



OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 28 June 2017

Session 5



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EDUCATION AND SKILLS COMMITTEE
20th Meeting 2017, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Johann Lamont (Glasgow) (Lab)

COMMITTEE MEMBERS

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

*Ross Greer (West Scotland) (Green)

*Clare Haughey (Rutherglen) (SNP)

*Daniel Johnson (Edinburgh Southern) (Lab)

*Ruth Maguire (Cunninghame South) (SNP)

Gillian Martin (Aberdeenshire East) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Clare Adamson (Motherwell and Wishaw) (SNP) (Committee Substitute)

Scott Bell (Scottish Government)

Bill Dodds (Scottish Government)

Peter Reekie (Scottish Futures Trust)

Kevin Stewart (Minister for Local Government and Housing)

CLERK TO THE COMMITTEE

Roz Thomson

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

School Infrastructure

Education and Skills Committee

Wednesday 28 June 2017

[The Convener opened the meeting at 09:31]

Decisions on Taking Business in Private

The Convener (James Dornan): Good morning and welcome to the 20th meeting in 2017 of the Education and Skills Committee. I remind everyone present to switch their mobile phones and other devices to silent for the duration of the meeting. Apologies have been received from Gillian Martin, and I welcome Clare Adamson to the meeting as her substitute.

Agenda item 1 is decisions on whether to take business in private. First, is everyone content to take agenda item 6 in private?

Members indicated agreement.

The Convener: Secondly, do members agree to consider the draft report on school infrastructure in private at future meetings?

Members indicated agreement.

09:32

The Convener: Agenda item 2 is our third and final evidence-taking session for the committee's inquiry into school infrastructure, the focus of which is on the lessons to be learned from the incidents at Oxbgangs primary school in January 2016. To date, the committee has heard from representatives of local authorities and the construction industry, and from Professor John Cole, who authored a report on the school closures in Edinburgh.

This week, we will hear from the Scottish Government and the Scottish Futures Trust. I welcome to the meeting Kevin Stewart, the Minister for Local Government and Housing, and—from the Scottish Government—Bill Dodds, who is head of building standards; Andrew Dailly, who is head of school building team; and Scott Bell, who is head of procurement and construction. I also welcome Peter Reekie, who is deputy chief executive and director of investments at the Scottish Futures Trust.

As I mentioned last week, it is important to note that a fatal accident inquiry is ongoing in relation to the accident at Liberton high school in 2014. We will therefore avoid any discussion of the specifics of that accident and ensure that the committee does not impinge on the work of the FAI by exploring any matters that might be sub judice.

I understand that the minister wishes to make a short statement.

The Minister for Local Government and Housing (Kevin Stewart): I will make a very brief statement, convener. I want to start by thanking the Education and Skills Committee for the invitation to appear today, and I very much welcome its inquiry into this important issue.

I hope that the committee will agree, particularly given the detail that is set out in the written evidence that has been provided by the Government and the Scottish Futures Trust, that we have not been complacent with regard to the swift action that we took immediately after the Edinburgh schools issue first materialised, and the steps that we have taken since the independent inquiry into the construction of Edinburgh schools published its report in February.

I understand that the committee has, importantly, already heard evidence from Professor John Cole, a number of local authorities and representatives from the construction industry. I very much welcome that, and I am sure that the committee will agree strongly that we must all work together to understand the full implications of

these failings in our public buildings and schools, and to learn any lessons from all of our findings on the issues. I am absolutely committed to putting in place all the necessary requirements, legislative or otherwise, to ensure that no public building or school lets down our pupils, teachers and parents in such a manner again.

Thanks again for inviting me here today. I am happy to take questions.

The Convener: Thank you, minister.

Do you agree with the Cole report's conclusion that the quality assurance processes were inadequate? If so, should the Scottish Government look to local authorities to implement a standardised approach to quality assurance in future capital projects?

Kevin Stewart: In the case of the Edinburgh schools, the quality assurance was not what it should have been.

I am adamant that we get this right, which is why I said that I am willing to consider any legislative, regulatory or other means to ensure that we get it absolutely right.

Just the other week, I met 30 of the 32 local authorities to discuss the issue in more depth. I am very aware that quality seems to have been much better in areas where the councils chose to continue to use clerks of works for all schemes. There are lessons to be learned, there.

I will look extremely closely at the committee's findings as well as at the work that the Government, with the help of the Scottish Futures Trust, has been doing across the board, to ensure that we put everything in place to get this absolutely right.

The Convener: Thank you. Did you say that local authorities with clerks of works have the highest safety standards?

Kevin Stewart: From the read-out of that meeting, which I have looked at closely, it is fair to say that authorities that had clerks of works in all projects seem to have had very few difficulties with their schools and public buildings. That probably tells a tale. We will do more in-depth analysis of the issue, but my broad view is that authorities that had clerks of works on every job seemed to do much better than those that did not.

The Convener: Does that cut across the method of financing for projects, too?

Kevin Stewart: Yes. A number of councils said that they had a clerk of works on the job, irrespective of the type of finance that was used.

The Convener: That takes us neatly to the question that Liz Smith wants to ask.

Liz Smith (Mid Scotland and Fife) (Con): We have had considerable discussions about the appropriate type of finance. Professor Cole hinted that the issue is not as much about the source of the finance as it is about overseeing how the money is spent. As you rightly said, it is the scrutiny of the process that is the important bit. Does the Scottish Government have a view on the appropriate source of finance, or is the debate much more about how the money is spent and the oversight that ensures that all checks are made?

Kevin Stewart: You are right to say that Professor Cole said in his report that the issue was not all down to the financial model that was used. As many other members could, I could sit here for ages and talk about what I perceive to be the failings of the private finance initiative/public private partnership model, but you will be glad to hear that I will not do that.

Professor Cole said that it was not the financial model that caused the difficulties. However, I think that some local authorities were, in using that model, maybe a little lax, in that they thought that all the risk would be carried by the body that was carrying out the work. We can say that that body bears the financial risk—folk would understand that—but, as far as I am concerned, the risk in relation to the building standards and ensuring that delivery of the project is absolutely right does not rest with that body; that risk still rests with the local authority or other body that contracted the work.

Liz Smith: I asked the question because, if the debate is about the type of finance and how it is managed, that is slightly different from one in which what seems to matter is not the source of the finance but how project spending is overseen.

I want pick up on an interesting point that you made about the responsibility element. It is pretty clear from the evidence that we have taken, and from what the Scottish Government has said so far, that the issue is about responsibility lying with people who will be on the job permanently, with cast-iron guarantees that a good job is being done. If it is true that the issue is about responsibility, is it your opinion that some changes might be required to ensure that that responsibility lies entirely with those who have the ability to deliver the spending on a project?

Kevin Stewart: I will go back to what Professor Cole said in the report, because that puts the matter into context. He said:

"There is no reason why properly managed privately financed public sector buildings should not be capable of delivering buildings constructed to a very high standard, if best practice approaches to ensuring the quality of design and construction are properly incorporated."

Beyond that, the report is clear that the fundamental failure was in construction quality and

supervision. The report has wide-ranging recommendations, which I am sure the committee has studied in depth—especially those that are focused on construction supervision. The recommendations have relevance for the approaches to financing and procurement, but construction supervision is the key. That is construction supervision across the board—the construction industry making sure that the work that it carries out complies with our very rigorous standards.

It is also, in my opinion, the duty of the body that has procured a building to make sure that it is going up properly, safely and to the standard that it expects. Beyond that, we have our building standards regime; there should be compliance with that. The Cole report is not particularly critical of our building standards regime, but it is extremely critical of the fundamental failures in construction quality and supervision.

Liz Smith: The report and the witnesses who came to the committee were also critical of the fact that it was not clear where responsibility lay; it was too easy to shift the responsibility on to somebody else. Do you believe that one of the most important answers that the Scottish Government has to give concerns clarity about where responsibilities lie and that, if necessary, it will have to legislate on that?

Kevin Stewart: As I said at the beginning, I will look at it all in depth. If the matter requires legislative or regulatory change, we will do that. I also said that I will look very closely at the findings of the committee's inquiry, take cognisance of them and see whether any need to be incorporated into any changes that we make.

There are some simple changes that could happen straight away, without legislative or regulatory change. They include making sure that the right folk are there on the ground overseeing projects, no matter how the projects are financed. I refer again to my point about clerks of works.

The Convener: Does Mr Reekie have any comments?

09:45

Peter Reekie (Scottish Futures Trust): I am a chartered civil engineer by background and training, so I come with the view of someone who has spent a long time in the construction industry, particularly in procurement. It is important to say that there have been a lot of changes in how we deliver buildings since the time that the Edinburgh PPP1 schools were built, as the committee has heard from other witnesses.

With schools delivery, we now work on individual schools rather than on large batches.

That allows a focus on the individual development and on what is right for any one building. The committee has heard evidence from local authorities and headteachers on that. As you have also heard, we now have a much more detailed specification for our buildings, rather than the sort of very high-level output specification that was the case at the time of PPP1, which left a lot of the design development to the industry.

Construction methods have changed. We now use a lot more steel framing systems, rather than brick and block, and we work more closely with designers, clients and contractors during the development process. The SFT also has a different role in supporting authorities to get what they are contractually entitled to as they move to the handover of buildings and as they move to the really important stage of monitoring a building in operation.

As everyone has said, practices vary. The Cole report is helpful in highlighting those practices. As we have heard, different monitoring regimes are in place in different authorities, designers interact with construction in different ways and there are different payment approaches throughout the industry. In my view, it is important that we come up with ways of delivering quality buildings that work with any of those approaches to procurement and delivery, because they have grown up in the industry for good reasons. As the minister said, all those can be done in a high-quality way with the right systems, processes and people wrapped around them.

Construction monitoring is important, and there are important points about the way that designers pass their production information to the guys on the ground who have to do the building. There are important points about the as-built information—information on exactly what has been constructed—that comes to an authority to be retained. All those lessons are being learned in respect of how we now deliver buildings, but there is obviously more that we can do.

The Convener: Thank you for that.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I heard what Mr Reekie said about the non-profit distributing system. The Cole report indicates that the major issues were with PPP1, where there was a major lack of oversight. How did that change, moving into PPP2, so that there was perhaps better control?

Kevin Stewart: It is often difficult to see what the changes are at various points. For one thing, there were construction changes. Mr Reekie and others might correct me, but I think that a lot of the PPP1 schools were built under design and build procurement methods. As I said, folks seemed to think that they were handing over the entire project

to someone else and that they were also handing over the risk, when they should have been monitoring much more closely.

The methodologies that were used in construction were also different in PPP2, as has been mentioned. The design of buildings is now very different. Modern approaches to building, insulation and construction lead to much less frequent use of what has been called brick and block construction, which was found to be defective in PPP1.

Despite all that, I am not complacent about the issue. I will continue to seek assurance about the quality arrangements that are put in place with the new construction techniques that are being used.

Colin Beattie: It was interesting that Local Authority Building Standards Scotland said that building standards services have no remit in terms of the quality of the build. From the name, one would think that there would be a certain degree of reassurance from building standards services, but that does not seem to happen. The organisation that represents those services says that the quality of the build is not in their remit.

Kevin Stewart: I will bring in Mr Dodds in a minute, if you do not mind, convener. On certification, the key thing in all this is that it is up to those who are doing the construction to make sure that they are compliant with building standards. I will let Mr Dodds give a more in-depth response about how our building standards system works at this moment in time.

Bill Dodds (Scottish Government): On the building standards system, when we talk about quality, we are talking about ensuring that a building is properly built. Under the Building (Scotland) Act 2003, the responsibility is ultimately the owner's. In this case, that would be Edinburgh's education authority. The owner has the responsibility to ensure that the building is constructed in accordance with our technical standards. In many cases, quality is embedded, because you need a certain quality to keep the rain out and make sure that the building is adequately ventilated, for example. There is an inherent requirement for quality, to meet the standards. The word "quality" in building can be used in many different forms; for someone who is extending their house or putting in a new kitchen, it might refer to the quality of the laying of tiles.

That kind of information has been passed on to the Local Government and Communities Committee, which is looking at building standards in more detail and asking about quality and the role that building standards perform within the overall framework of the system.

The local authority building inspector or officer verifies the drawings at the front end, to make sure

that the specifications are all properly set out. It is incumbent on the owner to build the building in the way that it should be built. There is then a last check. As we have heard, many other actors have a role to play, including the designer, the constructor and the developer. In many respects, the last man standing is the local authority building inspector.

Although there was not expressed criticism of building standards in the Cole report, the report raised issues that need addressing, particularly around the role of building standards, the nature of the inspections and the consistency with which local authorities undertake those inspections. That is to differentiate between the role of building standards, or building control as it is called in England, and what we would say is the supervisory requirement for the building owners—

Colin Beattie: When the guy in the street thinks about building standards, he thinks about safety and about reassurance that building standards will protect against a faulty build, but you are telling me that that is not the case.

Bill Dodds: No—I am certainly not saying that, by any means. I have worked for 40 years in the building standards system and it is in my DNA to ensure public safety. Fairly recent events show you that the regulatory regimes in other countries are coming under extreme scrutiny at the moment. I think that Scotland has a very good building standards system.

Colin Beattie: But it did not work.

Bill Dodds: It did not work for all the reasons that have been set out. It was about the quality of workmanship and the quality of supervision. Building standards are part of the overall process. That is what the minister is keen to explore here. Every constituent part should work to get compliant buildings at the end of the day.

Colin Beattie: Looking back, would you say that building standards services seem to have been rather remote?

Bill Dodds: Do you mean in respect of the Edinburgh schools?

Colin Beattie: I mean in respect of the Edinburgh schools and the other issues that were found in schools across Scotland.

The Convener: I will let Mr Dodds respond and then let you in, minister.

Bill Dodds: You have to appreciate that these are large and complex buildings. An almost daily presence would be required to undertake those inspections. The role of building standards services is to ensure that the builder undertakes the proper checks and balances throughout the project.

Colin Beattie: I do not think that the ordinary man on the street would understand that.

The Convener: I will let the minister in to see whether he can clarify the matter.

Kevin Stewart: Building standards have a major role to play in this. As I said, we will look at whether any change is required in that respect. The key aspect is that building standards officers cannot be on site all the time. In the regime that we have in place, the designers, the constructors and the owner of the project, whoever that may be, all have roles to play in ensuring the quality of buildings. They have a responsibility to ensure that buildings are compliant with the standards that have been set out.

As Mr Dodds rightly pointed out, building standards officers will, at the beginning of the process, look at the drawings and all the technical details and make sure that they are right. If Mr Beattie is suggesting that building standards officers should be on site at every project all the time, that would not be at all practical. That takes us back to the point about ownership of the situation. Clerks of works seem to have worked well on major projects, to ensure that there is complete and utter compliance at every stage.

The Convener: I suggest that that is not what Mr Beattie is saying. Mr Beattie can speak for himself, but what I took from Mr Dodds' response is that we are not sure what building standards officers are for, other than to look at the drawings at the beginning of the process and at the finished item at the end of the process. Are there any checks on the other component parts, throughout the process that you have talked about? Do building standards services have a role in ensuring that all those parts have been seen to? If they have such a role, why have some of the parts been missed?

Kevin Stewart: I will let Mr Dodds come back in at this point.

Bill Dodds: There are two points to make in that regard. After the building warrant is issued, the building standards surveyor, along with the owner, develops an inspection plan, which is called a construction, compliance and notification plan. The idea behind the CCNP, which was introduced in 2012, is to identify the high-risk items that might require inspection. Local authorities sometimes have scant resource to do such work, so they target the high-risk building elements.

We were aware that the Cole report was about to be published and that it would include findings. I discussed with the minister how we could update the CCNP in the wake of the report, and we are doing that work now. Essentially, what should happen is that the developer or the builder and the local authority have a plan that specifies the key

stages of construction that the latter wants to see—it might be the foundations, the external walls or the roof. They work their way through that plan and the applicant notifies them of the times to look at the building or whatever. At the end of the day, there will be a completion certificate and an inspection to ensure that the building was properly built.

I am aware that a number of local authorities supplement their building standards staff with what are called building inspectors. They are not clerks of works and they do not fulfil that role, but the local authorities appreciate that the focus is moving more towards inspection and are supplementing their building standards staff with additional resources. I was in Glasgow recently, where the council has taken on two or three building inspectors. A number of councils are changing the staffing structures, in a move away from a paper-based approach to assessing building warrant applications and towards having greater on-site presence. That drives up the build quality, with an extra pair of eyes looking over the shoulder of the person who is doing the work.

In Edinburgh, the situation was such that the work was almost hidden by the time someone came to inspect it. The walls were built and wall ties are difficult to see. Following a cursory walk around, structural engineers were not able to identify a problem until such time as they started to do intrusive—

The Convener: I am sorry to interrupt, and I know that two of my colleagues have questions to ask on this area, but if that is the case and the work cannot be verified, how can it be signed off?

Bill Dodds: It is part of a process that is driven by the building developer, who might have someone overseeing the inspections as far as the procurement process is concerned—there are a number of processes before the building standards inspector comes along. It is incumbent on the owner to ensure that their building has been built properly, and they should engage proper assurances in that regard. Peter Reekie can probably spell that out a bit more.

The Convener: I will let in Mr Reekie later on. Before I do so, I call Tavish Scott, to be followed by Daniel Johnson.

Tavish Scott (Shetland Islands) (LD): I have a lot of sympathy with the argument that you have just made: I built the extension to my house and had building control all over me. Is there one rule for private developers building, for example, a small house, and another rule for large and complex construction projects, such as a school, in which—as you have all described this morning—there might be only three visits during the course of the project?

10:00

Bill Dodds: I recently visited a council that had undertaken 40 inspections on a school as it was being built. That said, such inspections would not necessarily find the defects that were found at the Oxfangs school, because of the nature of the build. That is part of the issue.

There were lessons to be learned in relation to high-risk areas: for example, I am sure that most local authorities will have targeted, and will be focusing their attention on, wall ties and certain other high-risk elements. Given the events of the past couple of weeks, there will also be closer focus on fire-related issues.

Building standards services have a role to play, but they are part of an overall process—there should be checks and balances from the design stage, to the building-warrant approval, right through to how the building is constructed. Mr Stewart is suggesting that we are—rather than thinking in silos—taking an holistic approach to tackling those components so that they work together, thereby ensuring that there is no duplication and that roles and responsibilities are all set out properly.

Tavish Scott: That seems to be very sensible. I presume, minister, that your concern is that the system did not work: we cannot avoid the fact that the walls fell down. As my colleagues have been asking, what were building standards services doing when those walls were falling down? The system has not worked, has it?

Kevin Stewart: The system has not worked; it is quite clear from the Cole report that it did not work through the entire project.

Tavish Scott: So, what is going to happen?

Kevin Stewart: We have already made some changes to building standards, over the piece. For example, in 2013, local authority building standards services introduced a risk-assessed approach to site inspections, which targets building elements that are at the greatest risk of non-compliance. I would expect building standards services across the country to take that targeted approach to ensure that, where there is risk, they ensure that things are being done right.

Beyond that, building standards services in local authorities have tended to be a Cinderella service. Recently, I signed off an increase in fees. That is intended to allow local authorities to invest much more in their building standards services so that they have enough people to carry out all the functions that are required.

The key thing in all this—we cannot escape it—is that building owners such as local authorities are ultimately responsible for compliance; that responsibility is theirs. They are part of a system

that includes building standards services, which will look closely at what is going on, but in the day-to-day construction of a project, the owner is ultimately responsible for compliance.

Tavish Scott: You have said that a number of times. I do not think that anyone would disagree; the committee gets and understands that point. However, all that you are really saying is, “Welcome to the world of law”, which means that we will end up in the High Court or wherever. Our saying, “Great—we’ll take it to the law”, does not help the pupils in Daniel Johnson’s constituency, whose wall fell down.

I will turn to Mr Reekie and the Scottish Futures Trust. The system now all works. Does that mean that when you build schools across Scotland the things that your colleagues have been describing have been put in place? In other words, is there a clerk of works regularly on site, looking at the project so that the wall ties that we were told about in graphic detail the other day are going far enough into the blocks so that the darn walls do not fall down?

Peter Reekie: I started by talking about the changes that have happened since PPP1. I will talk about inspection monitoring, but it is important to look at the whole system of developing and delivering building assets.

In respect of the procuring customer authorities, we need a well-considered strategy by an intelligent client that understands—no matter how it goes about procuring or funding its buildings—the contractual structure that it enters into, what it can rightfully expect a contractor to do and what it needs to do for itself.

Tavish Scott: Is not that your job? The Scottish Futures Trust is the client, as far as the schools are concerned.

Peter Reekie: We provide a framework. The Scottish Futures Trust is not the client: the local authority is the client.

Tavish Scott: You kind of are the client, because you are building schools on behalf of us—the Parliament and the Government.

Peter Reekie: We set up a framework through which schools can be delivered. As I said before, that way of working is much more about the development of individual schools than it is about a focus on large batches. We use more detailed specifications, so that there is a lot more engagement between users of the building, designers and contractors. There is a partnership approach that allows that team to work together throughout the development stage, before the project gets on site, rather than its being at arm’s length through a competitive procurement process, as was the case in PPP1.

There have also been a lot of changes in construction technology. There are still brick-and-block walls, for very good reasons—for example, in a gym hall where brick facing might be needed because of what the planners require, and a block internal wall might be needed in order to get the right rebounds for balls. However, in most cases, that construction system is not used and different approaches are used.

We also have supervision and monitoring. As the committee heard last week, over a number of years local authorities have taken differing approaches to monitoring. All the contract approaches that the SFT uses allow for clerks of works to be included. Some authorities have used them; others have not. What we are doing now—

Tavish Scott: Why is there a difference? We found the evidence on clerks of works to be very strong, and the minister has reflected that, as well. Is it because budgets are so tight that the contractors do not have the money to employ clerks of works?

Peter Reekie: Contractors do not employ clerks of works. It is about the procuring authority having a team in place to deliver buildings in that way.

Tavish Scott: But the authorities have a budget for that. Do they not have to employ those people?

Peter Reekie: I agree, if we say that local authorities and health boards are the clients. Public bodies need to have a total budget for their organisation and budgets for their projects.

Tavish Scott: As regards improving the system, which we all agree needs some work, do you think that the SFT might have a role in that? It is your schools that are being built all over Scotland. Should you not have a role in monitoring what is happening?

Peter Reekie: The SFT is not the right organisation to deploy clerks of works on individual building sites across Scotland.

Tavish Scott: That is fine; I totally get that. Who is, then?

Peter Reekie: That should be done by the authority that has procured the building. It can do that through a directly employed team. As the committee heard last week, many authorities carry such people as an in-house resource. They can also be engaged on a project-by-project basis if the authority is an entity that does less procurement; it can contract for that role on a short-term basis.

Tavish Scott: I agree with that. Who pays for it?

Peter Reekie: That cost would need either to be part of the running costs of the organisation, if it is what we might call a serial procurer and it has an in-house team, or it could be built into the project

cost if the authority is a less frequent procurer and needs to engage that service on a project-by-project basis.

Tavish Scott: It could be built into the project cost. Is that part of a sensible way forward on such projects?

Peter Reekie: Yes—it could be done either way.

Tavish Scott: Thank you.

Daniel Johnson (Edinburgh Southern) (Lab): I want to follow up on the points on building control. Mr Dodds spelled out why the construction methodology meant that things could not be checked. Has that exposed a deficiency? Surely a building control regime exists to detect faults. More to the point is that Professor Cole said that there is no capacity for building control services to do more than verify a specification; there is no capacity to check whether it had been implemented. He was not saying that that was the historical situation, but that it is current. Will you reflect on those two points?

The Convener: I ask that answers be a bit shorter, please, because we have a lot to get through.

Bill Dodds: Okay. I will try to say this in as short a way as possible. As the minister has pointed out, the resources of local authorities today are different. If we are talking about schools that were built 10 to 15 years ago, at a time when they were being built in bulk, a different system was in place. There was a building boom and there was a shortage of skilled workers—a range of issues surrounded the construction of those schools. Again, I imagine that there would have been a need to build the schools pretty quickly; in his report, Professor Cole mentions some of the construction methods that were used.

Building standards are a final check; they check the building warrant specification and ensure that everything is there. We have a pre-emptive system in Scotland: everything is on the drawings, and buildings should be built exactly as they are on them. If something falls, the local authority has only to undertake certain checks of the drawings and specification to ensure that it has been built properly.

As the Cole report shows, quite a number of inspections were carried out on the schools, but a number seemed to focus on drainage and other items. That is why we changed the process to ensure that high-risk items were looked at from there on in.

Daniel Johnson: My next question is for the minister. Reflecting on those comments, I would say that, despite the fact that all the checks failed, according to your own definition. Do people not

have the right to expect buildings that have gone through the building control regime to be safe? To be frank, it is not good enough to say that the owners have to take responsibility. What is the point of the building control regime if it is not picking up the faults?

Kevin Stewart: The point of the building control regime is to ensure that what is being built complies with our very robust standards. There is always room for improvement, but the Scottish building standards regime is fairly robust.

As I have pointed out, the building standards service has changed the way it operates in dealing with areas that are deemed to be of greatest risk. As Mr Dodds has pointed out—and, indeed, as Professor Cole pointed out with regard to the Edinburgh schools—in the past there was a focus on things that were not so important. Mr Dodds mentioned the drains, for example. The regime has changed in that respect.

On the issue as a whole, I want to make it clear that if there are other areas in which I think change is required, we will make that change. I come back to my earlier point about investment: we need investment in building standards across Scotland, and we need improvement in the areas where the building standards regime has not been as good as it should have been.

I also recently allowed local authorities to have the verification contracts for specific periods of years. Normally, the period that the minister signs off on is six years. This time, however, I allowed the authorities that were performing well in building standards to have the six years. Those that were not doing so well got three years, after which they would be revisited, and in the three authorities that I thought were not doing well—Stirling Council, Glasgow City Council and the City of Edinburgh Council—I sent in Mr Dodds and his team to give advice on what needed to be done and gave them one year.

Daniel Johnson: When you say that there needs to be investment, are you agreeing with Professor Cole that building control currently does not have the resource to make the verifications that are needed for buildings that are being built right now?

Kevin Stewart: I am saying that I recognise that there needs to be investment in building control in Scotland. That is why I have allowed fees to be increased. I expect local authorities to put additional investment into their building standards services. As a former councillor, I say that due attention has probably not been paid to this area by elected members at local authority level to ensure that their building standards services are fit for purpose and are doing the job right. Professor Cole has given us every opportunity to reflect on

that; I hope that councillors across the country will pay due attention to that, scrutinise their building standards services much more and ensure that they are capable of carrying out the job that they should be carrying out.

The Convener: I will take supplementaries from Johann Lamont, Colin Beattie and Clare Adamson.

Johann Lamont (Glasgow) (Lab): I just want to reflect on a couple of points before I ask my question. Mr Dodds seems to be saying that the resources not just for having high standards but for ensuring that they are applied are scant, and the minister himself called building standards “a Cinderella service”. Perhaps the Scottish Government’s decision to target local government for cuts has proved to be a mistake. I hope that when you talk about investment in local government, there will be a commitment in that regard.

10:15

We also have so much complexity with the Scottish Futures Trust and all the checks and all the people. The fact of the matter is that a wall fell down because somebody did not put a wall tie in it, and that did not get picked up by anybody. There are clearly issues around the way in which, because of PPP, people did not take ownership, but it seems to be very basic: it is possible to construct a building that is not safe, and the checks and balances against poor workmanship in the inspection regime do not pick that up.

One thing that has come out of the evidence in the past couple of weeks is the necessity of policing the construction industry, because if we do not police it, it will cut corners. It is profoundly depressing that we have ended up in a position where people will cut corners and create dangers for the want of a clerk of works checking them.

What are the Scottish Government’s proposals to make the construction industry safer and to create incentives for high-quality construction with good workforce management? There is a culture that has led to levels of fatalities in the construction industry that are still shocking. Do you accept that picture—that construction is an industry that has to be policed closely because it will, when left to its own devices, build things that are not safe?

Kevin Stewart: Convener, I would just like to offer clarification on one point that Ms Lamont made. The Scottish Futures Trust was not around when PPP1 was on the go. I think that we have a much more robust check than there was during PPP1, which was a number of years ago.

With regard to the construction industry, we have talked about the holistic approach to dealing with the matter, and I have already had a round-table meeting with construction industry representatives and others, following release of the Cole report. I was very pleased that Professor Cole was able to attend an event that I hosted for a number of stakeholders. I have written to and have met the construction industry. We are following that up with a further summit in September to look at all aspects of the construction industry's failings in this regard.

Also, Construction Scotland's industry leadership group is now actively co-ordinating the development of an industry-wide response to the Cole report. Ron Fraser, who is a retired director of Carillion plc, is leading on that. The industry recognises that there were failings. It will respond as I have said, and we will look closely at what it has to say.

It would be fair to say that many folk in the industry were shocked by the findings of the Cole report. I think that we have a real job of work to do in ensuring that standards are brought up—massively in some cases—and that everyone, no matter who they are, recognises that constructing a building and completing a construction project must be done absolutely right.

Johann Lamont: Would you accept—

The Convener: That was just a supplementary. I will take Colin Beattie now.

Colin Beattie: Following on from what Johann Lamont said, I think that it is absolutely atrocious that subcontractors exploited failures in the system in order to cut costs, and may even have taken on unskilled workers to do those jobs, which I presume saved them money. Would the minister agree that the subcontractors that put at risk the lives of children in schools should, in order to restore credibility, not be allowed to bid again for work in the public sector?

Kevin Stewart: I will bring in Mr Bell, because I want to clarify a point.

Scott Bell (Scottish Government): The ability to exclude contractors or subcontractors from public contracts was strengthened by the regulations that were brought in in 2015, which mean that we can take into account past performance in contracts. I am not aware of examples of that arising. A test would be required with regard to the circumstances in which we would exclude a contractor from a public procurement exercise, because the potential exists for a legal challenge. I am not aware of any situations in which that has arisen yet, but the regulations have been changed so that we can exclude contractors based on elements of past performance.

Colin Beattie: Surely the test is very simple. If a contractor deliberately did substandard building work, it should not be let loose on a public contract again.

The Convener: I think that part of the problem would be that, because contractors subcontract, it might not be known who the subcontractor was. Sometimes, a couple of joiners will be brought in—I do not mean to criticise joiners; it could be any tradesperson—and I doubt very much that there would be oversight of that.

Colin Beattie: In that case, the system needs to be changed.

Kevin Stewart: As Mr Bell said, some such changes have already been made. We will give careful consideration to what Mr Beattie has said.

Another issue that came up in the Cole report is the fact that subcontractors will often be individuals rather than companies. The report picked up on the way in which some subcontractors are paid. Bricklayers are paid on a piecework basis—how much they are paid depends on how many bricks they lay. Obviously, adding in ties takes more time.

The Convener: Professor Cole made that point.

Kevin Stewart: We need to look at how the industry pays people. Dealing with that is an issue that I have a great interest in, and it is one that I will continue to raise with the industry. I do not think that the present system works, and I think that that needs to be resolved.

Clare Adamson (Motherwell and Wishaw) (SNP): Johann Lamont mentioned funding for councils. Councils now have the flexibility to use council tax increases to fund such services. Would the minister like some of that funding to be diverted to investment in building control?

I am a substitute member, so I have not been involved in previous evidence sessions, but there is a question that I would like to ask the SFT and the minister regarding what would happen if a school was procured today. Are you confident that the systemic failures that we have witnessed have been minimised?

Kevin Stewart: I will deal with your last question first. I think that the systemic failures have been minimised, but I assure you that we will work with the Scottish Futures Trust, procurement services and building standards services to continue to do all that we can to minimise those failures even further.

As far as the idea of raising council tax to invest in building standards services is concerned, councils should not have to do that, because the income that councils get from building standards is normally much greater than the investment that

they put into building standards services. I do not have all the figures in front of me on how much income local authorities retain and how much income they invest back into building standards, but I am more than willing to write to the committee with that information. I reiterate that the income that councils take in is normally much greater than the amount that they spend on such services.

The Convener: Before we move on to Clare Haughey, I would like some clarification on how work is signed off by building standards. Is there a box that someone ticks to say that the ties have been put in? When work is signed off, is a record kept of who has said that a particular safety aspect or building aspect has been done so that, if there is a problem, you can go back and identify the source of the problem and whose responsibility it is?

Kevin Stewart: Mr Dodds will come in on that, convener. You asked for short answers but it might not necessarily be a short answer.

The Convener: I ask you to make it as short as you can, Mr Dodds.

Bill Dodds: To follow on from what the minister said about funding, as we have gone round councils, we have found that the ones that fund their building standards services are the ones whose departments seem to perform the best. The investment that is going into them is shown in the service. With the councils that were awarded the six-year verification contracts, we tend to find that that the money for that is being invested in the service and it is running pretty smoothly. The corollary is that the councils that do not invest so much are the ones that seem to have some difficulty. Those are the ones we have targeted as part of the continuing process to try to ensure that local authorities are investing funds in the services to get a consistent approach throughout Scotland.

As far as signing off is concerned, the inspection plan sets out the key stages that should be inspected. It is incumbent on the building standards surveyor to tick those off to indicate that he has seen them. At the end of the day, he signs off the completion certificate. If you go into a local authority now, you should be able to ask for the CCNP, pull it out, read through it and see when the building was inspected and who inspected it. There will also be a computer record of that. Therefore, from now on, I hope that, if you go into a local authority and ask about a new school, you would see a CCNP process that you can work your way through to see the number of inspections and what was inspected on what day. That gives the surveyor the comfort to be able to sign it off at the end.

Some authorities will have the resources to have the luxury of being able to inspect a bit more than others. We are trying to level that playing field and get consistency throughout Scotland.

Kevin Stewart: I will make a small but important point, convener. The Government invested in eBuildingStandards.scot, which is an information technology system that now allows local authorities to connect. Most of the building standards systems in local authorities were paper based but now, if a local authority is having difficulties, we have the ability to use expertise from other authorities to help it out.

Mr Dodds has once again rightly pointed out that we have used him and his team to give the authorities that are not doing quite so well help and advice. However, it is up to a local authority itself to decide what investment it puts in. I suggest that the elected members in authorities that are not doing so well should consider the level of investment that is going into building standards and act accordingly.

The Convener: Yes. I suspect that that will be mentioned in our report.

Clare Haughey (Rutherglen) (SNP): I thank the witnesses for coming along. I will pick up a theme on which I questioned the two previous panels of witnesses in the inquiry. Is the follow-up activity on the specific problems that were identified in Edinburgh considered to be adequate? What action is being taken to monitor that activity?

Kevin Stewart: From the start of the issue, the Government was straight on to the City of Edinburgh Council and other authorities to ensure that everything was in place. Immediately after the situation arose at Oxfords primary school, my predecessors wrote to all local authorities. On 27 April 2016, the Cabinet Secretary for Education and Lifelong Learning asked for updates on what was happening. I could go on, even down to the point when the Cole report was published. I spoke to the chief executive of the City of Edinburgh Council, asking for assurance that works had been carried out to comply with the recommendations in the report, and we wrote to all local authorities asking them to take cognisance of the report and do the necessary inspections. We have had help from the Scottish Futures Trust in dealing with local authorities and other public bodies on those matters.

Yesterday, I received a letter from the City of Edinburgh Council after prompting it at a meeting for an update on what it has done. I am trying to find that letter in the copious amount of notes that I have with me but I cannot at the moment. It related to the fire-stopping aspects. I will share the letter with the committee, which should give

members some comfort about the work that has been undertaken.

10:30

Clare Haughey: The issue occurred in schools. What assurance can you give that it has not happened in other procured buildings such as hospitals and community centres?

Kevin Stewart: Although we have concentrated on schools in the meeting, the Scottish Futures Trust and colleagues across Government have been in touch with other public bodies, including the national health service, to ensure that they examine buildings that were procured around the same time with similar design and build. It might be wise for Mr Reekie to come in to give you more detail about the work that the SFT has undertaken to ensure that we are safe in that regard too.

Peter Reekie: I led the SFT's work in the wake of the closure of the schools in Edinburgh. The reason why we were able to deploy a team to help out is that we have an in-house team with the relevant professionals—engineers, architects and surveyors—which we supplemented quickly with an experienced and senior structural engineer to work through the issues for nearly a year. We took on the role of sharing the technical information from the City of Edinburgh Council with other public bodies to allow them to undertake their own assurance activities.

You can imagine that the technical team in Edinburgh was rightly focused on dealing with the issues in the council. They were also faced with inquiries from all over Scotland and further afield asking, "What have you found? What does it mean for us? What should we be looking for?" We were able to act as a single point of contact. The Edinburgh team made time to speak to our team and we then shared the technical details with all the local authorities and public bodies throughout Scotland, such as the health service, to allow them to undertake their own assurance activities, which have been going on in some depth since then.

It has been reported, and John Cole has said, that the issue is not likely to be limited to schools. Areas of non-compliance have been found in other buildings, although they have not been anywhere near as serious as in the Edinburgh schools. However, that assurance activity has been undertaken by individual authorities that own and maintain buildings. They will follow up on any non-compliance that is found.

Ross Greer (West Scotland) (Green): I am still trying to get my head around the process that is followed in the immediate aftermath of an incident. At Oxfangs, the wall fell down, a visual inspection was carried out and pupils were sent back into the school. Only later, once the deeper inspections

had been carried out, was the school closed once again. My understanding is that that process of immediately going to a visual inspection was the agreed process. Was that a locally agreed process or are there national guidelines or nationally agreed processes for what is done in the aftermath of such incidents?

Peter Reekie: It would be very difficult to write a set of guidelines that covered every incident that could happen in complicated structures with structural elements and mechanical and electrical services. I am aware of no national guidance that says what should be done if an issue with wall ties is found. The technical teams on the ground made their immediate response based on what they had seen.

As the teams uncovered more of the issues and—it has been reported—the issue around header ties became clear as other schools were inspected, the ripples spread, the response spread and different authorities based their assurances on what had been found in Edinburgh. Although I agree that it might be good to have a handbook that people can turn to for every type of incident, that would be impossible given that there are too many variables. The right thing to do is to have agreements and arrangements in place with qualified professionals who are able to respond appropriately at the time, and I know that Edinburgh deployed those professional teams very quickly.

Ross Greer: I understand entirely what you are saying about the range of scenarios to plan for and how it would be impossible to come up with a comprehensive list of responses. However, it seems to me to be quite unsatisfactory that, in response to a wall collapsing, a visual inspection was carried out and it was only after that that the decision was made to go for deeper inspection. A school was reopened before being closed again because more significant issues were found. That does not seem to be a satisfactory response and yet, as far as the education authority was concerned, it was the correct response.

Kevin Stewart: We need to reflect on the immediate processes that are used when something like the incident in Edinburgh occurs. I agree with Mr Greer about wanting to see a process that, as best it can, takes full account of a situation and assesses risk quickly so that necessary action can be taken. I will look again at the visual inspection and the further inspection to see how long that took and whether something else should have been put in place. The matter is, of course, mostly one for local authorities, but I understand your real concern about that and will reflect on it.

Ross Greer: Thank you.

Johann Lamont: At a previous committee meeting, Paul Mitchell from the Scottish Building Federation expressed grave concerns about the planned dilution of skills in construction apprenticeships. He raised the question of unilateral action by the Scottish Qualifications Authority in redefining some of those courses. We have already heard about the importance of the autonomy of the craftsperson in the building trade. I have friends who work in the construction industry. Workers in that industry are often put into circumstances that are not necessarily safe for them. The trade unions have been highlighting that over a period of time. What is the Scottish Government going to do about the level of skills that are needed in the construction industry? How do you address the real concern that the SQA is—unilaterally, we are told—making decisions about apprenticeships that could have consequences for the quality of work that is done in the construction trade?

Kevin Stewart: One of the best parts of my job as the Minister for Local Government and Housing is going to construction sites and seeing new housing going up. When I do that, I take the opportunity to meet apprentices because I think that it is important that we get young men and women into the construction industry to make sure that we can deliver for the future. I always ask the apprentices what they think of the quality of the training and the college course, and how they are being treated by their employers. Most of them are not backwards in coming forwards in telling me exactly what they think. That is a good thing, in my book.

Ms Lamont has made a specific point. There are no plans to dilute the level of quality of craft apprenticeships. Scottish vocational qualification level 2 qualifications in the sector were first accredited in 1993 and different iterations of those qualifications ran until 2012, when there were some changes. The Construction Industry Training Board is currently reviewing the level 3 craft apprenticeship framework because the existing system is due to expire in August.

The Government facilitated a meeting of employers and stakeholders earlier in the year, and we will continue to listen to what the Construction Industry Training Board and others say. Following consultation with the industry by the CITB, the skills test will be built into the SVQ to better ensure the independence and quality of the SVQ and of the apprenticeship. There is no planned change to the duration of craft apprenticeships in that proposed framework. I hope that that gives Ms Lamont some assurance.

Johann Lamont: Just to be clear, is Paul Mitchell wrong when he says that the SQA has unilaterally decided to dilute the courses? He has

expressed concern on behalf of the industry. If he is wrong, it may be because he is not aware of the activity that you describe, but he was very critical—I am sure that you will have seen his comments in the *Official Report*—about the SQA acting in that way. He also talked about the CITB not being helpful. It matters: according to his argument, the quality assurance on site would be reduced because the skill level of the people working there would be reduced.

Kevin Stewart: I reiterate that there are no plans to dilute the level or quality of craft apprenticeships. I will continue to talk to apprentices to see exactly what they think, but I assure you that the Government wants to ensure that folk enter the construction industry, and craft apprenticeships are vital in ensuring the future of the industry.

Johann Lamont: You have talked about various summits. Would it be an option to bring together the Scottish Building Federation, the SQA and the CITB to thrash out some of these issues, which are of such concern that they were brought before the committee?

Kevin Stewart: I will have a look at that. A number of the issues do not fall within my ministerial portfolio, but I will certainly talk to colleagues about it.

Johann Lamont: Thank you.

The Convener: I thank the minister and witnesses for their attendance this morning.

10:42

Meeting suspended.

10:48

On resuming—

Subordinate Legislation

Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180)

Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SSI 2017/182)

The Convener: The next item of business is consideration of two negative instruments. Do members have comments on either of the instruments?

Johann Lamont: I want to flag up some concerns that are partly about the process. On SSI 2017/180, the Delegated Powers and Law Reform Committee has expressed its

“disappointment that fuller supporting documentation or an impact assessment was not supplied”

and its “concern” that a consultation was not held. On SSI 2017/182, the committee was concerned about the use of powers. It has also expressed concerns about the way in which the Scottish Government is taking the policies forward.

The instruments both deal with big issues: student loans and free school meals. What power is held by the body that is given the responsibility to scrutinise and report back on secondary legislation? What weight does its work have if the Scottish Government simply says, “We do not agree with you”, and then the legislation comes to this committee to be dealt with as a negative instrument? We do not have any further information. I know that it has been complicated even to establish what the instruments do. For me that raises a question. If the DPLRC is flagging up something significant to us, what is supposed to happen as a consequence?

The Convener: We have a number of options. We could just note the concerns and leave matters there. Another option is to write to the Scottish Government. Given that we are going into recess, so there will be a period before the next meeting, and that the instrument has to be dealt with within 40 days, we could write to Scottish Government officials asking for a further explanation as to why they disagree with the points that were made by the Delegated Powers and Law Reform Committee. We could then consider the response over recess and decide by correspondence whether we need to take any further action. Would Johann Lamont be happy with that?

Johann Lamont: Yes.

The Convener: Thank you. If there are no other comments on either of the instruments, that brings us to the end of the public part of the meeting.

Before we go into private session, I would like to say a big thank you to everybody on the committee. You have made my first year as convener a very enjoyable one, if sometimes very tiring and testing—I am not talking about you in particular, Johann. Seriously, thank you very much for all your support. I think that we have done a lot of good work over the past year, and I look forward to continuing with it after the recess. I hope that everyone has a great holiday.

10:51

Meeting continued in private until 11:55.

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