



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 30 May 2023

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
16th 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)

*Ivan McKee (Glasgow Provan) (SNP)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Ashurst (High Rise Scotland Action Group)

Stephen Garvin (Scottish Government)

Fionna Kell (Homes for Scotland)

Paul McLennan (Minister for Housing)

Rachel Sunderland (Scottish Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 30 May 2023

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning and welcome to the 16th meeting in 2023 of the Local Government, Housing and Planning Committee. The first item on our agenda is to decide whether to take items 3 and 4 in private. Do members agree to do so?

Members indicated agreement.

Building Safety

09:00

The Convener: We now turn to item 2, which is to take evidence on building safety, focusing in particular on progress over the past year on the single building assessment pilot programme, responses to the zero valuation of flats in blocks with potentially flammable cladding systems stemming from the external wall system 1 process, and the Scottish safer buildings accord. We are joined for our first panel by Chris Ashurst, who is group co-ordinator at the High Rise Scotland Action Group, and Fionna Kell, who is director of policy at Homes for Scotland.

I will begin. Chris—I will start with a question for you, and then I will come to other committee members. Are home owners and buyers still experiencing problems in moving or obtaining mortgages due to the zero valuation of homes that has been caused by concerns about fire safety? If so, what impact does that have on the people who are affected?

Chris Ashurst (High Rise Scotland Action Group): Thank you for that really good question. The one-word answer is yes. The extended answer is that I can think of several buildings for which, for example, an EWS1 certificate might be granted at the level that would allow a mortgage, but because there is an SBA in the background and there are different criteria, a surveyor looking at the building would pass an EWS1 but could not give a low-risk assessment on an SBA. That would put him, as a professional, in a dilemma: “Can I sign this off, effectively giving a statement to lenders that it’s okay for lending, when I know that the SBA is in the background and could be an issue down the road?”. That is causing issues. It is a difficult area that you might want to explore.

As to how it affects owners, when we started the process—it was launched in March two years ago—one thing that we all on the then ministerial working group said, and that the minister and cabinet secretary said, was that we must give people hope. When the SBA was launched, people who had been sitting there for a while were really worried. Some were worried because they could not sell their properties, and some were worried because they were living in what they thought might be dangerous homes. To them, the launch of the SBA said, that there was hope. The difficulty has been that, as in the proverb,

“Hope deferred makes the heart sick.”

We are now two years down the road. Some people live in buildings for which there is an active SBA, but if they do not know the result and it is taking a long time, does that give them any

comfort? Those people are really concerned. I am seen as an advocate for the Scottish Government, I think, and perhaps because of that I have had messages with words being directed at me that I had not heard before—and I was previously an insolvency practitioner. People are really angry.

There are also people whose properties, like most properties, are not yet in an active SBA situation and they do not know what the situation is, so they are also very concerned. Some people who are in a building for which an SBA is under way do not know because of communication difficulties that prevent them from getting information. Does that help?

The Convener: That is very helpful. It is concerning to hear that there is a lot of worry and wondering about the system and processes.

You talked about it being possible to offer a mortgage at the EWS1 point but there being the SBA in the background. How could we move forward from that?

Chris Ashurst: The game changed slightly with the issuing of the new guidance on the Friday before Christmas week. The guidance was not publicised hugely, but there were changes that raised the threshold of the tests for safety. That has had an impact. Everyone agreed at the beginning that a building is either low risk or high risk, without gradation. The reality is that there are high-risk and low-risk buildings but, as has been discovered in undertaking SBAs, some are high, high, high risk—to the point that, having discovered what is there, it has been necessary to use the gold, silver and bronze system involving Government and city councils to get to the point at which people can carry on living there.

However, there are also buildings that would be defined as high risk, but there are shades to that. Councils and I want to see some realisation of that and a way of addressing it. I was an advocate of the high-risk or low-risk approach because it gives clarity, but it has also meant that there are buildings in which people have been living with risk for decades that were previously nominally acceptable. The situation needs to be thought through and developed further.

The Convener: So, a bit more nuance is needed.

Chris Ashurst: That is absolutely right.

The Convener: Great. Thanks very much.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Chris, if you do not mind, I will continue on that theme with you. It sounds very simplistic to have had the assessment originally as just low risk or high risk. You have said that that causes difficulties. Can you share with us the difficulties? Where is the middle ground, as you see it?

Chris Ashurst: First, as I have already confessed, I was an insolvency practitioner; I am not a builder or surveyor.

Some of the buildings have highly flammable materials in them and the compartmentalisation of stairs in flats is woeful; it is awful, so there is high risk. I know of a building that would get an EWS1, and would be assessed as being fine, but behind what looks like a concrete façade there is expanded polystyrene insulation in concrete capsules. The surveyor whom I spoke to said that that is, technically, flammable, so under the guideline that came out before Christmas it is a no-no and has to be remediated. He said when he first saw the insulation that it would be difficult for it to catch fire because it is already behind something else and is encapsulated. If it did catch fire, it would not flame: there would be smoke and, as he said, there would be a hell of a mess, but the chances of that happening are minimal. However, that building is now high risk and has to be remediated.

In buildings of ten or twelve storeys, many flats have Juliet balconies. You cannot go out on them, but you sit in your dining room, open the door and look out over your Juliet balcony. If a flat on the eighth floor or the tenth floor needs to have the exterior remediated, that means taking the render off, and to take the render off, the Juliet balcony will probably have to be taken off, so people would potentially be sitting in a flat on the eighth floor with open windows and no balcony.

There are the two ends of the scale and everything in between. Those are the sorts of issues that need to be addressed and tempered.

Willie Coffey: Thank you for that. It helps us to understand where the grey area might lie: in the middle between low risk and high risk. I think that I know what you will say to this, but has the EWS1 system improved at all in the past year? You talked about a few changes. On reflection, has it improved or are we where we were?

Chris Ashurst: I know one of the guys—he has given evidence here—who drafted the EWS1 form. Unfortunately, I did not know him when he drafted it. Of course, it was drafted against the background of English legislation. I told him that it would not really work here because of differences in the tenure system and all sorts of other issues. He said that they knew that, but were really dealing with England. Has the system really changed? I see no evidence of that on the ground, if you will let me put it that way. There is still a lack of qualified people; there are very few.

Willie Coffey: That leads me to the next question, which is about the difficulties of getting flat owners to agree to remedial action in Scotland.

Can you tell us a little about the difficulties that you know of and what the solutions might be?

Chris Ashurst: There are at least two schools of thought on that. I have discussed the matter with some of the guys on the team, who you will, I think, see later. An argument was advanced that every building that had to have remediation work carried out would need 100 per cent of owners' agreement. First of all, that will not happen in any situation. Some owners will be dead, for example, so people would have to deal with the executors of their estates and so on. We are dealing with one issue with a guy who is in China. Apparently—I am not sure about this—internet access in China is difficult at the minute, so communicating to get agreement on anything is difficult. How can we get 100 per cent agreement? The guy is in China and cannot agree. Does that mean that we just do nothing? That is not a route that can be followed.

I believe that for buildings that have deeds of condition in place, quorums are often set for meetings and a majority is required. My belief, which is shared and was supported by some of the guys in the Scottish Government—I ended up putting out a press release about it—is that, where such a process exists, it should take precedence. In those circumstances, 100 per cent agreement is not needed. In the building where I live—actors across Scotland tell me that we are more successful at this than most—getting 50 per cent to attend a general meeting is great. Most people say that 25 per cent or 35 per cent attend, at best. Even on critical matters that one would think people should take more seriously, they simply do not read what is sent to them. The 100 per cent threshold is not achievable, so there has to be a way to deal with that.

Willie Coffey: Are there examples of remediation having been done with the agreement of a quorum or some other kind of agreement?

Chris Ashurst: I am aware of only one building in Scotland where remediation is in any sense advanced. It is a relatively small development in a city. I believe that the owners were brought inside, but I think that there were not many of them.

09:15

Willie Coffey: Was there 100 per cent agreement.

Chris Ashurst: I do not know; I was not there. I think that there have been some difficulties since. In other places, getting agreement has been very difficult indeed because people actually oppose remediation.

Willie Coffey: Is that because remediation would cost a lot of money?

Chris Ashurst: Of course, there is the rub: will it or will it not? People are still unsure. I am sure that Fionna Kell will talk a little bit about that later, and so will the minister. We have tried to give comfort to people, as has the Scottish Government, that the burden will not fall on the owners. I think I said at the very first meeting that I came to two-plus years back that the only innocent people in the whole scenario are the owners.

Willie Coffey: Okay.

Chris Ashurst: The owners should not have to foot the bill. I know that the Scottish Government is committed to making others pay.

Willie Coffey: Okay. I know that other colleagues will come in on that, so thank you very much, for the moment.

The Convener: Thanks very much, Willie. I was just going to say that.

Marie McNair has questions for Chris. We will then come to Fionna, so if there is anything that you want to say at that point, you are welcome to do so.

Marie McNair (Clydebank and Milngavie) (SNP): Thank you, and good morning. Do owners in affected buildings still find it difficult or expensive to obtain insurance? Have actions by the insurance industry had any impact on the premiums that are being paid by owners and tenants?

Chris Ashurst: Yes. There are buildings that have no insurance because they cannot get it. A normal risk figure would be £100 million. I am aware of a building where they have tried again to get insurance—it is not a particularly high-risk building; it would get an EWS1 certificate—but the insurers will not countenance it. New factors have come on the scene. They are well-known, reputable, good factors, whose name you would know. They have previously had insurance for buildings across Scotland, but their usual insurers do not want to start a new policy on a building where there is that sort of potential. The factors were surprised and eventually said, "Well, we have just got to try and get some sort of insurance." In the end, they went through the Lloyd's market and got a quote for £100 million, which was the figure for risk. That quote was for around £900,000 a year.

Marie McNair: My goodness.

Chris Ashurst: The factors said, "As factors, we just do not think that we could recommend that." At the end of the day, it is the owner's choice, but that is not doable. That then puts a factor—whoever it is—in a difficult position because he is signing up on something in which he could have risk too, if there are unpaid premiums and that sort of stuff. That could cause

a factoring business to question whether that is a viable thing that it can legitimately do. It is a big question.

However, I was reading about a scheme just a few minutes ago. My good friend Alastair Ross, who dropped me in it so thoroughly at a previous committee meeting, reported to the committee a couple of weeks ago—not this committee. What do we call it? It is not the working group. We changed the name.

Fionna Kell (Homes for Scotland): The client stakeholder group.

Chris Ashurst: That is the one: the stakeholder group. An Association of British Insurers scheme is in the process of being launched. I can give you the website details if you do not have them already, although it is pretty scant on detail. Alastair gave us more detail at the meeting.

The ABI is trying to launch a scheme in which, in essence, there would be a single nominated lead insurer. They are trying to work it out in both England and Scotland. There are issues with the layers of risk. One of the things that was identified by the Financial Conduct Authority when it followed up on one of Mr Gove's initiatives to check the insurance situation was a big issue to do with commission, but there was also a big issue to do with the way that risk is spread. The ABI is seeking to address that and has made an announcement. I spoke with Alastair Ross last night, and there is something on the ABI's website this morning, saying that it is on track to try and launch something this summer that could benefit those who are at highest risk when insuring for catastrophic loss and so on. Perhaps that will help. Does that answer your question?

Marie McNair: Yes, it does. Thank you for that, Chris.

The Scottish Government's single building assessment programme was announced in March 2021. How well has its delivery progressed? Could anything else help in this regard?

Chris Ashurst: We were thrilled to launch the programme, but we said on the day that it was like getting in a car and travelling from Edinburgh to Penzance. We were in the car, we had started the engine and we were moving, but we were not sure which route we were going to take or how long it was going to take. We were aware at the beginning that moving from conception to reality and putting it into practice would be enormously difficult and it has proved to be so. It was and is a pilot scheme and some things that have been discovered in the pilot scheme probably could not have been envisaged. The people resources available to achieve the programme, both in and beyond Government, have been limited. As I said at the beginning,

"hope deferred makes the heart sick".

Some people are very angry at how slow it is, and I understand that. Our group, High Rise Scotland, is not a protest group. We are not a "Tie them to the railings" type organisation, but I understand people feeling that and have sympathy with it. Our position is that we are here to work with the process to bring our insight, if that is the right word—it sounds a bit pretentious—and our on-the-ground experience to temper the technical decisions and others that are being made. Had that happened when the EWS1 was being drawn up, it would have looked different, to be perfectly honest, so it is important that that is in the frame.

People are extremely angry. I got a pretty abusive message the other day from someone absolutely tearing into the Scottish Government, saying, "If it is broken, just stop and start again. There is no shame in admitting that you got it wrong. Start again." The "you" was not just me. Of course, keyboard warriors who read just snippets in the headlines do not understand the huge process that goes on underneath, or the detail. The things that have been discovered are of such import that they need other experts to look at them.

It is slow. I am pleased that, the other day, the Government at least issued the single building assessment spending information, which showed that work is being done. One of the huge criticisms and one of the reasons why people are angry, is that they do not know what is going on. I have had conversations with people in the Government saying, "Look, even if you do not know where we are at, at least say something." Our group has been pushing since November 2021 for some sort of regular information. I understand the argument about wanting to wait until they have something to say. My rebuttal of that was that it is a bit like being in the second world war: you do not want to announce anything until you get to victory in Europe day. However, in the meantime—the four or five years until then—there are people in the trenches whose families are at home and do not know what is going on. We are the people in the trenches and we do not know what is going on. In a sense, I am slightly privileged, but people in general across the nation and in individual developments do not know. For example, one owner—a respected guy—is trying to find out what is happening in his development where there is an SBA, and he has had to resort to making a freedom of information request to get information. That is just an untenable position.

Marie McNair: Thanks, Chris. That feedback is helpful. It is really important that we know about the feelings out there.

The Convener: I have questions for you now, Fionna Kell, and, as I said, you can pick up on anything else that we have covered previously.

The Cabinet Secretary for Social Justice, Housing and Local Government wrote to the committee in March 2023, stating that agreement on the safer building accord could not be reached as there was

“an unwillingness of developers to accept the need to work to legal Scottish Building Standards.”

I am interested to know whether that is correct and, if so, how the dispute was overcome.

Fionna Kell: I agree whole-heartedly with almost everything that Chris has just said. We have remained as frustrated as the residents with the issues around the single building assessment programme: the implementation, the pilot nature, communications, the issue of grading the risk from high to low and everything in between.

In answer to your question, those are the reasons why, back in March, there was no ability to reach an agreement. The housing minister updated the Parliament on Thursday 24 May, in a written answer, to advise that agreement had been reached with a number of what have been referred to as wave 1 developers.

In February, the Scottish Government asked us to concentrate on the 10 home builders who had already committed to and signed the equivalent pledge in England. Therefore, the priority was to focus initially on those 10 in Scotland. Since February, discussions have been happening with those 10 wave 1 developers and, as the housing minister advised at the back end of last week, the majority of them are now in a position to agree the accord.

For those who have not yet agreed, it is simply because they are still working through many of the technical queries that Chris outlined. There is no objection to the principle or the commitment to the remediation of life-critical fire safety: that is accepted. However, there are genuine practical questions that become apparent only as you work your way through this. We need to remember that this is something completely new. We are trying to fix buildings that are up to 30 years old; it is not just a question of a Lego building where you take one bit off and put a new bit on. It just does not work like that. A lot of the questions that come up and need to be answered arise almost on the hoof because, when you start the investigation, other things become apparent.

The position of the home builders is that, although they accept the principle, they need to understand a bit more about this. The Scottish advice note guidance that was published just before Christmas, which Chris mentioned,

introduced a raft of questions and approaches that had not been thought of until then. As each single building assessment gets under way, it unveils another set of questions.

In answer to your question, that is where we are. The principle is there and we are still trying to work out its implications, as Chris said.

The Convener: Thanks very much. That is very helpful.

Mark Griffin (Central Scotland) (Lab): The previous cabinet secretary said that they expected the accord to be agreed and delivered, I think, in time for September last year. Fionna, are you able to set out why it has taken so much longer to get that agreement in place than the Government predicted? Was the Government deadline of last September simply too ambitious?

09:30

Fionna Kell: As I have said, it is a completely new programme and approach. Never has the wholesale remediation of buildings that are up to 30 years of age had to take place. We did not know the questions at the outset; they have appeared as we have gone along. Trying to get answers to those questions to give home builders the comfort to sign up has taken that length of time.

The SBA pilot programme had a relatively slow start in getting the assessments rolled out and getting the technical teams with the skills to carry them out. That has all impacted on the understanding of what exactly it is that people are expected to sign up to. We have asked repeatedly, “What does an SBA look like? What is an SBA? You want us to sign up to remediate buildings based on the findings of a Government-procured SBA. Okay, but what is an SBA? Can you show us a template of what you are asking for? Can you show us a completed one, so that we know what we are signing up to?”. That information has been difficult to get hold of. In the course of the past few weeks, we have had a lot more clarification on those points, which is why the housing minister was able to advise that the majority of those wave 1 developers now have sufficient comfort on the principles, but there are still some technical questions. There is a long way to go before we get that legal long-form contract over the line. That requires our questions to be answered specifically and laid down in black and white in a legally binding format before we can progress.

Another concern with the SBA programme is the delay in running it. Chris Ashurst pointed out the frustration of many of his members in that regard. Again, home builders will be responsible for remediating, but they cannot get on with the remediation until they know what needs to be

remediated. That all stems from the SBA programme. If the SBA programme is not sufficiently resourced at pace to deliver, home owners will be waiting for it before they can know what is going on, and home builders will be waiting for it before they can deal with the remediation. We have suggested that home builders being able to procure the SBA could be an option, rather than it having to be Government. That might help to speed things up. In England, home builders are able to procure the fire-risk assessments that are required for the remediation programme. Could that be an option in Scotland to keep things moving?

Mark Griffin: That is helpful. Thanks. You have touched a couple of times on outstanding technical issues. You will know that the minister is coming to the committee after this evidence session. What are the outstanding technical issues? We can ask the minister on the record when we are likely to have them resolved.

Fionna Kell: Particular clarification on the grading system is needed, as Chris Ashurst mentioned. The home builders that have been asked first of all are those that have already committed and have things under way in England. I am using England as an experience, because it is trying to juggle both systems. In England, the publicly available specification allows for high, medium and low-risk approaches. It understands that there may be issues that are medium risk and that those can be looked at separately. Some of those risks may be tolerable.

In Scotland, that does not exist; risk is high or low. Home builders are trying to understand whether, in the case of a building where you have done A, B, C and D but where you cannot do E, you have to demolish the building—excuse me; I am not a construction person or a technical expert. That is the kind of question that we are getting to: if you have complied with all those other bits, but there is one bit that you cannot practically do, because the building was not designed to do that 30 years ago, what does that mean?

There are issues around building standards. For example, something to do with thermal insulation or acoustics might be required to bring a building up to current building standards. If you are applying for a building warrant for the remediation and have to comply with current building standards, what happens if your building can meet the fire safety requirements but cannot meet the requirements for thermal insulation or acoustics? Do you not proceed with that? It is about those kinds of technical practicalities. The policy is fine, but we are focused on the practical implication of it at the moment. It is those real technical questions that we are trying to get answers to.

Mark Griffin: Thank you. That is helpful. My final question is to do with the remediation work that small or medium-sized building businesses would potentially have to carry out. What kind of support packages, whether loans, grants or other things, would the Government have to put in place to support those small and medium-sized businesses that otherwise might be pushed out of business?

Fionna Kell: That is a major concern for us. The focus has been on that first wave of the United Kingdom-wide companies, but we know that the home-building market in Scotland traditionally has significantly more small and medium-sized enterprises than the rest of the UK. In England, a threshold has been introduced so that home builders with a turnover of less than £10 million are not included in the scheme, because they understand the potential financial impact on those companies. The last thing that we want is for companies to be put out of business, because the risk for remediating those buildings would ultimately fall on the public purse, if they become orphan buildings, which is the term that is used. It is in everyone's interests to make sure that this process, while dealing with the very real remediation that is required and that the home owners quite rightly require, does not, at the same time, put SMEs out of business.

We discussed some options with the Scottish Government, such as whether grant or loan support might be available to help SMEs and whether there is a threshold below which SMEs are excluded, but we are yet to get resolution to those questions. That is a very real issue on which we need resolution before we can fully move on to the next stage of the long-form contract. The Welsh Government has offered some loan packages to impacted home builders. We would like to look at some kind of financial support, such as grants or loans.

Mark Griffin: That is great. Thank you.

Annie Wells (Glasgow) (Con): Good morning. My first question is for Fionna Kell. When can people who already live in buildings of developers that have signed up to the accord expect work to start on their buildings?

Fionna Kell: The ideal answer would be "As soon as possible." Once the home builder has made that commitment, it wants to get on with it. However, as I have mentioned, the whole thing hinges on the initial SBA being carried out. Nobody gets any comfort and nobody can progress until the SBA is completed.

We would certainly like assurances from the Scottish Government that the SBAs will begin to be accelerated for the buildings of home builders that have committed to the accord, but we remain

concerned about what resources are available within Government to deliver at the scale and pace required.

As far as I understand it—Chris Ashurst can correct me if I am wrong—there are no fully completed SBAs for the 25 and then 27 initial pilot buildings. I might be wrong, but my understanding is that none in that pilot programme is fully completed. That is only for the first 25 and then 27 buildings in the pilot. If it is estimated that hundreds and potentially thousands of buildings are impacted, we are very concerned about the resources because, until an SBA happens, we will not get the remediation that is required.

Annie Wells: I have one final, general question for both of you. Fionna, you have already spoken about what is happening elsewhere in the UK. How does the progress of the cladding remediation work in Scotland compare with that in the rest of the UK? Can any other lessons be learned for Scotland?

Fionna Kell: When the former cabinet secretary announced in May 2022 that the Scottish safer buildings accord was to be developed, she said that she was disappointed that there was not a four-nations approach to it. We echo that disappointment. There has certainly been a focus in England, potentially because of the introduction of the Building Safety Act 2022, which began to force things through a little more quickly. Overall, the perspective of members who are building north and south of the border is that things have been progressing more quickly in England.

Those who have already committed in England and have signed the pledge and the long-form contract have said, “We’ll do exactly that in Scotland. We can just roll it out tomorrow and keep doing exactly the same thing.” All of them have teams that are already delivering, but there has been a different approach in Scotland, and it has not been able to be rolled out as smoothly. It has required a bit more investigation, getting a new scheme set up, asking different questions, taking a different approach, and using a different assessment scheme. All those issues mean that we have had to design something different instead of being able to roll out the same scheme.

We fully recognise that Scotland has different standards and different regimes. That is understood. The home builders build north and south of the border, so they get that. However, for something as complex as the remediation of existing buildings, it might have been more straightforward to roll out a similar scheme, where possible.

I can see Chris Ashurst nodding beside me. Do you have the same mindset?

Chris Ashurst: Yes. It was very unfortunate that there was not a four-nations approach, and the way in which the Scottish Government learned that there was not going to be a four-nations approach was unfortunate—I say that as an Englishman—but that has happened.

One question that is often put to me is, “Why can’t we simply take what is in England and translate it into Scots law?” I am sure that you will hear more about that later but, basically, the agreement that has been reached in England against a legislative background of English law simply cannot be transposed. That English law cannot be taken and simply put into Scots law, because there are differences in the statutes. I hope that I am not speaking out of turn, but I know that the team has worked very hard to see whether there is some way in which that could be accomplished. Having taken advice on Scots law from the Scottish Parliament, the answer is no, we cannot do that. We cannot cut and paste it. That simply cannot work.

There is a pilot scheme to discover what is in the buildings, but it is also a pilot scheme for the legislators and Government officials to try to work out what the dickens we can do to make it work. I am pretty convinced that they are working their socks off to try to find a way to do that, but it is not easy.

Someone wrote to me the other day about a building near us. They said, “Why can’t they just do it? Just do it.” Well, you cannot.

09:45

In England, some things have moved more quickly. When the SBA was announced, a lot of people in corresponding groups in England were quite envious, because they could see that it would give real safety, security and hope to people. In Scotland, the people involved are owners, whereas, in England, they are leaseholders. That is a big difference. Of course, in England, they are basically dealing with freeholders or companies that own the freehold of the property, whereas here, as we touched on earlier, there could be hundreds of owners. In my development, we have 278 flats, I think, and some of those are jointly owned. You have to get everyone to agree. It is a different kettle of fish.

Yes, things have been slower. Resource is the most enormous problem. I do not want to be a Job’s comforter. I am basically an optimist and a hopeful person, but I really do not think that people in and outside Parliament have grasped the magnitude of the task and the magnitude of the expense. What has been spent so far on doing a single building assessment of a property almost

fades into insignificance when you look at the cost of implementing remediation work, which is huge.

There is also an issue with the people resource: the people are just not there. Despite the efforts of the Royal Institution of Chartered Surveyors to get people to sign up to the scheme and to get more people qualified to do the work—I believe that some have done the course—there does not seem to be a great crowd of people who have done the course and are willing and wanting to undertake the work. That is massive.

Annie Wells: Thank you very much for that.

Convener, I want to put on record that my son is working on properties, and doing remediation work on cladding at the moment.

The Convener: Thank you very much for that, Annie.

Fionna Kell wants to come in.

Fionna Kell: I fully echo Chris Ashurst's points about the scale and the resource. I do not think that anybody has any understanding of the sheer scale of not just the remediation but the resource that is needed to get the programme up and running. It really is substantial.

The Convener: Do you want to say a bit more about that and unpack it a little bit for us so that we can understand it?

Fionna Kell: Yes. It is not just a desktop survey that needs to be carried out on the buildings; a full-scale intrusive survey is needed, and specialist skills are required, but the resources are just not available to do that. Once the investigation phase is started, there are so many interconnected parts. You might think that you are just remediating the external cladding, but it might turn out that you cannot do that until you have done another bit and so on. It is about the sheer interconnectedness of all of it.

It is also really important to highlight the number of what have been referred to as "orphan buildings", which are buildings that do not have a known linked developer. That cost will sit with the public purse, and that is potentially very significant.

The current Scottish Government approach of simply determining whether a building is high or low risk will result in more issues in more buildings getting put into the higher-risk category. More resource will be required to deal with those issues when, in fact, some of them could be deemed to be a tolerable risk, which would allow resources to be more easily and clearly focused on buildings that have life-critical risks. That is where the priority should be. The high-risk and low-risk categories will automatically mean that people will become risk averse. If you can choose only high

or low risk and you are carrying out that assessment, you will more than likely verge on high, so more things will go in that direction. That will have an impact on the availability of resources to deal with the real problems.

The Convener: That is helpful. Thank you very much for that detail.

Miles Briggs wants to come in on something else.

Miles Briggs (Lothian) (Con): Yes. Thank you, convener. I have a couple of questions.

Quite a depressing picture is being painted of where we are at in Scotland. It is for the Government to get a grip of the situation.

Why do you think, or are you concerned, that other buildings have not been included in Scotland that have been included in England—for example, hotels, office buildings, hospitals and schools? Obviously, those are not all buildings that people sleep in, but why are we taking a different approach in Scotland to buildings that, clearly, the public would think would be captured?

Chris Ashurst: Neither of us is the person to answer why, but I can make an observation. At the beginning—I think that this is still the case, although I might be wrong—when the scheme was envisaged, with no one knowing how long this was all going to take, the thought was that all buildings that had people living in them would eventually end up with some sort of assessment so that we would know that any building was safe to live in. We would know that it would be safe to stay in a hotel or to be in a hospital, a care home or wherever. I think that that was the original plan.

Of course, when the scheme was originally announced, the intention was—it still is—that there would be a central record of all buildings that would be maintained, which would show that a building was or was not safe. That would give comfort to the people in the buildings, insurers, bankers and all sorts of people. That was the original intention. I have not heard that that original goal has been abandoned but, understandably, the approach is concentrating on the places in which most people live, and it is particularly trying to address lending and the sale of buildings.

Does that help?

Miles Briggs: I think that it does. My question is whether those buildings have not been included because the task with homes seems to be so huge. We are talking about 105 pilot projects, not the potentially 5,000 buildings across Scotland that might need surveying. Obviously, those are the high-risk buildings that we are talking about.

How long do you think things will take? I am an Edinburgh MSP; other committee members are

Glasgow MSPs. We represent parts of the country in which those buildings predominantly are and people who are now trapped in those buildings with mortgages on properties that they cannot sell. You have outlined insurance problems, as well. With what is an in-principle agreement—I would like to know from the minister what we are talking about with that—how long do you think it will be until things can be resolved?

Chris Ashurst: When I was first asked that question—not here, but by an owner two and a half years ago—I said, “Oh, I think it’ll take six months.” Stupid me. Then, as I got into it, I said, “No, I think it’s going to take at least two years.” We are now two years on, and we are not really anywhere near the end; in fact, we are hardly over the starting line.

If you look at the press release from the Association of British Insurers on its insurance scheme, which is to cover buildings while there is still risk, you will see that it talks about a five to 10-year programme. I do not know how it reached that decision, but that was the first time that I had seen that written down somewhere. That might be optimistic.

Miles Briggs: We are talking about decades before we can legitimately—

Chris Ashurst: I hope not. It depends on how the criteria are set. People have lived with risk across the world for years. Some of those risks are unacceptable, and some should never have been there. Builders, architects and others failed. There are no two ways to say that: they failed. I am always a bit wary of what is reported in the press, but look at the case that was reported in the English press last week, I think. There was an external assessment as the building was being constructed, but it is now found to be unsuitable to live in. Such things are wholly unacceptable, of course, and they have to be addressed, because we cannot have risk to life.

However, there are risks. In our building, strangely—maybe it is the same in your building—we have gas. I enjoy my dinner, which my wife cooks brilliantly on a gas stove. We have gas pipes coming into the building. They come in through the car park and go up umpteen storeys. People have lived with that sort of risk in cities and elsewhere for 100 years or more. Yes, there have been accidents but, on the whole, people have taken that to be an acceptable risk, and we all have to make assessments. That needs to be moderated in order to try to get things into a proper perspective. If that happens, maybe things will move forward more quickly.

Please do not take it that I am saying that we should not be safe and that we should lower our standards. That is not what I am saying. I am

saying that, in this process, we need to have a reasonable assessment of what the risks are.

Fionna Kell: The word that we have consistently used is “pragmatism”. There needs to be a pragmatic approach to all of this.

On the timescale for delivering, all that I can say is that home builders have already started survey work and, indeed, remediation not just in England but in Scotland. That is happening already. Those developers that have indicated to the Government that they are in agreement want to get on with things now. They have made that decision. They will have set that aside in their accounts and balance sheets because they know that they have the remediation to do. They want to get on and do it. There will be no delay from them in getting on with it.

Once we can get the SBAs done, we will know what needs to be done, and we can get the schemes designed and implemented. Obviously, everyone is facing the same issues around the availability of construction skills and the workforce. All the bigger issues that have an impact on the labour force in general will, undoubtedly, have an impact on the programme, but there is no unwillingness on the part of the home builders to get on and do it.

Miles Briggs: Finally, do you have an assessment of how many orphan buildings we are talking about and what cost might be associated with them?

Fionna Kell: I am afraid that I do not.

Miles Briggs: [*Inaudible.*]—want to talk about, but that is a significant issue.

Fionna Kell: We have no idea of the overall scale of the buildings that might be impacted. Like you, we have asked for that data, but we have not seen it.

Chris Ashurst: I concur with that. We talked earlier about trying to move the thing on. I should have said that I applaud the guys in Government who have been working their socks off on this, which is brilliant. I have come to know some of them quite well.

I have said in our group, and I will say it again to everyone else—it has been echoed broadly across our group—that putting together the scheme in the first place and putting ideas down on paper was, of course, great, but that gathered speed and was driven very largely by the housing minister who was in office at the time. He had monthly meetings, which he chaired—and boy, did he chair them. If you did not do something, whoever you were, you knew that you had not done it. We were all accountable, whether we were civil servants or whoever. It was being politically driven by someone—Kevin Stewart—who had a passion to

make a difference. I got to know him a little, and I hold him in esteem.

As we have moved into the delivery mode, what has happened is that the involvement of civil servants and officers has become more front line. However, my perception—I know that this view is shared by others—is that we have missed having a cabinet secretary, whose role was huge, and who would come to a meeting every month and kick us up the backside and be aware of what was happening. That was just too much of an ask; it was just impractical.

I am due to have a meeting with the new housing minister very soon, and I have said publicly that I would really like to see that political drive instilled into the process, because I think that it made a huge difference. That is not to put down the work that is being done, but that brought a different dynamic to things—and it was a dynamic. It would be said, “We were aiming to do this, but we missed it, so what happened? We’re working to this goal: let’s press on.”

When I see the housing minister, I will say to him, as I have said to other MSPs, that I really want there to be regular meetings with the chair or the host, or whatever you call them. I am not trying to put down the current chair or host, but political drive is needed. That would speed things up. We can talk about the risk and so on. That would help, but I believe that, if we had that impetus or input, that would make a huge difference.

Miles Briggs: Thanks.

The Convener: The Minister for Housing will be on the next panel, of course. The committee is glad that we have a housing minister to address that part of our remit. I agree with Chris Ashurst. I hope that we will see something more of the momentum that he talked about.

I thank both of you very much for coming in and sharing your perspectives on the work that you have been doing. That has been really helpful to us in our work.

I now suspend the meeting to allow for a changeover of witnesses.

10:01

Meeting suspended.

10:05

On resuming—

The Convener: For panel 2, we are joined by Paul McLennan, the Minister for Housing. Mr McLennan is accompanied by Government officials. Stephen Garvin is deputy director for building standards, and Rachel Sunderland is

deputy director at the cladding remediation unit. Good morning and welcome.

Minister, can you provide an update on the single building assessment programme?

Paul McLennan (Minister for Housing): Is it okay if I make an opening statement?

The Convener: Yes.

Paul McLennan: Good morning, and thank you for the opportunity to speak on the important topic of building safety. My most recent appearance before the committee was just two weeks ago. As always, it is good to be back.

The Government’s absolute priority is the safety of residents and home owners. The Grenfell Tower tragedy provided absolute clarity on why building safety is so important. As the committee will be aware, immediately after the Grenfell Tower fire, we established a ministerial working group on building and fire safety. Since then, substantial progress has been made, with changes to fire safety standards and guidance, and further measures being taken, including legislation on smoke alarms, to address safety in buildings. The ministerial working group continues to meet and will address actions on building safety matters, working with key partner organisations such as the Scottish Fire and Rescue Service.

Safety is the reason why we have established a cladding remediation programme. I am determined to ensure that we identify, assess and remediate buildings with potentially unsafe cladding. Currently, 105 buildings are on the cladding remediation programme. Each of those buildings will go through a comprehensive technical assessment through a single building assessment. A single building assessment is a complex expert assessment. As we have already heard this morning, it is crucial that we take the time to get that assessment right, since it is the basis of all further work on the building. If experts identify an urgent issue during the assessment, we will take immediate action to safeguard residents.

However, I appreciate that, for many home owners, this process has taken too long. Last year, we changed our approach to the programme, moving from a grant model to a direct procurement model, which has led to a real increase in the pace of delivery.

Finally, I will update the committee on the Scottish safer buildings accord. The process has taken longer than we had hoped and has been complicated by the nature of the Scottish tenure system. However, I am pleased that we have made positive progress on the accord, as the committee heard earlier from Fionna Kell. I can confirm that a number of developers have sent or are in the process of sending in developer

commitment letters on the accord. That is an important step. We will now move to discussing the long-term legally binding agreement.

I can also confirm that we are looking urgently at legislative options to ensure that we remove barriers to support the delivery of the programme, to keep residents safe and to hold developers to account. We continue to work hard to remediate cladding issues for home owners and residents to ensure that we deliver a commitment to safeguard residents and home owners.

Thank you again for inviting me along. I look forward to answering your questions.

The Convener: Thanks very much. As I said, I would be interested to hear an update on the single building assessment programme.

Paul McLennan: As we have discussed previously at the committee, there are currently 105 buildings on the list. The anonymised list by region was published on 30 January this year. Twenty-seven single building assessments have been formally commissioned. Obviously, a significant amount of work is going on, and 14 single building assessments are at a substantive reporting stage. Remediation is under way in one building, and mitigation work is under way in a second building.

The Convener: I would also be interested to hear an outline, in broad terms, of what is meant by the in-principle agreement on the safer building accord that you reached with the developers.

Paul McLennan: I think that this is week 9 of my being in post and, in the first week or so, I met Homes for Scotland. Obviously, this is an issue of real importance to me. We have had discussions—I think that it was mentioned this morning that the previous cabinet secretary had been in discussions. There are a few key principles that are important to get across and that, working closely with Homes for Scotland, we have agreed on. One is developer responsibility, and that is being progressed.

Information sharing is another. Among the things that I picked up from today's earlier discussion at the committee was about communication, which Chris Ashurst mentioned. I would like to take that away and speak to developers and officials about it to make sure that we maximise communication to people. What Chris said about that was very relevant.

There is also the commitment to assess and remediate relevant buildings. That is about the cladding, which the committee has talked about this morning, along with other fire safety defects on buildings. We have talked about how closely we are working with the Scottish Fire and Rescue Service, which is a key partner. As mentioned, we

initially focused on the largest developers, which are members of Homes for Scotland.

Another key thing is that our approach is similar to that of the UK and Welsh Governments. We are in constant dialogue with them on the matter, which is a UK-wide problem, and we have followed their approach. There has been significant progress in the past weeks.

The Convener: I made a note about Chris Ashurst's comment on regular communication with people even if we do not have anything new to tell them, so I am glad that you picked up on that.

Willie Coffey: Good morning, minister. Can you tell us a wee bit about potential costs? What about the owners and tenants of properties that will ultimately be covered by the accord? Who will pay for the remediation?

Paul McLennan: Again, I heard that mentioned earlier this morning. The first bit of work is the single building assessment, which is fully funded by the Scottish Government, so there will be no cost to residents and tenants in that regard. In my previous answer, I mentioned the accord, which is about the developer taking responsibility for the remediation work. We have been clear about that, which is why it was important to reach the accord. The owners should not have to pay anything for that.

The other issue worth mentioning is that, although we have been dealing with buildings in respect of which we know who the owners are, there are also orphan buildings. It is important to mention that there is a public cost there. There is no cost to residents.

Willie Coffey: We heard Chris Ashurst say earlier that agreement is needed from everybody in a block of flats in order to proceed with anything. Is that the case, by and large, even if there is no cost?

Paul McLennan: I will bring in Stephen Garvin, as he has been discussing that. I heard the earlier discussion about the difficulties, with people being away—one person is in China—and so on.

Stephen Garvin (Scottish Government): There has certainly been an issue with getting agreement to go ahead in a number of cases. The legislation that we have might allow for majority agreement in some cases, but it depends on the title deeds of the property. Bringing people together has been one of the main challenges to progress and the pace of work on some of the buildings.

Paul McLennan: I know that we will touch on this later, as the committee will want to ask about it, but it is important to look at legislation. That would, in part, be about making sure that we get over that problem. We will touch on that more, and

I referred to it in my opening remarks. Part of the reason why we are considering legislation is that the more quickly we can remediate buildings, the better it is for everyone. That issue has been identified and will be part of any legislation, if that is where we move to.

Willie Coffey: You probably heard the earlier discussion about why it took over a year to get an in-principle agreement with some developers. Will you explain why, from the Scottish Government's point of view, it took a year to get to the point of agreement?

Paul McLennan: A general point is that the tenure system in Scotland is different from the system in England and Wales—it is more complex. Homes for Scotland talked about that earlier with the committee. There were lots of technical discussions on that, and it has been heartening to see the progress in the past weeks to get to the agreement. A lot of technical questions needed to be answered. As Fionna Kell said, the more you start to get into buildings, the more you start to see issues that you were not aware of that require a technical response. A lot of the discussions have moved towards that.

It has always been the position that everyone wants to get an agreement, but the technical discussions have been on-going over a number of months. As I said, the more we get into buildings, the more we find that there are technical questions that need to be answered. It was heartening to hear Fionna say this morning that all the developers are moving towards that, although there are a few outstanding technical issues that officials are working on. Officials meet Homes for Scotland and developers regularly to discuss those issues.

10:15

Willie Coffey: Do we have any statistics or data on the number of potentially unsafe homes that were built by developers that have signed up to the agreement?

Paul McLennan: I will bring in Rachel Sunderland on that.

Rachel Sunderland (Scottish Government): Part of the commitment that developers have now made is to share information with the Scottish Government about the buildings that they have developed and consider to be in scope. That is not information that we have had previously, and it will be important. Clearly, we know about some of the buildings, because they are part of the pilot programme, but we are aware that that applies to more buildings that are in the pilot programme. We will have that information soon. That is one of the things that we expect to see quickly, once developers have signed the developer letter.

Willie Coffey: Do we have an idea of the total number of potentially unsafe homes that we are talking about in Scotland? I am sure that, if you have that information at a later stage, the committee would welcome it, so that we can get a sense of the scale and size of the problem.

Paul McLennan: The published number for high-rise domestic buildings in 2021 was 780. That is not to say that that is the number of buildings that are at risk. I think that that number was published in 2021, and, obviously, the 105 buildings in the pilot phase of the programme were identified. We expect the vast majority of those to be safe, but that is the number of buildings that were identified in 2021. We are going through the buildings that we think are at higher risk. The initial estimate in 2021 was 780.

Willie Coffey: Thank you.

The Convener: I want to come back to the need to look at legislation. Can you say a bit more about that? Is it legislation on tenure?

Paul McLennan: That is probably about looking at a number of things. One is remediation of the buildings, and another is the mitigation of fire safety risks and ensuring that we can take action more quickly than we can at the moment. Obviously, we have reached agreement with the developers, but it is about tying that into legislation as we progress.

The Convener: Is there something that we need to look at around tenure? I hear that we have a problem with a different tenure system. We have to sort out the current issues but, looking to the future, do we have a tenure system that causes problems?

Paul McLennan: I will bring in Stephen Garvin on that. Obviously, the tenure system in Scotland has been established for quite a while. Stephen can talk about the issue specifically in relation to cladding.

Stephen Garvin: It is about making it easier to carry out assessments and, where an assessment determines that there is a risk, to progress with remediation. Clearly, we need to develop that and make it as easy as possible to go ahead with the assessment. That is one of the main considerations about any legislation.

Paul McLennan: That is probably down to the experience of the buildings that we have had to remediate in the first while. It is all about trying to quicken the pace and ensuring that we have the necessary powers to do that.

The Convener: Thank you. I will bring in Mark Griffin, who joins us online.

Mark Griffin: Good morning, minister. The Government and developers have both talked

about outstanding technical questions when it comes to getting an agreement on the accord. Can you outline the outstanding technical questions from the Government's side? Can you summarise those and set out how quickly you think the technical questions will be resolved to get that full legal agreement signed and delivered?

Paul McLennan: I will bring in Stephen Garvin on that, because he is the technical expert. Scottish building standards are slightly different from the UK and Welsh building standards. One of the key issues is that some of the organisations that we are dealing with through Homes for Scotland are UK based. In the programme in England and Wales, there are slightly different technical standards to ours. It is really about looking at that technical question of the slight differences between the UK and Scotland. That is broadly where that sits.

As Fionna Kell touched on earlier, it is really about points of clarification. That is the general reason why it has taken a little longer. Mr Griffin asked Fionna why the process had taken so long. Part of the discussions have been about getting those technical questions outlined.

Stephen Garvin will set out the specific technical points that we are looking at.

Stephen Garvin: The discussions have been largely about which standards will be applicable when cladding remediation is undertaken. It is clear that if it is determined that cladding needs to be replaced on a safety basis, current fire safety standards must be met and the structural performance of the cladding system that is put on must meet current standards.

There has been some concern about buildings that are about 30 years old, for which thermal or energy performance is quite different. There is a question about whether it is feasible to meet current standards with an older building, and there is some leeway there. It is about what can reasonably be achieved in a suitable manner that allows the building to be safely remediated. Our discussions have included the idea of preparing guidance for local authority verifiers, so that we have consistency between local authorities that may be dealing with a building warrant for cladding replacement or remediation.

Mark Griffin: My second question is similar to one that I put to Homes for Scotland and is about responsibilities for small and medium-sized developers. The Government has said that it is open to negotiations on responsibilities. What does that mean in practice? Are you considering either the turnover threshold of £10 million, as exists in England, or the loan system that has been introduced in Wales? Obviously, the last thing that we want is developers going out of

business and the potential for more orphan buildings. What reflections do you have on that, minister?

Paul McLennan: You are right, Mr Griffin. The first key principle was establishing the agreement with wave 1 developers, which built most of the buildings.

My background is 20 years in corporate banking, and I dealt a lot with small and medium-sized builders and developers. We need a more nuanced approach. The last thing that we need is to put such builders out of business. We are closely looking at the £10 million figure and the loan scheme in Wales, and officials are in constant dialogue with UK and Welsh Government officials. Just a few weeks ago, I had an interministerial meeting with UK, Welsh and Northern Ireland colleagues, talking specifically about cladding, and I will have a follow-up meeting with UK and Welsh Government colleagues on the issue.

We are looking at the two things that you mentioned, but we need a more nuanced approach than that to support SMEs. Obviously, they have their responsibilities, but we need to make sure that they do not go out of business because of the issue. The general principle is that it needs a more nuanced approach. We will go into that, but we are looking at the two schemes that you mentioned and are in constant dialogue with officials from the UK and Welsh Governments.

The Convener: I want to come back to the technical questions. In the previous panel, it was interesting to hear from Chris Ashurst and Fionna Kell about risk. At the moment, we have a system in which the grading is high or low, with nothing in between, but there are buildings where the risk is, possibly, lower and the way in which we should assess them might need to be different. Are you considering that and taking it on board?

Paul McLennan: I mentioned that we are trying to identify where there are immediate issues of high risk. I will bring in Rachel on that point.

Rachel Sunderland: I will say a little bit and then pass over to Stephen, who is the technical expert. The key point is that a single building assessment will assess the risk to the building and identify measures that need to be taken to bring down that risk to a manageable level. It is probably less about the red and amber ratings and more about the actions that need to be taken to bring down that risk to a manageable level.

If an immediate risk is identified during that assessment, we have in place a process whereby we can pause things, go straight in and take immediate mitigating actions. We are doing that in a couple of buildings: we have paused and put in measures such as a waking watch or having contractors on site doing work that will allow us to

reduce the immediate risk and manage that into the longer-term assessment process.

Stephen, I do not know whether you want to come in.

Stephen Garvin: I think that you have covered it in the main, Rachel. I suppose that it is about being clear. A single building assessment is a thorough process. There should be a report that sets out clearly what the issues are and the mitigation or remediation actions that need to be taken.

We discussed with stakeholders the approach on high-risk/low-risk ratings and on red, amber and green ratings over the period. Some stakeholders, particularly those who are decision makers on things such as mortgage lending, preferred the high-risk/low-risk rating scenario because they did not feel—certainly, at that point—that they could cope with the amber scenario. They did not know where to place buildings in that system. That was one of the driving factors.

Clearly, things move on. If an evidence base builds up that allows us to incorporate a medium risk and more nuanced view, that is entirely fine, and we are happy to discuss that with UK Finance, the High Rise Scotland Action Group, Homes for Scotland and other bodies—and we have done that. The important thing, wherever a building sits—whether the risk is high, medium or low—is understanding what action, if any, needs to be taken for that particular building.

The Convener: That is useful, and it is helpful to understand that you are aware of the potential need for more nuance.

Before I bring in Annie Wells, there is something else that I want to put to you, Stephen. You spoke about remediating buildings that were built at a particular time but that we have different standards now. I made a note to ask whether there is an opportunity, without slowing things down—I would not want that to happen—to look also at retrofitting buildings while we are remediating them, so that we do not have to go back to them to make them net zero in the future, and that kind of thing.

Stephen Garvin: Certainly, for energy-efficiency purposes, it would make perfect sense to consider that and to look at doing that at the same time. We have had discussions with colleagues in other parts of the Scottish Government about how that could work. It would be common sense to do as much as you can in that regard.

The Convener: I am glad to hear of your awareness and that that is part of your discussions.

10:30

Annie Wells: How long do you anticipate it taking to agree the remediation contracts with the developers who have already signed up to the accord? When might residents expect work on their buildings to start?

Paul McLennan: I do not think that there is a one-size-fits-all answer to that. It really depends on each building. We have heard about the inspection process. Part of the reason for some of the legislation is to quicken the pace of what we need to do with the buildings. In addition, one of the key things about reaching the agreement with Homes for Scotland and looking at legislation was to quicken the pace.

My key message is that we hope to increase the pace of the remediation of buildings, but it is hard to give an answer to that for one building or another because the requirements are all different. The key thing is to ensure that we quicken the pace. We are working with officials to do that and push things on quite a bit.

It is difficult to tie down the position for one building compared with another, as it depends on what remediation is required.

Annie Wells: Thanks for that, minister.

You have already spoken about legislation, and the Scottish Government said that it would explore legislative options to safeguard residents and home owners. Will you outline what those options are? What, if anything, would trigger their introduction and use?

Paul McLennan: If I return to a question that was asked previously, with buildings that we are already remediating, there have been issues to do with our not having the powers to move things on. For example, if there are fire safety risks, do we have the necessary powers on that? You mentioned holding developers to account through legislation. We have reached agreement, but, if we identify more buildings and developers that are not part of that agreement, we will need to move on that.

The key part—the important message—is that safety is, obviously, of the utmost importance. We need to be able to move on buildings and do things as quickly as we can. Legislation could be brought in to deal with that. It is about how quickly we can move things on in relation to where the barriers are at the moment.

We would look to legislate as soon as we could, if that is how we proceed, and that is still being examined. If we decide to do that, we would need to work closely with the committee on it. We would probably be looking at an expedited process, because safety is the most important part of this.

Annie Wells: Thanks for that, minister.

The Convener: Thanks, minister, for your awareness about working closely with us. That is much appreciated.

Marie McNair: I am aware that the Scottish Government has looked at how other parts of the UK have taken forward their cladding remediation issues. Are there any issues to be considered from the approach being adopted elsewhere?

Paul McLennan: Officials meet almost weekly, so I will bring in Stephen Garvin and Rachel Sunderland in a second on the technical discussions.

Mr Griffin mentioned the Welsh Government loan scheme. We are looking at that as well. Coming back to the point on legislation, we have talked about the UK Government's responsible actors scheme, and we are looking at the potential applicability of that in Scotland. Those are two key things.

I mentioned the interministerial group that met a couple of weeks ago—I think that it was on 10 May. I am seeking separate meetings with the UK Government and the Welsh Government to talk in more detail about what they do. The interministerial group meeting was a short one. It was useful, but I need longer discussions about what they do. It is a UK issue, and we need to look at how closely we can work with the UK and Welsh Governments on that matter.

Rachel and Stephen can comment on the discussions that they have been having. From a political point of view, it is about working closely with those Governments, and looking at the two schemes that I mentioned and at their applicability. There needs to be a UK-based requirement or settlement. It is up for discussion and to be further advanced politically.

Rachel Sunderland: I second what the minister said. We meet at official level with the UK Government, the Welsh Government and now Northern Ireland colleagues, as well, to discuss what we are doing. Obviously, there are differences with the tenure scheme in Scotland, which means that some of the steps that are being taken in England and Wales are not directly applicable, but, in many cases, we are dealing with the same developers and the same kinds of issues arise.

We meet very regularly to talk about the different challenges that we are facing, some of the different policy solutions that are being developed, how those are working and whether there are lessons that we can take from them that we can apply in Scotland. Similarly, we can tell colleagues in England, Wales and Northern Ireland about our experience, and they can see

whether there are things that they can take, from steps that we have taken, which are relevant to the work that they are doing.

Stephen Garvin: The only thing to add is that things are different in each country. England has the Building Safety Act 2022, although some of that applies UK-wide. It has brought in a new regime for higher-risk buildings in England and has set up the Health and Safety Executive as the building safety regulator for those buildings. That is something that we keep a close eye on.

A new building advisory committee for England is being set up under the building safety regulator. We have observer status on that committee, so we are seeing and engaging with colleagues on the development of that new regime. Again, it is about seeing whether there is something of value that we can apply here.

Marie McNair: Thanks for that response.

I will move to my last question. Is the Scottish Government taking any action to assist residents of potentially unsafe homes to access affordable buildings insurance?

Paul McLennan: Policy on mortgages and buildings insurance is the responsibility of the UK Government. I know that that issue is being discussed on an on-going basis with officials, and I will let them update you on those discussions.

One of the main reasons for trying to meet the UK Government specifically on that matter is that UK Finance takes that forward. We need to ensure that we make progress on that as soon as possible. Chris Ashurst mentioned that this morning, particularly with regard to buildings insurance and mortgages. I am really keen to take that further with the UK Government, to make sure that we quicken the pace and to find out what we in Scotland need to do to make sure that it is aware of that. It is a really important issue for residents and home owners. It is one of the key things that I will be discussing with the UK Government.

As for specific work that we are doing here, I will bring in Rachel again to talk about discussions that we have had on that. To a certain extent, our hands are tied on that matter, but obviously we have been raising it with the UK Government. I am keen to quicken the pace on that to make sure that we get some resolution as quickly as possible, to give the tenants and residents a bit more peace of mind. There are other things that we need to work on. We talked about communication this morning, and that is important.

Rachel Sunderland: UK Finance is closely linked to the programme, and it sits on our stakeholder group. We regularly discuss that issue with it, and it is regularly discussed at the

stakeholder group. We have also met it separately. In principle, it is about how quickly we can move to secure a solution that reflects what is happening in Scotland as opposed to the solution for the UK Government and UK Finance.

We are in active discussions about that and are keen to progress matters as quickly as we can. We recognise that insurance and mortgages, including access to them, are key concerns for home owners and residents.

Paul McLennan: One of the main reasons for trying to meet the UK Government and the Welsh Government regularly is that the cladding remediation programme in the UK is evolving and will continue to evolve over months and years. It is important that we are tied in as much as we possibly can be to what they are doing and how closely we can work together. Obviously, we have our own priorities and things that we need to do, but working closely with them as the remediation programme across the UK evolves is really important.

I will bring in Stephen to talk about the other discussions that we have had.

Stephen Garvin: The insurance issue is about getting buildings assessed and, if they need to be remediated, doing that as efficiently and swiftly as possible. That should put the building back to a place where affordable insurance becomes a reality again. I think that you heard earlier about some moves from ABI and so on to help home owners in the short term while that work is under way. We certainly want to be engaged in that and to encourage its progress.

Marie McNair: Thank you. I appreciate that response. I will hand back to the convener now.

The Convener: Thanks, Marie. I bring in Ivan McKee.

Ivan McKee (Glasgow Provan) (SNP): There are a couple of areas that I will question you on, minister. The first is skills. Have you done any thinking about or assessment of what the requirements might be? That applies to the skills that are needed to do assessments as well as the skills to carry out the remedial work as and when.

Paul McLennan: That was identified and picked up this morning in relation to, for example, fire safety inspectors. I will bring in Stephen to talk about the technical details. That is an issue. Whether there are enough qualified fire assessment professionals has also been an issue down south and in Wales.

The work that is required in relation to the broader remediation situation is less of a problem. However, some of that requires specific cladding work, which is an issue that we are looking at and one of the issues that I will take up with UK

Government officials. As I said, the problem affects the whole of the UK, so we must ensure that we are training more fire safety inspectors. We identified the issue pretty early on.

I will bring in Stephen to talk about where we are with the numbers.

Stephen Garvin: There is a lack of fire engineers with chartered corporate status who are available and engaged in this work. Filling that void takes quite a while because you need the qualification and experience to carry out that work. Having that skill will be a requirement for the long term, so we need to ensure that courses, including degree courses, are available for people.

There is a wider skills issue in construction. Take building standards verifiers. Nearly three years ago, with Local Authority Building Standards Scotland we set up a workforce strategy so that we could develop competence assessment approaches and work with it to fill training gaps. We have introduced a modern apprenticeship route into building standards. Our first cohort of 17 apprentices has started in the past year. We would like that to become a firm long-term part of bringing people into building standards. However, there are other routes in, such as graduates and others with more experience in the construction profession. We need in place a range of professionals and trades to deliver successfully on assessment and remediation.

Ivan McKee: Just to be clear, my understanding of what you are saying is that you have not done any number crunching, so we could go through the process of getting the accord signed and putting out the procurement for the assessments but then find that everything slows right down, because there is not the capacity to deal with what is required. Have you actually crunched the numbers to figure out what they look like and how long the process will take as a consequence?

10:45

Paul McLennan: On the general principles, we are at the start of the process. As I have said, every building is different, but the key skills that need to come through are generally the same.

The key for us is knowing what the process is, who we need to involve, what is involved and what skills are required. We are undertaking that process, but it is very much at an early stage. We at Scottish Government level need to ensure that we are resourcing that properly—and we are; there has been a big increase in numbers.

However, we also need to look at what is required within the sectors. That is getting picked up and we are starting to get into the remediation programme. We are talking to UK and Welsh

Government officials, to see whether there are lessons that we can learn from them. However, they are involved in that piece of work, because it is a UK-wide training programme.

I will bring in Rachel to provide a little more detail.

Rachel Sunderland: The fact is that, in March, we moved to a dynamic purchasing model. That allows us to draw on a slightly wider market when it comes to the number of firms that can register an interest, so that it is not just the Scottish market that is involved. Obviously, Scottish firms have a key role to play, but there has also been engagement with some UK-based firms about coming in and we have an Irish firm coming in. Different firms are involved in the assessment process. That is really important.

It is not just an issue with numbers; there is an issue with quality. We need to be confident that the people who are undertaking this important task have the necessary skills, capacity and knowledge to identify all the issues and provide solutions. We continue to engage on what that looks like and at whether we can bring new companies into the market through the dynamic purchasing system so that we have a greater capacity to draw from to increase the throughput.

Once we get to the remediation phase, as Stephen said, it is a different market, and it is less about specialist fire safety engineer work. We are working extensively with key companies across Scotland.

Ivan McKee: How many people are there in Scotland or across the UK who are qualified to do this work? Can you answer that question?

Rachel Sunderland: I do not know. I could not give you the exact numbers of people who are qualified to do the work in Scotland or across the UK. Many of the firms are UK-wide or are larger in terms of the number of staff. We tend to contract with a firm and we then have multiple individuals working on a single contract.

Ivan McKee: Without that information, you will not be able to work out how long this is going to take.

Rachel Sunderland: There are a number of things that we need to do on the phasing. One is to go back to the very start, because, until we start looking at the buildings, we will not understand the depth and the complexity of the issues that need to be addressed. Some scoping work still needs to be done. I think that that is the same for the UK Government and the Welsh Government.

Paul McLennan: We can come back to the committee with the number that you asked for in relation to fire safety.

Again, the issue goes back to the discussions that I want to have with UK and Welsh Government officials. What are they doing on that? Rachel Sunderland touched on this, but there are UK, Welsh, Northern Irish and Irish companies that do this work as well. We need to look at the capacity in Scotland, but also at the capacity across the UK. What do we need to do under that four-nations approach to ensure that we all have capacity, given that we will all be looking to do the same things at roughly the same time? We will have those discussions with UK, Welsh and Northern Irish officials to determine what we need to do to look at the issue as a whole. Again, I will be happy to report back on the discussions that we have at that stage.

Ivan McKee: My other question is about costs. We have talked about orphan buildings and the cost for those coming back to the public purse at some point. Has there been any estimation or assessment of that? Is there a process to work out what that cost might be?

Paul McLennan: Yes. I think that £400 million was set aside. The UK Government made its estimate and there are consequential costs that come through. However, the more we get into the process, the more that cost will be. That is why it is important to reach agreement with the developers on who is responsible for what. There are resource costs, and there are the costs of our initial assessment. That is one of the main reasons why getting agreement and moving that forward is so important. The principle of the developer meeting the cost is an important part of it. Again, however, the process will evolve as we move through it.

The Convener: You talked about skills and the time that it will take to train people. How long will that take? Stephen, you talked about training to degree level. Will the training that people have to undergo take, say, a year?

Stephen Garvin: There are fire engineering courses that typically take four years. People who have prior experience may be able to advance further into a course straight away, but a bit of time is involved to get a degree-level qualification and then postgraduate chartered status.

The Convener: From what you have said, it certainly seems that there is a lot of technical detail that needs to be well understood.

Miles Briggs: Good morning. It was concerning to hear from the first panel the thought that, in recent years, we have seen a lack of political leadership on the matter. I hope that you will try to change that, minister, and ensure that there is progress. As an Edinburgh MSP, I have individual constituents who have had to use freedom of information requests to get any information. I hope

that your commitment to communication will move forward at pace, because many people across Scotland feel that they have just been left. They are understandably waiting for developments, but they are not getting any updates. I think that it is important to put that on the record.

Ivan McKee made a couple of points about orphan properties. What is the current number of orphan properties that have been identified among the buildings?

Paul McLennan: I will ask Rachel Sunderland to comment on that in a second, but first I will comment on the point that you made at the start of your question. I heard Chris Ashurst talk about the importance of communication even if people can only say, "Here's where we are" and not what is happening. I will certainly take that away and discuss it with officials.

On the point about political leadership, one of the first meetings that I had as a minister was about the cladding programme and what we could do to take it forward. One of the first meetings that I had—within the first week, I think—was with Homes for Scotland, and we discussed the issue. I am glad that, within a reasonably quick period, we have reached the stage that we have reached and that we continue to move on. We will move on to the SMEs, as I said. We have talked about the need for legislation to try to quicken the pace. In the first two months, I have tried to show that leadership by moving on the agreement and moving on legislation that we require to do that. I am certainly keen to discuss that.

I will meet Chris Ashurst in the near future and I continue to meet Homes for Scotland regularly and keep on top of that programme. I have already mentioned having meetings with the UK and Welsh Governments to take the issue forward. I think that I am showing that political leadership, and I am keen to make sure that I do that not just in the first two or three months but on an on-going basis. As I said, the process will evolve in Scotland and in the UK, but I am really keen to make sure that we give people as much peace of mind as we can and that buildings are as safe as possible. That is the key thing.

I ask Rachel Sunderland to comment on the number of orphan buildings.

Rachel Sunderland: Our understanding of that is still evolving. All the buildings in the pilot programme had a linked developer at some time, and some of those developers are still active. There is a bit of work to be done to identify whether some of the buildings are genuinely orphan buildings. For all of them, but particularly for those that were built a number of years ago, there is work to be done to establish who the developer was. Following the developer

commitment, we get information from developers to confirm their buildings and their buildings that are in scope, which should allow us to gain a clearer picture.

I refer back to the discussion about the work being done in waves. We have the Homes for Scotland developers identifying their buildings. We go on to identify the larger developers who built buildings that are in the programme or are potentially within its scope, and we then talk to the small and medium ones. We then look at the developers that seem not to be in existence any more.

There is a bit of work to be done to determine how genuinely orphan some of the buildings are. At the moment, it is a bit of an approximation. Maybe about half, or probably more, of the buildings that we are looking at are initially in the orphan category, but we do not know whether they will remain in it as we continue to look at them. In the interest of getting value for public money, we will look as closely as we can to identify linked developers.

Miles Briggs: That is helpful. It is important to understand where liability lies and to take into account companies merging and things like that. Of the 105 buildings, you do not have a linked builder for half. Is that correct?

Rachel Sunderland: We have identified who we think the developer was for the majority of them. It is about identifying whether the developer is still active and could make a contribution.

Miles Briggs: Okay. I think that the committee would like to be kept up to date on that. There has been a lot of secrecy around this. We understand the situation that home owners are in, and having more public accountability and information is really important.

Paul McLennan: We will come back to you to agree the best way for us to keep the committee updated on that.

Miles Briggs: A large number of buildings that are included in England are being omitted in Scotland—specifically, hotels and hospitals. I have concerns about that. What is the thinking behind those buildings not being included? Is that under review?

Paul McLennan: As a general principle, the key focus at the moment is on residential buildings. There have been discussions about hotels and hospitals. Stephen Garvin has been involved in those, so I will bring him in. As I said, the key focus at the moment is on buildings with residents. Hotels and hospitals are responsible for their buildings, to a certain extent, but there have been discussions about how we can work with them.

Stephen Garvin: Hotels, hospitals and so on have duty holders whom we would expect to take responsibility for the safety of their buildings if there is a cladding issue. Indeed, we have had a number of discussions with relevant parties about that. Changes have been made to building standards, but there are still some differences between Scotland, England and Wales. Our standards apply to buildings from 11m in height. That probably goes beyond what is required elsewhere in the UK.

Miles Briggs: The Government's in-principle agreement states:

"Single Building Assessments will help us understand the scope and scale of cladding issues across Scotland."

I am not sure that we will achieve that if we do not include those buildings. I think that most people would imagine that any building in which people sleep will be part of the review process. I understand that hospitals are public buildings and they will have 24-hour waking watches, if you like, as part of their management, but I think that hotels are a special case.

Where is the Government on that? You talked about discussions with colleagues across the rest of the UK. They are taking this work forward. It would be concerning if Scotland did not include hotels and we were then an outlier because we had not had that work done. Is there potential to review that to make sure that we are not in a very different position compared with the rest of the UK?

11:00

Paul McLennan: We will discuss with the UK and Welsh Governments what their approach is, how they undertake it and how they engage. Individual discussions on the subject are on-going. For example, we have had discussions with the Wheatley Group about the buildings that it is developing to ensure that they meet the standards.

We have talked about our engagement with Homes for Scotland on what its responsibility is and what the Scottish Government's responsibility is. It is about looking into where the responsibility lies. Does it lie with Government or with the developers? Individual discussions are on-going with major stakeholders, but I will raise the matter with UK and Welsh Government colleagues.

As Stephen Garvin said, there is a duty of care in the sector. We are encouraging stakeholders to come forward if there are discussions to be had about how we can work with them on that.

Miles Briggs: Maybe you could keep us updated on that area as well, as we have concerns about it.

The Building Safety Act 2022, which applies in England, has been mentioned a couple of times.

You have committed to legislation potentially being brought forward. Is there anything in that act that you believe could be brought in as emergency legislation to move us forward? I asked you how long it could take for this to be resolved and for people in Scotland to have peace of mind. I do not think that anyone wants to commit to that, but, if we are talking about 105 buildings and then a potential 5,000, it could be decades before we can genuinely say—

Paul McLennan: I will bring Stephen Garvin in to comment on the 2022 act in England. If we decide to proceed with legislation, we will look to introduce it in early autumn. We would need to come back and speak to the committee about that. If we identify things that need to be brought forward and we need to get more clarity and more powers to deal with them, we will probably look to do it after the recess and to push legislation forward in an expedited process.

We recognise the importance of having as many powers as we need to move things forward and quicken the pace. That shows our urgency about what we need to do. We will keep the committee informed if that is where we decide to go. If an expedited process is required, we will come back to the committee about that as soon as possible.

I invite Stephen to comment on the 2022 act and anything else he wants to raise.

Stephen Garvin: The new regime for high-risk buildings has a number of different aspects before, during and after construction, and the building standards and building control element mirrors the system in Scotland. England has moved to a pre-emptive scheme, whereas we have had that in place for all buildings for many years.

England has an in-use phase as part of the new regime, where there are duties on duty holders. However, that perhaps plays more easily into the tenure system in England—with the freehold or leasehold arrangement—than it does here. There may be practical things that we can look at there as regards what has been done and how, but we need to consider how things can work best within our system of tenure.

Miles Briggs: On that point, we heard from the previous panel that the Scottish Government is responsible for the procurement and reporting around SBAs. Would you consider reviewing that such that known developers did that work? Concerns have been highlighted to us in previous meetings that we are asking developers to take someone else's workings and provide a solution. Is there an opportunity within the agreement to change that to make it easier and increase capacity?

Paul McLennan: Discussions are under way on that. I will bring Rachel in, as she has been undertaking those discussions.

Rachel Sunderland: The key thing is that the assessments are by independent expert fire safety engineers. In principle, we have said in our discussions that, if developers were minded to commission those, we could look at that. Through the process, however, there needs to be confidence that everyone can rely on the assessment. It is not our assessment or a developer's assessment; it is the independent fire safety assessment, which then provides a basis not just for the developer to take action, but for the residents to be confident that it has accurately captured all the issues of concern for them.

Paul McLennan: We have reached agreement in principle. There will be on-going dialogue between officials, Homes for Scotland and me, and they will be part of how this will evolve and work in practice. Those discussions will be on-going and regular.

Miles Briggs: The greatest concern is about who has professional capacity and how it can be maximised at pace. That is a potential solution.

Paul McLennan: We have recognised that in the department, Mr Briggs. On the broader resources that will be required, however, we will be sitting down with Homes for Scotland as well as UK and Welsh Government officials.

Miles Briggs: The convener is wagging her pen—

Paul McLennan: I am sorry, convener. I do not want to get on the wrong side of you, so I will shut up now. *[Laughter.]*

Miles Briggs: I think that she was wagging it at me, minister.

Paul McLennan: Oh, was it at you? I was used to getting a row off the convener before, so it is a habit.

The Convener: You would not get on the wrong side of me, minister. It was directed at my colleague Miles Briggs. It is just that there is another convener in the Parliament who uses his pen to get the members to wind up, and I thought that I perhaps need to start using that code as well. *[Laughter.]*

We have gone over our time, but one thing that concerns me is orphan buildings. I am thinking not so much about the past, but about the future. Do we have something in place, or are we going to put something in place to address that? If a company goes out of business, we will get an orphan building. Are there measures that we can put in place to make sure that buildings can be reassessed? When we talked about the subject last year, I think that it was Chris Ashurst who brought up the idea of an MOT. Is there something that we can do to ensure that, when a developer builds a building, we can always link it back and

check up on them so that we do not end up with orphan buildings?

Paul McLennan: Rachel Sunderland touched on the importance of squeezing out as much information as possible to make sure that we do not get orphan buildings. It is about pushing that as far as we can to find out who the owner of the building is and whether they are responsible for it. As Mr Briggs mentioned, there can be mergers and companies can be bought over. In such cases, where does the responsibility lie?

In looking at the budget that we have, there is an element of expectation that some orphan buildings will become part of that. We have reached an agreement with Homes for Scotland about the buildings that it is responsible for. With regard to the ones that it is not responsible for, we have to look at how we maximise the budget.

The key principle is to try to make sure that we find the owners who are out there. We need to acknowledge that there may be buildings for which we do not have owners but, again, that was part of the process of looking at the budget that was required at the start. That is on-going. At times, it can be difficult until we get into the building and find out what the remediation need is. However, that element is built into the budget.

The Convener: My question was also about future proofing. Given that we will build more buildings, will we end up in a situation where we have more buildings that are not tied to developers? Is there something that we could do to join that up more?

Paul McLennan: With registration and so on?

The Convener: Something like that—yes.

Paul McLennan: I will bring Stephen Garvin in on that. I do not know what we do at the moment.

Stephen Garvin: There is not a current situation where that happens. As soon as buildings are built and sold to individuals, it is up to those groups of owners. The question is how we continue to assure the safety of the building and ensure that whoever is responsible for that carries out those duties. The tenure system that we have in Scotland does not allow us to carry forward indefinitely a responsibility from the original developer.

The Convener: Okay. That may be something for us to explore in the future.

Thank you very much for coming in this morning and giving your perspectives on the issue.

We agreed at the start of the meeting to take the next agenda items in private, so I close the public part of the meeting.

11:09

Meeting continued in private until 11:12.

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