

PROCESSES AND PROCEDURES FOR COMPENSATION CLAIMS AGAINST THE KEEPER

Introduction

1. Here are the general procedures that are followed by the keeper's indemnity team when processing claims made against the keeper under the Land Registration (Scotland) Act 1979, the Land Registration etc. (Scotland) Act 2012, the Crofting Reform (Scotland) Act 2010, and claims for loss incurred as a result of inaccurate reports under the Terms and Conditions of the keeper's reports service.
2. Procedures specific to the following types of claim can be found by clicking on the following links: -
 - [Claims for indemnity under section 12 of the 1979 Act which have been preserved by the transitional provisions of the 2012 Act.](#)
 - [Claims under warranty under sections 77 to 79 of the 2012 Act.](#)
 - [Claims in consequence of rectification under sections 84 and 85 of the 2012 Act.](#)
 - [Claims as a result of people acquiring rights etc. in good faith under sections 94 and 95 of the 2012 Act.](#)
 - [Claims in respect of extracts, information and lost documents etc under section 106 of the 2012 Act.](#)
 - [Claims as a result of the "realignment" of bijural inaccuracies under paragraphs 17 to 24 of schedule 4 to the 2012 Act\).](#)
 - [Claims made under the Crofting Reform \(Scotland\) Act 2010;](#) and
 - [Claims for loss incurred as a result of inaccurate Reports under the Terms and Conditions of the Keeper's reports service.](#)

Form of claims and information required

3. There is no prescribed form for intimating a claim against the keeper. The claim should, however, be made in writing, identify the legal basis for the claim, and include detailed information about the nature and circumstances of the loss. It must be properly quantified and accompanied by evidence, such as receipts or invoices.

Procedure on receipt of a claim

4. Claims should be directed to the indemnity team based at Meadowbank House. A claim that is directed to another business area should be forwarded to the indemnity team without delay. The target timescale for acknowledging claims is 7 days from receipt regardless of whether claims are made directly to the indemnity team or are routed via another department.
5. Claims are logged in the first instance by legal services support and the details entered on an MS Excel spreadsheet, located in a shared drive which can only be accessed by the legal services team. Claims are then referred to the indemnity team where the indemnity officer logs the claim with a unique identifier on an MS Excel spreadsheet which is held within the indemnity section of the shared legal services drive. This log contains all of the information relevant to the claim and is updated as new correspondence is received. All correspondence in relation to that claim is scanned, saved to the file share or other records management solution, and linked to the spreadsheet.

The indemnity team

6. The indemnity team, which is responsible for dealing with compensation claims, sits within the Risk & Corporate branch of Legal Services and comprises 3 officers. An indemnity officer (HEO grade) is responsible for processing indemnity cases on a full-time basis. The indemnity officer is supervised by an indemnity manager (SEO grade) who is responsible for supervising and checking correspondence prepared by the indemnity officer. The indemnity manager is, in turn, supervised by the head of risk and corporate branch (usually a grade 7 solicitor) who oversees the indemnity work of the branch and who provides support and, where appropriate, legal advice on complex issues or points of law which may arise in relation to indemnity claims.

Target timescales for resolution of claims

7. There is no single target timescale to adhere to in processing a claim because many factors can affect how long it takes to resolve a claim. However, all claims will be dealt with as expeditiously as possible. Where a matter is straightforward and evidence sufficient to substantiate the claim is submitted at the outset, the team will endeavour to settle the claim within one month of receipt. However, where a matter is complex or particularly problematic, for example, where it involves two or more parties with differing points of view (say, in the case of a boundary dispute or a competition in title), or where there is litigation, it may be several months before the claim can be settled.

Review of outstanding claims

8. The indemnity officer maintains a spreadsheet detailing all outstanding claims (i.e. all claims which have been intimated but not settled) which is reviewed every six months. Where the progress of a claim has stalled because a claimant or their agent has failed to answer correspondence for 12 months, the claim is marked as “dormant”, moved from the outstanding spreadsheet onto a separate spreadsheet for dormant claims and the correspondence pertaining to the claim is archived. This is to ensure the outstanding claims spreadsheet accurately represents the potential liability presented to the keeper by outstanding claims, and is not distorted by the inclusion of claims which have not been pursued but have not been formally withdrawn.

Assessment of claims

9. The indemnity officer will consider the facts and circumstances and the evidence submitted. The officer must consider whether sufficient information and evidence has been provided to allow the claim to be assessed, and, if not, request same from the claimant.
10. The indemnity officer must be satisfied that loss claimed is demonstrable, real and actual, as opposed to hypothetical or speculative. Where the loss claimed is purely financial, for example, made up of legal fees, expenses or other outlays, it will usually be readily quantifiable. If satisfied that the claim has been correctly quantified and evidenced, the indemnity officer will prepare a letter offering to settle the claim. That letter will be checked by the indemnity manager before being issued.
11. However, where the loss arises in respect of, for instance, a right in land, amenity, or an incorporeal right, quantification may be more difficult and will normally require to be verified. The evidence the keeper will need by way of verification will depend on the particular circumstances of each case.

12. Where a right or interest in land has been lost the claimant will usually provide evidence of the amount of their loss by way of a surveyor's report. Provided it is reasonable, the cost of this report will be reimbursed as part of the claim. The indemnity officer may instruct the District Valuer (DV) to provide an independent valuation. In the event that a claimant does not accept an offer of Indemnity the keeper makes based on the DV's valuation, the indemnity officer will write to the claimant explaining that they are required to provide further evidence to justify departure from the valuation reached by the DV. The cost of the DV report will be borne by the keeper

Expenses

13. Section 13 of the 1979 Act and sections 79 (claims under warranty), 84 (rectification) and 95 (realignment of rights) of the 2012 Act all make provision for the reimbursement by the Keeper of "reasonable extra-judicial legal expenses".

14. For other types of claim the keeper will consider reimbursing legal expenses on a case-by-case basis depending on overall merits of the claim.

15. Where legal fees are claimed, the indemnity officer should consider whether it would be appropriate to request that the fees be subject to independent scrutiny by a law accountant to verify that the fees are reasonable. If this is deemed necessary the cost of instructing the law accountant will also be reimbursed under this provision.

Decision

16. Once the indemnity officer has completed his or her assessment he or she will discuss it with the indemnity manager. In particularly complex cases, other members of staff within the litigation section of legal services may be consulted. Once the claim has been quantified and expenses agreed, the indemnity officer will prepare a letter agreeing to settle the claim in full or in part and explaining the reasons for any reduction. This is checked by the indemnity manager before being issued. If the claim falls to be rejected the decision letter will set out the reason(s) for reaching that decision.

Appeal

17. Should the claimant wish to contest any decision of the keeper under the 2012 Act, he or she may do so under section 103 of the 2012 Act, which provides a right of appeal to the Lands Tribunal for Scotland.

18. A claimant who wishes to challenge a decision where there is no statutory appeal will need to bring a judicial review in respect of the decision.

19. All statutory appeals and judicial reviews are referred to Scottish Government legal Service litigation team, which provides a litigation service to RoS under a shared services agreement. There is no charge to business areas for advice under the agreement.

Complaints process

20. The appropriate recourse for claimants who are dissatisfied with a decision is to exercise any right of appeal, for example an appeal against a warranty decision.

21. The RoS complaints handling procedure does not apply to disagreements with a decision where a statutory right of appeal exists. It cannot therefore be used to overturn a decision regarding the payment of indemnity. However, if a claimant is dissatisfied with the way that their claim has been handled or the standard of service provided by the indemnity team, they may raise a formal complaint under the complaints handling procedure.

Payments

22. If the investigation of a claim results in a payment being agreed, a purchase order is raised for approval by the appropriate level of staff or governance body dependent on value. On a fortnightly basis, a payment instruction form is completed by the indemnity officer detailing all payments that have been raised and approved and this is sent to the finance office for payment. This form will be signed by the indemnity officer and is also signed by an individual with appropriate delegated authority as evidence of payment approval. The RoS finance manual details the financial authority required for payments which are as follows: -

The delegated scheme of authority for payments

23. Authority levels are linked to seniority and the following levels apply (note that the values include VAT).

Directors (Grade 7)	Up to £200,000
Senior Executive Officer equivalents	Up to £100,000
Higher Executive Officer equivalents	Up to £60,000
Executive Officer equivalents	Up to £30,000

24. Any indemnity payment in excess of £200,000 must be considered and approved by the keeper. Claims in excess of £1,000,000 will also require board approval.

25. Once authorised by the indemnity team payments are processed by the finance section. The indemnity officer will then update the indemnity log to show that the claim has been settled.

26. Claims are paid from the legal services budget or from reserve funds. The cost of any claim is not therefore charged back to the business area from where it originated.

27. Payments will usually be made out to the claimant's agent unless the claimant has been corresponding with the keeper directly or we have been asked to pay the claimant directly.

28. Where there is more than one head of claim, for instance, where there is a claim for compensation and legal expenses it is the keeper's usual practice to only process the payment once all heads of claim have been settled. However, the keeper may consider making an interim payment to the claimant in the event that there is likely to be a long delay in settling one element of the claim (such as a claim for legal expenses where the solicitor's file has been sent to a law accountant for audit).

Internal Reporting and Authorisation of Claims

29. The indemnity manager compiles a monthly report for the Policy and Practice Group (PPG) which contains the following information:

- details of all new claims in the month, including an outline of the claim and the amount claimed, if specified;
- details of all payments made in the month;
- details of all claims rejected in the month including reasons for rejection; and
- a summary table detailing the number and value of ongoing claims, rejected claims, new claims and paid claims for the month. Any claims that are expected to cost in excess of £50,000 will be the subject of a specific report.

30. As well as providing a note of the amounts claimed and paid, the report also details the nature of the inaccuracies and errors which have given rise to indemnity claims. This information is circulated within the registration directorate for awareness and to inform future training requirements with a view to reducing the error rate.

31. A quarterly report of payments made in the preceding quarter and outstanding claims, including an estimation of the value of any likely payment is made to the finance directorate. This report is discussed at a quarterly meeting between the indemnity manager and the finance director.

Trigger point for escalation

32. In the event that a claim is made where the expected payment is likely to exceed £50,000 (excluding expenses) a report will be made out to brief the Executive Management Team (EMT). In the event that a claim is made where the expected payment is likely to exceed £200,000 (excluding expenses) it will be reported to the board.

[LINK 1]

Indemnity claims under the 1979 Act

Legal basis for claim

1. Paragraphs 15 and 16 of Schedule 4 to the 2012 Act (transitional provisions) preserve claims for indemnity under sections 12 and 13 of the Land Registration (Scotland) Act 1979 where a person had an entitlement to claim immediately before the designated day, and the claim has either not been made or has been made but not determined.

Procedure

2. When a claim is received it is acknowledged and a determination made as to whether it is valid, i.e. whether the claimant did have a valid claim under the 1979 Act immediately before the designated day.
3. The claimant's quantification of their loss is considered. The loss which may be claimed for in respect of rectification or a refusal to rectify is to be measured by comparing the position a claimant finds themselves in following rectification or refusal to rectify, with the position they would have been in had the keeper done otherwise¹. Therefore, any valuation report should identify the diminution of the claimant's interest as a result of the rectification or refusal to rectify. This valuation should be made as of the date the loss was suffered, which will normally be the date the keeper rectifies/refuses to rectify.
4. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts, such as the District Valuation Agency, to assess the amount of the claim.
5. Once the loss has been quantified the indemnity officer will consider whether the claimant has taken all reasonable and appropriate steps to minimise their loss. In particular, he or she will consider whether section 13(4) operates to reduce the indemnity payment the claimant is entitled to. Section 13(4) provides for a reduction in the amount of indemnity paid in cases where the claimant has contributed to his or her loss through fraud or carelessness.
6. Once agreement is reached with the claimant as to the amount of their loss, a payment will be instructed; this will be made electronically wherever possible.

¹ *Kaur v Singh and others (No. 2)* 2000 S.L.T. 1323

[LINK 2]

Claims under warranty

Legal basis for claim

1. Under section 73, the keeper warrants to an applicant that, as at the time of registration, the title sheet to which the application relates is accurate in so far that it shows an acquisition, variation or discharge in favour of the applicant, and that it is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under any enactment.
2. Section 77 provides that the keeper must pay compensation for loss incurred as a result of a breach of warranty, but will only do so when the inaccuracy giving rise to the claim is rectified. A claimant is not required to exhaust other remedies before making a claim against the keeper. Payment by the keeper does not extinguish any rights that the claimant may have against any other person but it is a condition of payment by the keeper that any such rights must be assigned to her.
3. Section 79 sets out how compensation is to be quantified. Compensation is to be paid by the keeper for the loss caused by the breach of warranty, reasonable extra judicial legal expenses and any other consequential loss.
4. Interest is payable on these sums at the rate set by the Land Register of Scotland (Rate of Interest on Compensation) Regulations 2014 from the date any inaccuracy is rectified, or the date legal costs were paid by the claimant, or the date any consequential loss is sustained.
5. Section 78 of the 2012 Act sets out the circumstances in which the keeper has no liability to pay compensation for a breach of warranty, these are:
 - a. if the inaccuracy is consequent upon an error in the cadastral map and that error was made in reasonable reliance upon the base map,
 - b. if the existence of the inaccuracy was, or ought to have been, known to the applicant or their legal advisor at the time of registration,
 - c. in so far as the inaccuracy is attributable to a failure of the applicant or their legal advisor to comply with the duty owed to the Keeper under section 111 of the 2012 Act,
 - d. in so far as the claimant's loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
 - e. in so far as the claimant's loss is too remote,
 - f. the loss is non-patrimonial.

Procedure

6. When a claim is received it is acknowledged and we assess whether the loss claimed is recoverable under sections 77 and 79.
7. Consideration will be given to the following: -
 - has there been a breach of warranty?
 - was the claimant's warranty restricted by the keeper?
 - has the inaccuracy been rectified?

- do any of the circumstances in section 78 apply so as to exclude liability on the part of the keeper?
8. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts, such as the District Valuation Agency, to assess the amount of the claim.
 9. Once agreement is reached with the claimant as to the amount of their loss, interest will be calculated and a payment will be instructed; this will be made electronically wherever possible.

[LINK 3]

Compensation in consequence of rectification

Legal basis for claim

1. Where an inaccuracy in the Land Register is rectified, section 84 of the 2012 Act provides that the keeper must pay compensation for—
 - reimbursement of reasonable extra-judicial legal expenses incurred by a person in securing rectification of the register, and
 - any loss sustained by the person in consequence of the inaccuracy rectified.
2. A claimant is not required to exhaust other remedies before making a claim to such compensation. Payment by the keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated but it is a condition of any such payment that the claimant assigns any such rights to the Keeper.
3. Interest is payable on these sums from the dates the losses were incurred at the rate set by the Land Register of Scotland (Rate of Interest on Compensation) Regulations 2014.
4. Section 85 of the 2012 Act sets out the circumstances in which the Keeper has no liability to pay compensation in consequence of rectification, these are:
 - a. if the inaccuracy is caused other than by a change made by the Keeper to a title sheet or the cadastral map,
 - b. if the inaccuracy is consequent on an error in the cadastral map and that error was made in reasonable reliance on the base map
 - c. in so far as the inaccuracy is in an entry made on an application being accepted by virtue of section 43(1) or under section 43(5)
 - d. in so far as the inaccuracy is caused by some act or omission on the part of the claimant
 - e. in so far as the claimant's loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
 - f. in so far as the claimant's loss is too remote,
 - g. the loss is non-patrimonial

Procedure

10. When a claim is received it is acknowledged we assess whether the loss claimed is recoverable under section 84. Consideration will be given to the following: -
 - has an inaccuracy been rectified?
 - is the claimant the person who asked for the rectification?
 - do any of the circumstances in section 85 apply so as to exclude liability on the part of the Keeper?
11. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts, such as the District Valuation Agency, to assess the amount of the claim.

12. Once agreement is reached with the claimant as to the amount of their loss, interest will be calculated and a payment will be instructed; this will be made electronically wherever possible.

[LINK 4]

Compensation as a result of people acquiring rights etc. in good faith ("realignment" of rights under Part 9 of the 2012 Act)

Legal basis for claim

1. Section 94 of the 2012 Act provides that the keeper must pay compensation for loss incurred by a person who—
 - (a) Is deprived of a right by virtue of realignment of rights under Part 9, or
 - (b) Is the proprietor of a property burdened by a servitude created by virtue of section 90.
2. A claimant is not required to exhaust other remedies before making a claim to such compensation. Payment by the keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated but it is a condition of any such payment that the claimant assigns any such rights to the keeper.
3. Compensation paid by the keeper will include the value of the right the person has been deprived of on the date they lost the right, or the reduction of the value of the property burdened by a servitude on the date the servitude was created. The keeper will also pay reasonable extra judicial legal expenses and other consequential loss.
4. Interest is payable on these sums from the dates the losses were incurred at the rate set by the Land Register of Scotland (Rate of Interest on Compensation) Regulations 2014.
5. Section 94 of the 2012 Act also specifies circumstances where the keeper has no liability to pay compensation and section 94(6) provides that the keeper has no liability to pay compensation—
 - (a) In so far as the claimant's loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
 - (b) In so far as the claimant's loss is too remote, or
 - (c) For non-patrimonial loss.

Procedure

6. When a claim is received it is acknowledged we assess whether the loss claimed is recoverable under section 94 and in particular: -
 - whether the claimant has been deprived of a right by virtue of Part 9 of the 2012 Act (Note: in the majority of cases this will fall to be determined by the Courts)?
 - whether the claimant is the proprietor of a property that has been burdened by a servitude by virtue of section 90 (Note: in the majority of cases this will fall to be determined by the Courts)?
7. The claimant's quantification of their loss will then be considered against section 95.

8. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts, such as the District Valuation Agency, to assess the amount of the claim.

9. Once agreement is reached with the claimant as to the amount of their loss, interest will be calculated and a payment will be instructed; this will be made electronically wherever possible.

[LINK 5]

Liability of the keeper in respect of extracts, information and lost documents etc.

Legal basis for claim

1. Section 106 of the 2012 Act provides that a person is entitled to be compensated by the keeper in respect of loss suffered as a consequence of: -
 - (a) the issue of an extract or certified copy that is not a true extract or certified copy
 - (b) the provision of information as to the contents of the register that is incorrect
 - (c) a document being lost, damaged or destroyed while lodged with the keeper.
2. Section 106(2) of the 2012 Act provides that the keeper has no liability to pay compensation:
 - (a) in so far as the claimant's loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
 - (b) in so far as the claimant's loss is too remote,
 - (c) for non-patrimonial loss.
3. Section 106 does not otherwise provide for the nature of the loss. In principle it is enough that the breach of duty did actually cause the loss that is to be made good by the Keeper.

Procedure

4. When a claim is received it is acknowledged and we assess whether the loss claimed is recoverable under section 106. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts to assess the amount of the claim. Once agreement is reached with the claimant as to the amount of their loss, a payment will be instructed; this will be made electronically wherever possible.

[LINK 6]

Compensation as a result of the “realignment” of bijural inaccuracies

1. These procedures apply where there was an inaccuracy in the register before the designated day.
2. Where there was an inaccuracy in the register immediately before the designated day, it may give rise to a claim under paragraph 19 or 23 of Schedule 4 to the 2012 Act (the transitional provisions).

Legal basis for claim

3. In both cases a claimant must first establish whether the inaccuracy is one which the keeper had the power to rectify under section 9 of the 1979 Act.
4. Paragraph 18 provides that for the purposes of deciding whether the keeper had the power to rectify, that the person registered as proprietor of the land is to be presumed to be in possession unless the contrary is shown.

Keeper had the power to rectify

5. Where the Land Register was inaccurate immediately prior to the designated day and the Keeper had the power to rectify the inaccuracy the Keeper must rectify that inaccuracy. Compensation is payable under paragraph 19 of Schedule 4 to the 2012 Act to a party suffering a loss as if warranty had been granted and the procedures for dealing with such claims are the same as those for [claims under warranty](#).[\[INSERT LINK 2\]](#)

Keeper did not have the power to rectify

6. Where the Land Register was inaccurate immediately prior to the designated day and the keeper did not have the power to rectify, then on the designated day it ceased to be an inaccuracy (i.e. the rights of the parties concerned are realigned so as to conform to what the Land register says they are). Compensation is then payable under paragraph 23 of Schedule 4 to the 2012 Act to a person who suffers a loss, which, had it been suffered by virtue of section 12(1) of the 1979 Act would have given rise before the designated day to an entitlement under that section. By virtue of paragraph 24 of Schedule 4, compensation is quantified as at the date on which the register became inaccurate. A claim for loss under these provisions will be processed in the same way as a [claim for loss as a result of a person acquiring rights etc. in good faith](#). [\[INSERT LINK 4.\]](#)

[LINK 7]

Claims from the Crofting Register

Introduction

1. The crofting register differs from the other registers under the management and control of the keeper, in that first registrations are subject to a period of appeal and are therefore provisional until the period for appeal has elapsed. When a croft, common grazing or land held runrig are registered for the first time in the crofting register, such registration is open to challenge for a 9-month period from the date of notification by the Commission. Therefore, the Court has specific powers to require rectification.

Legal basis of claim

2. Under section 18(1) and (2) of the Crofting Reform (Scotland) Act 2010, the keeper must indemnify a person who suffers loss as a result of the following:-
 - (a) a mistake in the crofting register which requires rectification
 - (b) rectification of the crofting register
 - (c) the refusal of the keeper to rectify
 - (d) the loss or destruction of a document while lodged with the keeper
 - (e) a mistake in a registration certificate or any information given by the keeper in writing.
3. Under section 18(3), the keeper is not liable to indemnify where:-
 - (a) the existence of the mistake was, or ought to have been known by the person seeking indemnity or that person's legal advisor
 - (b) the mistake relates to an inaccuracy in the delineation of boundaries which could not have been rectified by reference to the ordnance map
 - (c) the loss was caused by the fraudulent or careless act or omission of the person seeking indemnity.
4. No indemnity is payable by the keeper until a decision has been taken about whether to rectify the crofting register. The Crofting Commission is liable to indemnify a person for loss suffered where the requirement for a fresh application or rectification is as a result of a mistake made by the Commission when forwarding an application for registration to the keeper or when submitting an application on their own behalf.
5. There are no statutory provisions in respect of the payment of interest on any payment of compensation.

Procedure

6. When a claim is received it is acknowledged and we assess whether the loss claimed is recoverable under section 18. If valid, we will consider whether any of the exceptions to liability in subsection (3) apply. Thereafter, we will consider whether the Commission is responsible to indemnify under subsection (5).
7. Where subsections (3) and (5) do not apply, the claimant's quantification of loss is considered.

8. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts, such as the District Valuation Agency, to assess the amount of the claim.
9. Once agreement is reached with the claimant as to the amount of their loss a payment will be instructed, this will be made electronically wherever possible.

[LINK 8]

Compensation as a result of an error in a Report

Legal basis for claim

1. The keeper's reports service is a commercial service which is governed by the terms and conditions of service under which the keeper warrants to customers of the service that:

- the report will be prepared with reasonable skill and care
- provision of the reports service will not infringe any third party rights
- the report reflects the information available from the Land Register

But does not warrant the accuracy of the Land Register itself (i.e. if there is an inaccuracy in the Land Register that will be reflected in the report).

2. The keeper will indemnify customers of the reports service for loss which arises solely and directly as a result of inaccurate or erroneous information contained in a report caused by the fault of the keeper or one of her employees.

Procedure

3. When a claim is received it is acknowledged and we assess whether the loss claimed is recoverable under the Terms and Conditions.
4. We may enter into correspondence to assist with evaluating the claim and in some cases employ the services of external experts to assess the amount of the claim.
5. Once agreement is reached with the claimant as to the amount of their loss a payment will be instructed, this will be made electronically wherever possible.