LABSS (Local Authority Building Standards Scotland) is a not-for-profit membership organisation representing all local authority building standards verifiers in Scotland. We are dedicated to protecting the public interest delivered by public sector expertise to ensure buildings are safe, accessible, dry and warm.

Our written response follows the format of the related online questionnaire and is as follows:

Should other organisations be authorised to undertake building standards verification work? Response – No

Competition would improve service standards? Response – No

There is evidence that competition has reduced service standards in England and Wales. Local Authority Building Control (LABC) in the LABC submission to the APPGEBE Inquiry into the Quality of New Build Housing in England, 2015 included survey results that showed that 73% of the complaints received by local authorities over the 36 month survey period were about other organisations providing the building control service – and this didn’t take into account complaints that were made direct to the other building control providers.

Competition would result in reduced fees?

Reduced fees will result in reduced inspections as has been raised as a concern in England and Wales as per:

- The APPGEBE More homes, fewer complaints, Report from the Commission of Inquiry into the quality and workmanship of new housing in England (More Homes, Fewer Complaints) raises concerns that competition in building control might be fueling “a race to the bottom” and that they felt there was a subsequent need to prescribe a minimum number of inspections.
- The Scottish Government commissioned report: Evaluation of the performance of local authorities in their role as building standards verifiers (March 2016) also stated “The fact that building standards verification is currently placed in the hands of local authorities means the system is free from the risk of ‘profit before compliance’ – a virtue which cannot be understated.”
LABSS view is that public interest and health and safety concerns are too important to be run on such a commercial basis.

A private sector verifier could provide a consistent service across Scotland? Response - No

- Additional verifiers providing verification services would inevitably increase national inconsistency.
- All local authority verifiers already work within the national Verification Performance Framework which drives consistency and is reported to the Scottish Government.
- Service Standards within the public sector building standards system are already high and the national customer satisfaction survey as Key Performance Outcome (KPO5) of the new verification performance framework confirms this. The 2016 survey produced a 7.1 out of 10 for overall national customer satisfaction.

Private sector verifiers could damage the impartiality of the building standards system? Response – Yes

- Local Authority Building Standards Verifiers have been appointed as they meet the conditions of appointment under the Building (Scotland) Act 2003, being: qualifications, competence, accountability to the public and impartiality
- The Scottish Executive Policy Memorandum to the Building (Scotland) Bill introduced in the Scottish Parliament on 18th September 2002 stated “At present, the verifiers within the Scottish building control system are the local authorities and they fulfil the necessary criteria. They are independent, competent and they are accountable to the local electorate.” and more recent independent research undertaken by Optimal Economics: - Research Project to Support the Appointment of Verifiers stated: “The current system of verification as operated by the local authorities in Scotland is acknowledged to achieve fully the objective of serving the public interest....” both statements confirm local authority verifiers are best placed to meet these requirements for verifiers.
- The previous Scottish Government public consultation carried out in 2011: Building Standards Verification - Improving Choice in Verification of Building Standards asked for views on extending the independent checking of building work. This was subsequently rejected 3:1 by the respondents. The consultation paper also emphasised that “Verifiers should be consistent and transparent in their work. They should also be independent of, and separate from, the organisation they are verifying to avoid any conflict of interest.”
Analysis of Consultation Responses as undertaken by Dundas and Wilson on behalf of the Scottish Government (September 2011) additionally highlighted real concerns with private verification over impartiality and accountability within the key findings of their report.

To date LABSS has not seen any evidence which explains how private verifiers will satisfy these issues and it is particularly difficult to see how organisations such as the NHBC who already provide warranty services to housebuilders could meet this requirement.

Private sector verifiers would not be accountable to elected members (Councillors)? Response – Yes

- In England and Wales concerns have been raised within the House of Commons Hansard Debates that Approved Inspectors are not always operating transparently including with their own customers - particularly following customer complaints - ref New Build Housing (Approved Inspectors) – issues of transparency and control and monitoring of building regulations.
- However local authority building standards services are driven by “public service”, have no conflict of interest or commercial interest/pressure, and are both publicly and politically accountable. The Scottish Executive Policy Memorandum to the Building (Scotland) Bill stated that local authorities “…fulfil the necessary criteria. They are independent, competent and they are accountable to the local electorate.”
- The New Performance Framework that all local authority verifiers work to, controls how local authority verifiers operate. Pye Tait Consulting, produced the report: Evaluation of the performance of local authorities in their role as building standards verifiers (March 2016) stating “In the Act Local Authority Verifiers are required to be impartial and their working practices transparent, to be competent and consistent in their activity and must be accountable for their actions. In order to meet this requirement each verifier is required to fully implement the new performance framework”
- The current verification service provided by local authorities working to the New Performance Frameworks successfully covers all types of buildings and is competent, open, transparent, impartial and independent with no conflict of interest. The service is delivered locally with local political accountability and this brings many benefits for Elected Representatives, (ranging from Councillors and MSP’s to Community Councillors) applicants, architects, builders and, of course, the general public.
It would be very difficult for private verifiers to achieve all of these goals and to remove any one of these positive factors from the current system would not be an improvement in terms of accountability.

Private sector verifiers may lack local knowledge? Response – Yes

However local authority verifiers have the benefit of readily accessing all relevant local authority information, are linked and integrated with other local regulatory services integral to the development process, can link verification with enforcement and, significantly, can provide a fully accountable local service with local knowledge whilst participating without commercial concerns into a national network of experience and best practice. There are also inward investment benefits for the local authority and customers in being able to offer such joined up services.

Other – It is unclear what conditions a private verifier would operate under if introduced and unless designed otherwise, private verifiers would likely target the more profitable building warrant projects. If such “cherry picking” was allowed, over time this would have a very detrimental effect on local authority verifiers, particularly if they were required to be the verifiers of last resort and could be compelled to process the less desirable loss making applications.

This issue and many others were raised during the 2011 Scottish Governments Improving Choice in Verification of Building Standards public consultation and as this consultation was rejected remain outstanding.

Should procedural regulations specify a minimum requirement for the inspection of building works, to ensure compliance with building standards? Response – No

It is opined that no system will ensure full compliance but the national guidance already in place, which all local authority verifiers work to, reduces the risk of non-compliance to an acceptable level.

The Verification During Construction guidance covers the minimum number of inspections and checks based on a risk based approach. Key Performance Outcome 2 (KPO 2) of the National Performance Framework relates and is reported quarterly to the Scottish Government by local authority verifiers and covers successful applicant notifications and inspections.

This would remove flexibility from the system? Response - Yes

The current Verification During Construction guidance recognises risk and best value, further prescription could lead to “tick box” inspections of limited value and
would divert resources away from higher risk and/or problematic projects unless additional verification resources was funded.

This would drive up costs? Response – Yes see above response

This would be unlikely to improve compliance with building standards Response – Yes

- Only those actually carrying out the construction work have the opportunity to ensure full compliance with building standards. The More Homes, Fewer Complaints report recognised that “the responsibility for construction of defect free homes should rest with the housebuilder – who should not rely on third party inspections to drive up quality”.
- These roles and responsibilities are further explained within the Scottish Government’s The Scottish Building Standards Procedural Handbook Third Edition. “Inspections by a local authority in its role as the building standards authority does not provide a system of control on site; this is a matter for the contracts and arrangements put in place between the client and builder. It is the responsibility of the relevant person (typically the owner or a contractor employed by them) to ensure building works are done correctly.”
- Within the formal procedures prescribed within the Scottish Building Standard’s system the responsibilities of housebuilders is even clearer - where the housebuilder by submitting a completion certificate to the local authority verifier certifies that the work is in accordance with the approved building warrant (plans and details) and the building regulations as per: I/We* submit a completion certificate in accordance with the details supplied above and with any necessary accompanying information…. This completion certificate is confirmation that the work was carried out and/or conversion* made in accordance with the building warrant. This completion certificate also confirms that in the case of work for the construction of a building, the building as constructed complies with the building regulations; that in the case of the provision of services, fittings or equipment in or in connection with a building that the services, fittings or equipment provided comply with building regulations….

All persons submitting completion certificates to local authority verifiers should carry out the work and/or supervise the work as necessary so they can properly certify the works in this way.

This would offer additional reassurance to new build property buyers?
In the opinion of LABSS the question is not if this would provide additional reassurance to new build property buyers but why such a profitable sector of the construction industry, building simple repetitive buildings cannot supervise the work sufficiently to meet building standards, customer expectations and the legal requirements of the Building (Scotland) Act 2003. It is accepted that consumers concerns reach beyond the minimum building standards and of the majority of complaints that were recorded by LABC during their survey contained within LABC submission to the APPGEBE Inquiry, showed that around 70% of the complaints recorded were outwith the scope of building control legislation - raising questions around the adequacy of the current cover NHBC and other warranty provider provide from the customer perspective.

This would ensure a consistent level of inspection of building work across Scotland?

The Verification During Construction guidance already provides for a consistent level of inspection and checking in terms of the building standards within Scotland. LABSS cannot speak for the consistency of inspection that warranty providers achieve.

This would improve compliance with building standards? – see previous responses

Should there be a statutory system to provide redress for new home buyers whose properties are subsequently found not to meet building standards requirements? Response – Yes

This housebuilder sector appears to be uniquely problematic when considered against the wider majority of building standards applicants, as local authority verifiers do not generally receive such complaints from the larger majority of other users of the Scottish building standards system which also rely on the same national risk based inspection guidance.

In this respect one difference that may be a contributing factor is that the construction works in these other customer areas are predominately for the future use of, benefit of and under the control of the owner during construction and not generally for immediate sale for profit upon completion. In these circumstances the building standards system with the primary statutory reliance on the owner certifying and thereby supervising the work as necessary to properly submit the completion certificate to the verifier and the verifier making risk based inspections/checks appears to deliver far less problems and dissatisfaction.

Local authority verifiers primarily approve building warrants and then make inspections and checks to protect the public interest - as is the intention of the building standards system in Scotland. This can properly include the sampling of
certain stages of construction across housing developments. Home buyers however expect assurances and warranties to protect their private interests including and beyond minimum building standards and covering their specific house purchase and financial investment.

For the above reasons LABSS considers that this issue of redress is one of private interest and therefore consumer protection, consumer rights and warranty.

In this area, More Homes, Fewer Complaints recommended the setting up of a New Homes Ombudsman to mediate between consumers, their builders and/or warranty providers and to be funded by a levy on the sector - this proposal was seen as the key recommendation to provide more effective consumer redress. The Commission also recommended a review of the laws governing consumer rights and thorough review of warranties as their evidence suggested that current warranties on new homes did not match the expectations of home buyers.

Do you think fees for the various aspects of the building standards system are.....? Response – Too low

From the introduction of the current building warrant fees in 2005, local authority verification costs have risen significantly to cover the increased technical complexity of the Building Standards, the additional inspection workload as required by the New Verification Performance Framework and for example and most recently the investment made by local authorities and ongoing investment required to support the implementation of eBuilding Standards.

Fees have not been raised since 2005 and the recent Scottish Government Fees Consultation and supporting research shows that a building warrant fee increase is well overdue with for example the fixed fees being 40% less in real terms. The building warrant and associated fees should therefore be raised to cover the recognised increased costs of local authority verification from 2005 and to fully compensate for the fee income reduction in real terms.

Are there any other issues about the operation of the Scottish building standards system which you wish to bring to the attention of the Committee?

LABSS opposes the introduction of private sector verifiers and does not believe it is necessary, nor in the interest of the building warrant customer, nor in the public interest to do so primarily for the following reasons:

- Independent Research undertaken by Optimal Economics in 2010 made the following observations on the present system of verification of building standards: “The current system of verification as operated by the local
authorities in Scotland is acknowledged to achieve fully the objective of serving the public interest and buildings erected in Scotland are generally considered to be safe and comply with building regulations”.

- In terms of the customer, following the publication of the Optimal Economics report, in 2011 the Scottish Governments Improving Choice in Verification of Building Standards public consultation resulted in the proposed introduction of a private sector verifier (NHBC) being rejected 3:1 – with the majority preferring the current local authority based services and the subsequent successful implementation of the verification New Performance Framework has subsequently strengthened and improved local authority verification services.

Regarding the concerns that the Committee raises around defects and completion certificates in Scotland, LABSS is not aware of the extent and nature of what that the Committee has heard nor has the Building Standards Division of the Scottish Government made LABSS aware of your concerns. LABSS will, however, be very pleased to receive and review these cases so we can understand the Committees concerns and seek to learn from these customer experiences.

On this basis our response to some questions has been based upon the experience and reports on this subject primarily as available for England and Wales and it would be very beneficial to get the Scottish perspective.

However the role and responsibilities of the housebuilder is clear both in terms of the Scottish Building Standards system and from the research cited in this response, particularly the importance of housebuilders building and supervising the work appropriately to achieve compliance and the overall quality customers expect.

The suitability of the warranties as available to customers and the ease of redress against the builder all appear to be factors that could be reviewed.