



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 18 April 2023

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
11th Meeting 2023, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Mark Griffin (Central Scotland) (Lab)

Marie McNair (Clydebank and Milngavie) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John-Paul Breslin (Stirling Council and Local Authority Building Standards Scotland)

Ivan McKee (Glasgow Provan) (SNP) (Committee Substitute)

Calum McQueen (e.surv Limited)

Alastair Ross (Association of British Insurers)

Nigel Sellars (Royal Institution of Chartered Surveyors)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 18 April 2023

[The Convener opened the meeting at 10:00]

Interests

The Convener (Ariane Burgess): Good morning, and welcome to the 11th meeting in 2023 of the Local Government, Housing and Planning Committee. We have received apologies from Marie McNair. I remind all members and witnesses to ensure that their devices are on silent and all other notifications are turned off during the meeting.

The first item on our agenda is to invite Ivan McKee MSP to declare any interests.

Ivan McKee (Glasgow Provan) (SNP): As laid out in the register of members' interests, my interests relate to the ownership of some rental properties.

The Convener: Thank you, Ivan, and welcome to your first meeting of the committee.

Decision on Taking Business in Private

10:01

The Convener: Agenda item 2 is to decide whether to take item 5 in private. Do members agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Private Residential Tenancies and Assured Tenancies (Prescribed Notices and Forms) (Temporary Modifications) (Scotland) Regulations 2023 (SSI 2023/58)

Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2023 (SSI 2023/63)

Non-Domestic Rates (Scotland) Act 2020 (Transitional Provision) Regulations 2023 (SSI 2023/64)

Building (Scotland) Amendment (No 2) Regulations 2022 (Amendment) Regulations 2023 (SSI 2023/65)

10:01

The Convener: The next item on our agenda is consideration of four negative instruments. There is no requirement for the committee to make any recommendations on negative instruments. Do members have any comments?

Mark Griffin (Central Scotland) (Lab): I have no comments, but I will declare an interest in relation to the private residential tenancies and assured tenancies regulations as I am the owner of a private rented property.

The Convener: Do members agree that we do not wish to make any recommendations in relation to the instruments?

Members *indicated agreement.*

Building Safety

10:02

The Convener: The next item on our agenda is to take evidence on building safety. Last May, the committee took evidence from stakeholders and the Scottish Government. The committee agreed to return to the issue on an annual basis.

We are joined in the room by John-Paul Breslin, who is building standards team leader at Stirling Council and chair of Local Authority Building Standards Scotland; Calum McQueen, who is technical surveying manager for e.surv Limited chartered surveyors; and Alastair Ross, who is the assistant director and head of public policy for Scotland, Wales and Northern Ireland at the Association of British Insurers. We are joined online by Nigel Sellars, who is a senior specialist in valuation and property standards for the Royal Institution of Chartered Surveyors. I welcome the witnesses to the meeting. We were also due to hear from Chris Ashurst from the High Rise Scotland Action Group, but, unfortunately, he has withdrawn due to ill health.

We will try to direct questions to a specific witness, where possible. If anyone would like to come in, please indicate that to the clerks, and Nigel Sellars, please type the letter R in the chat function. There is no need for you to manually turn on your microphones as we will do that for you.

I will start. I have two questions and I will direct them both to Nigel. If anyone else wants to come in, please do so. My questions might have been more appropriate for Chris Ashurst but, unfortunately, he is not here. Are home owners and buyers still experiencing problems in moving, or obtaining mortgages, due to the zero valuation of homes caused by concerns over fire safety? If so, what impact is that having on the people who are affected? Nigel, I am aware that you have some comments on the idea of zero valuation.

Nigel Sellars (Royal Institution of Chartered Surveyors): Thank you for having me. I apologise that I cannot be in the room in person.

I will open by clarifying the term zero valuation. Nil valuation is a technical term that is used in the process of valuing a property for mortgage lending purposes, where a valuer is unable to provide a value at that moment in time. For example, a valuer may undertake an inspection, but there may be insufficient information available to them at that point. That would result in a nil valuation being applied to the property, which signals to either the lender or the valuer that further information is required before the valuation can proceed. It does not mean that the property is worth zero or that it has a zero value.

I will move on to the question about how things are going in the market. In the past 12 months since the committee previously took evidence, there has definitely been more positivity in the market. The feedback that I have been receiving from RICS members operating in the space is that valuations are taking place and lending is proceeding. In December last year, RICS produced new guidance on the valuation approach for properties in residential buildings with cladding. Although that guidance is for England only, the intention is to extend it to include Scotland over time. When that happens, at the appropriate time, I envisage a more positive few months as it will provide more certainty for valuers, lenders and, ultimately, leaseholders in that space.

The Convener: If no witnesses in the room have anything to add, I will move on. Nigel—we will have focused questions for you a little later.

I would be interested to hear more about the operation of external wall system 1. Has that improved since the committee considered the issue last May?

Nigel Sellars: To be honest, I am not too close to the operation of day-to-day EWS1 forms. I am responsible for setting standards at RICS.

I appreciate, and I am fully aware, that the EWS1 process in Scotland has well-documented challenges. The tenure system and the single building assessment will come in and—fingers crossed—I hope that those will alleviate some of the challenges and that they will provide more clarity for people in the space. That is why I cannot comment on that at the moment.

Calum McQueen (e.surv Limited): During the past 12 months, the system with regard to the use of EWS1 forms in Scotland has not really changed. It is a lending requirement for buildings that are over a certain height and with certain cladding materials on the outside.

The Convener: We will move to questions on the single building assessment, which will be led by Miles Briggs.

Miles Briggs (Lothian) (Con): Good morning, and thank you for joining us.

I have a couple of questions. First, how would you rate the progress that has been made to date in Scotland on the Government's single building assessment programme? I would like your views on some of the pitfalls that we have seen and why there has not been a four-nations approach to the issue, which is one of the key things that I am concerned about.

Calum McQueen: I am not sure why there has not been a four-nations approach; I have not been involved in that at all. My involvement is with the valuation work that we do for lenders. As the

nations are devolved, individual approaches have been taken.

Miles Briggs: One case has progressed to the point where remedial work has taken place. In theory, that case is a pilot for the 105 other properties that are affected. It is important for householders to see a potential end to the problem. Is there anything in the completed project that has shown that it can be used as a Scottish example to demonstrate that work can be progressed so that all those properties can be surveyed and then delivered?

Calum McQueen: I have not been involved at all in the project; I have just heard about it. It is good that the Scottish Government stepped in and paid for all the work. I understand that the building is soon to be fixed. From a valuation point of view, the issue is that current lender guidance indicates that that building will not be acceptable until the work has been completed. However, in England, because of the Building Safety Act 2022, some lenders will consider lending on buildings before remedial work has been completed. At the moment, that is a distinction between the system in England and the system in Scotland.

Alastair Ross (Association of British Insurers): I am happy to add a little to that. Along with various other colleagues, including Chris Ashurst, I sit on the Scottish Government's cladding stakeholder group. We have been involved in a number of aspects, including the development of the SBA. On that, I defer to the update that the cabinet secretary gave, which is in the papers for the meeting. It is useful to see that progress being set out.

Building standards is a truly devolved matter, across the four nations. There is also the challenge around property tenure, which has delayed progress in Scotland compared with other parts of the United Kingdom. I also sit on an equivalent group in Wales, and we can maybe come on to that later, if time permits, so I can give you a contrast to Scotland in the progress that has been made in that jurisdiction.

A significant amount of work has gone into the SBA. From an insurer's point of view, the SBA is a useful and not unhelpful development. We understand the perspective of taking a more holistic view rather than just looking specifically at cladding wall systems. That is to be welcomed. We discussed the details of the draft with the major property insurers in the sector, and they said that it was all good stuff but that insurers already seek that information when they come to quote for such properties. It is a useful step forward. It will not dramatically change insurers' approach, because they were already seeking most of the information, but it is not unhelpful to have it collated into a single document.

Miles Briggs: That is helpful. In the detail of the single building assessment, is there a differentiation between what happens in Scotland and in England, and what that might mean? In Scotland, now, we talk about high and low risk. In England, they talk about high, medium and low risk. Everything in Scotland that has any potential risk is classified as high risk.

I am concerned that we are not on the front foot on that work in the first place, and that it could also present another issue for getting the work done: meeting the cost of doing it. Do you have anything to say on that?

Calum McQueen: Not on the single building assessment, no. I have not been involved in that.

Miles Briggs: I take it that no witness has, locally. What could be done to speed up the delivery of the assessment programme? Measures that were suggested include the establishment of a dynamic purchasing framework to improve timescales. Is there anything else?

Calum McQueen: There is a lack of engineers and qualified people in Scotland to carry out that work. That is well known. Clearly, if 20 people in the country were qualified to do the work, it would be done more quickly.

Miles Briggs: At UK level, £40 million has been committed to delivering that in England and Wales. I am not sure that the Barnett consequential of that have necessarily come through to the individuals who would do that work in Scotland. Do we have enough professionals to do that work?

Calum McQueen: In Scotland, there are only three or four chartered engineers who are qualified to inspect and comment on high-rise buildings.

Miles Briggs: Thanks. I have a couple of other questions that I may come back to later.

The Convener: Thanks, Miles. We move to a question from Annie Wells.

Annie Wells (Glasgow) (Con): Good morning, panel. In a letter to the committee just last month, the former Cabinet Secretary for Social Justice, Housing and Local Government noted that a waking watch has been applied to two buildings. Is that sufficient?

John-Paul Breslin (Stirling Council and Local Authority Building Standards Scotland): From the media and from reading the documentation, I am aware of the purpose of the waking watch. The flats have a stay-put evacuation procedure: an alarm would go off for individual flats. The purpose of the waking watch is to put in a simultaneous evacuation process: if something is identified, there are options to start evacuating everyone en masse or in a co-ordinated and phased way. It is

an ad hoc and temporary arrangement to be put in place until measures can address the cladding or, maybe, different types of detection and alarm systems can be put in. It is recognised as being an acceptable interim measure.

Annie Wells: Does anyone else have anything to add on that?

Alastair Ross: I will just make the point that, as I think the cabinet secretary said in her letter and as John-Paul Breslin has said, the waking watch is an interim measure. They are looking, I think, at the installation of an alarm system. That touches on one of the issues that we may come to. The cabinet secretary refers to the safeguarding of residents and the preservation of life. That is the priority. As John-Paul Breslin said, everybody can be got out of the property efficiently and, it is to be hoped, quickly.

10:15

However, waking watches on their own will not address some of the wider fire safety issues. For example, if there is a waking watch and the alarm is triggered, that person can alert the residents and they can get out—we hope, efficiently and safely. Presumably they would also alert the Scottish Fire and Rescue Service; I do not know whether there is a prioritisation on calls from certain buildings that have waking watches so that the service can respond and address the fire.

In the absence of sufficient fire safety measures, however, such as compartmentalisation systems or other measures to contain the fire within particular units, there is the prospect that although people will be able to get out of the property, the property will still be significantly and extensively damaged. The way to address that, ultimately, is installation of automated fire-suppression systems, whether sprinkler systems, mist systems or whatever—things that can be triggered when the alarm goes off in order to preserve, as far as possible, the property, as well as to preserve life. Therefore, the waking watch is certainly effective for safeguarding residents, but it is not really going to do a great deal in terms of preserving the property.

Annie Wells: Thank you very much.

The Convener: We move to questions on the Scottish safer buildings accord from Ivan McKee.

Ivan McKee: I welcome the panel. As the convener indicated, I would like to ask for witnesses' views about the likely success of the Scottish safer buildings accord. It would appear that some progress has been made on negotiations between the Government and developers, but our understanding is that they have reached a deadlock. I would like your

perspective on where the accord is and on the likelihood of its success.

Calum McQueen: From my point of view, on the evaluation side, if the developers were to hold their hands up and say that they will carry out repairs to buildings that need work, that could allow lenders to lend on those buildings and people to own flats in those buildings. That could open up the housing market because, at the moment in Scotland, people in those buildings cannot, generally speaking, remortgage and cannot sell the flats.

Ivan McKee: Is it necessary to have the accord in place to deliver on that?

Calum McQueen: There would need to be a commitment from the developer that it would pay for the cost of the works that were required.

Ivan McKee: Okay. Is there any other input on that point?

John-Paul Breslin: LABSS is fully supportive of the on-going discussions on securing an agreement. We see that as very positive.

I would just like to say that the building standards system in Scotland has made some significant changes, which we have all referred to previously. It has really improved levels of safety in the built environment. It is critical that we keep moving forward in that regard. Any kind of work should fully comply with the technical standards in Scotland.

Ivan McKee: Okay. Following on from that, when the cabinet secretary announced the accord, she said that, if necessary, she would

“make full use of the powers available to us to bring parties to the table, including if necessary, using legislation to do so.”

Do you think that it is time for the Scottish Government to look at the legislative route?

John-Paul Breslin: I believe that it is in the document, and in other documents that I have read, that the Government is looking at that—it has had early discussion of that. I think that this type of scenario was not considered at the time when the existing enforcement powers were created, so it may be time for something completely new.

Ivan McKee: Does anyone else have thoughts on that? If not, thank you.

The Convener: We will move on to a series of questions from Mark Griffin.

Mark Griffin: I will go to Alastair Ross first. How, since Grenfell, has the insurance industry adapted to provide home owners or tenants with affordable insurance in buildings that are clad with potentially combustible materials? Are there

different approaches to different parts of the UK, or is the insurance industry acting in a regimented way across the piece when it comes to providing insurance for home owners or tenants?

Alastair Ross: The insurance products that are being sold are being sold right across the UK. You could buy the same basic insurance policy whether you are based in London, Edinburgh, Belfast or Cardiff. However, those products will need to respond to the different regimes and circumstances in each of the devolved nations and in England, because they have different regulatory systems.

The insurance industry had concerns about the fitness for purpose of building standards and regulations before the Grenfell tragedy. There had been a number of incidents going back to the early 2000s. Fires had accelerated far faster than had been anticipated, and there were concerns about that. In particular, there were issues about food manufacturing plants and the kind of insulation that had been used in them. There were concerns that the system was not quite working; that developments had not been built according to specification, and that plans had not been carried out properly; that fire safety measures that were set out had not necessarily been installed or had not been installed to the correct level; and that some of the materials that were previously regarded as being safe to use were not as safe as had been understood, as subsequent fire testing revealed.

The tragic events and the loss of life at Grenfell brought all that into sharp focus. After that, we saw that the insurance market had perhaps underpriced some of the risk previously, based on the knowledge and understanding that it had from developers' plans, various regulations and so on. When it became apparent that the criteria on which insurers based their underwriting were no longer fit for purpose, we saw the anticipated response in pricing.

Insurance is risk reflective. The riskier the property is to insure because of a lack of safety measures, the more expensive it will be to insure, and that is likely to be reflected in the price. We have therefore seen an increase in pricing, which is, obviously, a great concern.

The Secretary of State for Levelling Up, Housing and Communities wrote to the Financial Conduct Authority, which is the insurance industry's regulator, and the Competition and Markets Authority to ask them to investigate the cost and availability of buildings insurance. He had seen that the higher premiums were a symptom of fire safety concerns and that there was a lack of availability and a limit to affordability. The secretary of state asked the two regulators to look at those things. The Financial Conduct Authority

took that forward and produced a report in September last year that recognised that there had been significant price increases. It did not find that excessive profits were being made by insurers as a result of that; it recognised that the financial risk had increased, so that was reflected in the pricing. It asked us to go away and look at that, and the ABI was asked to lead a project, which we are doing.

We had already started that work before the FCA made that recommendation. We are working with McGill and Partners, which is a specialist property insurance broker, our member companies that write property insurance for multi-occupancy buildings, and the reinsurers. We provide regular updates to the FCA and the Department for Levelling Up, Housing and Communities, as well as to the Scottish Government and the other devolved nations.

That work has involved looking at developing what is called a risk-sharing scheme. I will maybe go into a bit too much detail on this, but it might be worth getting on the record.

Previously, higher-risk high-rise buildings would have been insured on what is called an excess layer basis. Insurer A would agree to insure the first £5 million of any loss. When there was a fire, a flood or another named peril, insurer A would therefore cover the first £5 million of the loss. Insurer B might then come in and agree to take on the next £10 million, if the claim went that high. That would mean a separate fee and a separate arrangement. Insurer C might then come in and say that, if there was going to be a total loss of the building, it would—let us say for argument's sake—insure up to £50 million. That means that the risk was spread around, because some of the insurers could take only a certain amount of financial risk on to their own books.

Essentially, when you write property insurance, you take financial risk from the property owners and put it on to your balance sheet and, in return, you charge them a premium, so that they are able to transfer that financial risk over to you. Insurers then need to make sure that they have sufficient capital to carry all that risk. As the potential cost of those incidents went up, that was reflected in the charges around the excess layering, so the prices went up and the capacity in the market reduced. Insurers then had less capacity to take on that financial risk, because it was much greater than was previously understood.

The risk-sharing system that we are currently working on is on track to be launched this summer. That takes a different approach. Under that system, one insurer would take on all the risk and would then reinsure or cede it to reinsurers in the market. That should mean that the overall costs should come down, because it will be more

cost efficient to do things in that way. We have to be careful about how we construct that system, because that is quite a complex approach, and a lot of different people are involved. Competition regulation also has to be abided by. Therefore, that has taken a long time. It is complex, but we are making good progress.

That system should be operational by the summer. Over the 12-month period following its launch, as properties come up for their insurance renewals, the change should be reflected in the pricing. However, that is a fixed-term response. The scheme is likely to run for around five years. The ultimate solution to get insurance premiums down is through the completion of remediation of buildings to improve fire safety. That will be better understood, and that is when prices should come back down.

Mark Griffin: That level of detail is really helpful. Do you or your members have any indication of any properties in which residents are finding that increased premiums, before remediation happens, are simply unaffordable, and are some buildings going uninsured?

Alastair Ross: By definition, if people are not able to get insurance, we would not necessarily pick up on that. I am aware of a lot of very challenging cases in different parts of the market. Chris Ashurst is probably better placed to comment on that; he might want to do so in a future meeting.

It is taking a lot longer to get insurance in place. Brokers, factors and property agents are having to work harder and start work earlier to place it on the market.

Some innovative solutions are coming through, as well. There are some properties in which each unit is insured individually rather than the entire block being insured. However, I am not aware of properties that absolutely cannot get insurance. Some are insured for significantly higher amounts than before, but that reflects the risk involved in them.

Mark Griffin: I have a question for Calum McQueen and Nigel Sellars. Do surveyors and fire safety assessors still have difficulties getting indemnity cover for their work, or has that got a bit easier since we last covered that topic a year ago?

Calum McQueen: I do not know about insurance for engineers and surveyors who carry out assessments of buildings, and I do not know whether Nigel Sellars has any information on that.

Mark Griffin: Does Nigel Sellars have any knowledge of that?

Nigel Sellars: No—not about the fire engineers. I have heard anecdotally that, generally in that space, members find that obtaining insurance is

slightly easier than it was last year. However, as Alastair Ross has pointed out, when there is certainty about the remediation of buildings, that will give more comfort to stakeholders more widely.

Alastair Ross: That issue has come up at the Scottish Government's stakeholder group in the past. Anecdotally, we have heard that fire safety engineers are able to get insurance. However, they more often buy it now on a case-by-case basis for individual pieces of work that they carry out.

The market is functioning and open, but the professional indemnity market more generally is quite challenging. There are a number of factors involved in that. There can be quite a lot of risk in that area, because insurers insure on a claims-occurring basis, which means that claims could come from not only the past 12 months but potentially years or even decades back. That means that insurers take on quite a lot of long-tail risk. They are reliant on the individuals whom they insure—whether they are fire safety engineers, surveyors or whoever—having good housekeeping. That means having good record keeping, up-to-date training and development records, and good management of their supply chains and their subcontractors. A lot of evidence is needed to understand what risks could be present in each business.

10:30

Work has been done in the industry to improve access to professional indemnity insurance. The International Underwriting Association has done a lot of work on developing some model clauses that are drafted in a way that elicits a lot more information for the insurer. That gives them a lot more confidence so that they are able to take on a bit more of the financial risk that was previously unknown.

However, the construction sector and related trades are quite litigious. An awful lot of claims are raised. They tend to be quite complex, and they can run for several years after construction is completed and go back historically. All that can be quite challenging, but the anecdotal evidence is that the professional indemnity insurance market is opening up a bit and improving. That is not particularly a Scottish or UK phenomenon; it is a global one. However, the market is starting to improve, and we hope that that will continue.

Mark Griffin: I have a final question for you, Alastair, because you touched on your experience of working on the Welsh stakeholder group. On the process of cladding remediation—rather than assessments and everything that goes before that—where are we in Scotland in comparison to

England and Wales? I know that Wales already has a number of schemes in operation, including the pact with developers, loans and different funds. Where are we on progress on actual remediation of the problem?

Alastair Ross: As we have touched on already, the big differentiator in Scotland is the tenure system, which presents a unique set of challenges for this particular market. Scotland is at a different point in the process, which is largely down to the tenure position. Again, if Chris Ashurst were here, he could probably speak very knowledgeably about the challenges involved in getting all the owners in a block of flats to agree on a course of action and to commission a survey—compared with a freeholder in England or Wales making that decision on behalf of leaseholders. It is a different approach.

In Wales, there are some similarities with the Scottish Government's approach. Both Governments have taken a holistic approach. It is about more than looking at cladding specifically; it is about the overall fire safety of the building.

There are a number of measures in Wales that it might be worth touching on. In September 2021, Welsh ministers set up a building safety fund. I go back to what Miles Briggs raised earlier with regard to procurement. That fund gave the Welsh Government the option to appoint a single consultant and go direct to market. The Welsh Government is directly procuring surveys. Rather than giving money to freeholders or leaseholders to do all that work themselves, it has taken the active decision to procure about 260 digital surveys from a single provider. To date, I think that that has led to 144 intrusive surveys, so it is making progress with that.

I think that the equivalent figures that the cabinet secretary provided were that there are about 105 or 106 surveys under way. In England, the Department for Levelling Up, Housing and Communities publishes data monthly. I do not know whether the March data is available yet, but the February data indicated that surveys are under way on something like 95 per cent of the 400-plus properties in England that it is working on. Those are not necessarily completed, but they are certainly under way.

Wales has taken quite a specific approach. Where there is what is described as a genuine dispute over responsibility for remediation or fire safety, the Welsh Government is determined that leaseholders will not be held financially liable. They do not have the same legal protection that leaseholders in England have under the Building Safety Act 2022. Again, a question for the Scottish Government to consider is the extent to which protections can be provided for owners in Scotland. We do not have a leasehold system.

Wales has also introduced a developers pact, which was signed off last year. That secured the involvement of about 11 major developers there. It has now moved from a pact to a legally binding agreement that is supported by the major developers in that market.

The Welsh Government has also introduced the developers loan scheme. It has set aside £20 million to assist developers if they need additional financial support to carry out some of the remediation work. That is probably for the small or medium-sized elements of the construction market. That is a loan rather than a grant, and the Welsh Government has been very clear that it is a loan that must be repaid in time.

There is also a leaseholder support scheme. The Welsh Government is concerned about not only the financial situation but the wellbeing of the leaseholders who are in flats with combustible cladding or other fire safety issues, so it is providing independent financial advisers, which it will pay for, to help leaseholders to understand their financial situation. In circumstances in which the best option for a particular leaseholder is to sell their property, either to transfer the financial risk on to somebody else or just to move out completely, there will be support for that. That will be supported by the Welsh Government's Development Bank of Wales, which is equivalent to the Scottish National Investment Bank. That bank is prepared to fund the purchase of those properties and take them off the leaseholders. Once the properties are remediated, the intention would be to repurpose them as social housing and bring them back into the market so that there is that capacity.

There are some interesting approaches in Wales, but you would not necessarily lift and shift them wholesale for Scotland. The Scottish Government and the Welsh Government are certainly having discussions about some of those steps, but Scotland is at a different point in the process.

Northern Ireland does not have the same extent of cladding problems, and it is really constrained in what it can do because it does not have a functioning Executive, at the moment. As I have said, there is in England a different system entirely, which is updated regularly. The building safety fund in England is around £4.5 billion, so there are significant differences in the scale of funding, but that is progressing as well.

Mark Griffin: Okay. That is really helpful. Thank you.

The Convener: Thank you very much. Those responses are very helpful.

We will move on to questions from Willie Coffey.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning to you all. I have some questions on building standards in general but, first, do you think that the changes to the building standards that were introduced last year deliver higher levels of fire safety? What evidence can we draw on as a committee to demonstrate that? I will start with Calum.

Calum McQueen: I think that John-Paul Breslin would be the expert on that. It is not really a valuation issue.

John-Paul Breslin: Yes, I am here today as the chair of LABSS. I am also team leader at Stirling Council. I was saying to my colleagues earlier that we are one of the few authorities that do not have a building above 18m, just because of the nature of the environment that we live in, so I have not been involved directly with the working groups that created and worked on that. However, I am aware of the changes to the technical standards.

My opinion is that the changes make a significant difference. The threshold has been brought down to 11m, and the most recent change in relation to non-combustibility is a significant step. Also, I think that the rigour of our scrutiny of the evidence that we take is the most significant in the UK.

Willie Coffey: I should say to Calum McQueen that I was going to come to John-Paul Breslin anyway, but I thought that I would give him a chance first.

Is the Wallace monument not over 18m?

John-Paul Breslin: It is not residential. [Laughter.] It is not residential and it does not meet the high-rise building requirement.

Alastair Ross: I do not think that it has cladding, either.

John-Paul Breslin: Yes, I am pretty certain of that.

Willie Coffey: That is a great point. A number of issues were raised with the committee when we looked at this previously, as well as with me in my role as a constituency member. I will just share an example with you and ask for your opinion on it.

A retired person bought a flat and subsequently wanted to sell that flat, only to discover that it had no fire safety measures and no sound insulation. They are now having incredible difficulty, as you might imagine, in trying to sell it. There is a debate about where the responsibility falls—there is the builder's responsibility and then, of course, there is the responsibility of the local authority to inspect, and so on. It is in that territory. Whose responsibility is it to assure a person who is about to buy a house that it is fit for purpose, especially

in relation to fire safety and other measures such as sound insulation?

I was going to come to you anyway on that point, John-Paul, to see whether you could assist with that type of inquiry.

John-Paul Breslin: In Scotland, in the current system, even with the recent changes to the technical standards, the completion submission is down to the relevant person, who is the building owner. In the building standards system, we undertake reasonable inquiry; currently, that is a notification plan for key stages. We come out and, if we do not get notification, we look at alternative evidence. Where the sound standards apply, there will be a sound test and periodic inspections at certain key stages. However, ultimately, it is the relevant person—the owner or, sometimes, a builder or company—who, when they submit a completion submission, is saying that the building fully complies with the technical standards.

We undertake reasonable inquiry, by looking at what site inspections we have done, what evidence we have gathered or what alternative evidence we have gathered if there have been areas or aspects that we could not get out to see. That would all factor in and, if we see that the building meets the standards of reasonable inquiry, which are defined in the guidance, we will accept the submission. If we do not find that the building meets that level or threshold, we will reject the submission and list the reasons for doing so.

Willie Coffey: Is the process thorough enough to find deficiencies that are as serious as those that I mentioned? In that particular case, it clearly was not thorough enough, so I wonder whether the new standards that we have introduced will give people the assurance that that kind of thing cannot happen in the future—particularly for fire safety but also for other matters that I have mentioned. Has the process improved? Could that circumstance happen again?

John-Paul Breslin: That maybe comes on to another piece of work—the compliance plan manager role, which is forward looking. What we have talked about earlier today is more retrospective—looking at the incidents from the past. One of the things that are on trial at the moment, which I can talk about later on, is the relevant person employing a suitable professional, who will look at the reasonable inquiry in the same way that building standards do. We are looking at engagement and dialogue about the risks of the individual project, identifying the compliance risks, then setting out—early in the building warrant stage, prior to approval—what needs to be seen, what needs to be evidenced and what needs alternative evidence. The compliance plan manager would oversee the process and do their

own independent checks, prior to the verifiers coming out.

That is what the futures board working group has been looking at; it is one of the streams that we have been working on for a couple of years. There are improvements to be made, but we are working with the Scottish Government to deliver that.

Willie Coffey: Do you see there being a kind of checklist of things that should be there—almost like an MOT certificate of construction compliance? We are all laypersons when we buy a house. If I was buying a new house, I would not know whether there was sound insulation, so we rely on the professionals to tell us that a set of things is required and for that to be signed off, in a sense. Do we have that kind of system yet?

John-Paul Breslin: That is a difficult question to answer. Such a checklist could work for a new-build house, because it could be tied to regulations that were in force when the house was constructed. For older properties, if sound insulation does not fail to a greater degree, because there was a separating wall of a fashion beforehand and the building has been converted into flats, there would not be a regulation that we could apply in that regard, so a simplistic list would not be possible. As I said, it is certainly something that the Scottish Government, LABSS and other stakeholders could strive towards, but I cannot think of an easy solution in that regard.

Willie Coffey: Do you recognise that that is a potential issue even going forward now? When people buy a house, one of their principal concerns must be whether it is fire safe. Somebody should tell them whether it is, and they should be able to see that in documentary evidence, without opening up cavities and having a look. Surely, that should be recorded somewhere to give people the assurance that the house that they are about to buy complies with all those requirements. Do people get that as purchasers or does it happen through the survey process?

John-Paul Breslin: In the building standards process, we undertake reasonable inquiry, but that is not specifically for the end user.

Calum McQueen: There is no way that a surveyor could provide that evidence, even if they did a level 2 inspection, which is more thorough but not intrusive. Fire safety issues are usually hidden behind cladding and cavity barriers, and sound insulation issues would not be seen. When surveyors inspect a building, they look only at what they can see on the surface, so those issues would not be mentioned in any kind of survey report, unless it was an intrusive building survey.

I assume that your constituent had that issue because an EWS1 assessment was done on the building and then a qualified person went to have a look and did some intrusive inspections. It has been commented on a couple of times that the EWS1 system has shone a light on some of the issues in buildings. The developer has a responsibility for building the building and the local authority for passing it through building control but, after that, no one else will inspect a building and consider those matters unless an EWS1 assessment is carried out.

10:45

Willie Coffey: Therein lies the problem. The builder who constructed the house subsequently went out of business and could not perform any remediation. The owner is left with the house and unable to sell it. I am trying to get at whether we have improved those circumstances for the public in Scotland who are buying and selling houses.

John-Paul Breslin: As part of one of the work streams, the Scottish Government is considering post-completion powers. That has been the subject of dialogue for a while, but it is early days. There might be an opportunity to do something on high-level issues but it is early days and the Government is still examining the legalities and whether building standards or another function would enforce such powers because they could be exercised in a period of time after completion has been granted.

Willie Coffey: Do you know whether the UK Government is doing any equivalent work in that area? I talked about building MOTs. I think that we used that phrase at a previous committee meeting to try to articulate the process better for purchasers. Does that concept make sense? Do you know whether the UK Government is going down the route of trying to provide greater reassurance to buyers that their house is fit for purpose in regard to the issues that I mentioned?

Calum McQueen: Not for buyers, no. I believe that it has extended the fire safety responsibilities of the responsible person, who is usually the building owner or freeholder, to the entrance doors to flats. However, I am not aware of any equivalent to what the single building assessment would be. It would be a full and detailed inspection of each building.

Willie Coffey: Nigel Sellars, do you have anything to offer in that regard? I realise that I have not come to you yet.

Nigel Sellars: That is okay. I am not too close to additional information on that from the UK Government. Some broader work is being done across industry with agents, surveyors and fire engineers to provide some more confidence about

information on a building so that, when properties are marketed, potential purchasers are given as much information as possible and are fully aware of what type of building they are buying into. If any remediation work has been done or is under way or any fire safety assessments have been undertaken, that information will be passed on to consumers at the earliest point. That broader transaction work will provide a lot more assurance in the buying and selling of such properties.

Willie Coffey: Thank you, everybody, for your contributions.

Miles Briggs: I have a few questions further to the theme that Willie Coffey pursued. One of the issues that have been raised with me relates to the new regulations not including schools, hotels, hospitals and, potentially, other high-risk buildings. What are the witnesses' views on why those have not been included?

John-Paul Breslin: Is that regarding buildings that are 11m?

Miles Briggs: Yes—over 11m.

John-Paul Breslin: There is a certain scope to which the regulations can be applied. I think that it includes certain high-risk buildings.

Miles Briggs: In England and Wales, they are specifically included but, in Scotland, they are still permitted to have the cladding on them.

John-Paul Breslin: I will need to get back to you. I was under the impression that it applies to certain footprint areas and other things. However, our technical standards say that certain things cannot be on a high-risk building regardless of height. It has to be A1 or A2.

Miles Briggs: I know that a lot of this is technical, in particular when we are asking about the two systems.

Finally, what data, if any, do you have on what are often referred to as potential “orphan buildings” in Scotland? What exposure do SMEs have to that issue, which could present a significant cost for those companies that they might not be able to meet in the future? Are you aware of any data on that?

John-Paul Breslin: From a building standards perspective, I do not have any knowledge of that information.

Miles Briggs: Calum McQueen, do you have knowledge of that?

Calum McQueen: I have no information on that.

The Convener: That brings us to the end of our questions. I will open it up and see whether there is anything that we have not asked questions about that you think it is important for us to hear. If

there is anything that we have not covered, I would appreciate hearing about it from you.

Calum McQueen: I have one comment, about the Building Safety Act 2022 in England. It has unlocked lending, because the UK Government, in statute, has now set a presumption that leaseholders will not pay. We do not have that in Scotland. There is no statute; there is just a single building assessment. That is obviously something that the Scottish Government has not done. If it were to give an assurance that it would cover the costs of certain buildings, I believe that that would be considered by lenders. That would bring us more into line with the situation in England.

The Convener: That comes back to the potential need for legislation in that area.

Calum McQueen: Possibly.

The Convener: If there is nothing else from anybody, that brings us to the end of our evidence. We really appreciate the witnesses coming in to talk to us.

As we agreed at the start of the meeting to take the next item in private, I now close the public part of the meeting.

10:51

Meeting continued in private until 11:00.

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