



OFFICIAL REPORT
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Local Government and Communities Committee

Wednesday 14 June 2017

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
18th Meeting 2017, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

*Elaine Smith (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Glenn Campbell (Highland Council)

Gilly Carr (Institute of Clerks of Works and Construction Inspectorate of Great Britain)

Ross MacKay (Law Society of Scotland)

Kenny McKenzie (Royal Institution of Chartered Surveyors in Scotland)

CLERK TO THE COMMITTEE

Clare Hawthorne

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 14 June 2017

[The Convener opened the meeting at 10:00]

Building Regulations

The Convener (Bob Doris): Good morning and welcome to the 18th meeting of the Local Government and Communities Committee in 2017. I remind everyone present to turn off their mobile phones. In this meeting, papers are provided in a digital format and tablets may be used by members. We have a full house today, with no apologies having been received.

Under agenda item 1, we will take evidence as part of our inquiry into building regulations in Scotland. The evidence-taking session follows up on the session with stakeholders in the housing and building industry that we held on 3 May 2017. Today we will take evidence from Ross MacKay, the convener of the property law committee in the Law Society of Scotland; Kenny McKenzie, of the Royal Institution of Chartered Surveyors in Scotland; Gilly Carr, the president elect of the Institute of Clerks of Works and Construction Inspectorate of Great Britain; and Glenn Campbell, the building standards manager in Highland Council. I thank our witnesses for coming along this morning. We very much appreciate it.

We will move straight to questions. I will open by asking our witnesses to tell us about their general experiences and views.

In your experience, how widespread is the problem of new-build homes that have received completion certificates and subsequently been found to have significant construction defects? That is a fairly good contextual question to ask in relation to what we are looking at this morning. Does anyone want to start off on that? Do not all rush to catch my attention.

Gilly Carr (Institute of Clerks of Works and Construction Inspectorate of Great Britain): That seems to be a foreseen problem across the United Kingdom. It is encountered mainly by the end users who occupy new-build housing. The issue seems to get a lot of negative press.

The Convener: Your perception is that it is fairly widespread.

Gilly Carr: Yes.

The Convener: Thank you. Does anyone else want to give a view on that?

Glenn Campbell (Highland Council): The main issues that are reported to Highland Council tend to concern noise and condensation, for some reason. The cause of problems in housing can be down to the quality of workmanship but, in relation to those two particular issues, it is the lifestyle of the people who occupy the buildings that tends to generate the problems.

The Convener: Is that specific to new-build properties?

Glenn Campbell: No, not necessarily. We find that people moving into new-build properties tend to find problems at an earlier stage and report them via the housing association or the local authority.

Ross MacKay (Law Society of Scotland): My experience is that, anecdotally, there is not large-scale evidence of major structural defects in new-build properties in Scotland, in the context of breaches of regulations. There is a wide range of issues that I would class under the snagging heading, which can be fairly serious from an individual point of view but which, thankfully perhaps, do not constitute a breach. If there is an area that is causing more concern than others, it concerns the small, standalone, one-off or two-off types of transactions, rather than transactions involving major builders who tend to have the systems in place to monitor and deal with complaints internally, which means that local authorities or solicitors are not called upon to take some form of action.

Kenny McKenzie (Royal Institution of Chartered Surveyors in Scotland): I concur with Ross MacKay.

Before I go on, I should say that, although I am here representing the RICS, I am not employed by the RICS. I am a building standards surveyor who works with the City of Edinburgh Council. I chair the building control professional body in the RICS, and the RICS asked me to come to this meeting because of that.

My personal experience is similar to that of Ross MacKay and also probably of Glenn Campbell. When people move into a new house, they expect that it will be soundproofed, wind and watertight and so on, but they understand that there might be little snagging items. However, there are one-off developers whose projects can involve more serious defects. That is not common, but it can happen. If such a developer goes into liquidation or disappears, the situation becomes quite problematic and people have to fall back on the National House Building Council, Premier Guarantee, Zurich or whoever is doing the third-party insurance nowadays.

The Convener: We will definitely come back and ask more questions about that as the evidence session goes on.

What we have heard raises a question. How can new-build homes that suffer from serious construction defects receive completion certificates? If the system was working robustly, that would not happen, so how do you think that we find ourselves in that situation?

Ross MacKay: It comes down to the level of inspection during the build process. Building control teams have their requirements and schedules in their diaries for going out to inspect properties during the course of construction but, to state the obvious, they are not on site every day. Any completion certificate always has the magic phrase “so far as can be ascertained from a visual inspection”, and that is meant quite literally. If there is anything behind the wall or underneath the floor that is not visible, the building control team cannot comment on that. As solicitors, we rely on the completion certificate as prima facie evidence that the property has been built in accordance with the regulations, but we accept that that is not 100 per cent guaranteed. There could be something that no building inspector could ascertain, because it was literally hidden from sight.

The Convener: Much of the process is based on trust.

Ross MacKay: Yes.

The Convener: Does anyone else want to comment on that?

Gilly Carr: Building control teams do only sequential inspections—they inspect the foundations, then the damp-proof course, then the construction at windowsill level and so on. On sites that have a clerk of works, there is normally quite a lot more time allowed to carry out inspections. Unfortunately, clerks of works have been taken out of the forms of contract. When design-and-build contracts came in, the words “clerk of works” were removed from the contract. Hopefully the new engineering contract 4—NEC4—will include the clerk of works in such a way that, at least, the client and the developer are aware that there is such a person as a clerk of works. Hopefully, we can get clerks of works back into the construction side.

The Convener: For clarity, we are delighted to hear replies from all witnesses, but not everyone should feel the need to reply. That said, does Mr Campbell or Mr McKenzie want to add anything to that?

Gilly Carr: I would like to add one more point first. Some problems—such as condensation, which Mr Campbell touched on—are down to design, not bad workmanship. For example, based

on an understanding of modern-day living standards and what people expect, designers could put in mechanical ventilation to deal with condensation in bathrooms, kitchens and bedrooms.

Kenny McKenzie: There are issues with the level of inspection that is possible on the type of development that we are discussing, given the resources, the finance and the need to match the application fee against how many inspections can be carried out. Communication is another important issue, because we rely on the developer informing us that the building is at a stage that we can inspect. If we go along to inspect a building that is all covered up, we have to have real cause if we are to ask for it to be opened up. We could ask for it to be opened up but, if that was challenged, we would almost have to show failure. We can only do reasonable inspections. However, if we had a reason to think that there was a failure, we would get the building opened up.

It is very rare that a building that starts construction does not meet the standards on paper. Quite often, the final building meets the standards as well, based on a visual inspection, but there are perhaps little issues such as a cavity having a block that could cause dampness. Shrinkage, settlement and things like that can happen, but they take years to happen; they do not just happen overnight.

Glenn Campbell: I think that this issue needs a bit more investigation. Is it clear that building regulation defects are being found, or is the issue more down to the quality of workmanship? Those issues are two quite separate entities. Building standards teams, in their inspections on site, do not have the responsibility for inspecting the quality of workmanship that has been carried out. The reason for the inspection is to ensure compliance with the regulations.

The Convener: That is helpful, because I was going to go on and ask a little bit about the responsibilities of the construction team on site, the developers, the insurance company, NHBC, and so on.

A few weeks ago, we had NHBC at our committee. We invited it to come to speak to us after we had heard anecdotal evidence—for the record, I stress that it was anecdotal—from people who felt that they had been poorly served by construction standards in new-build housing. What we heard led us to ask an obvious question about what happens if someone complains to NHBC or any other insurance company about something that is structurally defective in their house and is causing a significant problem, and whether that company would have a responsibility to check whether that problem could be systemic across the development, which might have 100 or 200

units. In response, Malcolm MacLeod from NHBC said:

“If the complaint was about an individual property, we would tend to look at that particular property and deal with that complaint, because we would not know whether the problem was systemic.”—[*Official Report, Local Government and Communities Committee*, 3 May 2017; c 13.]

I will leave that sitting there. NHBC is but one insurance company, but that might be practice in the sector. If the new-build properties in, for example, a 200-unit development are insured and a problem is identified in one, two, three or four of them, is there any legal responsibility for anyone to start picking away at the issue to see whether there is an underlying problem, whether it is the quality of workmanship, the design or whatever? Who would have that responsibility? If no one has it, should it sit somewhere?

Ross MacKay: If you are looking to me as a lawyer, I would say that, at the moment, there is no such responsibility. There is a bigger issue to do with the warranty and consumer protection that a buyer of a new-build home obtains. At present, what they receive is the habitation certificate, which is maybe not the final completion certificate but is the green light from the local authority to say that that individual house has been passed and is fit for occupation. There will be a cover note from NHBC or an equivalent warranty provider saying it has inspected the property and is satisfied that it is fit for occupation, and that is it. There is nothing else there. One of the great omissions is that there is very little obligation on the part of the builder to provide a property that is compliant with anything. A lot of builders have a standard form contract that does not even have a provision saying that they undertake to build the house in compliance with planning permission and building regulations. Effectively, you take what they give you.

A couple of years ago the Law Society produced a standard form contract for use in new-build situations. It included a specific provision saying that the builder undertakes to build the house to a proper and workmanlike standard, which is the classic, old-fashioned phrase, and in compliance with all the relevant regulations. That, effectively, is the building contract. Normally, when you buy a new-build house, you do not have a building contract. If you undertook a £100,000 extension to your house, you would have an architect involved, an architect's contract and a ream of paperwork setting out what is going to be done. However, on the whole, a consumer who buys a new-build property does not have a building contract other than, at most, a one-line phrase saying that the builder will build a house.

The Convener: Are there any other thoughts on that line of questioning?

Kenny McKenzie: I think that it might be possible to go down the road of looking at something with regard to what you are talking about. I do not want to just talk about NHBC, but I would have thought that that type of third-party insurance should be adequate, given the number of inspections that it does.

10:15

My experience is not of major problems throughout private sector construction, but there is the odd one-off house that something has gone wrong with—houses are just like any other product, and there might occasionally be an example of what we might call the Friday afternoon house. Such examples tend not to make the press—sometimes, they do not even come to the attention of building standards teams—but you hear third-hand accounts of them. Such instances tend to be picked up by the builders because, as national contractors, they do not want them to get in the newspapers, so they act more for commercial reasons than for any legal reasons.

Occasionally, for example, something is missed with regard to a house with specialist foundations, leading to the house settling and people being evacuated and taken somewhere else while the house is rebuilt. That sort of construction work does not need a warrant because it is classed as repair and something is being done about it. However, such cases are very few and far between, as far as I am aware.

The Convener: Would you say that your information about such cases is all anecdotal? Earlier, I stressed that the information that the committee has is all anecdotal, too.

Kenny McKenzie: Yes, it is anecdotal, but it opens up the issue of who pays for the necessary work at the end of the day. In my experience, if there is a clerk of works on a job, it will definitely be better finished and constructed, but that is a cost and we need to think about who is going to pay that cost. It might end up being the person who is buying the product, which means that there will be more on-costs, but that is only a personal feeling.

Gilly Carr: We seem to be talking about individual properties here rather than housing associations. In terms of fees, you get what you pay for, basically.

I am a practising clerk of works, but I will give you a little bit of my background. I am a joiner by trade. I went on to be a site manager and a building manager, and then I became a clerk of works. I worked for a number of years for Newcastle City Council as a clerk of works and, through the institute, I was taught to be part of the construction team. If a clerk of works picks up on a

defect at any point throughout the construction phase, it is brought to the builder at a very early stage, which stops defects that we are aware of being built into the properties. I have not come across anybody who would willingly build a defect into a property and then carry on and do it again, so if you can bring a defect to the construction company at an early stage, it is beneficial to everybody.

The Convener: I see that Mr Campbell wants to say something, but I am being really disciplined here. We will bring you in a little bit later, Mr Campbell, but lots of themes have been brought up that I know that my fellow committee members want to explore further. Because of that, and the responses that we have received, we will slightly depart from the order in which members were scheduled to ask questions, so that members can pursue certain lines of questioning.

Graham Simpson (Central Scotland) (Con): I will follow up with a question for Mr MacKay. We have looked at the legal situation. You rightly said that people who are buying a new home do not have any consumer protection, and that seems unacceptable to me. You mentioned the standard contract that you drew up a few years ago; I do not know whether that is in widespread use. Might part of the solution be to have a standardised missive to be used for all new house sales in Scotland?

Ross MacKay: There is certainly merit in looking at that approach, although there is always a reluctance to impose a standard contract by legislation in any field. You are right in saying that, as we have discussed before, there is a lack of warranty protection. However, we have to ascertain how deep the problem is before introducing a whole raft of legislation to support that aim, and that may require further evidence.

The standard form of contract is increasingly used by smaller builders but, as far as we are aware, the main national builders still use their own bespoke offer to sell and they are fairly reluctant to move away from that. The position of some of them is very much, "This is a standard contract: take it or leave it." We find that even fairly reasonable technical amendments are rejected. The builders' view is that they have a standard form of contract and people should just sign it.

When a new home buyer has seen the house that they really like, with all mod cons, and it has been sold to them very well, they want to sign up for it. A lawyer will try to explain the position to them but they just want to sign on the dotted line, secure the new house and start planning to buy the furniture, the carpets and so on. I think that consumers require an element of protection in terms of a simple warranty, and builders have a duty to build in accordance with the regulations and to a reasonable standard.

Graham Simpson: If we dealt with the matter at the missives stage, that would give people absolute legal cover if things went wrong.

Ross MacKay: They would have that contract, yes.

Graham Simpson: That could cover things such as how defects are handled and provision for dealing with disputes if we were to have an ombudsman, for example. A route for consumers to go down could be set out in the missives. That does not exist at the moment

Ross MacKay: No, it does not. I am sure that NHBC and Homes for Scotland would tell you that they have created their own consumer code for home buyers, which has very much helped the position over the past few years. NHBC is not just a provider of insurance; it also provides an arbitration service. A lot of these cases perhaps do not come to public attention because, when someone has a complaint and they are in a dispute with their builder, NHBC or Premier Guarantee, which are the two major suppliers of the product, will step in and try to arbitrate between the builder and the buyer. In those circumstances, NHBC will step in to insist that the work is done. If someone buys a property without NHBC or Premier Guarantee protection, they have a problem if there is a dispute with their builder.

The Convener: I know that we are having a conversation with the lawyer on the panel, but if anyone else wants to come in on that subject—do not feel obliged to do so—please catch our attention and we will bring you in.

Kenny McKenzie: A lot of the NHBC and Premier Guarantee arrangements are driven by the mortgage lender—the bank or whoever is lending the money. Particularly with first-time buyers, the person who lives in the house does not own it; it is the mortgage lender that owns it, and a lot of these things are driven more by the lender. I do not know how Ross MacKay feels about that, but we hear a lot about what the lender wants—not regulations but a completion certificate in their hand on a certain date rather than a temporary certificate, because they want to make sure that every single thing is complete.

We would issue a temporary certificate or a habitation certificate, as the solicitors like to call them, only when something like a bit of footpath or street lighting is not finished on the road but it does not affect the property or when there are outstanding amendments to plans to be submitted that might not affect the property although they might affect another property. A lot of the third-party insurance is driven more by the lenders than by the house builders.

Ross MacKay: If a mortgage is involved—as it is in the vast majority of cases—the solicitor has to

abide by the Council of Mortgage Lenders handbook, which sets out the technical provisions of what we are required to do. It states that we have to check that there is warranty cover from a list that is approved by the lender. Virtually all lenders will approve NHBC, Premier Guarantee and Zurich as warranty providers, although Zurich is no longer in the market. There are also a number of smaller providers that the lender will be happy to accept as the warranty provider provided that we check that there is a warranty—that is all that the lenders require. They do not expect us to interrogate the workmanship or anything else. As long as we can say that we have the completion certificate or habitation certificate—call it what you will—and the warranty, the lender will be happy.

Kenny McKenzie: They will accept the report of a chartered surveyor who has supervised the work of an architect who has also supervised the work. If I was to buy a bit of land and build my own house, I could employ a third-party independent or maybe the architect who drew up my plans, and they would be fully employed to sign off at different stages that they were satisfied with the work. From the RICS point of view, as well as from a clerk of works point of view, third-party inspections could perhaps be outsourced as opposed to being required to be done by a nominated third-party inspector. For a lot of non-domestic, non-housing properties, the architect is still involved in the project or a third-party surveyor or project manager is acting on behalf of the client, overseeing the property at different stages.

Ross MacKay: Kenny McKenzie is right that one option is what is called a professional consultant's certificate, which we tend to see in one-off situations in which someone is building their own house. The professional, the architect, the engineer or a specified list of others can give us a certificate saying that they have supervised the build during the entire course of construction and everything is fine. There is a standard certificate that those professionals can provide, and it is more wide ranging than the basic completion certificate. It states that they personally have supervised the construction and are happy to sign off on it.

Graham Simpson: I do not know what view the committee will form, but, if we were to go down the route of having standardised missives, who would instigate that? Would that be a matter for the Government? Would it require a change in the law?

Ross MacKay: Yes, to make it binding it would require that. As an interim step, you could recommend to Homes for Scotland that its members move towards a standard contract and see whether the matter could be dealt with on a voluntary basis.

The Convener: Mr Gibson has a supplementary question on that specific issue.

Kenneth Gibson (Cunninghame North) (SNP): A problem with dealing with the matter on a voluntary basis is that the rogues are the ones who would be least likely to sign up to it. That is the issue. We have heard a lot of talk about NHBC—

The Convener: No, Mr Gibson. Your question must be specifically on the issue about missives.

Kenneth Gibson: The only comment that I want to make about the missives route is that, unless we put it in legislation, it will not cover the people who are least likely to adhere to the kind of regulation that we want to see introduced.

The Convener: You do not have a supplementary question on missives.

Kenneth Gibson: No. When I indicated that I had a supplementary question, we were talking about NHBC. We have moved on from there.

Elaine Smith (Central Scotland) (Lab): My question is also not about missives, I am afraid, convener, because it was a wee while ago that I indicated that I wanted to ask a supplementary question. However, we are probably going to come back to inspections and clerk of works issues, so I will shelve my question for later.

Can I ask about the legal situation? We received anecdotal evidence about a person who bought a new house in a big new housing scheme from a private building company and had a full survey done. Personally, I would have expected them just to get a mortgage survey done, but they had a full structural engineering survey done and then there were problems with the foundations and so on. Is the surveyor responsible in law when they provide a full structural survey that later turns out to have missed huge problems?

Ross MacKay: The issue of surveys is an interesting one. The committee will be aware that, if someone buys a second property, the seller is required to provide at least a home report under the Housing (Scotland) Act 2014—a seller survey. There is a specific exemption for new build, so builders do not have to provide the equivalent of a home report for a new-build property.

It is up to a buyer to decide what level of survey they wish to obtain on the property. If they are obtaining a loan, their lender will instruct what is called a scheme 1 mortgage valuation, which is a relatively cursory inspection of the property. The valuation confirms that it is, prima facie, four walls and a roof, that it is worth X thousand pounds and that it is suitable for mortgage purposes. It is not an in-depth survey, as you would expect it to be; it is primarily for valuation purposes.

It is relatively rare—in fact, very rare—for buyers to spend their own money on getting that valuation upgraded to what is called a home buyer's report or a scheme 2 valuation, which involves a much more thorough inspection of the property. They tend to rely on the facts that it is new build, that they know the builder—if it is a national name, they take that as comfort—and that they have the completion certificate and the NHBC warranty. They see little point in incurring the cost of a further full survey on the property. That is their choice, but there was a strong push back, several years ago, when builders were given that exemption from the requirement to provide home reports.

10:30

Elaine Smith: That is really interesting. I am glad that it has come out in your evidence. If the committee agrees, we might look at the issue a bit further. In the anecdotal evidence that we heard, the problem was that a full structural survey—it was not just a valuation survey—did not pick up a major defect.

I probably need to move on slightly. I want to ask Mr McKenzie something else on the subject. You said that, when you respond to those questions, the matter will be resolved because the builders do not want bad press. Is it also the case that the home owners do not want bad press, because they might not be able to resell their houses?

Kenny McKenzie: Perhaps.

Elaine Smith: Is there a need, therefore, to get statistics that show the extent of the problem? We are looking at it a wee bit in the dark if builders do not want to talk about foundation problems when half their houses are sinking and home owners do not want to talk about the problems either because they are their houses—the biggest purchase they have ever made—and they might have to re-sell them? I think that you said that we should get more evidence, but how can we get more evidence?

Kenny McKenzie: I do not want to get into trouble for bringing in NHBC again. That was anecdotal. I know of one situation, many years ago, in which that happened to a property in Edinburgh but such situations are few and far between.

You may be correct in saying that the owner may not want the bad press either, but I am sure that the matter would be reported to NHBC, which would probably be involved. It would have a record of all minor and major claims and all defects found against the companies, as they would be underwritten by insurance companies. The insurance company would have records, and

NHBC would be able to give the owner that record. However, the issue is not reportable to the local authorities in any way at all. We sometimes get news of it but only anecdotally, and, unfortunately, rumours grow legs and arms and become exaggerated by the time that they get to the 10th person—and we might be the 10th person.

Elaine Smith: Should it be reportable to the local authority? That goes back to the convener's first point. If an insurance company found something structurally defective about one house, should there not be an onus on it to see whether the defect is in the other houses instead of trying to contain that one situation?

Kenny McKenzie: Glenn Campbell might speak better on behalf of local authorities, as I have my RICS hat on at the moment. I do not want to pass the buck, but personally I do not think that the matter should necessarily be reportable to the local authority, as there is no reason for that through the building standards.

Glenn Campbell: I agree with Kenny McKenzie. If a fault with the foundations were found in one house out of a development of 200 houses, it would be practically impossible to revisit the other 199 houses to check or recheck to make sure that the foundations in the rest of those houses had been built correctly.

Kenny McKenzie: The problem is that you are going back another stage. The foundations may have been put in by a specialist subcontractor on behalf of the builder, but in some developments they may have been put in by a specialist subcontractor to someone who wants to develop land in a mining area, for example, and who then sells off plots of land. I live in Musselburgh and for about two years someone has been grouting and stabilising the ground all around Wallyford and Musselburgh but, as far as I am led to believe, that land has not yet been sold off to house builders. House builders will come on to that land on the understanding that it is stable, but one bit might have been missed where the corner of a house goes. It is very difficult. Such things may happen very rarely, but hopefully the insurance is in place, as it is for any accident that happens.

Elaine Smith: You mentioned NHBC, but it would be difficult to get that information from NHBC because it would not be subject to freedom of information requests. If it keeps all that data, I am not sure how we would go about getting it.

Kenny McKenzie: I do not know how the building authority—at the moment it is the local authority—would be able to record all that either. It could, but that might be even worse because solicitors tend to do general property searches. A new-build house today is a second-hand house a

year or so down the road. Any notice will be flagged up in a property search, so it could be detrimental to the sale of that house or to house builders in the future if there is a mark against it.

Elaine Smith: The problem is that we now know that there are a lot of crumbling houses that were sold as new houses 25 or 30 years ago. Certain builders have been associated with that—I will not mention the builders, even though we have a certain amount of privilege in Parliament.

Ross MacKay: On the point about inspecting the whole development, I think that the distinction is between workmanship and design. If a problem is found in a specific property and it is ascertained that it is due to poor workmanship, there would be no reason to go to the other houses in the development. However, if there is a clear design fault—with the design of the roof truss, or something like that—there may be grounds for saying that if such an issue applies to one house it will probably apply to every other house of that design in the estate.

Elaine Smith: There has been an issue with wall ties in schools. Should there perhaps be an onus on the insurers to act if there is an issue with one house? That could be a matter of life and death in certain circumstances, could it not?

Ross MacKay: If it is a design issue. You are getting into technical regulations and literally the nuts and bolts of construction. If wall ties should have been there according to the building warrant and simply were not installed, that is workmanship. If they are on the warrant drawings and preapproved, and for some reason the engineers got it wrong—perhaps the ties were not strong enough for the wall—that is a design fault. That leads into a bigger picture of inspection.

Gilly Carr: Engineers' surveys of a property have been referred to. Surveys are just done on the key stages. For work that goes on in between—like wall ties—if inspections are done throughout the construction process there is more chance that a problem will be picked up. A lot of people just look at the walls of the building—they do not see what is behind the walls. Unless they break into some areas to see what is behind the wall, they will never find the problem.

The Convener: We have returned to Mr Gibson's theme of questioning, so he may want to explore that further before we move on.

Kenneth Gibson: NHBC said in a written submission that it is an approved inspector for England and Wales, where it has delivered a complete building control service since 1985, and that it is the largest building control authority in the United Kingdom. It said that

“successive Scottish Ministers have declined to license NHBC”

to deliver a building control service in Scotland and, therefore, that home owners in Scotland are suffering consumer detriment. Do the witnesses agree with that statement?

Glenn Campbell: I think that NHBC, or an equivalent insurance body, has not been taken into the building control process or the verification process because local authorities are accountable to the public and to the local members and they do not have any commercial interest. NHBC—I am sorry to keep referring back to NHBC—is a commercial body. It is in a business; it takes fees from contractors or development companies.

Kenneth Gibson: But it is not for profit.

Glenn Campbell: Yes. Okay—

The Convener: You have put that on the record, Mr Gibson. Let Mr Campbell continue.

Glenn Campbell: The local authority is seen to be impartial and independent, and I think the view in the past has been that that brings with it an added security for the public interest.

Kenneth Gibson: Are you saying that the system is better here than it is south of the border, where NHBC has been involved with building control for 33 years?

Glenn Campbell: There seems to be evidence that the approved inspector regime in England and Wales is not as good a system as some people would purport it to be.

Kenneth Gibson: That is interesting.

Kenny McKenzie: The RICS has members throughout the UK, and I know some people who work in England and Wales. NHBC tends to dominate new housing there and local authorities deal with more of the non-domestic situation. From my experience in Scotland, in all the cases of defects—anecdotal or real—that I have been aware of, the properties have had either a Premier or an NHBC certificate. I cannot see how the NHBC or Premier or anybody else would be doing any more wearing both hats than they are doing at present. I am not convinced that that is the root cause. I am not saying that NHBC would not do equally a good job or otherwise, but I do not think that that is getting to the problem that Elaine Smith alluded to: what faults are there, where are they, and how do we stop them happening in the first place? That is the bigger picture.

The Convener: I should state again—we have put it on the record already—that this is not about one warranty provider, NHBC. It is about the statutory landscape in which the providers operate. It is important to point out to anyone who is watching our meeting that we are not looking at

any one provider. We are looking at the structures within which all the providers and others operate. It is helpful that you have come back to that point.

Kenny McKenzie: Our submission touches on construction notification plans; I think that they were brought in after consultation with Local Authority Building Standards Scotland, which gave evidence at a previous meeting.

Over the years different local authorities have taken slightly different approaches. We have put in place a formal system, which has been quite successful but you can only deal with the response that you get. I do not like to use the words “cowboy builder”; that is another situation that we have tried to deal with for many years. If we turn up for an inspection and the building is finished, we have to have reasonable cause to strip it. We might say, “I wanted to see all this work.” If photographs are available, that is an alternative method.

However, the current remit of building standards is only to confirm compliance with the plans and with health and safety and welfare. There may have been bad workmanship. It may take 30 years for something to start crumbling; we do not know that, because materials are changing all the time. There may be third-party certification, agrément certificates, and British standards that comply with independent testing, but where does maintenance come in? The building that we are in is one of the most complicated and beautiful buildings in Scotland, but I think that it has had its own problems, too. That is not a dig at anyone in particular; my point is that we are dealing with a very difficult situation.

The Convener: Certainly, but at least we are not conducting an inquiry into that. [*Laughter.*]

Kenny McKenzie: No, not at all. There are many excellent things here, but there are probably one or two little issues as well. That can happen in a lot of buildings, because we do not have a crystal ball that lets us know what will happen with a material 10 or 20 years down the road.

10:45

The Convener: I am delighted to hear you say that there may only be one or two issues. We are happy with that.

Andy Wightman (Lothian) (Green): We have covered an awful lot of ground and I think that we will probably want to return to many of these issues in the months and years ahead. To what extent are the problems that we are talking about specific to the speculative building industry? That industry dominates in the UK, unlike the rest of Europe where contracts are entered into at the beginning. There is control—buyers procure

buildings; buildings get built; there is an architect; and presumably there is the equivalent of a clerk of works. If a building is bought off the shelf, which is common, is that responsible for a lot of the potential problems?

Ross MacKay: At the core it probably would be. As you said, the industry is speculative. We have a well-established building industry. We have a relatively small number of national house builders, which we all know. Their business is to go out to buy land and build houses in the expectation that there will be a demand and that people will buy their product. It is no different from the sale of any other product, be it a car, a sofa, or a tin of beans. With a house, the issue is the scale of the expense. We are talking about properties worth at the very least tens of thousands and in most cases hundreds of thousands of pounds. To a large extent, the reliance is on the reputation of the builder.

This is purely anecdotal, but a year or so ago I was at a round-table meeting chaired by NHBC at which some of the major builders were represented. They were at pains to say that they have radically improved and enhanced their aftercare service. Several years ago, there were a lot of unhappy buyers as a result of snagging problems rather than structural problems. The builders feel that they have addressed that now. They have after-service teams to deal with those issues and if someone is buying a new-build property now and they find that there is a loose window or something, the builder will get a team in there to fix it. That has squashed a lot of the issues. If there is a more serious structural defect, the same teams are there to look into that now.

The builders are aware that they have a reputation to maintain. If there is bad publicity, it will be picked up by the public and it will impact on their share prices and they are very conscious of that. They have a business rationale to make sure that they build a good product; that is the business driver behind it, rather than a legal or technical or regulatory regime.

Andy Wightman: Who uses clerks of works now in the domestic house building industry?

Gilly Carr: Unfortunately, the use of clerks of works has declined drastically over the past decade or so. I am not aware of many companies that employ a clerk of works—it would tend to be a designer or a client rather than the construction company. There is a need for regular inspection; that has become more prominent and I think that it has been brought to the fore because of meetings like this one. There are a lot of very good builders out there. Unfortunately, large companies tend to have a lot of self-employed management teams. The builder’s reputation is based on the self-employed person and if that person is going from

one company to another he does not seem to have much loyalty to one particular company. He finishes on one site and he moves on elsewhere. That is where the large company suffers.

Andy Wightman: Just to be clear, is the legal obligation of a clerk of works towards the client?

Gilly Carr: Yes.

Andy Wightman: A clerk of works works on behalf of a client. Would a clerk of works ever have been involved in speculative volume house building? There is no client at that stage

Gilly Carr: They do not work directly for the client. Again, it depends on what warranties are wanted and what guarantees will be given. It would not be right to ask a clerk of works to sign off a completed building. As I see it, the role of the clerk of works is to inspect through the whole construction process.

Unfortunately, I am not working with housing at the moment. I am working on larger-sized projects. I am currently working for Heriot-Watt University in the west of Edinburgh. The main contractor tests that the piling testing on jobs is correct and I am asked to witness those tests. When we are on site more regularly than just for the ad hoc inspection, we end up with a good working relationship with the contractor. It is all about trust and that can only be gained when people deal with each other face to face throughout the process rather than in just three or four inspections.

The Convener: I thank Alexander Stewart and Jenny Gilruth for their patience. They will be taking us on to a new line of questioning shortly, but Graham Simpson has some further questions about the clerk of works.

Graham Simpson: It strikes me that if you have a clerk of works on site, their job, as you have described, Mr Carr, is to inspect every building at every stage and make sure things have been done properly. In the building control system that we have, that does not happen. We have what is called reasonable inquiry, which means that building control officers inspect some sites. They do a paper-based risk assessment and things get missed. Should we bring in a system in which there is a mandatory clerk of works, for instance on sites over a certain size? Would that help?

Gilly Carr: Yes, that would be ideal. Unfortunately, because of restraints on local authorities, I do not know whether that is affordable. As you know, many local authorities have outsourced their housing stock to housing associations.

It would be great to get a system like that in place, but the clerk of works is not the be-all and end-all. We can inspect only for the amount of time that we have been given for each project.

There is not a finite line that says that if a clerk of works is on the job, everything is perfect; the odd thing is overlooked. I do not think that I have ever overlooked anything myself—I hope that I have not—but I can answer only for myself and other qualified clerks of works. You pick up a lot more than you miss.

Glenn Campbell: We do not want to confuse reasonable inquiry with the role of the clerk of works. The role of building standards and building control is to ensure that the building has been built in accordance with the approved drawings and complies with the regulations. The role of the clerk of works is to check the quality of the work on site and that the building has been built in accordance with the plans and specifications. Building standards and the clerk of works are two different roles.

The Convener: Building standards is going for a final line of questioning. We definitely get the distinction. Are there any other comments on the clerk of works?

Ross MacKay: It boils down to a risk-benefit analysis. There is no doubt that in an ideal world every house would have a regular inspection regime by an independent professional, be it a clerk of works, an architect, a local authority inspector or whoever, but that would cost serious money. The practical aspect has to be about where the building industry, this committee, and the local authorities feel that an appropriate balance can be struck in that regard. It boils down to cost and the risk-benefit analysis, dare I say it, behind it. I am not speaking for builders, but I can imagine that their reaction to employing a regime of clerks of works or equivalent will be about the cost. That will bite into their profit margin and they may want to put the price of houses up, which is not what the intention is.

The question is whether there is another mechanism for ensuring the quality of the build, and what the fall-back might be when that quality does not materialise? Such a mechanism might be, for example, some form of sinking fund that builders and other parties could pay into. If you buy a flat in a modern block these days it is quite common that factors or managing agents will seek a monthly payment from the owners to go into a sinking fund to deal with future maintenance. It may be that some sort of fund like that could deal with what I think are still fairly rare cases of serious structural defects that are not picked up by builders or insurers and slip through the net. If there was some sort of fund there to deal with these cases, that might be an appropriate mechanism, rather than the statutory employment of third parties.

Gilly Carr: I touched on the qualified clerk of works, unlike the RICS or the legal gentleman.

There are a lot of clerks of works out there: just pick up the phone, pick up a business card and I am a clerk of works. I can answer only for qualified clerks of works. We go through a very simple process to interview people who come into the institute.

Elaine Smith: We have two clerks of works situations. Big building companies—the good ones whose houses are not crumbling 30 years later—used to employ a clerk of works. They would not have undertaken a building project of any magnitude without having a clerk of works. Now, it seems, they do not. That is the private sector and the question is whether there is any motivation for them to employ a clerk of works.

Then there is the question whether public sector building control should be employing a clerk of works.

What would be the motivation for the private sector to employ a clerk of works? Would it be a more robust inspection regime? For example, say there was a blue sky team from the Scottish Government that was going to go out and swoop down on particular sites, perhaps taking the local authority people with them at the time, and the big companies that are building the big housing schemes did not exactly know when that blue sky team might be coming. Might that motivate them into thinking, “If we had a clerk of works on site we would be ready for that”? That is question one: is there any merit in that kind of thing? I see Gilly Carr nodding.

Gilly Carr: I think any additional inspections would be of benefit one way or the other, but if you are just going to do ad hoc inspections—I am at risk of repeating myself—you are taking it only at that point in time. Do you take it when it is a rainy day when people are travelling through mud to get to their place of work and you do not know what is built in and what has gone off their feet and so on? Do you take on board the health and safety issues?

Elaine Smith: We heard evidence previously that the clerk of works is a thing of the past and I am trying to get at why it is not in the interests of the big building companies and the big house builders to have an overall clerk of works on the building sites. Why is that not in their interests, especially when they are employing so many subcontractors, which we have discussed? Is it because there is no possibility of that kind of unexpected inspection? I suppose that is all that I am asking: is that an issue?

Gilly Carr: You are dead right. Some—very few—companies have lately advertised for a clerk of works to work directly for the building company rather than for the client. That is because of publicity. When things unfortunately go wrong,

everybody says, “Why was there not a clerk of works?” That is after the event. Things are improving very slowly, where clerks of works are coming back in.

Elaine Smith: I will ask Mr Campbell specifically about local authorities. It would seem that to monitor building regulations you have building control officers, but local authorities used to have clerks of works too, because they could do a different job to the building control officers. Why do local authorities no longer have clerks of works to do shear tests, drain tests and found tests—the kinds of things that clerks of works might have gone out from the local authority to do. That role is totally different to the role of the building control officer, who is qualified in a different way. Could you tell us a bit about that?

11:00

Glenn Campbell: The local authority would have employed its own clerk of works for building housing developments for council use. Private sector housing developments, for which the local authority is not responsible, are a different scenario.

Getting back to what Ross MacKay said initially, in a housing development the customer is the young couple that is buying a house for the first time. They are the client, not the local authority. In an ideal world they should, in their own private interest, employ a clerk of works to supervise the construction of that house. The local authority has a wider responsibility, in that they are looking at the overall development of a housing development, but not for the purposes of the quality of an individual house for the end user.

Elaine Smith: You would never, as a local authority, have used your own building control officers to go out and do soil tests or found tests or drain tests or anything before you gave a certificate of completion. Would you never have done that?

Glenn Campbell: No, we would do that.

Kenny McKenzie, and the chap from LABSS who was at your previous meeting on building standards, mentioned construction compliance notification plans. That is the system that is now in place. The building standards surveyor or building control officer, whatever you want to call them, assesses a proposed housing development, say, given that that is what we have the biggest issues with. They will sit down and look at a scheme of 100 houses and, because we do not have the resource to be on site every day of the week or to inspect every individual house, they will determine what houses within that development will need specific inspections. We will randomly select a number of house types to inspect. The

construction compliance notification plan will stipulate that the foundations need to be inspected on that house and that it might need another inspection at wall plate level whenever the timber frame is erected, if it is a timber-framed house. Depending on the type of construction, there will be a stated number of site visits that we would like to see and perhaps soil tests before the foundations are laid.

In Highland we fortunately do not tend to have the same ground condition issues that the central belt has. We do not have mining areas that are susceptible to holes appearing. The ground conditions in Highland are generally very good, sandy gravel. We do not tend to come across very many, if any, issues with subsidence or foundation failure. They have occurred where people have perhaps built in peat, but by and large it is not a common occurrence.

Elaine Smith: I will stop you there, Mr Campbell. Is it a resource issue? Would you have both building control officers and clerks of works doing more inspections of specific types if you had more resources?

Glenn Campbell: In an ideal world, yes, we would like to inspect every single house in a housing development, but we do not have the resource to do that.

The Convener: I know that Mr Stewart has been waiting for an hour now to ask a very similar question, but Gilly Carr did want to come in in relation to clerks of works at local authority level.

Gilly Carr: Yes, thank you. I worked for Newcastle City Council, as I said, for some 10 years and one of the reasons why I left was that they went from a group of 14 clerks of works down to two. You cannot deliver the same service without the people.

There was mention of the individual buying the house and fees being passed to them. As Mr McKenzie said earlier, pressure could be put on to the mortgage lenders. I think you would have a better recourse and get some useful response from the builder.

The Convener: How much would a clerk of works cost in reality—I am talking about the private sector—for a large house developer building a 400 unit development who would be on site with a rolling programme for, say, two and a half years? How many clerks of works would they need full time for a job like that?

Gilly Carr: That is a very broad question, convener.

The Convener: I know. If you are selling properties at £200,000 a property, you have 300 or 400 of those units and you are on and off site within three years, what percentage of the overall

ticket price of that property sale will be reflected by having two full time clerks of works on site? Is it Mr MacKay's reasonable point about striking a balance across the level of risk, the guarantee of quality and the cost of all that? I am trying to grapple with how significant an additional cost it would be for the private sector to employ a clerk of works, or two or three, for a substantial housing development.

Gilly Carr: We are very cheap. In my opinion, a lot of clerks of works are very much underpaid. I am aware that some local authorities pay as little as £23,000 a year. That is not much more than a building labourer gets. A qualified clerk of works in private practice would charge in the region of £25 to £30 an hour. That is a very broad answer to a very broad question.

The Convener: That gives us some context. The committee has to strike a balance in the recommendations that it makes. In the private sector, with quite eye-watering ticket prices and a lot of new-build properties, my instinct is that the additional cost to a developer for a clerk of works seems very minimal. I was trying to make sure that I was going along the right lines on that, Mr Carr.

Gilly Carr: Yes. The most recent adverts I have seen from the private sector and direct from builders have been in the region of £38,000 a year for a clerk of works.

Kenny McKenzie: As an alternative to the clerk of works, I know that chartered surveyors provide this service as well, as do architects and probably structural engineers. It sometimes needs the relevant expertise.

I do not want to digress, but when you talk about drain testing on building sites, we still witness drain tests and suchlike but a lot of that is self-certified now. SNIPEF, which is the Scottish and Northern Ireland Plumbing Employers Federation, registers the drainage people, plumbers or whoever, to self-certify drainage now, so a lot of that is self-certified work. A lot of design is self-certified now through the Government's Structural Engineers Registration Scheme, which is through your building standards division. That is one of its self-certified groups. A lot of design is now self-certified, as are a lot of site works. On a Wimpey site, I do not know whether I have ever seen a clerk of works other than working for someone else. I have never seen them employ one themselves, let us say.

The Convener: There are other building firms, of course.

Kenny McKenzie: There are other building firms, and it is Taylor Wimpey now anyway.

The Convener: Gilly, do you want to add to that before we move on?

Gilly Carr: Yes. I echo what Mr McKenzie said. My experience is that, if there is a building control officer on site and I regularly see them inspecting main drains, I do not inspect the main drains. I trust them on the whole. We do the internal drainage, which is under the foundation and is very difficult to get back to, and test them as we go along. We also get a closed-circuit television survey of the full drainage system on completion. It is not a waste of time having building control and a clerk of works when they work hand in hand. It is not doubling up on the workload as such. We tend to do our own thing as a team.

Kenny McKenzie: There are also third-party inspectors. Glenn Campbell is perhaps management now; he has probably been a foot soldier in the past. What tends to happen generally in a new housing development is that you will go out at the very beginning and inspect the first house that has gone up. If that is a show house, they usually try to make it good anyway, but you inspect that first house. As Gilly Carr alluded to, you hope that you get that right and that it follows on that those are the agreed standards that everyone can work to.

Again, you work hand in hand with NHBC. You go on site and look at its book and see whether it is picking up any faults, and when you are there you may say, "They have had a wee issue with this situation." If you are going to look at a house, you might look at that specifically. NHBC does not do drain testing. It relies on the local authority, so there is a partnership there already. There is a partnership between all these professional people, who, at the end of the day are working to get a professional, good quality building.

The Convener: Absolutely—that point is well made. I call Mr Stewart, who has been patient and who I thank for sticking with us.

Alexander Stewart (Mid Scotland and Fife) (Con): Thank you, convener. Gentlemen, we have touched on the role of the building standards system, and it would be useful to get your view on whether local authority building standards departments are sufficiently resourced to provide an effective service to the client. If that is not the case, what is the knock-on effect?

The Convener: Mr Campbell was coming on to that.

Glenn Campbell: There will always be a local authority view that the service is understaffed, and that is a particular issue now while we are slowly coming out of a recession. House building has taken off again and we are approaching levels of house building that were last seen during the boom. Unfortunately, local authorities have not kept in tow with that, and the result is that many

authorities are struggling with staff resources to catch up with the private sector.

When Highland Council has staff resource issues that mean that we cannot turn around building warrant applications to meet targets, we regularly use private sector verifiers or surveyors to help us. I am aware that the City of Edinburgh Council fairly recently put out a plea to LABSS for the same reason. We will always plead that we do not have enough staff; that is an issue.

Kenny McKenzie: Local authority funding of building standards is a serious issue. The fees are not ring fenced and, to speak on behalf of the RICS, I think that the perception is that some local authorities see the fees as a bit of a cash cow—it is a regular income that local authorities can have some of—so the function is not properly resourced.

There was a recession, and the building industry goes up and down through recessions. I have been involved in the industry for 40 years and I can probably name most of them. In a recession, there are pressures on departments to have enough income to cover their budgets and their staff but, when the economy is out of the dip, there is normally a surplus, which is not always spent on providing resources.

All sorts of further complications arise if colleges stop running surveying courses, because there are then no surveyors to recruit, which takes four years to fix. When we come out of a recession, we need someone there, but that person is in training.

Because local authorities tend to have yearly budgets and do not do long-term succession planning, training regimes and apprenticeship regimes are difficult. The RICS and other professional bodies have been looking at somehow helping by working with local authorities on training and maybe modern apprenticeships to try to get more professional people into building standards.

As Gilly Carr said, it is important to have professional people with professional standards; membership of his institute gives the assurance that a member is working to a professional standard, whereas someone who is not qualified—although I am not saying that they do not have a level of expertise—sometimes does not have the professional standard behind them. There are certainly issues with training and budgetary control.

There are huge issues with the fact that, for a huge percentage of building warrant applications that come into a council, the fees are probably less than £250. That will hardly cover the administration nowadays, never mind the technical input, given the computer systems for the registering and grant of the warrant and the

process that is involved in leasing computer space off the eBuilding Standards system and others. That alone wipes out the fees, and a council has to do a professional job on top of that.

11:15

The fees at the lower end need to be greatly increased. Some fees for non-domestic buildings could maybe be cut down, but we are speaking primarily today about house building. A 400-unit housing scheme might cost quite a few million pounds—say, £20 million. A £20 million office development could be thoroughly inspected in about half a dozen inspections if it was a shell unit but, for the same fee, an authority could do half a dozen inspections times 400 on a housing scheme.

A different fee structure has to be looked at; fees could be upped at the bottom and cut back a bit at the top. Domestic and non-domestic fees have to be looked at separately and perhaps we need to be a bit more clever there. The situation is difficult, but my view is that any moneys that come into building standards should be kept in that team and its budget.

The Convener: That is clear and helpful.

Glenn Campbell: I support what Kenny McKenzie said. Succession management seems to have fallen off the radar of a lot of local authorities, to the extent that apprentices and trainee surveyors seem to be a thing of the past. As an example, I have a team of 26 staff. The average age of my surveyors is 48, and I have two surveyors who are 65. My youngest surveyor is 30 and I am not taking in trainee people to shore up the bottom end of the profession. I think that that is the case throughout the country. We have a lot of older surveyors who could leave the profession in the next five or 10 years and we do not have new young blood that is growing underneath that. That is a potential problem.

Alexander Stewart: You have identified the problem—that funding is a major issue. If we are to be realistic about how we go forward, we need to look at the fee process and structure, because that will give us an opportunity to identify issues and move things forward.

Mr Campbell exactly touched on the idea of apprenticeships and ensuring succession—colleges and universities need to support that process, too. Over the next five or 10 years, there will be a massive demand, so authorities will be trying to recruit such individuals into locations. As house-building demand grows and progresses, authorities will find themselves in the difficult situation of managing what will become a crisis. There could then be more difficulties and more standards slipping, because we will not have the

fully qualified staff to manage the process and ensure that the right people are doing the right roles in the community.

When a house buyer buys a property, they assume that everything will be okay, because they have this idea that their new home, which might be the biggest purchase of their life, will be of a good standard. However, that might not be the case.

The Convener: Wrapped in that was the point that Mr Campbell made about where the skills gap might emerge in the years ahead. It would help if you said how you would address that gap. You have spoken about ring fencing, adequate resourcing and full cost recovery with fees, but that would not solve the skills gap. How we solve the skills gap might seem self-evident to you, but it would help the committee if you put that on the record.

Glenn Campbell: One recommendation of the fees consultation that came out just before Christmas was a requirement for local authorities to use part of the fee increase to employ trainees and apprentices. That is an excellent idea that I personally fully support.

My question to the committee is how local authorities could be made to adhere to that excellent idea, which I hope would force or commit them to employ new blood in the profession. The ring fencing of fee income is a great idea and I do not think that any building standards manager in the country would say no to it. If money goes into a central pot, having a local authority give it to an individual service is an impossible task.

The Convener: If you can answer the question that you posed, we should swap places. If any politician tries to tackle the problem that you identified, every other politician accuses them of centralisation and undermining local democracy, but that sometimes means that we do not get at local level the service and delivery that all our constituents require. We all wrestle with that, but we will certainly continue to think about it.

Kenny McKenzie: I do not wish to undermine Gilly Carr and his clerks of works, but I think that clerks of works and building standards have always been separate. For many years, we had building inspectors, who were clerks of works, as such. They were much more the people who were out five days a week to inspect work. There were building inspectors, surveyors, officers and whatever—the titles changed over the years.

We have gone from building control to building standards, which was right because we never controlled buildings. The task now is very much about getting the plans right and then inspecting. In the past, we often got it right on the plans, but the process was not as involved, because there were not as many regulations and complications.

Building was much simpler 40 years ago, when the approach was very much to get out and see the site.

The approach has moved away from that. Particularly when the construction compliance and notification plan came in, local authorities looked at employing more site-based people. There were experienced people in the office, but maybe youngsters needed to come in and train in the skills of site inspection, plan reporting and other disciplines of the profession. People such as clerks of works could have been employed only to do site inspection work. That foundered a bit because of a lack of availability and a lack of finance. There is a will in local authorities to do both aspects, but it is all down to someone at the very top authorising that when budgets—whether national or local—are incredibly tight.

The Convener: Does Mr Carr want to come in?

Gilly Carr: I can only strengthen what Mr McKenzie said. I worked for 10 years in the Channel Islands. A clerk of works post in the education department there was advertised, and 233 people applied, which I thought was a very good number. I was lucky enough to win that post, and it involved on-going training from the Guernsey Government, which strengthened my career.

As for qualifications, I went to university when I was 43. As I said, I am a joiner by background. I wanted to improve my career throughout my life, so I had full-time family commitments, a full-time job and a part-time degree.

It is only individuals who we can bring into construction, and that is not all about taking people directly from college or university; we can have people with experience. People need to know not just how we build things but how we do not build things, which is learned only by experience.

We are now called the Institute of Clerks of Works and Construction Inspectorate of Great Britain; we are not just clerks of works any more. Our body has recognised that, to maintain a 100-odd-year-old institute, we need to improve, so we are construction inspectors, too.

The Convener: We know that, but we all fall back into the old terminology, which I apologise for.

Does Mr MacKay want to come in? I apologise, as he caught my eye quite a few times.

Ross MacKay: This is not really a legal issue, but I entirely endorse what my colleagues on the panel have said. We have been talking about new-build houses, but we tend to forget that building standards departments deal with a huge range of applications daily. We are seeing a big backlog in

Edinburgh. It is not affecting buyers, but it is affecting lots of home owners. If people want to add an extension or do work of some shape or form on their house, that is being held back, which is not good overall—it is not good for the building industry or for home owners. That comes back to resources. Building standards are an essential part of what we all do, and consumers need to know that work is being regulated and checked to a reasonable standard.

The Convener: The initial question was from Alexander Stewart. Does he want to follow up on that?

Alexander Stewart: I thank the witnesses for their evidence, which I think exactly mirrors what we believe the case to be. As I said, there is a backlog and there could be a crisis in the industry in the future. The witnesses have identified things that should and could be done to address that, which is useful for the committee.

The Convener: Thank you, Mr Stewart. I say to other members that we have about 10 minutes left for questions if there is anything that they still want to come back in on. I know that Mr Simpson wants to come back in.

Graham Simpson: Our role is to look at the system, which we have done—we have heard some good evidence in the previous evidence session and today—and to come up with solutions. Mr McKenzie, the written submission from the RICS, on page 5 at point 15, mentions that the system can result in

“a lack of consistency within each building standards office, and more widely across Scotland.”

It says that

“The introduction of procedural regulations would help alleviate this.”

Should we therefore set a minimum number of inspections to be carried out by building control and possibly warranty providers?

Kenny McKenzie: That in effect happens at the moment. The inconsistency is in how the construction compliance and notification plan that is now in place is used. The plan can be populated with 20 visits or perhaps more, although that is very rare. It also asks for certification—there is a tick sheet with all the final certification that is required. It is a guidance note as well, which is useful for contractors.

I think that there is an inconsistency. As Ross MacKay has alluded to, in Edinburgh, where I currently work, we have been struggling with workload because it is a capital city and is booming. It never really had much of a recession, or it rode out the recession pretty well compared to other places. We have used the facilities that we now have through the local authority consortia and

the national body Local Authority Building Standards Scotland, although other local authorities have always been there, anyway. We have outsourced work to Aberdeen City Council and Argyll and Bute Council. Because of the importance of the oil industry in Aberdeen, it has suffered a recession, so the council has had spare capacity and has been helping us out, which has improved the situation.

There is still an inconsistency. An officer who has a lot of experience might look at an application and, because they know the architect who will be supervising the work, will do only three visits—at the beginning, the middle and the end. A slightly more inexperienced officer might decide that they want to see quite a lot. Another officer who has a huge backlog might decide just to risk assess the application and ask for photographs. That is the type of inconsistency that exists. There is already in place a procedure whereby a document can be sent out. How that inconsistency has come about may be down to personality and experience.

It is the same with interpretation of regulations. Developers will always say that people interpret differently, but every architect and every developer gives different levels of information. People also have a different degree of expertise in what they can glean from perhaps a few notes. They want detail and they want different things. Because of personalities, we will never get a system where everything is totally in boxes that can be ticked. It will always vary a bit, depending on people.

Procedurally, the construction compliance and notification plan is very much a voluntary thing for local authorities. Way back when I started in building standards, England and Wales had a system, although I do not know whether it was a national system, and some authorities have adopted that in the past. As I said, it is a resource issue. When you are quiet, you can get things done—

Graham Simpson: I will cut you off there, Mr McKenzie.

Kenny McKenzie: Sorry.

11:30

Graham Simpson: We have established from the evidence that we have heard that councils perform at different levels and that is why the Scottish Government, in issuing verification notices to councils, has given some only one year to comply and some up to six. Off the top of my head, I think that Edinburgh got one year. You are right that councils are performing to different standards, but the evidence that we have heard is that, when people buy a house, they can have no confidence that it has been inspected at every stage or that it is built to standards. I am

suggesting that that situation might not arise if we build into the system a prescribed number of inspections.

Would any of the witnesses agree with that?

Kenny McKenzie: If that was resourced, it would almost certainly help but, as was alluded to earlier, my gut feeling is that the odd situation would still occur. Such situations have occurred even with a good level of supervision in place. As Ross MacKay said, building standards are not just about new housing. I am not trying to defend the backlog in Edinburgh in any way, but perhaps some of it has been caused by the huge upsurge in new housing. New housing is very well served. People need to get a certificate on a certain day and officers are out doing professional and thorough inspections to the best of their ability. That demand has taken away resources. In recent times, resources have probably been focused quite a lot on new housing, which tends to get quite high priority.

It certainly would be a big advantage if there was a fee for new housing that allowed officers to inspect every single house at key stages. That would definitely be an improvement. However, as Gilly Carr said, you cannot guarantee that you will see every bit. Even if you are there every day, or twice a day, there is a lot done in the three hours that you are not there that you might never see and that might be missing. That might be when the dodgy wall ties are put in, because someone has run out of wall ties and thought, "We're getting paid a bonus for this, so we need to get it finished," and then they go and pick up something else and use that.

As the written submission from the Institute of Clerks of Works points out, a lot of the issues go back to the tradesmen. I am not trying to divert from the professionals supervising, designing and constructing, but it is the qualified tradesman on the ground who makes the error. We have to look at who is being employed and whether we are employing four or five-year time-served tradesmen any more. I am totally digressing, but my personal view is that that is where a lot of the fault lies. Supervision perhaps should have picked up some of the issues, but it cannot pick up everything. We cannot afford to have someone standing over somebody's shoulder—that would literally be a factory level of quality control.

The Convener: That is a good point, Mr McKenzie. It is about long-term security for tradesmen with certain companies rather than subcontracting everything.

Kenny McKenzie: Yes, that is another point. It is all about various schemes and, as Gilly Carr says, people being on one site one day, taking the money and then going to another site the next

day. There is no responsibility and no comeback. Folk probably do not even know who built the walls any more.

The Convener: I think that Gilly Carr wanted to add to that.

Gilly Carr: Actually, my answer to Mr Simpson's question was going to be very similar. The question was whether the suggestion would improve things, and I was just going to say yes.

The Convener: That is far too short an answer. You will never go far in politics with a short and clear answer like that.

Mr Campbell, do you want to comment?

Glenn Campbell: I would say a qualified yes.

The Convener: You will go far in politics, Mr Campbell.

Graham Simpson: That is not bad for a council officer.

Glenn Campbell: In principle, Mr Simpson's suggestion would work. The construction compliance and notification system addresses that to an extent, in that it risk assesses the individual site, the developer, the location of the site, the ground conditions and so on. The surveyor will then determine the number of inspections that are required. However, to have every individual house on a site inspected at various stages of construction would require a huge resource. That is fine when a local authority has 200 houses to do for the next two years, but when that housing development dries up and there is no housing for the next two or three years, what does the authority do with that resource? There are issues with employing—hiring and firing, crudely—that the local authority could not manage very well. However, in principle, Mr Simpson's suggestion is a good idea.

Elaine Smith: I have a specific question for Gilly Carr that goes back to the clerk of works situation. In your written submission, at number 5, you state:

"Historically regulations stipulated the appointment of a Clerk of Works, this should be reinstated."

What regulations were those?

Gilly Carr: That is a typing error—it should have read "forms of contract" not regulations.

Elaine Smith: Can you explain that a bit further? Is it forms of contract with the builders or with the local authorities?

Gilly Carr: It is forms of contract between builders and clients, whether private clients or local authorities. When the design-and-build form of contract came in, the local authority building contract, with quantities or without quantities, kind

of went astray. There was a section in those earlier contracts—off the top of my head, it was A23—that stated what the contractor had to provide for the clerk of works, such as an office and a telephone. When the design-and-build contract came along, which was pushed by the construction companies, the term "clerk of works" did not exist in it.

Elaine Smith: So rather than housing developments, you are talking about local authorities contracting with private companies to build schools. You are saying that, previously, those contracts would have stipulated a clerk of works, but now they do not.

Gilly Carr: When it is stipulated in the contract, the person who is signing the contract—the architect or the head of the local authority—can remove the words "clerk of works" if they do not want a clerk of works there. However, with the design-and-build form of contract, because the term "clerk of works" is not in there, we seem to be forgotten.

Elaine Smith: Are those contracts legal?

Gilly Carr: Yes.

Elaine Smith: Therefore, they could be looked at. The committee could take an interest in that.

Gilly Carr: I do not have a legal background, but my understanding is that the current forms of contract in the construction industry are called NEC3. There is a big push from the RICS to get the words "clerk of works" put back into the contracts, which is helpful. However, as Mr Simpson said, there needs to be something in writing to say that X number of inspections are needed, whether by a building inspector, chartered surveyor or clerk of works. That is a way forward.

Elaine Smith: Does Mr MacKay have any comment on that?

Ross MacKay: There are standard forms of contract and there is a whole suite of contracts in the building industry that have been developed over the years, which architects and others pull down off the shelf and, in effect, fill in the blanks to a large degree. The contracts regulate the timescale, the payment structure and so on. Those are the standard forms of contract that Gilly Carr is alluding to and that the architect who is putting the whole scheme together would use.

It would be a question of asking the Royal Incorporation of Architects in Scotland, or a similar body, to develop the standard form construction contracts, perhaps not to enforce an inspection regime but to look for it to be beefed up, whether it is a local authority client or a private client.

Elaine Smith: It seems from what Gilly Carr said that it used to be enforced, because it was part of the legal document and it no longer is.

Ross MacKay: Yes. It is not my sector, but I can imagine that that has been dropped as a matter of practice, although it is equally simple to put it back in again. It is a question of speaking to the relevant parties who prepare the standard form contracts and recommending that that would be good practice.

Kenny McKenzie: I do not want to digress again, but are we talking about speculative private house building, local authority house building or about building in general? Forty years ago, I worked for a house building contractor and there was never a clerk of works on a private house building job. Local authority house building, which is now done through housing associations, still tends to involve clerks of works. However, very few jobs that are not for a university or health board or something like that now have clerks of works. Most major contracts are design-and-build contracts. Architects design them for a client, who appoints a major contractor and the contractor brings on board—I do not know the legal word for that—all the architects and engineers and they come under his remit after that point. He employs them all and the job is done. A third-party surveyor, architect or project manager might look after the project on behalf of the client, but ultimately the contract is with that builder.

Elaine Smith: That is quite helpful—I was trying to clarify exactly that point. I think that we have clarified that what was being referred to went beyond private house building, which we have tended to focus on, because there is a lot more to the whole regime, including the inspection regime, than that. I want to widen things out to what we were talking about in relation to schools and hospitals—and even perhaps the Scottish Parliament—where the public sector employs the private sector in design-and-build construction. From the answer, it seems that you used to be confident that you would have a clerk of works because that would be in the contract, but now it does not have to be and, as part of a design-and-build contract, schools can be put up that do not have a clerk of works near them. That is what I was trying to clarify.

Kenny McKenzie: That may be the case if it is design-build. In Edinburgh, schools have been built under a package—under the public finance initiative, a public-private partnership or whatever—that may or may not have had a clerk of works, but now the council is funding schools through architects, and tendering is going to builders who have clerks of works. There are probably more visits from clerks of works because

we tend to be reactive rather than proactive and walls have been falling down.

Elaine Smith: This is my final question, and I am sorry to finish on what is a slightly related point. We have received a briefing for the meeting that talks about functional standards. In particular, it talks about standard 2.2, which says:

“Every building, which is divided into more than one area of different occupation, must be designed and constructed in such a way that in the event of an outbreak of fire within the building, fire and smoke are inhibited from spreading beyond the area of occupation where the fire originated.”

That illustrates how the building should perform, but it does not say how that requirement should be achieved. Although the building standard is mandatory, the choice about how to achieve it is with the builder. Maybe this is a question for Mr Campbell. How can a local authority know that the standard is being achieved if it does not inspect?

11:45

Glenn Campbell: It comes back to risk assessing specific types of buildings. That particular regulation relates to a health and safety issue, and Highland Council—and most authorities, I am sure—would inspect that specific part of the building. You are referring to a regulation, but underneath that regulation is a ream of technical standards that will determine various ways of complying with it. The designer or the architect can opt to adhere to the standards or they can come up with an alternative, but it always has to comply. Highland Council would certainly inspect to check separating floors, compact compartment floors or whatever to ensure that there is integrity.

Elaine Smith: That was just about floors, but open-plan schools, for example, spring to mind.

Glenn Campbell: In more complex types of building, other standards come into play that support the individual building.

Kenny McKenzie: In the report on the schools in Edinburgh—I was not directly involved in that report, although my colleague was—a lot of questions were raised about open-plan schools, fire-separating walls and so on. We are not convinced that they were fire-separating walls. You can have compartment sizes of thousands of metres, particularly in single-storey schools.

To answer your question, we inspect the walls and floors. The penetrations are the biggest things to inspect, in order to make sure that fire is stopped—that there are dampers and so on for anything going through those floors. That is critical. It is a key inspection point. The schools report kept alluding to firestopping walls, but we think they may just have been acoustic walls that

were taken up. They had double-thick plastic board on them for sound—

Elaine Smith: How did that get through without an inspection? I do not mean just in Edinburgh; I am talking in general terms. What happens if you do not have a regime that inspects everything individually, and you depend on builders ticking things off and saying that they have complied?

Kenny McKenzie: No, no. I think that we would inspect those things. A wall might seem to me to be an acoustic wall, but someone else doing a report on a building later on might perceive it to be a firewall. However, it might be an acoustic wall that has a hole in it. I do not want to get too technical and too defensive about it, but sound does not come into building standards in schools. Nowadays, sound only comes into building standards in housing, in relationships between buildings and in hotels—it relates to residential buildings, sleeping and so on. A lot of things were put into the schools report about breaches in firewalls that I do not think were breaches. I am not 100 per cent sure about this because we did not get specific instances, but normally firewalls are inspected. It is one of the key areas. People say that we are obsessed by fire—we tend to be labelled as obsessed with drainage and fire. People say, “What about condensation and dampness? What if my roof leaks?” because they think that those things are more important than their building going on fire. However, we look at health and safety issues quite critically. Access is another thing that we are very strict about nowadays, but certainly firewalls would always be inspected.

After a building is finished, the IT person can go in to start installing the IT. They might take a knife, cut through a fire batt or a fire partition and just leave it—they might not put in a firestop later. That work does not need a building warrant. Nobody goes back and inspects it. Such things happen regularly.

I was a resident of a building for four years. I could turn my back on an area that was meant to be locked down, with permit-only access for the contractor to get in, yet two months later there would be a ladder up. I would ask how that happened and would be told, “It’s not us; it’s somebody from BT putting something in”. My response to that is that it is up to the management of the building; it is their building still and they have to look after those things. It comes down to management.

A lot of the walls in schools that were perceived to be firewalls were actually just acoustic walls—they kept things quiet between classrooms. Schools do not need many fire-separating walls. They are all one occupancy and they are all open plan. Perhaps even the floors do not need to be

firewalled. I am sorry to go on, but it is quite a critical issue in the report.

The Convener: I do not want to stop you—we should allow you to put all this on the record—but the Parliament’s Education and Skills Committee is starting an inquiry into school infrastructure today, so it will be looking at many of these matters. I am not trying to curtail the detail of what you are putting on the record; I just wanted to mention that another committee is looking into the issue in detail.

Kenny McKenzie: That is fine, but it is worth determining what the standards are. When building control officers have asked for things, we are told by the builders that they do not have to do it because it does not involve a building regulation. We can tell them that it is good building practice, but if it is just a difference between two offices and a bit of metal, they will not do it—they will not spend money on firestopping that; they will just leave it. It does not matter to anybody. My colleague could not understand a lot of the stuff that came back about fire; he could not see where all those things were. We were not given specifics, but we reckon that it comes down to schools tending to have acoustic measures round the corridors and round every room that look like firewalls but which are not. That might be an interesting thing to put to the Education and Skills Committee.

The Convener: There are no further questions from members, so I thank all the witnesses. We have had good value from you today, and it has been a lengthy evidence session. There are lots of players in making building standards as high quality as they can be and buildings as safe as they can be. When things go wrong, most people have a very good experience of the system, but we are looking at what recourse there is and how we stop things going wrong. We are responsible for that—Mr MacKay helpfully illustrated that point when he gave the legal perspective. The session has been very informative and very helpful. There is a lot for us to digest. Thank you all again for your attendance. We will keep you updated with our inquiry.

11:52

Meeting continued in private until 12:19.

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