



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 3 May 2017**

**Session 5**



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**  
**13<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**DEPUTY CONVENER**

\*Elaine Smith (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

Kenneth Gibson (Cunninghame North) (SNP)

\*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

\*Graham Simpson (Central Scotland) (Con)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Dave Aitken (Local Authority Building Standards Scotland)

Nicola Barclay (Homes for Scotland)

Jim Gilmour (Federation of Master Builders)

Stephen Kemp (Scottish Building Federation)

Malcolm MacLeod (National House Building Council)

John Scott (Ayr) (Con)

**CLERK TO THE COMMITTEE**

Clare Hawthorne

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Local Government and Communities Committee

Wednesday 3 May 2017

*[The Convener opened the meeting at 11:03]*

### Building Regulations

**The Convener (Bob Doris):** Good morning and welcome to the 13th meeting of the Local Government and Communities Committee in 2017. I remind everyone to turn off mobile phones. Meeting papers are provided in digital format, so members may use tablets during the meeting. We have a full house; no apologies have been received.

Item 1 is evidence on building regulations in Scotland. I welcome John Scott MSP, who is here because he has a strong constituency interest in the subject. Thank you for coming along, John. I also welcome our witnesses. Nicola Barclay is chief executive of Homes for Scotland, Malcolm MacLeod is director of the National House Building Council in Scotland, Stephen Kemp is president of the Scottish Building Federation, Dave Aitken is from Local Authority Building Standards Scotland, and Jim Gilmour is board member of the Federation of Master Builders in Scotland. Thank you all for coming along.

Given the size of our panel of witnesses, we will move straight to questions. I hope that that is okay with everyone.

**Graham Simpson (Central Scotland) (Con):** Mr Aitken represents the local authority building control sector. For committee members and people who are watching, let us set the scene by describing the current system. Your organisation has produced a document entitled, “Verification during Construction—Non-Domestic Buildings: Guidance to Support the Application of Reasonable Inquiry”, which states:

“Verification of the compliance of building works with Scottish building regulations is undertaken by the 32 Scottish local authorities in their role as verifiers.”

I understand that councils were all recently reissued with licences in that regard. You go on to say that

“The work of verifiers has two main elements: checking that building plans comply with building regulations when an application is made for a building warrant and undertaking reasonable inquiry to verify that the building work complies with the approved plans, details and with regulations.”

Before I read more, will you say what “reasonable inquiry” means?

**Dave Aitken (Local Authority Building Standards Scotland):** I can do that. It is important that the committee is aware that there are differences between our system in Scotland and the system in England—the submission from LABSS makes reference to that. Our system is very much a pre-emptive system: plans are checked to ensure their compliance with building standards, and the builder can then start the build.

On the “reasonable inquiry” that goes on on-site, all local authorities issue a construction compliance and notification plan—a CCNP—which is an inspection plan that is tailored to the risk that is associated with the build: builds are risk assessed. That approach enables local authorities to focus their attention and available resources on higher-risk projects. “Reasonable inquiry” under the CCNP involves targeted inspections on higher-risk elements of the build: for example, verifiers will look at drainage, fire issues and structure. It all depends on the risk that is associated with the building type. That is how those plans are constructed.

**Graham Simpson:** In the case of a large housing development, will a council official sit in an office and make a judgment about which plots to look at, rather than look at every plot?

**Dave Aitken:** In a large-volume build site, a verifier first liaises with the developer when the building warrant is approved, because it is important that the verifier knows when the build will start. That enables the verifier to get a feel for how the build will be phased. Developers used to build maybe 20 houses at one time, but that is no longer the case; the landscape has changed quite a bit. It is important that the local authority verifier engages with the developer at an early stage so that they can get an idea of how the build programme looks and can then produce a CCNP for the site, which will include random inspections—for which there could be a 1:4 ratio, depending on numbers and the size of the site. Random sampling is done. Again, that is all risk based.

**Graham Simpson:** The short answer is that you do not look at every site—I mean every plot.

**Dave Aitken:** There will be inspection of every site and a completion inspection will be carried out.

**Graham Simpson:** In the “Verification during Construction” document, LABSS says:

“The inspection of building work in progress is an important part of the building standards verification procedure. However, it must be stressed that inspections are to protect the public interest in terms of compliance with building regulations, not to ensure that all the work is constructed as the person paying for the work would want it.”

How do you explain that?

**Dave Aitken:** The Optimal Economics report of 2014 that is referred to in our paper highlighted differences between the purposes of what are classed as warranty inspections and inspections that are carried out by a verifier. Warranty inspections are undertaken to ensure that the construction conforms to guidance and standards, and are primarily carried out on behalf of clients to protect their private interests and to minimise the risk of claims, whereas inspections that are carried out by verifiers focus on the public interest—for example, on carbon and energy reduction.

**Graham Simpson:** So if we can cut through all that, what basically happens is that a council does a paper exercise and assesses risk, but does not go out and inspect every stage of every property. So, when it comes to buying a new house, the person who is buying the house can have no confidence that that house has been built to standard.

**Dave Aitken:** The buyer would seek confidence through the legal system, as the situation is set out just now. Clearly, the responsibility lies with the developer who signs off the completion certificate to say that the build has been carried out in accordance with building regulations. That is an important part of how the system is set up in Scotland.

**Graham Simpson:** You are saying that it is the responsibility of the developer, so what is the point of your service?

**Dave Aitken:** As I said earlier, the important point is that we have a pre-emptive system. We ensure compliance in plans and builders build from approved plans.

**Graham Simpson:** But you are not actually ensuring compliance with anything because you are not inspecting every stage, so a house buyer cannot have that confidence.

We heard evidence earlier—I will not give details because it was in private—of cases across Scotland in which people have bought homes that have ended up being defective because problems were not picked up through the building control system. One case involved a lot of houses. Is there something missing that makes inspection lax?

**Dave Aitken:** As I say, the main responsibility lies with the developer, because it is the developer that signs the completion certificate to say that the build has been carried out in accordance with the approved plans, which were stamped by the local authority.

**Graham Simpson:** What is that completion certificate meant to prove?

**Dave Aitken:** It is meant to prove that the developer has carried out the build as per the approved plans, which were signed off by the local authority. Clearly, in the situation that you have talked about, that has not happened—the developer has falsely signed the declaration on the completion certificate.

**Graham Simpson:** It is the developer's fault—it is not down to you to check anything that the developer is telling you.

**Dave Aitken:** No. We carry out “reasonable inquiry”.

**Graham Simpson:** I will give you a quotation from the inquiry into Edinburgh schools, which you will recall. Paragraph 10.6.3 says:

“The Inquiry formed the view that there was a common misconception, even among some Council officers, as to the extent of the reliance that can be placed on the quality of construction of a building that has gone through the statutory Buildings Standards process.”

That is pretty damning, is it not?

**Dave Aitken:** LABSS came out quite well in the report that you refer to. I do not think, in fairness, that we were damned at all; the report highlighted weaknesses in the system. When you look at building standards, you have to look at them holistically. Every stakeholder in the construction process has a part to play in ensuring compliance with building standards.

**Graham Simpson:** I will read you another paragraph from the report. Paragraph 10.6.10 says:

“From the above it is evident that the Building Standards system is not designed or intended to give the level of assurance that a client may require in relation to the more detailed aspects of the construction of a building.”

Anyone can jump in on that if they wish to.

**The Convener:** Before anyone comes in, I want to draw a distinction between the role of local authority verifiers and the wider construction processes of private developers. We will want to tease out some of that. If anyone else wants to come in on that, it would be good, but I should point out that Elaine Smith and Jenny Gilruth will want to come in with supplementary questions.

Does anyone want to come in on what they have heard so far?

11:15

**Malcolm MacLeod (National House Building Council):** I just want to record that the points that Mr Simpson has made have been well documented in the past. For example, back in 2009, the Scottish Government published a consultation document entitled “Consultation on improving Compliance with building regulations”,

which recorded that it was, because of the lack of follow-up inspection, highly improbable that work on a site would comply with what was proposed in the design. We are therefore not dealing with a new issue or problem; “Report of the Independent Inquiry into the Construction of Edinburgh Schools” seems to have followed the same line and reinforced the position that was stated back in 2009.

**The Convener:** Is that a problem with NHBC-covered properties as well?

**Malcolm MacLeod:** No, I would not say so. Our systems are significantly different from those that are employed by local government in Scotland.

**The Convener:** It is worth putting on the record at this stage that some of the information that we received in private from constituents is that they believe that NHBC developers, too, have let them down badly. Does anyone else want to come in? Are there no takers on that? Graham—do you want to follow up on anything before I bring in other members?

**Graham Simpson:** I will make a final point, because I know that other questions will flow from this. We have heard evidence that many householders have faced problems with buildings. Of course, it is not just about houses; I have mentioned schools as well, but it could be any building. My understanding—perhaps Mr Aitken can confirm this—is that if it is established later that there are defects, there is no mechanism under the Building (Scotland) Act 2003 to rescind a completion certificate.

**Dave Aitken:** That is correct—there is no form of redress and it becomes a civil matter between the purchaser and the builder.

**The Convener:** I suspect that we might return to that at some point, Mr Aitken.

**Elaine Smith (Central Scotland) (Lab):** Mr Aitken said that things have changed over the years somewhat and that a developer that might at one point have built 20 houses will now build, for example, 200. Has there been a reduction in the number of building control officers employed by local authorities over the period?

**Dave Aitken:** I do not have such figures available, so I cannot tell you. I know that there are roughly 500 employees in the building standards system just now and that, within that, there are about 250 chartered surveyors spread across Scotland. However, I cannot tell you the actual numbers per local authority.

**Elaine Smith:** Are chartered surveyors different from building control officers?

**Dave Aitken:** Yes. There are different levels—for example, building inspector and technician. A

chartered surveyor would deal with higher-risk issues.

**Elaine Smith:** I suppose that people assume that the issuing of building control certificates of completion can give them confidence. However, you have said that there is no redress if there are building defects and that the only recourse is for the buyer to take legal action against the company that they bought the building from. Basically—as my colleague pointed out—the message is “Buyer, beware.”

**Dave Aitken:** Yes, that is correct.

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** Good morning, panel. Mr Aitken, I want to drill down a wee bit into some of the issues that my colleague has highlighted. You said that the developer has the final sign-off but the local authority has the right to “reasonable inquiry”.

**Dave Aitken:** Yes.

**Jenny Gilruth:** The local authority has a right to inspect the work in progress to check that the building warrant is being complied with. Is there consistency nationally in how that is applied? Do you have any information or data that shows that inspection is being applied nationally in a consistent fashion, or is that information not available?

**Dave Aitken:** I do not have statistics on what is happening on the ground, but in respect of driving consistency nationally, there is the “Verification during Construction” handbook. Each verifier or local authority uses that guidance. As I said, every building warrant receives an individual CCNP: that compliance plan that will identify, based on risk, the type and number of inspections that will be carried out.

**Jenny Gilruth:** My question is about the fact that, although the local authority has the right to inspect the work, there is nothing that compels it to do so.

**Dave Aitken:** The legal responsibility for “reasonable inquiry” compels the local authority to inspect work. It has to carry out a form of “reasonable inquiry”—that is the legal term.

**Jenny Gilruth:** How would you describe “reasonable inquiry” and how does it work? What would lead the authority to that point? Would it be someone coming to the local authority with a complaint? Am I right that such inquiry is not done as a matter of course, and that the local authority would carry out some sort of check if an issue arose?

**Dave Aitken:** No. The checks and inspections are laid out in the CCNP.

**Jenny Gilruth:** But does the local authority have to do them?

**Dave Aitken:** Yes—because that would be “reasonable inquiry”.

**The Convener:** I want to follow up on “reasonable inquiry”. I assume that developers are like MSPs—you get good, bad and indifferent ones. Would part of a reasonable inquiry include looking at the track records of construction companies and developers over the years to see the level of post-construction complaints? It would help if you could give the committee an idea of what “reasonable inquiry” means.

Before you answer that question, Mr Aitken, I point out that we are going to move on to discuss the checks that are in place for the warranty system for private developments.

How do you get an evidence base for the risk assessment in order to decide on the depth of inquiry for each development? It would be helpful to hear more on that.

**Dave Aitken:** I referred to the “Verification during Construction” handbook, which refers to factoring into the CCNP risk assessment the quality of the builder based on experience. If it is known that there have been problems with a builder previously, the level of risk would be cranked up.

**The Convener:** It might be helpful to hear from industry representatives about the checks and balances that they believe are in place in the construction process. We have had an overview from Mr Aitken about the role of local authority verifiers in the process and, from what we are hearing, it seems that much of that is based on risk assessment, reasonable inquiry and a degree of trust in the developers, so that when they certify a build as completed that signing off is appropriate. Is that joint or individual sign-off?

**Dave Aitken:** It is not joint sign-off. The legal position is clear that responsibility for sign-off lies with the developer; the developer signs off the completion certificate and the local authority either accepts or rejects it.

**The Convener:** Okay. I do not mean to be glib, but how can we have comfort that the completion certificates are worth the paper that they are written on? What checks and balances are there in the system to ensure that the certificates are valid?

I am not always very good at seeing when people are trying to catch my eye, so I ask the witnesses please to signal to me if you want to speak.

**Stephen Kemp (Scottish Building Federation):** I will talk from experience and with a developer hat on, as I have operated down here as a builder and now run the family firm in the Orkney islands. There are vast differences in

respect of frequency of inspection. We are fortunate in Orkney to have a relatively well-resourced local authority and a relatively low volume of work, so we see our inspectors on site very regularly. However, having spoken to members from elsewhere across the country, it seems that the frequency of inspections varies substantially between local authority areas, depending on the volume of work and resources.

**The Convener:** That is helpful. It is also helpful that Mr Gilmour and Mr MacLeod have put up their hands, so I know that they want to speak.

**Jim Gilmour (Federation of Master Builders):** The FMB covers the whole United Kingdom, although we also have FMB Scotland. About 19 months ago, down south we signed a partnership concordat with building control. Part of our partnership is that we do individual inspections with every contractor, every two to three years. The inspections are carried out by an external company of chartered surveyors.

I am a developer and a construction man. The scenario is that there is an area of trust and you build up further trust. Earlier the question was asked about whether the ante is upped for a builder that has a track record of being disappointing in previous contracts. That is the master plan down south, which we are bringing back up here. We have a new partnership with building control in Scotland. It is becoming a bit of a marriage, but it will probably take a couple of years before it really beds in.

Contractors do not like the individual inspections, which were brought in about four or five years ago, but I think that they have been the best thing for keeping people out of court. That is good for the FMB, because it has to represent its members, and for the clients at the other end.

In my opinion, many sites on which there have been issues should have had a clerk of works—a full-time clerk of works inspects the site as the work goes along. The expense of having one on a development is not crazy. I will give you a tradesman’s view. A decent clerk of works on site will build up a relationship with the joiner, the electrician and the plumber and he sets the standard on his site. He might turn round and say, “Sorry, but if you fit a window like that again, I’ll go to your employer and you won’t be on this site.” That process of checks and balances is what we are trying to get to.

**The Convener:** That is really helpful. For clarity, who employs the clerk of works?

**Jim Gilmour:** On a local authority site, it would more than likely be a local authority clerk of works. On a private site, it is up to the contractor, not the local authority, to employ a clerk of works.

**The Convener:** Elaine Smith wants to come in. Is your question specifically on this topic?

**Elaine Smith:** Yes—it is a bit like the question that you asked, convener. It is for Mr Gilmour. It is my understanding that, a number of years ago, every major building company had a clerk of works—maybe not just one, but a team—because of the employing of subcontractors. Are you saying that a major building company now could be building 400 houses without a clerk of works?

**Jim Gilmour:** Companies maybe have a foreman or a supervisor who has been in the industry for a while and might be educated in it as well. His job is to go round and get the site built. On a large-scale site, there will normally be a contracts manager, but the structure used to involve a contracts manager, a site agent, a general foreman, foremen and a chargehand for each trade. Trust me—that system has disappeared.

My personal view about project management, which I hope I am allowed to express, is that there is not a great bond. In my view, contracts go out on the basis of cost. Just using hypothetical amounts, if someone will do a build for £5 million and someone else will do it for £4 million, the job will be done for £4 million because—I am sorry to say—it is all about profit. The previous system was always one of structured supervision all the way down. My view is that that is what is missing.

**The Convener:** Mr MacLeod, is there less structured supervision on sites now? What is NHBC's view on that?

**Malcolm MacLeod:** Do you want me to talk about NHBC's processes or to comment on what Mr Gilmour said?

**The Convener:** I think that the two are inextricably linked, so you could reflect on what Mr Gilmour has said and then say how NHBC can provide reassurance, I hope, in relation to it.

**Malcolm MacLeod:** Mr Gilmour's comments are valid. Historically that was the case, but the situation changed many years ago and it is now very unusual to have a clerk of works on any building site.

There is generally a clerk of works for a housing association or local authority project, and they tend to be directly employed by the housing association or local authority. In the private sector, however, it is exceptionally unusual to have someone in that role. Quality control and checking of workmanship tend to be devolved to various people within the organisation, be they the site manager on site, who has many other tasks to do, or another individual who has been identified to carry out that function.

There is, potentially, lack of supervision of the quality of construction, which is where NHBC can assist. We do that by having a structured inspection process that looks at the quality of construction from inception through to completion.

**The Convener:** Can you say a little bit more about that?

**Malcolm MacLeod:** NHBC is an insurance company with a register of builders; we are not a trade organisation. Before a builder can become registered with NHBC, they have to go through our assessment process. Any builder that is registered with NHBC has been checked and vetted in respect of their financial and technical competence. We also check whether they have any bad history with us—if they do, we do not entertain putting them on the register.

Once they get through that process, we carry out a detailed and structured on-site inspection of every house that we cover. We check the foundations when the excavation has been done, and we check the walls when they are being built. That includes checking the walls of low-rise housing at mid-level, checking the wall ties and ensuring that the wall construction is correct. We check at the head of build of all flats for the same reason. We check the internal services—plumbing and electrics—before they are covered up, and we do a final inspection check once the house is complete.

11:30

On top of that, we carry out benchmark inspections of roofing. For every site that we cover, we check the first one or two roofs that are built and accept those as the benchmark. We then spot-check roof construction as it proceeds throughout the site. Where flats and multi-occupancy are involved, we carry out checks to ensure, for example, that proper fire stops have been installed and proper fire protection is being provided.

In the past year, we have introduced a number of initiatives to assist the industry and improve quality. We have rolled out a construction quality review to three or four major builders and are working to extend that across the UK. That entails our visiting every site in the UK on which those builders are working. We visit and inspect all areas of work on each site and introduce a detailed specific report for the site, which is subsumed into a larger report for the builder. We do that only with the buy-in of the builder's board—we report back to the board and identify where the builder can improve its construction processes. We are doing quite a lot of work with the industry to ensure quality of its product.

**The Convener:** We might follow that up at some point. You can have the best system in the world, but things can still go wrong.

**Malcolm MacLeod:** Absolutely.

**The Convener:** A couple of committee members want to explore various points relating to that theme.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Thank you for explaining the processes that you go through, Mr MacLeod. It is apparent that individuals still find themselves in situations in which there are defects or faults. I want to ask about the Buildmark insurance policy. If a defect is found, how would it normally be rectified under that cover to ensure that it did not go from being a small defect to something more difficult or dangerous?

**Malcolm MacLeod:** Buildmark is an insurance policy that is valid for 10 years from the date on which the house is purchased. For the first two years, it covers virtually everything in the home; if anything fails within the first two years, the home owner can make a valid claim against the policy. Our internal process within the first two years is to give the builder the opportunity to address any complaint or defect; if they fail to do that, NHBC takes over the process and rectifies the situation to the satisfaction of the home owner. When we investigate claims within the first two years—what we call section 2 claims—and the builder does not attend to them, in about 75 per cent of cases we find in favour of the home owner.

For the last eight years of the policy, not everything in the house is covered; it does not cover plumbing, electrical wiring, kitchen fittings or central heating systems, but everything else is covered. If there is a defect during the last eight years of the policy, the home owner works with NHBC to try to resolve it. If it is a serious or major defect, we may ask the builder to become involved, although, equally, we may not and may just try to resolve it. The insurance policy is structured for its last eight years in such a way that, for the defect to be found valid under the terms of the policy, it must be in breach of our building standards—we have our own building standards—and it must cost more than £1,500 to fix. The policy has been like that for a long time. If a defect meets those criteria, we accept that there is a valid claim.

We are regulated by the Financial Conduct Authority and the Prudential Regulation Authority, so the home owner has back-up if they disagree with us. We advise them that they have the right to refer the matter to the Financial Ombudsman Service, who will make a determination about whether we have managed the complaint properly.

It is mandatory that we respond to the ombudsman's findings and do not challenge them.

**Alexander Stewart:** How long do complaints run for? Is it months or years?

**Malcolm MacLeod:** It varies. Some complaints go on for a long time, which is not satisfactory. That is sometimes because of the complexity of the work or of finding a solution. It depends on what the problem is—whether it is a matter of trying to get the proper material or of identifying the root cause, which can sometimes be difficult. The vast majority of claims—about 90 per cent—are small claims that are handled, dealt with and resolved in a matter of weeks or months. About 10 per cent are very large and complicated claims that take a lot longer to resolve and can become protracted.

**Alexander Stewart:** What is your expectation of finding faults in a development or of having individuals come to you within the first two years? Is that a normal procedure? Does that happen regularly or is it infrequent?

**Malcolm MacLeod:** Annually, we receive about 7,000 to 8,000 complaints across the UK. That is the kind of volume that we tend to see. Ideally, the building industry works with us to deliver very good quality homes. We carry out a separate customer satisfaction survey, which has over the past few years indicated that satisfaction levels have been increasing. One of the questions that we ask is about the quality of the customer's home and how satisfied they are with it. We get complaints, but the number is static at about 7,000 to 8,000 a year. I say, to illustrate the number of complaints that we had in that period compared with the overall volume of business that we are undertaking, that last year NHBC dealt with about 160,000 houses.

**The Convener:** Does NHBC have a code of conduct or a duty to investigate possible systemic or structural issues in relation to properties? My question is inspired by constituents who were at a private briefing session with us before the meeting. I will be careful to give limited information from the example that we heard about. A small number of owners in a development were aware of issues with the foundations of their properties; NHBC would be involved in investigating such issues. Would NHBC consider that it had a duty to approach the other 50, 60, 100 or 200 households in the development to warn them to examine their foundations because there could be a problem for everyone else?

Does NHBC also have a duty to inform the local authority? Despite the fact that the verifier had signed off on the development, would NHBC inform the local authority so that it could take action? The owners would be insured and payouts

would be involved, would they not? There would obviously be tensions with any insurance company: insurance companies do not seek people out after a flood to ask whether they want to make claims, but instead seek to mitigate their liabilities. Would you seek to mitigate the NHBC's liabilities or would you seek other potential victims when a systemic error occurs?

**Malcolm MacLeod:** That is a difficult question to answer. The Buildmark insurance policy is a bespoke individual insurance policy and we respond to claims or complaints that are made against that policy by the individual policy holder. If, for example, the complaint related to a communal building such as a block of flats, we might extend the investigation, because we would be working in common areas—roofs, foundations and drains, for example. If the complaint was about an individual property, we would tend to look at that particular property and deal with that complaint, because we would not know whether the problem was systemic.

**The Convener:** Surely the only way that you would find out whether a problem was systemic would be to take action. Do not you think that there is a professional duty on NHBC to go round the rest of a development after it had been signed off to see whether a problem is systemic? Is not there, because of the risk assessments that local authorities have to carry out, a duty to inform the local authority of issues, so that the authority could manage its inspection and verification regime differently for the developer next time? How would you reconcile that?

**Malcolm MacLeod:** Over the past few years, engagement with LABSS in particular has been very difficult—it has not been willing to engage very much with NHBC. That aside, I do not see it as being our duty to go to local authorities and highlight where there could be problems, because there might not be problems. Where there are, we work with local authorities. For example, if there was a problem with a foundation, we might have to go back to the building control department to obtain a building warrant. We would make it clear to the local authority why we were doing that and we would work with it, which might open the situation up to other complaints and claims.

In some instances, we have gone out. For example, at a development on the west coast we insisted that the builder go round the houses on the development to fix a particular issue that we had discovered. If the builder had not done that, we would probably have stepped in to take over that role. We have done that on a number of occasions.

**The Convener:** That is a good example. However, if six property owners in a 200-unit development have significant problems with their

properties, surely there is a professional duty on NHBC—whose robust inspection regime was outlined at length earlier—to say, “Those six got under the radar. What’s happened here?” Maybe the other 194 properties would also have problems. Surely to goodness it is incumbent on you professionally to inform the local authority. Whether or not there is a statutory duty, do you not feel a degree of duty?

**Malcolm MacLeod:** We would refer individuals to the local authority if they felt that there was such a complaint. We are not a statutory body. If there was an issue that we thought the local authority or building control should be involved in, we would advise the individual or the group concerned to make contact with it. We would probably even give them advice on what to do.

We respond to individual complaints and cannot second guess whether an issue extends across a development. We find that, on building sites or housing developments in which there are a number of similar complaints, news of that gets out very quickly by word of mouth and we tend to be inundated with complaints that are in the same vein. If we get a complaint, under the terms of the Buildmark insurance policy we are duty bound to investigate it, so we investigate it.

**The Convener:** Lots of my colleagues want to explore that issue further. I apologise to some, because there is a long list. Nevertheless, we will get you all in.

**Elaine Smith:** Thanks very much, convener. Could Mr MacLeod tell us what body funds his organisation? What is the NHBC's purpose?

**Malcolm MacLeod:** We do not have a funding body. Since the NHBC was established in 1936 our purpose—our two core reasons for existence—has been to raise house building standards through our inspection process, our building standards, working with the industry and our research, and to protect the consumer interests of home buyers.

**Elaine Smith:** Where do you get all the money to do that? Where do you get your funding to deliver that?

**Malcolm MacLeod:** We get our money from investments that are made by the NHBC. We are an insurance company—

**Elaine Smith:** You cannot make investments if you do not get funding in the first place. I will go back a step: do you get funding from builders?

**Malcolm MacLeod:** Builders pay an insurance premium to the NHBC for the 10-year insurance. We invest those premiums and, over time, that investment has grown into a significant portfolio.

**Elaine Smith:** Do the companies that are NHBC registered fund your organisation? There are some that are not registered.

**Malcolm MacLeod:** No; companies pay a premium for each property—

**Elaine Smith:** Are companies not registered with the NHBC because they do not pay you a premium?

**Malcolm MacLeod:** That is an individual decision—

**Elaine Smith:** I am not asking about their decisions. Are they not registered because they do not pay you a premium?

**Malcolm MacLeod:** Those companies decide whether they wish to become registered with the NHBC. We decide whether we wish to have them on the register. There are builders that apply to be registered that we will not accept—we decline them because of certain criteria.

**Elaine Smith:** The builders with which you have the inspection regime are those that pay you the premium. Is that correct?

**Malcolm MacLeod:** It is correct that those builders pay an insurance premium.

**Elaine Smith:** How many field officers do you have in Scotland?

**Malcolm MacLeod:** We have roughly 70 staff in Scotland.

**Elaine Smith:** Are those staff the field officers who go out to do inspections?

**Malcolm MacLeod:** We have three teams of inspectors with about 10 people in each team led by an inspection manager. About 33 people deal directly with physical inspections of construction across Scotland.

**Elaine Smith:** You said that you would be very clear about inspecting all foundations.

**Malcolm MacLeod:** That is correct.

**Elaine Smith:** So if there were later to be a problem with foundations, whose fault would that be?

**Malcolm MacLeod:** It could be the builder's fault or the designer's fault.

**Elaine Smith:** But not your fault for inspecting the foundations and not finding anything wrong.

11:45

**Malcolm MacLeod:** We could have missed it; I am not saying that that could not happen. The reality is that it is a very difficult area to investigate, because we are talking about exposed ground below which could be something that

nobody knows about. A lot of the foundation failures that we deal with tend to be related to subsidence because of factors—peat, for example—that are below the level of the clay. The ground might look all right, but there might be a bit of peat there that no one knows about and which causes subsidence.

**Elaine Smith:** My final question is this: do you see any conflict of interest at all in the fact that the only houses that get an NHBC 10-year guarantee are built by members—building companies—that pay you a premium?

**Malcolm MacLeod:** First, we are not a membership organisation; we do not have any members. Builders apply to be registered with the NHBC and we decide whether they will be registered with us.

**Elaine Smith:** Okay, let me rephrase my question. Is there a conflict of interest in the fact that the builders that are registered with the NHBC are the only ones that can get your inspections and your 10-year guarantee? Anybody who is not registered with you cannot have the guarantee and does not have those inspections. Is there any conflict in the fact that the builders that are registered with you, and therefore pay you the premiums, are the ones to which you give your guarantees?

**Malcolm MacLeod:** No, because we are not the only organisation that provides such a service. We are the leading warranty and insurance organisation in the UK for the new-home building sector. Our systems have been developed since 1936, and we think that they are very robust and the best on offer. However, there are other organisations that provide a similar—although not the same—type of service. Builders do not have to come to the NHBC to obtain a warranty. It is a voluntary scheme; builders can apply to the NHBC to become registered with us—

**Elaine Smith:** Mr MacLeod, I know that—we have established that—but the only builders to which you will give your 10-year guarantee are those that are registered with you.

**Malcolm MacLeod:** That is correct, because we have vetted and checked them and, as part of the registration process, they are contracted to carry out the building work in accordance with building standards and to facilitate our inspections on site. They are also bound by our claims process. We contractually tie them down. If they are not registered with us, we do not have that contractual agreement in place.

**The Convener:** Thank you, Mr MacLeod. It is worth noting that Mr MacLeod does not personally go out and do the NHBC checks.

**Malcolm MacLeod:** Well—

**The Convener:** Do you do the checks personally, Mr MacLeod?

**Malcolm MacLeod:** I do not do them personally, but I am heavily involved in our pride in the job competition, which is there to encourage builders to improve standards. Yesterday, I spent all day going round building sites and assessing construction for that purpose.

**The Convener:** Okay—there you go. Graham Simpson has a question.

**Graham Simpson:** Convener, I am aware that Mr Wightman has been itching to get in. I am happy to give way to him, and I will come back in later.

**The Convener:** He absolutely has been itching to get in—as has Mr Scott. I will take them in that order and then I will let Graham Simpson back in.

**Andy Wightman (Lothian) (Green):** Thank you, convener.

The evidence that we have sought has been primarily about who should do the verification, and we have heard conflicting reports on that.

Much of the evidence from Homes for Scotland and the NHBC refers to delays in the process. Indeed, in its submission, the NHBC says:

“In reality the current delays inherent in the system are encouraging builders to start work without the proper Building Control consents in place and in addition to this being illegal it raises questions of how compliance can be demonstrated or checked.”

If the private sector or others were to take on the verification process, is speed the only thing that you would be looking for?

**Malcolm MacLeod:** No—speed is certainly not the only thing. In England, where we have been delivering the service since the 1980s, it is about providing an efficient service, but, at the same time, ensuring that that service is delivered correctly. It is not about speed; it is about ensuring that a proper service is delivered and, at the end of the day, providing consumer redress if it is not delivered properly. In England and Wales, we provide separate insurance protection so that, if the building control element of that service is not delivered properly and there is a building control issue at the end of the day, the end user—the home owner—can make a claim against that insurance, which is separate from the warranty that covers latent defects within the build.

**The Convener:** Mr Kemp, would you like to add something to that? My apologies, Mr MacLeod. I thought that Mr Kemp wanted to add something. I will take in Nicola Barclay after that.

**Stephen Kemp:** I just thought that Mr Wightman was looking at me for a moment.

There is a big issue for the Scottish Building Federation’s membership across the country. As I said, our members all have different views but we would suggest that there is a need to improve the service. Speed is a big factor, and having a resolution service such as the NHBC provides is a big assistance.

**Andy Wightman:** On the building warranties that you provide—

**The Convener:** Mr Wightman, Nicola Barclay wants to add something.

**Nicola Barclay (Homes for Scotland):** I agree with what Mr Kemp just said. Speed is one of the main issues for us. There is uncertainty about how long it will take to get a building warrant in some parts of the country. In Orkney there is no problem, but in Edinburgh we have a disaster at the moment, with developers waiting more than 42 weeks to get a building warrant—that is after they have had to go through the pain of getting planning consent, and they still have to get roads construction consent. There is a real lack of certainty about how long it will take between doing a deal on a piece of land and getting on site. That is not good for anybody’s business plan. We are looking for certainty of delivery.

The gentleman from LABSS can tell us the number of building inspectors that there are in local councils, but the anecdotal feedback that I have had from our members is that their number has been severely reduced over the past few years, which has put massive pressure on the service. It just does not have the resources to deal with the number of applications that are coming in. At a time when the market is improving, more applications are being submitted and there is a real drive for more houses to be built, local authorities do not have the facilities to deal with all the regulatory consents that need to be approved before the builders can start on site.

**Andy Wightman:** Thank you. I have a brief supplementary question for Mr MacLeod. You have talked about your building warranty service in England and how you provide an insurance policy for owners that is separate from your warranty service. For how long can home owners claim on that policy?

**Malcolm MacLeod:** Ten years—it is the same cover as the Buildmark policy.

**Andy Wightman:** A number of people are involved in the market, including the speculative volume house building industry, building companies and local authorities, which carry out inspections, provide building warrants and check completion certificates. However, at the end of the day, someone pays a substantial sum of money to buy a house and, when defects are discovered, it appears that, in some critical instances, proper

redress is not available. Mr Aitken said that that is a civil matter for the legal system. Should that be the case? Your warranty expires after 10 years—is that correct?

**Malcolm MacLeod:** Our warranty lasts for 10 years—

**Andy Wightman:** If you bought a pair of shoes, you would expect them to wear out after two, three or four years, but you would not expect a house to wear out after 10 years. Should a warranty not last for the design life of the building?

**Malcolm MacLeod:** It can, but the problem is cost. As with all these things, the longer that you look for something to be in place, the higher the cost will be—

**Andy Wightman:** Surely that would drive up standards.

**The Convener:** Give Mr MacLeod a chance to expand on that.

**Malcolm MacLeod:** At the moment, the warranty is set at 10 years. Although, as I said, there are other organisations that provide a similar service across the UK, the NHBC is the only insurance company that directly underwrites that risk. All the other companies that provide that service are brokers, so they offload the risk to insurers—to a third party. Some of the companies that provide the insurance are based offshore.

We insure the buildings directly. That insurance is calculated and has to satisfy the criteria that have been set down by the financial regulator, in terms of assessing the risk and ensuring that sufficient reserves are put aside to address that risk. If someone has a warranty for 10 years and wants to extend it to, say, 60 years, mathematically that will cost more because more reserves will have to be set aside and the risk will increase, so the cost of the policy and the premium will increase. At the moment, the average cost over 10 years is roughly £500, which is relatively good value for 10-year cover. I could not tell you what the cost would be if the cover was increased to 60 years, but it would be significant and could be uncompetitive.

**Andy Wightman:** You mentioned that one of your objectives is to drive up standards in the building industry.

**Malcolm MacLeod:** That is correct.

**Andy Wightman:** I am looking at your latest annual report, which says that the bonuses for your executives are calculated on the basis of a number of criteria: 40 per cent is calculated on the basis of financial criteria and 20 per cent is calculated on the basis of home owner and builder customer satisfaction.

**Malcolm MacLeod:** That is correct.

**Andy Wightman:** How much of that 20 per cent is based on home owner satisfaction? Are home owner satisfaction and builder satisfaction the same?

**Malcolm MacLeod:** No—they are different. Although I do not know what percentages apply to home owners and builders, I imagine that it would be 50 per cent each way. The home owner and builder satisfaction surveys are two different surveys that we carry out. We carry out a customer satisfaction survey on behalf of the Home Builders Federation in England and Wales. That survey extends into Scotland and is independent from the building industry. It directly communicates with and receives information from home owners. That survey has been carried out since, I think, 2004, and it is one of the surveys that is referred to when we talk about customer satisfaction.

We carry out another independent survey with the building industry—with house builders—to find out what they think about the NHBC and the range of services that they get from us on things such as building control and warranty inspection. They are two different surveys.

The other part of the bonuses that the annual report refers to relates to operational costs. If we do not make an operational profit, which is different from the insurance side of the business, the bonus is null and void. If the organisation is in profit operationally, there will be a bonus.

**Andy Wightman:** Okay, so the bonuses for the leadership, which are very attractive—

**Malcolm MacLeod:** Yes—that is public information. We do not hide that. It is in the annual report.

**Andy Wightman:** I know, but I just want to confirm that it appears that 10 per cent of the bonuses is based on home owner satisfaction.

I am aware that time is pressing. We have heard that the NHBC and some of its clients who take insurance with it use gagging orders in settlements that have been reached to prevent home owners from talking about defects that have been found. Is that common practice?

**Malcolm MacLeod:** No, and I think that that is probably the incorrect term. I was not party to this, but I believe that in the case that was referred to there was a cash settlement—there was an agreement between the home owner and the NHBC in relation to a sum of money, to satisfy the home owner in terms of their loss, and a standard clause was written in as part of that agreement that it would be kept confidential.

**The Convener:** Just for clarity, the expression that Mr Wightman used was the one that was used when we heard information in private earlier.

However, I understand why you would not phrase it in that way, Mr MacLeod.

**John Scott (Ayr) (Con):** I am here to represent my constituents in Ayr, with their permission, on a case with which Mr MacLeod will be familiar, which is the problems facing Dalblair Court in Ayr. There are 69 homes there, and there have been faults with the property for all the time that I have been elected to represent my constituency. Those have been drawn to my attention, and there has been a great deal of correspondence between Mr MacLeod and me in that regard. The property is now being entirely re-roofed, at a cost to the residents of £4,000 to £7,000, depending on the size of their properties. That is to replace a roof that, as it has been taken to bits to be repaired, has allegedly been found to be utterly defective in many respects. The property was signed off by South Ayrshire Council, which is the local authority concerned. The local authority and the NHBC say that it was built to the required specification at the time.

The bottom line is that my constituents are left with the problem. To be frank, Mr MacLeod, you have washed your hands of it. I am not certain what value your organisation has been in the process at all. I understand that the property was covered by the Buildmark policy. The roof is not yet 15 years old, yet it is having to be replaced because it was not built to specification. That apparently escaped you, and it has apparently escaped South Ayrshire Council, too. I am extraordinarily annoyed on behalf of my constituents, who are now facing that bill. Given that the defects are being uncovered as the roof is deconstructed to, in essence, be rebuilt to the specification that was originally expected, will your policy now cover the costs to my constituents of that rebuild?

12:00

**The Convener:** Perhaps I can come in here first. I know that it is frustrating for constituents, who will be keen to hear their stories told in a public session of this committee, but what the committee cannot do—and we have spoken about this previously—is rehearse individual cases, as there might be litigation issues or various other matters. I am not referring to the case that Mr Scott has raised, but there might be a slight restriction on what Mr MacLeod or others can say.

However, Mr Scott's question raises a wider point about where home owners can seek recourse when something has apparently not been built to specification and there are consequences. I am not trying to be helpful to you, Mr MacLeod—I am simply trying to couch for you the rules of engagement when you seek to reply to the question. With that in mind, any response that you

can give will be helpful. The wider issue is, as I have said, that something that should have been built a certain way gets signed off, but it becomes self-evident that it has not been built in that way and no one takes responsibility. From what we can gather—I am talking not just about Mr Scott's constituency case but about a variety of cases that have come before us—that seems to be how it is for a lot of people.

Others apart from Mr MacLeod might want to come in with their reflections on the matter, but perhaps Mr MacLeod can respond first of all.

**Malcolm MacLeod:** First, I want to say to Mr Scott that I do not have the details with me, but I am very happy to meet him outwith this meeting to discuss the particular issue and to see whether we can assist in any way. I will follow up on the matter.

**John Scott:** I would be grateful for that.

**Malcolm MacLeod:** As for the wider question, I cannot agree that there is no protection. The NHBC warranty runs for 10 years; in certain circumstances with housing associations, it can be extended to 12.

The majority of the serious defects that we find tend to occur in years 7 to 8 of the build. I am not saying that other defects do not happen outwith that timeframe, but our research and information suggest that the insurance cover's 10-year life is about right. I should also say that other organisations in the marketplace that offer a similar service have exactly the same time constraints in their cover and policies.

As for our getting involved, all I can do is reiterate what we do in our assessments. With any complaint that we receive against the policy, we will investigate it; if it meets the policy terms, we will address it with the builder, if possible; and if that is not possible, we will take on the responsibility ourselves. There is also a right of recourse through the Financial Ombudsman Service if it is felt that we have not managed the process properly.

**The Convener:** Perhaps Mr Aitken might have a view on this. I am not trying to curtail anyone, but I think it reasonable at this point to make the obvious assertion that if a house has been through all the processes outlined by the NHBC and has been verified and signed off, but the home owner finds that it has not been built according to what was set out in the planning permission and is actually something different, they will almost certainly and in many circumstances have no recourse under NHBC policy. Does the local authority have any powers to go back to the developer and say, "We gave you permission to build X, but you built Y or Z, and that's not on"?

What can local authorities do in those circumstances?

**Dave Aitken:** As I have said, the builder should be building as per the approved plans. I am not familiar with the case that has been highlighted, but potentially what has happened is that the builder has not built in accordance with the approved plans. By the time building standards officers carry out their inspection, a lot of the elements of the build might be covered up, and they do not get to see certain elements that would have been exposed earlier. They are therefore going on trust that, in signing off the completion, the builder or developer is saying that everything has been built in accordance with the approved plans.

**The Convener:** I will take Mr Gilmour in a second, but I would suggest to Mr Aitken that if something has not been built to the approved plans the developer should face financial consequences and the home owner should have legal recourse separate from what is set out in the insurance policy.

**Dave Aitken:** As I said earlier, that would be a civil matter under the Building (Scotland) Act 2003.

**The Convener:** That is how things stand just now, Mr Aitken, but perhaps things have to change.

**Jim Gilmour:** I understood that, in Scots law, if there was a latent defect, a person would be liable for that for life. There was a gas explosion in Edinburgh because someone had fitted a valve wrongly, and that case went through the whole judicial process. That is my recollection, but the committee might want to check that that information is correct.

I do not know the case in question, but I will give an example of a possible latent defect concerning a roof. The manufacturer's printed instruction could say that the lap of a tile should be 75mm. The idea of that is to cover the nail or the nail holes of the previous tile. If there is shortened cover, a lot of leaks will come from the nails because of capillary action. That is why the lap is as big as 3 inches—in old money—or 75mm. As I said, I do not know the case in question, but we build houses and do the whole lot—we deal with small to medium-sized enterprises, as well—and I have always thought that a latent defect involves liability for life.

Is that helpful?

**The Convener:** That is very helpful. Do you want to follow up on that, Mr Scott? I apologise for cutting you off in your flow.

**John Scott:** I would welcome a meeting with Mr MacLeod, and I note what Mr Aitken said. In the particular circumstances—I apologise to the

committee for taking up its time with those circumstances—if there is no NHBC cover, notwithstanding the alleged obvious defects, the only recourse for my constituents would be in law.

**Dave Aitken:** That is correct.

**John Scott:** I welcome the contribution of Mr Gilmour, who said that there should be liability for life for a latent defect. I think that that will be very helpful, but I would have thought that that would have encouraged NHBC to become the body carrying that liability, particularly in the circumstances.

**Jim Gilmour:** Or that it would encourage the builder to return—if the firm still exists.

**John Scott:** Indeed. NHBC could recover costs from the builder. Point taken.

**Graham Simpson:** We have heard about perceived flaws in the building regulations system and that the whole development industry runs its own scheme of warranties. Where is the statutory redress for home buyers if things go wrong? Any of you may answer that question.

**The Convener:** Mr Gilmour has helped me out by indicating that he wants to speak. That will buy the others time to have a think about that.

**Jim Gilmour:** Under the FMB's compliance system, we now have a contract with the clients. In the small to medium-sized enterprise world, a lot of cowboys are floating about who either do not have the proper insurance or do not carry out a proper job.

There is a totally independent arbitration system. When someone has a complaint, it will go through the complaints process and be fully investigated. If the parties are not satisfied, there is the opportunity to sign up to arbitration, which gives them a form of redress. When they sign the document, they have to accept the arbiter's outcome. That is something that could be knocked on at the back end. We started that only in the past three and a half years, and it is working very well. We get fewer complaints, as they are resolved at source.

**The Convener:** Is that for your company or across the entire sector, Mr Gilmour?

**Jim Gilmour:** It is a Federation of Master Builders system for the UK, and it is rolled out everywhere. People sign a contract prior to starting the process. The contract is in plain English—there is no section 327 or whatever in the small print.

**Nicola Barclay:** The larger-volume builders and anybody across the country who is registered with NHBC or one of two of the other main warranty providers will have to sign up to the consumer code for home builders. That is a similar service. It

provides consumers with all the necessary information that they require right the way through the buying process and when they have moved into their home. They will know exactly who they need to contact if they have any issues once they have moved in. They will also have a dispute resolution service so that, if they do not think that they have had the answer that they want from the builder or the warranty provider, they can go to an independent adjudicator. I sit on the consumer code board. We go through the adjudication decisions and carefully consider and scrutinise them to see whether the issue is a systemic failure or a one-off issue that could not have been foreseen. We then go back to the builders and work with them to ensure that they improve their practices.

**Malcolm MacLeod:** I was going to refer to the consumer code, too. Furthermore, we have the NHBC 10-year warranty. We cannot speak to statutory control or regulation but, as an insurance product, it provides comprehensive protection.

**Stephen Kemp:** The federation agrees that there is protection through the NHBC. If we were to step back, perhaps the key would be to look at the inspection process. I know from experience that inspectors from the NHBC or other warranty providers are on site regularly. A school of thought is that if they were positioned to carry out the verification during their inspections, the process would become much more robust than it is at the moment, when there are, in some cases, irregular visits from building standards officers.

**Graham Simpson:** The issue is about the system that Mr Gilmour has outlined and the consumer code that Nicola Barclay talked about. Those processes come from the industry. There is no statutory system of redress for anyone.

A house is probably the biggest purchase that a person will ever make and the most amount of money that they will spend, yet we appear to have fewer consumer rights than we would if we bought a washing machine. That seems to be a completely ridiculous situation.

An idea that I have heard—it emerges from the Westminster all-party parliamentary group for excellence in the built environment—is to have a new homes ombudsman as a way to provide redress to people when things go wrong. I accept that it is rare for things to go wrong, but we were given a snapshot today of incredibly serious cases. My guess is that those are the tip of the iceberg. What do you think about that idea?

**The Convener:** There is a suggestion. Mr MacLeod?

**Malcolm MacLeod:** I have no comments—either good or bad—to make about having such an ombudsman. As always, we would need to see the

detail in order to understand what that role would look like in reality.

Because the NHBC is an insurance company, it is governed by an ombudsman: the Financial Ombudsman Service oversees us. That is the right of redress that policyholders have if they consider that we are not responding to their demands or meeting their concerns. Therefore, we already interact and work with the ombudsman, where we have to.

**The Convener:** So you are open minded to Mr Simpson's suggestion?

**Malcolm MacLeod:** I would need to see the detail. I am confused about how two ombudsmen would work together. Our activities are governed under financial regulations by an independent ombudsman service.

**The Convener:** Is that specific to your policy?

**Malcolm MacLeod:** It is specific to any insurance company. Banks are also governed by the financial regulators.

**The Convener:** We are not inquiring about insurance policies today; rather, we are inquiring about building standards in new-build properties and the construction process. The NHBC's policy can change based on what you want to negotiate with the companies that pay insurance premiums to your company. Mr Simpson's suggestion was far more cross-cutting than that.

Do you want to say a little bit more about that, Mr Simpson, before I bring in other witnesses?

**Graham Simpson:** Yes. The points are completely different. Mr MacLeod is talking about financial regulation; I am talking about a process that would deal with disputes that arise in situations in which people have bought new homes. I am not talking about the financial aspects; I am talking about when things go wrong with a new home. At the moment, people do not have anywhere to turn to when that happens.

**Malcolm MacLeod:** The processes sound similar. The dispute would be whether we have properly handled their complaint about whatever defect they have brought to our attention—

**Graham Simpson:** I am sorry to interrupt, but I am not talking about NHBC specifically, but in general.

**Malcolm MacLeod:** Oh—okay.

**The Convener:** That is helpful. I thought that it would be useful to be clear about Mr Simpson's suggestion.

**Nicola Barclay:** Mr Simpson mentioned the Westminster all-party parliamentary group for excellence in the built environment. I make it quite

clear that that group did not approach the consumer code board for its views, although the board asked to be able to give evidence on its work a number of times. We have been going back and forward with the parliamentary group to seek clarity on some of the findings in its report. Further information has been laid in the library at Westminster, if you care to look at that.

Before this evidence session, I asked the chair of the consumer code board—I am fairly new to the board—for clarification on a specific point. If a consumer who is not happy with their redress from the house builder or the outcome with the warranty provider goes through the dispute resolution process under the code and goes to adjudication, and is not happy with the result, what should their next steps be? I was advised that the Financial Ombudsman Service would be their next course of redress; that, in terms of consumer protection, they would be covered by the Property Misdescriptions Act 1991, which is enforced through trading standards; and that, beyond those options, they could go down the civil court route.

12:15

**Dave Aitken:** The LABSS submission referred to the ombudsman option as outlined in the “More homes, fewer complaints” report that was produced by the APPG down south.

**The Convener:** Before I bring John Scott back in, I want to address the points that have been made.

We have the consumer code. We have heard about the Federation of Master Builders across the UK and what it does, and we have heard about the Financial Ombudsman Service, NHBC’s policies, other insurance companies’ policies and warranties, trading standards and the civil court route. It all seems quite fragmented. Would you see merit in or support the consolidation of those various threads? To go back to Graham Simpson’s suggestion, do you think it would be helpful if all the recourse measures sat in one place instead of having property owners scurry about trying to find out where they should go to get redress and perhaps not getting any redress at all?

I see that no one has any thoughts on that. In that case, I will bring John Scott back in.

**John Scott:** Mr Aitken will keep me right on this, but I have a feeling that trading standards is unable to take up a complaint such as the Dalblair Court case in South Ayrshire because of a conflict of interest. Trading standards officers are employed by the local authority and would therefore not be able to investigate a complaint that was made against that authority.

**Dave Aitken:** I am not in a position to speak for trading standards. I represent LABSS, which is a different organisation.

**John Scott:** In that case, I simply point out that, when I raised the matter with my local trading standards officers, they specifically said that they were unable, because of a perceived conflict of interest, to take up the case in question because it involved another part of the same local authority.

**The Convener:** That is now on the public record.

**Elaine Smith:** I would like to explore with Dave Aitken the issue of building companies not employing a clerk of works as they used to in the past, which interests me and which I find rather unusual.

The NHBC plays an inspection role for the companies that buy into its policies, the advantage of which to a company is that it can put up a sign that says, “NHBC 10-year guarantee”. That gives some comfort to the people who purchase a house; they might also have the idea that the title “National House Building Council” somehow means that there is a more formal Government-type assurance. Do we need more building control officers to carry out an impartial inspection regime? Should the committee look at the possibility of providing in statute more methods of recourse for the customer?

In addition, there is the possibility of increased fees. The Federation of Master Builders says that if the fees are going to increase, service should increase as well. Should that be the case not only for builders, who obviously want a quicker system so that they can get building, but for customers, who should be able to rely on a much more impartial inspection regime?

**The Convener:** We could probably talk for another hour now that the issue of fees has been mentioned, but I think it only reasonable that, once Mr Aitken has answered, Mr MacLeod comes back on the issue of the impartiality of the inspection process that the deputy convener just asked about.

**Dave Aitken:** I will pick up on a few of the issues. You might have to keep me right, because there are quite a number of things that you want answers to.

Any additional inspection would be welcomed by industry. As I think I have mentioned, it is certainly my view and the view of LABSS that we have to look at building standards in a holistic way. Building standards services in Scotland are a small—though vital—piece of the jigsaw, and the issue needs to be opened out to include the wider industry. We need to look at, for example, procurement and the way in which the statutory

legal system is currently set up, and if the industry could come together and work collectively, I am sure that we could reduce a lot of the issues related to defects that are being discussed today.

**Elaine Smith:** But would it be beneficial to, say, purchasers to have more building control inspectors actually going out and taking a much closer look, in the way that, as Mr MacLeod says, the NHBC does with the properties of the builders with whom it is involved? Mr MacLeod said earlier that they have field officers who go out and do actual inspections. Would it be beneficial to people in Scotland who, as Graham Simpson has said, might be making the biggest purchase of their lives to have confidence that an impartial service such as building control—and I will call it “impartial”—is doing far more inspections than it does at the moment?

**Dave Aitken:** As I have said, any additional inspections would be welcome, but the legal system’s current set-up would have to be changed to allow that to happen.

**Elaine Smith:** I suppose that that is what I am asking. Should we be looking at statutes and building regulations? Should we be looking at the legal system to see whether it needs changing?

**Dave Aitken:** My view—and I think the view of LABSS—is that we would have to look at it holistically.

**The Convener:** Do not feel obliged to come back in, Mr MacLeod—I just thought that you wanted to.

**Malcolm MacLeod:** I just wanted to stress that the NHBC is an independent organisation and that the inspections that we carry out are impartial. Last year, we carried out about 800,000 inspections across the UK, and I think that about 500,000 defects arose from them. We give the building companies the opportunity to rectify such defects, and if they do not, we take control of the situation.

**Elaine Smith:** Does your impartiality apply only to the building companies that buy your insurance and not to those that do not? You do not inspect them.

**Malcolm MacLeod:** We do not inspect them, because we have no contractual relationship with them. The ones that we inspect are contractually tied to the NHBC, so if the inspectors find something wrong on site, they have to sort that out. Otherwise, we have the authority to sort it out on their behalf. We do not have that relationship with builders that are not registered with us—we do not have a contractual agreement with them.

**The Convener:** Finally, I have a question about an issue that we heard about in our private session this morning but which we have not really

explored today. I will not get into the details of the case; in effect, though, it is a neighbourhood dispute. Someone wanted to build an extension to their property and it became self-evident that, although the local authority had signed off on the extension, the work that had been done was not what had been set out in the approved outline plans and did not meet the specifications. It is the same situation that we heard earlier in relation to large-scale developments. When the situation was drawn to the local authority’s attention—this is, of course, all anecdotal, Mr Aitken—the authority said that it did not make a material difference, even though the extension’s impact on the neighbouring property is significantly detrimental.

The person who we heard from pointed out that it is self-evident that planning approval was given for one thing and that something else was built—and verified—and that although they have made it clear that something else was built and is now impacting on their quality of life, the local authority is not acting. The person feels that they have no recourse. I think that it is reasonable to outline that situation, given that we heard about it this morning, and any reflections on it would be welcome, Mr Aitken.

**Dave Aitken:** You mentioned planning and the different consents. I would like to know a bit more about the actual dispute, such as whether it was a planning or a building warrant matter.

**The Convener:** I will answer that with a question. Let us consider a situation in which a local authority verifier signs off on a property—for example, they sign off an extension as being complete—and the property owner self-verifies to say that they have done it accordingly. However, there is, as a neighbour discovers to their detriment, a complete mismatch, and they go back to the local authority—I hope that everyone is still following me. Whose job is it to ensure that the individual whose property has been impacted on by an extension for which planning approval was never given has recourse to something? Surely, when a local authority verifier verifies something, they should at the very least ensure that it accords with what the plans were in the first place.

**Dave Aitken:** I do not know the specific case but, typically, what happens is that the verifier goes on site to carry out the checks and an amendment to warrant will be required for any deviations from the initial approvals.

**The Convener:** If that is the process, that response has been helpful.

We are out of questions. If any of the witnesses wishes to make additional comments, now would be an opportunity to do that.

**Stephen Kemp:** I am glad that we are moving on to inspection instead of concentrating on

redress because it is the inspection that has failed, with the result that defects go unnoticed.

I have worked in Edinburgh and Orkney, building houses. A well-staffed and well-resourced building standards department whose staff come out regularly builds up a working relationship with the site managers and sees the building at various stages. That has a positive effect. I was amazed to see some of the statistics for areas where inspections are rare; indeed, it amazed me that a builder could build X number of houses and barely expect to be inspected more than once or twice. When I worked in Edinburgh, the rarity of seeing the building standards inspector was a new thing for me, having come from Orkney. We were wholly reliant on the NHBC's inspection regime.

Builders, especially site managers, work very hard to rectify and remedy reportable items on the building site. We come back to builders who are often not registered, which means that there is no remedy for the householder. We could cut down instances of defect an awful lot with better-resourced building standard inspections.

**Nicola Barclay:** We should not forget that all of this is related to the lack of skills and resources in the entire construction industry. Not only do we have a lack of building control officers but we need people coming through the system who have been well trained by our colleges and through apprenticeship programmes. The issue goes much wider than just building standards.

**Malcolm MacLeod:** The NHBC is structured to be non-profit distributing; we have no shareholders and do not pay any dividends. Our core purpose, as I have already said, is to raise house-building standards and to protect the end users—the consumers. By providing a building control service, as we have done and do in England, we can enhance that core purpose, because we can improve the construction process and at the end of the day deliver better-quality homes by checking plans, becoming more involved on site and carrying out more on-site inspections.

**The Convener:** Does Mr Aitken or Mr Gilmour want to add anything before we close?

**Dave Aitken:** LABSS's view on the impartiality issue that was asked about is that local authority building standards departments are well placed in that respect; they are impartial and accountable to the local electorate. Given what Malcolm MacLeod has already said about the way in which the NHBC is set up and its connection with the builders, I think that it would struggle with impartiality.

**The Convener:** You have already put your views on impartiality on the record, Mr MacLeod. However, if you feel the need to repeat them, I will let you do so.

**Malcolm MacLeod:** I reiterate my view and refer the committee to Scottish Government research published in 2010 that supports the appointment of verifiers and refers to private sector building control improving the efficiency of the service and leading to more innovation in that service. The fact that we can help has been recognised in Scottish Government publications.

**Jim Gilmour:** It all starts with supervision. Making visits is all that is possible; it is not possible for a full-time NHBC person to sit on a site all day. The process is very simple: you get a site—let us call it a field—and you have to shape it. Basically, you scrape it and set it out. Then you cut the founds; you can cut and pour the founds but at some stage the NHBC comes in to check the founds before they are backfilled. It is exactly the same with drainage. It is a step process. The NHBC does not have to be there every day watching the joiner cutting wood; instead, it comes in at each step.

12:30

The skills gap is really hitting everybody at the moment. I was on the UK board for the Construction Industry Training Board for quite a while, and we found quite a dip in proper training. This is an important point: down in London, they wish to cut apprenticeships to two years. My question to the people in London was, "If you had a £20,000 kitchen, would you let a young two-year apprentice loose on all your marble worktops and kitchen units?" The 100 per cent answer was no.

We should not be letting down the kids by reducing the term of their apprenticeship. I do not think that that suits Scotland; it might suit the big boys for a brickie to be able to lay a line of brick—that is what it is called—but could you send him out to do anything off a decent drawing? The boy would be lost. If he came to our company, I would be surprised if he was with us after two weeks. We would have him removed because he would not have the ability.

**The Convener:** Thank you very much for that. We will take on board all the points that you have raised, whether or not they were in response to our lines of questioning.

We as a committee have to decide how we want to follow this up. I think it reasonable to point out that, as all MSPs know, committees hear about things only when they go wrong. That is the nature of the job that we do. We have no idea of the extent of the problems and issues that exist, but we do know that it is our job to respond to them when we hear about them. We also know that the solution involves everyone around this table working in partnership, whether or not the system changes. We are keen to continue this line of

scrutiny to see whether the system needs to change and whether more safeguards can be brought in.

I thank everyone here for taking part in this lengthy evidence-taking session. We will stay in contact with you as we make progress with our scrutiny of this area. I also thank the constituents who met us in private earlier to tell us about what they perceive to be significant problems with the design of the current system.

I suspend the meeting briefly before we move to the next agenda item.

12:32

*Meeting suspended.*

12:35

*On resuming—*

## **Subordinate Legislation**

### **Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102)**

**The Convener:** Welcome back. Agenda item 2 is consideration of subordinate legislation. Because the instrument in question has been laid under the negative procedure, its provisions will come into force unless the Parliament votes on a motion to annul it. However, no motion to annul has been lodged.

If members have no comments, I invite the committee to agree that it wishes to make no recommendation in relation to the instrument. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** Thank you. We now move into private session, and I ask those in the gallery to leave the committee room.

12:36

*Meeting continued in private until 12:43.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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