arrived at the policy that we have today, which is to make due inquiry as to the reason why the person wishes to submit an a non domino disposition; what their connection is with the property; and whether they have made inquiries to establish who the true owner is. If they have established the true owner, we want to know whether the true owner still has an interest in the land and, if they do, why they are not conveying the title to it. From our perspective, the policy appears to work reasonably well and seems to be well understood by the conveyancing profession. We used to receive just the a non domino dispositions, whereas they now come in supported by the evidence that we require. Solicitors seem to be familiar with the policy. They are aware that, unless they go through that due process, an a non domino disposition will not be accepted.

I emphasise that we do not have a blanket policy not to take those dispositions. We just want to be sure that there is a valid and legitimate reason why we should agree to take them on to the land register.

Patrick Harvie: No one has argued that use of the facility should be prevented in all circumstances. However, if the new provisions on notification are basically broadly in line with existing practice, I presume that the actual effect will be non-existent and will not change what is required or expected of people. Is that right?

John King: That seems to be a fair assumption.

Patrick Harvie: Therefore, if there is a problem with the current process, the implication is that the bill needs to go further. What would be the practical effects of any change in the bill to require advertising, neighbour notification or something that invited other applications, perhaps from community groups or from the Crown in wider circumstances? Would you find anything problematic in managing that process?

Gavin Henderson: Are you asking only about advertising or about scrapping prescription and starting a free-for-all bidding process?

Patrick Harvie: I am talking about the range of possibilities that the committee might consider and that have been mentioned in evidence, as you will be aware.

Gavin Henderson: In theory, there is no problem with an advertising provision. It would work. The question for the keeper, for registration purposes, would be whether there was evidence that sufficient advertising had been done. There are many examples of provisions on the statute book that require advertising in similar ways, such as on the nearest lamp post or in newspapers. That could be done in different ways.

The committee has heard evidence that we should perhaps just have a public auction for prescriptive land. For Registers of Scotland, the question is about who owns the land. The method by which somebody receives it is not necessarily a registration matter; it is about whether it is fair that they acquire the land in that way. It is really for the minister, rather than this panel, to say whether it is fairer to have a system in which a person can acquire land by prescription—which of course in itself creates a market, because it makes people want to find and use land that is abandoned—than a system whereby people have no incentive to find land because someone else with deeper pockets will just come along and take it and then use it.

That would be like "Homes Under the Hammer", but for land. A market would be created in which people looked to buy up bits of land and sell it for its market value. Whether that is right is an open policy question.

Patrick Harvie: It has also been suggested to us in evidence from Andy Wightman that, because citizens do not have the right to proactively register common land—or there is ambiguity as to whether they have that right—the a non domino process can be used to take into private ownership land that is recognised as common land but which does not currently have title. Is that an issue and do you have comments on the potential solutions that have been suggested?

12:30

Gavin Henderson: Where land is genuinely owned in common, the provisions on notification exist to support the owners of that common land. The person who wishes to take prescriptive title will have been required to notify the owners of the common land before they can get the title, and those owners will be able in effect to veto prescription. The effect of the bill is to empower communities.

The issue is, as Mr Wightman would say, that a lot of those communities do not know that they own the land. The keeper would have to satisfy herself that the true owner had been notified, which may mean finding out who the common owners are and notifying them. Failing that, if it was reasonable to presume that there was no other owner, the Queen's and Lord Treasurer's Remembrancer would be notified. There is a relatively robust process for ensuring that the people who own the land are notified and have the ability to veto the sale, rather than there being—in Mr Wightman's language—hostile takeover of the edges of common land.

Patrick Harvie: Mr Wightman argued that there could be a greater or more proactive opportunity for citizens to register common land. Following on from that, does anyone have any comments on the written evidence that we received from Robin McLaren of Know Edge Ltd on that point? He mentions the proliferation of spatially enabled technology. Many of us have such devices, and he suggests that someone could initially make a provisional registration, which could later be upgraded through some sort of quality assurance procedure.

That idea chimes a little bit with Sheenagh Adams's comments about being more citizen focused or citizen friendly. Could there be a more participative relationship with citizens through such a process?

Sheenagh Adams: I want to ensure that citizens know about and can access the services that we provide. The bill makes no provision for citizens to play a role in trying to identify ownership of land. I do not know—would someone go about with their iPhone trying to sort something out?

If a community comes along and says, "We own this land," and puts in an application for registration, we carry out the normal investigations, as we would for any application that came in. We would look at the title history through the sasine register—or indeed, at whether the title is not on the sasine register—and at the history of that land and who owns it. We would then take a view on whether a person or group could show that they were the owners of the land.

Patrick Harvie: If the witnesses have not had the chance to see the written evidence that has just come in, perhaps we could provide them with it and ask that they write to us with their responses, which I would find interesting.

The Convener: That is reasonable—it is probably not fair of us to spring that on them without notice.

Mike MacKenzie: I am slightly concerned that the suggestion about public advertising in such cases stems from the feeling that all development is carried out by greedy developers who stand to make trillions by successfully accumulating bits of land to which they may have no right.

Might publicly advertising land whose ownership is uncertain give rise to vexatious or spurious claims of ownership? If that was the case, how would you attempt to resolve such claims? Could that take a long time?

I am also concerned about the situations that have been described in which there are minor discrepancies and problems with the title to domestic dwelling-houses—for example, it may lack certain aspects to make it complete. There may have been a drafting error or an accident, and the bill provides a means of sorting that.

I wonder about the hardship that publicly advertising land might bring down on people, because mortgage lenders are—understandably—very risk averse. How helpful are such suggestions? I accept that they are perfectly well intentioned, but might they give rise to an awful lot of difficulties?

Sheenagh Adams: They could. As I said earlier, we are keen to have the right balance for the citizen, for people who own land and for people who want to bring land back into use. John King has a lot of practical experience, so I ask him to comment.

John King: From our perspective, the question is difficult to answer. The intended use of an area of land can be development or something more localised, such as a house extension. Where there is a contentious development, there will occasionally be somebody who, on the face of it, has a legitimate reason for applying for an a non domino disposition. When the application becomes known locally, it is not unusual for us to receive competing applications for a non domino dispositions. Operationally, that places us in a difficult position, as we cannot adjudicate between them. We will look at each one and base our consideration of them on our policy. There have been occasions on which we have accepted more than one a non domino disposition on to the register. We will leave it to the parties to fight that out or to resolve it in court.

What you suggest is possible. I suppose that it depends on the nature of the land and the intention for it.

Mike MacKenzie: Do you accept that the people who provide title insurance might run a mile from insuring property that might be blighted in that fashion, because competing claims could arise from all quarters?

Sheenagh Adams: We do not get involved in title insurance, so I do not have the expertise to offer the committee a view on that.

The Convener: I want to move on and ask you about another point that has arisen in evidence. Section 42(3) of the bill states the time periods that are required before you will accept an a non domino title for registration. There has not been much controversy about the obligation on the applicant to demonstrate that he has occupied the land for one year before the application, but we have heard quite a lot from people about the period of seven years for which the land must have been vacant and not possessed by any other person. A practical issue arises about that. How does someone prove a negative? As keeper, what evidence would you accept to prove the point in that section?

Sheenagh Adams: I ask John King to comment on that.

John King: Proving a negative is always a challenge. It is clear that we will be expected to provide guidance on that, and we can provide some guidance that is based on particular facts and circumstances. There will be occasions on which the evidence that is required is relatively straightforward.

The position depends on the history of the area of land. For example, if a large factory is being demolished and redeveloped and it comes to light that a sliver of land in the middle of the site has no known title, we could use the fact that the factory site has been there for a number of decades as a basis for evidence.

It becomes more difficult when somebody who is interested in acquiring an area of land has little knowledge of its history or there is no known history. In such cases, we will be asked what evidence we expect. We recognise that it will be a challenge for us to provide guidelines in those circumstances.

The Convener: You will understand that the matter is of some concern to practitioners who are looking at the bill and thinking, “How on earth can this be established?” Is the period of seven years an arbitrary figure that has been plucked out of the air or is there a methodology behind it?

Gavin Henderson: The period was suggested by the Scottish Law Commission. It should be remembered that the bill also includes a power to change the period by subordinate legislation. You might wish to ask Professor Gretton about it. I think that it is an arbitrary period, but it could be reduced if it was found to be the wrong length of time.

We accept that, in some cases, there are issues about how the seven-year period of abandonment can be established. The question is how we can strike the right balance between protecting the rights of true owners and allowing land that is genuinely not being used by anyone to be redeveloped. As the accompanying documents state, the bill sets the bar relatively high. There is no doubt about that.

In certain cases where someone is trying to correct an issue in the title—cases such as the one that Mr MacKenzie mentioned—it may well be fairly straightforward to establish the seven-year period. An example is where there is an error in relation to a bit of land that overhangs a path. If a person has been living in a bedroom that overhangs the path, the error can be resolved, because it is easy to prove occupation.

Admittedly, things become more difficult where a developer who comes on to a site does not own a particular sliver of land. The root cause of that is a conveyancing issue; for example, the conveyancing might not have been correctly carried out. I know that witnesses have said that a non domino dispositions are useful or convenient tools and, in some ways, such get-outs allow for mistakes to be corrected. However, the question is whether they encourage people to be as diligent in conveyancing property as they should be—I do not know.

John Wilson: I believe that Ms Adams said in response to my colleague Stuart McMillan that, in March, Mr King was going to present to the board a paper setting out the expected costs and

timetable for completing the register. Is that the case?

Sheenagh Adams: The paper covers two issues, neither of which is as grand as the issue of how the register will be completed. The first relates to our policy on voluntary registrations and how we should progress it. We have started the process of advertising that this is an open-door policy, but the paper will also consider how we should promote that work to landowners.

Secondly, the paper will set out initial thoughts on keeper-induced registrations, particularly with regard to properties in research areas on which we have already done some work. My understanding is that Professor Gretton thought that keeper-induced registrations would come in decades from now just to tidy up the land register. However, we think that they could be useful now in greatly speeding up the process of getting titles on to the land register and in a way that would be quite good value for money. The paper will cover such issues rather than how we get to the end of the road.

John Wilson: I welcome that response. When might the paper be available to the committee? Given that we are considering the bill, it would be useful to have that information as soon as possible, to give us an indication of additional issues that we might raise. After all, we have to complete our stage 1 report by, I think, the middle of February.

As we have made clear today, the committee is keen for registration to happen as quickly as possible. It would be good to get an indication of the timescale from the paper. Otherwise, all that we can do is to say in our report that, although we were aware of a paper to be presented to the board in March, we could not consider it before we published the report.

Sheenagh Adams: I can write to the committee on the matter. John King and I will discuss which bits of information can be provided to you in advance of the Registers of Scotland board meeting, but I do not think that the paper covers anything that will particularly affect sections in the bill as it stands. The paper looks at policy issues for me as keeper, including the approach that I want to take to the bill as it stands.

John Wilson: I am sorry, but I have to disagree. It is important for the committee to consider voluntary registration and the way in which the keeper takes the bill forward. After all, we are considering legislation. Surely it would be better to tie up as many things as possible in the bill instead of having to tidy things up with amendments or regulations down the road. The committee has to ensure that the bill as presented to Parliament is fit for purpose and is not some piece of legislation that simply suits a particular timescale and needs to be amended six months, a year or two years down the road.

Sheenagh Adams: I recognise that.

The Convener: We have covered a lot of ground in what has been a very good and long evidence session, but a number of members have what I hope are fairly brief follow-up questions.

12:45

Rhoda Grant: You will have heard the evidence on advance notices that the previous panel gave. Can you shed some light on the status of advance notices? We understood that they exist to protect somebody's title but, from the evidence that we received this morning, it seems that they can be displaced by the registration of a disposition, even if it is not to the people in the advance notice. Is that the case?

Sheenagh Adams: That is not our understanding. Gavin Henderson has undertaken detailed work on the matter.

Gavin Henderson: The relevant provision is section 58. The effect is pretty clear and not necessarily as it was described this morning. The effect of section 58(3)(a), in particular, is that it is as if the later advance notice had not been registered—not that there would be ranking in the standard security example. We are happy to give more detail on that in writing if you would like, explaining fully the effect in each case.

Rhoda Grant: That would be useful. The issue is not so much that there would be competing advance notices, as it is quite clear that the first one to be registered would have priority. The concern is that, if someone then registered a disposition that was not involved in the advance notice, that disposition would take precedence over the advance notice.

Gavin Henderson: That is not my understanding of what the provisions do. If there is an advance notice that protects a deed and a later deed comes in that is not protected by an advance notice, the deed with the protecting advance notice will prevail—that is the whole point.

Rhoda Grant: Okay. That was our understanding.

The Convener: If you could write to us on the matter, that would be helpful.

Rhoda Grant: Will advance notices show up in searches? Will they be searchable?

Sheenagh Adams: Yes. We will develop systems that will enable advance notices to be shown. Things get loaded on overnight, and they will be on our registers direct system—either the

current one or an improved version—depending on the timescale of their coming in. So, yes, they will be fully searchable.

Rhoda Grant: I have one small supplementary question regarding your answer to John Park's question about public access to the register. Your answer was welcome. Would there be a cost to the public for accessing the register? They would probably want to look not just at one property, but at a range of properties in undertaking historical research on an area, a family or the like. Would there be a cost attached to that?

Sheenagh Adams: The setting of fees is a matter for the minister. If there were not a direct charge, the cost would have to be subsidised by some other method. When we reviewed information fees in 2007, there was a public consultation, and the view from all stakeholders, including those representing the Scottish consumer interest, was that fees should be charged and that it would not be appropriate to make such information free. It was felt that those who have to register property compulsorily should not have to pay extra to cover the cost of providing information to people who happen to have an interest in it or want to know something. However, that is a matter for ministers and would have to be consulted on in the preparation of any future fees order.

Chic Brodie: I have a very quick question. Is Crown Estate land fully or partly registered? How much of the near-shore Crown Estate land is registered?

John King: The general answer is that very little is registered. The odd part of the coastline is registered but, generally speaking, very little Crown Estate property is registered in the land register.

Chic Brodie: It is probably an opportunity for an a non domino disposition.

The Convener: You would have to notify the Crown first, and I do not think that you would get very far.

There are no further questions. I thank the witnesses for coming along. This has been an extremely helpful session in which we have covered a lot of ground.

12:49

Meeting continued in private until 13:01.

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