

COMMUNITIES COMMITTEE

Tuesday 19 April 2005

Session 2

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COMMUNITIES COMMITTEE 11th Meeting 2005, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Elizabeth Bruce (Royal Institution of Chartered Surveyors)
Professor Lorne Crerar (Harper Macleod LLP)
Keith Denholm (Allied Surveyors)
Kennedy Foster (Council of Mortgage Lenders Scotland)
Ian Gillies (Royal Institution of Chartered Surveyors)
Brian Gilmour (Countrywide Estate Agents)
Alison Hatrick (National Association of Estate Agents)
Alistair Kinnear (Surveys Online)
Ann Laird (Scottish Tenement Group)
Ross MacKay (Law Society of Scotland)
Bill Scouller (Glasgow Solicitors Property Centre)
Ron Smith (Edinburgh Solicitors Property Centre)
Alex Solomon (Council of Mortgage Lenders Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Tuesday 19 April 2005

[THE CONVENER *opened the meeting at 14:06*]

Housing (Scotland) Bill (Witness Expenses)

The Convener (Karen Whitefield): I open the 11th meeting in 2005 of the Communities Committee and remind all of those present that mobile phones should be turned off.

Item 1 on today's agenda relates to witness expenses associated with our scrutiny of the Housing (Scotland) Bill. The committee is invited to delegate to the convener the responsibility for considering any witness expense claims received during its consideration of the bill, in accordance with the procedures outlined in the paper that has been circulated. Do members have any comments?

Members: No.

The Convener: Do members agree to the proposal?

Members *indicated agreement.*

The Convener: I will therefore consider any witness expenses as they occur.

Christine Grahame (South of Scotland) (SNP): Before we move on, it is incumbent on me to declare an interest as a member of the Law Society of Scotland, although I no longer practise as a solicitor.

Housing (Scotland) Bill: Stage 1

14:08

The Convener: Item 2 is continuation of our stage 1 evidence on the Housing (Scotland) Bill. The committee will hear evidence from four panels. I welcome our first panel of the afternoon. We are joined by Ian Gillies, who is the honorary secretary of the residential faculty board at the Royal Institution of Chartered Surveyors, and Elizabeth Bruce, who is the assistant director of the RICS. We also have with us Alistair Kinnear, who is the managing director of Surveys Online; Kennedy Foster, who is the policy consultant at the Council of Mortgage Lenders Scotland; and Alex Solomon, who is the senior policy adviser at the Council of Mortgage Lenders Scotland. I thank you all for coming along to today's meeting.

I have a question on the Executive's consultation on the bill. Have there been sufficient opportunities for you to engage with the Executive on its legislative proposals and for you to have your views and contributions taken into account?

Elizabeth Bruce (Royal Institution of Chartered Surveyors): We are satisfied that we have been acknowledged as a key stakeholder. Ian Gillies and I have been involved in the Scottish Executive's single survey steering group, and we have been given the opportunity to take part in focus groups and to respond on consultation documents. We are satisfied that we have had a fair crack of the whip.

Kennedy Foster (Council of Mortgage Lenders Scotland): I take the same view as the RICS. We have been consulted from day one, through the housing improvement task force, the single survey steering group, the "Maintaining Houses—Preserving Homes" consultation process and the consultation on the bill.

The Convener: You will be aware that one of the main objectives of the legislation is to improve the condition of private housing stock in Scotland. Will the Executive's introduction of regulations prescribing the information that is to be provided to house buyers help to meet that key objective?

Elizabeth Bruce: The RICS might be sceptical about that particular objective. We have a concern that the requirement to provide information will lead to people doing only cosmetic repairs, or the cheapest possible repairs, before selling their house. Any improvement to housing will take many years to manifest itself. The requirement to provide more information does not necessarily mean that people will be prepared to spend a great deal more money on their houses.

The Convener: How do you respond to the suggestion that if buyers were aware of problems with a home, they would either think twice about purchasing it or at least know that they would need to find the money for the repairs?

Ian Gillies (Royal Institution of Chartered Surveyors): There is a misconception that buyers are not aware of defects in a property, or of any repairs that might be required. At present, the report of a mortgage valuation inspection contains not only the valuation but a comment on items of repair that materially affect the value of the property. It is important to make it clear that repairs are already mentioned under the current system.

Providing additional information will not necessarily mean that, having absorbed that information, buyers will rush to make further repairs. The additional information will often be about work that is advised but not essential.

Alistair Kinnear (Surveys Online): Surveys Online has been operating in England and Wales and in Scotland since 1999. In England and Wales, the effect of having information up front is that the estate agent works closely with the seller and identifies the elements of the valuation report that they should take action on before putting the property on the market or before completing the sale. In the English market, a sale can fall through late on in the process, but it has been shown time and time again that there is less chance of that happening if such action is taken. Although the market in Scotland is different, it is clear to us—and we are doing a lot of business here—that a number of sellers have indeed taken steps to improve their property before selling.

Ian Gillies: In my experience of more than 30 years as a surveyor in Scotland, if a seller has undertaken a repair before selling a property, they do the work to a minimum standard. That is because they do not go on to enjoy that repair or benefit from it. Therefore, the work is often not of the quality that the buyer would achieve, because the buyer would want to be sure that the work was done to a very high standard.

I repeat that there is a misconception that sellers will undertake repairs to a high standard. That will not happen.

Alex Solomon (Council of Mortgage Lenders Scotland): I want to make a point about the advice that estate agents give to their clients. Within the residential property industry throughout the United Kingdom, the estate agency profession is the only one that is not regulated or licensed in any way. If that profession is to take a role in the development of the single survey or the purchasers information pack, we suggest that it

would be sensible to consider how to ensure that the profession is properly regulated.

The debate on monitoring housing conditions has so far considered only the information available in an individual transaction. However, the Scottish Executive might well be interested in another angle. If a single survey is required on every transaction, the information could be aggregated and stored electronically. Such information would give a useful picture of the condition of houses in Scotland as a whole, unlike the information on individual properties that is available only to individual buyers and sellers.

Cathie Craigie (Cumbernauld and Kilsyth (Lab): In your experience, does a buyer's awareness of a repair outstanding on a property affect the offer made to the seller?

Ian Gillies: It depends on the severity of the problem. For example, if the issue is dry rot, which will cost thousands of pounds to repair, that will have a material effect and will definitely influence the buyer's offer. However, if the issue is a relatively minor repair, most people will—for want of a better phrase—take it on the chin and simply make their offer as they normally would.

Cathie Craigie: Is it possible that the presence of dry rot might not be discovered or highlighted if a valuation for mortgage purposes is carried out rather than a full survey?

Ian Gillies: It depends on the area in which dry rot is present. If it is in a sub-floor area, it is likely that it would not be picked up by a mortgage valuation inspection, which is very much a walk-through inspection. Nevertheless, the surveyor will pay particular attention to those areas in which, in his experience, defects might occur.

14:15

The Convener: What effect will the proposals have on homebuyers' habits?

Ian Gillies: Do you mean, if we proceed down the single survey route, what effect will it have?

The Convener: Yes.

Ian Gillies: One of the big problems is education. Buyers will not be comfortable about relying on a survey that they believe to have been commissioned by the seller. There is a problem with giving people confidence that the survey is truly independent. I will perhaps comment on independence later in your questions.

Elizabeth Bruce: There will have to be a cultural change in how people regard the buying and selling of houses. I concur with what Ian Gillies said; there will have to be an education programme to make both sellers and buyers aware of what the new system will mean for them.

Alex Solomon: I suggest that the issue is not just about the attitude of the buying and selling public. We must accept that the Scottish Parliament is suggesting that it will change the rules of the game—the rules under which home buying and selling operate. That means that there is likely to be a significant structural change in the professions of the residential property industry. We must remember that there will be a change of attitude about the way in which homes are bought and sold not only among the public but in the residential property industry itself, including among mortgage lenders, the surveying profession and the legal profession. It is important to see both sides.

Kennedy Foster: We firmly believe that changing the process will drive structural change in the industries that surround house buying and selling.

Alistair Kinnear: What sellers and buyers do to property depends on market conditions. In the past few years, if someone wanted to buy a house, particularly in parts of Edinburgh, they would buy it with dry rot if they needed to. The market is changing and there is now more choice. I believe that that will help people to use the information to improve the property.

The Convener: Yes, but is there not a difference between, on the one hand, someone buying a house, knowing that it has dry rot and making the judgment that they have enough money to do the work and, on the other hand, someone buying a house, discovering that it has dry rot but, having mortgaged themselves to the hilt, not having the means to do the work? That is a fundamental difference.

Alistair Kinnear: Absolutely. That is why, when we started, we set up our stall to do exactly that—to give people the information and a guarantee against defects that were not in the report, so that they could be fixed.

Christine Grahame: I regard the single survey as having a dual purpose. It tries to increase the structural integrity of housing stock in general, but it also impinges on contract. Much of what you are talking about is dealt with in missives. Caveat emptor will still prevail, and solicitors will deal with the issues. Notwithstanding single surveys, solicitors will negotiate about who takes liability in the circumstances that the convener mentioned. Alex Solomon referred to a structural change, but that term is light considering how far the matter penetrates into the law of contract.

That said, there is a lot going for the idea of a single, mandatory structural survey—which, as we know, most people do not have carried out. I have difficulties with the proposed single survey, but are there alternatives to multiple surveys, which are

often done by the same survey team going out on behalf of six different people? The public's perception is that they are throwing money at nothing.

Ian Gillies: Before I answer that, may I ask whether your problem is with the independence of the surveyor? Are you concerned about the surveyor being caught between the seller and the buyer?

Christine Grahame: I think that other members of the committee will address that. Whatever we do, regardless of whether single surveys come in, there will be contractual duties, obligations and liabilities that will be negotiated between the purchaser and the seller. Those contractual conditions will not be identical; they will vary according to how desperate the buyer is to get the property. For example, the buyer might take a property without any guarantee that there is no evidence of dry rot; they might just want it anyway, in which case liability will transfer to them. The single survey will never remove the contractual shifts that take place. I just wanted to find out whether, with all your experience, you agreed with that general comment.

Let us say that there are issues with the single survey. What alternatives to it are there if we are to move away from multiple valuation surveys, which in general are carried out on behalf of the lenders?

Kennedy Foster: If we go back to the original housing improvement task force report, we find that the single survey was piloted to provide prospective buyers with better information up front, to tackle multiple surveys and to deal with low upset prices.

As I understand it, the issue of multiple valuations has been addressed in the Edinburgh marketplace by the practice of submitting offers that are subject to survey. However, when people get a survey done, they still only get a scheme 1 valuation for mortgage purposes, so although that practice gets round the problem of multiple valuations, it does not get round the other two difficulties that were identified in the task force report.

Alex Solomon: The practice of submitting offers that are subject to survey creates the same situation that the Office of the Deputy Prime Minister is trying to address through pre-sale home condition reports. One would assume that, ultimately, the Scottish Parliament will have to address such situations, given that they result in people making an offer without having information on the property's condition. If buyers wait until their offer has been accepted to have the survey done or to obtain the mortgage valuation, that can create the problem of transactions failing.

Elizabeth Bruce: The RICS Scotland certainly does not support the practice of making offers that are subject to survey, because it means that people buy on even less information than they would get from a valuation inspection. Furthermore, it introduces uncertainty into the system, which is a major downside.

Christine Grahame: With respect, if someone makes an offer that is subject to survey, they are not committed to buying the property, as the contract has not been concluded.

Elizabeth Bruce: Yes.

Christine Grahame: The buyer can withdraw from the purchase at any point—they are not tied in to it.

Alex Solomon: There are incurred costs. In England and Wales, it was found that about £330 million a year was wasted in legal and survey costs as a result of transactions falling through before the exchange of contracts.

Christine Grahame: I have declared my interest. In practice, many solicitors do not charge fees when offers fail.

Alex Solomon: But they will charge for their outlays.

Christine Grahame: As I understand the bill, the structural survey will be carried out prior to marketing of the property. I note that in your submission you say that the survey should have “no stated shelf-life”. However, you go on to say:

“We accept that sellers may need to renew single surveys and that this would have a particular impact on low income/low value properties”.

Will you specify how often single surveys should have to be renewed? I know that lenders will have a view on that, but what is the RICS’s view?

Ian Gillies: That is a difficult issue, on which my view is fixed. I believe that the shelf-life of a single survey would be the date on which the inspection was carried out.

In Scotland there are many different types of properties, ranging from modern properties to properties that are 200 years old and from properties that are in good condition to those that are in bad condition. The shelf-life of a survey depends heavily on the property’s condition. If someone was looking at an old cottage that had a dilapidated roof, for example, I would say to them, “Crikey! In six weeks’ time, that property could have deteriorated quite significantly.” If, on the other hand, the property was—dare I say it—a modern semi-detached Wimpey house that was six or seven years old, it would not be a problem to have a survey that lasted for perhaps a year. To specify a time limit of two months, three months or six months would be totally wrong. I believe that a

survey’s shelf-life should be the date of the inspection.

Elizabeth Bruce: We are concerned that the consumer might view a shelf-life as some sort of guarantee that the survey would remain good for the specified length of time, whether three months or six months. For the reasons that Ian Gillies has explained, every property is different, so to state a shelf-life would not be helpful to the consumer.

Alistair Kinnear: The surveyor can get round that in the report. He can say that he believes that a property should be reinspected within a month. We successfully ran a scheme for five years with surveys with a six-month shelf-life and a reinspection at the six-month point, with the consumer paying another nominal fee for the surveyor to go back and check that nothing had changed.

Christine Grahame: But would a purchaser rely on a survey with a six-month shelf life?

Alistair Kinnear: With a hidden defects guarantee, that seems to work.

Kennedy Foster: It is worth mentioning that the English legislation proposes that the home condition report must be instructed within three months of the property being put on the market. That puts the shelf-life at the front end.

Alex Solomon: The shelf-life of a valuation report tends to be defined as the length of time for which a lender will rely on it. There are differing views among lenders. Some lenders take the view that a valuation report is out of date after three months; others take the view that it is out of date after six months. In England, provision of the information is being moved to before the property is marketed. The important point is how old the report can be at the point of marketing. The age of the report at that point will dictate what lenders see as its shelf-life after marketing. Even if one were to say that the report could be three months old on the first day of marketing, as in England and Wales, some lenders would say that they were not prepared to rely on the information in it. Unfortunately, the Office of the Deputy Prime Minister did not agree with us when we suggested that the period be one month rather than three months before the marketing date. The industry has already created a set of rules that define how long a report will be valid for, which tends to be the time for which it would be valid for a lender to make an underwriting decision.

Christine Grahame: But in the end the market will decide.

Alex Solomon: It will.

Christine Grahame: No matter what you say in your report, the market will decide.

Should there be a valuation as well as all the structural details and so on?

Alex Solomon: We have not come to a view about whether the single survey should include a valuation. There are arguments for and against it. In its evidence to the committee, the Scottish Executive suggested that it had not decided which route should be taken. There is a need to consider seriously the pros and cons of including a valuation, in order to come to a risk-based decision about which way we should go.

Christine Grahame: Yes, because although someone could get a valuation of their property three months before they market it, three months later the property would be worth a lot more, simply because of inflation.

Alex Solomon: We hope so. I agree. We must consider how the market might develop to cope. We are focusing on the single survey, but we should not forget that there will be many other documents in the purchasers information pack that will have a shelf-life, or a period of time for which people rely on them. How will the market move? Will it create a situation whereby certain documentation can be insured to give it an additional two or three months' life? Will the surveying industry move to update single surveys at minimal cost, rather than charging the full cost again? It goes back to the point that the rules of the game are changing and the market will adapt to try to make the single survey and purchasers information pack work for the consumer.

Mary Scanlon (Highlands and Islands) (Con): I want to explore the relationship between the low take-up rate for the single survey and the justification for making the scheme mandatory. The CML Scotland submission states:

"Our agreement for the pilot was given on the basis that this was a controlled pilot of what was to be no more than 2,000 surveys."

I understand that the target changed from 2,000 surveys to 1,200 surveys and that, eventually, only 74 were carried out. In Edinburgh there was one survey, in Dundee there were four and in Inverness there were five. That leaves us with 64 surveys conducted in Glasgow.

I am not sure what you are saying in part 3, page 8 of your submission, which states:

"During the pilot 2 Glasgow firms of estate agents used only 2 firms of surveyors who they both had business relationships with. These relationships were not disclosed either to the seller, the prospective buyers or, indeed, the lender."

Will you clarify that point and explain what concerns you had about the Glasgow surveys? I believe that CML Scotland was on the steering group—can you confirm that? Were you consulted

before the decision by ministers to make the scheme mandatory?

14:30

Kennedy Foster: I will answer your last question first. We were not consulted by ministers before the announcement of the scheme being made mandatory. The first I knew about it was when I got a phone call then a subsequent e-mail with a copy of the press release five minutes before the announcement was made.

Mary Scanlon: Was that the case for the other witnesses who were members of the steering group on the single survey?

Elizabeth Bruce: Yes.

Kennedy Foster: My concern about what happened in Glasgow is that there are business relationships between estate agents and valuers. For example, in the pilot in Glasgow, one estate agency owned the firm of valuers that was carrying out the valuation—they happen to have two different names. Our concern is that that relationship is not known to the seller of the property, the buyer or—ultimately—the lender.

If one estate agent passed a whole lot of business to one lot of valuers, there would be the potential for that estate agent to influence the valuers in some way. All that we are suggesting is that those business relationships should be disclosed and made transparent to the consumer in much the same way as happens with mortgage regulation. When we accept business from an intermediary who has brought in a mortgage customer to a lender, we have to disclose to the consumer the fact that we might have paid a procurator or arrangement fee for having the business introduced to us. The issue is potential conflicts of interest and their disclosure. That was not thought about going into the pilot. All that we are suggesting is that that detail of implementing single surveys needs to be examined.

Mary Scanlon: Thank you. That is helpful.

I note from the sample single-survey document that there are three repair categories: 1, 2 and 3. I presume that it is probably a sample survey for an older property, as 13 out of the 20-odd repairs are in category 2, which is defined as

"Non-urgent repairs or replacement requiring future attention but you should still get estimates."

If I was looking at an older property and I got this sample survey document, I think that I would run rather than walk away from it. Will the single survey make an older property much more difficult to sell because of such information—which is welcome—about the property? Will it have a serious adverse effect on selling older properties?

Alistair Kinnear: Potentially, the opposite will be the case. Anyone who has a fear of older properties will have all the information up front and will know what they are tackling. We have done a couple of thousand such surveys in England and Wales and in Scotland and we have no evidence of what you suggest taking place.

Ian Gillies: I have to say that I disagree with Mr Kinnear. I happen to think that Mary Scanlon has hit upon a very good point.

Elizabeth Bruce: One of our concerns is that, in the scheme as proposed, the surveyor who has done the survey will not be able to offer additional advice to anyone who is interested in buying the house. Currently, if a buyer who commissions a survey does not understand a technical term or something that the surveyor says about a repair, they can phone the surveyor and ask them about it. Under the new proposals and our rules and regulations, if our members offer advice to one potential purchaser and do not offer it to every other potential purchaser, there will be a conflict of interest. No interpretation of the report by the original surveyor will be given to potential purchasers.

Mary Scanlon: Did not almost exactly that happen in Edinburgh? I read in the press about a seller who spent a lot of time trying to interpret a single survey and explain what it was about. It is my understanding that they eventually took the house off the market because, after eight months, they could not sell it.

Elizabeth Bruce: I also read that in the media.

Mary Scanlon: Mr Gillies seems to be thinking of a response.

Ian Gillies: My apologies—I thought that we put something on the issue in our submission, but we did not. One of my concerns with single surveys is that in poorer areas properties will struggle to sell. Unfortunately, the properties that we are trying to improve the condition of are often in low-value, low-income areas. I am concerned about older properties in poorer areas.

I have always maintained that the single survey will work without any glitches whatsoever in the Milngavies of this world and in certain parts of Edinburgh, but in the east end of Glasgow, places such as Larkhall and other areas, there will be problems. More than anything, I am concerned that we will end up red-lining areas. By that I mean that surveyors will be extremely concerned when they go into particular localities because their knowledge of the difficulties in selling properties might have a depressive effect on their opinions of the condition of properties and their values.

Mary Scanlon: I notice that your submission states that

“properties in certain areas may become unsaleable as they are revealed to the market ‘warts and all’”,

so you have covered that issue.

Alex Solomon: I would like to make a point, if I may. For my sins, I have been involved in the development of the home condition report in England and Wales for the past three and a half years. The debates around the development of the home condition report started in 1998 and an immense amount of work has been done to try to develop a report that meets not only the needs of the consumer—both buyers and sellers—but the needs of others who are involved in the transaction, such as the legal profession, the surveying profession and the lending industry.

Interestingly, the definitions of the three condition ratings south of the border are different from those here. A lot of work has been done on trying to develop a reporting style that delivers the information to the consumer in a way that does not red-line areas or cause additional problems. We have not finished that work, which has been eight years in the making. The implementation date south of the border is 1 January 2007, although my view is that that will slip. The timeframe in Scotland to develop the single survey has not been anything like that. The document that you have at the moment may be a good starting point, but there is a hell of a lot of work to do to get the single survey into the state that it needs to be in if it is to work in the industry.

Mary Scanlon: That is interesting. I know that we have to move on, but I have a point—

The Convener: Can you make this your final question?

Mary Scanlon: Yes. The CML stated:

“The focus to date has been ... on the Single Survey but the bigger picture is Purchasers’ Information Packs.”

What would you like to say about those packs and their potential value?

Kennedy Foster: Obviously, there has been a single survey steering group, but behind it has been another group that has been considering what should be included in the purchasers information pack. One recommendation was that the pack should include the single survey. The original housing improvement task force report also proposed that the purchasers information pack should be piloted. There is a lot more work in the purchasers information pack than there is in the single survey. One lesson that we can draw from south of the border is that people spent an awful lot of time concentrating on the home condition report, to the detriment of the home information pack, which is the English equivalent of the purchasers information pack. We firmly believe that a lot more work needs to be done on

purchasers information packs before they are introduced. We have to learn that lesson from south of the border.

Alex Solomon: There are significant contractual issues to do with the other documentation that will be required. For example, there are issues to do with copyright, and a difficult decision will have to be made about what documentation will be required in 100 per cent of transactions. How will the legislation reflect the fact that a Coal Authority report is vital in 20 to 30 per cent of transactions, although it is not required in the remaining 70 per cent? We are opening a can of worms.

Linda Fabiani (Central Scotland) (SNP): Elizabeth Bruce and, I think, Ian Gillies talked about an inability to give additional information to multiple potential purchasers, but there must be a way of getting round the problem. In other fields of surveying, such as quantity surveying, all the people who tender must be given the same information. Surely in the information technology age there must be a way of providing that additional information, if not on paper then on the web, for example.

Elizabeth Bruce: We discussed the issue in the single survey steering group and I think that everyone accepted that the tracking of potential purchasers would be a nightmare.

Linda Fabiani: Estate agents manage to track potential purchasers pretty well—they are never off the phone to them.

Elizabeth Bruce: We do not know whether sellers will hand out copies of the single survey when a person views their home. Are we asking sellers to make a note of the name and address of everyone who views the property? That approach would create practical difficulties for our members.

Alistair Kinnear: The technology exists to provide surveys on the web. We have been doing that for five years. If someone requests a survey report from Surveys Online, their name and address is added to the top of the report so that it is personalised. The surveyor knows to whom he is liable; the seller knows who is interested in the property; and the agents know who is committed enough to the property to read the report. If the surveyor is asked a question and thinks that he should have included the answer in his original report, he can make a clarification and everyone who has seen the report can be given the additional information.

Kennedy Foster: To be fair, not everyone is linked to the internet.

Alistair Kinnear: Most agents, solicitors and advisers are connected to the internet, so potential buyers have access via somebody.

Linda Fabiani: The witnesses are not here to present a united front.

Christine Grahame: We detected that.

Elizabeth Bruce: A large number of surveys are carried out, but I am not sure how many Surveys Online deals with. We are just saying that there are practical issues for our members. According to the profession's rules and regulations, there would be a conflict of interest if our members did not share information with everyone who might have an interest in it.

Ian Gillies: I speak from a practical point of view. I have always enjoyed speaking to individuals. A good surveyor is able to sit down with their client and tell him or her what is right or wrong with a property—that is the key. I have great concerns about putting surveys on the web. The written word does not convey the same message as might be conveyed by talking to someone. The lack of contact is a negative aspect of the proposals for single surveys and we should consider that in some shape or form. It is not practical for a surveyor to speak to 20 prospective purchasers, but people should receive personal advice from the surveyor. If they do not, who will interpret the report for them? I suspect that solicitors will have to do so—they will have something to say about that.

Linda Fabiani: Before I move on, I want to comment—

The Convener: Please stick to your line of questioning, Ms Fabiani.

Linda Fabiani: I will. I have bought and sold a few houses in my time and the idea of having a wonderful surveyor who talks to me does not register.

Elizabeth Bruce: That is disappointing.

Linda Fabiani: The bill will provide for the making of exemptions in relation to the duty to provide information on a house that is being sold. The RICS thinks that only new houses that have a National House-Building Council certificate—or an equivalent—and houses that are being sold to family members should be exempt from the scheme. What are the panel members' views on exemptions? If some cases were exempt, such as when people exercise their right to buy from a registered social landlord, what information should be provided as a minimum?

14:45

Alex Solomon: From a lender's perspective, exemptions are a major problem. Lenders base their business on agreeing, or not agreeing, to provide finance on the basis of standardised information. Given that it will cost the lending

industry a significant amount of money to change its processes to cope with the new system, we would not be overly happy with exemptions that meant that we had to tweak our system to allow us to consider financing such purchases. It would not be too much of a problem to exempt sales of new-build property with a warranty, but that would pretty much be it. South of the border, there is also an exemption for grade 1 listed buildings, but a home condition report or a single survey is unlikely to be able to cope with such properties anyway.

Kennedy Foster: We believe that when RSLs or local authorities sell, the information that is available should be equivalent to that in the single survey. I remember that, in a previous life, one member of the committee used to write to me about properties that belonged to the former Cumbernauld Development Corporation. Issues have emerged with right-to-buy properties. People sometimes buy a property without the need to resort to finance, but when they come to sell it on, they find that the construction type is not acceptable to lenders. Information should be available for such people, although, in fairness, the Executive is considering such a measure.

Alex Solomon: The important point about the right to buy is that there is a significant fall-through—not a great proportion of applications result in a sale. There would be a significant cost to the public purse in providing all the information at the beginning of the process. An assessment needs to be made of the point at which the information should be provided during the application process.

Linda Fabiani: So that could be a difference for right-to-buy properties.

Alex Solomon: Yes. The figure that I remember from south of the border is that only 50 per cent of right-to-buy applications turn into a transaction. We must find the point at which we have a 90 per cent or 95 per cent conversion rate in the application process. That is the point at which the information should be made available to the prospective buyer.

Linda Fabiani: Is that view shared by the other witnesses?

Elizabeth Bruce: The RICS Scotland feels that right-to-buy properties should not be exempted, for the reasons that Kennedy Foster outlined. The properties are sometimes of non-traditional construction and the people who buy them may be less experienced in buying a house and therefore perhaps do not fully understand the process. We feel that the argument for right-to-buy properties to have a single survey to protect the consumer is stronger than the argument in relation to other properties.

Linda Fabiani: I am interested in the comment that the difference for right-to-buy properties may be the point at which the survey is carried out, rather than the extent of the information that is required.

Alex Solomon: I based my comment on my experience south of the border, but I am sure that the Executive would be able to give the exact conversion rate for Scotland.

The Convener: Time is marching on and we have several more lines of questioning for the panel. I ask members to keep their questions short and the witnesses to keep their answers as succinct as possible.

Linda Fabiani: Stop arguing, everybody.

Cathie Craigie: Some of my questions have been dealt with by other members, so to avoid duplication, I will leave them.

Elizabeth Bruce mentioned non-traditional houses in relation to right-to-buy sales. Local authorities are under an obligation to advise tenants if the property that they are buying is non-traditional. When a person buys a property that they have known for a number of years, that is different from somebody who buys a house on the open market. Kennedy Foster was right about Cumbernauld Development Corporation, but the situation for local authorities nowadays is different. When Cumbernauld Development Corporation was selling houses, it had an aggressive sales policy—it had targets to meet for the Government of the day on the number of houses that it sold. Now, local authorities are obliged to tell prospective purchasers about the obligations that they would have under the right to buy. Do you agree that the circumstances are different now and that the guidance that local authorities must follow is different?

Kennedy Foster: I was suggesting not that local authorities should produce a single survey, but that some equivalent to a single survey would give prospective purchasers under the right to buy more information than they currently get. Would many tenants understand what is meant by non-traditional construction?

Cathie Craigie: They would probably understand it if a member of the Council of Mortgage Lenders Scotland refused to lend them money on a property because it was of non-traditional construction. Do you agree that local authorities should bring that to the attention of purchasers?

Kennedy Foster: Yes.

Cathie Craigie: I move on to enforcement issues. Sections 106 to 109 of the bill set out provisions relating to enforcement. Enforcement will be through local authority trading standards

officers. What is your view on the provisions relating to enforcement of the duties to prepare and provide prescribed information?

Elizabeth Bruce: We accept that a mandatory scheme must be enforced in some way. I am not sure how the consumer will react to being told that they will be fined if they do not meet their duties. We are delighted that a provision to make that a criminal offence has not been included in the bill. I cannot say much more about the issue, but it may be difficult to explain it to the public.

Kennedy Foster: At the end of the day, a civil penalty is probably appropriate. There was some investigation of whether there should also be a criminal penalty, but a civil penalty is more sensible.

Alex Solomon: In my view, much enforcement will be done by the market. I would like to understand better how trading standards officers will be funded to enforce the provision, as it is additional to their current responsibilities. If we add to their workload, surely additional resources will be needed to allow them to do their job properly.

Mr John Home Robertson (East Lothian) (Lab): I have one or two specific questions for the RICS Scotland. If there were to be a mandatory single survey, as the Executive proposes, how would that impact on the business of surveyors who are involved in house buying and selling?

Ian Gillies: That is a very good question, about which I have thought long and hard.

Mr Home Robertson: That is why I am asking it.

Ian Gillies: I have concerns regarding the payment of the fee, which is key for surveyors. At the moment, the fee is paid up front. It has been suggested that the fee may be putting some people off commissioning a single survey. If so, we might look to have the purchaser ultimately pick up the bill, which would have an impact for a period on cash flow to surveying practices.

We have carried out a rough analysis and believe that there are enough qualified surveyors in Scotland to undertake single surveys. They would no longer undertake multiple surveys and I am sure that they would be more gainfully employed in carrying out single surveys.

Elizabeth Bruce: We would carry out fewer inspections, but they would be of higher quality and better remunerated. We do not think that our members will lose out financially from the introduction of a mandatory single survey. There may be greater control of the market by estate agents and solicitors, because they will be instructing surveys from our members. That brings me back to the point that was made earlier about the need for transparency in the market and for

relationships to be declared. The one-stop-shop approach, which allows people to get everything done in a corporate organisation, may have a bigger say in the market and the independents may lose out. Over time, that would lead to less choice for the consumer.

Mr Home Robertson: That is a little bit different to how this evidence-taking session was trailed. We had been led to believe by the press that there would be unanimous rejection of the whole idea, but you have just said that instead of a series of rather low-grade reports there will be one high-grade report, which will actually be better value for everybody.

Ian Gillies: Your question was about how the single survey would affect our business.

Mr Home Robertson: Yes, but the points are obviously related. Your evidence also refers to the problem of multiple inspections and low upset prices, which is clearly a problem just now and is adding to confusion and difficulties in the market.

Elizabeth Bruce: There was some discussion earlier about whether a valuation should be included in the single survey. We think that it should be included, because otherwise the problem of multiple valuations—one of the things that came out of the housing improvement task force—will not be done away with.

Ian Gillies: There is also the problem of low upset prices. Both would be countered by the valuation being included from day one.

Mr Home Robertson: In answer to my first question, you asked who would pay for the higher-cost single survey. Would you elaborate on the comment in the RICS submission that

“more consumers will be paying more money than currently to obtain good quality information”?

I presume that there is a contract with whoever commissions the survey and that it is up to that person to pay.

Elizabeth Bruce: The only point that we were making is that, at the moment, it is possible to buy a property after a valuation, which might cost, for the sake of argument, £150. Under a mandatory scheme, everyone will have to spend several hundred pounds obtaining a single survey. Everybody will have to pay that money whereas, at the moment, many people are able to buy a property after a valuation.

Mr Home Robertson: The Executive has suggested in its financial memorandum that, in a rational housing market, the extra costs of the single survey should lead to a reduction in the price paid for the property. Do you find that plausible?

Elizabeth Bruce: I do not know that the housing market is rational.

Mr Home Robertson: That is probably quite a good reply.

In your written evidence, you express concern that members of RICS Scotland

“will be acting for all parties in the process”.

Could you explain why things are going to be made so difficult under the single survey scheme? What we are talking about is an objective survey of a property—either it needs repairs or it does not, and either it has dry rot or it does not. I realise that it is not quite as easy as that if you do not have X-ray vision, but an in-depth survey should be an objective survey for the benefit of everybody, so where is the conflict?

Ian Gillies: Our concern is that, on day one, you have one client, and that is the seller. You prepare the single survey—

Mr Home Robertson: So you might be tempted to cover up any problems for his benefit.

Ian Gillies: Well, the seller has the right effectively to veto the report. As things stand just now, he can shop around, as we have said in our paper, and go to two or three firms to get the best report. That is where we have some real concerns. Let us make no bones about it: when people are selling their most valuable asset, they are extremely concerned about its value and about what a surveyor will or will not say about the property. On day one, you have only one client, although you know that you will have another client a few months down the line when someone ultimately purchases the property and relies on the survey. Nevertheless, valuation is an art, not a science. People can apply pressure and sometimes it can be difficult not to be swayed one way or another.

Kennedy Foster: I think that it is fair to say that the valuation element is not objective. It is subjective.

Alex Solomon: It can never be objective.

Ian Gillies: The rest of the report is objective, but the valuation is not.

Mr Home Robertson: The physical survey should be objective for all purposes.

Ian Gillies: I accept that that is true of the physical survey. However, I could prepare an objective report and, just by tweaking one or two words, make a defect sound not as bad as it might otherwise appear.

Mr Home Robertson: Surveyors do it, lawyers do it—even politicians might do it sometimes.

Alex Solomon: The other important point is that, if you go down the route of requiring single survey reports to be logged in a databank, you have a useful policing mechanism to ensure that people do not shop around.

15:00

Elizabeth Bruce: We would support the idea of a databank in which every survey would be registered.

Kennedy Foster: Such a databank has been developed south of the border. You could piggyback on that work.

Alex Solomon: The vast majority of the cost of developing the database is already being borne down south.

Christine Grahame: The RICS Scotland submission says:

“It should be noted that Chartered Surveyors may come under pressure to alter values by both the seller and the buyer”.

I accept that a good, clear distinction has been made between the structural element of valuation and the part that is more like an art, which is to do with how much a property would get on the Edinburgh market as opposed to the market in another part of Scotland. However, I would like an explanation of what is meant by altering values and how the professions that the witnesses represent would deal with that pressure.

Ian Gillies: As I explained earlier, if you prepare a valuation of a property and say that it is worth, for example, £200,000, the seller might come to you—an intermediary might also apply pressure—and say that they think that the valuation is a bit light. If that happens, there will be a bit of to-ing and fro-ing and, ultimately, you might agree to increase the valuation marginally. That might be acceptable because, as we say, valuation is an art, not a science. However, one of our major concerns relates to the buyer. Someone who has purchased a property for, say, £225,000 following a single seller survey valuation of £200,000 might approach the valuer to say, “I have paid £25,000 more than your valuation. Could you please increase it?” The concern is that, if you increase the value for him but did not do so for all the other prospective purchasers, you are prejudicing them, because they might well have been able to offer more, had they known that the value of the property would be £225,000 rather than £200,000.

There will be pressures from both sides. The seller will want the highest valuation, as will the buyer.

Christine Grahame: Are you saying that, post-conclusion of missives, the purchaser might want you to up the valuation?

Ian Gillies: He might well, in order to secure a loan.

Kennedy Foster: He would be able to secure a more advantageous interest rate on the product because most lenders work on a loan-to-value ratio.

Christine Grahame: Would that valuation become part of the titles to the property? We now have provision for registration of title but it might be that, as part of the record of the property, when that person comes to sell it on, they will found their sale on the previous single seller survey.

Alistair Kinnear: It is part of the report already. A lot of work that is being done in England—

Christine Grahame: I am sorry to interrupt, but I had better clarify my point. At the moment, if I get a survey done for borrowing purposes and sell my house two years later, I will not use the first survey. However, the survey that we are talking about is different. Its components include information about the structure and the price. It might well be that, in relation to the sale that follows the sale for which the survey was commissioned, people will ask to see that first survey, which will have a valuation on it. That is what I am getting at, in relation to increasing the valuation a bit.

Alistair Kinnear: The record of what was paid for the house is available. Potential buyers will know what you paid when you bought the house.

Christine Grahame: No, that is not quite correct, because other things can be included in the missives apart from the price. I am wondering whether the single seller survey will become a much more potent document in relation to the sale that follows the sale for which it was commissioned.

Kennedy Foster: That will be particularly true if a databank of surveys is created.

Christine Grahame: Exactly. That is why I am interested in the value being increased.

Alex Solomon: I do not want to get into the secondary mortgage market, which involves lenders selling on the loans, but I will say that the issue of changing valuations causes the financial markets quite a problem and might even concern the Financial Services Authority. One of the reasons why we have to consider carefully the question whether a valuation is included is because we need to get our heads around exactly what the implications are for us in the funding markets.

Donald Gorrie (Central Scotland) (LD): I want to clarify one or two aspects of the CML submission. In paragraph 24, you say:

"Issues regarding transparency need resolution."

I heard what you said in response to a previous question, but it would help our deliberations if you would put on the record the extent of your concerns.

Kennedy Foster: Any business relationship between the estate agent and the valuer should be disclosed. For instance, any fee payment that may have been made between the estate agent and the valuer for the introduction of the business should be disclosed to the seller, the prospective purchasers and the lenders.

Alex Solomon: There will always be interrelationships between different firms, because that is the way in which the market operates. The trick is to make the relationships transparent in order to ensure that consumers are fully informed of the interrelationships.

Elizabeth Bruce: The RICS endorses that.

Donald Gorrie: The next aspect that I want to clarify relates to paragraph 25, in which you say:

"the introduction of a Single Survey and Purchasers' Information Packs are likely to lead to structural change in the industry".

You also refer to the one-stop shop, which was discussed earlier. Will you elaborate on the point?

Kennedy Foster: Although all of us around the table are interested in the market, none of us fully understands how the changes that will result from the introduction of the single survey will drive the structure of the market. Although we have suggested that the one-stop shop could become a dominant player, that is just one way in which the market could go. We were simply suggesting that the Executive needs to do some research on the issue. If the large corporates were to become the dominant players, small estate agents, solicitors and independent firms of valuers could be affected.

Alex Solomon: An entirely new business area might also be created, comprising companies that compile the purchasers information packs. We are concerned about how those new businesses would fit in and how they might change the interrelationships between the other parties in the residential property transaction. Although nobody knows what will happen, the bill and the secondary legislation under it will define the rules of the game; the Parliament will have to be sensitive to the fact that it is defining the rules of the game in an environment that may not be exactly the same as the one that we observe today.

Donald Gorrie: Thank you. The next aspect that I want to clarify relates to paragraph 19 of your submission, in which you express concern about the possibility of each council setting up loan schemes. You also make the constructive

suggestion of a national scheme. Will you elaborate on the point?

Kennedy Foster: Obviously, the comment relates to part 2 of the bill and the repair and improvement of houses. Our concern is whether, if each of the 32 local authorities developed a loan scheme, a sufficient volume of applications would go through each scheme. We have seen examples in the past of similar schemes falling into disuse because of the low volume of use. We want a national model that is rolled out in much the same way as Communities Scotland's recent homestake shared equity proposal was.

Donald Gorrie: My final question relates to paragraph 16, which deals with section 57. You express concern that

"the power of recovery contained in this section is extremely wide."

If the powers that local authorities are to be given are too wide, what should we do about that?

Kennedy Foster: We were trying to say that the bill does not give the detail of how councils would recover expenses—councils seem to have completely wide powers in that respect. Some definition or guidance needs to be issued to local authorities on the issue.

Scott Barrie (Dunfermline West) (Lab): I have three questions for the panel, which I will try to keep relatively short. The first question relates to paragraph 26 of the CML Scotland submission. You raise a number of points about lenders and ask whether the single survey will meet all current demands on lenders. I found it difficult to understand the point that you were making, so will you explain it again in simple language?

Kennedy Foster: The paragraph deals with whether the valuation should be included in the single survey and the acceptability or otherwise of that to lenders. Each lender is regulated by the Financial Services Authority and, as part of that regulation, each lender must have their own risk management process, which will include how the security on a loan is valued. The process will depend on the size of the lender in particular. Moreover, building societies are currently required to obtain a property valuation in each transaction in which they lend. Whether a valuation in a single survey would be acceptable in that regard is another issue.

Alex Solomon mentioned the secondary mortgage market, in which lenders basically on-sell mortgages but continue to administer them as far as borrowers are concerned. At the moment, we do not know about the acceptability of a valuation that is included in a single survey. The paragraph is about valuations in single surveys. The rest of a single survey report is simply

objective, so we do not have a great issue with those parts of it.

Scott Barrie: So what would need to change in order to satisfy—

Kennedy Foster: We are not suggesting that anything needs to change; we are simply suggesting that there needs to be a debate. We do not have answers at the moment. The Scottish Executive said in its evidence to the committee that there needs to be a debate on whether single surveys should include valuations.

Alex Solomon: The simple point is that lenders' views of the valuation that they can and cannot accept is defined by their business judgment, but the valuation is also influenced by a number of regulations and requirements placed on us by the Financial Services Authority, the Banking Act 1987 and the Building Societies Act 1997, not to mention the Housing (Scotland) Bill when it is enacted.

Scott Barrie: I have a brief question about online surveys. Section 96(8) of the bill precludes the provision of a copy of the prescribed documents in electronic form

"unless the potential buyer consents in writing to receiving it in that form."

Mr Kinnear, given the nature of your organisation, what are your views on that matter?

Alistair Kinnear: Things can be controlled with the technology that is available in the market. A printout of a survey report can be given through any solicitors centre or property centre as a paper copy with the person's name on it and it can be recorded as a delivery. There is no major issue in respect of using the technology, which is needed to manage the process. The pilot showed that, unless the process is properly controlled with technology, it will be difficult to manage who sees copies of paper reports.

With the databank, the survey report is registered in a central location where people can access it and can see what the surveyor genuinely said—there will be a date-and-time-stamped support system. If somebody hands me a survey report, I will not know which bits they have Tipp-Exed and recopied, but if I can see a date and time stamp on a report in a central location, I can trust the report and know that it is a true and independent view of the property.

Scott Barrie: I have a final short question for the RICS. Given what you said earlier about the way in which surveys work, why in most cases do the survey and the valuation of a property reach exactly the same figure, which is the figure that someone is prepared to pay for the property? I can give two examples. The previous two properties that I bought were not on the open market and the

money that I told my solicitor that I was prepared to offer was exactly the same as the figure that the property was valued at. Why do such things occur if the market is so dynamic?

Ian Gillies: I can say only that that is your experience. That is certainly not normal, although it happens.

Scott Barrie: It happened twice in a town with only one surveyor.

Mary Scanlon: And one solicitor.

Scott Barrie: No, not one solicitor—one surveyor.

Ian Gillies: There is no doubt that, in a rising market, there is pressure on the surveyor to produce valuations that assist in the purchase of property. There are occasions on which valuations are pretty close to purchase price, but that is not true in all cases.

The Convener: Ms Fabiani has a short, final question.

15:15

Linda Fabiani: In order to understand fully what we are likely to move to with the single survey, I want to understand fully how things work just now. Let us look at the matter from the point of view of the consumer. One of the aims of the proposal is to save the consumer money, yet we hear that it will cost an awful lot of money to have a single survey carried out. I would like to ask a few questions around that. First, the RICS states in its evidence that there are no standard fee scales for surveyors, whether for valuation or for other kinds of surveys. How does that system work and what is the on-cost? Is it the lender who asks for the survey to be done who gets that money?

Elizabeth Bruce: No, not necessarily.

Linda Fabiani: Is what somebody pays for a survey what the surveyor gets as a professional fee? If not, what is the on-cost that the consumer pays above and beyond the survey fee? How was the estimate of what the single survey will cost put together by the industry? Are there certain surveyors whom lenders and solicitors are willing to use and are there some chartered surveyors who are cut out and whose valuations are not used?

Finally, I want to pick up on a point that was made about secondary mortgages. You said that, if the lender sells on the loans, another valuation is not necessarily required. However, if I decide that I want to change to another lender, I have to pay a fortune for a valuation.

Kennedy Foster: The lender is not being changed in those circumstances. The mortgage

remains with the existing lender, although that lender is effectively taking the mortgage off its balance sheet by selling it on to someone else. As far as the contractual arrangements are concerned, the mortgage remains with the existing lender.

Linda Fabiani: So that is why there is no need for another valuation.

Kennedy Foster: Yes.

Linda Fabiani: Okay. That is fine. Can you address the other questions?

Kennedy Foster: Yes. You were asking why lenders operate panels.

Linda Fabiani: Oh, they do? I did not realise that they did.

The Convener: Perhaps if Ms Fabiani allows the panel to answer, their answers will be a little shorter than the questions.

Kennedy Foster: Lenders operate panels of valuers as a matter of risk management. In the 1990s, when there was a fall in the property market, some lenders took action against the surveying profession because they had suffered losses through poor valuation of property. Therefore, for risk management purposes, lenders operate panels of valuers and will check such details as the indemnity insurance that the valuers carry. They will also look for service standards from the valuers concerned.

Elizabeth Bruce: That may mean that a valuation that is carried out by a surveyor, if it is included in the single survey, may not be acceptable to a particular lender.

Alex Solomon: The challenge is to design a system in which lenders can be comfortable with the valuation irrespective of which individual chartered surveyor has carried it out. I reiterate the point about the databank being used as a policing mechanism. It is about building confidence around the entire system, not just the individual relationship in one transaction.

Linda Fabiani: What about the costs?

Ian Gillies: As regards fees, the intermediaries who pay the surveyor directly have a fee scale arrangement with the surveyor. Included in that is an administration charge. Often, the client believes that the surveyor is receiving all the moneys, but he is not. Other intermediaries are, however, happy for the surveyor to bill the client direct, in which case a pure survey fee is charged.

Kennedy Foster: The administration fee has to be disclosed under legislation.

Linda Fabiani: How much is it, as a proportion?

Kennedy Foster: It is three years since I was involved in work for a major lender.

Ian Gillies: It can be substantial.

Linda Fabiani: I am trying to get at how much of that worrying cost could be avoided.

Alistair Kinnear: Recent cases down south have involved lenders, through intermediaries, insisting on £400 to £500 for a valuation report, for which they pay the surveyor only £160 to £200. The fee is lumped into the cost of getting the survey. The consumer might be told in the small print that other costs are involved, but he thinks of what he is paying as the survey cost. That is one of the issues that we are addressing.

Kennedy Foster: That is certainly not my experience of fee levels.

Ian Gillies: I have a final point on fees. We believe that if a surveyor undertakes two single survey inspections and prepares the reports, that is probably the maximum that they can do in one day. We do not think that they will be able to do more than that. Given what a surveyor is paid, it is likely that the cost will be £300, £400 or £500.

Linda Fabiani: To the surveyor alone?

Ian Gillies: Yes.

Alex Solomon: I want to defend the lenders. The CML has a code of practice on cost transparency, which covers the way in which survey costs are taken from customers and passed on to surveyors. Also, the mortgage and mortgage intermediary industry is regulated by the Financial Services Authority, which has a lot to say about transparency and the requirement to let the consumer know where costs are being borne and whether they are for the surveyor or due to a relationship between the lender and the surveyor.

Ian Gillies: Could I perhaps make a point—

The Convener: This must be your final point, Mr Gillies.

Ian Gillies: The CML is absolutely correct, in that the larger lenders are totally transparent. Unfortunately, however, some of the smaller ones and the intermediaries are perhaps not as transparent.

Linda Fabiani: Thank you, convener. It wisnae me, it was him.

The Convener: I think that you are all a little bit guilty for letting that exchange go on.

I thank the witnesses for coming along today. Most of our questions concentrated on the single survey. However, the Housing (Scotland) Bill covers a wide range of issues. While you are here, do you have any comments to make on the wider aspects of the bill?

Elizabeth Bruce: We will submit written evidence on the wider aspects of the bill.

Alex Solomon: We have already submitted evidence, but the single survey is a part of the purchasers information pack and I emphasise that there are a significant number of thorny issues to be resolved on the other documentation in the pack.

Alistair Kinnear: I am qualified to talk only about pre-sale surveys, so I will not comment on anything else. A lot of work has been done on the home information pack down south and it would be good to use that work here instead of reinventing the wheel.

The Convener: Thank you for attending and for the detailed information that you supplied to the committee.

I will suspend the meeting to allow a changeover of witnesses, but I ask members to remain in their seats as we are now considerably behind schedule.

15:22

Meeting suspended.

15:27

On resuming—

The Convener: I welcome our second panel of witnesses. Alison Hatrick is the chairman of the Scottish branch of the National Association of Estate Agents; Ron Smith is the chief executive of the Edinburgh Solicitors Property Centre; Bill Scouller is the chief executive of the Glasgow Solicitors Property Centre; and Ross MacKay is the senior member of the conveyancing committee of the Law Society of Scotland. Thank you all for joining us this afternoon.

I will ask you the same question that I asked our first panel. Did the Scottish Executive's consultation give you the chance to contribute effectively?

Ross MacKay (Law Society of Scotland): The Law Society of Scotland has no objections in that regard.

Bill Scouller (Glasgow Solicitors Property Centre): The same goes for the GSPC.

Ron Smith (Edinburgh Solicitors Property Centre): And the ESPC.

Alison Hatrick (National Association of Estate Agents): And the National Association of Estate Agents.

The Convener: Great.

The Law Society of Scotland's evidence says that it is

"unconvinced that the housing stock will be improved by the compulsory pre-sale Single Survey."

Improvement of the private housing stock is undoubtedly one of the main reasons behind the Executive's proposals. To what extent will the introduction of the regulations prescribing the information to be provided to house buyers help to meet that key objective of the bill?

Ross MacKay: The provision of information by the seller will be helpful to the purchaser, but the barrier to carrying out repairs will be finance rather than lack of information. The information may provide a checklist of items that need to be dealt with in the course of ownership, but whether those items are dealt with on day 1, in year 1 or in year 10 would remain to be seen.

From the seller's perspective, the logic of putting a house on the market is that they want to leave it behind them. They may do cosmetic repairs to assist in the sale of the property, but they will not carry out work that would lead to improvement in its capital value. The seller will carry out such repairs as are required to get a pass mark—if I may put it that way—but will not do anything that would dramatically improve the value of the property. It would not be in their interest to do so.

15:30

The Convener: If the capital value of a property would be affected by the need for a particular repair to be done, would it not be in the seller's interest to do that repair, because it is more likely that they will then be able to sell their property with ease? Selling may not be a problem in the buoyant property market in some parts of Scotland, but generally, where people might have difficulty in selling their property or want a quick sale, it would be in their interest to make the repair.

Ross MacKay: If the seller was convinced that the expenditure would be recouped on the sale, they would make the repair. If the surveyor recommended that plaster repairs or other cosmetic repairs be carried out to improve the look of the property, the seller might make them if it was within their budget to do so. Equally, if the seller was advised that the flat-roof section of the building had a limited life span and would require repairs within the next one to five years, they would not be inclined to do those repairs because they would not see the benefit of them. Indeed, in most cases the cost of such repairs will not automatically be reflected in the value of the property; spending £5,000 on roof repairs will not automatically increase the value of the house by £5,000. If the cost of the works will be recouped by

the seller, they will be inclined to make the repairs, but not otherwise.

The Convener: The seller may not recoup the cost, but the buyer will be aware that the work needs to be done, whether it is done in one year or five years, and that may be reflected in their offer. The issue is that the buyer would have the information with which to make that judgment, and to ensure that any offer that they made reflected all the circumstances.

Ross MacKay: Clearly, that would be beneficial. The difficulty at the moment is with scheme 1 valuations, which are limited in their detail. The current scheme 2 home buyer report, which is more or less the equivalent of the single survey pilot product, provides much more information to the purchaser, who should be able to budget expenditure much more clearly in future years. Whether or not works are done relates to the ability to fund the repairs. Roof repairs that are not essential but recommended may not be done immediately, but as long as the buyer is aware of them and budgets for the future, that can only be beneficial.

The Convener: Do the other panellists have anything to add?

Ron Smith: Yes. Human nature and pragmatism are issues in the circumstances that have been described. There is a risk that a cosmetic repair will dominate if it is highlighted in the survey. With the best will in the world, people will do what they have to do to sell their house, and perhaps no more. One could take another view and say that those who are investing in the property for the longer term will be more concerned to have high-quality, in-depth repairs that will last for a number of years. That is a risk, which is obvious in terms of the proposed change in the law.

The Convener: People will do what they have to do to sell their property, but I would have thought that, likewise, the buyer would make a judgment about exactly what they might be required to do either immediately or in the future. Frequently at my surgeries I see people who have bought properties based on a valuation survey only, then discovered a few years later, or even less than a year later, that they need to do something to the property that they had not budgeted for. If they had known at the time of purchase that that work would be required, perhaps they would have reflected that in their offer or decided that it was not appropriate for them to purchase the property and not gone ahead with the sale. Perhaps the single survey addresses those concerns.

Bill Scouller: Anyone who purchases a property should expect to have on-going maintenance costs. Sometimes people choose to do cosmetic

and other work. That is an on-going commitment that people take on when they purchase the property. I agree with everyone that it is better that more information rather than less be provided to potential purchasers when they purchase their property.

Ron Smith: I add the caveat that I fully understand the circumstances that have been described. However, in circumstances in which what has been described here as a cosmetic repair has been done, who is qualified to say whether that repair is cosmetic or how well done the job has been? I certainly would not be so qualified and I am sure that the majority of people who buy houses would not be so qualified either. I see both sides of the argument, but I caution that there is a risk that needs to be identified and considered in the due process of this legislation.

Alison Hatrick: We are talking about owner-occupied houses. The "Maintaining Houses—Preserving Homes" report recognised the fact that such houses tend to be better maintained than properties in other sectors.

The convener noted that the seller might do the repairs, which would be a good thing. However, not every seller is in a position to spend the kind of money that might be required. I am thinking, for example, of elderly people who are forced to sell to go into a nursing home or those who are less well-off, such as single parents, who need to move to a bigger property, or others who would be almost excluded from selling their house because they could not raise the money to do repairs that are seen as essential. A further example would be someone who has been made redundant but could get a job at the other end of the country. However, that person might not be able to move because he or she cannot do the repairs or afford the cost of a single survey. Such situations would cause us concern, because sellers are consumers, as are buyers. We are very much in favour of the provision of more information, but there has to be awareness of those other issues.

The Convener: What impact would the introduction of a single seller survey have on home buyers in the short term and the longer term?

Ross MacKay: We will await developments. The point to bear in mind, as mentioned in our submission, is that the single survey is only part of a larger pack—the proposed purchasers information pack—the details of which will be quite important. However, to focus on the availability of a single survey, a seller or their agent will have to provide a direct review. That will become part of the practice.

The previous panel expressed concern about the inability of the purchaser to speak to the

surveyor directly about a property. As a practising conveyancer instructing scheme 2 home buyer reports, I have some concerns in that regard because such reports can be detailed and lengthy. To see those reports cold, in black and white, can scare off potential buyers for no good reason. It is important in current practice that the client has the report interpreted for them, either by the solicitor or directly by the surveyor, to explain, for example, that a reference to damp in the hallway is not that serious and the problem will cost only £200 to fix. If the reference is just that there is damp in the hallway that needs to be investigated and repaired, that could be enough to scare off the nervous buyer. So, that may have a prejudicial impact from the seller's perspective.

From the purchaser's perspective, the availability of further information should be beneficial. Purchasers will get a more detailed report than many get at the moment. Current practice is for solicitors to give their clients the option of two types of report—a valuation or a survey. Regrettably, and despite advice to the contrary, many buyers go for the cheaper option, which is the valuation. That is their choice. When people are faced with the choice between a cost of, for example, £250 and £550, and money is tight, they take the cheaper option. In that regard, more detail will be beneficial. Whether the cost of providing that detail will be met by the buyer or the seller is a point that needs to be thrashed out; that is a question for the future.

The conveyancing committee still has concerns about the independence aspect. The Law Society of Scotland is concerned that, because the report is instructed directly by the seller, the buyer has no direct input in speaking to the surveyor with regard to its terms. The report is presented cold to the buyer. Solicitors, being cautious in nature, will advise their clients and, notwithstanding the existence of a single survey, the clients may still wish to have an independent valuation as well as the single survey, just to give them peace of mind—a second report from an independent surveyor who they have instructed themselves. Indeed, they may also wish to instruct a full scheme 2 report because, if the practice develops that the seller has to pay for the single survey, the buyer will get that report free from the seller. Therefore, why should not the buyer pay that extra £500 or £600 and get their own independent report as well? Practice may develop along those lines.

The Convener: I appreciate your concerns that people who have not seen a survey before might be a little confused about what it all means. However, as the single survey becomes the norm could it not be argued that more people will become familiar with some of the terms and that there will be less concern and greater

understanding because everybody is getting such a survey done? If a single survey is the norm, everybody who sells a property will bear a similar cost. That is in contrast to the current situation in which people who are attempting to buy a property—often in a property hotspot—might have the money to have a full survey done once or even twice, but will go for the cheapest option if they have to put in bids for 10 or 15 houses and are unsuccessful with them all. They have a limited pot of money and know that, in all likelihood, they will have to have many surveys done before they are successful.

Ross MacKay: I mentioned multiple surveys and multiple valuations. Concern has been expressed about someone having 10 or 15 surveys done, but such a situation is extreme. I would be surprised if more than a handful of people in Scotland have had that experience. On the whole, the statistics prove that the majority of people buy a property after one or two attempts. However, be that as it may, cost is a factor. Familiarity will help, but people will see such a report only once every five or six years when they sell or buy a property: they will not see the reports regularly. In years to come, as more and more people see the reports, familiarity may come into it, but we are talking about that happening years down the road rather than immediately.

Alison Hatrick: For buyers who are in the process of buying a house, the shelf-life issue will arise. As the market begins to slow or level off, which it will do in many areas, and houses are on the market for a bit longer, buyers will still have to get an independent report that suits their mortgage lender or the seller will have to commission an additional report. That has cost implications. If the buyer underwrites the cost of the report, the cost will be higher, in most cases, than it would be for one or two surveys being done at the ordinary level.

There is nothing in the bill to say that a buyer has to use the survey; it is the buyer's choice whether to do so or not. The experience in the pilot—and my experience some years ago when our firm tried a seller survey scheme—was that a good percentage of buyers preferred to get their own report, which meant that they still faced the costs involved in that. That was the case despite the fact that our scheme included hidden defects insurance. Any single survey scheme, in order to be sold to a buyer, would need to include hidden defects insurance. That would mean that the survey would be underwritten by an insurance company rather than by the surveyor, so that anything that the surveyor missed—through fault or not—would be covered.

The Convener: Several of my colleagues have lines of questioning on some of those issues.

Christine Grahame will ask later about the shelf-life issue, but I will let Linda Fabiani in now.

Linda Fabiani: Alison Hatrick mentioned the scheme being underwritten by an insurer. Are you saying that, in the current set-up, the surveyor's indemnity insurance would not suffice?

Alison Hatrick: Chartered surveyors must have public indemnity insurance. They also have liability insurance and various other insurances. Without that insurance, they cannot be members of the RICS. Surveyors certainly have insurance as far as fault is concerned, but, as was mentioned earlier, it is not always the surveyor's fault if they miss something at an early stage. The fault may be concealed by floor coverings and furnishings, or there may be some other problem. If every survey was done in an empty house, so that the surveyor could look under the floor and in the roof void, that would make the surveyor's job much easier. However, in the real world, a surveyor might have to look in a room that is over-furnished and which has carpets or laminated flooring, which makes it difficult to detect problems that are at an early stage of development.

We would have liked the requirement for independent insurance to be included with the proposals for the single seller survey. I think that the witness from Surveys Online mentioned that matter, and people in other parts of the industry have said that such an approach would benefit buyers, because there would be no fault. Buyers would simply say, "By the way, during the year since I bought the house some rot has developed at the window through no fault of our own and we want to claim on our insurance"—just as they might claim on the insurance that they have for every other item in their house.

15:45

Ross MacKay: A firm of surveyors in Scotland used to provide such insurance free with its report as part of the package, but it recently had to stop doing so because the Financial Services Authority, under its new general insurance code, prevents surveyors from selling insurance unless they sign up to the FSA regulations.

The Convener: Do you have alternatives to the proposals for single seller surveys that would address issues to do with multiple surveys?

Ron Smith: Yes. You might consider the workings of the marketplace. I say that because although we hear anecdotes about people who have commissioned many surveys, such people are in the minority. The ESPC currently has around 4,500 houses on its books, 53 per cent of which are for sale at a fixed price. That reflects the fact that the market is working. In many respects in relation to fixed-price properties, the issue of

multiple surveys has gone away. The present system is not perfect, but it is by no means as bad as it has been painted and it might still be worthy of consideration through an option appraisal of the true pros and cons of the different schemes.

Cathie Craigie: It is interesting to hear that 53 per cent of the properties on your books are for sale at a fixed price. You said that that shows the market working and I agree with you to some extent. However, what happens when someone spends up to their limit to buy a fixed-price property at £100,000 and then discovers that they need to spend a further £10,000 or £20,000 to deal with a problem? Would it be better if such properties and the properties around them were sold to people who could afford to take them on with whatever defects they had? The market might be regulating itself, but it is not preserving and maintaining the housing stock, which is why so many houses in the private sector need repair.

Ron Smith: If we consider the bald statement that you made, we can agree that it would be extremely unfortunate if someone went to their limit to buy a fixed-price property only to discover six months later that a wall was falling down—or whatever the heck the problem was. However, there is another side to the coin. Even when someone buys a fixed-price property they must take into consideration the need for a survey to satisfy themselves—caveat emptor—that they are buying something that they know and understand. You might say that the seller's survey would provide that information up front—supposedly. However, the potential for the house falling down or whatever should also be covered by a buyer's survey.

There are pros and cons on both sides, but I do not think that there has been a rigorous option appraisal of the two approaches that indicates why the overwhelming balance of advantage lies with the seller's survey. Perhaps something has been done that I have not seen. I am just saying that, although it is quite possible that the market is regulating prices, people still take a risk when they buy and they should take all prudent measures, including commissioning a comprehensive survey of some sort, to satisfy themselves that what they are buying is what they think they are buying.

Cathie Craigie: What percentage of the people to whom you sell houses commission a full survey?

Ron Smith: I do not have that information.

Cathie Craigie: Is it as many as 53 per cent, or is it more like 10 per cent?

Ron Smith: I would be lying if I gave you an answer.

Cathie Craigie: Can you provide the committee with that information?

Ron Smith: We would have to go to our member firms, and I am not sure that even they could provide the information. The exercise would outweigh the value of the information that it yielded.

Bill Scouller: It is commonly known that a relatively small number of people opt for a scheme 2 survey. As we know, the pilot was not successful, because we did not get the uptake that we thought we would get. We played our part. We put the report on our website, marketed and advertised it and had discussions with our solicitor members to make them aware of what was happening. We did everything that we thought possible to make the pilot successful, but at the end of the day uptake was not particularly high.

The Executive and the pilot group have not yet analysed the figures, but we can only assume that the public did not find the scheme sufficiently attractive. Perhaps people did not think that they were getting sufficiently good value by paying the extra sum that they were required to pay for a scheme 2 report. As Alison Hatrick said, there were also no guarantees. There was no hidden defects insurance, which we believe would be critical when such a scheme was being introduced.

We must win the support of the public, who must know that it is in their interests to make a switch to the seller providing the survey. They must believe that they are getting truly independent advice, or they will not take up the scheme. If that happened, there would still be multiple surveys. However, instead of there being multiple scheme 1 surveys, everyone would seek a scheme 2 survey. If we failed to make purchasers believe that they could rely on the single survey, they would proceed to instruct their own valuation. There would be a mixture of multiple scheme 1 and scheme 2 surveys. I am concerned that, in those circumstances, the surveying profession would not have the resources to meet demand. That would slow down the housing market, because it would take people longer to put their houses on the market. A reduced number of houses would come on to the market.

Cathie Craigie: You make an interesting point, but I represent members of the public, who say to me that the single survey is a good idea and is needed. When I am standing in the queue at the butcher's or sitting in the pub, people tell me that the profession, rather than the public, does not want single surveys to be introduced.

Bill Scouller: No. It depends on what question is asked. Some of the information that I have indicates that the public say that they would like

information. Of course they would. However, it does not indicate that the public are prepared to pay more money for that information—and they would have to pay considerably more money for it. That is the question. We all agree that the public want more information and that it would be in their interests to have it. However, when it comes to the crunch, do people want to put their hands in their pockets and to pay the money that they would be required to pay? As the RICS told the committee earlier, people would have to pay an increased fee to get the information. I am not sure that they are prepared to pay it. The pilot indicates that they are not, but I really do not know.

Ross MacKay: At the moment, the purchaser or consumer has a choice. They can opt to have no survey, pay for the limited valuation report or pay for a house buyer's report. There is also a structural survey called a scheme 3 report, which we do not really do. Even when people have secured a property in principle—when it is not up for competition, has been sold at a fixed price or is part of a private deal—the options are given to them. Unfortunately, they still tend to go for the cheaper option, even when the limitations and nature of the valuation report are explained to them. It is their choice to do so.

Ron Smith: I want to nail one point firmly on the head. I am not a lawyer and have no axe to grind on lawyers' behalf. Bill Scouller has told you what was done in Glasgow. The four solicitors property companies that participated in covering the areas that were involved in the initial trial took strenuous steps to ensure that their member firms were properly informed. Based on conversations with both the then chair of the conveyancing committee of the Law Society of Scotland and solicitors from our bigger member firms, we put the right people together, so that the background to the trial was properly explained. Solicitors were primed to offer the single survey in the trial areas and to explain to their clients what it was about.

There was no question of the legal profession being against the pilot; indeed, there was interest from the Law Society. The message was clear—Ross MacKay may correct me if I am wrong—that it was important that the profession participated in the trial to see whether it would work if it was what the public wanted. There was no professional bias against it. We tried to make it work as best we could, but the public did not want to play.

Mary Scanlon: First, I would like your comments on the survey report model that was used in the pilot. In your discussion with the convener, you mentioned buyers. Do you think that there are any issues that lenders would need to consider concerning the valuation in the report? My second question is for Ross MacKay. One thing that you did not mention in your discussion

with the convener is mentioned under paragraph 7 of the Law Society's submission, which states:

"A Latent Defects Guarantee in the Single Survey would offer ... protection to purchasers."

You are of the view that, in the absence of that,

"a purchaser is more likely to carry out good-quality repairs."

Can you explain what you mean by that?

Ross MacKay: The pilot survey report was very good. It was almost too detailed in its content and, as a style of report, we had no objections to it. We would be delighted if more buyers bought that type of report, if it was available to them.

Our concern about the valuation aspect would be its lifespan. As one of the surveyors said earlier, valuation is an art, not a science. If a valuation was included in a single survey report, buyers would look at it and say, "Yes, that is fine. That gives us a clue," but they might still wish to have the comfort of an independent valuation at the very least, to back it up. Much would depend on how much of a loan the buyer wanted, how much they were prepared to pay and what their budget was. If, for argument's sake, a property was valued at £200,000 and the buyer was prepared to pay £300,000 for it, the valuation would be, to all intents and purposes, meaningless. However, at the bottom end of the market, the valuation can be very important. If someone is looking for a 100 per cent loan and the property has been valued at, say, £50,000, but they need £55,000 to fund the purchase, as the previous panel mentioned, conversations may be had with the surveyor to try to tweak or alter the valuation.

The hidden defects guarantee or insurance would be a major benefit to any type of single survey. It would mean a fault-free indemnity scheme whereby, if there was dry rot in a property that no reputable surveyor could have found without digging up the floorboards, the purchaser would be insured for that. That would be beneficial. When such a guarantee is not available, in most cases buyers would be advised to do the repairs themselves rather than have sellers do them. That is what I have found many times in practice when a defect is known about. The surveyor's report says that, for example, roof repairs are required, and it gives an idea of the cost and what is required. The options are either to advise the seller to carry out the work before the buyer moves in and pays for the property or to get the price altered and get the buyer to do the work. The buyer knows that they will do that work to the standard that they want, under their control and at their price. That is what we feel would happen in practice.

Mary Scanlon: Let me take it from there. We are now talking about an insurance—a defects guarantee—and a separate valuation. There is also £500-plus to pay for a single survey and a purchasers information pack, as mentioned in paragraph 134 of the policy memorandum, which details everything that has ever happened and is ever likely to happen to a house. We are really talking about thousands of pounds.

Ross MacKay: The cost would be quite substantial.

Mary Scanlon: Very substantial. How substantial do you think that the package is going to be? We are talking about a few hundred pounds here and there, but when it is totted up we are talking serious money.

Ross MacKay: Indeed. The difficulty lies in trying to create a one-size-fits-all product or package for everything from a cottage in the Highlands to a large villa in the centre of Edinburgh. If the property is a large historic property in Edinburgh, there may be a large number of documents about prior alterations and guarantee papers. Trying to put everything together in a reasonable package will take time and therefore money.

16:00

Mary Scanlon: Some crofts in the Highlands go back further than some older properties in Edinburgh and they can be equally complex to deal with.

Ross MacKay: That is a valid point. So far, urban properties have been focused on and there has been relatively little focus on rural properties, which may have private water and private drainage, access issues and so on. People have focused more on tenement-type flats in Edinburgh and Glasgow rather than on rural properties, and further thought about those is required.

Mary Scanlon: Can you give a ballpark figure for everything?

Ross MacKay: I think that we would be looking at a minimum of around £750 for an average-priced property.

Mary Scanlon: Does that figure include the survey, the purchasers information pack, the insurance and the valuation?

Ross MacKay: The figure could be a lot more than that.

Mary Scanlon: It could be an awful lot more.

Ross MacKay: I think that the average Edinburgh Solicitors Property Centre sale price is around £150,000.

Ron Smith: Yes—it is just over that figure.

Ross MacKay: I think that a scheme to report at that level would be around £650.

Mary Scanlon: So the figure is £650. I do not want to get bogged down in the issue, but we must be a bit more realistic about the figures.

Bill Scouller: We are concerned that a number of people put their houses on the market without having decided whether they will definitely sell the house. They want to test the market and find out about the demand for their property. If the demand is sufficient and it looks like they will get the right price, they will be tempted to sell. However, I think that the number of people who do that will greatly reduce because people will not speculate—they will not spend the amount of money that we are talking about in order to test the market. Therefore, we expect that there will be a reduction in the number of properties that come on to the market.

The market is very much about supply and demand. With low interest rates, demand is expected to remain high. I think that the Scottish Executive has said that the number of households in Scotland will grow between now and 2030. The demand for property will therefore continue to increase. A reduced number of properties coming on to the market would be a serious concern. We know that the net effect would be further increases in house prices.

Mary Scanlon: I will lump together my next questions. Would the proposals have an adverse effect on the selling of older properties? Why was the take-up rate so low in the pilot scheme? Mr Smith said that the profession did its best, but the consumer said no.

The policy memorandum states:

“Further research on the content of a Purchaser’s Information Pack has been carried out.”

I am not aware of that research, but perhaps the witnesses are. Do you have comments to make on the value of the purchasers information pack and what should be included in it?

Ron Smith: You have asked a lot of questions.

Mary Scanlon: We are short of time.

Ron Smith: I will try to give short answers.

I do not see why there would necessarily be an effect on older properties. There are well-maintained older properties and it is a matter of horses for courses—things will vary and we cannot give a common law.

I am sorry, but what were the other questions? I am completely flummoxed.

Mary Scanlon: Is there any information that you would like to see in the purchasers information

pack? I understand that more research has been done.

Ron Smith: I was not aware that more research had been done. All that I can say is that our company also operates in England—which is a little further down the course of using home information packs than Scotland is—and from the list that has been provided, I do not think that the packs will be much different in Scotland. We are not talking about rocket science. The documents are largely floating around anyway—in fact, they are normally collated by the solicitor who is dealing with the transactions. The jury is out on whether the so-called information pack will be a new animal that will provide new opportunities or greater accuracy, as the material in question is already used as part of the process, and it seems to be used quite well in general.

Bill Scouller: I am not a solicitor, but when I buy a house, I pay my solicitor to make such checks for me and to ensure that my purchase is covered.

Ross MacKay: Some research has been carried out on the subject. The sub-group of the single survey steering group was tasked to look at purchasers information packs and it instructed DTZ Pida Consulting to undertake some market research on the issue. The group published the report, but the consensus was that there was no consensus. The original focus was on technical documentation such as title deeds and searches, but all the consumers to whom the researchers spoke were looking for different things.

It seems that consumers want to focus on practical issues such as crime rates, schools, the location of the nearest bus stop and the condition of the central heating boiler. All the hard questions—such as what the survey should contain, who should provide it, when it will be provided and who will pay for it—were put back to the sub-group to answer. That said, the simple answer to the question is that research was undertaken.

Mary Scanlon: You have set out the consumer's reaction to the single survey. I will move on to section 112, in which ministers are given powers to make regulations exempting persons from the duty to hold and provide information. I am thinking in particular of new-build houses and right-to-buy properties. What is the panel's view of the circumstances in which exemptions from the duty to prepare and provide prescribed information can be made?

Ross MacKay: If the logic or the purpose of the duty is to provide information to the buyer, the exemptions should be limited. For example, it has been suggested that if a new-build property has an NHBC guarantee, it should be exempt from the requirement.

Mary Scanlon: For 10 years.

Ross MacKay: Yes. Logically, the exemption should not apply, as a five-year-old house can have as many structural defects as a 50-year-old house. The NHBC guarantee is not a guarantee; it is simply a document that sets out that the property was built in accordance with certain NHBC guidelines. The NHBC guarantee is not an indemnity but an insurance-backed scheme with an arbitration process that the NHBC offers on behalf of builders.

In essence, the only exemption that should be made is when the buyer is in residence. I am thinking of family situations and of sitting tenants—people who are living in the house already. The argument can be made that those people should know what the house is like.

Ron Smith: Perhaps a better approach would be to say that we should agree on the exemptions only when we know finally and absolutely what the purchasers information pack will hold. The contents of the pack will determine the circumstances under which it should be applied.

Mary Scanlon: That makes sense. My final question is to ask the panel's view on the information that local authorities and registered social landlords should provide when tenants exercise the right to buy. Should they have to provide as much information as other sellers do?

Ross MacKay: That is a matter for a policy decision. By its nature, the right-to-buy market tends to apply to the lower end of the spectrum where costs and income are limited. In the case of a sitting tenant, trying to impose the full rigours of the single survey on the vendor, which may be a local authority or a housing association, may be too much. One can argue that there are policy reasons why not as much information should have to be provided to sitting tenants.

Mary Scanlon: The idea is that the sitting tenant is likely to know the condition of the house in any case. However, when one looks at the technicalities and complexities of the survey, surely that is most unlikely.

Ross MacKay: I am not arguing that sitting tenants should not get anything, but the argument can be made for a lesser or different product.

Alison Hatrick: The NAEA disagrees with that argument. If the information is to be brought in, it should be available to all. Why should someone who is buying a £20,000 council house have any less right to information than someone who is buying a £20,000 tenement flat? Surely, as most of those people are first-time buyers, they are vulnerable. The NAEA encourages the committee not to consider exemptions for those types of transaction.

I know that we are trying to move on quickly, but I want to return to the issue of timing, which has not been discussed fully as yet. I am thinking in particular of the fact that both the valuation element of the single survey and the seller's pack—

Christine Grahame: I will be addressing—

Alison Hatrick: I am sorry; I am anticipating questions. Will I wait?

Christine Grahame: Yes. Please leave something for me to ask. I am hanging in here.

The Convener: I am sure that we will get there.

Cathie Craigie: A yes or no answer to my question will do, because we need to move on and I am sure that members want to ask about other matters. The provisions on enforcement will give local authorities the power to take action. Someone who does not provide the prescribed information could be subject to a penalty charge of up to £500, I think. Do the witnesses have difficulties with those provisions?

Ron Smith: No. The issue is probably more for the state, which must determine the additional resources that will be needed for trading standards officers, to accommodate their new role. We have no difficulties with the application of the provisions; we work regularly with trading standards, as I am sure that you know.

Alison Hatrick: We are governed by trading standards in relation to descriptions and other matters. We have only one question about the enforcement provisions: how on earth will they be policed? I can envisage a situation in which a person who wants to list with a reputable agent and who is told that they must provide a single survey replies, "That's fine. I'll put it in the paper myself." That is one concern. We also raise concerns about licensing for estate agents in our submission.

Ross MacKay: The apportioning of liability between agents and sellers will have to be considered more closely, particularly in relation to the purchasers information pack. For example, a seller might have paperwork on guarantees but say that he did not have those guarantees. The agent would say in all honesty that there was no paperwork, but if somewhere along the line it became clear that that was not the case, where would the split of liability fall? The enforcement provisions are acceptable in principle, but more thought is needed on the allocation of liability.

Bill Scouller: We have no difficulty with the provisions either but, given the time that it takes to put a property on the market, we are concerned that people should not be prevented from putting their houses on the market before all the documentation is in place. If the measures are

introduced, there should be a period of grace during which a house can be on the market, with a requirement to provide the documentation within a specified time.

Cathie Craigie: We talked about the home information packs that will be introduced south of the border. Is consistency important? Should the purchasers information packs in Scotland contain similar information to the packs in England and Wales?

Ross MacKay: There is no requirement for the packs to have similar content. I am stating the obvious, but title requirements and searches are quite different south of the border. The end result might be the same in principle, but the technical content would be quite different. The Scottish packs should be tailored for Scottish property and the Scottish market.

Bill Scouller: Do purchasers have any interest in seeing the documents? They just need to know that their solicitor has dealt with them.

Scott Barrie: Will the witness from the NAEA describe that organisation's experience of the development of the home information pack in England and Wales and outline any key relevant issues that should be considered in Scotland?

Alison Hatrick: The main difficulty that we foresee is that in England all the documentation for the home information pack, including the home condition report, will have to be collected before marketing commences. That means that people will not be able to sell their houses—it is as simple as that. A person might approach an estate agent and say, "I've just secured the house down the road—I've been waiting for ages for it to come on the market. I'm moving in in three months' time." The estate agent will have to reply, "I'm glad you got the house, but it might be a month before we can put your house on the market, because it can take three or four weeks for the title deeds to come through, which holds up marketing." Currently, such a delay in receiving the title deeds is not an issue, because the solicitor arranges to acquire them on the day on which the house is put on the market—or close to that day—and the deeds appear during the conveyancing process, to be made available to the purchaser.

At the moment, the Scottish house purchase system is efficient, in that we market the house on day one and most of the information is available by the time we need it. I was involved in a benchmarking system in England and agents there said that their average selling time was six months. At that time, our market was quite slow, but our average selling time was six weeks. Our market is different. I agree with the Law Society: any solution that we come up with should be appropriate for Scotland. We should not adopt a

solution that has not been proven in England, let alone been proven to be transferable.

16:15

Scott Barrie: You touched briefly on this when you answered Cathie Craigie's question, but will you expand on the comments in paragraph 1.4 of your submission, on the need for accreditation of estate agents to ensure that consumers are protected?

Alison Hatrick: Other than the seller and the buyer, the only person involved in the transaction who is not required to have professional accreditation is the estate agent. For some time, the NAEA has been asking the Government and the Scottish Executive to examine that. We are the only country in Europe that does not have accreditation for estate agents. Anyone who has seen a film that involves a house purchase in the USA will know that realtors sit exams before they can go out and practice. We think that professional qualifications and licensing are long overdue in Scotland—and indeed in the UK. There might be an opportunity for the Scottish Executive to move ahead of the Westminster Government on the matter. As a late arrival, there has been a private member's bill down south that referred to the ombudsman scheme.

We would like all estate agents to be licensed. In that way, they will receive respect when they act in a reputable manner and they will be fully qualified to advise their clients on what are major transactions. To be honest, we find it difficult to understand why licensing has not happened before now. Admittedly, the recent Office of Fair Trading report on estate agents was on England but, given the tenor of that report, we ask whether the logical answer is not simply to consider licensing.

Christine Grahame: It feels like groundhog day, because I return to single surveys and the other things in the purchasers information pack. Would it help to prevent the single survey from having a limited shelf-life if the valuation was not included in it and it was what the RICS Scotland calls an objective structural survey?

Ross MacKay: I think that that would be the case. The single survey should be objective; it covers the condition of the property, which should be factual in nature. As was indicated, one or two points could be ambiguous, but on the whole it should be non-contentious.

The valuation aspect is more difficult. It is a cliché to say that if we put three surveyors in a room we will get three different values. That is understandable, because valuations are not specific. As I said earlier, we may well find that buyers want to carry out their own valuations, for a

number of reasons: independence, to get a different view on the property, or possibly just to seek a better valuation for particular circumstances. The valuation can certainly change rapidly in a rising market.

Christine Grahame: As you said, purchasers did not like the look of the scheme; I take it that lenders did not either. If a structural survey was required, which would deal with the Executive's policy intention of upgrading the integrity of buildings, would that give purchasers security, because they would have more than they normally have?

Bill Scouller: Yes.

Ron Smith: Yes.

Ross MacKay: Yes.

Christine Grahame: I know that it is difficult to generalise but, if we required a structural survey without a market valuation, what would be its lifespan for, say, a 1960s Wimpey house or a croft? How long would it last before a seller had to undertake a repeat structural survey?

Ross MacKay: I must bow to my colleagues in the surveying profession on that.

Christine Grahame: I will ask about other items in the purchasers information pack, which we have kind of forgotten about. Does anything else in the purchasers pack have an obvious shelf-life that we should know about?

Bill Scouller: You suggested that the scheme 2 report—not a structural report—should not include a valuation. I understand that if no valuation took place, we would be back to multiple surveys and valuations.

Christine Grahame: I am just exploring the apparent problem in teasing out the two strands. One is objective and the other is an art that is based on how the market is going. If we go down the proposed route of having a single seller survey before sale and before marketing, by the time that a property is marketed, the valuation could be between one month and three months out of date. By then, the market could have completely changed—up or down. I do not know whether the valuation could be changed.

That causes difficulties that a scheme 2 survey without a valuation would not cause for a seller or a purchaser. Part of the Executive's intention is not only to prevent multiple surveys but to achieve the underlying objective of upgrading property in Scotland nationally. The direction in which we are going will not achieve both aims, because of the problems of unreliability of a valuation, particularly to prospective purchasers.

Bill Scouller: In that, I agree with the RICS Scotland. It is difficult to set a shelf-life. I tend to

agree with the institution that the relevant date is the date on which a survey is conducted. One, two or three months later, it is for the consumer and his advisers to decide what weight to attribute to that or whether to have a property revalued or resurveyed.

Christine Grahame: That is why I took out the valuation. If the survey was only structural, the purchaser would be in a better position, because instead of having just the valuation for the building society, they could read a much more thorough scheme 2 survey.

Bill Scouller: Personally, I would want something that had been conducted only weeks before at most. After months, if the market slowed in difficult areas, most consumers and advisers would say that they needed to have another survey, just to be on the safe side and to be sure.

Alison Hatrick: One possibility that the single survey steering group discussed briefly but not in any detail—it could be investigated further—was whether a condition report could be included. Buyers might then approach the surveyor for a further report that would contain a valuation and mandate to pay for that report if they were successful. A mechanism could be created. It is for the RICS to find a satisfactory mechanism.

Bill Scouller: The survey cannot be discussed with the surveyor. As the RICS has just said, a scheme 2 survey involves no dialogue.

Alison Hatrick: Perhaps.

Christine Grahame: The lenders—the building societies and banks—are terribly important. What is their view about the combined single seller survey, which has a valuation? How long would they let a purchaser or solicitor rely on that?

Ross MacKay: Each lender has its own criterion—that might be one or three months.

Christine Grahame: There must be a general norm.

Ross MacKay: I think that it is a few months.

Christine Grahame: The final matter, which I passed over again, is the purchasers pack. What else is in there, apart from the single seller survey, that would have a date stamp on it so that one could see a time limit?

Ross MacKay: It is yet to be determined what will be in the pack—that is part of the problem. According to what has been suggested, the searches—what is called the local authority property certificate, which tends to be a snapshot—will be included. The current Council of Mortgage Lenders guidelines for a purchasing solicitor are that the certificate should be no more than three months old at the time of settlement.

The certificates go out of date and have to be updated.

Christine Grahame: So we do not know what is in the pack yet. You are just guesstimating based on what you provide at the moment.

Ross MacKay: Yes.

Christine Grahame: The final question is, when should the pack with the single seller survey be produced? Should it be done before marketing or once the property is on the market? That is the timing question that you were coming to.

Ron Smith: My colleague suggested a period of grace of perhaps 30 days after you have started marketing the property. That seems to be eminently pragmatic.

Ross MacKay: The concern is that if the pack were not done in that time, the property might have to be taken off the market. There are complications.

Alison Hatrick: I return to the bill. The legislation requires the information to be available to persons who have sufficient means to pay and who are genuinely interested in a property.

We would like the information to be compiled at the point when people note interest and the sale proceeds. That would get round a lot of the shelf-life problems of the certificate. For most houses, there might be only one buyer at that point, but even if there were multiple buyers, we envisage that a scheme 2-type survey could be obtained within a maximum of three to five days. I understand that most searches can now be done within 24 hours. We are looking ahead to a registration that will allow title deeds to be available again within 24 hours. The majority of the information that we are talking about could be available at that point with the remainder to be available from the solicitor as part of the missives, as you have already highlighted.

Christine Grahame: And that would take away people who were just playing at it, as it were, and getting the single seller survey delivered to them with the purchasers pack with no serious interest in the property.

Ross MacKay: Possibly. At the moment, noting interest is not binding anyway.

Alison Hatrick: It still will not be binding, but a genuine note of interest comes through a solicitor. A solicitor would discourage his client from noting interest on 30 different houses, whereas a buyer might come into an estate agency and say, "I want to see the six tenement flats that you have and can I have a purchasers information pack for each?" That would be costly and would be reflected in fees in the longer term. There are advantages to making the packs available later. It

still means that the information will be available to a person at the point when they make an offer.

Christine Grahame: Just a final point—

The Convener: Ms Grahame, you have already had two final points.

Christine Grahame: I just want to ask whether the legislation should require that a formal note of interest should be made rather than allowing somebody simply to say, “I am interested in the property”?

Alison Hatrick: Yes, we would want to make the information directly available to the solicitor.

Cathie Craigie: In its written evidence, the NAEA expresses concerns about the additional costs to the consumer of introducing the single seller survey. How would you react to the alternative argument that, in the long run, consumers could benefit from that information and that they might be able to negotiate a lower price for the property to take account of any works required?

Alison Hatrick: That argument assumes that the only consumers are the buyers. The sellers are the other half of the transaction and they are consumers too.

Cathie Craigie: Obviously, I understand that the estate agents make their money from the seller.

Alison Hatrick: Yes, but the sellers are half of every transaction. We cannot get away from the fact that the buyer is not the only person involved. A seller may need to sell because they are changing jobs or they have lost their job and they cannot pay their mortgage. It is all very well saying that the new arrangements would allow buyers to bring down the price, but I do not think that the prices will necessarily be affected in that way. Prices will be affected most by demand and supply and our concern is that there will be less supply because the speculative sellers will vanish. You will see in our written evidence a suggestion from one of the life companies that as many as one house in three might not come on the market. The inflationary effect of that on property prices might be outrageous.

16:30

Cathie Craigie: Why would houses not come on the market? Will you expand on that?

Alison Hatrick: If I said to an owner who would like to sell provided that they could get £80,000 for their house, “That is fine, but you need to pay £800 before I can find out whether you can get £80,000”, the owner would have to take a view on that. If I said that they might get between £75,000 and £80,000 and they felt that, because of the number of repairs that they had done and the new

fitted kitchen that they had put in, they would not be able to sell for less than £80,000, they might decide not to sell at all.

Cathie Craigie: Surely that would happen at the moment. If somebody goes to an estate agency saying that they want to sell their house and that they need £80,000 for it, but the estate agent tells them that it is worth only £75,000, they will make the same decision.

Alison Hatrick: If I say that the house is worth £75,000 to £80,000 and the owner says that they want to get £80,000, we suggest that they try putting it on the market at a fixed price of £80,000. If someone comes along and pays it, they have sold the house.

Cathie Craigie: How would a single survey change that?

Alison Hatrick: Owners would not spend £800 to find out what their houses were worth.

Cathie Craigie: Earlier, you gave two or three examples of the kind of person who might have difficulty paying for the survey, such as an elderly person who has to sell up and move on and who does not have the money for the survey up front. Is that not something of which the legal profession and estate agents would take account, so that the seller would pay the money when the sale was concluded?

Alison Hatrick: Estate agency is already end based: estate agents often carry advertising costs as well as their fee costs not only to the date at which the house sells, but to the date of entry, which could be three or four months away. Estate agency fees in Scotland are lower than those in England; the majority of Scottish estate agents charge only about 1 per cent of the sale price and, for dearer houses, it might be even less than that. We could carry the price of the survey to the end, but I would probably want to increase my fees by about 50 per cent. There would need to be a trade-off because, apart from anything else, if the person did not sell, I would have to pursue them to try to recover the money. The history of such actions is difficult—the RICS Scotland has experience of people who do not buy a house not paying their survey price—and the introduction of a single survey would lead to more of the same. A lot of consideration would have to be given to that. I do not know the answer.

Ron Smith: I am surprised at Cathie Craigie’s suggestion because, whatever business one is in—whether it is an exalted professional organisation or a corner shop—cash is king and the business needs to maintain a cash flow. You are suggesting that the businesses that are involved would immediately carry an additional cost and cash would be shifted back potentially quite a long way, which would be severely

damaging to any business, never mind a professional business.

Cathie Craigie: I am surprised by your reaction, because my experience of conveyancing is that the survey costs are often met when the sale of the house is settled. That certainly happens regularly in Cumbernauld and Kilsyth, which I represent; it is a practice in which solicitors who are involved with estate agents engage.

Perhaps we are looking for problems that do not exist. I suggest to you that cash in the bank is as good as cash in hand; if you have on your books 100 properties that will sell and you will get your percentage at the end of the sale, you have cash in the bank.

Ron Smith: The importance of cash is timing, not where it is.

Bill Scouller: It depends on whose bank the cash is in.

Cathie Craigie: It will go into the estate agent's bank at the end of the day. I still think it strange that Alison Hatrick says that she would have to increase her fees by 50 per cent. If we cannot get figures on how much the valuation will cost, how can the estate agents say that they would have to increase their fees by 50 per cent?

Alison Hatrick: Because fees are an element of risk.

Ron Smith: With respect, I could go to Tesco and say, "I will pick up my shopping today, but I will pay you in a couple of months," and I am sure that Tesco would be delighted to help me.

The real world is not like that. Cash needs to come in to allow a business to operate. You are asking us and our colleagues who are involved in the house-selling process to carry a large amount of additional cost.

Bill Scouller: Many businesses are already running an overdraft. There is no facility to do what you suggest.

Cathie Craigie: I am not going to argue about how your business runs. Explain how it runs. When do you get paid for selling a property?

Ron Smith: I do not sell properties; we are a marketing organisation. We get paid when the property is registered.

Cathie Craigie: As soon as the property is registered?

Ron Smith: We take a fee as soon as the property is registered with us.

Cathie Craigie: Is that normal practice among estate agents?

Ron Smith: It is the normal practice for solicitors' property centres.

Alison Hatrick: Many estate agents also charge a registration fee up front, although my organisation does not. At the moment, businesses have a choice.

Cathie Craigie: Consumers have a choice about which estate agent to go to.

Ron Smith: Absolutely—there is a market out there and they have choice.

Donald Gorrie: I want to clarify two things. In your submission, you support your argument that the timing of the provision of information could be put back by saying:

"the legislation does not take the impact of new technology on the home buying process into account. We would encourage the Communities Committee to secure further evidence in this regard."

Where and how can we find such evidence?

Alison Hatrick: The Registers of Scotland will probably be able to tell you how it is progressing with e-registration and the Law Society can probably tell you about searches and so forth.

Ross MacKay: E-registration, which will come in in 2007, will not impact on the marketing process because it is to do with completion of the registration of title process, which comes right at the end of the conveyancing transaction.

People are keen to provide such information electronically on the web, along with the sales particulars. The success of the ESPC website has been phenomenal. More and more people download schedules from the web. The concept is that the information in question could be downloaded at the same time, should the potential purchaser be inclined to do so. That would not apply to the many people who do not have access to such websites. Moreover, much information—large plans, for example—would be hard to scan in.

There is an aspect of the pilot that we are concerned about. At the moment, all the technical information is readily available. If a buyer wants to know about the title or to find out whether there is a guarantee for woodworm or whether planning consent has been granted for the conservatory, for example, all they have to do is ask and the seller's agents will tell them. I am not aware that there is any great demand for that information to be provided and it is not being given. The technical information relating to titles and so on is readily available.

When a solicitor puts a property on the market, he will write off for the title deeds and look for the other documentation at the same time. That happens right at the start of the process and it can

take several weeks, while buyers are being found. If a property is put on the market and is sold the following day, there is a bit of rush, but those documents can still be obtained very quickly. The research indicated that, rather than that technical information, the average buyer was looking for local information on crime, buses and schools, along with practical information on matters such as central heating. Even if a buyer does want to know that consent has been granted for the conservatory, they do not want to see the consent document; they just want to know that it exists. It will be passed on for the solicitor to examine.

If the purchasers pack comes to fruition, it will be provided only to those people who note an interest in a property. However, we are concerned that if the pack contains such technical information, we will move from a multiple valuation situation to a situation in which solicitors get involved in multiple examinations of title packs, which will have to be charged for. In most cases, people will not be able to understand or translate for themselves the technical information, so they will give it to their solicitor and ask him to tell them about it. Prior to any bid being made, the lawyer will have to sit down, go through the titles and say what the various pieces of information mean, for which a fee might be charged. If the potential buyer goes after several properties and gets several packs, the solicitor will have to charge the purchaser for all that work.

Donald Gorrie: I want to be clear about another matter. The written submissions express concern about a conflict of interest. If we take the proposition that there would be a separate survey on the building—set aside a price—I presume that it would be possible for a professional to produce a structural survey that is neither a seller's survey nor a buyer's survey: it is a neutral survey. Is it fair to say that there would be no conflict of interest in that case?

Alison Hatrick: That is my understanding. The rules say that a surveyor cannot act for a seller and a buyer, but preparing a report for a seller that a buyer could look at would not be an issue. I have spoken to a couple of local surveyors and their main problem is that the valuation is included for the seller and is then made available to the buyer for their purposes.

Donald Gorrie: The valuation is the stumbling block that we have to sort out.

Alison Hatrick: You would need to double-check that with the RICS Scotland.

Ross MacKay: Our concern—the point was raised earlier—is that there should be no linkage or at least a declared linkage between the surveyor and the selling agent. That is very important.

Bill Scouller: There are concerns that the national estate agents will employ their own surveyors, so that in essence what will happen is that the house-buying public will not get independent advice because the estate agent will be acting for the seller, they will be doing the report and they will be putting the pack together. They will do everything and there will be conflicts of interest throughout the process. The concern is that there will be a reduction in the independent advice that is currently available.

Alison Hatrick: That might have an impact if we were looking for end funding. An estate agent that employs a surveyor in-house might be able to carry the cost more easily than an estate agent that employs a surveyor from outside the company and has to pay them.

Linda Fabiani: I have a general question. If the bill is implemented roughly as it is now, with tweaks here and there, how will it impact on the work of solicitors in buying and selling houses?

Ross MacKay: Our view is that its impact would be neutral. The bill would change the practice of how we buy and sell property, but we have no direct input into the survey as such. We are not the buyer or the seller. It would change the practice, but our view is that it would have a neutral effect on solicitors per se. To that extent we await developments. We would have to adapt and change to reflect the legislation.

Linda Fabiani: You do not think that there would initially be a lot of extra work for solicitors to change their systems.

Bill Scouller: I am not a solicitor, but I repeat my concern that there might be a reduction in work as a result of a reduction in property transactions, because the up-front costs might mean that people who previously could afford to sell their house could not now afford to do that. The markets may slow; I do not know, but they may slow.

Ron Smith: The other practical point is that information packs and seller surveys floating around will, with the best will in the world, generate a lot of paper and activity. We would have to invest in additional server capacity and strengthen the websites if the legislation allows anyone at any time to demand access to the information. People could come into our showrooms and demand access to the information. We might have to hand it over, which would require additional paper storage. We would have to make all sorts of pragmatic investment in order to deliver whatever it was that the law said that we had to deliver.

Alison Hatrick: Estate agents definitely see an extra cost being involved because the information is to be made available through the agent. How

that works out will depend on how this works out, if that makes sense.

Linda Fabiani: Yes. I see what you are saying.

The Convener: I thank you for coming before the committee to give evidence today and for your written submissions in advance of today's meeting. The committee meeting will now be suspended. I ask witnesses who are leaving to do so as quickly as possible to allow the meeting to resume as soon as possible.

16:43

Meeting suspended.

16:46

On resuming—

The Convener: I welcome our third panel of the day. Thank you for waiting. We are running a little behind schedule, so I ask members to keep their questions as short as possible. We are joined by Professor Lorne Crerar, managing partner of Harper Macleod LLP; I apologise if I have not pronounced your surname correctly. The panel also includes Brian Gilmour, business development manager of Countrywide Estate Agents, and Keith Denholm, director of Allied Surveyors. Thank you for attending today's meeting.

My first question is directed primarily at Professor Crerar. How did the housing improvement task force seek to involve all the stakeholders in the consultation process? How were the views of those stakeholders who will be most affected by the reforms and are most involved in the buying and selling of properties—the purchasers—taken into account?

Professor Lorne Crerar (Harper Macleod LLP): My group was sub-group B, which was responsible for the concept of the single survey. We were given some direction on where our views should carry us. We commissioned a market research report from DTZ Pieda. As was mentioned earlier, it was a kind of options study that sought to determine the views in the market. Sub-group B had a wide membership. I was the only lawyer, and I am not a domestic conveyancer, so to provide help and expert advice we co-opted to our group Professor Stewart Brymer, chairman of the Law Society of Scotland's conveyancing committee.

Unusually, because of perceived difficulties that were identified by three key groups, sub-group B had a series of meetings with key stakeholders. We had five meetings with the RICS Scotland, two with CML Scotland and three with the Law Society to explore their concerns. Over the course of the

meetings, we sought to suggest potential ways of overcoming the hurdles that were presented to us. Arising from those meetings were the proposals that we made, which received the support of the three key constituents that I have mentioned. The Law Society, the RICS Scotland and CML Scotland represent the key elements that support the house buying and selling soup.

The Convener: Will you outline for the committee's benefit the key conclusions of sub-group B?

Professor Crerar: The recommendation that there be a single survey has received most publicity. The concept arose from a series of key factors. A direction to the sub-group was that buyers were to have more information about the property that they purchased, for a number of reasons that have already been discussed today. The question was how that would work in the context of somebody having to pay for it. A series of key conclusions from the DTZ Pieda report got us to where we reached. More than 95 per cent of the buying public commission a valuation, which is not a survey at all, although many think that it is. The DTZ Pieda report said that purchasers would pay for a much more meaningful report, so long as they did not have to commission lots of them and they could rely on it, so that in the event of a fault, the purchaser could sue their surveyor.

The single survey concept also leaned on the example of other jurisdictions in Europe that it is not beyond the wit of man to commission an independent condition survey if protocols and professional rules are in place, which is why the RICS Scotland were involved. Those protocols and professional rules are the rules of engagement one has with the seller, and the idea was that they would be relied on by the buyer. All of the buyers would have the same report, which would contain a valuation enabling everyone to start from the same starting block and, thereafter, offer what they wanted. The purchaser would willingly pay for the report because it would contain meaningful information.

The evidence to the HITF was that the cost of such a report would be between £300 and £350. A key feature was the independence of the report. My submission to the committee mentions two factors of that independence: reality and perception. The reality is that the HITF spent a lot of time recognising that the independence of the report was critical. As a result, the lawyers for the Executive and the RICS Scotland fought over the terms of a contract for some months. Contractual documentation was put in place whereby the purchaser could rely contractually on the independence of the report and sue for it. Therefore, the legal position was that the report was independent.

The second and more difficult part concerns perception. That required explanation at source by solicitors, estate agents and surveyors of the reality that the report was independent, which was recognised. The so-called market-led pilot was supposed to tease out that information and create comfort in the market. That is a brief history of how we got to the position we reached.

Christine Grahame: I know which way I am moving on the independence issue, which is towards understanding that a scheme 2 report can be objective on the integrity of the building, repairs and so on, but it is more difficult to defend the argument that there is no conflict of interest in relation to a valuation and to set aside the matter of shelf-life. Would it assist if we took away the value of the property? Would it resolve the conflict of interest if both sides could say that the report is objective and concerned with the building itself?

Professor Crerar: I do not agree with the conflict of interest argument, a conclusion I reached for a series of reasons. Other European jurisdictions have systems based on rules of engagement for the professional in the market, so that the condition of the property is in accordance with all the rules that govern the profession.

I have heard that valuation is an art, not a science, or the other way around. The reality is that valuations differ. A commonly criticised aspect of the house buying and selling process, which in the main is—correctly—well thought of according to the DTZ Pinda report, is that it encourages low upset prices. Including the valuation is important because it gets rid of low upset prices, which are unfair. Estate agents' job is to attract purchasers to view the property. Low upset prices achieve that but it is unfair. The HITF received evidence that many people were viewing properties that they could not realistically afford and, worse, were paying for a valuation that was utterly meaningless as well as costing a lot of money.

Christine Grahame: For the sake of argument, I will challenge Professor Crerar on that point. The valuation of a property is what somebody will pay for it. The survey may value a house at, say, £200,000, but if somebody pays £300,000 for it, that is the value of the property.

Professor Crerar: That is exactly right.

Christine Grahame: Therefore, the valuation for the single seller survey would have been wrong.

Professor Crerar: No. I am sorry, but that argument is flawed, for the following reason.

What do we want, as a matter of policy? We want everyone to start from the same starting block. We want to say to them, "This property, in my professional opinion, which is likely to be reflected by the professional bodies of which I am

a member, is worth £200,000. If you want to pay £300,000 or £500,000, that is a matter for you, but at least you know, as everyone else does, where you are starting from. Your starting block is exactly the same as that of every other potential purchaser." So the valuation—

Christine Grahame: My final point on the matter is that, as we heard in evidence, if one puts a sackload of surveyors in a room, they will give different valuations. I am playing devil's advocate. I am happy to accept that the soundness of the building would be agreed among them, but their valuations of the property might differ by £10,000 to £15,000. That is where my difficulty lies.

Professor Crerar: I understand. It is only natural that if we put 10 surveyors in a room and ask them the value of a property, they will come up with different values, but it is highly unlikely that the margin of difference will be great. What people will get is a detailed condition report, and the value will be assessed on that basis. In the past, surveyors would go and look at a house but would not do any detailed inspection before saying, "This is worth £100,000." We heard the RICS Scotland say that surveyors will do only two reports per day. I am not sure that that is correct, but people will benefit from the detailed condition report, which is an in-depth report that has taken a considerable time and contains key information. It is compiled by a professional individual who is bound by his rules, and the margins of error must be small.

Christine Grahame: I move on to a quick question to Mr Denholm and Mr Gilmour. The shelf-life of surveys relates to valuations. Under the provisions of the bill, the survey will be done before the property is marketed. Marketing might take place three months later, even though a valuation has been done on the property much earlier. In the pilot, what difficulties were encountered in relation to the shelf-life of surveys?

Keith Denholm (Allied Surveyors): In my experience, there is rarely a difference of three months between the valuation and a property being marketed. More often than not, the estate agent will have been out to prepare the valuation one night. He will then get the formal instruction to go ahead and market the property, and we can go out the next day. If there is an urgent rush, we can get a written report on the net that night or the following day.

Christine Grahame: Are you talking about a scheme 2 survey?

Keith Denholm: I am talking about the single survey.

Christine Grahame: So there were no problems with the shelf-life of the surveys in the pilot.

Keith Denholm: You were asking about preparation—

Christine Grahame: No, I was asking about shelf-life.

Keith Denholm: When we inspect a property, we take a snapshot of the property at the date and time of inspection. We might survey a property one day and there could be a bad storm the next day, with a large section of tiles being blown off the roof. The report cannot take that into consideration; we have to prepare the report at the date of inspection.

Christine Grahame: I was asking about any problems that occurred with the surveys in the pilot, because we have not had an analysis of them. Did people have problems with the shelf-life of surveys? Did people not use the surveys, or did they use them but have another survey done as well?

Keith Denholm: Analysis is being done by the pilot managers. As far as I am aware—I can answer only on the cases in which my firm was involved—there were single surveys that were not used. I do not know whether people decided to have their own inspections prepared. I assume that we will find that out in the analysis.

Brian Gilmour (Countrywide Estate Agents): I will comment on the experience of Countrywide, because we have sold properties with single surveys in the west end of Glasgow and in the city centre. In the second half of last year, those areas had different market conditions: the west end was buoyant, but the city centre was slow. We found that as soon as a seller was presented with a valuation of their property by a surveyor, that was the price that they wanted and the price that they would accept.

If a property is on the market for more than a short time, the timescale becomes irrelevant. If a seller has more than 12 to 15 people through their door, it is not the timescale but the price that is wrong. However, when people have a certificate that tells them the value of their house, they can say, "You cannot tell me that the price is wrong. I have a certificate from a surveyor."

As Keith Denholm has just said, although the price is a snapshot of the market at the time that the property comes on to the market, people get it into their head that the certificate tells them the value of their property and that it will not change. We found that people who were on the market for a period of time and could not sell their property at the valuation price took it off the market.

17:00

Christine Grahame: Okay. That is interesting. We are talking about the price being lowered.

Brian Gilmour: Yes, specifically because the market performed so poorly in Glasgow city centre.

Christine Grahame: The market dropped?

Brian Gilmour: Yes.

Mary Scanlon: I made a note of something that Professor Crerar said about the point made by the RICS about only being able to do two surveys in a day. When one looks at the 23 pages of extensive information that the survey contains, it is hardly surprising that that is the case. I cannot imagine that anyone could do more than two surveys in a day.

Given that you are the creator of the single survey, Professor Crerar, what is your comment on the survey report model? In considering the wider purchasers information pack, did you consider the inclusion of information that is given to potential buyers in the United States of America, which is along the lines of Megan's law?

Professor Crerar: On the structure of the survey report, I have to say that I am not a surveyor. The task force asked the RICS to produce what it thought was the most meaningful report format in the context of what we were trying to achieve. The RICS used its current scheme 2 report as a template. It is interesting to note that the RICS tried to have a public relations campaign to promote the use of scheme 2, which was unsuccessful.

The template was discussed by the surveyors on the task force and the result was that the scheme 2 format was used. Issues such as energy efficiency and disabled access were considered; quite a lot of time was spent on the format of the report. When I saw it, I thought that it looked and felt good—it is better than the norm.

I have listened with interest to the comments that have been made on the purchasers information pack. My opinion is that the pack has been made more elaborate than was originally intended. The housing improvement task force's intention was for the purchasers information pack to act like a car logbook. The task force thought that when someone buys a house, it would be sensible for them to know whether the gas boiler and the electrical appliances had been checked and to have information such as the fact that the house had been rewired.

The intention behind the pack was no more complicated than that; it was for the pack to record the works that the seller had done to the property throughout the period of their ownership. Of course, the subsidiary element of that intention is the underlying desire for people to look after their homes. It was thought that, if people were asked

to keep a record, they would make an effort in that regard.

I do not recall any discussion of school standards or crime levels and I was at all the meetings. Those subjects were not discussed when I was there.

Mary Scanlon: To be fair, I will give an example of what I mean. I live on a fairly modern estate in Inverness. As someone who set up a residents association and a community council, I can say that we are still struggling to get money out of people for ground maintenance 10 years after the estate was built. The lawyers did not tell people that they had a responsibility for ground maintenance—life is not perfect yet. I would welcome the inclusion of common repairs in the process.

Are you familiar with Megan's law, under which potential purchasers—I am thinking of people with young families—are advised whether sex offenders live in the area? If so, was the matter discussed?

Professor Crerar: It was not discussed.

Mary Scanlon: Why was the take-up for the pilot so low? Does the pilot demonstrate or justify the move to a mandatory scheme?

Professor Crerar: There were two reasons for the pilot not being taken up in the numbers that one would have hoped for. First, as others have mentioned, we need to remember that more information is not necessarily something that everyone wants, and that someone has to pay for it. Albeit that the pilot was market led, it was also market unaffected. In order to reach agreement on the project, I had to try to get a compromise among the interests of solicitors, the RICS and the CML. The RICS mentioned two things, one of which was that up-front payment would be required—the seller's survey should be paid for at source—which I understand. I used the phrase "market unaffected", but as the committee has heard in evidence today, if the project was brought into play, the market would come into play and perhaps there would be payment at the end of the process, when the property was sold, rather than at the beginning of the process.

Secondly, much information was put out to the market, but—hand on heart—I do not know how much effort was put in by the professions that are represented today, who have said that they did put in effort. It is one thing to know about something, but it is another to be proactive and to say that an idea is good and new, that only one surveyor will go through a person's home, that more people will come to view the person's home and that the system is different. Perhaps we were too ambitious.

Mary Scanlon: Are you saying that the RICS, the CMLS and the Law Society of Scotland—the three major players—agreed to move towards a mandatory system irrespective of how many people participated in the single survey scheme?

Professor Crerar: No, I am not. There is an important paragraph in the HITF report that says that the task force was devoutly of the view that the benefits to the consumer so outweighed the inconvenience of the change to the system that if the system did not take off for reasons that were unrelated to its benefits, legislation was still merited. I was sceptical; I thought that bringing a revolutionary product into an institutionally ingrained market would be difficult. I am not saying that that is why the pilot failed, but I always had my doubts.

Mary Scanlon: Were things difficult from the point of view of consumers or the professionals? Are you saying that the professions were not enthusiastic enough about selling the system?

Professor Crerar: Yes, I am. A home is the biggest purchase that a person will make during their lifetime. They will rely on professionals to give advice and to lend a shoulder, but I do not think that that happened.

On the number of surveyors who took part in the pilot, around 90 per cent of surveys are carried out by three firms, but at least one firm did no surveys at all. I must be careful not to be pulled before the Law Society of Scotland for misconduct for in some way criticising such an august body, but a lot of information was issued and I know what it is like to be a busy solicitor. It takes a lot to say, "Hold on. We can do things in the normal way, but have you heard of this?" The natural inertia in a market in which everybody is busy makes it hard to push people to do something different, notwithstanding the benefits that there would be.

Brian Gilmour: I back up what Professor Crerar says. One of our issues was the lack of information that the public had. Cathie Craigie mentioned standing in the butcher's queue and people saying that the single survey is a great idea. However, every person whose home I sat in had never heard of it. In Glasgow, for example, one leaflet-dropping advertising campaign was done during the Glasgow fair fortnight. That was the only promotion of the single survey that took place, except for what our organisation and the GSPC did. There was a lack of publicity. The argument was that nobody wanted to prejudice the scheme, but the public had a lack of information.

We tried hard to push the scheme when we were in people's properties. Cost has been mentioned. As soon as someone was told that they would have to pay money up front in a buoyant market, which there was in the west end

of Glasgow for example, the seller would say that they did not need the scheme, because properties of the type that they had were selling ten a penny. They would say, "Why should I fork out 400 or 500 quid up front? I don't need to do that." In a slow market, which there was in the city centre, people would say, "If the majority of potential purchasers out there are going with the basic valuation, why should I prejudice myself and possibly find a fault in my property that nobody else would find?"

Mary Scanlon: Was all that reported back to the Executive?

Brian Gilmour: Yes.

Mary Scanlon: The pilot scheme started on 14 July last year. Nine months later, it was decided to move to a mandatory scheme. Did you ask for the Executive's help with communication and advertising?

Brian Gilmour: Yes.

Mary Scanlon: Was it forthcoming?

Brian Gilmour: No.

Keith Denholm: The question was about why the single survey pilot failed. A number of important issues are involved. First, the estate agents were not fully engaged in the process. A number of estate agents were proactive in the relevant areas, but a number either knew nothing about the survey or paid lip service to it.

On the question of when surveyors should receive payment, we decided that there would have to be a robust trial to enable us to ascertain the merits and demerits of the scheme, which we needed to know about for business and other reasons. We have a business relationship—although there is no financial connection whatever—with an agent who operates in the central belt, with whom we ran a trial scheme four or five years ago, so we discussed the matter with him. We decided that rather than try to collect the survey fee up front, we would collect it from the person who ultimately purchased the house. The approach appeared to have no effect on the number of instructions that were taken. In my office in the west end of Glasgow, we conducted 28 surveys, and of the surveys that were paid for by the purchaser and for which payment was delayed until missives were concluded, 13 related to properties that were sold through that estate agent and the rest related to properties on the open market. Although the issue about getting money up front is perceived to be a problem with the proposed scheme, I do not think that that is the case. I am talking about a very limited sample, so I cannot say more than that.

Scott Barrie: You make some useful points. Do you want to comment on the survey report model

that was used in the pilot? Should a valuation be included in the report?

Keith Denholm: A valuation must be included. A chartered surveyor cannot comment on whether a defect is substantial or just routine unless he is preparing a valuation of the property. For example, if a surveyor says that he has identified a rot problem that might cost £5,000 to rectify, how can a prospective purchaser know whether the defect is significant or routine without knowing the value of the property? If the valuation is not included, people cannot quantify the significance of defects.

Scott Barrie: How will the bill impact on the behaviour of buyers and sellers in the housing market in the short and long terms?

Keith Denholm: Surveyors know that people will shop around for a favourable report. The RICS has demanded a central register of instructions, which would have considerable merit. However, if a surveyor does not identify a structural problem in a property, his PI insurance will kick in. The hidden defects guarantee that we introduced was mentioned. If we can sort out our disagreements with the FSA, such insurance will be of substantial benefit. Buyers will have more information about properties. Currently only about 10 per cent of prospective buyers instruct their surveyor to carry out a scheme 2 report on a property. It is difficult to argue that sellers will not be affected by the new system in some circumstances. Sellers could well be affected, because currently we inspect properties on the prospective purchaser's behalf and under the new system defects might come to light that might never have been identified in the past.

The Convener: Does Professor Crerar want to comment?

Professor Crerar: I will merely raise a matter that was mentioned earlier. Why does the proposed single survey not include a latent defects guarantee? The matter was regarded as important, given that the RICS, with which we were "contracting", was unable to effect latent defects insurance for all its members, although some firms of surveyors had standard latent defects insurance for single surveys. One thought that if that became market affected in the true sense, people would naturally gravitate towards single surveys that contained a latent defects guarantee. I cannot comment on the short-term situation, but in the long term I hope that people look back and ask how on earth they made the biggest purchase of their lives without a condition report on the property.

17:15

Scott Barrie: Does the information that is supplied in Scotland need to be consistent with

that which will need to be supplied as part of a home information pack in England and Wales?

Professor Crerar: When the housing improvement task force was meeting, the situation in the English market was evolving. We saw the pack, which looked extremely complicated. However, the purpose is much simpler. I tried to explain earlier that a pack was to be a bit like a logbook for a car—it would just provide a record of what had been done. It could be displayed as part of the information that is made available to a purchaser. The Law Society's representative mentioned an up-to-date search, but was not convinced that that was necessary, because that is part of the process. A planning certificate on what planning might affect a property was also mentioned. The evidence that the HITF received was that such work would ordinarily be done in a conveyancing transaction and that little if any cost to the process would be added. We saw not having too much extra cost as important.

Linda Fabiani: You have covered many of the matters that I wanted to talk about. It is clear that the pilot did not work by any standard, whether because of its scope, promotion or implementation. However, that does not mean that the public do not want the scheme. The problem is more with the survey than with the basic principle.

What is the way forward for promoting confidence in what we are trying to do, which is to change the culture of how houses are bought, sold and maintained? Is a much bigger pilot worth considering with up-front funding from the Executive and a recoverable cost? That would mean that people did not say, "What's the point in paying for a survey up front when I can let the buyer do it?" Is phased implementation with monitoring worth considering? Is the Executive right to make the single survey mandatory with a fairly quick implementation date?

Brian Gilmour: People are always comfortable with the status quo. I do not expect a big uptake of the single survey if it is one of several options in the market. Making it one option in the market is one route to take, but in the pilot areas people did not choose it. The only way of making the system successful is to implement it as the only means of buying and selling property.

Linda Fabiani: I think that I know Professor Crerar's opinion. What is the opinion of Keith Denholm and Brian Gilmour, as housing professionals, on whether the single survey is the right way to go?

Brian Gilmour: Mary Scanlon mentioned the size of the 25-page report. Naturally, most people are daunted when they are presented with a 25-page technical report, but the reality is that the first 23 pages are a bit irrelevant. The only parts that

are particularly relevant to what people want to know are on the cost-effectiveness of heating and the energy efficiency rating, the building's structure and what the property is worth. Those are the three essential elements that people want from a survey. The problem with the single survey is that the report's end users are detached from people such as Keith Denholm, who produce the report, because they do not have the opportunity to sit down with them and be talked through the report.

Linda Fabiani: Should a lawyer not do that?

Brian Gilmour: It is the role of the professional who compiled the report to explain it.

Linda Fabiani: That does not happen anyway.

Keith Denholm: A conflict exists. If we provided information to one person, we would have to give it to everyone else. If the last person said, "Wait a minute—will you answer a question about the windows?" we would have to go right round the other people again. I could spend my day on the phone and be unable to go out to undertake surveys.

I was extremely surprised that, for the 20 or so surveys, I had only two phone calls from prospective purchasers asking me for information. I had to say, "Sorry. I am not allowed to discuss the information with you."

Because the market in the west end of Glasgow has slowed down, people are now instructing scheme 2 surveys again. The percentage of those has crept up a bit and in many ways we are now going through a hand-holding exercise with people. People phone me up and say, "I was out viewing a property. Can you survey it?" So I survey it and, when I get back to them, I can spend 45 minutes to an hour on the phone.

Linda Fabiani: I wish that all you wonderful surveyors had been around when I was buying my house.

Keith Denholm: That is my way of doing business. I feel that if someone is paying me a good fee, they are entitled to ask me questions about my job. Often, I am carrying out a hand-holding exercise. The problem with the reports was that the drafts that surveyors were provided with, a copy of which members have in front of them, were full of technical phrases. As a profession, we do not do ourselves a lot of favours by using such language. I feel that the report could be written in simple language.

Linda Fabiani: That is a side issue.

Keith Denholm: It is a side issue, but it perhaps explains why I have not had many phone calls since I decided not to use the technical jargon that surveyors are often guilty of using. You will see

that, in my report, I use simple phrases to say that I could see or could not see something, or that something has or has not rotted.

Linda Fabiani: I will come back to the basic question. As professionals in your field, do you think that the single survey is the way to go for housing in Scotland?

Brian Gilmour: There are strong merits in having a single survey that is presented to people when they buy a property. Some form of single survey is probably the right route to go down.

Keith Denholm: My firm has been trying to go down that route for four years, if not longer—it may be seven or eight years. We tried to go down that route through a variety of different products. We feel that the consumer needs to be as fully aware as possible of what they are purchasing and that that should be backed up with the hidden defects guarantee where possible.

Linda Fabiani: You would not go for another pilot. As Brian Gilmour said, you think that the change should just happen.

Brian Gilmour: We would have exactly the same results in another pilot.

Christine Grahame: What? It would fail?

Linda Fabiani: As I said initially, another pilot could be done that was front-loaded with funding, so that people would not have to pay up front. That would be a culture shift in itself.

Mary Scanlon: They have already mentioned that.

Linda Fabiani: I have been listening, Mary.

The Convener: Can we please have one questioner and one person responding?

Linda Fabiani: And no muttering in my ear.

Keith Denholm: Mandatory involvement could have an effect in some areas of the market, although the effect will not be marked with certain properties. At the lower end of the market—in particular, the market involving people purchasing one-bedroom flats in poorer areas—the costs could be prohibitive.

Cathie Craigie: Will the introduction of a single survey improve the quality of housing in the private sector? Will it improve maintenance and general repair?

Keith Denholm: No. I say that because of my experience of surveying a property in the west end of Glasgow during the single survey pilot. I identified £5,000-worth of dry rot in the common roof space and the property was sold less £5,000. That is the reality. The single survey will not force sellers to attend to repairs. However, if a structural problem meant that the property was not

mortgageable, that would be a different issue—someone's personal asset would have been affected and they would not be able to sell it. If there is a structural problem, it will have to be dealt with, but with a more minor repair—a common repair of £5,000 in a tenement building is not that much these days—the reality is that the price will be modified and the repair may or may not be done, depending on what it is.

Cathie Craigie: A failure to attend to £5,000-worth of repairs to the roof could cause much more damage, if wind and water were getting into the roof space. Is that not something that a lender might take note of? Might they not say, "You want £100,000, but I will hold back £5,000 until you get the work done"?

Keith Denholm: Lenders have become very lax regarding retentions. If retentions relate to common repairs to buildings, the lenders are not interested. For example, if a block has eight occupiers, the repair will be split eight ways. It would be an undue responsibility to impose a £5,000 retention on one flat when a common repair is split among all eight occupiers. In the case of a house, the issue might be considered in isolation. A £5,000 repair for a £30,000 flat is a lot of money, but for a £500,000 house it is not. We cannot generalise.

Cathie Craigie: So in some cases retention might encourage repairs to be done, whereas in others it would not. It depends on the type of property involved.

Keith Denholm: Even in cases such as those that I have described, there will be people who believe that they must get the repair done. Some one-bedroom flats valued at £20,000 that we survey are in immaculate repair, although they may not have the most modern kitchen and bedroom. The owners of those flats are desperate to maintain them as well as they can. We may then go to a £500,000 house that is a dog's dinner, because the owners do not care. There is no rhyme or reason to anything.

Brian Gilmour: People who have an interest in maintaining the condition of their property will do so today and the day after a single survey report is produced. People who do not have such an interest will not do it today or the day after the report is produced. That is the nature of people. If someone knows that they live in a sandstone property with a roof that is as old as the building, and Keith Denholm provides them with a report on it, he will not be telling them anything new. If someone gives them £10,000, they will buy a new kitchen before fixing the roof. The majority of the public are like that.

One of the big difficulties concerns places where there is tenement-flatted living, such as Dundee,

Glasgow and Edinburgh. In the building, there may be three people for whom it is most important to maintain the building's structure. As you suggested, by repairing something for £500 today, people can avoid a bill of £5,000 later. However, there may be another five people in the building whose attitude is that they will pay the £5,000 bill when it comes in, rather than shell out £500 today. Unfortunately, no matter what we do with the single survey, that attitude will prevail.

Professor Crerar: The statistic that we have for the proportion of people who commission a valuation is 95 per cent, rather than 90 per cent. The task force took the view that a natural consequence of having full-condition reports on 100 per cent of homes was that repairs that needed to be done would be done by someone, either the seller or the buyer. We saw the matter as a cultural issue. Although people's culture might not be changed at the start, the problem is a bit like toothache—it is better to deal with it now, because it will only get worse later. However, it will take time to make that change.

Cathie Craigie: A constituent told me that, in their experience, they have more rights and protection as a consumer when buying a tin of beans than when buying a house on the market. Would the single survey that is proposed in the bill prevent young people from buying a flat with a structural problem that they do not know about, because they have only a valuation survey, and protect them from being out by £30,000 and having a property that is worth £10,000 within three weeks of their moving into it?

Keith Denholm: There are two answers to your question. It depends on whether the person who undertook the single survey had the benefit of a hidden defects guarantee. If they did not have the benefit of such a guarantee and it was proved that the surveyor was negligent, a justifiable claim could be made under the PI insurance.

I can answer only for my practice. If the surveying practice had the hidden defects policy and the purchasers moved in and found a problem, the insurers of the scheme would be contacted and they would send out an assessor to examine the damage. The repair would be attended to there and then, subject to a £500 excess claim charge—because a hidden defects policy is for a significant defect that a surveyor missed or could not have seen rather than for a chipped bit of paint or a missing door handle—and the house would be restored to the condition in which the clients expected to find it. If the surveyor had been negligent, the insurance company would sue the surveyor or his practice behind the scenes.

The most important aspect of a hidden defects policy is that it means that the people who buy a

property—such as a young couple—should find that it meets the anticipated standard. Under a hidden defects policy, not everything will be sorted out—there might be a bit of wallpaper missing, for example—but the major problems will be addressed. That is the important factor.

Brian Gilmour: To some extent, that option is open to buyers at the moment. Instead of going for a mortgage valuation report, they can get a scheme 2 survey from day one. One could argue that, if people have a genuine concern about what they are buying, they should go down the route of getting a scheme 2 survey. There is an existing option in the marketplace. That said, I understand that there are issues if a closing date has been set for the property that they are going after. As Keith Denholm has pointed out, hidden defects insurance would get round the issue that you have identified.

Keith Denholm: The process could be lengthy. In some situations, consideration of a claim that is made under PI insurance can extend for a number of years, whereas a claim that is made under a hidden defects policy can be sorted out in a matter of weeks or months.

Cathie Craigie: Alternatively, the problem could have been highlighted in a single survey that—

Keith Denholm: We are assuming that it was not highlighted in a survey. Let us be honest—people in every profession make mistakes. That is why we have championed the hidden defects policy for a considerable number of years. We have seen the benefits of the policy and it is unfortunate that, because of the change in the FSA regulations, we have had to re-examine matters. The policy is on the table for change.

The Convener: That concludes the committee's questions to the panel. We thank the witnesses very much for their attendance.

17:32

Meeting suspended.

17:33

On resuming—

The Convener: We welcome our fourth and final panel of the day. Ann Laird is the chair of the Scottish tenement group. I appreciate that members are becoming a little weary, but we are very grateful to Ms Laird for her attendance; today was the only day on which she was able to fit in with our schedule. Ms Laird, what is your opinion of the Executive's consultation on the bill? Has it provided organisations such as yours with an opportunity to engage?

Ann Laird (Scottish Tenement Group): We were extremely pleased that such a consultation was taking place and were impressed with the way in which it was carried out by committed, conscientious and competent professionals. We felt that all aspects were being considered and the right people were being asked questions. Our problem was simply the lack of representation for home owners in general. We did our best to respond when we could, but we believe that the major problem with the consultation was that there were not enough representatives of home owners.

The Scottish tenement group applied for about £300,000 to provide representation through the Scottish Consumer Council when the housing improvement task force was set up. We would very much have liked such a grant to improve the representation of home owners, but our application was refused and, as a result, you may have found it difficult to find people who can talk about the issues.

I am talking about the private sector as it relates to tenemental properties of all ages and types—whether traditional Scottish tenements, modern flats or subdivided houses that share a roof—but much of what I say applies to other parts of the private sector as well. A lot of money is put into representation for tenants; if it can be done for tenants groups, I am sure—this is not rocket science—that we can work out how to engage home owners more effectively. I hope that, in the long term, that will be considered.

Apart from that, I thought that the process was good and I was extremely pleased with the vast majority of the points in the final report.

The Convener: What, in your experience, are the key problems that tenement owners face in carrying out repair and improvement work to their properties?

Ann Laird: It is hard to know where to start. Forty per cent of Scottish households live in tenements—that is, flats—of one kind or another. A tenement might be worth £1 million and eight people might be trying to run that £1 million asset. If eight directors were running a company, they would have information, take advice and have all the equipment of the law behind them, but eight owners will set out to run a tenement with practically nothing behind them. Because of that—and a lot of other things—private properties in general and older tenements in particular are not well maintained.

The long term is the biggest casualty of short-termism. Need I say more? That is what the issue is all about. Property is long term, but the economy is short term. We look to folk such as MSPs to help to put that right. In different fields here and there, I detect a little undercurrent of

looking more to the long term. We can be short-termists for as long as we like, but we all know that that it is not a good idea. We can play about with a bit of short-termism, enjoy ourselves and enjoy the fruits of it but, in the end, we have to come back to reality.

Quite a lot of the bill brings us back to reality and will make everyone change. Owners will have to change. I spend more time talking to owners about how I would like them to behave than I do talking to professionals, because it is a lot easier to change the professionals than to change the owners. In my professional life, I am a teacher—I am the head of the computing department of a big secondary school on the west coast—and I would say that we need an approach of educate emptor. Educate the buyers, please. I am talking about information and advice. This is the information age—I teach computing, so I know that it is and you know that it is—so we can provide the information now. The bill is heading in that general direction.

In general, I am extremely supportive of the bill. I am aware of the difficulties faced by professionals who are being asked to change the way in which they work—I have experienced that myself in education. However, the problems can be got round and that is where leadership is required at the highest level from folks such as MSPs. I know that you want me to stop talking, but—

Linda Fabiani: We would never know that you were a teacher, Ann.

Ann Laird: I have checked up and I know that some of you have educational connections, too.

Tenement law is really bad and is not made a lot better by the bill, but the Executive has made the best of a bad job. Dispute resolution and mediation should be available; they are not mentioned in the bill, but they are needed. Property managers should be accredited, like other professionals. Communities Scotland is dealing with that matter at the moment, but it needs to be pushed forward. I was part of a working party and a good report was produced. We do not need much money; we just need to get things going and strike while the iron is hot.

Do not ask me the best way of giving advice and information for owners, because you all know the answer. Everybody learns in different ways and what we need to do is to provide a variety of sources of information—that must be done as well as the Coca-Cola Company does it. It can be done—we know how to give information and we know how to change the way in which people behave. MSPs can change public behaviour. The single survey more or less answers the previous point that was raised about information for new buyers. I believe that it would help a lot.

The Convener: The bill proposes to replace the existing statutory repair and improvement notices with a single statutory notice. As you are generally supportive of the bill's proposals, can I assume that you are in favour of that proposal?

Ann Laird: Yes.

Cathie Craigie: Thank you for giving us your thoughts. The aim of the provision on maintenance orders is to prevent owners from not paying their share of works that have been done and thereby putting their neighbours' property at risk. My colleague Scott Barrie and I had not quite realised that a block of eight flats in a tenement might be worth £1 million—we had never added that up—so your point that the tenement is a very valuable asset for everybody was interesting. It is obvious that works have to be done. What are your views on the proposal to give powers to local authorities to serve maintenance orders?

Ann Laird: We think that it is fine. I am sure that the local authorities do not have time to serve such orders unnecessarily. There would have to be a huge, up-front training element to ensure that the measures were undertaken properly. I am in favour of such measures being undertaken, but I am afraid that they will not be introduced in the proper way; I fear that they will not work and that they will cause a problem.

Cathie Craigie: Is it training for staff that you want?

Ann Laird: For staff and owners. There is a little problem called role reversal. Once upon a time, a tenement had a factor, of whom the tenants were in awe. Then things changed and the flats were sold. The tenant or someone else became the owner and, as the owners employed the factor, the owners were in charge. That is a very different situation.

In Scotland, we are sometimes not that good at taking charge. We are not a particularly mature society in that respect. That is why I am in favour of being allowed to look after our main asset—our homes—in an effective way, because I believe that it will help to develop our society. It is exceedingly bad for society that we cannot run our homes properly and that we end up with repair orders. At the core of our existence is our home and it should not be so difficult to undertake what should be a routine, sensible, managed exercise.

Cathie Craigie: Does the bill get the balance right between the rights of an individual and—

17:45

Ann Laird: I think so, for the meantime, but a lot of what we are talking about is part of a long-term transition. Because things have been done in a certain way, properties are now not in very good

condition. Although we would like one day to be in the place where we want to be, we are going in another direction at the moment. We might have to go to one or two places where we do not want to be in the long term. My concern is not so much about the power of the local authority against an individual as about the power of one owner to wreck the plans of another seven. That is much more worrying than anything that a local authority is likely to do.

Cathie Craigie: In your introduction, you mentioned the difficulties that owners face in bringing everybody together, talking about things and planning for the future. You also highlighted the importance of the difficult decisions that need to be taken if we are to protect buildings into the future. How difficult has it been to set up maintenance plans? Is eight the right number of people to bring things together in a tenement block, or should things be done on a bigger scale? What do owners need if they are to set up maintenance plans for the future?

Ann Laird: Setting up a maintenance plan is a technical job; it needs to be done by someone who knows about maintenance, so people usually delegate the job by buying in expertise. The real difficulty for tenement owners is their lack of management and committee skills—I am thinking of things like agendas, how to chair a meeting, what a committee member does, how to work to a deadline and team working. Those are the skills without which the whole thing falls apart.

Quite often, people do not want to take responsibility. That is partly because today's society is based on individualism—everything is about the individual and not about the common good. According to how we think at the moment, it is not fashionable to be anything other than an individual. I am not saying that we should change society; I am saying that the problems that we face are an unfortunate side effect of today's society. People do not think that working in a group is a great thing to do. They are brainwashed by business to think that they are an individual and that they should do their own thing. A lot of underlying psychological change will need to take place before people who live in tenements reach the point at which the problems are addressed.

The same difficulty does not arise for people who live in houses. If someone's property is just a wee house on its own in the middle of a garden, they have only themselves to consider. That said, house owners, too, may not always be so good at long-term planning. People need help.

In a sense, a house is exactly like a car. Although it is a valuable asset, it is potentially dangerous and expensive to fix. It is also an asset that will be sold on to another owner. A property purchase is different from the vast majority of

other purchases that we make, in which we keep what we have bought for ourselves. A house has to be handed over to another owner.

That leads me on to the big picture of housing's place in society. I accept that a house represents someone's financial investment, their home and their family's home, but it also represents the community. Housing is part of our architecture and built heritage—it tells us how our country looks—but we do not remember that as often as we should. Someone in authority needs to think about the big picture; they need to remind us to look to the long term and to remember the true value of housing.

Cathie Craigie: So do you think that tenement owners need help from their local authority to get set up and to gain committee skills and so on?

Ann Laird: Well, let me put it this way: we are not doing terribly well just now, are we? We are not maintaining our homes very well for a variety of reasons. If good-quality, properly funded help can be provided by suitable sources such as local authorities, so much the better. Given the size of the national housing budget, we are talking about putting only a minute percentage into providing information and education. We can either build one house or undertake a huge information campaign. We must support local authorities in providing the kind of assistance that is needed. I would put money into that; it has to be money well spent. I would put a lot of resources into all the things that are missing in the deep infrastructure. Without that, things will not work properly. We are keen on the big elements, but we have forgotten to put the oil in the system.

Mary Scanlon: I think that the points that I wanted to raise have been covered in your extensive opening statement. However, I would still like to ask about the range of powers available to local authorities to provide assistance. Is there anything that you want to add to what you have already said in that regard? I know that you have covered the philosophical, cultural and educational aspects and have touched on the issues of training, the role of the individual in society and dispute resolution.

Ann Laird: I would like to draw attention to the issues of leadership and good maintenance practice. About three years ago, I visited Amersfoort in the middle of the Netherlands to learn about a system for older buildings that is called *monumentenwacht*—that does not mean that it is to do with monuments; it is to do with older buildings. The programme is Government funded. I do not know whether we could manage that here, but it represents the key to the matter. It provides to owners of older buildings—

Mary Scanlon: I am really talking about the role of the local authorities.

Ann Laird: Yes, but you should think beyond local authorities. I am fine with the idea of local authorities doing work—I think that we should get them to do as much work as possible—but they should be given lots of training to enable them to work effectively.

I am saying that there are other ways of getting the work done and that those ways might be more acceptable to the public, especially private owners. Owners should be able to act independently and should not have to act as a policeman by reporting whether other owners are doing the maintenance.

Under the system in the Netherlands, people's buildings are surveyed annually, at cost, by surveyors. Furthermore, while the workers are surveying the buildings, they carry out stitch-in-time repairs, such as replacing a bit of pipe and doing other small bits of work that will prevent big problems arising in years to come. A week after the survey is carried out, people receive a 30-page report. We all know that people cannot read that sort of report—and the one that I saw in the Netherlands was in Dutch, so it was even more difficult to read—but the person who was on the building's roof, surveying the property, explains the document to the owner.

We have talked about the possibility of piloting such a scheme in the west end in Glasgow and have been finding out about the research and work that is done by Maintain Our Heritage in Bath or Bristol. The sort of work that I am talking about is extremely valuable good practice and shows us a different way of offering help and support. The key is variety. We know that people work in different ways, which means that we have to provide a range of solutions.

Linda Fabiani: You have set my imagination going—well done. We have been sitting here for a long time and I am suddenly starting to think about different solutions that might be found. You said that local authorities have a role to play in a strategic sense, but that independence is also important. The sort of system that you are talking about would need front-resourcing, which would involve considering the bigger picture and the long-term benefits. Could the care-and-repair model that is currently used in relation to properties that are inhabited by vulnerable and elderly folk be beefed up to assist tenement dwellers generally?

Ann Laird: I would have to answer that question later, as I am not sufficiently familiar with the model that you mention.

Linda Fabiani: I was absolutely sure that you would be. In a nutshell, the Care and Repair

Forum Scotland was set up to assist mainly elderly people who have difficulty organising and paying for repairs. I was trying to come up with a model of a sort of independent, roving agency that could assist tenement dwellers.

Ann Laird: That kind of thing would be ideal. There would be a clear case for an organisation to be set up that would provide a similar service for tenement owners. That was what we were talking about when we asked for money for the Scottish tenement group.

Linda Fabiani: We could, in the shorter term, give extra powers and funding to an existing organisation or to organisations such as community-based housing associations in the areas where there are tenements. That might get things up and running.

Ann Laird: Earlier, you spoke about residents associations. I have a lot of experience of the west end of Glasgow, partly because I am also the convener of the Friends of Glasgow West, which is interested in architecture and conservation. I am interested in using residents associations to change the ways in which people do things and to enable them to do things better. The smaller and more focused the group, the more likely it is to do things. The west end of Glasgow is known to cover the most highly educated constituency in the United Kingdom—

Linda Fabiani: Is that right? I am from the west end, you know.

Ann Laird: I was actually going to say something bad about the area. Even when we get eight people from that area together—people who have skills—things still do not work very well.

The Convener: Getting eight people from the west end together would not guarantee that there was any common sense involved.

Ann Laird: There are problems with people working together, whatever they are working on.

I am aware that the fact that I am a teacher gives me the opportunity to speak to all the sorts of people in the population—our future home owners are in the classroom. I know that teachers always complain about being expected to solve every social problem, but we have our five national priorities, one of which is citizenship. Under that priority, there is a lot of stuff about community councils, values and so on. I would also include committee skills and team-working skills in that. They are already dealt with up to a point but, judging by the way in which people work when they leave school, those lessons are not taken on board sufficiently. If they were, the population would take up lots of things that people in buildings such as this one talk about. We can talk about certain things until we are black in the face

but if people do not have those skills—which are transferable—they will not put into practice anything that we are talking about.

People are doing better now and the situation has improved since we have got better access to information through the internet and improved communication links. However, there is an immediate problem relating to how tenement owners act.

The Convener: I think that that concludes the committee's questions. I thank you for attending on behalf of the Scottish tenement group.

Meeting closed at 17:57.

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