The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 5 March 2013

Session 4

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CONTENTS

JUSTICE COMMITTEE
7th Meeting 2013, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Colin Keir (Edinburgh Western) (SNP)
Alison McInnes (North East Scotland) (LD)
David McLetchie (Lothian) (Con)
*Graeme Pearson (South Scotland) (Lab)
*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alison Brynes (Scottish Federation of Housing Associations)
David Doran (Hacking and Paterson Management Services)
Alex Middleton (Greenbelt Holdings Ltd)
Wendy Quinn (Greenbelt Group Ltd)
Jennifer Russell (YourPlace Property Management)
Kevin Wilkinson (Ethical Maintenance)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 5

Scottish Parliament

Justice Committee

Tuesday 5 March 2013

[The Convener *opened the meeting at 10:18*]

Decision on Taking Business in Private

The Convener (Christine Grahame): I welcome everyone to the seventh meeting of the Justice Committee in 2013. I ask everyone to switch off completely mobile phones and other electronic devices, because they interfere with the broadcasting system even when they are switched to silent. I hope that mine is off, but I am not sure—we will find out. It is a new gadget.

We have received apologies from Alison McInnes and David McLetchie.

Item 1 is a decision on whether to take item 5 in private. It is proposed that we take the item in private because it relates to consideration of an approach paper and we might discuss potential witnesses.

Graeme Pearson (South Scotland) (Lab): Your explanation of why we might want to take the item in private was helpful and allows us to understand the logic behind the proposal. You have saved me from asking the question that I was going to ask.

The Convener: We will also be considering two pieces of correspondence, which I do not think are in the public domain. I want us to be able to discuss them. Thank you very much.

Subordinate Legislation

Police Service of Scotland Regulations 2013 (SSI 2013/35)

Police Service of Scotland (Promotion) Regulations 2013 (SSI 2013/39)

Police Service of Scotland (Special Constables) Regulations 2013 (SSI 2013/43)

10:20

The Convener: We will now consider three Scottish statutory instruments that are subject to the negative resolution procedure and which arise from the Police and Fire Reform (Scotland) Act 2012. Members will see from their papers that the Subordinate Legislation Committee has drawn our attention to SSI 2013/35 on a number of grounds—that is an understatement—including defective drafting, and to SSI 2013/43 on the ground of one drafting error. On both instruments, the SLC said:

"It appeared to the Committee that the meaning of 'dependant' was unclear",

in relation to a constable or special constable's business interests, and suggested that the Justice Committee might want to consider the practical effect of that.

The Scottish Government wrote to the SLC and copied its letter to this committee yesterday, to confirm that it intends to lay amending regulations as soon as possible after the SLC completes its consideration of the police and fire reform instruments. The letter was circulated to members electronically; I hope that you all have it—it has funny letters at the top.

Are there any comments on the instruments? If not, are members content to make no recommendation on them? We will see what comes next. The clerk has indicated that the amending regulations will come to us, so we will have the opportunity to consider them then. Are members content with that?

Members *indicated agreement.*

Policing (Correspondence)

10:21

The Convener: Item 3 is consideration of correspondence from the Scottish Police Authority on the "codicil" to which it referred in its earlier correspondence on responsibility for human resources and finance. Members will remember that we asked the SPA for a copy of the full document or exchange of correspondence that comprises the codicil. The SPA has provided a copy of correspondence from the Scottish Government and its response to that letter, both dated 17 January. Do members have comments?

Graeme Pearson: Where do we start?

The Convener: At the beginning, and we finish at the end. There might be a middle.

Graeme Pearson: May I come in after other members have commented?

The Convener: My first, brief comment is that it has taken an awful long time to get to where we are, and I do not know why. Members might want to expand on that.

John Finnie (Highlands and Islands) (Ind): It is a bit of a damp squib, at the end of the day, and I cannot understand the reticence.

The language that is used by committee members and the people from whom we seek information is terribly important. We need to see more willingness. I note that Mr Emery wrote:

"I am a little disappointed that the Committee does not feel able to meet with the wider membership of the SPA board."

I think that the committee is more than a little disappointed by the dealings thus far.

I am sure that we will have good relations, but it is important that there is a flow of information and that when the committee requests information our staff are not required to undertake the protracted business that they had to undertake in this instance, on what was a fairly modest request.

The Convener: Yes, and we were simply saying to the SPA board, "You are no different from any other board." We simply do not have individual boards in front of us to present their case, whatever that case is. We are not using a different process with the SPA and it must not take how we operate personally.

Colin Keir (Edinburgh Western) (SNP): We have had more or less identical legislation on the police service and the fire and rescue service, and it seems odd that our only real problems so far have been to do with the proposals for the new police service.

This is perhaps just my view but, from anecdotal evidence, it seems that whereas the fire and rescue service has two senior people, one from a local authority background and one from a fire and rescue background, who are working away together quite well without problems, the police service has someone from a private business background talking to a police officer, and there are difficulties. Maybe there is something to do with the cultures that is proving difficult; I do not know. It will be interesting to consider how effective the arrangements that lead to the first day of operation have been overall, for both services.

The Convener: The approaches are not quite identical, although we might say that they are broadly identical. We know that the SPA has statutory duties and responsibilities in relation to certain staff. However, I take your point that there might be a cultural issue in relation to how local government liaises with the police and how someone from the commercial sector does. I do not want to personalise this; I am talking about the commercial attitude, which is fair enough, but in the context of liaising with the police.

This is Graeme Pearson's moment.

Graeme Pearson: Thank you. It is extremely regrettable that it has taken such a time to obtain the detail of the codicil, as it has been described. I do not think that the initial response from the chair of the Scottish Police Authority gave us the full colour of the relationships between the authority, the service and the Government, which was later exposed in the letters in the appendices to paper 4, particularly those between Vic Emery and Paul Johnston.

I read the following description of the proposed arrangement from the civil servant:

"the proposed arrangement is unbalanced, confusing and would place the Police Service of Scotland in a unique and invidious position."

That is almost an angry term from a civil servant. The response from Vic Emery, which does not seem to me to be engaging and warm, stresses

"the length of our consideration"

and states that the proposals

"are neither modest nor insignificant."

Towards the end, he mentions "difficult decisions" that the board faces, and states:

"the Board's reservoir of patience with the protracted nature of resolving this kind of issue is already running low."

That does not augur well.

I hope that, the Justice Committee having rehearsed these matters, the authority and its chair, the chief constable, the civil servants and

the cabinet secretary will now put their minds to the business of the future and the putting in place of a police service that creates safe communities for Scotland. This seems to me to be a playground spat.

The Convener: I think that I used a metaphor about a football being taken away in the playground by one party or the other.

I think that you are quite right. I do not think that the committee foresaw this kind of public adjustment going on. I am sure that these matters go on—goodness me; there is that word "matters". I am sure that these instances happen in other circumstances, but they are not usually played out in public. Obviously, there had to be some adjustment between the parties, but the regrettable thing is that it was played out in the press. Once that happens, people get themselves dug into positions and it is sometimes difficult for them to get out again.

That said, I am delighted that we have got this far. The creation of the sub-committee, which is moving its way through the various parliamentary technicalities, should give focus to the partnership—let us call it that—between the parties.

Roddy Campbell wants to comment.

Roderick Campbell (North East Fife) (SNP): I must admit that I found the letter from Mr Emery somewhat intemperate, and I found the final paragraph, and certainly the final sentence, somewhat ironic.

The Convener: Yes. I just read it again.

Let us leave it at that. It seems that a healing process is going on. Let us not open up wounds again. I am glad that we have got this far. I thank the committee for pursuing the issue, and we will continue to pursue the most important thing, which is to have a good single police service in Scotland.

Title Conditions (Scotland) Act 2003

10:29

The Convener: Item 4 is our first evidence session for our inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003. We will hear from two panels of witnesses today. Members should have received the written submissions with their papers. In addition, a late submission was received from YourPlace Property Management, which we will hear from in the second panel. The submission was circulated to members and a hard copy has been placed on their desks.

I apologise to members for the late paper. We have lots of papers and I know that late papers are not helpful. I am not blaming anybody for sending them in late, but it is helpful if we can receive papers as soon as possible.

I welcome our first panel of witnesses: Alex Middleton, chief executive officer of Greenbelt Holdings Ltd; Wendy Quinn, solicitor with Greenbelt Group Ltd; and Kevin Wilkinson, director of Ethical Maintenance. Good morning, and thank you for coming.

I move straight to questions from members.

Roderick Campbell: Good morning. I would like to ask the Greenbelt representatives for some clarification, more than anything else. In your submission, you talk about new initiatives under the Property Factors (Scotland) Act 2011, and you describe Greenbelt as not being a property factor. I know that Greenbelt Energy Ltd has taken the view that it is not required to register under the 2011 act. I have referred that matter to the Scottish Government. Have any of the Greenbelt companies registered under the 2011 act?

Alex Middleton (Greenbelt Holdings Ltd): Yes, two companies have registered: Greenhome Property Management Ltd, which is a property factor in the sense that it looks after tenements and common parts, and Greenbelt Group Ltd, which looks after open spaces under a single ownership model that we will no doubt discuss today. Greenbelt Group Ltd covers about 20,000 households in Scotland, and probably about 40,000 in the UK.

Roderick Campbell: Those two companies have registered under the 2011 act.

Alex Middleton: Yes. The company that you referred to, Greenbelt Energy, is simply a land-holding company, as with any party that owns land.

Roderick Campbell: I take a different view of that and I have referred it to the Scottish

Government, which is in contact with the company. We will leave it at that for the moment.

Alex Middleton: I have been in front of a Justice Committee before. It is important to clarify exactly what the 2011 act covers, which are companies that charge for a service. Greenbelt Group and Greenhome Property Management charge for a service; Greenbelt Energy does not—it is simply a landowner.

Roderick Campbell: We will leave it there for the moment.

The rest of the Greenbelt submission displays a certain irritation—if I might put it that way—with the idea that some of these matters might be referred for further consideration by the Government or the Parliament. Would you like to add to or clarify that?

Alex Middleton: No. It is an interesting first question, if you do not mind my saying so. We are a Scottish company and many of our employees are from Scotland. We operate throughout the United Kingdom, and we are quite proud to say that we are a Scottish company that operates throughout the UK. Day to day, we get on with business. I do not believe that there is irritation behind our comments.

What might come through is the fact that we have already been here. We made various comments and submitted an extensive consultation response two years ago, which we have yet to see published. If you call that irritation, that is fair enough, but as far as we are concerned, we just respond. We come to see you, we are honest and open, and we try to give as many facts as possible. I do not think that we are irritated; to be honest, it is possible that we are a wee bit frustrated that the issue has not been dealt with before.

We are open and up front, and we are happy about coming here to speak to you.

Roderick Campbell: I will ask one further short question before I let others in.

With regard to the appointment and dismissal of managers, in your submission you refer to "consumer choice" and various related terms. How well are you publicising that to the individuals in many developments who are very unhappy with the services from your group?

Wendy Quinn (Greenbelt Group Ltd): The consumer choice option is published on the Greenbelt Group website. Under the 2011 act we are issuing to all our residents written statements of services each time they receive a bill. The consumer choice option accompanies the written statement of services, so every resident will receive a hard copy.

Jenny Marra (North East Scotland) (Lab): Good morning, and thank you for coming before the committee.

I ask all three witnesses briefly to take us through their main points in relation to the 2003 act. We have their written evidence in front of us, but I am sure that my colleagues would agree that few of us on the committee are experts in property law or the more technical details of title conditions and the enforcement of burdens. I have certainly heard from people involved in the law and through casework that section 53 of the 2003 act may not be operating as well as was perhaps originally intended or that it has unforeseen consequences. I would be grateful if each of the witnesses could briefly share with us their opinions on that in the most accessible way possible for us non-experts.

Alex Middleton: That is a very helpful and useful question to ask us. We have known each other for a long time, so I suggest that I will give a commercial angle—

The Convener: Sorry, who have you known for a long time? Oh, you mean the other witnesses. I thought you were imperilling Ms Marra's independence when you said that you had known each other for a long time.

Jenny Marra: I have never seen the man before.

The Convener: It is good to have that on the record. Sorry to throw you there. It just came out strange.

Alex Middleton: No, I love a bit of humour as well.

I imagine that Kevin Wilkinson will also be able to give a commercial angle. Importantly for today's purposes, Wendy Quinn has been involved in conveyancing as a career and has been with Greenbelt Group for a long time. She is very au fait with the legislation that we are talking about, so it is useful to have her along today. From a legislative point of view, she will be very helpful. I am sure that she will present the issues in layman's terms so that we can all grasp the point—we need to try to grasp it as well.

Jenny Marra: That would be good, thank you.

Alex Middleton: On behalf of Greenbelt Group and Greenhome Property Management—I will just refer to them as Greenbelt now—I have prepared a statement of about probably a minute and a half that should pick up the main points.

First, thank you for the opportunity to provide evidence to the committee. Greenbelt has previously provided oral evidence to Government committees on property management and has also made a number of submissions providing extensive evidence. Most recently, we submitted a

response to the consultation on land management companies in 2011, which I referred to and which is yet to be published. We have also made representations to other organisations, including the Scottish Government, individual MSPs and MPs, the Office of Fair Trading, Consumer Focus Scotland, trading standards, the information commissioner, Ipsos MORI and the sheriff courts—we have made representations throughout.

Our submission to this inquiry reiterates much of what we presented in our 2011 submission, in which we provided our views on the questions raised at the time. However, we base those views on facts. Greenbelt has years of experience as a provider of land management services to 20,000 households in Scotland, and we also operate in England, Northern Ireland and Wales. I believe that we are best placed to provide the committee with the necessary evidence so that it can form a balanced view on land management companies, and we are quite happy to do that.

There are two primary questions. First, do householders have effective recourse where there is dissatisfaction with services? Secondly, is there a current mechanism to remove the land management company? Commercially, those are really the primary questions. In our experience, the answer to each of those questions is yes, under the existing legislation. That has been clearly reported to the committee in our submission, and perhaps Wendy Quinn will pick up on that in a minute or two.

One matter that is not clear is the question of ownership of open land and the responsibilities of such land ownership. If the maintenance provider is removed, there needs to be an alternative and willing landowner who is prepared to undertake the ownership and maintenance responsibilities and liabilities and who can ensure safety on the land and ensure that the related property values are maintained at the level of householder expectations. That must be addressed comprehensively and responsibly.

It is also important to clarify Greenbelt's place in the market and correct a misperception about Greenbelt, which I think one of your colleagues raised. On every one of our 200 or so sites in Scotland—which represents about 5 to 7 per cent of the private sector property market—the open space is well maintained and managed and is kept safe and tidy. We keep maintenance records—for play areas, play area inspection and sustainable drainage features, for example—and, importantly, we record customer inquiries through various communication routes.

There is no record of any planning enforcement or of any insurance claim for flooding or any credible evidence of anything even vaguely approaching mass dissatisfaction of customers—20,000 customers—in our experience. Indeed, our customer inquiries are at a low level and annual payments are at a high level. We have examples of neighbouring estates asking Greenbelt whether they could have the same service that the residents who receive our greenspace service get because, in their opinion, their property values are demonstrably lower, given the lower standards of care of amenity land on their developments in comparison with Greenbelt-managed developments.

Our experience is that there is a cultural change among owners—they see the benefits of well-managed estates, supported by secure legal structures that oblige parties to maintain the balance. I have no doubt that poor management would have resulted in Greenbelt being subjected to actions in the sheriff court and applications to the Lands Tribunal for Scotland, yet we have minimal evidence of that.

The 2011 act has only just come into force. It has not really had a chance to demonstrate its effectiveness as a vehicle for redress. It has been introduced at not inconsiderable cost to the property management industry—a cost that will ultimately be borne by householders. Any further change will increase those costs.

I hope that the committee takes on board Greenbelt's evidence, which indicates that the appetite for change is just not there among the vast majority of homeowners. There is a real danger if the majority is ignored—this is a key point—at the expense of the minority. The majority will seek to hold the powers that be to account if property values are put at risk as a consequence of the removal of a mechanism that has ensured a stable and robust way of managing open space on housing developments in Scotland.

The main point is that there is a fine balance just now. It is important to understand that and take a full view of the situation. We have not heard from the majority of people yet, and there is that danger if they feel that there is a good balance and the main thing that they have in their minds is the value of property—the value of their house.

Sorry, I feel as though I have taken up time.

The Convener: No, that is fine—you have put your statement on the record. However, you did not answer Jenny Marra's question about section 53 of the 2003 act.

Over the past three years, how many complaints have you had about the service and how many refusals to pay have you had, and were those related to the service? Also, how are those logged? You may not have that information, but it would be interesting to know.

You have said that the majority of people are satisfied and that some people even look around and wish that they had Greenbelt managing their developments. However, I would like to know the number of complaints you have had. Jenny Marra referred to problems, and I and other MSPs have had information cross our desks that people are not getting a satisfactory service from Greenbelt and there appears to be nothing that they can do about it except not pay. They will not go to court because that would be expensive, and they will not go to the Lands Tribunal of Scotland because that would be even more expensive. In fairness to those people, without going into individual cases, it would be useful to have figures.

Alex Middleton: We can give figures. I cannot remember whether we gave figures in the submission, but I know what my figures are and I know the level of customer care. For example, out of 40,000 UK-wide—

The Convener: Just deal with Scotland, please. The inquiry is into the Title Conditions (Scotland) Act 2003.

Alex Middleton: At the moment, UK-wide, we have 28 outstanding live customer inquiries. Inquiries are not all complaints. They can be inquiries about how to pay—

The Convener: I am specifically asking whether somebody has written to you or been in contact with your agents to say, "I am complaining about this—I am not paying it," or, "I am complaining—this is not being done outside my house." That information would be helpful to the committee and it would be helpful to have it in written form. I do not expect people to have that data to hand, but if we could have it in written form, it could go on the Parliament website and other people could see it.

Alex Middleton: I can say now that the level of customer inquiry is dropping vastly, even though the number of customers is increasing and we have new billing. We can submit the week-to-week figures and the figures from this year compared with last year and the year before. On payments, our collection rates are easily above 90 per cent.

10:45

The Convener: Is that for Scotland?

Alex Middleton: That is for Scotland, England and Northern Ireland.

The Convener: Because we are looking at Scottish legislation, we must have figures for Scotland. We require the data for Scotland, not for the UK.

Alex Middleton: The figure is above 90 per cent in Scotland.

The Convener: Thank you. Will you also provide us with the additional information that you mentioned?

Alex Middleton: Absolutely.

The Convener: I do not think that Jenny Marra's question on section 53 was dealt with.

Jenny Marra: That is correct, convener.

Wendy Quinn: Section 53 deals with a complicated area of law, which is the intrinsic difficulty with it. Briefly, before the Title Conditions (Scotland) Act 2003 and the reform of the feudal system, we had landowners or householders with a feudal superior who was entitled to enforce burdens against them. For example, if someone wished to make alterations or extensions to their property, they might have needed the consent of the feudal superior, who might be an absent individual or a company with no interest other than to make a charge for issuing the consent.

That system had been in place for many hundreds of years. As part of the then Scottish Executive's political agenda, it felt that it was important to reform Scottish land law, and the 2003 act was part of a suite of legislation on that. The act removed the right of the feudal superior to enforce those conditions and converted some conditions into community burdens, which, for example, might be enforceable by all members of a residential housing development.

I come to the difficulty with section 53. Previously, we could identify who the feudal superior was. As a practising solicitor, if a client came to see me to sell a house and they needed consents for various work that they had done to the property, I was able to inform them that we needed to approach X for consent, because that was clear. Unfortunately, we now have a system of implied enforcement rights. At a practical level, it is actually impossible to advise a client who is selling a property on who would or would not be entitled to enforce certain rights in the title deeds. That is my fundamental difficulty.

Jenny Marra: Is the difficulty that you have just described specifically a result of section 53 of the 2003 act?

Wendy Quinn: My view is that section 53 creates that difficulty.

Jenny Marra: We are conducting a post-legislative scrutiny exercise, so where we go with our recommendations is kind of open. Would your preference be to have section 53 scrapped or amended?

Wendy Quinn: I agree that those are the options. If we scrap section 53, I guess that the risk is that there are people out there with genuine rights who might have purchased their property in

the knowledge that they would be able to enforce them. That might have been an important factor to them when they acquired their property. However, the law needs to be clear, and my view is that section 53 is far from clear.

Jenny Marra: It strikes me that the legal difficulty with section 53 is that it is open to interpretation.

Wendy Quinn: It is.

Jenny Marra: It is not clear who has a right to enforce and perhaps what interest they would need to enforce. Is that correct?

Wendy Quinn: That is correct. It is all down to title and interest. The difficulty is in the interpretation of that. Had we been given a definitive list of what constitutes title and interest, it would be possible to operate section 53, but the difficulty is that we only have examples of what may constitute title and interest, and they are not definitive.

Jenny Marra: Can you give me an example of the kind of problems that section 53 causes for your company?

Wendy Quinn: Ironically, we have very little experience of section 53 operating in practice. It is not terribly relevant for our operation.

Jenny Marra: Then why does it cause you problems?

Wendy Quinn: I am a practising solicitor in the private house-building industry. If a client comes to me to sell a property, I will check whether they have all the necessary authorisations—for example, for works that they have done to the property and to show that they are using the property for the correct purpose under the title deeds. Let us say that they have built a garage. Who on the development would be entitled to object to that garage having been built?

Jenny Marra: So, it is more with your solicitor's legal head on, rather than on behalf of the company, that you are saying that section 53 causes problems.

Wendy Quinn: Yes. I think that we said that in our written submission. In my view as a practising solicitor, section 53, as drafted, does not operate in the way that it was intended to. However, it does not have a huge relevance for Greenbelt Group's day-to-day business.

Jenny Marra: In your professional legal opinion, section 53 should be amended.

Wendy Quinn: It cannot operate as it is.

Jenny Marra: What amendments to it would you like to see?

The Convener: I am a little concerned. You made the fair point that somebody who purchases a residential or commercial property may think that they know what their duties, obligations and rights are, but if there is an amendment to the law—given that ownership of property can endure for decades—that puts them in an invidious position.

Wendy Quinn: It does, indeed.

The Convener: They lose the security of knowing what they have signed up to.

Wendy Quinn: Absolutely.

The Convener: Would it be appropriate to say that section 53 was envisaged to operate more where there is mixed tenure, including in housing associations—the right to buy made it more difficult to know who is in the common ownership group—and commercial properties rather than for a housing estate where all the properties are privately owned and the land around them is managed, where it is clear what the community is and who has rights?

Wendy Quinn: It is not, actually.

The Convener: Ah, well, there you go. I wish that I had not said that now.

Wendy Quinn: In theory, the community has a right to object if someone is not implementing their burdens. However, if you stay three or four streets away from me and I make some alterations to my property, it is difficult to say whether that has any material detrimental effect on your property.

The Convener: I am straying into planning law. The point that I was trying to make is that section 53 was perhaps designed more to deal with mixed-tenure and commercial properties than to deal with housing estates and private developments together with the land around them, where people have rights of enforcement against each other. Is that correct?

Wendy Quinn: No, I do not think so. I think—

The Convener: Oh, well. I am racking my brains.

Wendy Quinn: I think that the intention was for the provision to apply to communities, which would certainly include residential housing developments.

The Convener: Roddy to the rescue.

Roderick Campbell: I ask for a small clarification. I understood that section 53 related to pre-2004 burdens that were imposed on a common scheme.

Wendy Quinn: That is correct.

Roderick Campbell: I do not know how many pre-2004 developments Greenbelt Group has, in

which the provision would be relevant. The number is probably quite small, is it?

Wendy Quinn: Yes. The vast majority of our estates were built after that.

Roderick Campbell: That is one reason why section 53 is not a big issue for the company.

The Convener: Yes. Mr Wilkinson wants to come in. At last you get to speak, Mr Wilkinson.

Kevin Wilkinson (Ethical Maintenance): Would it be appropriate for me to give a quick overview of a slightly different approach to the—

The Convener: Yes, of course.

Kevin Wilkinson: It will set the context for the answers that I give.

Ethical Maintenance is a community interest company that is designed to serve the communities and not necessarily our shareholders. We see the factor's role as being fourfold: to cut the grass, to collect the money, to look after any special interests such as play areas and sustainable urban drainage schemes and to protect the landowner's interests. We believe that, in providing a service, we can isolate those four separate areas, and the Title Conditions (Scotland) Act 2003 should enable residents to separate out those four responsibilities should they want to do that.

On the subject of land ownership, we are a land-owning company, and we see that as our role on behalf of the communities that we serve. Primarily, we see communities as owning the land around them. Most communities with which we have experience are not that interested in actually owning their land and taking on the responsibilities, so we are happy to do that on their behalf.

We are a good conduit for the house builder to transfer the land to us at the start of a new development. Later on, once everything is settled and everybody is happy with the land around them, we will ask the community whether they would like to take ownership. So far, the response has been that they are not that interested.

That is where Ethical Maintenance comes from. I can now go back to the specific question about section 53. We are a new-start company in the biggest building recession that the country has experienced, so we do not have much experience of section 53. As our submission says, we can see that it might be a problem, but we do not have much actual experience of it being a problem.

The Convener: Do you want to come back in on that point, Rod?

Roderick Campbell: I would not have thought that it would cause Ethical Maintenance difficulty, as a new-start company.

The Convener: But do you have any further comments on section 53? You seem to understand it really well.

Roderick Campbell: You have mentioned the difficulties for small groups in dealing with complex legislation. Would you like to say a few more words about that, for the record and for the committee?

Kevin Wilkinson: We say to our communities, "These are the services that we provide—one, two, three, four. Do you want to take responsibility for any parts of them?" We find, for instance, that residents on small sites can cut their own grass, and we do not have a problem with that. Where the properties are all together, the residents can collect their own money to pay for the grass cutting, whether that involves buying a lawnmower or paying a contractor, and we do not have a problem with that.

On more complex sites, can residents get together to look after special interests, such as setting up a sinking fund to replace play equipment every 15 to 20 years? They do not like going there. Residents are not that keen on looking after the landowner's interests on the more complicated schemes, where there are big play areas, big sustainable urban drainage systems or big wayleaves that go through the site. With anything that is a bit out of the ordinary, they are not that keen on taking responsibility for the work that is carried out on the site.

To answer your question directly, even if the residents are keen to take responsibility, do they know how to go about doing it? We might say that we are the factor and we can help them to interpret the 2003 act. They might ask whether they can trust our advice, because we are really on the other side of the fence. We might say, "Fair enough. You go and find out for yourselves how to do it." They will come back and say that they have looked at the act and it is far too complicated for them. They will have sought advice, but the advice that they need will be far too expensive, and they will not want to proceed. Does that answer your question?

Roderick Campbell: Yes. I do not want to put words into your mouth but, basically, you are saying that, because the legislation is complex, it is difficult in practice for people to reach the right view as to where they should go.

Kevin Wilkinson: I said that in a much more long-winded way.

The Convener: Your model is very different from Greenbelt's model—yours is one of shared

ownership, whereas Greenbelt's is one of outright ownership.

Kevin Wilkinson: Yes.

The Convener: What are the benefits of shared ownership as you see them, and what are the disbenefits of shared ownership? Why do you not follow Greenbelt's model?

Kevin Wilkinson: We are in business to serve the communities. With a normal limited company, everything that it does is in the interests of the shareholders, arguably, and its aim is to serve them. The two models have different strategic aims. Does that answer your question?

The Convener: Do you make profits as well?

Kevin Wilkinson: No. We cover all our costs and obviously I draw a salary—

The Convener: But you are non-profit.

Kevin Wilkinson: In essence, we are a not-for-profit organisation. Under the community interest company legislation, any dividend distribution is capped and controlled. Our approach is quite different from that of a normal limited company.

11:00

The Convener: Can I tie that into the land-owning model that Greenbelt uses? We have not yet raised the issue of prices and charges. I note that Consumer Focus Scotland's research showed that 74 per cent of those surveyed thought that the service that they received

"was either fairly or very poor value for money."

There is a strong feeling out there that people are being overcharged for services. I take it that Greenbelt elected to be a business that makes profits. That is not a bad thing—it is life—but the problem is that you have a monopoly in many circumstances, and it seems to me to be a perpetual monopoly, or am I misunderstanding it?

Alex Middleton: I do not know. Wendy, do you want to answer first?

Wendy Quinn: One useful aspect of the property factors register is that it at least enables us to assess the market share that we have with the properties that are currently registered. At present, Greenbelt Group represents between 5 and 7 per cent of the market in Scotland, so it is certainly not in a dominant position. It is far from being a monopoly.

The Convener: Yes, but where you operate, you have a monopoly.

Alex Middleton: No. As I explained earlier, there is a mechanism to remove the land management company. The issue is—

Jenny Marra: Where is that mechanism?

Alex Middleton: It is the Lands Tribunal for Scotland.

The Convener: Sorry?

Alex Middleton: It is the Lands Tribunal for Scotland. There is another mechanism called consumer choice, which we have introduced. It is well worth having a look at that. We did not just knock it up; we took professorial advice on it.

The Convener: We will be speaking to professors next week, so we can find out about that.

Alex Middleton: Yes. You could ask them about consumer choice, Greenbelt and their involvement. I suggest that the committee looks at that and asks whether that is the right approach to achieve what we are out to achieve. We want to get rid of all the misperceptions about a monopoly, overcharging and masses of dissatisfaction. I am giving you evidence just now, and I can back it up with figures.

I return to the question. We operate a single ownership model, and there are huge benefits in doing that. When I started out, the company that I was with was a public sector vehicle. The owners at the time were Strathclyde Regional Council, Scottish Natural Heritage and others. We went to the industry and the planning department on the premise of Strathclyde Regional Council, which was a strategic planner at the time. They looked for other options to address issues that were arising relating to common ownership and the anticipated house-building boom, such as the fact that local authorities did not want to take on the land. They were looking for a useful mechanism. The reason for single ownership was that sites were becoming more complicated. They were not just a piece of grass and a play area with two swings; there were sustainable drainage systems, tree preservation orders, new woodlands and sinks, and there was a requirement for art in developments.

The Convener: Mr Wilkinson, do you not have all that stuff as well?

Kevin Wilkinson: Yes, we do.

Alex Middleton: I checked with Mr Wilkinson beforehand and the biggest site that he has is about 50 units. Ours is about 1,000 units, so there are differences in scale.

I will give you an example of the benefits of single ownership. We went to the Lands Tribunal with a case in which we varied a community burden on the basis that, at the point of planning, too many play areas had been designed for the development, which was up in Fife. Two play areas had been implemented and one had not.

There were not a great number of young children in the community. We worked with the community, which had an opportunity to say, "Let's vary this." We got 96 per cent support in the community and support from the planning authority. The case went through the Lands Tribunal and we varied the community burden. That was the right solution, but it could not have happened if there had been multiple ownership. It could happen only with single ownership, with me saying, "Let's go and do this." That is the benefit of change.

The Convener: Can I test that? Is that correct, Mr Wilkinson?

Kevin Wilkinson: Is what, specifically, correct?

The Convener: The point that has just been made—that variation of a community burden can happen only with single ownership.

Kevin Wilkinson: If the community works together, it could happen. The challenge is to get a community to work together without the leadership of a single owner with the will to do it. That is the biggest challenge.

The Convener: But you could do the same.

Kevin Wilkinson: Yes.

The Convener: I just wanted to clarify that.

Other members want to come in, but I want to clarify one other thing. Wendy Quinn and Alex Middleton said that Greenbelt Group has 5 to 7 per cent of the market. What does that mean? Does it reflect the number of units that you deal with? There might be lots of little companies that deal with little estates. Do you deal with the biggest number of units in Scotland, compared with others?

Alex Middleton: We looked at the totals for private registered property management units, or households, in the property factors register. We did not include housing associations or the private rented sector. The figure is there or thereabouts. That is our estimation. You guys can look at it and assess it yourselves.

The Convener: I just did not know quite what it means. How many units do you deal with?

Alex Middleton: Twenty thousand.

The Convener: Are there any other management factors who deal with that many units?

Alex Middleton: Yes, I am sure there are.

Wendy Quinn: There are larger ones.

Sandra White (Glasgow Kelvin) (SNP): Good morning. Having listened to you, I have come to the conclusion—I am sure that it is correct—that you are both land-owning companies, but that Mr Wilkinson's company is a more community-minded model that does not make a profit, and Greenbelt does make a profit.

Kevin Wilkinson: Yes.

Sandra White: I thought that I would establish that.

I want to pick up what has been said about the 5 to 7 per cent of the market and the convener's question about whether there is a monopoly. Mr Middleton, you said that you do not have a monopoly, but people who come to see their MSPs feel that when only one company is allowed to undertake the maintenance of the area that they live in, that is a monopoly.

You mentioned that residents can take steps—for instance, by approaching the Lands Tribunal. I will come back to that with a specific example. You also mentioned consumer choice. I want to pursue that specifically, and perhaps Mr Wilkinson will give me the opinion of his company as well. You mentioned the fact that residents associations can use consumer choice if certain conditions are met. Can you tell me what those conditions are?

Wendy Quinn: I can explain about that. The main thing that we have to be satisfied about when we speak to a residents association is that it is certain that it is representative of the individual residents on the development. That is a fundamental requirement. We look at every site on an individual basis and in line with the provisions of the Title Conditions (Scotland) Act 2003 regarding dismissal of property factors. We have said that, if we are satisfied that a two-thirds majority is in favour of change, we will accommodate that. There needs to be an independent system for ensuring that the two-thirds majority is in place.

Sandra White: On the two-thirds majority, there are absentee landlords and it can be difficult to get signatures. Also, if developers—perhaps even Greenbelt—have bought up, say, 50 to 60 units within a development, how would it be possible to get the two-thirds majority?

Wendy Quinn: We do not have any examples of that across the 193 housing estates that we deal with. I have personal knowledge of all the sites in Scotland. On some sites, three or four units, or at most half a dozen, are in single ownership, but no more than that.

Sandra White: I am not talking only about your company, because there are other developments that have 50 units or more. I just wonder how that would work with the two-thirds majority that is provided for in the Property Factors (Scotland) Act 2011.

Wendy Quinn: We are simply following the precedent that the Title Conditions (Scotland) Act

2003 set for the dismissal of a manager. There has to be a decision that there is a majority. Where that majority rests is a political decision.

We have a small site in West Lothian in relation to which we were presented with what we call a doorstep petition, which was put in front of us by the chairman of the residents association. A doorstep petition can be run by a minority and the perception is that pressure can be put on people on their own doorsteps. If the question that is asked is, "Do you want to pay Greenbelt or not?", it is possible that nine out of 10 people will say that they do not want to pay Greenbelt—or anyone else for that matter. The issue is what the majority decision is based on.

In that instance, we circulated independently to all the residents on the development all the relevant information that they would need to enable them to make an informed decision as to whether they wished to take over the ownership, management and maintenance of the features on the site. We sent them a full information pack and gave them a realistic timeline within which to respond—from memory, I think it was six to eight weeks. That period allows for people who are absent and we would anticipate being able to get a response within that time. When we got the response, by far the majority were in favour of retaining Greenbelt and the situation was not as the chairman of the residents association had suggested.

That is one example of a doorstep petition. The residents association chairman was not acting on behalf of the majority; he was acting on his own interests.

Sandra White: Mr Wilkinson, I noticed that, in your submission, you mentioned that it might be a good idea for the Scottish Government to produce a pamphlet or leaflet explaining the 2003 act. Will you comment on that? Will you also comment on Wendy Quinn's response?

Kevin Wilkinson: There are two issues. One is the need for guidance on how to use the 2003 act for someone who is brand new to it and who dives into it to find out how they change the burdens to get rid of their factor.

I have given the example of needing to dance all over between three sections. When we get into those three sections, we find references to loads of other sections and, very soon, the average person—such as me—loses the will to live and cannot get through it.

That is where guidance comes in. Once someone has spent a lot of time looking at it they find that, if the factor has been appointed by the community, it is a 50 per cent decision. If the factor has been appointed by the builder and is still within his five years of appointment, a two-thirds majority is needed.

When we get into it, the process flows quite nicely, but no guidance is available. Perhaps someone should make a fortune and write a book on interpreting the 2003 act. We do not have that book at the moment, which is why I suggested that some guidance could be produced.

You also asked me to comment on what Wendy Quinn just said. It is very much the case that it is possible to get an active minority on a site who want to railroad the rest of the residents into their decision. On a particular site, we had exactly the same experience as Wendy Quinn described. Once the residents realised where they were going, they asked the chairman to resign and decided to continue as they were. Minority groups can take over. We as the factors just have to be aware of that.

11:15

Wendy Quinn: We have had a continuing issue on one site with one individual who, in a well-publicised case, took us to Perth sheriff court. His argument was that we were not performing the services to contractual standard.

We won that case at the sheriff court, at the first instance and on appeal—it was a two-and-a-half year case. We were found to be carrying out our contractual obligations. That was good. The individual who took us to court is the chairperson of the residents association in that development. He has subsequently put in a fraudulent application to the Lands Tribunal—

The Convener: I had better stop you there. I think that you know yourself that the use of the word "fraudulent" is problematic. I think that we will just leave that one, if you do not mind.

Wendy Quinn: Okay. The application was withdrawn because residents came back to the developer, who is still involved with the site—it is an active site, and the developer is still building there—

The Convener: I am not too happy about going down this route. I appreciate that you are trying to make a point but I think that you have done so. We understand that there can be a minority of complaints that can be vexatious or misplaced. You have made the general point that you are not baddies per se and that there might be issues with occasional residents.

We should not go into particular cases. I appreciate that you were preserving people's anonymity, but I am sure that people could work out who you were talking about.

Alex Middleton: There is something that I could say that would be helpful for the committee.

The Convener: I wonder.

Alex Middleton: In each of the consumer choice cases that we have had—I think that there have been 13—we were quite willing to help the body of people who were seeking a change. As I said earlier, the issue is who is going to take ownership of the land at the end of the process. If someone wants to remove the land management company, they must bear it in mind that we still own the land. Landowners have certain rights and cannot just be tossed off the land.

Kevin Wilkinson is dealing with fragmented land, so he can pick and choose. From our point of view, if someone is dismissing Greenbelt, that is fine; we will walk away. However, in every case, when we have got to the point of asking who the land should be transferred to—when we have said, "We are quite happy to go through the legal process and transfer the land; just let me know who will be signing"—we have found that there are not many people who are willing to take ownership of the land and take on the associated liabilities, whether it is the grass, the SUDS, the play areas or whatever. That is a crucial issue that you have to get around.

The Convener: So, for you, ownership and management are not separable.

Alex Middleton: What incentive is there? I mean—

The Convener: That is fine. I was just clarifying that point. They are not separable, and that is the issue. If people are discontented with the land management, the issue of ownership is placed on the plate in front of them.

Alex Middleton: Absolutely, yes.

Wendy Quinn: The existing legislation does not address the issue at all.

The Convener: I am just testing the point. That has clarified it.

Kevin Wilkinson: There is an argument that management and ownership are not separable, but we see it the other way around. For us, they are separable, as long as the landowners' responsibilities are properly looked after. That is the challenge for us.

The Convener: Yes, but that is not how Greenbelt sees things. That is fine.

Graeme Pearson: The Consumer Focus Scotland report draws attention to certain issues. One is the confusion about the services that are provided and the responsibility that land-owning land management companies have for public liability insurance, inspection of facilities and liaising with other bodies. Do you feel that there is any confusion?

Another conclusion concerns value for money and whether the land management costs are justified. The final conclusion that I will mention involves communication. The report says:

> "Three-quarters of consumers feel that their land-owning land management company is either fairly poor or very poor at keeping them informed."

It seems to me that, if those three issues were responded to in a positive fashion, many of the friction areas between the tenant groups, the owner groups and you might be eliminated. Are those conclusions fair? Do you recognise the comments? Could you offer a view for the future?

Alex Middleton: Those comments were made in the Consumer Focus Scotland survey of 2011, which Wendy Quinn has already referred to. We had question marks about the template when we worked with Consumer Focus Scotland and Ipsos MORI on that. We were not satisfied with the survey because it did not address the issues in the context of a bigger picture as opposed to a smaller picture. In response to any survey that asks people whether they like Greenbelt, people might say no because of value for money—that is the first thing that will come to mind. To be honest, we were not satisfied with the survey.

In 2013, we have the Property Factors (Scotland) Act 2011, which provides a standard that we meet. The written statements give us an opportunity to demonstrate to the market—to our consumers—that we are compliant with the current legislation. In terms of value for money, that is addressed by market tendering; in terms of the services that we offer, that is addressed by the written statement of service, which highlights absolutely everything consistently; and in terms of communication, we offer a free phoneline and demonstrate customer care, as I have talked about. The committee should bear it in mind that that is our experience. You can take our evidence or leave it, but that is our experience. You invited us to give you our evidence, and we are quite happy to give it to you.

The point about confusion is a separate issue. Basically, the new legislation, which is very recent, should enable a dilution of any confusion. If people are confused, they know that they can call us to ask about the situation and about the arrangements that are in place.

The committee should also bear it in mind that the house-building industry has to take on some responsibility for informing people when they are making the biggest purchase in their life. We have battered that point into the system. In certain cases, we did not take on developments because the residents had not been properly informed, so

we passed them back to the developer. As a resident, it is not helpful to be caught in the middle like that.

I think that the PFSA has diluted that point about confusion so that it is no longer an issue.

Kevin Wilkinson: Sorry, I remember only two of the three points, which were communication and value for money.

The Convener: That is all right—I have been there myself. Sometimes I can remember only one point.

Graeme Pearson: The third point was about confusion over services, such as public liability insurance and other issues.

Kevin Wilkinson: We certainly get feedback like that from residents who have not been prepared to engage with us, if that does not sound a bit aggressive. Basically, we have a meeting with our residents twice a year. At the end of the year, we ask them, "How did it go? Do you want us to do anything different next year?" From that meeting, we put together a works programme for the following year and say, "Do you want to do it yourselves? Do you have any contractors that you recommend us to go to?"

After putting the work programme together, we tender it and then come back and do open book and say, "Here are the tenders; this is what the contractor is charging; this is what the insurance costs; this is our overhead for managing it—what price do you want?" The price works out from that. We would say that, where people are prepared to engage, there is no issue. As Wendy Quinn and Alex Middleton have said, under the Property Factors (Scotland) Act 2011 people now get a written statement every year showing how everything is worked out and what all the ins and outs are.

Graeme Pearson: From what the two of you have just said, the feeling seems to be that there might have been some evidence to support the views in the survey but that developments since then have gone some way towards repairing the situation. However, I have to say that there is one bit on which I am not particularly convinced.

At the end of the day, you provide a service to those areas. Inconvenient and frustrating though it might be, you need to try to provide that service in the way that your customers seek. We need to see that endeavour or energy in taking matters forward. I pick up from Mr Middleton a frustration about administering this business, and I can understand that. However, you have entered the game of providing this service, and you need to take the downside to that.

Alex Middleton: Absolutely. I think that you are right, and I do not hide from that at all.

In 2007 or 2008, I held my hand up and said that the company had got it wrong, and a couple of MSPs were all over my back—maybe I will rephrase that.

Graeme Pearson: That is characteristic.

Alex Middleton: When I held my hand up, the first thing that I did was pull in all my staff and tell them that we were no longer a company that provided a facilitation mechanism for the development industry, but a service provider. We had to change overnight, and that is exactly what we did.

Since then, we have brought in consumer choice, a customer care charter and a dispute resolution process that the Scottish Government asked to have a look at when it was drafting the Property Factors (Scotland) Bill. The various things that we have brought in are all advertised on our website.

It is a case of developing a service. We are not there yet, but we will keep on improving. You mentioned energy and desire. At Greenbelt, that is what I drum into all the staff. They are loyal, so I also protect them.

The Convener: To balance what Greenbelt has told us, I ask Ethical Maintenance to provide us with information in writing about any complaints that it might have had over the past three years and instances of non-payment. That would give us a bit of balance in looking at the two systems.

Kevin Wilkinson: Okay.

Jenny Marra: There is an issue that I would like you to help me to understand. I understand that a developer can register a deed of conditions before it transfers the land to the maintenance company, and that that deed of conditions can specify the name of the maintenance company that will take charge of the land. Is that correct?

Wendy Quinn: Yes, it is correct.

Jenny Marra: How much of your business comes that way? In other words, how much of it comes as a result of the developer deciding that Greenbelt will be the maintenance company and that being put into law?

Wendy Quinn: I am heavily involved in the drafting of that wording. The developer must put the deed of conditions on at the very outset. There must be a mechanism in place for the ownership, management and maintenance of the open space. The deed of conditions has to be put on before the first plot is sold, because, legally, that is the way in which the mechanism works in Scotland. As part of the house builders code of conduct, at point of sale the developer must inform the purchaser of a house in a new development what the arrangements will be for the open space.

As far as the wording is concerned, Greenbelt Group will be referred to in the deed of conditions on many occasions, but the reference will be to Greenbelt Group or any other body that may be appointed to take over the ownership, management and maintenance of the open space. I cannot recall an example of a developer being willing to have only Greenbelt Group in the wording of the deed of conditions, because at that point it might well not have signed a contract with us to take over the estate. The developer will still be looking for flexibility. It might have decided to follow the single ownership model, but I am almost certain that Greenbelt Group will not be mentioned as the only option. The developer might also put a factoring alternative into the deed of conditions, thereby reserving the right to choose either one.

Jenny Marra: You said that you are involved in 193 estates across Scotland.

Wendy Quinn: That is correct.

Jenny Marra: In how many of those 193 cases has the developer come to your factoring company by virtue of the deed of conditions specifying that you must be the maintenance company?

Wendy Quinn: I would say that the number of such cases is almost certainly nil, because Greenbelt Group will not always be named. It might be named, but the reference might be to Greenbelt Group or another body, with the developer reserving the right to convey the land to Greenbelt Group.

Jenny Marra: Okay. In how many of those 193 cases has Greenbelt Group been specified in the deed of conditions as one of the potential maintenance companies?

Wendy Quinn: I would need to check on a site-by-site basis, as I do not have that information to hand, but there are developments for which Greenbelt Group is specified.

Jenny Marra: Is Greenbelt a developer and a factoring company?

Alex Middleton: No. We are a land management company, not a developer. We provide a service.

11:30

Jenny Marra: Does the 2003 act allow development companies to hand over maintenance contracts to their preferred firms through the deed of conditions?

Alex Middleton: I am sorry, but I am not quite sure what you mean.

Jenny Marra: I am sorry—I am not explaining it well. Does the 2003 act allow developers to say, by virtue of the deed of conditions, "We will give X factoring company the business"?

Alex Middleton: I do not think so. Does it?

Jenny Marra: It does.

Wendy Quinn: That is possible. That is in line with how the industry has developed through the house buyers code. Residents have been confused and they have had a lack of information, which are matters that the 2011 consultation partly covered. Residents wanted information at the outset; they did not want to be given information at the point of the house purchase.

Jenny Marra: I understand that, but it seems that the act allows—with regards to a person who is purchasing a flat in a development—the developer to decide the specific company it wants to factor the property. Is that right?

Alex Middleton: PFSA may be able to put a bit more meat on the explanation for you. However, the developer must demonstrate that it has selected the right property factor.

Jenny Marra: The act allows for that. Is that correct?

Alex Middleton: The developer, along with a planning authority, decides on the long-term management and maintenance, whether that relates to a tenement or an open space.

Jenny Marra: I want a yes or no answer to my question. Does the act allow the developer to decide who the maintenance company will be?

Alex Middleton: Yes—on both fronts. Developers can choose the maintenance company and include that in the title deeds, or they can say nothing in the title deeds and still appoint their favourite maintenance company.

Jenny Marra: It is difficult for residents at the other end to get out of the factor that the developer has initially decided on in the titles. A two-thirds majority is needed.

Wendy Quinn: You must also remember—

Jenny Marra: We can come on to what I must remember, but is that correct?

Kevin Wilkinson: Our submission is that the answer is yes because residents cannot work out how to get through the act to do it.

Alex Middleton: I will give an example based on where I think that Jenny Marra is coming from. The answer is yes: the developer can decide, along with the planner or whomever else they confide in, about how the long-term management and maintenance of the open space will be done or who will do it. The developer will make considerations based on whether, for example, it is a 500-unit development, which is complicated. I

have mentioned that the size of developments has increased over the past 10 to 15 years, and they encompass areas in the green belt that might be protected for reasons related to water, drainage, flood plain or something else. Who will take that on? Our company does.

The committee is talking to the two guys that are willing to take on and look after such land. I do not know whether we do it well, but we are still learning. There are not many other guys out there, whether in local authorities or other organisations, willing to take on the responsibility—and, by responsibility, I mean public liability insurance. Insurance needs to be put in place for the SUDS so, if there is flooding, we have the data that the insurance companies can look at and say, "Right, okay, we'll pay out on it."

The developers make a judgment call based on who has the experience and expertise to manage a site. If the site is relatively simple—if it is just a piece of grass and a couple of shrubs—they might have a wider group of people from which they could choose. If it is more complicated than that, they will look at Greenbelt because we have the mechanisms, systems, expertise and knowledge to manage big, wide, complex developments.

The Convener: I think that what Jenny Marra was getting at—

Alex Middleton: I am sorry—I was going off on one.

The Convener: No, that is okay. I think that what Jenny was getting at—forgive me, Jenny, if I have this wrong—is the fact that the developer appoints the land management company and then that is it. I see that Wendy Quinn is nodding, so I am taking that to be the case.

I am not impugning anything, but there could be concerns that there may be a close relationship between a developer and a land management company, and in the middle are the people who live in a development, who have no say in the matter for what seems a long time. I accept that you are bound by the legislation and you obtemper it, which is absolutely right, but residents are bound with that land management company, whoever it may be. Is that a reasonable summation?

Alex Middleton: I apologise to Jenny Marra, as perhaps a bit of frustration came out. In answer to the question, the decision is not ours. We are called and asked whether we would like to take a site on, and we will have a look at it.

The Convener: My point is about the relationship that is there and perceived to be there. How many sites have come to Greenbelt because residents voted for that?

Alex Middleton: That is an interesting question. I have examples where residents on Greenbelt Energy sites—where there is no mechanism in place, just a straightforward landowner—have asked for our greenspace service. We have considered whether we can appoint a factor or set up something—

The Convener: But you heard my question: if you cannot answer my question, it would be useful to know later.

I pose the same question to Kevin Wilkinson: how many sites do you have because residents voted for you?

Kevin Wilkinson: None right now. However, over the next couple of years, in cases where builders have retained ownership of the site and we are on a three or five-year appointment, we will ask the residents whether they want us to do another three years at the end of that appointment. If you ask me the same question in a couple of years, the answer will be interesting.

Jenny Marra: Is that three or five years specified by the legislation, or is that something that your company has decided to do?

Kevin Wilkinson: No, that is something that the builder decided to do.

The Convener: I will let Roderick Campbell in next because he has been terribly patient.

Roderick Campbell: A number of the submissions that we have seen suggest that the burden that requires home owners to pay for the maintenance of land in which they have no ownership interest is unenforceable. If that was tested in some way at the Lands Tribunal for Scotland, how would that impact on your business?

Wendy Quinn: That is an issue that we were aware of at the outset and on which we took advice. In the wording of the Greenbelt deed of conditions, our residents have a servitude right to use the ground for access, egress and recreational purposes. In our wording, the residents have a right to use the land.

Roderick Campbell: Are you saying that that servitude right distinguishes your case from the examples in the submissions?

Wendy Quinn: Yes.

Roderick Campbell: I take that point. That is not a matter of concern to you then.

Wendy Quinn: No, it is not a matter of concern. It is an issue that we addressed at the outset when considering the mechanism.

Alex Middleton: I suggest that we give the committee a copy of a standard Greenbelt deed of

conditions. That would be useful for the committee to look at.

The Convener: Is it on the website?

Alex Middleton: I do not think that we put it on the website. I do not see many customers going on to the website and finding a deed of conditions exciting.

The Convener: Lawyers might.

If you could send that to the clerks, that would be fine.

Sandra White: I want to clarify a point that was raised in the questions from Jenny Marra and the convener. Is there a problem with planning authorities and lead developers pushing for the land-owning maintenance model? That is the crux of the matter. They do not necessarily say Greenbelt—it could be Greenbelt or A N Other—but is there a problem for the maintenance of land, including land in common ownership, if local authority planning departments and lead developers recommend companies such as yours?

Alex Middleton: That is possibly where we were before. There are cases in which that happens. We are a UK-wide company and most of our business is in England, so we are not necessarily actively promoting ourselves in Scotland.

Sandra White: I know that we have spoken at length about the issue, but I want to clarify the point that was raised by Jenny Marra and the convener. If local authorities and lead developers recommend and wish to see the land-owning maintenance model, things will be skewed in one direction rather than the other.

Alex Middleton: There are really only two or three management companies—

Sandra White: I am just asking the question. Is it the case that local authorities—

Alex Middleton: I do not think so. I am not sure, as I am not party to that decision making, which involves developers, planners and so on. I am aware of discussions, but that is not really what—

The Convener: It is perhaps not a question that Mr Middleton can answer. Mr Wilkinson, do you have any experience of this?

Kevin Wilkinson: The local authority wants to be sure that the long-term management of the landscaping is looked after. It asks the builder, "How are you going to convince us that you will do that?" Both the builder and the local authority know that giving the land to the residents does not necessarily guarantee the long-term maintenance of the site, whereas the land-owning maintenance model does.

I do not think that I have answered your question directly, but I can see why builders propose the land-owning maintenance model to local authorities, because it secures what they want.

Sandra White: It would be interesting to see whether it is a recommendation under planning conditions and planning enforcement that local authorities also have to look at this matter if they are recommending land-owning maintenance companies.

The Convener: I am just considering that. We will not have any planners coming before us, but we can certainly put the issue to the academics and ask them whether it is their experience that it is all a kind of triangle that is connected. Well, triangles are connected, are they not?

I say to John Finnie that he is not next, so he should not look optimistic. I ask members to ask just two short questions, because we have had a fair bite at this. I call Colin Keir, to be followed by John Finnie. If you come in early, you see, your questions are not short.

Colin Keir: Thank you, convener. I ask the witnesses how they decide what is an acceptable level of service.

Alex Middleton: Kevin Wilkinson is probably in a better position to answer that first.

Kevin Wilkinson: That is set by the builder in agreement with the local authority. We are largely talking about landscape maintenance, but it also applies elsewhere. Well, I do not know whether local authorities set the cleaning of common areas in flats but, as far as we are concerned, the local authority says, "The grass will be cut twice a month during the growing season and the shrubs will be looked after," and the builder says, "This is what you've got to do." We then say, "To do that, we are going to charge the residents this amount." That is how we go about it.

Alex Middleton: It is a good question. It comes up all the time in relation to accountability. People ask, "How are you performing?" The specification that Kevin Wilkinson mentioned is a performance spec. It is a minimum spec, and it is probably inflexible. It is set by planners as a kind of security to ensure that the site is maintained. It will refer to hard and soft landscapes, young and old woodlands, SUDS and play areas.

On top of that, we have to remember that this country is heavily legislated in terms of European law. That applies to play areas, drainage and so on, and it now applies to woodlands as well. As well as specifications, there is legislation that we have to follow. There is a lot to consider in ensuring that performance meets the requirements. Ultimately, however, what we want

to do as a business is to satisfy everybody, because it is easier that way.

I said earlier that we have payment rates of over 90 per cent. The average is 92 per cent. However, that means that 8 per cent are benefiting from not contributing, and that 8 per cent can represent the difference in what the whole development gets between standard, average or perhaps just above average conditions, and the hanging gardens of Babylon. That is the irony. If the non-payers, who are a small minority, contribute, everyone gets better conditions.

At the end of the day, it is easier for the business if everybody is satisfied because we can then move on and look at the other issues that come up. The inquiries that we get from customers on developments that are five, six or seven years old, where the landscape is established and everybody understands what work is done, are about traffic calming, about where the lollipop man stands and about bus services. Those things are also part of the community. We can help, because we have connections on the development side, in planning departments and with the political sector. We can do things and be part of the community.

11:45

There is an incentive to get to that point. Service provision is the basic, and we should get to the highest possible point and get customer satisfaction to the highest possible level. As a landowner, we are in effect a neighbour to all the residents and we are part of the community, so we will naturally be a major and influential part of the community in finding solutions. That is where we want to get the business to and that comes in the longer term.

We have a record of such an approach. The committee is welcome to look at some of the interesting stories on our website. Perhaps we do not market and sell that enough; we just get on with it. Performance and service are absolutely important. We must get above the minimum spec as quickly as possible; that is what business and service provision are about.

The Convener: Colin Keir had to ask a short question, because we are towards the end of the session and we must bring in the next panel, but I will let him have a short supplementary.

Colin Keir: Okay, I will—

The Convener: If the question is eating away at your soul—

Colin Keir: No—not at all.

The Convener: If it is not eating away at your soul, I will call John Finnie. In the next session, perhaps Colin Keir can come in first and John Finnie can come in second.

John Finnie: Thank you for that guidance, convener.

The Convener: Or John Finnie can come in first.

John Finnie: That is very kind.

I have a comment more than a question for Mr Wilkinson. I was not necessarily going to raise the issue, but we have skirted around it. A number of private housing areas are maintained to the householders' satisfaction by local authorities. Basically, you gentlemen are in business because local authorities have disregarded what some might say is their obligation to maintain the space around houses—I refer not just to registered social landlord and council houses but to private developments. Do you have discussions with planners? I would prefer local authorities to undertake the work that you do.

Kevin Wilkinson: The short answer is yes. The long answer is that, when we have discussions with planners, we are sorting out other people's failures. We have discussions with and know planners, but we do not talk about their telling builders to give Ethical Maintenance work.

Alex Middleton: A good point has been raised. Do we have discussions with planners? Absolutely. Our view is that there should be joined-up thinking. We are a long-term landowner on development sites, which are highly sensitive—emotions run high and a lot of value is put into them. Given all the factors that relate to a square metre of open-space land, that can be the most important piece of land around, and many people are involved in dealing with it.

Planners should be involved. Our role is not about influencing whether we take on land but about getting the design right. We can give feedback on and bring our experience to design. I referred earlier to the situation in Balmullo. Why would three play areas for kids be required when the residents were all over a certain age? Can such requirements be changed? Yes, they can.

Our discussions are about design and giving feedback that says, "If you do this, this is what will happen." For example, if there are shrubs around a kerb with a parking place, when the plants grow, people will say that their trousers or skirts are getting torn, so different shrubs should be put in.

The biggest thing about a development site is that it is not virgin land when Greenbelt is involved—every inch of the land has been turned over by a digger and flattened. When the open spaces, green spaces and play areas are established in the design of a development, where play areas are put is sometimes flexible. The issue

is just when the developer decides to put in the play area. Developers always leave that to the end. A condition should say that the play area should be established early, rather than left to the end, so that everybody knows about it.

We like to give such advice to planners, not because we want the business but because that is part of the whole entity. We must get the designs and the impacts.

John Finnie: I am sure that you know that play areas are invariably put in unfavourable parts.

The Convener: I do not want to go into an inquiry into whether there are too many play areas or whether they are in the wrong places. We have had a go on planners and whether their involvement with the witnesses' companies and developers should be earlier.

I am sorry, John, but I want to move on. I will let you in for longer next time.

John Finnie: Since the issue has been opened up, will we have further exploration of the role? As a former councillor on a planning authority, I know that planning authorities impose considerable conditions. The one that probably has the most lasting effect is that on grounds maintenance.

The Convener: If the witnesses want to write in response, that would be good. I am sorry to curtail the discussion, but we have another panel of witnesses, who have waited patiently. We have a long agenda.

I just caution you not to plant a high hedge.

Alex Middleton: Tell me about it.

The Convener: On that note, I thank the witnesses for their evidence.

The committee will get a 10-minute break. The next witnesses, who have waited a long time, are getting an extra break, so they can have a cup of tea.

11:50

Meeting suspended.

12:00

On resuming—

The Convener: Right—jollity over. Can it be jolly in the Justice Committee? Of course it can.

We move to our second panel of witnesses, whom I thank for their patience in sitting through a very long evidence session. I welcome to the meeting Alison Brynes, Scottish Federation of Housing Associations; David Doran, director of Hacking and Paterson Management Services; and Jennifer Russell, managing director of YourPlace Property Management.

Sandra White: Convener, I declare an interest in that Hacking and Paterson is my property factor and Mr Doran was involved in factoring when the company was based in Glasgow.

The Convener: Thank you for putting that on the record. I seek questions from members.

Alison Brynes (Scottish Federation of Housing Associations): Convener, I should add that although I am representing the SFHA this morning I am actually from TC Young Solicitors in Glasgow and act for the majority of housing associations on factoring queries. I just wanted to make that clear before anyone starts firing at me questions about statistics that I will not know the answers to.

The Convener: That is a shame. We had so many statistical questions to ask.

Would either John Finnie or Colin Keir like to start with their questions?

John Finnie: Questions, convener? [*Laughter.*]

I believe that you were all present during the previous evidence session. Would any of you like to comment on what you heard?

The Convener: Does anyone have an urgent need to comment on any particular aspect? All you have to do is self-nominate.

Jennifer Russell (YourPlace Property Management): I will kick off, convener.

I oversee property management for Glasgow Housing Association. Cube Housing Association, which is part of the GHA group, also delivers a factoring service, so I can tell the committee about my experiences in that regard.

I suppose that, of the 10 questions that were set out in the committee's call for evidence, three were of particular interest to us as a housing association and provider of factoring services to 24,000 properties for GHA and another 1,200 for Cube Housing Association: private development and the interests of owners against those of developers, which was raised in the earlier discussion; the dismissal of a factor and whether the two-thirds majority was workable; and whether the size and scale of developments were a barrier or offered an opportunity. We have had experience of all three, both as a factor and as a purchaser that has bought into private development properties. Indeed, over the past 18 months, we have been purchasing properties for mid-market rental opportunities.

John Finnie: Was a maintenance regime in place when you purchased those properties?

Jennifer Russell: No. I was just about to talk about our experience of that.

With regard to the second and sixth questions in the committee's call for evidence, on whether the timescales strike the right balance between the interests of home owners and those of developers—in particular question 6, on whether the two-thirds majority vote provisions were "workable in practice"—we think that the provision in respect of managers being appointed for five years in private developments and for three years in care developments works because it takes that length of time for private developments to mature.

As for the provision that owners who are not happy with the service are able to dismiss a property factor if they have a two-thirds majority, my understanding of the act is that the overriding power to dismiss does not apply to a manager who has been appointed under a management burden until those five years have elapsed. People are bound by that five-year provision, which means that, if they are not happy with the factoring arrangements, they cannot do anything until those five years are up.

Having purchased properties, we find that very often—indeed, more often than not these days—developments are not developed out. In other words, phase 1 of a development might have been completed but, because of a lack of interest in purchasing the properties, phase 2 gets put on the back burner. That in itself brings complications because, more often than not, we find that the developer continues to take responsibility for maintaining the common areas, rather than appoint a factor. Developers will absolutely do that maintenance, as their interest is in ensuring that the land is in good condition so that they can sell it. However, in developments where building stops but roads and common areas are not fully developed, the individual owners are almost in no-man's land.

That causes us frustration, first, because we buy into those developments and, secondly, because, as a property factor, we are approached by owners in estates that are not fully developed asking us to take on the factoring services on their behalf. However, the owners are bound, because they cannot get out of the situation for five years, and it is almost impossible to get a two-thirds majority in an estate of 100, 200 or 300 properties. We have had many public meetings to try to support home owners to change factor. That is at our expense and it is resource hungry. It is difficult to change factor. To comment on the evidence from the previous panel, my message is that we absolutely need to make that easier. Where there are difficulties, we need to give people a voice and the opportunity to make changes in the factoring arrangements.

One issue that we have come across is that, although active residents associations might lobby and have ambition and a hunger to do something, when it comes to voting, there is apathy and not everyone sees the issue as a priority. Such associations do not have decision-making powers. If private developments had a committee with those powers, that would at least make the debates and discussions easier.

John Finnie: Sorry, but may I interrupt you there? Perhaps my earlier intervention was not clear. Can you help me with the chronology? As a registered social landlord, you acquire properties on a private site for you to rent or sell.

Jennifer Russell: As part of the Glasgow Housing Association group, as a housing provider, we purchase properties as part of our housing options model.

John Finnie: As part of that, do you inherit a grounds maintenance obligation when you purchase properties?

Jennifer Russell: No, not at all. That is not connected to our factoring activity. We face those problems as an individual owner.

John Finnie: Sorry—I should have clarified. I meant that, as the body acquiring properties, you are not factoring them, albeit that you are also factors. You inherit obligations from someone else.

Jennifer Russell: That is correct.

John Finnie: If a site is not complete, there are no discussions with you about that and no opportunity for you to take on the factoring.

Jennifer Russell: Yes—there is no opportunity for that. That goes back to the committee's earlier conversation that the developer appoints a factor for a five-year period.

John Finnie: Have you ever been appointed by a private developer?

Jennifer Russell: No—not under those circumstances.

The Convener: The issue of partly developed sites is interesting. There are huge issues about those that we have not addressed. Does any of the other witnesses wish to address the issues that John Finnie has raised?

David Doran (Hacking and Paterson Management Services): Hacking and Paterson is a simple factor, as we have no ownership of areas of land or of property within the developments that we factor. We urge consideration of what happens before the legislation has to be used. The legislation is in place as a last resort for owners. We try to satisfy owners or put in place a resolution process before we get to the stage of needing to look at the legislation to change

burdens or remove a factor. The committee and the Scottish Government need to consider how to get factors and owners talking.

Jennifer Russell talked about residents associations not having any clout, but they can have that. Most title deeds these days have procedures to put in place a formal committee of owners who are empowered to take decisions on behalf of the other owners. Ultimately, there are problems with getting groups of owners together to do that, but that is more to do with the will of home owners rather than anything else, such as the legislation. The owners have a certain level of power, and the Property Factors (Scotland) Act 2011 will help owners know that they have that power. More than anything, it will offer greater transparency and open the doors for owners and factors to get together and discuss, and to empower themselves.

With regard to the current situation, we need to stop things getting to the stage at which home owners have to resort to legislation to get action in their developments. We talked about developers appointing property factors prior to the registration of a deed of conditions. Our experience is that that is similar to appointing a contractor. The appointment goes through a tender process and a property factor will put together a tender based on the information that is provided to them by a developer. The successful tenderer is appointed property manager to look after maintenance and have the manager burden.

The tender document can take a lot of work, as it can involve extensive planning conditions for the maintenance of woodland areas and SUDS ponds. I imagine that the developer makes a decision that is based not only on the tender, but on their experience of how factors have performed in other developments after submitting successful tenders elsewhere. Developers have the right to appoint a factor, but there is a process to get to that stage.

Alison Brynes: My clients come at it from a slightly different angle. The majority of my clients see factoring as a necessary evil; they do not see it as an enterprise to make money. My clients end up being factors because a property has been sold through the right-to-buy process or, where they have developed a new-build development, they have perhaps sold some properties outright and some through shared ownership or shared equity. In those circumstances, they are appointed as the factor within their own deed of conditions. We do not go through a process of establishing ourselves as commercial factors and approaching new-build developments to take them on, so that is slightly different.

Sandra White: We have talked about how we would like a new private development to be factored—Jennifer Russell alluded to that. The fact is that, for the first five years of a development, a factor is appointed to look after it. Residents can do nothing about that for the first five years, because it is tied into the title deeds. After five years, if residents are not happy with the service that they are getting, they have to get a two-thirds majority, which is difficult.

The Convener: You are giving evidence, but I do not mind. It is absolutely fine. I will move you over there with the property factors.

Sandra White: I was going to ask the witnesses for their thoughts on that. We are looking to see whether the legislation is working. The evidence that we have received certainly suggests that it needs to be looked at again and maybe changed. There are the issues of the two-thirds majority and absent landlords.

Some huge developments, such as the harbour development in my constituency, are owned by companies that are also the factors and it is very difficult to get a two-thirds majority. Jennifer Russell has already spoken about that so perhaps she will not comment, but what does the panel think? Is it fine if RSLs own the majority of a development, or if private developers or factors own the majority of a development? Can the residents get justice in any other way, or do they have to get the two-thirds majority or go to a land tribunal? How else can we get satisfaction for residents if they are not happy with the service that they receive?

Alison Brynes: I have worked a lot with the home owner housing panel under the 2011 act on its resources and what it has to look at with factors and the services that they provide. It plugs a gap; if someone is not happy with the service that they are getting from their factor, they now have someone to go to, to raise an issue or a query. However, the home owner housing panel does not have a locus to look at costs; that is entirely different. Someone cannot go to the home owner housing panel and ask whether a charge of £50 to change a light bulb is appropriate—the panel simply will not consider such a query. However, it will consider duties in relation to the provision of a service, whether there is anything set out in the title deeds and what is in the written statement of the undertaking to owners regarding the services that are to be provided.

12:15

The Convener: Are there any particular difficulties when there is mixed tenure—a balance of social housing, housing association housing and properties that have been bought under the right to buy? One team on one side might be saying, "Well, I'm not doing it. They're renting their houses. The housing association wants this done

but I'm not paying for it." Does mixed tenure cause special problems?

Alison Brynes: One of the housing associations' main concerns is about encouraging owners to participate. Just now, because there is a lack of development, lots of organisations are looking at major repairs programmes and are identifying things that need to be done but which have a substantial cost for owners, such as reroofing. They are trying to encourage owners to come with them on that journey. It is one thing for a factor to be entitled to carry out a major repair, but it is another for them to recover their costs. Organisations are doing a lot of consultation in which they are sitting down with owners and saying, "Realistically your building will need to be reroofed in the next 10 years. What are we going to do about it?"

The difficulty in trying to engage owners is that, more often than not, they are apathetic, do not want to pay or cannot pay. Through the right-to-buy process, a lot of people have purchased properties at a heavy discount and have not really thought about the future ownership of the properties and the obligations that go with that. That is a difficulty for housing associations and local authorities in trying to provide factoring services for properties.

The Convener: Is there a resolution to that in legislation? I agree with you that it is better if people do not resort to the law. The law should be a last resort or should push you in the right direction without your having to use it. Is there another way of resolving that difficulty? Housing associations are quite prepared to carry out repairs because they can pay for them. However, as you say, private owners may have very modest means and, if they are not on the top floor, frankly, they do not care about the roof.

Alison Brynes: The difficulty is that all housing associations will now be bound by the Scottish housing quality standards, which they must measure up to. If they have tenants in a property that is substandard, they will not meet their SHQS. If they do not engage with owners and get them to agree to carry out major repairs, how can they meet their SHQS?

Some of my clients have withdrawn tenants from buildings in which they have had only one tenant because they have not wanted to meet the cost of a £60,000 roof repair with no prospect of recovering the cost from the other owners in the block. They have removed the tenant and decanted them somewhere else, as they have no way of subsidising owners. Housing associations are bound by the fact that they cannot use their tenants' money to subsidise owners; therefore, they should not throw tenants' money at a major repair that they have no chance of recovering the cost of.

David Doran: Alison Brynes is correct that there is a distinct lack of understanding or education among home owners about what they are buying into, what their obligations are and the fact that buildings cost more to maintain as they age. There is a need for more education and understanding rather than for legislation.

There is a problem with the image of the factor—whether they are private, social or a land maintenance company—in that everything that comes from them is considered to be, more than likely, a lie. We have a development of 329 houses, where we manage the common ground on their behalf. I recently met an MSP who said that he had received in excess of 100 letters from people who were concerned about the maintenance of that development and our service. Three weeks prior to that, we had issued a letter to the owners, which had a tear-off slip at the bottom, asking for their views and saying that we wanted them to form a residents committee so that we could hear their views and take matters forward as they wished. We received eight replies, simply because the letter came from us—people would rather go to their MSP, whom they trust. That is about education and understanding.

The Convener: That is a wonderful thing—an MSP whom they trust! Do not name that person or the rest of us will feel disenfranchised.

David Doran: That is a major problem, at any rate. When it comes to attitudes such as, "I'm not on the top floor, so I don't need to pay towards the roof," it is a matter of education for other institutions, too, including citizens advice bureaux. We continually get letters from citizens advice bureaux detailing people's income and expenditure. A satellite television or mobile phone package might be included, yet the owner cannot afford to pay for their buildings insurance. That is seen as acceptable to the citizens advice bureaux, and that is a big difficulty.

The OFT survey said that 70 per cent of people who responded were happy, and thought that the services from their factor were reasonable and were up to a good standard. It reported that "a substantial minority", as it put it, were unhappy. That is prevalent across the board—there is a problem with a substantial minority of people. Although we, as factors, need to take on board their concerns and alleviate them as best we can, we have to consider the overall client—the body of ownership. We could have a tenement of eight people, and one of them might never be satisfied. However, if we are satisfying the other seven, we are doing a good job. That is where the real difficulty lies. It is about the education of owners.

The Convener: I have lived in a tenement, and trying to get some kind of secure access was a nightmare, even though I was on the ground floor. It did not suit me, but I wanted it for other reasons. Someone on the top floor might not care if somebody wanders in and gets to the first floor. Such things are a perennial problem.

David Doran: One of the other submissions said that factoring is the management of common property for several different owners. That is not what factoring was ever intended for. Factoring was intended to act for the landlord of a tenement. A factor maintained the building on behalf of the landlord and collected the rents. That has changed with the change in ownership, and factoring is now diversifying with the introduction of the 2011 act, which will help.

The Convener: Colin Keir wanted to make an early bid. See the influence that I have here.

Colin Keir: I wanted to keep on your good side, convener.

The Convener: At last.

Colin Keir: My question—I am going off my script a bit—

The Convener: You have a script? We do not have scripts.

Colin Keir: I wrote it down, just to remind myself. I need these things in my dotage, I suppose.

This is a hypothetical point, but perhaps someone can answer it. Developments are set up, things are based on land management more than anything else, and there are house owners. There will be strips of land, which factors are brought in to deal with, along with the costs.

People buy their houses, pay their mortgages and all the rest of it. The land is held by the developer, for instance. Some years ago, the question was put to me: why should it be legal for somebody to keep hold of a piece of land and to force people who are already spending money on their mortgage payments to pay for that piece of land?

The Convener: I feel like saying, "Discuss," as my history teacher used to say.

David Doran: We are not directly involved in land maintenance companies. I suppose that the argument is that the people who are buying in should be aware of the situation. That is something for solicitors to bring to the attention of a purchaser. Developers are now bound to provide information on factoring prior to the first sale, but what happens on the second, third, fourth and fifth sales? That is where things fall down, because that level of information is not a requirement at that stage. If a solicitor does not ask the question, they will not get an answer.

The Convener: I will defend solicitors here.

Alison Brynes: I was just going to say—

The Convener: I have got there before you.

David Doran: I was not attacking solicitors. It is the minority—

The Convener: Two of us rose out of our chairs there.

David Doran: Remember that we are talking about a minority of people.

The Convener: When solicitors are dealing with purchases and sales, they make it plain—they have to, or they would be sued for negligence and compensation—what the obligations are that go with a property. However, many people do not want to hear that, as they are too busy looking at the lovely flat and the way it has been Ikea'd out and so on.

I hope that you are happy about that, Ms Brynes—I leapt in there for you.

Alison Brynes: Under the Property Factors (Scotland) Act 2011, people should get a written statement, and they should get a welcome pack from their factor. That is a matter of educating owners. They will have heard about the factoring once through their solicitor; they should hear it again from the factor.

We tend to find that people who have previously been tenants were not quite sure what factoring services the registered social landlord would provide. All of a sudden, they become a property owner and they start getting bills. They never realised that they were going from being a tenant to being an owner, with all the things that go with that.

The Convener: That is an important point, but I am afraid that Mr Keir is unhappy and we must not have Mr Keir unhappy, especially as he is in charge of the pandas and it is important that he keeps them on message for the next couple of weeks. Mr Keir, would you like to repeat your question, because you seem to be unhappy with the answer?

Colin Keir: Given the fact that everyone is a landowner within an estate and they are each responsible for their own property, why should the ground be factored out? It should be the responsibility of the owners.

The Convener: I will let the witness answer but I think that you have missed something there.

Jennifer Russell: That is not always the case—you heard from the first panel about two different models. Some of the land transfers into common

ownership and some of it remains in the ownership of an individual or of a land developer. You heard earlier that a lot of the time, people had the right to use the common land—we had a single ownership land model. That is not always the case in our situation. Home owners do not have the right to use some private land, albeit they continue to be asked to pay for the maintenance of a piece of ground that they do not own. They can go to the new home owner housing panel about services, but there is a cost issue. To answer your question, it does not seem right to us—it seems unjust—that they would not be given the opportunity.

The challenge around that responsibility, as you heard earlier, is that it is not as easy as owning a bit of common land and cutting the grass. Canals, sewerage, play areas, indemnities and so on are often involved. That is where it becomes complex and that is where individual home owners sometimes need the support of people who have that level of expertise so that the home owners do not end up in difficulties. It is not as straightforward as just cutting the grass or planting the plants or ensuring that the area is well maintained. A lot of other responsibilities go with some of those areas.

Colin Keir: Yes. A number of such examples—in my constituency and when I was a local councillor—have come my way over the years. It is a fair question, the more I think about it, depending on which model is being used. I am not saying that it is the same everywhere.

The Convener: You would have to change the law of contract and a lot of other fundamental things.

Colin Keir: That is what I was suggesting.

The Convener: Yes. Roddy can comment on that. Graeme Pearson is next.

Graeme Pearson: Much was said earlier about education and information. Who would provide that? It is one thing to say that there is a need for more, but more from whom? Who would be responsible for the provision of that information and for keeping it up to date?

To return to the point that I made to the first panel, a great deal of friction seems to be caused by a lack of clarity on the services that will be provided and on the evidence that those services provide value for money. A £50 charge to change a light bulb was mentioned. All too often, that becomes a real issue in itself. One would expect that, if it costs £50 to change a light bulb, there would be an explanation for that £50 charge or a breakdown of the costs. It is about provision of information.

Who should be responsible for maintaining the guidelines for information and education and what are your views on that lack of clarity on services?

David Doran: That is about working together. It is not about one party taking responsibility, but it has to be led by the Government. Currently, trust in factors is not there and getting that trust back is about not only the services that are offered, but hearing about those services from another perspective. Any factor would be happy to sit in on Government boards or seminars to help educate the home owner. That work has to be pulled together by the Government but led by those carrying out the maintenance and the services, who can share their experiences.

As you say, there is a lot of friction and there are a lot of unhappy people, although they are still a substantial minority. However, many people are unhappy simply because they do not understand, to use your example, the cost of replacing a light bulb. They do not understand that, if they do not replace the bulb themselves, they need to pay for the services of a qualified person, who attracts a suitable rate. That is the simple answer.

12:30

In our opinion, we need a Government-based approach. We have had the Tenements (Scotland) Act 2004 and the Property Factors (Scotland) Act 2011, which are all about enforcing duties on property factors, but we need something that gets owners on board as well, so that the owners who do not pay or refuse to pay start to understand the effects of that on them in the long term.

When I attended a recent seminar in Paisley that was run by Renfrewshire Council, I was given some frightening statistics on the number of houses and tenements that are in disrepair. However, nothing can be done about that, because there is no public funding. It is right that there is no public funding, because the private owners should pay for the repairs. Where there is definitely a problem that is not treated, that will lead to the housing stock getting into a state of dilapidation.

As a factor and a for-profit organisation, we obviously want to continue maintaining properties. If we spend more money on a building, we do not earn more money—that is the simple fact of the matter. It is not beneficial to us to spend a lot of owners' money, because we do not make any more money out of doing so.

Graeme Pearson: You have made the point that there needs to be an on-going Government-led scheme. Perhaps I should know this, but is there a forum in Scotland on which the Government is represented that enables current experience and knowledge to be developed so

that guidance on such matters can be offered across Scotland?

David Doran: No. There have been many working parties, but there is no forum—

Graeme Pearson: Is there nothing on-going?

David Doran: There are bodies such as the Glasgow factoring commission, but nothing that pulls everyone together.

Graeme Pearson: Should there be?

David Doran: Yes—absolutely.

The Convener: Another issue is how property factors keep tenants or property owners informed beyond just putting a bill through their door or giving them a note that says, "By the way, we have had a look at the roof, and it will cost £30,000, so your share will be £5,000," and that is the first that they hear about it. Given that tenements can have a greater turnover of people than other property types, is there any way that factors can keep people informed so that they know what is happening? People might then remember to save something towards communal repairs. Do you do that?

Jennifer Russell: I am involved in the Glasgow factoring commission, where that question has come up. When the commission looked at the issue in producing its report, which is still to be finalised and distributed, we found—believe it or not—that there is actually a tremendous amount of documentation out there that is produced by a number of different bodies and made available to people from the minute that they buy their house. For example, information is provided on the right-to-buy legislation. Consumer Focus Scotland produced "Common Repair, Common Sense" and local authorities produce other leaflets. As a large-scale factoring organisation, we produce a wealth of material, which is made available through self-service online, including home owner handbooks. The home owner housing panel, which was set up under the Property Factors (Scotland) Act 2011, stipulates that every factoring organisation should provide written statements and should re-register with the panel every three years.

For me personally, there is an issue about making it easy for people to understand everything. There are a number of legislative acts and pieces of documentation, which are not easy for the layman to understand and decipher. There is a belief that the reason why few home owners switch factor is that they are not sufficiently well informed. However, our written evidence highlights our experience of going through the housing stock transfer. From 2009 to 2011, more than 5,000 home owners who were in mixed-ownership blocks had to make a decision about who they wanted to be their factor. Both we and the receiving landlord spent a significant amount of money on documentation to give people a benchmark on what each of the available service provisions would be like.

We door-knocked people and provided them with options for self-factoring and going to commercial factors. No one chose self-factoring, but it was not a lack of information that prevented them from changing to that option; it was the fact that it was not important to them. Forty-three per cent of people decided not to do anything, despite all the efforts, knowledge and materials and so on. Those who decided to change factor chose another registered social landlord, and they might say that they do not see any difference between the two. There is an awful lot of material out there, although it is not all in the one place.

Graeme Pearson: It is commonly accepted in many fields that there is a lot of information out there—even accessing the internet we are swamped. The issue is to pull it together in a manageable fashion that people can cope with when they come home of an evening after a day's work or when they are dealing with some crises. People need to be able to manage the wealth of information to suit their purposes.

No matter how much information is out there, I know from speaking to people who have experience of using your facilities that they do not understand why they are being asked to pay for painting when they do not know where the painting was, or to pay for repairs when they have no idea where the repairs were occasioned. We are talking about some very basic things. You can have a tonne of papers but, at the end of the day, the essential piece of information that they need is a sheet of paper that says, "We're talking about the landing adjacent to your property." If they have that, although they do not want to spend £50, they can see the paint and that things are much better, so they accept that they need to pay the dues.

Jennifer Russell: I agree. We recently created a common repair team. Our factoring officers go out, have those conversations and get consents on doorsteps rather than by letter. However, there is a cost to that approach, which is more resource intensive than letters. We are piloting that approach, but we have to balance how much people are able and willing to pay for a service against the level of communication that we are engaged in.

Alison Brynes: We acted for the receiving local housing organisations when Glasgow Housing Association transferred, so we have a feeling of the meetings from the other side. In the majority of cases in which the factoring did not transfer, it was simply because the meetings were not quorate—we could not get enough people to come to the meetings. We considered doing things such as

proxy voting. We tried to be a wee bit inventive in how we got the votes but, even then, it was difficult to engage people.

The Convener: Did you try online voting?

Alison Brynes: The difficulty was that if you do it—

The Convener: Did you try it?

Jennifer Russell: Believe it or not, we are encouraging our customers to go online. However, in the majority of cases there is a difference between the private sector and the social sector in the number of customers who are online. We offered that option, but we did not have an awful lot of customers who had the facilities to use it. We had public meetings, and a variety of communication methods were tried.

The Convener: I heard Graeme Pearson make a good suggestion. Why not ask about that, Graeme?

Graeme Pearson: I was waiting for the space, convener.

The Convener: You have got it now—I have given it to you.

Graeme Pearson: I have learned to stay out of the way when women are having a debate.

The Convener: Your wife has achieved something.

Graeme Pearson: Do you go for the use of mobile phones, texting and tweeting in order to get feedback?

Jennifer Russell: Believe it or not, Glasgow Housing Association—

Graeme Pearson: I believe you every time.

Jennifer Russell: We have Twitter and our customers can use an app on their phone to report things such as repairs online. We are using those service options.

Graeme Pearson: But how about voting?

Jennifer Russell: Not for voting—

Graeme Pearson: Why not?

Jennifer Russell: We do not have that level of data.

Alison Brynes: With my lawyer's hat on, the difficulty with tweeting is about how to tell whether a person is who they say they are and whether that is an appropriate proxy vote, if that is what you are asking them to do.

Graeme Pearson: It is useful to have that on the record. Thank you.

David Doran: A property was transferred from us through an online voting mechanism. It can work. The difficulty is the different home owners in each block. A factor could have two blocks of 300 flats getting exactly the same service for exactly the same cost, but each will have a different opinion of the factor, or it might be possible to get a committee working and quorate in one but not in the other. Those are the difficulties that factors face. The situation is not cut and dried; if we do the same thing in two different buildings, we will not necessarily get the same result.

Graeme Pearson: I do not want to take this too much further, because I do not think that we can get to the bottom of it. The point is that, although you might feel that you have provided a similar service to both blocks of flats, it might not be perceived that way at the other end.

David Doran: Absolutely.

Graeme Pearson: I would therefore not call it illogical if you get more complaints in one area than in another. It might just be down to people's perception of the service.

David Doran: Indeed.

The Convener: I have to say that this seems to be more of a west of Scotland issue. I wonder whether it is as much of an issue in, say, Edinburgh.

Sandra White: Well, we have the GHA, LHOs, the private factors and so on. I could go on about the differences between factors and how private factors have floats and RSLs do not, but I do not want to get into all that. Instead, I want to ask about how you have been affected by section 53 of the 2003 act, which came up a lot with the previous panel. According to the submissions, it has made the situation much more difficult for solicitors and I really think that it needs to be examined in our post-legislative scrutiny.

Alison Brynes: I find it fairly difficult to understand section 53, but what I find really difficult is explaining it to a client in a way that they can understand. What is a common scheme? What does the phrase "related properties" mean? Indeed, it is the related properties element that people fall down on. There is a wee bit of guidance in that respect, but it is not particularly robust. I do not agree with the previous suggestion that we should simply scrap the whole thing, but we certainly need more robust guidance on related properties and on exactly what constitutes a common scheme. For example, do the provisions enabling someone to be part of a common scheme have to be identical or merely similar?

A particular difficulty that I have is that the majority of my west coast clients are the successors to Scottish Homes. In the Scottish Homes stock transfer, they got large areas of ground and the properties that had been

purchased through the right to buy were subject to a deed of conditions. The deed seemed straightforward—it was generic and simply said that everyone in the development bore an equal share of the costs of maintaining its common parts—but the problem is that it contained no definition of the development. As a result, when you try to enforce such provisions, who do you enforce them against? Who is the community? In such cases, we have to import the provisions in the 2003 act and try to define whether the properties are part of a common scheme and are related.

The difficulty with the Scottish Homes deeds of conditions is that they did not provide for owners to have a common share in the open spaces; in fact, they did not provide for owners to have use or enjoyment of those spaces. Of course, they have use and enjoyment of those areas by virtue of where their properties are, but nothing specific is set out in the deed.

That is a big difficulty for my clients, who now routinely carry out open space maintenance and recharge for it, because that is all that they can do. Some of my clients maintain estates with 3,000 properties; indeed, one who makes no money out of factoring routinely invoices for about £400,000 a year. If that client stopped doing that work, the communities would fall into complete disrepair, but what option does it have? If the 2003 act does not contain the necessary provision to enforce the provision in the titles, should it simply stop doing that work? If it did so, communities would fall into disrepair; if it carries on with the work and then discovers that it should not have done so because it cannot recharge, it will be left £400,000 adrift. It is a difficult balance to strike.

As the convener suggested, section 53 might have been introduced to deal with mixed tenure developments. That is fine where the titles prevail; however, if the titles prevail, we do not need to look to the 2003 act. In the main, I look to the act to deal with my Scottish Homes deeds of conditions, which contain no plans, but I find it difficult to bring in the common scheme and related properties element.

The Convener: So we need to amend it.

Alison Brynes: I think so, especially in those circumstances.

The Convener: If you have any ideas about how it should be amended, we would be delighted to have them. I do not expect you to be a legislative draftsman, but you could at least give us an idea of how section 53 might be amended to make things easier. After all, a law is no good if it is not practical.

I do not want to spin things out too long. Roddy, are you signalling that you want to ask a question?

Roderick Campbell: Yes. It was a very—

The Convener: It was a flick of the finger. I have to learn to understand the committee's body language—it is beyond my abilities at the moment.

I believe that Colin Keir has a supplementary question.

12:45

Colin Keir: Yes. I wanted to ask something on the back of Sandra White's question.

The Convener: Okay. I will take that and then the flick of the finger.

Colin Keir: Obviously tenemental properties are owned by different people. One problem in Edinburgh is that it has the most legal houses in multiple occupation anywhere in Scotland. In some cases, there might be a block of eight properties, six or seven of which are run by factors, and from my experience as chair until 2011 of Edinburgh's local licensing committee, which dealt with HMOs, I have to say that we always found it difficult to join up the dots if there were any relicensing problems. There never seemed to be anything in the title that made the factors work together. Some would not speak to each other; others were not only factors, but property owners. It was all over the place. Is there anything that we can do in the 2003 act to help that situation and ensure that common repairs get done?

David Doran: The legislation binds the home owner, rather than the factor, and it is more a matter of getting the home owners together to ensure that their factors speak to each other. Edinburgh is slightly different in that, for many years, it was more self-factoring; it is also not as big as the west coast. However, the situation is changing. I do not know whether it is a sign of the economic downturn or whether it simply signals a change in views, but more and more properties in the city are becoming factored.

There is no legislation as such that deals with the issue. The Property Factors (Scotland) Act 2011 will help home owners whose factors do not speak to other factors, but I do not think that any working group is pulling any of that together. Education might assist, but I am not so sure about legislation.

Jennifer Russell: On the issue of letting agents acting on behalf of owners and factors factoring blocks, I point out that difficulties in blocks as a result of HMOs or anything else are flagged up to us as factors and we know that letting is going on. The register that letting agents must sign up to helps us identify the person we need to speak to in order to join things up a bit, but I totally agree with David Doran that the legislation is more focused

on the owner and their responsibilities with regard to repairing properties rather than on the factor and their responsibility to act on instruction and complete their tasks.

David Doran: The property factors register has also assisted in that respect. It is easier for us to liaise with another factor than with a self-factoring block, and that is what the register allows us to do. Previously we might have sent a letter to eight home owners, got no response from any of them and never found out who the factor was. The fact that we can now see whether there is a factor will help.

The Convener: When did that come into force?

David Doran: October—so it is still early days.

The Convener: It is just up and running. That might answer Colin Keir's question about identifying factors.

Rod Campbell's question will be the last one, because we still have things to do.

Roderick Campbell: My question is a general one. You said that the 2011 act has improved the situation for home owners, because they can now see what services factors provide; however, it does not contain anything about the value of services. How might we look at that aspect?

David Doran: Home owners will be able to value the services that they are offered, because the factor's terms of service will make things transparent, and the ability to carry out marketing exercises based on other factors' terms of service will, in itself, give owners a cost equivalent to consider.

Given that services, be they cleaning, ground maintenance, roofing or whatever, are all transferable, it does not matter who factors the building because the same contractor can be used. The only costs that should be an issue are the insurance and the management fee, which home owners can easily regulate.

The Convener: I thank the witnesses for their evidence and their time and hope that they found the discussion useful. We now move into private session.

12:50

Meeting continued in private until 12:55.

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