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Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 15 September 2010

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
20th Meeting 2010, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Alasdair Morgan (South of Scotland) (SNP)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Alex Johnstone (North East Scotland) (Con)
Alison McInnes (North East Scotland) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Paula Hoogerbrugge (Greenbelt Group Action)
Peter Lukacs (Office of Fair Trading)
Elizabeth Murray (Stonelaw Court Owners Association)
Douglas White (Consumer Focus Scotland)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 3

Scottish Parliament

Local Government and Communities Committee

Wednesday 15 September 2010

[The Convener *opened the meeting at 10:02*]

Decision on Taking Business in Private

The Convener (Duncan McNeil): Good morning, and welcome to the 20th meeting in 2010 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys.

Agenda item 1 is to consider whether to take in private item 5, under which the committee will consider its approach to the scrutiny of the Scottish Government's 2011-12 draft budget. Do members agree to take item 5 in private?

Members *indicated agreement.*

Property Factors (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is to take oral evidence on the Property Factors (Scotland) Bill at stage 1. I welcome our first panel of witnesses: Peter Lukacs, director at the Office of Fair Trading, markets and projects—infrastructure; and Douglas White, senior policy advocate at Consumer Focus Scotland. We await Brian Parr, group manager for private sector housing and investment at Glasgow City Council, who will represent the Convention of Scottish Local Authorities.

The witnesses are happy to go directly to questioning, so I ask Jim Tolson to ask the first question on behalf of the committee.

Jim Tolson (Dunfermline West) (LD): Good morning, gentlemen. Much of the casework that members receive that relates to factoring companies, including on the unfairness that members of the public who use factoring services perceive, is to do with whether the factor can be changed. In effect, the question is whether the person can sack the factor and move on. That is legally possible, but it seems to be very difficult, if not nigh-on impossible, to do. How easy is it for consumers to switch from one service provider to another if they are not satisfied with the factoring services that they have been provided with? What barriers exist under the land maintenance ownership model rather than the model in which residents jointly own the land? Will you provide the committee with an update on the test case that the OFT proposes?

Peter Lukacs (Office of Fair Trading): Good morning. In the OFT's market study on property managers in Scotland, we found that there were barriers to switching and that there was a very low level of switching between property managers, even relative to what happens in other sectors of the economy. We found that less than 1 per cent of people who employed a property manager switched each year, compared with significantly higher levels for utilities, for example. One of the reasons for that is obviously the need to agree collectively. The terms under which people can switch their property manager will often be determined by the deeds of the property. Sometimes a unanimous decision and sometimes a majority decision is required, but it is necessary to get agreement and that is not necessarily straightforward.

The difficult process is one of the reasons for the low level of switching. An additional difficulty is that the deeds and conditions are not necessarily written in a way that is familiar to consumers, so

one obstacle that consumers face is that they have to understand what they have to go through to switch their property manager. Those two factors combined lead to the low level of switching that occurs.

We found that if there is sufficient impetus and people know the route, those who have switched have not found the process to be particularly difficult, but those are the people who have had the necessary majority to switch and have found out about it—once they have tried to do it, they have not found it to be a difficult process .

With land maintenance, there are obviously additional issues. Often, a larger number of customers is involved—rather than there being eight flats in a block, there might be dozens of houses on an estate—so getting a majority is that much more difficult. An additional difficulty in a land maintenance model is that ownership is typically in the hands of a land maintenance company, so there must be mechanisms for transferring ownership. As part of the OFT market study, we made recommendations on a test case. I know that Consumer Focus Scotland has been exploring the possibilities for such a test case, so I leave it to Douglas White to expand on that.

Douglas White (Consumer Focus Scotland): Good morning. I echo much of what Peter Lukacs has said about the difficulties that home owners can face in switching their property manager. There are a number of reasons why it is a particularly difficult market in which to switch. The process can be complicated and is not the same in every block of houses or tenement block; it can differ from one to the other, so it is not always straightforward.

There is often a lack of awareness among consumers that switching is an option if they follow the process and take the necessary action.

As Peter Lukacs explained, to make a change, the process requires someone to get agreement among a majority of home owners in the block. That can be difficult to do, particularly in large blocks, so it is a difficult market to switch in, which is one reason why we would support some form of regulation in the market to protect consumers and to improve services for consumers to ensure that they receive the standard of service that they need to receive, regardless of whether they are able to switch provider.

On land maintenance companies, the recommendation for Consumer Focus Scotland to take a test case was made by the OFT prior to the final proposal for a bill being lodged in Parliament in January 2010. We believe that the bill offers an opportunity to clarify the legal position of consumers of land-owning maintenance companies and their ability to switch provider without going down the test-case route, which would be complex, lengthy and potentially costly for all involved. We would like the relevant provisions of the Title Conditions (Scotland) Act 2003 to be amended to make it clear that home owners who currently receive services from a land-owning maintenance company can switch provider through the same process as consumers of other property management services. We would like that point to be clarified in the bill, as we think the bill offers us an opportunity to clarify it.

Jim Tolson: On your final point, Mr White, most home owners have it written into their title deeds that they must engage a factoring company for maintenance whether of a block of flats, which you suggest might involve a dozen people, or of public open space, which in some parts of my constituency might involve about 200 or 300 households, which is a significant number. Would it be proper—and helpful to your organisations—for the bill to provide a level playing field? For example, it could state that 50 per cent of home owners would have to say that they wanted to change their factor, rather than 100 per cent or a very high percentage as is often the case at present. Would that be a better deal for the consumer?

Douglas White: I would not want to make a blanket statement that a single approach is the way forward; we would need to gain a deeper understanding of the specifics of each case. There might be specific reasons for a particular block having to meet a certain requirement before consumers are able to make the switch.

All consumers of property management services in general and of services provided by land-owning maintenance companies should have the opportunity to switch. However, there might be reasons why there are different set-ups in different blocks. Your suggestion might be something that we could explore, but I would not want to commit to that at the moment.

Jim Tolson: Joint spaces and public open spaces around blocks of flats are, in general, jointly owned by all the residents in the estate; it is normally written into their title deeds. On the surface, therefore, it seems that residents buy in a service to have those areas maintained. However, in situations in which residents do not own the land or the common spaces, and a third-party company owns them and charges residents to maintain them, is there a fair deal for customers?

Douglas White: The reason why we think that land-owning maintenance companies should be included in the bill is that—as Mr McLetchie neatly summarised at last week's meeting—many of the issues that customers who live in those spaces raise are to do with things such as cost, the quality of service that they receive and communication

with their service provider. Those are similar to the issues that consumers of property factor services raise, so it seems appropriate to use the bill as an opportunity to improve the way in which each of those things are handled on behalf of home owners, regardless of which model they live in.

There are clearly added complications around the ownership model, which is why we view the bill as an opportunity to clarify the position of consumers in relation to land-owning maintenance companies and give consumers the opportunity to switch from a provider if they wish, as consumers of the services of property management companies are able to do.

Jim Tolson: Mr Lukacs, do you have any views on that final point about land owners who own the land charging residents for its maintenance? Is that fair according to the OFT?

Peter Lukacs: When a developer is building an estate or a block, they must consider how it will be maintained on an on-going basis. There are a variety of different models: on some estates, the land has been handed back to the local authority for maintenance, while other estates operate a property factor model in which the land is owned by the residents in common and maintained on that basis.

I am not sure that the ownership is necessarily the key thing. As part of the OFT's market study, we recommended that when developers choose a model, they take into account the consequences. At the moment there are difficulties with the land maintenance model because the difficulties in switching provider are so extreme in that particular model. Therefore, that is a particular factor that developers should consider. However, I am less clear on whether that means that the model itself is inherently problematic.

The Convener: I will allow brief supplementaries from Bob Doris and Alasdair Morgan before we move to Malcolm Chisholm.

Bob Doris (Glasgow) (SNP): Mr White, you said that consumers need more clarity and transparency on how they can switch factors, and that the bill offers an opportunity to provide that. The obvious question to ask is whether that can be done without the registration that the bill implements. If a consumer wishes to switch just now, what kind of informed choice can they make about moving from one factor to another, which could be better or worse? Will registration bring with it informed choice and trust within the system?

10:15

Douglas White: As I am sure you are aware, when consumers want to move from one factor to another, even if they manage to overcome all the difficulties that we have mentioned, including difficulties with getting agreement among the other home owners, it is extremely difficult for them to know which factor will offer a better service than the one that they are using at present. The fact that there is no recognised, industry-wide set of standards helps to demonstrate that.

Provided that registration is carried out in the correct way, it can help to improve standards across the board so that consumers know that whichever factor they choose to switch to will meet the minimum required standards. One of the arguments for continuing to develop the accreditation scheme alongside any proposed regulation is that it would offer a further badge of quality and a further mark for consumers to look out for if they decide to switch factor.

Alasdair Morgan (South of Scotland) (SNP): Given the difficulties that you pointed out with changing factors, what will happen if the bill is enacted, a particular factor does not raise his standards despite your hopes that standards will rise, and ministers decide to remove him from the register? Where will the householders be then? What will they do?

Douglas White: That is a practical question that will have to be bottomed out as the bill goes through the process of being scrutinised and passed. Clearly, there would be various stages to go through if a factor did not meet the required standards as set out in the code of practice. I imagine that, initially, they would be given an opportunity to bring their services in line with the code of practice and to start delivering the level of service that home owners in the estate were looking for and need to receive.

Ultimately, if the factor simply was not meeting the required standards, the final sanction would be to deregister them. If that was to happen, we would want a mechanism built in that would allow the home owners to move on to a new factoring service. I am not sure that I can comment at the moment on the practicalities of how that would work, but it is certainly something that we need to think about. We certainly need to be aware that there has to be a mechanism in place for dealing with that.

Alasdair Morgan: Surely we need to do more than just think about it at this stage. Presumably, we would have to think about it and put it in the bill before it is enacted. Do you agree, or do you think that we should just leave it open?

Douglas White: I would imagine that you would want to have some provisions in the bill to handle that situation.

Alasdair Morgan: Do you have any idea what those provisions might look like?

Douglas White: I would simply be hypothesising at the moment, but I think that we would be looking to have a mechanism in place whereby another company or organisation would take on the factoring service from the factor who had been deregistered. There would be various practicalities to work out in terms of how that happened and the role of the home owners in selecting who the new factor would be, but we would certainly want to ensure that the factoring role was passed on to a company that met the required standards.

Alasdair Morgan: But I presume that the same majority provision that applies at the moment to the set of homes would apply in that situation. It might be a totality, in fact, so the owners might have a really big problem.

Douglas White: The legislation on that has not been drafted yet, so I am not sure what the position would be for home owners in that situation. We are entering a new area. The situation would not arise at the moment because there is no register for people to be deregistered from.

Alasdair Morgan: I want to pursue this important issue a little bit further, convener. Perhaps Mr Lukacs might also want to comment at this point. What if you have to deal with an intransigent ground maintenance factor who actually owns the land in question? The bill does not—and, I suspect, could not—contain any provision for dispossessing him of that land.

Peter Lukacs: Let me go back a step. The OFT identified an overwhelming need in the market for home owners to hold their property factor or land maintenance company to account if their problems are not being resolved or if they are still unsatisfied after they have complained to the property manager, and that need is addressed in the complaints and redress mechanism set out in part 2 of the bill. However, we felt that if such a mechanism allowing home owners to hold their property managers to account existed and was effective there was no need to add a registration scheme, as it would not really yield sufficient benefits to consumers to justify its costs. I simply want to put that in context with regard to your question. As I say, the OFT sees significant value in having a complaints and redress mechanism to which all property managers and land maintenance companies are subject, but does not recommend the introduction of a licensing or registration scheme in the bill.

You raise a good question about deregistration. Such a step would be really serious, particularly if we are talking about a large property manager covering thousands of home owners, and one has to wonder how often such a measure would be enforced. After all, it will not only punish the property manager, but leave the home owners involved in a difficult situation. That aspect of the scheme needs to be considered.

Alasdair Morgan: I just wonder—

The Convener: Alasdair, you are slightly taking advantage of me now. Your supplementary question is turning into a line of questioning, and other members might well want to follow up the issue.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): That particular theme is a fairly basic one. I want to begin with the OFT, which is leading the charge against a statutory system, and consider the arguments in its submission, some of which have already been highlighted. First, you suggest that there must be a big gap between the code of conduct and the accreditation standards that have been developed. However, I do not see how that necessarily follows. Obviously there might be slight variations, but why could the standards that have been developed for the accreditation system not just be adopted as the code of conduct?

Peter Lukacs: There are differences between a code of conduct for minimum standards with regard to statutory legislation and a code designed to achieve best practice in the industry. With a self-regulatory code, people in the industry are saying, "We are not just complying with basic law; we in the industry are doing—and can be trusted to do—a good job."

As part 1 of the bill makes clear, failure to comply with the code of conduct is a reason for deregistration. In other words, if a property manager does not comply with the code, they will no longer be able to practise as a property manager. It is one thing to say that someone is not following best practice; but to say that they are acting in a way that is so bad that they should be deregistered is quite a different matter. That is where I would expect the proposed code of conduct to differ from an accreditation scheme.

Malcolm Chisholm: So you feel that the standards that have been developed would not be suitable for a code of conduct. A lot of people assume that they would form the basis of the proposed code of conduct.

Peter Lukacs: They may well do so. Having looked at the core standards that form part of the accreditation scheme, I see that there is not an awful lot in those standards that one would not expect property managers to be doing routinely—although there are some things that go beyond that.

In the market study, we highlighted the importance of residents getting together in some kind of organisation, whether formal or informal, as

they get a better deal when they do that. One aspect of the accreditation scheme is that the property manager should facilitate the process. However, we would not necessarily say that if a property manager is not actively facilitating the process that makes them unfit to be a property manager. There are elements where it could be said that the accreditation scheme goes beyond the minimum requirements.

Malcolm Chisholm: I will ask you one more question before putting one to Consumer Focus Scotland.

The other main objections in your written submission seem to be related to cost. You are saying that, because of the cost factor—we will consider later the extent to which it might deter people—quite a lot of cowboys, as you call them, would not register, so there would still be a problem. Although there might well be a residual problem, surely far fewer factors would not register. On the other hand, under an accreditation system, a large number might not be willing to adopt the standards, there being no compulsion to do so.

Peter Lukacs: There are two elements to that. I agree that under a statutory system we would expect pretty much all property managers to sign up. We can imagine that very few people would work outside the system. Having said that, we have observed that the overwhelming majority of property managers who are covered by the accreditation scheme are represented on the working group—there are not significant groups of managers who are not engaging with or not directly represented on the working group. That gives us some reason to believe that a large part of the industry would be covered under the accreditation scheme.

Malcolm Chisholm: My main question for Consumer Focus is about the dispute resolution procedure, but I have another question before that. What are you suggesting with regard to switching? There are all sorts of conditions in place at the moment. Should people be able to switch at any point? Should there still be a time limit of one or two years before they can do so? Should there be no restriction on people's ability to switch?

Douglas White: There is a broader point here. Consumers need the ability to switch. At the moment, it is quite a complicated matter. They need to know that they have that ability, and they should know about the process that they must follow in order to switch. If the gaps in those areas can be tackled, that would support consumers to switch more.

Malcolm Chisholm: Is that at any point in the process, even after just a few months? I am not opposed to that, but I wonder what your view is. One of the main problems at the moment is that people are not allowed to switch for a certain number of years after a development starts being inhabited.

Douglas White: I am not sure that we have reached an organisational view on that. I do not know whether members are aware, but I am standing in for a colleague—the arrangements have been fairly last minute today. I can check that point and come back to you if that would be helpful.

Malcolm Chisholm: As I said, the main thing that I want to ask Consumer Focus about is dispute resolution. On other issues you support the bill, but on this one you take the view that an ombudsman system would be better. We have not yet asked many questions about dispute resolution, either last week or this week, but for part 2 of the bill it is important for us to understand the pros and cons of such a system. It was not entirely clear to me from your submission what you think the advantages or disadvantages of the bill's proposals are.

10:30

Douglas White: We agree with Peter Lukacs that the complaints aspect is hugely important. The data from the OFT market study show that about 53 per cent of people have cause to complain, that 35 per cent follow that up with a complaint and that two thirds of consumers who have gone through the complaints process are dissatisfied with it. That shows that reform of that element of the market is most fundamental, as it is one major concern—if not the major concern—for consumers. We are absolutely behind that principle.

As for the different models of dispute resolution, the bill proposes a panel. The concern that we expressed in our submission is that a panel would require support from public funding. We are not convinced that using public funding to establish a complaints mechanism for a private sector market is desirable.

The panel that the bill envisages is based on the private rented housing panel, which is used in the private rented sector. The Scottish Government's review of the private rented sector, which was published last year, found a low level of awareness of the panel among tenants—only one in 10 tenants knew about it. In contrast, the industry would fund an ombudsman scheme, as property managers would pay a fee each time the ombudsman investigated a case against them. Consumers understand more the concept and role of an ombudsman. In focus group discussions that we held recently about the draft standards for the

accreditation scheme, several consumers said without prompting that an ombudsman should be established to tackle some of the problems.

Those are some of the pros and cons that we have identified with different models.

Malcolm Chisholm: Do you suggest having a special ombudsman or using an existing ombudsman?

Douglas White: It might be possible to use existing ombudsmen. A model that uses existing ombudsman services was being considered for the complaints mechanism under the accreditation scheme.

Malcolm Chisholm: Would the ombudsman have enforcement powers against factors?

Douglas White: Powers are not always the same from ombudsman to ombudsman, but ombudsmen can certainly have the power to award compensation to consumers and to recommend remedies that should be put in place to address the detriment that consumers are suffering.

Malcolm Chisholm: I understand that cost is an issue, but the private rented housing panel is not very expensive to run. I accept that the panel could be better known, as you say, but research also shows that the work that it has done in the past few years has been highly effective. That should be borne in mind.

Douglas White: Absolutely. The private rented housing panel deals specifically with matters such as repairs in the private rented sector. The range of issues in relation to property managers that the panel would have to deal with could be broad, so the types of issues in which we would want the panel to have expertise could widen significantly. I am not sure whether that could be achieved at a low cost.

Peter Lukacs: We have not examined the panel that is proposed to take on complaints, so we do not have a particular view on it. In general, we think that the system must be robust, so it must be able to hold property managers to account; it must be able to enforce its findings, so it must have the option to penalise property managers who do misdeeds; and it must be seen to be independent.

I will mention a further measure that I have not seen in the bill. It is really helpful to make public the resolution of complaints, because one issue is ensuring that property managers understand what they are expected to do and home owners understand what the causes for complaint are. Publishing outcomes and findings educates people by allowing them to understand why decisions have been made—they can learn from decisions.

Mary Mulligan (Linlithgow) (Lab): I will ask a quick supplementary on the register before I move on to my question. Mr Lukacs seemed to suggest that a register was not preferable because you could be left without a property factor if the factor was removed from the register. If you do not do that, however, a group of residents who had difficulty with their factor might go through a fairly arduous process to remove them but the factor might be hired to deliver the same service to someone else, without those people knowing that the factor had not delivered the first time round. Why would the factor deliver the service for anybody else in the appropriate way? If there was a register, you would know that the factor was not able to fulfil their obligations.

Peter Lukacs: If an effective complaints and redress mechanism is in place and if, as the bill proposes, it covers all property managers and land maintenance companies, that affords home owners a reasonable degree of confidence that they can hold their property manager to account. If the findings are made public, they can see what past decisions have been made and, if they want, they can use those to inform their own decisions.

From that perspective, the key issue is that there is a mechanism for holding property managers to account. Our query, which comes back to the point that we raised about cost, is that if that is in place, we do not see that the additional benefits that the licensing and registration element would bring on top of the complaints redress mechanism would justify the additional costs of such a scheme and its enforcement. The point that we are making is that you go a large part of the way to helping consumers in this market by having a complaints redress mechanism. Adding a registration and licensing scheme adds on costs without necessarily delivering benefits.

Mary Mulligan: Like you, I hope that the dispute resolution process will be such that it will resolve any problems but I am concerned that, should that not be the case and residents have to remove their property factor, we are saying to residents groups that every one of them will have to take their own action to remove a factor who is clearly not able to do the job that they are supposed to be doing. If factors were registered and a factor had been deregistered, everyone would be aware of the situation.

Peter Lukacs: As I said, if the complaints redress mechanism is effective, when a group of residents makes a complaint and it is resolved by the complaints redress mechanism, that property manager will be deterred from acting in that way in the future, because they could again be subject to the same mechanism.

Mary Mulligan: You have greater faith than I have in the dispute resolution process for individuals.

I move on to my substantive question. In response to questions from my colleague Jim Tolson, both witnesses said that the terms under which people can switch their property manager would be in people's title deeds. I understand that, but an issue that has been raised with me on a number of occasions is that people are sometimes unaware of exactly what is in their title deeds and what the commitment is, both in respect of the resident and their payments and in respect of what the factor is obliged to do. Can we do anything to make people more aware, from the very beginning, of the obligations on both sides?

Peter Lukacs: A recommendation that we made as part of the market study was that an advice and mediation service should be created. We observed that there is such a service in England and Wales—the Leasehold Advisory Service or LEASE. As well as offering generic advice, LEASE is a service that flat owners can go to for advice on their lease and on how to go about setting up something such as a joint scheme. Such a service does not exist in Scotland.

Given that we are talking about complicated legal documents, we cannot expect home owners to know what their options are simply from reading them. It would be extremely helpful if such a service were available in Scotland.

Douglas White: I add that if the proposed registration scheme goes ahead and is accompanied by a code of practice, information provision to home owners would be an important element of that code. It should ensure that they are told clearly and at a very early stage exactly what services they will receive and what they will be charged for them, and the communication that they receive as their relationship with their property manager develops over time should continue to be clear and transparent so that they continue to have a clear understanding of those services and how much they pay for them.

I agree with Peter Lukacs that there is a wider issue about the need to help home owners develop a greater understanding of their rights and responsibilities in relation to common parts. I know that some of you will be aware that Consumer Focus Scotland has produced a guide for consumers on some of those issues. We are seeking to help address the problem in that way, but there is an issue that needs to be tackled.

Mary Mulligan: I welcome the proposal on information provision. This week, I met residents who have been in their homes for two years and who have only just been told that they have a factor, with the result that they now face two years' worth of bills. There is a problem as regards the knowledge that people have when they take on a new property or move into a new home. Would you like the bill to contain any more in that regard, or does it fully cover the issue?

Douglas White: Are you referring to information provision?

Mary Mulligan: Yes.

Douglas White: We need to think about that carefully. We want to ensure that the code of practice tackles the key issues for consumers and leads to improvement in the standard of service. Peter Lukacs alluded to the fact that the higher the level at which we set the code of practice, the more likely it is that additional costs will be incurred, which would be passed on to consumers. We must ensure that we pitch the code at the right level and that what we demand of property managers in the code will improve the quality of service that consumers receive. The suggestions that I made about information provision would help with that.

We should be careful not to put too many things in the code, as that would inevitably result in an increase in cost. It is a case of achieving a balance. We must ensure that we get the best outcome for consumers—an improved service—without a significant increase in costs.

Mary Mulligan: That was helpful.

David McLetchie (Edinburgh Pentlands) (Con): My normal inclination would be to support a voluntary accreditation scheme as opposed to a statutory scheme. That would be the case with a sector of good reputation and public standing, on which an accreditation scheme could build. In the context of the current debate about accreditation and statutory regulation, my problem is that we are talking about a sector that has a low reputational base, as measured by the volume of complaints that we have received in the evidence that we have taken to date and in our own postbags.

In that context, what confidence could one have that if one did not support the scheme that is proposed in the bill, an accreditation scheme would address in relatively short order and effectively the sort of complaints that we get and which we have heard about in evidence?

10:45

Douglas White: As members will be aware, the Scottish Consumer Council—one of our predecessor organisations—had been working on the issue for a long time, and we have long argued for some form of regulation in the market. We have been strong supporters of there being an accreditation scheme and have been on the Scottish Government working group that is

considering that. As Mr McLetchie suggests, the benefits of accreditation are that it encourages competition and choice in the market, that it could be implemented at a relatively low cost to consumers and that, among participating providers, it would improve standards and give access to a source of independent redress for home owners.

We are now of the view that the evidence on property management services and land maintenance companies shows that some form of statutory regulation is required. The delays in creating the accreditation scheme have contributed to our coming to that view. We have always recognised that there are limits to accreditation. Clearly, it will not prevent rogue providers who will not join an accreditation scheme from offering services; nor will it prevent people from entering the market without meeting a prescribed set of standards. In considering the standards for the accreditation scheme, consumers who have participated in recent focus group discussions that we have held, which I mentioned previously, have said that they would expect those standards to be enforced for all property managers. So, consumers are of the view that the same standards should apply to all.

Accreditation was first recommended by the housing improvement task force back in 2003. We are still hopeful that a scheme will be established soon, but it has been a long process to get here and, as the Property Managers Association Scotland representatives mentioned in their evidence last week, there seems to be a reluctance among those in the industry to take ownership of the scheme. So we are now of the mind that the consumer interest in the market would be best served by some form of statutory regulation.

David McLetchie: But you do not think that, Mr Lukacs. Can you persuade me why I should stick with the accreditation route instead of supporting the route in the bill?

Peter Lukacs: Let me explain where we were and where we are. At the time of the market study, we thought that there were problems across the industry. The fact that 53 per cent of home owners have problems shows that the issue is not confined to a couple of small rogues; it crosses the whole industry. We were looking for a scheme such as that which the Scottish Government had proposed, and, from talking to the participants in the industry, we thought that that was likely to get widespread support. The evidence is that the vast majority of the industry has been participating in the working group.

Nonetheless, we recognised that there was no certainty that that was going to come about or that any complaints redress mechanism that came out of that would prove to be robust and effective. Therefore, we said that we would like to see it in place and proving itself effective soon. However, 18 months down the line, there are still important things to be resolved. We are not wedded to a statutory or accreditation scheme approach. Our pragmatic view is to see what is the best way of securing an improvement for consumers. At this stage, we are comfortable with the idea of a statutory complaints and redress mechanism that would hold all property managers to account, as is set out in the bill. Our worry is that the addition of the regulation and licensing element will add costs without necessarily generating additional benefits for consumers.

David McLetchie: It has been suggested that housing associations should not be covered because they are already regulated through the Scottish Housing Regulator. As I understand it, many housing associations, either directly or through a subsidiary, also act as property factors or seek to win business as property factors in blocks of flats or estates that they do not own and manage. If we are to have a registration scheme, should they be covered by it? Should they be required to be registered as factors as well as being registered as owners and managers with the Scottish Housing Regulator?

Peter Lukacs: The definition in the bill says that, if you are carrying out a business as a property manager, the bill affects you. That seems to cover housing associations, but we observe that the complaints redress mechanism under the Scottish Public Services Ombudsman does not cover local authorities when they are engaged in property management activities, so there is a gap. We suggest that anybody who is carrying out property management as a business should be covered by the bill.

David McLetchie: Do you agree, Mr White?

Douglas White: Yes.

David McLetchie: Finally, what percentage of owners must be involved in order to switch factors? Is it appropriate to have a situation in which a majority of the owners must vote for a change as opposed to, say, a majority of the people who attend a meeting or grant a proxy for that meeting? In the former situation, in a sense, the indifferent all count as noes. In the latter situation, a decision can be made on the basis of those who are actively interested in the matter and the indifferent are excluded; because they are indifferent, they are not counted as a yes or a no.

Peter Lukacs: I do not have a particular view on that. What we need is a system in which residents can make effective decisions. I can see the issue that you raise, but I do not have a view on it.

Douglas White: I am in a similar position. Your question is reasonable. We want to encourage all home owners to participate in making such decisions and we want them to do so on an informed basis. We are keen for home owners to be given the opportunity to participate as much as they can rather than being excluded, but we appreciate that that can make it a challenge to get the level of agreement that is needed to make a change.

David McLetchie: They are not excluded. They are excluding themselves by their own indifference. That is my point. If you have a system in which, in effect, the indifferent count as noes, then by and large you will not effect change, and that will benefit the status quo. If you have a system whereby people have to participate or grant a proxy for a meeting, albeit subject to the achievement of some type of quorum, you create a situation where there is a greater likelihood of change and therefore a greater responsiveness to the customer or consumer. Is that not correct?

Douglas White: I absolutely appreciate where you are coming from with that point. My concern is simply that consumers might be not indifferent, but lacking the understanding, knowledge or confidence to participate in that way. We want them to be given the opportunity to contribute to the decision-making process and to do so in an informed way because they understand what they are engaging in. As we discussed earlier, consumers lack understanding of the process of change and what their rights and responsibilities are. If we can help to tackle that, it will help to place consumers in a better position to participate in the decision-making process.

David McLetchie: As I understand it, you have suggested to us that the bill should be the vehicle for adjusting the current provisions in the Title Conditions (Scotland) Act 2003. I presume that, if we are going to do that in order to make switching easier, we will have to come up with a formula to determine the switching mechanism.

Douglas White: Our point on a mending that act related to the land maintenance company situation and clarifying the position of consumers in relation to those companies in particular, as opposed to anything to do with the property factor market more generally.

David McLetchie: Thank you very much.

John Wilson (Central Scotland) (SNP): I am concerned that the bill will raise residents' expectations that the issues that they have with their property factors or land management companies will be resolved. From your experience and the research that has been done, what is the average size of groups of residents or owners involved in these property management and land management agreements? I want to get a feel for the number of residents who are grouped together under localised agreements and how that impacts at the local level.

Peter Lukacs: There is some information on the average size of blocks in the market study report. I am trying to remember that. I would like to come back to the committee on the matter, but I understand that roughly 35 per cent of people with property managers are in blocks of four and roughly the same percentage are in blocks of eight. A pretty small proportion are in large units of 100 or so. The large part of the market consists of relatively small blocks, but there are, obviously, people in large units.

Douglas White: I defer to Peter Lukacs on that. He has facts from the market study.

John Wilson: We talk about the registration and deregistration of property factors, but we do not have property factors for every block of four. Property factors will operate over a number of properties and probably over large geographical areas, so the experience of one group of residents or owner-occupiers may be different from that of another group. If a small group of residents is unhappy with a property factor or land management company, it may try to complain about that company. How would you deal with it if the company came back and said, "Oh, by the way, this is one group of residents out of 25 groups of residents that we factor for"? How can the bill deal with such issues? What would happen if small groups of residents had complaints, but the vast majority of people who used the company's services seemed to be happy?

Douglas White: The key element in the bill for dealing with such situations is the dispute resolution mechanism for complaints that have been brought by an owner or a group of owners. It is clear that the team that is in charge of monitoring and enforcing the registration scheme, wherever it is situated, will take into account complaints that have been received against that factor in deciding on a factor's suitability to provide services. In the type of situation that you highlight, in which the vast majority of owners who receive services from the factor are satisfied and a separate complaint from one group of home owners has been made and dealt with through the complaints resolution mechanism, I think that the team would determine that that factor was fit to continue to operate. However, the team would take into account any complaints that had been made against the factor in their analysis and monitoring of the system.

11:00

Peter Lukacs: I agree. The current complaints and redress mechanism enables not just groups of property owners but individuals to make a complaint against a property manager. We have found that when individuals complain about a property manager, the property manager sometimes says, "Well, you're the only one in the block who's complaining and therefore it's not a serious problem." However, it is a serious problem for that individual and they need to be able to hold their property manager to account.

John Wilson: That is the point that I am trying to make. An individual might feel aggrieved and make a complaint against a property factor where the rest of the residents are owner-occupiers and content with the factor. We might be raising the expectations of individual home owners that they can deal with their property factor through the individual complaints process that you described, whereas in reality no change can come about because there is no common complaint from a group of residents who are provided with that service by the property factor.

Peter Lukacs: The benefit of having publicly released findings of the complaints and redress panel mechanism is that there would be improved education about what individuals can expect from their property manager. If there are lots of people who are unhappy because they have an expectation of the property manager that is not shared by the rest of the block or does not reflect what their contract with the property manager is, that is an education process for that individual. In that way there would not be an expectation that complaints will be resolved in favour of the consumer. It might be shown that the consumer does not have reasonable expectations or that their complaint is unfounded.

John Wilson: As I said, it is about the expectation of what can be delivered versus reality.

My next point is about title deeds and ties in with what David McLetchie alluded to earlier. Many owner-occupiers are tied into title deeds. When people buy a house or flat they are not always taken through the title deeds in great detail by the lawyer or legal adviser who is assisting them to buy the property. When it comes to a dispute about what is expected of the owner-occupier in relation to factored services—whether land management or property related—it is sometimes difficult for the owner-occupier. That is particularly true if they have a mortgage, because the mortgage company squirrels away the title deeds in a vault and it usually costs the owner-occupier to access them. How do we resolve the situation when owner-occupiers have not been fully appraised of what the property factoring or land management agreements are? What do we do to allow access to the title deeds to clarify exactly what the obligations are for the owner-occupier?

Douglas White: That is one of the key issues that the accreditation scheme working group looked at. The problem can be looked at through that scheme and also, potentially, through the statutory regulation scheme. It might be built into the code of practice that the property manager is required to give clear information to the home owner, not just about the services that they provide and their fees, but what is expected of the home owner in that situation and what they can reasonably expect from their property manager. The complaints resolution mechanism, in its wider recommendations following a particular case, might also be able to make some points in that regard.

The Convener: As no other committee members wish to ask further questions of the panel, our session is at an end. I thank both witnesses for their attendance and the valuable evidence that they have given us.

11:04

Meeting suspended.

11:07

On resuming—

The Convener: I welcome our second panel of witnesses: Paula Hoogerbrugge from Greenbelt Group Action and Elizabeth Murray from the Stonelaw Court Owners Association. I hope that you will agree to move straight to questions. I invite Malcolm Chisholm to begin.

Malcolm Chisholm: I apologise for the fact that I will have to leave soon for about 20 minutes to answer questions from a visiting school group from my constituency. I thank the convener for letting me ask a question at the beginning of this session. I will read in the *Official Report* the bits that I miss later on.

I start with a general question: will you describe your experiences of the level and quality of the service provided by the property factor and, in particular, say what are the most common areas for dispute or disagreement?

Elizabeth Murray (Stonelaw Court Owners Association): I live in a block of retirement flats, known in law as sheltered housing. There are 43 flats in our development, which is only five years old. Our initial experience was not good. Our first factor was appointed by the developer and our concern in the first few years was whether they were working for us or the developer. That situation led us early on to establish a formal

owners association. We found that we were paying for services but doing the work ourselves. When there was follow-up snagging, we had to approach the National House-Building Council; the factor did not do it for us.

As time went on, things got worse and worse. We had to pay our factoring bill six months in advance. We had an annual budget meeting at which the budget was set and eventually we began to chase things up. One example was insurance. We said at a meeting with the factor that we thought that the premium was rather high and got the throwaway remark, "If you can do it better, do it yourselves". You do not say that to one of my neighbours—because he went and did it himself, and we discovered that our factor was taking a third of the premium as their fee for setting up that insurance. We know that it is generally the case in such circumstances for the person who sets up the policy to take only 12.5 per cent. Despite having our money up front, they also had the cheek to charge us £9.90 a month to pay the insurance premium monthly.

Because of the system of billing, we paid in September and then in March. Our financial year ended at the end of August and we did not get that year's accounts until the following January or February, making some of them almost 18 months old. How do you follow up accounts and invoices that are 18 months old when you want to question them? We might have grey hair, but we still have grey matter and did not want to be taken advantage of any more. I could give you more examples, but I will not.

We then had a secret ballot of all owners, and there was a 91 per cent vote to change factors. So, we have changed to a traditional Glasgow factor who, I am pleased to say, is in favour of the bill and wants to be fully registered. We want that, too. We also want a code of practice so that we know what good practice is. I know from experience that a code of practice works. I presently sit on a tribunal for additional support needs and I am an adjudicator. These systems work and a code of practice works. You know your entitlement and what you can fight for. At the moment, we are just pouring money down a hole and we have very little comeback.

Paula Hoogerbrugge (Greenbelt Group Action): I live on an estate that is managed and maintained by a land-owning and land maintenance company called Greenbelt Group, which is probably the largest organisation of its kind in Scotland—indeed, we suspect, in the United Kingdom.

I moved into my home about seven years ago. A few years after moving in, I received an invoice from the company that was quite threatening. It told me that I had to pay the company a sum of money up front for maintaining tiny pockets of open space and woodland on my estate. I had not been informed about that at the point of sale or by my solicitor, so I referred to my title deeds and found that they contained quite extensive burdens that mandated me to pay that company—and only that company—in perpetuity for the maintenance of those areas around my estate.

It was not like any contract that I had encountered before. There was no price in it and no means of escape. In effect, it looked like a monopoly. So, I set about trying to find out something about the situation and whether there was any legislation governing my relationship with the company. I thought that it could not be only me who thought that there was something wrong with it, so I launched a website to find out whether other estates were having problems with the company. Within weeks, I was absolutely deluged by reports from people from throughout the country of similar problems and confusion with the company. We are now in touch with about 150 estates across the UK—although most are in Scotland—where people are experiencing problems with Greenbelt Group.

We have also set up websites to unite us with home owners who are experiencing problems with other land-owning and land maintenance companies. We have had thousands of complaints about Greenbelt Group but we have had only two complaints about the two other known players in the field. The question that I am asked again and again is, "How do I get rid of them? How do I switch provider?" That is far and away the most common question. People are being charged up front for services that are not delivered and it is impossible to negotiate with the company. The managing director has stated publicly, on a number of occasions, that, because of the nature of our relationship with the company, we are under a direct burden to pay it, whether or not it delivers services.

One of the key points about this company is that it does not use the court system as a traditional factor might; it avoids the courts. Of a customer base of about 50,000, we know of only six cases that the company has attempted to take to court, all of which have fallen through for one reason or another. The company is now approaching people's mortgage providers to see whether it can reclaim moneys by adding them to the mortgage. Those are the kind of problems that we are experiencing.

The biggest problem is that there is no obvious route in law for us to use to switch providers. Although it looks as if the Title Conditions (Scotland) Act 2003 was set up to attempt to prevent the inclusion of on-going monopoly scenarios in title deeds, there are little wormholes

or workarounds in the act that mean that the company can still operate in the way that it does.

11:15

Malcolm Chisholm: Thanks very much for that. I do not have any experience of Greenbelt in my constituency, but some of the things that Elizabeth Murray talked about are familiar to me from my experience of factors in my constituency.

I have to leave, but I will come back in 20 minutes.

Alasdair Morgan: I have a supplementary question for Mrs Murray. I did not quite understand what you said at the end of your statement. I thought that you said throughout it that you were happy with your new factor. Is that right? Is it the case that you no longer feel that you are pouring money down the drain?

Elizabeth Murray: We are relatively happy with our new factor. I moved from a non-factored property to a factored property thinking that, at my stage in life, I would be able to sit back and get the garden done and the windows cleaned and that I could go on holiday and my house would be looked after. I did not think that I would have to attend residents committee meetings once a month and chase up the factor.

Although our new factor is far better than our old one, they are still not perfect. I have no doubt that there will be problems in the future—minor ones that we can sort out through amicable discussion, I hope. I still feel that there is an absolute need for registration of factors. After all, your house is the most expensive item that you will ever own, so you want it to be looked after by people who are registered.

I really cannot see why there is a problem with having official registration. After all, doctors, lawyers and teachers are registered. There is even talk of registering the people who help you to write your will. In the case of elderly people such as me, if factors are not controlled, we will have nothing left to pass on to our heirs, because our service charges will continue to escalate. I fear that the service that we get will diminish if we do not have some control—and backing if we need it. A code of practice with legal backing would be so desirable, because we could say to factors, "This is our expectation of you and we expect you to deliver it."

Mary Mulligan: Good morning. You suggested that if, at the end of the day, the problems persisted, you would want to be able to switch factors. I want to take you back a step and ask about your experiences of resolving disputes. Having looked at the bill, do you think that the provisions around dispute resolution would have benefited you when you had your initial problems, Mrs Murray, and would they help you with your on-going problems, Ms Hoogerbrugge?

Paula Hoogerbrugge: In our situation, there is no obvious mechanism in law for us to use to resolve disputes. One owner has attempted to try to thrash the problem out in the courts, but nearly a year and a half on, he is still attempting to do that. That has proved to us the problems of trying to seek solutions in the sheriff court system. Some other form of legislation or dispute resolution mechanism would be absolutely fantastic for people in our situation.

I spotted in the bill that there is going to be a deterrent that prevents people from bringing back an issue again and again. I appreciate that that might be valid in traditional factoring situations, but because customers such as us have no means of escape, we might have to bring back the same problem, perhaps annually. We ask you to look at that element in light of our circumstances.

Mary Mulligan: That is helpful.

Elizabeth Murray: Our previous factor put in place a dispute resolution mechanism that was very similar to the local government mechanism. We could go from one stage to the next, but it was all within the company; there was no external adjudicator or mediator. We never got to the stage of using it because we had the facility and the will to change things. We had early access to our title deeds because of another matter, and we were aware of the legislation because other sheltered housing residents came to the Parliament when the Tenements (Scotland) Bill was introduced. That helped us to have the ballot and change things.

Mary Mulligan: That is helpful. You said that you did not use the dispute resolution service. Is what is in the bill more helpful to you, given the independent element?

Elizabeth Murray: Yes. I like the independent mediation and adjudication in the bill. That might stop vexatious claims, and I think that it would lead to resolution. It might also mean that the tenant or owner might not get what they were looking for—the factor might be the winner, if we are talking about winners and losers—but people would feel that they had had a fair hearing.

Mary Mulligan: When you were looking to change your factor, how easy was it to know who you could change to? How confident were you that they would be any better?

Elizabeth Murray: We asked owners in similar properties about their factors. We, too, are on the internet—we are silver surfers—and had seen the complaints about the company that we were with. We asked about and, as a committee, we invited

two companies to give us a presentation. We then asked one of them to give all the owners a presentation. Following that, we moved to a ballot and decided to move to a traditional Glasgow factor.

Mary Mulligan: That is helpful.

Jim Tolson: Good morning, ladies.

It is rare to hear of a group of residents that manages to switch factor—that is interesting, from the perspective of the evidence that we heard earlier. In trying to switch provider, what obstacles did you encounter and, in Mrs Murray's case, manage to overcome?

Elizabeth Murray: We did not have too many obstacles, given that we were not getting a very good service. I cited the example of insurance, but there were other things, so you can imagine that the situation was escalating. A lot of our problems were because our property manager was managing between 20 and 25 properties—it was all "Mañana, mañana, mañana." There were no real obstacles. We just had to collect enough hard evidence to persuade other owners. If I describe them as disinterested, I sound as if I am doing them down but, as you will appreciate, in sheltered housing, we have some neighbours who are in their 80s and 90s and who did not expect to have to do this. Those of us who are more active did a lot of the research, but there was no problem when we held the ballot. At the time, we had two empty flats. We approached the solicitors who were dealing with the sales and gave them the facts; from the result of the ballot, we know that the owners must have voted for the change. Two people did not return ballot papers, but everyone else did. Although some of them were not particularly interested, they felt that this was an important matter.

We had a small, active group that was prepared to do the research and to put in the work. I appreciate that that is not the case in every property. My feeling—I have no evidence to back it up—is that, in the past, there has not been a change of factor in retirement properties because of the nature of the population that lives there. It would have been too much effort for those people to do what we did.

Paula Hoogerbrugge: My problems with Greenbelt started in spring of 2007, about two and a half years after the Title Conditions (Scotland) Act 2003 came into force. At the time, it was a very new piece of legislation. Our initial problem was finding solicitors who could give us advice on how it worked. We worked with the Scottish Government to understand the 2003 act a little, over weeks, months and, effectively, years. There is a lack of clarity about our rights to sack and replace a provider.

We also tried to work with factors, to see whether they would be prepared to manage areas of land that the company owns. Basically, they said that they could not maintain land that was owned by someone else and that we had no right to instruct them to look after such areas. That was the main problem for us.

Jim Tolson: I understand that. As I mentioned in last week's evidence session, many factoring companies—Hacking and Paterson, Greenbelt and many others—are active in my constituency. I am sure that most of them provide a good service, but I get a significant amount of negative mail from constituents raising concerns about some of them. I know that other members have had a similar experience.

When you were looking to purchase your properties, did you get any feedback from the sales agent, the estate agent or even your conveyancing solicitor on the charges that you were about to face, which were written into your title deeds and which you were required to take on board? Do you consider that in-perpetuity maintenance—by a local authority, for example—which was mentioned earlier today, would be a better option, even if that cost were added to the cost of your property and spread over your mortgage?

Paula Hoogerbrugge: I bought my property second hand—although it was a new build, I was not the first owner. My solicitor gave me my title deeds about a week before I moved into the property and told me to let them know if I came across anything of concern. You take it on trust that, because something is in the deeds, it must be okay. There seemed to be provision for a dispute resolution mechanism—which was not valid—but I was already committed to buying the property anyway. Having worked with home owners across Scotland, we know that developers are not up front at the point of sale, when people are signing the missives and committing themselves to properties, about either the nature or the costs of such agreements. That is a problem for people.

You asked whether another method, such as in-perpetuity care by a local authority, would be preferable. People would be overwhelmingly in favour of that model.

One of the big problems with our model is that some very expensive parts of public infrastructure, such as sustainable urban drainage system ponds and flood defence systems, are being put into the care of one particular community, which has to pay for them although they might benefit many different communities, a whole town or a number of towns. We feel that putting the onus for the care of high capital maintenance pieces of public

infrastructure on one tiny population is not necessarily the best model to follow.

11:30

Elizabeth Murray: I bought my property new and the salespeople advised me of what the service charge would be. With regard to the title deeds, because it was a new property, the title deeds were signed four weeks before my purchase was completed. However, because of the delay at the land registry in registering new properties, it was two years down the line before the title deeds became available. That is the practice all over Scotland. In fact, I think that you would find that, hitherto, the land registry was taking even longer than two years to register new properties.

We did not really know what kind of service we would get, but the developer that I purchased my property from has what looks like a permanent link to our factor. That is why we had doubts about who the factor was working for—they obviously do not want to upset the developer as they want to factor the next development. The factor is an England-based company, although it has a Scottish office, and we initially had the terms "freehold" and "leasehold" thrust at us all the time. That was a big problem that we had to overcome at the beginning: we had to establish that we were the owners.

In retirement properties, you would probably find that no one has a mortgage. Most of us are in the lucky position of having paid our mortgages during our working lives and have had property to sell or have downsized. Therefore, mortgage companies do not always come into our arena and we have to fight for ourselves and our heirs. In some cases, we have had to call on our heirs to come to our assistance.

Jim Tolson: In a way, I am glad to hear that you both had at least some indication of what charges and so on you might face. From the significant case load that I have, I know that the majority of people say that that does not happen. You are both involved with organisations that look at the wider community. In your involvement with the wider community in dealing with these problems, do you find that most owners have, like yourselves, had information up front—either through their title deeds or at the point of sale—or does that often not happen?

Paula Hoogerbrugge: One of the big problems with our deeds is that there is no starting price, so the company can effectively impose any price that it plucks out of the air. As the OFT report said, the company bases its pricing structure not on what services cost to provide but on how much it thinks the community will tolerate. We have no ability to use normal market forces to negotiate the price down or to switch provider. We are not told at any point how much we have to pay until the company informs us; we are in the dark.

Elizabeth Murray: For most properties, if the purchasing solicitor does their homework, the person coming in should know. In retirement properties such as mine, where there is a service charge, it is incumbent on the purchaser's solicitor to provide that information. If the solicitor whom the purchaser has employed does not do that, I would say that the purchaser would have recourse through the Law Society of Scotland to do something about them—albeit that it might be a bit late. Our present factor has assured us that, when someone purchases an empty flat, the factor furnishes the purchaser's solicitor with full details of the present expense.

Our previous factor set the factoring charge. It might interest the committee to know that, for 43 flats, we were charged £10,000 a year. Two years ago, that factor unilaterally imposed—just before we left it—a 4 per cent increase. When we tried to negotiate and argue against that, the factor told us that that was what the charge would be.

Our property manager managed 20 to 25 properties and ours was a smaller one, so she brought into her firm £250,000. Her firm employed three people across Scotland to do only retirement properties and so on. That is a sizeable income to a factoring company from three people. People who buy property do not always think carefully about the service charge, which must be paid in perpetuity. That can be a heavy burden when people are retired and have a fixed income.

Jim Tolson: Thank you both. That has been enlightening.

David McLetchie: Good morning, ladies. Ms Hoogerbrugge said that, when she used the net to find other people in the country who were experiencing the problems that she had identified, she found that few complaints were made about other companies that used the land maintenance model and that almost all the complaints focused on Greenbelt. Is that correct?

Paula Hoogerbrugge: That is right. We used a freedom of information request to try to work out whether any other companies operate in this incredibly lucrative arena. Greenbelt admitted that possibly five other companies use the same model, so we set up websites that might catch and harness complaints from customers who were beholden to other providers. As I said, we received thousands and thousands of complaints about one provider—Greenbelt Group—which is the largest. I have had only two complaints about two other companies.

Recently, we have uncovered the fact that Greenbelt Group acts as a land bank for most major developers. That might explain why only one company has emerged to dominate the market. One big reason why we suspect that developers opt for the model is that they look for a safe home for land that is an open space at the moment but which might become developable. We have copies of the underlying contracts between Greenbelt Group and developers, which I would be happy to make available.

David McLetchie: What proportion of the market does Greenbelt have relative to the other five companies?

Paula Hoogerbrugge: Greenbelt Group has the vast majority of the market. The only other providers of which we know in Scotland are Ethical Maintenance, which has probably a few hundred customers—if that—and Scottish Woodlands Ltd, which takes over wooded areas and about which we have not had a single complaint.

An interesting aspect of the situation is that we are always looking at a snapshot, as it were, of what developers were doing three years ago, because it takes time for people to be billed by the companies. For example, this week we came across an instance of a traditional factor—Hacking and Paterson Management Services—that now operates a land-owning and land maintenance model. In the weeks and months to come, we suspect that we will see more examples of traditional factors operating that model. The reason for that, I suspect, is that the bulk of the bad publicity about Greenbelt Group happened about three years ago, which is probably when developers looked to find a sustainable safe solution by using other companies to provide security for the land and on-going maintenance.

David McLetchie: Is the model itself inherently flawed—this perhaps relates to the answer that you gave to Mr Tolson—or can the model operate satisfactorily, given the appropriate land-owning management company? Is the problem really with the specific company with which you have had to be involved?

Paula Hoogerbrugge: I think that the entire industry is inherently flawed and that specific legislation is needed to deal with the particular abuses and difficulties that we face. The major problems are our inability to switch provider, the nervousness that communities have about bringing in factors to manage other people's land and their reluctance in principle to do that. The other major problem for us is that communities are inheriting very complex features such as sustainable drainage system ponds, other drainage systems and large forest areas. People will find it difficult to commission services to look after such features.

David McLetchie: On the difficulties of switching, when I asked Mr Middleton about that directly during our evidence session last week, he said that Greenbelt does not use its ownership of common areas in a monopolistic way and would not prevent people from switching. He said that Greenbelt would facilitate the transfer of the common areas to a residents association or some other vehicle that is owned and controlled by the individual house owners. His evidence—if I may state it as fairly as I can—was that Greenbelt was prepared to facilitate such switching, but the problem was that when it came to the bit no transfer arose: in the last analysis, owners were not prepared to take on the responsibility. Can you comment on that? What has been your experience of that?

Paula Hoogerbrugge: When the original problems started to be uncovered a few years ago, in a bid to make itself more acceptable and to avoid legislation Greenbelt Group published a series of what it called customer options, one of which was that it would, at its own discretion, allow home owners to switch provider. Over the more than two years when those options have been in place, not a single community has taken them up. The options have also been branded by the Scottish Government as misleading in law, so I think that there are major flaws in them.

One of the initial stumbling blocks when our community considered that option was that Greenbelt Group insisted that all debt must be repaid before it would allow home owners to enter into discussions on the options. However, what a company such as Greenbelt Group might call debt might also be called demands for payment for services not rendered. We need some automatic mechanism in law and rights in law that allow us to make such a switch. We do not want to be beholden to the discretion of a company that holds a monopoly—in every sense of the word—over us.

David McLetchie: That is a fair point, but what rights in law could be laid down to effect such a transfer under a land ownership model? In other words, what do you want us to enact to facilitate a transfer that does not exist in the options paper that Greenbelt set out and that no one has taken up?

11:45

Paula Hoogerbrugge: Amendments could be made to the Title Conditions (Scotland) Act 2003 to allow a community to fire its service provider on a two-thirds majority, which is what people in traditional factoring arrangements would do under that legislation. We would also need a second stage that would allow us automatic rights to appoint a provider of our choice for land that we are burdened to maintain, whether or not we own

that land. That would be fairly straightforward to effect.

David McLetchie: So, you want a situation in which—for the sake of argument—Greenbelt Group would remain the owner of the land but in which the individual householders would be able to say, "You are no longer maintaining your land. We are appointing a factor to maintain that land and all the common parts, which we are paying for." That would leave Greenbelt Group as the landowner—is that what you want to do?

Paula Hoogerbrugge: Yes, although the word "want" is debatable in that we do not support the whole land-owning and land maintenance model. However, given that we are now in that situation and that tens of thousands of people have these burdens in their deeds, what you have outlined would be a useful mechanism for people who are already caught in the trap.

David McLetchie: If we introduced that model, Greenbelt Group, as the landowner but not the land manager, would still have legal responsibilities not just to you but to any member of the public who came on to the common areas. How would it be covered for the cost of the residual responsibilities that it, like any other landowner, would have?

Paula Hoogerbrugge: Could you outline one of the responsibilities that you are thinking of?

David McLetchie: You are talking about complex areas of infrastructure and, ultimately, the landowner would be responsible for the safety of people who came on to the land. Landowners can find themselves the subject of legal claims if areas of their land are not safely fenced off or if trees are not properly maintained and fall down, injuring people or damaging property. There are loads of reasons for which landowners can be sued. Under the situation that you describe, Greenbelt Group would be unable to subcontract that liability to a land management company.

Paula Hoogerbrugge: That is a very good point, and it is one of the blockers that communities have faced in considering the options. They are not prepared to take the responsibility or liability for managing someone else's land.

David McLetchie: Exactly. So, how do we resolve the problem? You seem to be confirming what Greenbelt Group said to us in evidence last week. When it comes to the bit, people are not taking up the option of ownership because they do not want the responsibility and liability that go with ownership. If your associations are not prepared to do that—if you just want to run the factoring but not to be the landowners—I am not sure how we will get out of this limbo.

Paula Hoogerbrugge: I think that communities would be prepared to take responsibility as the landowners if the land were to be transferred to them, although that might be more problematic in estates where there is a large SUDS pond, a flood defence system or a large forest. Communities have expressed interest in taking ownership and full responsibility and liability for those areas; however, there are problems in getting communities to want to take responsibility for managing someone else's land.

David McLetchie: Yes, I can see that. To be honest, I am not wholly convinced that the scheme that you propose is a perfect resolution of the problem.

The Convener: John Wilson has a brief supplementary question on that.

John Wilson: It is a very brief question. Ms Hoogerbrugge indicated earlier that she feels that Greenbelt is being used by some developers to bank land for possible future development. Does your group have any evidence for that, and have there been any discussions with developers regarding the method of land management that they have adopted in which it falls to residents to pay?

Paula Hoogerbrugge: On the first point, it was Greenbelt Group's own solicitors that gave us an underlying contract between a developer and the company that showed that the developer had transferred open spaces to Greenbelt Group for a peppercorn sum and that, should it be successful in gaining planning permission to build on the open spaces, the land would be transferred back from Greenbelt Group to the developer, again for a peppercorn sum. I have made that document available to the Scottish Government, and I am happy to make it available to the committee.

Once we had that document in our possession, we spoke to other developers, which have confirmed that they operate in exactly the same way. We suspect that it is the industry norm. A recent FOI request shows that Greenbelt Group operates a similar arrangement for certain areas of land formerly owned by Scottish Enterprise. The model is established and has been operating for a long time; it is just that we are now aware of it and can prove it.

I suppose that there are, in the model, other advantages to developers, in as much as they are not having to pay commutable sums up front to local authorities to take on the land. There were arrangements in the past whereby developers transferred land to communities, but those arrangements sometimes broke down. The advice that we have from planning officials is that developers always remain responsible for the land maintenance solution that they put in, so they are

ultimately responsible for its success or failure. If the land maintenance arrangements failed and a community owned the land, the chances are that any enforcement action would be taken against the developer instead of the community. In the model in question, the developers offload a lot of responsibility—it is all win for the developer.

John Wilson: Thank you. I would be grateful for copies of the material to which you have referred.

Paula Hoogerbrugge: I would be happy to supply it.

Alasdair Morgan: I suppose that this comment is to stretch out the last point that Mr McLetchie made. There seems to be a difference between what you are suggesting and the case that Mrs Murray raised in which the owners already own everything in the block of flats. In that case, if you have a vote and there was not unanimity, all that you would transfer to the unwilling voters—the "No" voters—would be the change of factor. However, the other case brings the thought of changing the ownership of a piece of land, including SUDS and the burdens that go with that, to the owners of all the properties that feed into that SUDS. It would be incredibly difficult to enact legislation that would allow that to happen if one person stood out against it—even assuming you could get over what was, in effect, the nationalisation and municipalisation of land that belonged to somebody else.

It also strikes me that, although the developer might have obligations to the local authority in maintaining the land, developers may not be there 20 years hence when the problems begin to arise. At the least the owner of the land will still be there—somebody will own it. If your solution was agreed, that owner would be all the residents. I can see why residents would not want to have themselves being faced with the burden of being responsible not only for their house but for all the urban drainage around about it.

Paula Hoogerbrugge: Yes. The whole system is fundamentally flawed and needs to be reviewed. I am not suggesting that the solution that we discussed today is necessarily the right one; a root-and-branch review of the current method of land management is needed. We need changes to policy as well as to legislation, to prevent major parts of the public infrastructure from being put into the hands of perhaps 30 people, who would have to bear the costs.

The Convener: Are there no more questions from members? I am sorry, I forgot about Bob Doris; there were so many supplementaries that I stopped using my list.

Bob Doris: I have been quite restrained today and Mr McLetchie asked most of the questions that I wanted to ask, but I have one question. I was struck when Elizabeth Murray said that a third of the insurance premium that she was paying to her former factor represented the fee for organising the premium. You said that the industry standard for such fees is 12.5 per cent. How did you go about digging out that information?

Elizabeth Murray: When the throwaway remark, "If you can do it better, do it yourselves" was made, we went to a local broker, who did his job and investigated what it would cost to insure our property. We had an exact valuation, because a few months previously our factor had had our property revalued—without our permission and consent, and had charged us £750. The broker got quotes for us, one of which was from the company that was insuring our property, so we were able to compare what the company said it would charge with what we were being charged. That was when what was happening came to light. We challenged the factor, who admitted what they were taking. The gentleman who was doing the work for us told us that it was their normal practice to take 12.5 per cent of the premium—they have to have a fee for the work that they do. We circulated the information round the flats on the Thursday evening, and it was interesting that by the following Monday our factor had come back with a revised quote for the insurance.

Bob Doris: That is illuminating. I liked your choice of word when you said that the factor "admitted" that a third of the premium was their fee. When they had given you the quote for your insurance, I take it that nothing in it intimated that £1 in every £3 would go straight into the factor's pocket.

Elizabeth Murray: The only indication that we had was an annual budget statement, which was similar to the statements that local government uses, in that it showed amounts set against headings. Some of the charges are quite evident and open. For example, we have a common laundry and we have lights in our corridors—there is common electricity. We also have telephone lines attached to our pull cords. Those charges are evident; we can see the telephone bills. The other items that we are charged for include pull cords, pendants and so on. Because of the nature of our property, those services are owned by the factoring firm. We did not have clear indications of that.

Bob Doris: I asked the question because many home owners feel that their factors are ripping them off but can never quite quantify it. They just know that the bills keep coming. However, you were able to quantify the extent to which you were being ripped off.

That brings us back to the billing process. Transparent itemised billing is one thing, and the home owner can say, "Whoah! That's quite

expensive", but it is another thing to take the next step and expose the amount of profiteering that is going on. I commend you for doing that. Should there be an industry standard for billing, so that factors itemise not just the charges but their fee for arranging each service? Should a trade standard be included, so that people can compare what their factors are charging with the trade standard? Your factor was charging 30 per cent when the trade standard was 12.5 per cent. We are asking credit card companies, mortgage companies and energy companies to be clearer about their billing and charging processes. Should factors also be required to do that?

12:00

Elizabeth Murray: Yes. They should make it clear exactly what people are paying for. I am a volunteer at a citizens advice bureau, so I have experience of other factoring issues in Glasgow when people have bought what was previously council housing. There is a desperate need for openness in the accounts that people get. Having had the experience of trying to help someone to get open and honest accounts for work that has been done, I know that it is very difficult.

I cannot say that we are having the same experience because now that we have moved to a traditional factor we get quarterly accounts that we can peruse, but there should be more openness where factors set up insurance or provide any service. As you can imagine, when we discovered what was happening with the insurance, we wondered what percentage the factor was getting for the lift maintenance, our pull cords and other services. We did not dig any further because the action that we took was to move to someone else, but we would dig in the future if we thought that there was a problem.

There is definitely a need for openness and transparency. Factors should have to put on the table what people are being charged so that they know that they are paying a fare share, that they are not being asked to pay someone else's share, and that someone further along the line is not making a big profit.

Bob Doris: Let us hope that honest and transparent billing will save people such as you from having to do further digging in the future. Thank you for that. I found it interesting and helpful.

The Convener: There are no other questions from the committee. I thank the witnesses for their attendance and the valuable evidence that they have provided.

Subordinate Legislation

Notice to Local Authorities (Scotland) Amendment Regulations 2010 (SSI 2010/251)

Lay Representation in Proceedings relating to Residential Property (Scotland) Order 2010 (SSI 2010/264)

Charities Accounts (Scotland) Amendment Regulations 2010 (SSI 2010/287)

12:02

The Convener: Agenda item 3 is consideration of three items of subordinate legislation under the negative procedure. Members have raised no concerns on the instruments and the Subordinate Legislation Committee has not drawn the Parliament's attention to them on any of the grounds in its remit.

Do members agree that we do not wish to make any recommendation on any of the instruments?

Members *indicated agreement.*

The Convener: I remind members that we agreed earlier that we would move into private session for item 4.

12:03

Meeting continued in private until 12:42.

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