



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 26 February 2020

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

7th Meeting 2020, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Annabelle Ewing (Cowdenbeath) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Denholm (Royal Institution of Chartered Surveyors)
Phil Diamond (Diamond & Co)
Matthew Jupp (UK Finance)
Derek MacDonald (Property Managers Association Scotland)
Karen Major (Scottish Government)
Brian Smith (Law Society of Scotland)
Kevin Stewart (Minister for Local Government, Housing and Planning)
Sandra White (Glasgow Kelvin) (SNP)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Local Government and
Communities Committee

Wednesday 26 February 2020

[The Convener opened the meeting at 09:00]

Interests

The Convener (James Dornan): Welcome to the seventh meeting in 2020 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones.

I welcome Jeremy Balfour to the committee. Jeremy has replaced Alexander Stewart, who has taken on a different role in his party. Alexander was with the committee from its inception in 2016. I record the committee's thanks to him for his service—Jeremy has big boots to fill. I ask Jeremy to indicate whether he has any relevant interests to declare.

Jeremy Balfour (Lothian) (Con): I have nothing to declare.

Kenneth Gibson (Cunninghame North) (SNP): I have something to declare, in particular for this meeting. I have a flat that is rented to a third party and which is affected by the cladding issue.

Decision on Taking Business in
Private

09:00

The Convener: Agenda item 2 is to decide whether to take agenda items 6 and 7 in private. Under agenda item 6, the committee will consider the evidence that it will hear today on building regulations and fire safety. Under agenda item 7, the committee will consider its next steps in relation to its digital engagement exercise on community wellbeing. Does the committee agree to take those agenda items in private?

Members indicated agreement.

Subordinate Legislation

Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 [Draft]

09:01

The Convener: Agenda item 3 is consideration of an instrument that is subject to affirmative procedure. First, the committee will take evidence on the instrument. I welcome the Minister for Local Government, Housing and Planning, Kevin Stewart, who is accompanied by Karen Major, who works in the Scottish Government on private rented sector regulations, and Norman Macleod, who is a senior principal legal officer in the Scottish Government.

The instrument is laid under the affirmative procedure, which means that the Parliament must approve it before the provisions can come into force. Following the evidence session, the committee will be invited to consider the motion to approve the instrument. I invite the minister to make a short opening statement.

The Minister for Local Government, Housing and Planning (Kevin Stewart): Thank you for the opportunity to give evidence on the draft Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020.

Our programme for government included a commitment to introduce minimum standards for the energy efficiency of homes in the private rented sector that are to be let out for new tenancies from 1 April 2020. The regulations fulfil that commitment using provisions of the Energy Act 2011 that have been in force since 1 July 2019. In drafting the regulations, we have also drawn on the responses to a number of public consultations, the most recent of which was held last summer.

The standards that the regulations establish will make an important contribution to the removal of poor energy efficiency in the private rented sector, which is a driver of fuel poverty. With the most recent figures, for 2018, showing that 36 per cent of households in that sector are fuel poor, the importance of taking that action is clear.

The regulations also flag the wider expectation of the energy efficient Scotland programme to introduce standards for energy efficiency across all building stock in Scotland. Further to standards that have been set in the social sector through the energy efficiency standard for social housing—ESSH—they herald another important step for the 20-year energy efficient Scotland programme. The standards that are introduced will be phased in over five years and will use the widely

recognised energy performance certificate as the yardstick for energy efficiency.

From 1 October 2020, there will be a prohibition on the letting of new tenancies that fall below EPC band E. That standard must then be met by all tenancies by 31 March 2022. From 1 April 2022, the standard will increase to EPC band D—again for new tenancies first. By 31 March 2025, all private rented properties will be required to meet the EPC band D standard.

The regulations allow for various exemptions to the standard to take into account individual circumstances and the variety of building stock found in the private rented sector. Examples of those include the cost of the works exceeding £5,000 for each standard set; a sitting tenant or third party refusing to allow the required works to take place; and the likelihood that the necessary works would have a negative impact on the fabric or structure of the property.

We will work with stakeholders to finalise non-statutory guidance to support the roll-out of the changes. If the committee recommends approval of the regulations, my officials will publish draft guidance on 1 April, which will be used as a platform for conversations with local authorities and landlords during the spring of 2020.

The regulations introduce minimum standards for energy efficiency in the private rented sector. The approach will help to ensure that private tenants are able to live in homes in which they do not have to trade off paying for heating with spending on other basic needs.

I apologise for my croaky voice.

The Convener: Thank you, minister. I invite questions from members.

Andy Wightman (Lothian) (Green): You mentioned a cost cap of £5,000. Was consideration given to regional variations in the cap? Here in Edinburgh, for example, a third of tenants live in pre-1919 tenements, to which it is probably relatively more expensive to introduce energy efficiency measures than it is to introduce measures to homes in other parts of the country.

Kevin Stewart: No, we have not looked at regional variations to the £5,000 figure. Many parts of the country have pre-1919 tenements, as Edinburgh does—my constituency is one of those places. From my knowledge of the Victorian tenements project in Aberdeen, I think that some requirements to do things to such buildings will fall within that figure, without a doubt.

As I always say to the committee, we will continue to keep an eye on all that. If we think that there is a need for variation in the future, because folk are falling through the net, we will look at the situation very carefully indeed.

Andy Wightman: It is not clear from the regulations whether the exemptions register will be separate from the existing landlord register. Will it simply be a case of adding fields to the existing database?

Kevin Stewart: I will bring in Ms Major to answer your question.

Karen Major (Scottish Government): There will be a separate register, because the existing landlord register is based on landlords, not property. The exemptions register will be based on property and will be a separate thing that is held by each local authority.

Andy Wightman: Was thought given to amending the existing register so that people could go to just one register?

Kevin Stewart: We are looking at the existing register, the functionality of which is very basic. I think that adding the function that we are talking about would have caused difficulty. I assure the committee that we are reviewing how the current register operates to see whether other functionality can come into play in the future to deal with a huge number of aspects.

Andy Wightman: There will be an exemptions register, but will there be a register of properties to which energy efficiency measures have been applied?

Kevin Stewart: There will not be such a register. I think that, as we move forward, we will get a huge list of the reasons for exemptions, and I expect that others will meet the standards.

Andy Wightman: A property will be exempt if the costs exceed £5,000. How will that be assessed? Will it be done through quotes? I can see quite a bit of scope for creative quotes coming in at £5,001.

Kevin Stewart: I assure the committee that we will keep an eye on any creativity that goes on. I stand to be corrected by Ms Major when I say that we reckon that, at the beginning, the average change will cost in the region of £1,140, so folk will be being very creative indeed if they exceed the number.

That said, as I have said to the committee previously, it would be very difficult to introduce measures to some properties because of the nature of the buildings. When I was questioned about EESSH previously, I gave the example of Napoleonic council housing in Orkney, which is from the late 18th and early 19th century. Those buildings could not be externally cladded, and nothing could be done internally because the size of the rooms would be reduced dramatically, but folks are happy with that. We have to realise that we have some old buildings that we do not currently have the technology to deal with. Such

buildings fall into the category of those beyond the £5,000 cap. In some cases, not a huge amount can be done. However, I assure the committee that, as we move forward with the energy efficient Scotland programme across the board, we will do all that we can in all sectors and across the country to make our homes more energy efficient, to reduce fuel poverty and to curb our carbon emissions.

Sarah Boyack (Lothian) (Lab): I welcome the draft regulations, but I want to ask about a couple of issues. First, I see that you have had conversations with the Convention of Scottish Local Authorities and individual local authorities. What additional resources will be required to carry out the regulatory enforcement? Will that work be covered by existing local authority officers, or will new people be recruited to ensure that the enforcement works in practice?

The second issue is investment. To what extent will the improvement work feed into the area-based schemes that currently exist?

Kevin Stewart: I would never dictate to local authorities how they should handle such issues. In this area, as in many others, we are committed to working with local authorities. We are in the process of setting up formal governance arrangements with COSLA and the Society of Local Authority Chief Executives and Senior Managers to oversee strategic planning of the energy efficient Scotland programme.

Ms Boyack is well aware that, as it stands, our home energy efficiency programmes for Scotland area-based schemes—HEEPS ABS—are managed by local authorities. I can see the work that we have been talking about fitting in well. Local authorities in certain parts of the country have made great efforts to ensure that owner-occupiers and landlords enter into the HEEPS ABS programmes that are available. They are quite persuasive in ensuring that folk know that they have access to loan funding to carry out works.

Beyond that, as I have said to the committee previously, I am clear that all of us need to be more proactive—I know that some local authorities are proactive—in ensuring that owner-occupiers and landlords who choose not to access the schemes are told that, by not doing so, they will cause themselves possible difficulties in the future, not only by not complying with the changes but in relation to selling on their properties. I have given the example of Cadder, which is an area in the north of Glasgow that has benefited from the HEEPS ABS programme. However, certain folks chose not to participate, and there was a stark contrast between the prices of properties that entered the programme and the prices of those that did not. We need to get over to folks that by

not entering into the HEEPS ABS programme when they have that opportunity, they might cause themselves liabilities in the future.

I do not know whether I covered all the bases there.

09:15

Sarah Boyack: You covered energy efficient investment schemes. This is an opportunity to highlight the fact that there are such schemes, and it is critical that the regulations tie into them.

My question was not about instructing local authorities; it related to your comment on the need to ensure that the timescale works and that local authorities are capable of gearing up. Are you happy that the local authorities are ready to gear up? Will it be new staff or current staff who deliver the enforcement?

Kevin Stewart: We have not had anything back from local authorities to say that they would have any difficulties. As I said in my opening remarks, we have the period between the publication of the guidance on 1 April and implementation on 1 October to talk to local authorities and stakeholders. In my dealings with folk at COSLA in relation to the energy efficient Scotland programme, I have heard that local authorities are up for the changes.

As I have said, we will put in place formal governance arrangements to ensure that we deliver in partnership with local authorities the energy efficient Scotland programme, which is important and strategic.

Graham Simpson (Central Scotland) (Con): Good morning, minister. Do you have any idea of the number of properties that might be involved?

Kevin Stewart: Gosh. If Mr Simpson bears with me, I will try to find those figures in the vast array of documentation that I have in front of me. Here we go—that is efficiency for you.

As the committee is aware, the regulations will cover properties that have an EPC and whose tenancy is covered by the repairing standard. The most recent Scottish house condition survey identified 26,000 such properties that are in EPC bands F and G, which is about 10 per cent of the private rented stock. Those are the houses that will be affected by the first wave of regulation. A further 42,000 properties are currently in EPC band E, which is 16 per cent of the total private rented stock. Those houses will be affected by the second wave of the changes in April 2022.

Graham Simpson: So it is 66,000 properties.

Kevin Stewart: By my calculation, that is 68,000 properties.

Graham Simpson: Yes—you are right. That is a lot of properties. That takes me back to a previous question. Do councils have the resources to monitor all of that? It seems quite a big extra workload.

Kevin Stewart: From my experience of talking to folks who deliver HEEPS ABS programmes in local authorities and some of the other energy efficiency schemes, there are folks who are really expert in all of this in many places. As I have said—in committee or perhaps in Parliament—what we have seen from HEEPS ABS thus far is that many local authorities have concentrated on the low-hanging fruit. I know that local authorities are looking at moving further forward in improving energy efficiency in various places and are looking more to the private rented and owner-occupied sectors and at getting them involved. This is part of that work. We have seen local authorities in many parts of the country bringing together not only the HEEPS ABS resources but other resources from elsewhere to deliver across the board. Although the regulations add to that work in some regards, in reality, in many places the local authorities are doing it anyway.

Graham Simpson: How will a landlord or landlady know that they need to do work? How will that be communicated?

Kevin Stewart: We are going to embark on communication starting from 1 April and talk to folks up until the 1 October trigger date. We will use all means possible to communicate the changes, including the good offices of the Scottish Association of Landlords, which is key in helping us to spread the message far and wide.

Beyond that, we will look at how we can communicate the changes to tenants through various organisations such as Shelter, so that they know what their rights are. They will also know whether their landlord is not fulfilling the obligations that are laid out in the regulations.

Graham Simpson: I have a final question. I can picture the scene in which work is done on a property, but the rent is put up as a result of the landlord spending money. I am sure that that is not the kind of outcome in some parts of the country—probably all parts of the country—that you are seeking.

Kevin Stewart: That is a possibility, but I would hope that, in such circumstances, landlords would take cognisance of the situations that folk find themselves in. We also need to look at the whole cost to the resident. It might well be that, in some cases, there is a fair saving to be made in energy bills by carrying out only a very little amount of work.

The Convener: As there are no more questions, we will move on to agenda item 4,

which is formal consideration of motion S5M-20854. I invite the minister to speak to and move the motion.

Kevin Stewart: I will simply move the motion.

Motion moved,

That the Local Government and Communities Committee recommends that the Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 [draft] be approved.—[Kevin Stewart]

Motion agreed to.

The Convener: The committee will report on the instrument in due course. Does the committee agree to delegate authority to me as convener to approve a draft report on the instrument?

Members indicated agreement.

09:22

Meeting suspended.

09:26

On resuming—

Building Regulations and Fire Safety (Zero-valued Homes)

The Convener: Under agenda item 5, the committee will take evidence on building regulations and fire safety, in which the committee has a long-standing interest and on which we issued a report in 2017. The focus of this session will be the issue of homes with cladding that have been assigned a zero value.

I welcome Sandra White, who has a constituency interest in the matter. Once committee members have finished asking their questions, I will allow Sandra to ask some questions.

I welcome to the meeting Phil Diamond, who is a chartered building surveyor with Diamond & Co; Matthew Jupp, who is the principal at UK Finance; Keith Denholm, who is a director at Allied Surveyors Scotland and is representing the Royal Institution of Chartered Surveyors; Brian Smith, who is a partner with Simpson & Marwick and is representing the Law Society of Scotland; and Derek MacDonald, who is a joint managing director of Newton Property Management and is representing the Property Managers Association Scotland. Thank you for your written submissions.

How widespread is the issue of zero valuations? What impact is it having on house sales across Scotland?

Keith Denholm (Royal Institution of Chartered Surveyors): When a property is evaluated for the preparation of a home report, a value is placed on the property. When the surveyor is asked to do a transcription to a bank or building society, we follow the lender's specific requirements, which state that we should put a zero value on the property when we report to that lender.

The Convener: That was not my question. However, are you telling me that you go looking for a zero valuation because that is what you are asked to do?

Keith Denholm: When we do a report on a property for a specific lender, as chartered surveyors, we will put a zero value on it, following the guidance that we are given by that lender. In other words, we follow the instructions of the lender, as we do in providing any valuation to a bank or building society.

The Convener: Maybe it is just me—maybe I am confused—but do you not make a valuation on the basis of the survey that you carry out?

Keith Denholm: We put a market value on the property for the home report, subject to the issue of cladding on the building being clarified. If a request is made to go to a bank or a building society, we follow the guidance of that specific lender, which, in the majority of cases, will say that a figure of zero should be entered for the valuation.

The Convener: Because of the cladding issues.

Keith Denholm: Yes.

The Convener: Right—so, two valuations are placed on such houses.

Keith Denholm: No. The zero valuation is not a valuation. It is a process that has been put in place to ensure that the mortgage processing goes correctly.

The Convener: I am sorry if I appear dumb, but how does providing a zero valuation ensure that the mortgage process goes ahead correctly?

Keith Denholm: The valuation is part of the process that surveyors go through in reporting to a bank or building society. In reporting on a traditionally built property that has no cladding issues, a value will be stated. In producing that valuation, we will follow the guidance that is applicable to that lender. In reporting on a property that has cladding on it, the lender will say that, until such time as clarification is obtained, the valuation figure in the report should be entered as zero.

The Convener: Does that mean that nobody whose property has cladding on it can get a mortgage?

Keith Denholm: No, that is not correct. They will get a mortgage, subject to clarification being obtained, which involves the provision of an EWS1—external wall system 1—form.

The Convener: So they all start at zero and have to prove themselves to be something else?

09:30

Keith Denholm: There will be a value written on the surveyor's notes to say that the value of the property is whatever—for instance, £200,000. However, that will be on file, based on the comparative evidence in arriving at that valuation. For the processing, the surveyor puts a value of zero on it until such time as the clarification of the EWS1 form is provided. Once that is provided, the valuation is entered on the form.

The Convener: Let me ask a question, either of Mr Denholm or of somebody else; do not feel that you all have to answer the same question—there are five of you, after all.

What impact is that having on house sales across Scotland at present?

Keith Denholm: The impact is fairly significant. It affects the properties in the developments that have cladding on them, and there is a roll-on effect in the rest of the marketplace, because the people who would previously have been able to sell their property find that they cannot do so, because of the cladding, which means that they cannot buy another property, so they are, therefore, removed from the marketplace.

The Convener: Has the EWS1 process helped to unlock sale of flats in high-rise buildings?

Keith Denholm: It has started to help the process, yes. Although it is in only the early stages, it has definitely started to help the process improve.

Graham Simpson: My understanding is that the EWS1 form is not applicable in Scotland. Is that correct?

Keith Denholm: No, that is not correct.

Graham Simpson: So, it is being used here?

Keith Denholm: The EWS1 form is being used in Scotland, yes.

Graham Simpson: The convener's first question was about how many properties have been affected. Does anybody in Scotland know that?

Matthew Jupp (UK Finance): No, I do not think that we have that information.

Graham Simpson: So, you do not know how many properties people are unable to sell?

Matthew Jupp: No.

The Convener: But the response was that the number is fairly significant.

Keith Denholm: It can be significant in certain parts, or hotspots, of the country.

Graham Simpson: Where are the hotspots?

Keith Denholm: They will be primarily around harbourside developments, be they in Glasgow, Edinburgh or Dundee. It is not limited to specific types of property; it could be other properties and other developments throughout the country. We do not know the extent of the problem.

Graham Simpson: Is it newer properties or older properties?

Phil Diamond (Diamond & Co): We have surveyed something like 300-plus developments, and there is not a stereotype. It tends to be stuff from 1990 onwards; however, it is not necessarily stuck to any one point in time. Obviously, there is not a problem with Victorian and Georgian

sandstone tenemental stuff; however, in the more modern development share, there is a significant problem with cladding on the buildings, a lot of which is physically combustible.

Graham Simpson: Mr Denholm said that a zero valuation is applied until you can get clarity on what the cladding is. Do you have to survey the whole building?

Keith Denholm: From the valuation point of view, you would undertake a general inspection of the building. We would then ask or recommend that an EWS1 form is obtained, in which case it is passed on to the EWS1 form provider.

Graham Simpson: Is the cost of that shared among all the residents in a development?

Phil Diamond: To backtrack to your first question, we have to look at the common fabric, because that is the nature of the tenure in Scotland. We need to look at the construction as a whole across the development and identify all the key elements of the cladding—that is, what the different types are—all over the flats. Bearing in mind that this relates only to flats, you could—typically—have a development with half a dozen stairwells and 30 different types of cladding.

The nature of the tenure in Scotland is such that you cannot get a professional indemnity policy to offer that comfort to all the people who form part of the development; it has to be specific to the householder. As it stands, that cost is, unfortunately, borne in full by each individual householder.

Graham Simpson: That is what I am getting at—each individual householder has to pay. Let us say that it was me: if I wanted to sell my flat, I would have to pay for a survey on the whole development?

Phil Diamond: Technically, that is correct, but it is, in effect, the same as the valuation survey because the valuation surveyor would look at the whole fabric and issue a valuation for that individual flatted dwelling. As chartered building surveyors, we cannot treat that property in isolation; we have to look at the full extent of the common fabric because that one flatted dwelling is affected by what is in other common parts of the building, which might look in theory unrelated but are part of the common fabric.

Derek MacDonald (Property Managers Association Scotland): Cost is a concern with regard to the initial work that the surveyor has to carry out, which I think that my colleagues will agree probably makes up the bulk of the cost. Property factors are trying to find a workaround for that, because we are limited, as Phil Diamond said, in how the initial survey is done and what happens consequently. For example, some blocks

have approaching 100 units per block and the survey is for the individual risk for that block. We are trying to come up with a workaround with the consent of the owners whereby they acknowledge collectively that the work is to their benefit. Once that knowledge base has been established, each individual owner that consequently went on to sell would have the option, subject to the surveyor's agreement, of a reduced cost for what would be, in effect, a duplicate certificate but which would be in their name. That would perhaps address some of the question mark over the professional indemnity. We are at the very early stages of that and can push it only for situations where we are dealing with constituted owners' committees.

Graham Simpson: They do not exist in a lot of developments.

Derek MacDonald: Exactly. If they do not, we are working in a vacuum, in a sense, and trying to consult all the owners and reach a decision.

Graham Simpson: Is the situation in Scotland different from that in England in terms of having a legal entity that you can deal with? Is that part of the issue?

Derek MacDonald: Our understanding is that, south of the border, the legal entity that would sign off on the survey would be either the building owner or the management company, which tends to be owned by the landlord—the original building owner—particularly in modern properties. The majority of the buildings that are affected are probably post 2000.

Graham Simpson: When you and I spoke about this issue previously, you said that, in your view, there is an issue in Scotland about the EWS1 form.

Derek MacDonald: Yes, there is. The issue, as Phil Diamond indicated, principally arises from the PI cover that is provided by the surveyors who provide the reports. Matthew Jupp could maybe advise on this, but we understand that, even if the owners in a building collectively decide to commission a communal survey, a lender would look at it and say "Hold on a minute. You've got 96 flats here that are being covered by £5 million-worth of cover. That's inadequate." The pushback is therefore more likely to come from that direction. Ostensibly, there is no problem if we ingather the consent from the owners collectively. That makes things easier, and we are working very well with some committees on that. However, the pushback is on the issue of the total amount of the PI cover.

Graham Simpson: So, where there is no owners' association, you have to track down individual owners, which can be difficult, and try to get majority consent.

Derek MacDonald: Yes. There are ways in which we can approach that, but we need to be certain that there is a quorate view in the development, particularly for larger developments.

The Convener: It was suggested that Mr Jupp might have something to say on that.

Matthew Jupp: I do. The EWS1 form was designed for there to be one per block. We were mindful, when we developed the process, that there would be a cost implication to investigating the cladding on the outside of a building. We wanted to ensure that the people who live in those buildings did not have to pay an excessive amount for that. The idea is that there is one form per block and it lasts for five years, so it has a reasonable lifespan. However, the property-owning situation in Scotland does not make that as easy a process as it is in the rest of the UK, but the expectation is that there could be one per block. We might need to find a way to ensure that that can happen, but the expectation is that there could be just one.

Graham Simpson: So, you still have not found that way. The earlier assertion that the EWS1 form is working in Scotland is not quite correct—we need to change it.

Keith Denholm: It is working, because of the workaround that we use in Scotland. There is a difference with regard to the freeholder from how it was originally set up. Now, individual homeowners instruct the report themselves on the element of the building that their property occupies, and that is then passed to the purchaser to assist the purchase. On that basis, it is working. In an ideal world, we would like to have one report per block, but we need a workaround solution to get things moving again in the Scottish property market.

Phil Diamond: That will involve the agreement of the professional indemnity bodies—in a big way—and would be a significant cost in relation to effectively insuring the common fabric. Matthew Jupp is suggesting, in effect, that a chartered building surveyor or whatever goes out to the property, looks at the common fabric and signs off on it. That is all very well, but that then has to be underwritten by the PI company, which will not grant 100 people access to the policy without what they call “a commensurate level of fee”. Surveys that relate purely to EWS1 could be significantly expensive.

I would like to air one of the things that my business is working on in the background with some of the factors—we are coming at the issue slightly differently, which may help. We are doing construction identification surveys and rather than calling them an EWS1 surveys, we create factual reports by doing investigative surveys on buildings, covering the extent of the common

fabric, the building and how it is put together. We go through the fabric elements on an Excel spreadsheet on an elevation-by-elevation basis and traffic light them—red, amber and green. We do not do anything other than physically look at the common fabric. Those reports seem to be being treated in the same way as a normal defect diagnosis on a building, such as when it needs a new roof or it has dry rot or a structural problem. We now get quite a few instructions from factors to do that. That way, at least, the individual proprietors have the option to come to us directly and ask for the EWS1. That is starting to work, but we need to do it on a large-scale basis. Clearly, the factoring industry and certainly the surveying industry do not have the means to make that happen.

Graham Simpson: What do you mean by “the means”?

Phil Diamond: They do not have a vehicle to instruct it, in a lot of cases, because the nature of the tenure blocks it—they have to get consensus among all the proprietors, but every person’s agenda is different.

Graham Simpson: I see that other members want in, convener.

The Convener: If there is anything that you want to ask later, you can do.

Andy Wightman: Getting back to the convener’s original question about how many are affected, Mr Denham, you said that you do not know and, of course, we do not know. It would be useful to get a sense of the scale—are we talking about tens, hundreds or thousands? In Mr Diamond’s written evidence, he said:

“There are many flatted dwellings that are blighted already.”

Those are properties that would presumably be an option B on the EWS1 form, or would fail if they were inspected under that regime. Mr Diamond also said that there are

“a significant number of properties which include combustible materials”.

What is the scale of the problem? Are we talking about hundreds or thousands? Are we talking about isolated developments on the harbourside in Edinburgh, Dundee and Glasgow? Surely you can give us sense of scale.

Keith Denholm: Not really—it is very difficult to give a general figure, but it is substantial. It would be in the thousands.

Andy Wightman: Thousands—okay.

09:45

Keith Denholm: I do not want to say that we have triple that amount or half that amount—it is around that level. The bottom line is that we do not know that there is an issue until a building inspection has been undertaken. It is not just a simple case of walking down the street and saying: “that is a good one; that is a bad one.” You have to use proper due diligence to inspect those properties.

Andy Wightman: Is it correct that we find problems on buildings of any height—over or under 11m?

Keith Denholm: The initial figure from advice note 14 of the Ministry of Housing, Communities and Local Government’s guidance was 18m. The recent guidance note that was issued in January brings it down to much lower levels.

Andy Wightman: But are we finding the problematic cladding on building of all heights?

Keith Denholm: We are.

Andy Wightman: Can the ESW1 form then be used for a building that is 6m or 12m in height?

Keith Denholm: Yes. Even though the form mentions 18m, it could be used for other heights.

Andy Wightman: It is still a process.

Keith Denholm: The RICS will host a meeting on 10 March in order to review the form, because we are in a very fluid situation just now.

Andy Wightman: Mr Diamond, you say in your written evidence with reference to your EWS1 findings from surveys to date that you have more than 300 developments across Scotland on your books. Those 300 developments alone must represent 3,000 to 6,000 individual properties.

Phil Diamond: Those 300 developments typically have six to eight stairwells, with an average of 10 to 12 people in each. I need to be a bit careful, because our numbers are skewed by the fact that we get referrals, so we get the properties that are already problematic. We are in the process of analysing the data and working hard in the background to pin down a figure; new data comes in every day. I would be happy to share that figure with the committee when we are confident that we have reached a stage at which the analysis would pass muster. The figure moves about just now, but it is significant. It is as far as I can go at the moment, but I have spoken to you privately about that anyway.

Andy Wightman: Do you require the permission of the property owner to do an invasive survey?

Phil Diamond: Yes—we require the property owners’ permission.

Andy Wightman: You say in your evidence:

“our experience is that there is a further group of developments that contain a significant number of properties which include combustible materials in their external envelope.”

Can you say more about those properties? Were they compliant with building regs when they were built, which would make it a legacy issue? Were they not compliant? Were they meant to be compliant but not built with the correct materials?

Phil Diamond: The background to that statement is that the original assumption that everything was based on aluminium composite materials has proved not to be the case. In Scotland, we find a range of different materials on buildings. Essentially, the combination of those materials is the problem. We find, in a lot of cases, cladding systems that have two hybrids: a fire-rated version and a non-fire-rated version, which are absolutely identical to an untrained eye. We also find cladding systems that have a British Board of Agrément certificate or some other form of third party accreditation but which have not been installed in accordance with the actual tested construction; and cladding systems that are a mixture of things, which means that we have no way of establishing what the fire-related criteria would be, or establishing any certification whatsoever.

By and large, a lot of developments complied with the building regulations of the time but, obviously, the rules of the game have changed. Would they pass muster now, given our post-Grenfell knowledge and the new testing regimes that have been implemented? I doubt it very much, but most of them would have passed the regs at the time.

Our experience is that the majority of the problems are in the six or seven-storey height bracket, which is bang on the 18m mark. Buildings of that height are also the most common archetype for blocks of flats, so it stands to reason that the problems will come from that bracket.

We are finding a lot of properties that would be rejected if they were reinspected now by a building control officer, because there are physical failures in the way in which they have been constructed. There is a whole range of different failures, such as missing firebreaks, stuff that has not been properly fitted, omissions, swaps in materials, and lack of certification.

Andy Wightman: What is happening for properties that are getting a B rating on the ESW1 form, which indicates that there is an issue with the cladding?

Phil Diamond: They are stuck.

Andy Wightman: Is any remedial work being instructed for them?

Phil Diamond: No, other than for high-profile ones such as at Glasgow Harbour, where some of the big players are; I am not aware of any works being instructed for the smaller developments. Maybe other panel members know of some.

Keith Denholm: Unfortunately, we have no remediation fund in Scotland. In England and Wales, there is an initial figure of £200 million to address aluminium composite material clad properties; I understand that that has now been extended. Unfortunately, where there is a problem with cladding, unless the original developer is able to assist, home owners are left high and dry.

Andy Wightman: Even if the remedial works are affordable—perhaps they are not really affordable, but the owner could potentially just get there—does the flat owner still require the consent of all the other owners?

Keith Denholm: Yes.

Andy Wightman: Where that is happening—where the costs are not too excessive and are possibly within people's scope—have people have tried and not succeeded in getting agreement?

Brian Smith (Law Society of Scotland): I suspect that we have not yet reached that stage. It is still a relatively new issue.

It started around September. Scotland was affected first because, unlike south of the border, the home report is carried out before a property is marketed, so it became more apparent. At that time of year, the market starts to drop off. Estate agents generally tell clients to wait until the start of the new year before they bring their property to the market. We are now two months into the new year, and we are going to start to see all these issues coming around.

Zero value for mortgage purposes is clearly a problem, but the biggest problem in any market is uncertainty. Buyers and sellers—buyers in particular—do not like uncertainty. It is not just about whether they can get the funding. Even for cash buyers looking at a property that may have a cladding issue, the advice is not going to be to buy it without knowing what that problem is, and what the potential liabilities for remediation are. Until there has been some comprehensive evaluation of the extent of the problem, and some understanding of what the remediation path is going to be, the market will continue to be affected by those uncertainties, and to have difficulties.

Andy Wightman: Thank you. I will leave it there and come back in later.

Jeremy Balfour: Good morning, gentlemen. I have a number of questions.

I go back to the issue of cladding on all buildings. We have had different heights quoted. Are lenders saying that any property with cladding has been raised with them, whether it is 1m, 18m or 21m high?

Matthew Jupp: I will talk about the process for lenders. We have to have an independent valuation, carried out by an independent valuer. They flag that there is a concern with cladding, which might affect the value of the property. A lender would then ask for that to be investigated, and then it would go down the EWS1 process.

If the building is above 18m, that is a fairly well-understood concern at the moment. Lenders, valuers and others are also considering the United Kingdom Government's guidance that suggests that buildings below 18m may also be a concern. We are aware of the difficulties in assessing all buildings, given the sheer numbers involved. As a result, we are looking to see whether there is a more risk-based approach that could be taken, to ensure that we are focusing on the buildings that are most at risk.

Jeremy Balfour: Can you clarify the current situation? I go to Mr Smith because I want to buy a flat in Edinburgh; it is 8m high, but it has cladding. Would I be able to get a mortgage on that property without any investigation?

Matthew Jupp: It would depend on whether the independent valuer, acting on behalf of the lender, flags that as a concern that affects the mortgage valuation.

Keith Denholm: Guidance on properties below 18m has not been issued by the majority of high street lenders, so we await that information. However, some of the guidance that has been issued since August last year contains a cover-all statement that says that, if the valuer believes that there is an issue with cladding on a property below 18m that could have a material effect on its market value, the surveyor has to recommend an EWS1 form.

Jeremy Balfour: That is helpful. I appreciate that I am asking you how long a piece of string is but, if an individual who is trying to sell a flat gets a home report that says that there is an issue with cladding, how much, roughly, would it cost them to investigate whether the cladding had an A or B rating. Roughly, how much would an average flat owner be charged for that?

Phil Diamond: We would charge approximately £900 plus VAT for the initial survey. That is our physical fee. There is also a professional indemnity cost, which varies from block to block and is volume sensitive.

Jeremy Balfour: Roughly, how much is that?

Phil Diamond: At its lowest end, it could be £1,000; at its upper end, it could be a couple of thousand pounds. A lot of third-party costs are attached to such work, because we sometimes need to consult chartered fire engineers, we need cherry pickers to give us access and we sometimes have to do testing. In such circumstances, it is not feasible for an individual home owner to take all that on board; a common approach needs to be taken.

Jeremy Balfour: Let us say that there is a block of eight flats. If the owners of seven of the flats are very happy and think that they will be there for the next 10 to 15 years, and if I am the only individual who wants to sell my flat, you are saying that, at the moment, I would not be able to sell it.

Phil Diamond: If the block had cladding, we would report on it and say whether we thought that it would pass or fail.

Jeremy Balfour: I am trying to work out how much it would cost an individual to get the work done to be able to sell their flat.

Phil Diamond: Typically, it would cost £2,000 plus VAT. That would be the average level.

Jeremy Balfour: Does that include the cherry picker, for example?

Phil Diamond: We have no way of knowing at the outset whether that would be necessary, because every case is different. It would depend on whether we could get access to do the surveys. A lot of developments are on the high street, so we cannot get a permit to go up with a cherry picker and so on. Across the board, on average, it would cost about £2,000. The majority of that fee is currently the professional indemnity cost. That might change in the future once more players enter the market but, at the moment, the PI is a major barrier to entry across the board.

Jeremy Balfour: Mr Smith said that buyers in particular do not like uncertainty. From a legal perspective, what advice would the Law Society give to clients who were thinking of buying a property with a home report that had a comment about cladding? I appreciate that every lawyer gives different advice, and I am not suggesting that the Law Society tells everyone what to do, but what is the general advice among property solicitors likely to be? Would the solicitor tell the client not to touch it?

Brian Smith: There are two fundamental issues. The first is that our members are not in any way qualified to pass comment on the EWS1, other than in relation to the existence or otherwise of it. If a property has an EWS1 and a buyer asks the natural question—"What does that mean?"—we need to refer them back to the person who prepared the report. We simply cannot make any

comment. Given the nature of the solicitor-client relationship, that in itself can often mean that some clients think, "I'm not sure I'm very comfortable about this if my solicitor is unable to comment on it."

The system is bedding in, but one of the difficulties at the moment is that we are finding that there is a bit of inconsistency in how home reports comment on such matters. Some surveyors are marking home reports with a 1 and commenting that, although there is cladding, it is assumed to be non-combustible. Our understanding is that a home report on a property with cladding should be marked with a 3 so that the issue is flagged up and the EWS1 system has to come in. There is still a bit of uncertainty about how everybody should process this, and that creates more uncertainty.

10:00

At the moment, it is very difficult for our members to provide advice in such cases, but solicitors tend to be cautious people, and the obvious advice to give is, "If we're not sure about it, you're not sure about it—do you have other options that you might be considering?"

Jeremy Balfour: Are there issues to do with the solicitors guarantee fund and indemnity policies for solicitors with regard to the advice that you give in such circumstances? We have heard about indemnity policies for surveyors. Are there issues here for solicitors?

Brian Smith: We are not building professionals, so we are completely unable to comment on the construction and the fire resistance of a building or the materials that are used in it. We can comment only on whether there is documentation of the appropriate type and, in general, we would check that there was professional indemnity cover behind that. However, we cannot really go beyond that.

Jeremy Balfour: This will be my final question, because I appreciate that the convener wants to move on. How do we solve the issue? I am a pragmatic individual. I recognise that we have an issue here and I want to find out what the way forward is. There will be a number of my constituents in Edinburgh who, over the next few months, might not be able to sell their property, and that will be true in other parts of Scotland, too. What is the solution?

Brian Smith: To my mind, you cannot solve a problem until you know what the problem is. A comprehensive survey needs to be carried out, and we need to establish what the nature of the problem is.

On committees that I have been involved in—I see the faces of many of my colleagues on those committees on almost a weekly basis at the moment—there has been discussion of some means of green lighting properties so that the properties that we know that there are no issues with can be moved aside, the market can get on with dealing with them and we can move on to the problem properties, which are the ones that will need remediation of some sort. We need to think about how that can be put in place, given the need for majority consensus in doing that. The bottom line is the cost of carrying out remediation work.

Kenneth Gibson: You talk about carrying out a survey to green light certain properties. Who would pay for that if it were to be done across Scotland? Would the local authorities or the Scottish Government pay for it?

Brian Smith: I do not know who would pay for it—that is probably beyond my remit.

Given what Phil Diamond has said, although a survey is done on a specific flat, that survey will clearly relate to the fabric of the whole block. The cost of carrying out a survey on each block—particularly if we are talking about an advisory survey, for which indemnity cover might not be required—might not be prohibitive. There might be a sufficient number of owners within a development who would be prepared to have such a survey carried out if some kind of arrangement could be reached on costs being reimbursed, perhaps from the sale of properties. However, it is the co-ordination of that process as much as the cost of it that is the issue.

Kenneth Gibson: What is prohibitive for one person might not be prohibitive for someone else. As Jeremy Balfour pointed out, some people might not want to move, so they might not want to pay anything. There is an issue there.

From the point of view of resources—excluding financial resources—do we have the skilled people in Scotland to carry out such a survey? How many months or years would it take to undertake such work? The whole point of the process is to make homes safer, but if we do not have the people with the skills to do the work if a need for it is identified, and if the people who need the work done following the change in standards cannot afford it, what is the purpose of such efforts?

Phil Diamond: I believe that we have the necessary skills in Scotland, particularly if we can go down the route of the construction identification-type model, because that would allow a whole firm of chartered building surveyors, architects and engineers to be involved while the PI issues attached to the EWS1 form were sorted out. That is what generates bills from the PI companies. We could readily develop a model for

the routine survey work. That would enable us to split the market across different businesses and to accelerate the process.

To go back to a point that Jeremy Balfour made, it is also important to stop this getting worse. The fastest-growing sector for inquiries is new-build contractors who are building flats and have concluded missives on transactions. Those transactions hit the buffers with lenders. That seems easy to sort, but we will go backwards if it is not quickly tackled. We have a lot of inquiries from builders working in Glasgow, Edinburgh and Aberdeen and using cedar cladding or external cladding that has fallen foul of EWS1.

Kenneth Gibson: That is a sensible point and one that we take on board.

You talked earlier about how some buildings that you have looked at did not even comply with previous standards. In those instances, should the liability not fall on the builders, rather than on owners who bought the properties in good faith and expected them to comply with relevant standards? If a builder has skimped on materials and has not met even pre-Grenfell cladding requirements, should they not be liable?

Brian Smith: Many aspects of law come into that. The bigger house builders will have commercial and reputational issues that put pressure on them not to walk away. Many smaller developments are done under a single-purpose vehicle—a company that is set up purely for that development. Once that is finished, the company is wound up and the developer no longer exists.

Kenneth Gibson: I am aware of that.

Brian Smith: There are obviously subcontractors, and the issue might work its way down. There is no doubt that developers are morally liable, but the legal process is never quick. The further back we go in time, the more difficult it is. Most buildings come with a 10-year warranty that might offer an avenue to pursue those cases, but pursuing legal remedies beyond that becomes more difficult, takes longer and is more costly.

Kenneth Gibson: We have not discussed the human cost. The clerks have given us extensive data on this. *The Sunday Times* has a report on a woman in Leeds called Abigail Tubis. The report says:

“Faced with a £35,000 bill, Tubis, an account manager, and her husband are putting off having a baby. ‘It breaks me.’ she says.”

Her 65-year-old neighbour is a supermarket checkout worker who has no possibility of being able to afford that sum and who has been made ill by stress. Another neighbour is 32 and a special needs teacher. She bought her flat through the help-to-buy scheme and says:

“If you buy a flat supported by the government ... and signed off by the council, you never think it’s unsafe.”

A lot of people have bought their houses in good faith and, they thought, according to the standards at the time, and suddenly they are presented with bills. Would it not be appropriate for the Scottish Government or the UK Government, or a combination of both, ultimately to foot the bill? It was the Governments, not the folk who live in those flats, that changed the laws and standards.

Keith Denholm: You would have to check whether the property complied with building warrants and completion certificates. I am sure that legal action will take place to decide who is responsible for construction and the materials used. That does not help the people you referred to and many others throughout Scotland and England.

I think that the case you mentioned was about paying fire wardens to walk round the property. Thankfully, that has not been an issue in the flat developments in Glasgow—or certainly not that I am aware of—where the council has been there to assist people. In relation to the development that you mentioned, the developer has said that it will attend to the building, which is laudable, given the extensive cost. However, as Brian Smith has said, there are developments where the developers, or joint venture partnerships, are no longer about. The recession took a number of developers down, and homeowners such as the ones that you have described have been left in limbo. One of the calls that the RICS has made is for a remediation fund to be set up.

Kenneth Gibson: You mentioned that earlier.

Keith Denholm: Such a fund should not be limited to a specific cladding material—in England and Wales, the fund is limited to ACM, which is the material that the Grenfell tragedy is being attributed to. There are many other cladding material types in existence. A remediation fund would help people out once a building had been inspected. As has been said before, the EWS1 form could be viewed as a form of triage. It identifies the problem properties that cannot be readily sold or remortgaged. Remediation should focus on those properties. I would call on the Scottish Government to set up such a fund.

Some people can afford to buy another property—they might convert their original property into a buy to let or use some other mortgage facility. I know that there are people in developments in Glasgow who had to buy another property and pay an additional land and buildings transaction tax supplement, at 4 per cent. Again, we would call on the Scottish Government to look at exempting people who are caught in that trap. That extra money can be a substantial amount—it

can be £60,000—and it seems unreasonable to tax people who are not at fault. They have bought a property in good faith; they obtained the building warrant and completion certificates. That approach should be looked at.

Kenneth Gibson: How much should the remediation fund be? They started with £200 million in England, which seems to be quite a small amount of money relative to the size of the country and the scale of the problem. What kind of moneys would we be talking about, and should it be a grant or a loan?

Keith Denholm: I do not know how much it should be.

Kenneth Gibson: Should people who apply get a loan or a grant?

Keith Denholm: I am not in a position to answer that question. I do not know what the solution is. It would be a matter of means testing. These questions are very relevant, but I do not think that the representatives here today are in a position to answer that particular question.

Kenneth Gibson: You do not necessarily need to answer the question, but can anyone recommend how such a fund could help to resolve the situation?

Matthew Jupp: We would entirely agree that individual homeowners should not foot the cost of remediation where it has been shown that they need to have it done to make their building safe. That just does not seem fair. It makes sense for the UK and Scottish Governments to step in if necessary—

Kenneth Gibson: Especially because if a homeowner cannot afford remediation, they will not make the building safe anyway. They will not be able to pay for it, so the building will never be safe.

Matthew Jupp: The mechanism is open to debate. The obvious thing to do is to try to get the work done as quickly as possible to make the building safe, and then work through the legal wranglings about who is ultimately liable. I do not think that any of us can really answer whether the fund should provide loans or grants. Grants seem fairer, but obviously it is not our job to make that decision.

Phil Diamond: The Scottish Government has help to buy, shared equity, golden shares and other types of shared equity models. Therefore, I would have thought that it could have a good stab at assessing its own portfolio to understand what such a fund could look like.

Sarah Boyack: We received a very useful submission from the Property Managers Association Scotland, which raised one or two of

the issues that we have just been discussing. One suggestion was that the Scottish Government could convene a working group, given that the situation is complicated. Indeed, a range of suggestions were made. One that has been mentioned is to have a register across the country so that we know which buildings are fine, which buildings have elements of compromise and which buildings have an issue with the entire building.

Do we need some kind of leadership to bring this together now, given that you are all finding it difficult to answer all the questions?

10:15

On one level, I can see the advantage of a remediation fund, but if buildings are still not being built to the right standard, there is an issue about building warrants and approvals for existing buildings. Do we need to be much more rigorous and set expectations about new and existing buildings? Do we then need to have a regulatory process so that, in buildings where there might be problems, all the owners have to work together?

Brian Smith: The answer to your first question is very clearly yes—we need leadership. We need to have everything pulled together, we need to understand the extent of the problem, and we need to find solutions.

The second thought that came to mind has now completely slipped my mind—

The Convener: Welcome to my world.

Brian Smith: If I recall what it was, I will come back in.

Keith Denholm: I certainly agree that we need a task force or a working group to move the situation forward, and move it forward quickly, because people's lives are on hold and people are in buildings that are potentially dangerous. As time progresses, there is always a risk that members of the public will be affected, so we need to do something.

As Phil Diamond has mentioned, the new-build market is probably the easier area to start with. You are absolutely right: I think that we need to draw a line in the sand and move further forward on that with the developers. I think that there is a belief in and support for such an approach in the new-build market and, if it is not already taking place, it can readily start to take place from now on. At least that will future proof new builds.

The problem is the legacy issue that we have. Who is to blame? I do not think that we need to address that issue today; what we need to address today is the properties that are potentially dangerous, so that we can get them back into the

marketplace and people's lives can continue. I think that we all want that.

Phil Diamond: I have already had some informal conversations with Homes for Scotland's chief exec and I indicated to her how that could be tackled. I think that she has started to convey that message to her members but I think that the issue needs a bit more of a push to be addressed. However, new build is an easy one to fix.

It also strikes me that there are a lot of properties out there that are okay; that information could be published and released and they could be let back on to the market immediately. However, the question is how we, as professionals, do that. I share my colleagues' views—most definitely, something needs to be set up that allows some consensus to be reached on how to move forward.

Sarah Boyack: So we need some kind of working group, with the Scottish Government taking a lead and enabling all the key parties to be involved.

The Property Managers Association Scotland submission also suggests the

“creation and management of a comprehensive register of all flats with cladding and those who have been recommended to undertake remedial action.”

One of the debates that we have been listening to this morning is about how to encourage all owners to take part in the process and whether all owners can afford to do that. Given the legal system in Scotland, we have had lengthy discussions on the repair and maintenance of tenements. A solution was identified in the case of tenements, but it will take a lot of time to work through. Do we need to take a similar approach with these flats? Do we need to consider where we need to change the regulations and then look at where funding is needed?

Brian Smith: We might need to do that. It links back to the point that I forgot earlier. Let me make it now before I forget it again: we have a natural human reaction to Grenfell, which is to rebase our societal tolerance of risk to zero.

Many of the discussions that have taken place have been around the fact that we probably cannot get a building that is completely fireproof. We have seen tenement fires in the past few months in Glasgow, where stone buildings have been affected substantially by fire. One of the difficulties that we have—particularly, perhaps, in changing regulations—is that we work on the knee-jerk reaction to go back to zero risk. We have to decide where that tolerable level of risk is and then rebase the level there.

Trying to change regulations immediately might be difficult, because we may come in with

impossible solutions. That issue will work through, but it is the kind of debate that requires leadership and direction from Government.

Sarah Boyack: I was thinking not just about the standards but about regulations and requiring people to work together as owners. We have had that debate about tenements and empowering those who have agreed to work together. For example, if 90 out of 100 owners say that they want to work together, it comes down to how the remaining 10 owners are brought into the equation. At the moment, all the costs are potentially put on to the other owners, or on to the people who want to move. Surely that is not fair.

Brian Smith: No, absolutely. There remains an on-going problem in any shared ownership property in Scotland, whether it is an older tenement or a modern block. It comes down to everybody agreeing to do something and having a mechanism of enforcing that agreement that does not involve a lot of expense in terms of either the cost of pursuing or the paying of shares.

Sarah Boyack: Thank you.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, panel. I will pick up on a few issues.

Can someone explain in a nutshell what the problem is with professional indemnity? Is it a lack of skills among surveyors? Is it UK Finance being difficult? Is it the issue of getting all the owners to sign up, to which Mr MacDonald referred quite early on in our discussion? If we could work out exactly what the problem was, we could get a better handle on the best interventions for solving it.

Phil Diamond: I will answer that, because we have recently gone through that pain. The PI marketplace has contracted to two or three players. Post-Grenfell, the others decided that they did not want the risks that are attached to the construction, surveying and architectural industry, and they have all run a mile.

It took us nearly four months to get our professional indemnity in place, to cover the cladding survey element of what the business does. Our costs went from about £8,000 or £9,000 a year to just over £80,000. That is an awful lot of money for a small business. The problem is further compounded by the fact that we are committed for five years as a result of the duration of the period stated on the EWS1 form. We have taken a great big risk on whether there will be a couple more players in the marketplace. Basically, the market for PI has shrunk; next to no one is left now.

Annabelle Ewing: What role can UK Finance play? There was greater fluidity in the PI market, but now there is no that fluidity, as Mr Diamond

has quite clearly stated. If UK Finance is sticking to the old situation, surely it is not sufficient for it just to say, "That's not our problem." If that is the reality of the insurance market, what is UK Finance going to do?

Matthew Jupp: UK Finance does not represent insurers—

Annabelle Ewing: I appreciate that, but your conditions, vis-à-vis the valuation process, impact on people's ability to get mortgages.

Matthew Jupp: As I say, we do not represent insurers, so I cannot comment about the market for—

Annabelle Ewing: No, but we just heard that there is no market for PI, so—

Matthew Jupp: Pretty much every professional wants to have PI cover for their activities. It is not unusual for professionals to want that. The market is shrinking for that, but that is a different question and a different debate.

Annabelle Ewing: That is the question that I was asking.

Matthew Jupp: It is not something that we can—

Annabelle Ewing: You are a key player in the whole process. What discussions have there been, within UK Finance, to reflect the changed market?

Matthew Jupp: We have had some discussions with the insurance market, but it is the insurance market that has the issue, rather than UK Finance members. It concerns whether the professional guys around the table can get the cover that they need to carry out their work, rather than something that we are telling them that they must have.

Phil Diamond: It is a requirement of our chartership that we hold professional indemnity—

Annabelle Ewing: I get that—

Phil Diamond: We have no choice. I will be totally clear: we certainly would not carry the cost if we did not have to. However, we very much do have to carry the cost.

Annabelle Ewing: Whatever else happens and however much money is thrown at the issue, that will remain a key problem. You will not solve anything until you solve that. It needs a lot of focus, because it is the blockage from the get-go, before you get into any other issue about remediation and cost.

Keith Denholm: Professional indemnity insurance will be a significant cost for homeowners. It does not matter what we try. As Phil Diamond said, it is down to the players in the

market. If more PI providers come in, the cost will reduce. At present, they are risk averse.

Annabelle Ewing: Okay. On the issue of who funds remediation, as has been said this morning, we do not know the scale of the problem. We know that there is a problem and that it will be a significant one for particular individuals—I think that we are about to hear from a constituency MSP in that regard—but it is difficult to talk about the likely cost of any fund, even in broad-brush terms.

I understand that the fund in England and Wales operates with respect to buildings that are over 18m high, but that another condition requires individuals to make reasonable efforts to recover the money. I am not sure about the detail of what they are expected to do, but it is important to bear that in mind. Mr Smith will realise exactly what that may or may not entail.

The Property Managers Association has suggested that the fund could be a loan fund and that the person could get a loan, which would be a security over the property to be repaid following its sale. We are about to go into a budget, but I do not know whether there will be calls for money to be set aside for that. Obviously, people would have to say where the money would come from. That approach might seem reasonable, as long as we took the view that public money should go to enhance the value of private property. Is that something that the taxpayer should pay for, in the round? Perhaps that is more of a philosophical question.

Keith Denholm: It is. A number of people will have purchased such properties at reasonable prices. However, because of the effects of cladding and various other issues to do with high-rise buildings, the public support and the values have dropped and people might be in, or be close to, a situation where no equity exists in their property. Although we might wish to put a remediation cost—which could be £30,000 per flat—against the property, there might be no money to recoup that if the property is sold.

What would we do in that situation? Would the loan roll on to the person's next property purchase, which would affect their mortgage calculation and the terms that were available to them? When a loan is put against a property, it has a significant effect. I do not know whether lenders would be keen to put an additional or secondary loan against the property. Who would have the first call if there was a default on the mortgage? An awful lot of situations could lead on from the proposal.

Annabelle Ewing: Indeed. None of this is easy. As a former conveyancing lawyer, I absolutely take on board what you say. Various

circumstances could be involved, including that the value of some flats might, once the problem is sorted, not just go back to the purchase price, but be in excess of it. All those things have to be factored in.

Mr Denholm, I think that you suggested in response to Kenny Gibson's point that there might need to be a means-tested approach. There are lots of issues to be looked at.

Keith Denholm: Indeed.

Annabelle Ewing: Sadly, nothing is straightforward in life.

I have a question on the important issue of insurance. I do not know whether you have all had a chance to read the submission that the Association of British Insurers provided to the committee for this meeting. If not, we can arrange for it to be circulated to you after the fact. The ABI makes the interesting statement that

"Buildings insurance is not a mandatory requirement, but most mortgage companies do require buildings insurance to be in place when lending."

Mr Jupp, do you know of any mortgage companies that do not require buildings insurance? It seems an odd situation.

Matthew Jupp: I am not aware of any mortgage lender that does not have a requirement in their terms and conditions for there to be buildings insurance.

Annabelle Ewing: I just wanted to clarify that. I would have been astonished if there were any such companies. That seems to be the ABI's view, but I do not know—

Matthew Jupp: If someone owns a building outright, it will be for them to decide whether to have insurance.

Annabelle Ewing: Yes, but in that case there will be no standard security on the building. Anyway, the ABI goes on to say:

"We have seen no evidence of changes in either buildings or contents insurance driven by issues involving combustible cladding or zero valuations."

However, the submission of 25 February from Diamond & Co ends by saying:

"There is a developing issue with the Insurance Industry removing cover from Buildings that have combustible products."

10:30

Phil Diamond: We are seeing an increase in instructions from factors where we have been asked to take the construction indemnification route because the insurance people are putting buildings on a pathway and saying, "You've got 12 months to fix this issue." We are getting a growing

number of instructions about that. It has come from the insurance industry.

Derek MacDonald: That point is also made in our submission. We are aware of the case of an iconic building in Glasgow where the property owners had the same insurer for four years but, because of the awareness of a certain type of cladding, the insurers have revalued the risk on the building for this year's renewal and they are now looking at it as potential singular loss of £115 million. Because of that, the premiums have risen by 40 per cent. The entire cover is not burdened by the original insurer; the broker has had to go through the Lloyd's market to obtain the additional top-up insurance. In addition, the insurers have given the owners 12 months to rectify the situation or the cover will be withdrawn.

Annabelle Ewing: Obviously, that is very worrying. I do not know whether there would be a standard security on the building in question, but in general terms, for many such properties, a standard security would be extant, and not having insurance cover would be a breach of the mortgage conditions.

Given the mortgage lenders' particular interest in the issue, what discussions has UK Finance had with the ABI on the threat of withdrawing insurance cover from properties that are subject to standard securities in Scotland?

Matthew Jupp: We have not had any specific discussions with the ABI—

Annabelle Ewing: Do you plan to have such discussions?

Matthew Jupp: Given some of the comments today, yes.

Annabelle Ewing: Okay. Thank you.

The Convener: That is a good point for you to finish on, Annabelle.

Graham Simpson: I want to follow up on the insurance angle. Mr MacDonald, you suggest in your submission that there should be a Scottish-Government-backed insurance guarantee. I presume that that would be for cases in which cover was withdrawn, or to prevent cover from being withdrawn. How do you see that working?

Derek MacDonald: We have indicated that a similar situation applies with flood-risk insurance. The mechanics of it would not be down to us, but there has to be a default security arrangement for the owners of such properties. As my colleagues have said, the situation has been thrown at them from nowhere. They have not done anything wrong. They bought properties that they felt met the building standards, and the mortgage companies that provided the finance thought that the buildings were up to standard. It seems to me

that it would be potentially catastrophic if insurers were prepared to withdraw cover. They have to protect their business and they do not want on-going risks that will affect them in the long term, but there needs to be a backstop security arrangement for the owners of such buildings.

The building that I used as an example has an active owners' association that has historically managed to fund an incredible amount of work on the building, and it is likely that the owners will be able to deal with the situation that they now face. However, other examples will come up as the full reality of the situation starts to dawn, and they might have more serious problems. I would fully expect the insurers, if not to withdraw cover, to consider restricting it for those properties. In that situation, there has to be some sort of fallback for the owners.

Graham Simpson: You mentioned an iconic building in Glasgow. You will not be willing to say which it is, but is it in the city centre?

Derek MacDonald: Yes.

Graham Simpson: Was it originally used as something else? [*Laughter.*]

Derek MacDonald: I will pass on that one.

Graham Simpson: I might know the building that you are talking about.

The Convener: Please be brief, Graham.

Graham Simpson: You have come up with requests for the Scottish Government. Is the professional indemnity issue something that the UK Government could look at and bring people together to solve?

Phil Diamond: Definitely—100 per cent.

Brian Smith: I understand that, about 10 years ago, in relation to flooding, the UK Government leaned—for want of a better word—on the insurers to ensure that they continued to provide cover, which they were threatening to withdraw. I do not know what all the terms were, but I can see how that could work for building insurers. Perhaps some pressure should be exerted on PI insurers to get them to come to such an arrangement.

Graham Simpson: If such cover is being withdrawn and people such as Mr Diamond are facing huge increases in costs, that would appear to be a market failure, so perhaps there is a role for the UK Government to play there. Should it work with the Scottish Government on that?

Brian Smith: Absolutely—the two Governments should work together.

The Convener: After we have heard from Andy Wightman, I will come to the ever-patient Sandra White.

Andy Wightman: My first question is on the 10-year warranties that new properties can have. Would such a warranty kick in if it was found that there were materials in a building that were not as specified?

Brian Smith: It might. I believe that the National House Building Council has on-going cases that relate to cladding, but it might depend on the detail of the policy.

Andy Wightman: Mr Diamond mentioned the problem with new-build properties. Why are there any problems with properties that are being put up today?

Phil Diamond: It is because there is a distinct difference between what is acceptable under the building regulations and what is acceptable under the new Ministry of Housing, Communities and Local Government guidance. The building regs would allow combustible products to be used on the outside of a building. That is the problem in a nutshell. Although the building regs and the MHCLG guidance are related, they are in some respects unrelated.

Andy Wightman: Is the bottom line that the lending industry is risk averse and the building regs are not?

Phil Diamond: No. I think that the building regs are great documentation. We looked at a new build in Edinburgh that had a full-blown sprinkler system from top to toe. Although it is a state-of-the-art development, it would not pass EWS1, because it has timber cladding on the outside of the building. The developer has been very responsible in deciding to take that off and put a non-combustible product in its place. However, the two sets of documentation conflict.

Andy Wightman: Mr Jupp, do you have any comments on that? If buildings are being built to current standards, it seems to me that lenders should be content to lend, all other things being equal.

Matthew Jupp: I think that the issue comes down to whether the fact that a building is potentially unsafe has an impact on its value. I appreciate that, in addition to the building regs, the UK Government is to issue new guidance on cladding on high-rise buildings, but a responsible lender will have to question whether it is right to lend to somebody to buy a property in a building that is potentially unsafe and to which a remediation cost will be attached further down the line. I do not think that that is an unfair position to take.

Andy Wightman: I understand that the use of combustible material has been banned in England and Wales, whereas we still allow it in Scotland. Should it be banned in Scotland, too?

Matthew Jupp: Yes. UK Finance has suggested that combustible materials should not be used.

Phil Diamond: We can design out the use of combustible materials on flats where there is a common element, and it is crazy that we have not already done that.

Sandra White (Glasgow Kelvin) (SNP): Thank you for allowing me to come along today. There have been some really good questions and answers. I will pick up on some of them.

You talked about the scale of the problem. I had a surgery with four representatives of residents. In their blocks are just under 1,000 houses—that is in only four blocks in a small part of Glasgow down at the harbour. However, the problem exists not only at the harbour but in the city centre—it is massive. I have people coming to surgeries who cannot afford to pay the money.

I will raise three issues, although there are probably more. First, this has happened and we want to resolve it. Secondly, people in the flats are genuinely worried about their safety. Thirdly, there is the cost, which has been discussed.

I have been asked to pick up on issues related to the cladding, some of which have already been mentioned. You talked about getting experts to look at the cladding. A lady from Edinburgh told me that it cost her £700 to get a certificate. Other people have been told that it would cost thousands of pounds for a certificate for a small decorative piece of cladding on the outside.

I ask for a clarification that I can take back to my constituents. If a building has cladding on it, will no one lend on it at all until it has been tested? You cannot tell what the cladding contains, and whether it is safe on a high-rise building, until it is tested, so everybody who lives there has to pay.

Phil Diamond: Cladding does not necessarily need to be tested; more than anything, it needs to be identified. People who have experience in cladding can generally tell what it is. The process is as follows: you start with a desktop survey, then do a site visit, after which you can say, for example, “There are 22 different types of cladding in that development,” and you go through them one by one. Some types are readily identifiable—for example, brick, block and render. Others can be identified on site by disruptive survey techniques. Testing is required only when the cladding cannot be identified or is something that is a bit odd and does not have the proper—

Sandra White: I am sorry for interrupting. Residents in a huge development at the waterfront in my Glasgow Kelvin constituency could not get anybody in Scotland to do anything. They contacted a firm in England and were told to take

off a piece of the cladding and post it down. I will not name the firm. A huge area across two blocks apparently needed to be sorted, but an adjoining area of a block that had been built by a different developer was fine. So, in one huge block residents in one part were told that it needed to be sorted, but residents in another part were told that it was fine. However, everybody has to pay. In an awful lot of people's eyes—mine, as well—an awful lot of money is being put about: the situation is costing residents a fortune, and somebody is making a fortune. That is how a lot of people see it.

I am desperately worried that we see only the tip of the iceberg. We are coming up to May, when more people will move house—there are not a lot of moves at this time of year—and the problem will mushroom. As Derek MacDonald said, in Scotland the majority of owners in a block must agree.

A comprehensive survey is a great idea. Sarah Boyack picked up on the point that when the cause of the Grenfell fire was discovered, the Scottish Government asked councils to survey their properties. Glasgow City Council did so; in my constituency there is a block that the developer paid to have repaired, but other blocks were not identified then and have only come to light now. I do not know how the survey was done, but all the developers did was look at a plan—they did not actually go out to see the properties. A comprehensive survey must be done, and the scale of charges must be looked at.

Do you have a register of experts who have the relevant skills? Do you have a scale of charges so that people know what they are dealing with? How do we resolve the issue? I genuinely believe that property developers should contribute to the remediation fund that has been mentioned, because some of the properties were developed when the developers knew that the cladding was unsafe. I know that a legal process is under way in relation to some properties in Glasgow. The developers should put money into the fund, because they knew that the cladding that they were going to use did not meet building regulations. That needs to be looked at.

10:45

My final point is about certification. Self-certification by builders should be stopped and somebody else should be made responsible for it. Many builders—not all of them; it is usually the big builders that do so—self-certify when materials do not meet criteria. What do the witnesses think about that?

Brian Smith: I will pick up on your point about who is qualified to do inspections and provide the EWS1 forms. We have seen examples of

companies that have done inspections and provided forms possibly not having the professional indemnity insurance that allows them to do so. There have not been a huge number of such cases, but they are starting to come in.

Guidance note 14 included a big list of bodies whose members would be qualified to provide EWS1 forms. There were some surprising inclusions on the list—for example, the Royal Town Planning Institute, which one would not expect normally to be involved in the detail of building construction.

Buying solicitors cannot comment on the certificate itself; all that we can comment on is the fact that a certificate has been provided. Our two concerns would be about whether the person who has provided the certificate is competent and able to do so, as opposed to just being a member of a professional organisation, and whether they carry professional indemnity insurance. We have heard stories from down south about fraudulent EWS1 forms. I have not yet heard any evidence of that happening north of the border, but it can only be a matter of time. Therefore, even with the EWS1 form system in place, there are still risks that mean that the problem has not been solved.

Derek MacDonald: If there is to be a register of properties that are surveyed, we will need to ensure that the information is not gathered from property plans. A couple of years ago, my company was involved with a building—it might be the one that Sandra White referred to—on which the council identified that ACM, which was the material that was used on Grenfell Tower, had been used. The owners of the development were written to to be forewarned about that, but when we put boots on the ground, the surveyors said, “Are you having a laugh? There's no ACM on this building.” Any comprehensive survey of the buildings must involve putting boots on the ground. We cannot take what council records say for granted.

Sandra White: Thank you for addressing that matter, because it is a concern.

Keith Denholm: You used the word “cladding”, but we have moved on from that—we now talk about “external wall systems”, or EWS. Cladding was the original concern. The issue is whether there is flammable insulation behind the cladding and whether there are fire stops and various other things. I do not want to be pedantic, but we should refer to external wall systems rather than to cladding. However, what has been said is absolutely right.

Sandra White gave the example of residents being told to send a piece of their building down south or wherever else in the world. That would not answer the question; those residents have

been sent down a false trail. A bit of cladding could be taken from any part of the building. If it was taken from a point below 18m and it was flammable, that would be an issue, but if it was taken from a point above 18m, it could be fine. It is also necessary to get the permission of all the co-owners of a building for removing sections of cladding.

The issue started off with ACM, but we have moved on to high-pressure laminate and various other types of cladding or, rather, external wall systems—I have started say “cladding” myself. [Laughter.] I am pretty sure that there will be other systems that will come into the equation.

As has been mentioned, the big issue is not so much the cost. In terms of the time it takes, the cost of a professional doing an inspection is probably not unreasonable. The problem is the need for those who do inspections to have professional indemnity insurance so that they can provide a meaningful report that will support what is required. Unfortunately, no one here is able to decide what the cost is.

The headline is, “It’s a lot of money for home owners.” As a profession, we would like the cost to be lower, but the vast majority is cost that we must pass on, because if we did not do that, people would not ask us for the report.

Phil Diamond: Sandra White mentioned self-certification. There is a mechanism for the Scottish Government to influence that. Years ago, building control departments were very active on sites. Building control officers would get out of their offices and they would get in your face inspecting, recording and so on, but that does not happen any more. If that alone was changed—if those guys were given their place in life so that they go out and do their jobs—we would not have half the problems that we are talking about. For a raft of reasons—cuts, and one thing and another—that is not happening. There are a lot of good qualified surveyors out there who could stop use of inappropriate materials in the first place if they were out working on the ground.

The Convener: In a previous report, the committee suggested that the role of clerk of works should be brought back.

Phil Diamond: That would go a long way in helping the situation.

The Convener: Before I bring proceedings to an end, I should say that we invited the ABI, which has been mentioned quite a few times today, to give evidence, but it refused to come because it did not think that it would have a significant contribution to make. It is clear from what we have heard that the exact opposite is the case. Therefore, we will write to the ABI again to seek its

views and, perhaps, ask it to appear before us at a future meeting.

I thank everybody for their attendance. This has been an extremely useful meeting. The committee will now consider in private its next steps in the matter.

10:51

Meeting continued in private until 11:51.

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