



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Friday 19 June 2020

Session 5



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Pàrlamaid na h-Alba

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Friday 19 June 2020

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
BUILDING REGULATIONS AND FIRE SAFETY	2

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

15th 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:

- Chris Ashurst (High Rise Scotland Action Group)
- John Baguley (Royal Institution of Chartered Surveyors)
- Nicola Barclay (Homes for Scotland)
- Dr Jim Glockling (Fire Protection Association)
- Laura Hughes (Association of British Insurers)
- Paul Stewart (Scottish Fire and Rescue Service)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Virtual Meeting

Scottish Parliament
Local Government and
Communities Committee

Friday 19 June 2020

[The Convener opened the meeting at 10:00]

Decision on Taking Business in
Private

The Convener (James Dornan): Good morning, and welcome to the 15th meeting of the Local Government and Communities Committee in 2020. I thank the broadcasting office staff for their work in helping to organise the meeting. I ask everyone to ensure that their mobile phones are in silent mode.

Today's main business is an evidence session on building regulations and fire safety, but first, agenda item 1 is consideration of whether to take item 3 in private. Item 3 is consideration of evidence heard at today's meeting. As we are meeting remotely, instead of asking whether everyone agrees, I will ask whether anyone objects. If there is silence, I will assume that you are content. Does anyone object? Silence is acquiescence in this case. As no member objects, it is agreed that item 3 will be taken in private.

Building Regulations and Fire
Safety

10:02

The Convener: Item 2 is an evidence session on building regulations and fire safety in Scotland, which follows on from the committee's inquiry into the issue earlier in the parliamentary session and our agreement thereafter to maintain a watching brief on the issue.

Almost three years to the day since the Grenfell tragedy, it is good to be able to return to this hugely important issue after a period when our sole focus as a committee has been on the impact of the coronavirus crisis. Our discussion today will touch on the Scottish Government's work on a new high-rise inventory and on problems that have arisen in relation to apartment buildings with external wall systems. I am pleased to welcome our first panel of witnesses: Dr Jim Glockling, technical director, Fire Protection Association; Paul Stewart, assistant chief officer, Scottish Fire and Rescue Service; and Laura Hughes, general insurance policy manager, Association of British Insurers.

I am grateful to you all for taking time to answer our questions today. Thanks also to the FPA and the SFRS for their written submissions. For information, we have allocated around 70 minutes for this session and we have a number of issues to discuss with you. For the benefit of broadcasting staff, I will call each panel member by name before you speak in response to a question. I also ask witnesses and members to please give broadcasting staff a few seconds to operate your microphones before you speak.

I will start by asking a general question. Is there a fully competitive market in Scotland among suitably qualified and insured professionals to undertake external wall systems form 1 surveys? If there is not, what impact is that having on the EWS1 system and what needs to be done to create a competitive market for that work? Would anybody like to respond to that? I have a couple of general questions for the ABI on that.

Laura Hughes (Association of British Insurers): It was at short notice that we got on the panel, so thank you for inviting me to join you today. I apologise for the ABI not responding to your letter following the previous evidence session, which we did not attend. I am more than happy to follow up after today if there are issues left over that still need to be covered.

The EWS1 form was created to reduce the issues with zero-value homes. Unfortunately, that was done without any insurance industry input,

and insurers do not consider that the required route to complete the form is satisfactory, or that those completing it are doing enough detailed investigation to understand whether the building that is being assessed has combustible material on the outside, given what they are charging—we understand that people can get the form completed for less than £100 in many circumstances.

Given that, and the broader issues about there not being much of a competitive market in the insurance industry for professional indemnity insurance specifically relating to fire safety, there is not the capacity in the insurance market to provide professional indemnity insurance for the form, or for those completing the form. I am happy to talk about that wider issue, which is an issue not just in Scotland but across the United Kingdom and the rest of the world.

The Convener: You have highlighted what you consider to be the problems, but what are the solutions? How can we create a market in which people will be able to get the indemnity insurance that they require so that the work is done to ensure that people are safe in their homes?

Laura Hughes: That is a very good question. We are three years on from Grenfell. Generally, the insurance industry is innovative—if it can create products and solutions to issues, it does so. It is important to recognise that the industry has not been able to develop any innovation in which it would be comfortable offering professional indemnity insurance for fire safety risks currently.

We are having similar conversations with the Ministry of Housing, Communities and Local Government. We work closely with the International Underwriting Association of London and the British Insurance Brokers Association to understand whether there are any routes to creating a solution. We have gone back to ABI members who underwrite indemnity insurance to ask them what their risk appetite is. It is important to note that, at the moment, there is no commercial appetite across the UK to underwrite professional indemnity assurance for fire safety.

If the industry could have created a solution, it would have done so by now. Consequently, we are considering how we can work with the Government to find alternative solutions that might provide the cover that the fire engineers and surveyors need but is not available on the commercial market.

The Convener: How, then, is it the case that some people have professional indemnity insurance and others do not? Some work is getting done, is it not?

Laura Hughes: Yes. When I said that there is no appetite in the market, if the risks are good,

and the party concerned has good relationships and works closely with their insurer, the insurer might be happy to provide insurance. However, we are seeing a significant decrease in the availability of that cover for those who need it. That is largely to do with the disproportionate cost. Fire engineers or surveyors are often a one-man band or part of a small company, so the insurance premiums that they can afford need to be relatively low. The liability risks that they are on the hook for if the EWS1 form is completed incorrectly and combustible material is on a building that tragically catches fire and leads to total losses of significant numbers of millions of pounds are such that the premium that would have to be charged would be so high as to be unaffordable for small companies.

Some larger companies might be able to afford that higher level of cover, and probably what we are seeing is those larger companies being able to access that cover because of the relationship that they have with their insurer. The issue is more about the smaller businesses that cannot afford what the insurers would need to charge to ensure that they have the capital behind those risks.

The Convener: That clearly leaves a huge gap in protection for residents and owners of properties. What talks have you had with the Government on trying to close the loophole? Do you have any suggestions about how to create a market that allows a much more level playing field than we have at present?

Laura Hughes: We are currently in conversations with the MHCLG about it, and we have had conversations in the past with the Scottish Government, but we will probably need to pick up on that again. The English Government is due to carry out a professional indemnity review. There is no further detail on that yet, but it might extend to Scotland. Although the legislation is different in Scotland, the problem from an insurance perspective is not particularly different.

We have suggested to the English Government that the liabilities could be held elsewhere and that fire engineers and surveyors could be held harmless. The English Government is currently considering whether local authorities can employ surveyors and engineers so that the liabilities then sit with the local authority.

At the moment, we are looking for possible solutions. I appreciate that that is not good news for you, but it is important to recognise that we have been talking about the issue for three years now and that is really where the industry has come to. Fundamentally, we need building regulations to give insurers confidence that the process will work effectively. It is a cycle of hard and soft markets in insurance and, at the moment, professional indemnity is an incredibly hard market.

The Convener: I have another general question that I will perhaps come back to later if there is time. For now, I will pass you on to my colleague Sarah Boyack.

Sarah Boyack (Lothian) (Lab): I welcome our witnesses. The responses to the convener's questions were very interesting. They leave us with an issue about what happens next for people who live in high-rise buildings.

I declare an interest in that, in my former employment, I worked on the issue after the Grenfell tower fire which, as has been said, was just over three years ago last weekend.

My questions are about the high-rise inventory. We have heard about the lack of cover and the lack of knowledge in the insurance industry. What progress are we making with the high-rise inventory? It is critical that we know what the position is in each building. That affects not just insurance but whether people can put their property up for sale, whether they feel safe in the building and, crucially, the knowledge of what remedial measures need to be taken. What are the issues on which we need more information? We still do not know about every building and about cladding or fire doors, for example. As an introductory question, what has progress been on the inventory thus far and what would your priorities be for what should be done next?

Dr Jim Glockling (Fire Protection Association): I am happy to talk about that in so far as I can. An insurer that is presented with the high-rise inventory, which is a credible piece of work, would have the same objectives as you have. Insurers look for reasons to insure rather than reasons not to insure, but they are obviously duty bound to interrogate and investigate the risks in any given portfolio, so the inventory is very welcome.

10:15

Insurers would take a look at the inventory with fresh eyes to find potential issues, and they would then investigate whether those issues are credible. The first stage in that process might involve segregating the list into different categories, such as buildings that are known to have non-compliant polyethylene ACM—aluminium composite material—of the type that was used on Grenfell tower, and buildings with other systems that are suspected of being non-compliant. Increasingly, suspicions are being raised that other systems such as ACM high-pressure laminates and ETICS—external thermal insulation composite systems—are non-compliant.

Insurers would probably look at which building types might break the basic resilience principle of limiting the use of combustible materials. I note

from the Scottish Government's statistics that ETICS feature very heavily indeed. That type of system can introduce an enormous quality of combustible material to a building.

Insurers would probably also review the known potential issues with each of those construction methods. With ETICS, we know that there can be issues with the window detailing. Where windows are moved outwards to encourage light on the—now fatter—external envelope of the building, that can, if the fire stopping is not done correctly, bring combustible material to the living space itself. Insurers would basically do an investigation and find out what is good and what is bad in the portfolio.

To answer Sarah Boyack's question, in treating the matter from an insurance perspective, insurers would be looking for reasons to insure on the basis that it is good business, with a view to property protection rather than life-safety protection. Going through an inventory such as this one is therefore a very good start.

One challenge, which possibly relates to the previous question on the EWS1 form, is that, where there is uncertainty, what evidence do we have to go on without again conducting full-scale testing of what is on the building? We know from work that we have undertaken in our own laboratories that even very minor changes in the geometry of any system that is applied—the BS 8414 rig, for example—can lead to changes in the outcome.

We are therefore sadly seeing people having to pay for very expensive and large-scale testing in order to move on the conversation. I would not wish that on anyone. However, the situation is complicated, and if the result of large-scale testing is all that people are going to believe, that is the best solution that we currently have.

Paul Stewart (Scottish Fire and Rescue Service): Good morning to all members, and thank you for the opportunity to attend committee today.

In response to the questions that have been asked, the high-rise inventory is a very good asset for ensuring that information relating to building risks and so on is up to date and readily available through a number of avenues across the sector. The SFRS very much supports the creation of that inventory and its use as we move forward. It is a very good starting point from which to make progress.

The inventory also facilitates a good element of cross-referencing of our own records to ensure that we have consistent information across the sector. Given the time that we have available today, I will not rehearse what we have set out in the SFRS submission, but I highlight that we very

much support the creation of the high-rise inventory as a really good starting point.

Sarah Boyack: I want to pick up Paul Stewart's last point. He talked about the high-rise inventory being a useful starting point. One challenge is knowing what the condition of the exterior is in respect of cladding or window angles. We have also heard that from Dr Glockling.

The other issues that I am very conscious of, as a result of former work and constituency case work, are fire-rated doors, such as front doors to individual houses, and doors on fire escapes. What work is it important to prioritise to address those doors in buildings? According to the high-rise inventory, although there is quite high compliance, there are still quite a significant number of buildings in which those doors are not fitted.

The other issue is sprinklers. We are not quite there yet on a few practical things. How can we increase safety?

Paul Stewart: If you do not mind, I will take those issues one by one as I remember them. If I miss any of them out, I would be happy to go back to them.

I will start with fire doors at flat entrances—the front doors of premises in multistorey flats. The fire door requirements have changed over time. Doors provide a good level of fire protection, but the doors of individual premises in multistorey flats may not be certified as fire doors. The standards of fire doors remain a matter for building standards, but the recent guidance that the Scottish Government issued supports the upgrading of doors on a risk basis. As a fire and rescue service, we clearly support that view. The element of prioritisation would be particular to older buildings in which we might see a difference in the standards that have been applied. We think that a robust door mechanism on the front door of a property could afford additional protection to residents and, indeed, to firefighters who attend incidents.

Further context would be required for us to comment fully on the fire doors allocated within an escape route or a protected route within a building. Are the existing doors discounted from the return on the high-rise inventory? Fire doors on to escape routes are included in the Scottish Fire and Rescue Service's operational assurance visits, so we regularly check them. That allows us to have a national overview and to provide additional focus on that area. However, at this stage, not many concerns have been raised with us about the existing standards in protected stairway areas. That is my answer on escape stairs.

On sprinklers and the retrofitting of fire suppression systems, we would welcome the installation of sprinkler systems. Such systems can be key to reducing fire growth and spread, particularly in flats that house people who may be deemed to be more vulnerable. The high-rise inventory can act as a resource for assessing risk in properties, and it may consider sprinkler systems where the risk is higher than that which modern standards would potentially present. They provide a tool to mitigate risks.

It should be noted that internal suppression systems, by virtue of the fact that they are internal, are not mitigation for the presence of cladding. It should also be noted that any major retrofitting can impact on the compartmentation that forms a key part of the fire strategy in high-rise buildings. That would be a potential area of risk or concern.

I am not sure whether that captured all the points in the question that was asked. I think that I got through most of them, but I would be happy to take any further questions on that.

The Convener: Thank you for that very full answer.

I am sorry, Sarah, but we have to move on. You might want to come back in later if there is time for that. I remind everybody that we have a lot to get through. Although I know that some of the questions deserve a full response, I ask that witnesses try to answer as quickly as they can in order to allow everybody else to get in.

Graham Simpson (Central Scotland) (Con): I thank everyone for joining us for this meeting. There is some very technical stuff here, so I will try to keep things as simple as possible. Can somebody—perhaps Paul Stewart—tell me whether you are able to look up the details of an individual property as a result of the inventory?

Paul Stewart: Can you elaborate on what you mean by

“look up the details of an individual property”?

At the moment, we conduct operational reassurance visits that provide us with a degree of information for our operational crews, but I am not sure whether that is the question that you are asking.

Graham Simpson: No, it is not. We have the inventory of details that has provided by local authority building standards people. Is someone who lives in a block of flats able to look up their block of flats in that inventory to see what information there is on it?

Paul Stewart: As a fire and rescue service, we can do that, but I am not sure whether that can be done by members of the community who reside in a multistorey block. That information is available to

us, but I am unaware what access communities have to it.

Graham Simpson: Okay. Let me put this question to Laura Hughes: if that information was available, would it be of any use to the insurance industry?

Laura Hughes: Yes, it certainly would be of use. We are really supportive of the inventory and have, in fact, been asking MHCLG for something similar for a while—admittedly on a broader scale—when looking at modern methods of construction. It is important that MHCLG is encouraged to see the inventory as best practice and to really consider how it can use it.

Insurers are data hungry. They want as much information as they can get, and they will, at their own discretion, make commercial decisions using that information. Although some would use it more and some would use it less—it would be totally up to them how they used it—it would nonetheless be incredibly useful for insurers to have access to the inventory. It would also, obviously, be useful for fire and rescue services in terms of understanding how to tackle a fire, should one occur.

Graham Simpson: Thank you for that. Let us look at the inventory, because there are some gaps and flaws in it. For example, it deals only with domestic buildings and only with buildings over 18m high, even though the classification has now changed in Scotland to include buildings over 11m high—clearly, there is a gap there. In addition, it does not deal with buildings such as hotels, hostels, boarding houses, hospitals and care homes. Should those gaps be rectified? Anyone can answer that question.

Laura Hughes: I am happy to start. We have been clear from the beginning that there should not necessarily be a trigger height of 18m for buildings and that the inventory should consider not only high-rise but high-risk buildings. It should consider buildings of any height and the vulnerability of the people who are in those buildings. Specifically, buildings such as care homes and hospitals—which Graham Simpson mentioned—as well as student accommodation and schools should all be included. Where the inventory is at is a good start, but it would be great if it were to be developed.

10:30

Dr Glockling: I agree. The extension to include high-risk buildings rather than just high-rise buildings seems like a sensible way to go, without a shadow of a doubt. To focus on—*[Inaudible.]*—constitutes a sleeping risk or a major risk of societal interruptions such as to schools, so it seems like a pertinent thing to do.

Graham Simpson: My final question is a technical one, so it is probably for Jim Glockling or Paul Stewart—or both of you.

The inventory questions do not request that respondents detail the Euroclass ratings of external wall panels or insulation material, which makes it impossible to know the materials' reaction-to-fire properties. That is a gap.

The report also does not appear to request detail from respondents on the type of external wall insulation that is used in buildings.

Dr Glockling: You are absolutely correct, but we need to balance that out, because if such questions had been incorporated into the inventory there might have been a much lower rate of return of information. If you ask for too much, you might end up getting nowhere.

The questions are pertinent enough to get to a starting point and for us to have today's conversation on the results of the HRI. We wish that we had more information at our fingertips, but that is inevitable with a study such as this.

A lot of the information that you are asking for requires simple questions, which are exactly the questions that are holding up progress at every point. It is difficult to identify insulation; sometimes, it is unremovable and, sometimes, we are presented with a little core sample. Then it gets down to detailed chemical analysis, which is also tricky because the different insulation materials and formulations require specialist techniques that are not commonly available.

If we knew the answer to those questions, we would not have such a big problem at the moment. For the further work element, I agree that we need to include those questions in new fields of the inventory and people need to fill them in. We will then start to have a truly useful extension in how the database is used, and it could perhaps be linked into the EWS1 forms. It could then perhaps work for us in finding a solution, rather than just highlighting the size of the problem.

Graham Simpson: Of course, you do not get the answers unless you ask the questions.

Dr Glockling: That is true, but we now know what questions to ask, and at least we are backfilling in something that has a pretty significant—

Graham Simpson: *[Inaudible.]*

Dr Glockling: Yes.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, colleagues and panel members.

I have two questions. One is for the SFRS, but if Dr Glockling wants to comment, that is fine. The other question is for Laura Hughes.

Given the background to this important subject, I take the opportunity of Paul Stewart being here to ask what the SFRS's current stay-put policy is.

Paul Stewart: Our current stay-put policy is just as it says: our advice and guidance is to stay put in a fire in a high-rise block. If there were developments during a fire incident that would alter that advice, we would liaise closely with our control rooms and put a plan in place to alter it. The advice would come from on the ground at the incident and from the on-scene incident commander. In our standing operating procedure, which has been reviewed, we still ask our residents to stay put in the event of a fire in a multistorey block.

Annabelle Ewing: Thank you. Dr Glockling, do you have any comment to make on that?

Dr Glockling: The stay-put policy is a difficult issue to address. Such a policy is a luxury that is earned on the capability of the building itself, and I feel that, historically, it has been used to cover other ills such as poor performance in alarm and detection systems. When we look at the false alarm records of our systems—we are much more used to false alarms than we are to genuine fire alarms—it seems all too convenient to introduce a policy that does not ask for de facto evacuation of the building. It is not uncommon, in certain types of occupancy, for there to be four false alarms a day.

However, is that a good reason to have a stay-put policy? Absolutely not. A stay-put policy must be earned on the capability of the building, and it is difficult to understand how such a policy can stay in place without a building's fire-resisting capabilities being fully understood, given the need appropriately to ensure the safety of the people who need to get out when there is a fire. It is a very difficult call.

Annabelle Ewing: Thank you. I guess that Paul Stewart would say that a stay-put policy is not based on convenience and that the SFRS does a lot of operational assurance work on buildings and so on. I am sure that you will take up the matter.

The ABI said, in its submission to us, in advance of our meeting on 26 February:

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

Is that still the position?

Laura Hughes: We have seen some high-rise buildings obtain renewals that are deemed by the people who live in them and pay for insurance to be unaffordable. It is important to note that we have not seen market failure; there is not a systemic problem with the market.

However, there are specific high-rise buildings that have combustible cladding on the outside, which have expensive insurance premiums. Insurance is written in a risk-reflective way, so the price is, unfortunately, reflective of the significant risk that insurers deem there to be for a specific building.

We are incredibly sympathetic to the people who are experiencing that—the situation is far from ideal and is another burden on top of the stress of knowing that they live in a building that has combustible material on its outside. In our eyes, the answer is to get the remediation completed as quickly as possible and to get buildings returned to a lower fire risk, which will be reflected in the premiums.

Annabelle Ewing: But if you cannot get in to do the valuation, *inter alia*—[Inaudible.]—as we discussed, we go round in a circle.

ABI also said in its submission:

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

I thought that that was strange. Which mortgage companies do not require buildings insurance to be in place?

Laura Hughes: My understanding is that they all do. I think that what was meant is that there is no legislative requirement to purchase buildings insurance. If someone owns a property outright and has no mortgage on it, there is no need for them to have buildings insurance, if they so choose—it is their choice. Clearly, there is a requirement from the mortgage companies to have buildings cover.

Annabelle Ewing: Yes. The submission should say "all mortgage companies", because if there is a standard security extant, buildings insurance will be needed.

That brings me to my final question, which will be brief. At our meeting on 26 February, I suggested to UK Finance that because it is a fundamental mortgage condition that buildings insurance be in place—not having buildings insurance in place would be a serious breach of the mortgage conditions—it might be useful for it to engage with the ABI on the subject, which it had not, at that point, had conversations with the ABI about. Has UK Finance since done so?

Laura Hughes: Yes. I have had a conversation with Matt Jupp, who I believe was UK Finance's representative at that evidence session in February, about what the solution needs to look like. We have not come to a final solution, but we have had an initial conversation.

To be perfectly honest, Covid has probably taken over. We had our first discussion on the issue right at the end of March or the beginning of April; we can certainly follow up on that and have a second conversation about it.

Annabelle Ewing: That is encouraging. Perhaps the committee can seek to follow that up.

Andy Wightman (Lothian) (Green): I have quite a few questions, but I will try to keep them brief. My first is on the outcome of the high-rise inventory. It found that 13 per cent of high-rise buildings had rainscreen insulation board on them. In its evidence to the House of Commons, Rockwool claimed that plastic foam products have a 90 per cent market share of rainscreen insulation boards, but are extremely combustible. Is it appropriate that such materials continue to be used on high-rise buildings?

My second question is for Paul Stewart of the Scottish Fire and Rescue Service. With the stay-put policy, compartmentation continues to be a fundamental principle of fire protection in high-rise buildings. Why is there not more focus on ensuring that flats have up-to-date fire-rated doors?

Dr Glockling: I am happy to respond to the first question. On other types of cladding, we are finding, as more experimentation is done on the competing systems, that the problem of non-compliance might be more far-reaching than we initially thought.

I would like to make it clear that a fire involving polyethylene of the type that was used on Grenfell will be a very ferocious fire—we are not talking about a material that would receive a marginal pass in the test. However, as we start to do the testing that should have been done to assure the suitability of such products for use on buildings, but which might not have been done for a variety of reasons—a desk-top study might have been carried out, instead—we are finding that some high-pressure laminate cladding systems, for example, might not be capable of passing a test and being deemed compliant. That might stretch further and apply to other aluminium composite materials.

One of the historical problems that we had is that the test was used to check the compliance of the material rather than to check the compliance of the accurate geometry of the system as it was applied to the building. We know that, in certain situations, a particular material combination might initially fail the test, but the test allows for that combination to be reconfigured, perhaps by having the position of cavity barriers changed—reasonably or unreasonably—until a pass is obtained. We do not have a very good stock of information to fall back on to understand what is on buildings and the threat that it poses. As we do

more testing, that will lead only to a higher population of buildings that need further investigation.

Andy Wightman: Thank you. I am not sure whether we still have Paul Stewart of the Scottish Fire and Rescue Service on the line.

The Convener: The last I heard was that attempts were still being made to reconnect him.

10:45

Andy Wightman: Okay. I will move on.

I have a question for Laura Hughes from the ABI. I am still not entirely clear about this. We have high-rise buildings with questionable cladding. Someone who wants to sell such properties finds it difficult to get an EWS1 form, and anyone who can, finds it very expensive to get professional indemnity insurance, but the people who occupy the flats can get buildings and contents insurance. Why would an insurer charge so much for professional indemnity insurance on—*[Inaudible.]*—of the building, given that an occupant of the building can, although it might be expensive, readily get buildings and contents insurance that covers the risk of that building being destroyed?

Laura Hughes: There is an important distinction between buildings insurance and professional indemnity insurance. Buildings insurance relates to a named peril—in this case, fire. The insurer covers what it deems would be the estimated total loss—the maximum cost that the insurer would have to pay, which would usually involve rebuilding the whole property.

The industry has not pulled out of insuring buildings, largely because insurers have risk-management teams that go into buildings and work with the owner. In many cases, the insurer will say, “You have this type of cladding on the outside of the building, and it represents a risk to your occupants.” The insurer might suggest that if the owner puts in waking watches or other measures, they will continue to offer them cover and such measures will help with the risk.

Professional indemnity insurance covers the professional advice that an individual gives—whether they are a fire engineer, a surveyor, a valuer or someone else in the construction industry. The issue is cases in which any glimpse of negligence is proven. If building regulations have been deemed to be not fit for purpose, it is difficult for an insurer to have confidence that the individual whom they are insuring will be able to do everything absolutely perfectly. If there is a glimpse of negligence, the insurer will be on the hook for the liabilities of all the work that that individual has done in that case and historically. In

the current environment, providing such cover is very risky and potentially extremely expensive for an insurer.

The market has hardened for various reasons. An insurer has to have a good understanding of the capital and the reserves that they will need, should they need to pay out. There are also significant legal costs. Such claims are not solved quickly; many cases go on for between six and eight years. The millions of pounds that would be on the hook is the difference between the two types of insurance.

Andy Wightman: Thank you.

I think that Paul Stewart has been reconnected, but I am not sure whether he heard my question. The stay-put policy and compartmentation are still key aspects of fire prevention, so I am rather surprised that we continue to allow flats in high-rise buildings to have doors that are not fire rated against modern standards.

Paul Stewart: Flat doors can be an issue. The standards for fire doors remains a matter for building standards. The recent guidance that was issued by the Scottish Government supports the upgrading of doors on a risk-assessed basis, so—

Andy Wightman: I understand that it is a question for building standards. However, the SFRS has adopted fire-prevention principles that are related to compartmentation and the stay-put policy. The doors might not support those policies, so surely it is also an issue for the SFRS.

Paul Stewart: From a building strategy point of view—*[Inaudible.]*

—is compromised, it is clearly a fire and rescue service issue. We seek to pick those up through our operational assurance visits, which we conduct regularly across all watches and stations. That is an issue of safety for the operational personnel who attend those incidents. However, it is certainly of concern to us when doors are not up to a specific standard.

Andy Wightman: When you do your assurance visits and find a door that is not up to standard, you inform the occupier and advise them to upgrade it, after which no further action is taken. I find that to be rather surprising, given that that potential vulnerability is affecting the fundamental principles of fire prevention and could ultimately compromise the safety of everybody else in the building. I am curious as to why there is not a more rigorous regime. However, I will leave that.

I would like to ask you—

The Convener: I am afraid I am going to have to cut you off, Andy. We need to move on.

Jeremy Balfour (Lothian) (Con): Obviously, we are focusing mostly on high-rise dwellings.

However, I would like to ask Laura Hughes about some correspondence that I have received on the height restriction being applied. If a building has cladding on it, it is difficult for a surveyor to get insurance, however tall or small the building is. Is it therefore difficult to get the necessary reports for any building that has cladding on it?

Laura Hughes: I think that there are two issues in that question, but please correct me if I misunderstood it.

The matter is not just about trigger height; it is about high-risk buildings. For buildings insurance, an insurer's risk management team will assess a building and work with the building owner, no matter what height the building is, to understand the fire risks, and will then price the building's insurance appropriately.

The professional indemnity element of insurance covers the professional for the service that they provide; it does not specify whether a building is high-rise. What we are seeing in the professional indemnity market is that insurers provide professional indemnity cover in general, but might have policy exclusions for fire-safety risk, or if they do not have exclusions they have high excess amounts. That is because insurers do not want to take on that risk at the moment because of potentially extortionate claims.

Jeremy Balfour: If I were a surveyor trying to get PII, and I went to a building that was two or three stories high and saw cladding on the building, would I be able to get the insurer to do a survey on that property without doing any testing to see whether it is dangerous, or would I be priced out of the market?

Laura Hughes: At the moment, individual surveyors might struggle to access what they would deem to be affordable insurance cover, because the insurer will probably want to charge significantly more than the individual would be willing or able to pay. That is because of the potential costs to the insurer.

At the moment, we think that it is extremely difficult to do that. Some people might be able to do it, but we always advise people to use specialised brokers to ensure that they get the right cover for their needs.

Jeremy Balfour: My second question might be for Dr Glockling. Are we confident that buildings that are being built in Scotland today—that is, buildings on which construction will recommence a week on Monday—are being built to the appropriate standard and that someone who tries to get a mortgage on such a property will not encounter any issues, or are buildings still being built that do not meet the standards that we would expect?

Dr Glockling: That is an interesting question. We must consider whether the HRI will be a good model to take forward for the next variety of buildings that might come under scrutiny. Today, we are dealing with cladding issues, but tomorrow we might be dealing with another construction method that is accepted at the moment but might fall from favour in the course of events. Certainly, we have seen some emerging issues around apartment blocks with a light timber frame responding poorly to fire and ending up on the ground. Such events are certainly worrying and, if more of them start to happen, that would cause concern over not only an extended range of current building stock but also on-going building methods.

Although projects might be compliant with building regulations, that might not necessarily align with how insurers feel about them as property risks. Insurers deal in terms of estimated maximum loss. Generally, for a multistorey building, you would not assume that the whole building would burn down—you might lose a floor to fire, two floors above to smoke damage and the floor below to water damage. However, if the loss experience starts to tell insurers that the whole building will be lost, they will suddenly start to look at insuring buildings as though the whole thing is lost each time. As soon as that starts to happen, things start to get expensive.

Historically, buildings have fallen into that category. In the food industry, where there used to be widespread use of polystyrene sandwich panels, there were expensive losses that were total and many in number. The costs around damage to those buildings became too expensive for the insurance industry and things had to change. Similarly, I live in a thatched house, and I pay in insurance each month what most people pay in a year. That is the only way that I can do it because, if there is a fire in my house, the whole house will be gone.

You are absolutely correct to ask the question. I would advise that, with regard to everything that is being done now, you keep an eye to the future to see whether the investigations that are on-going might forewarn you with regard to any potential issues that might arise.

Jeremy Balfour: I have a question about the regulations that are in place at present. My understanding is that the regulations north and south of the border are different. Should the Scottish Government rewrite the regulations in order not to minimise the safety issues but to get around some of the technical issues? Would that be the quickest way to resolve the issue, or is that too simplistic?

Dr Glockling: Some good progress has been made with regulations. Scotland has stuck with

allowing cladding materials that have passed BS 8414 testing to be used on buildings of height, whereas I believe that, in England, Wales and possibly Northern Ireland, there is a ban on combustible materials at height. The issue is evolving. The FPA and its membership support curtailing the use of combustible materials on buildings.

11:00

Treatment of the external envelope of the building, which is a primary area, can lead to the one form of fire spread that involves connecting every compartment of a building almost simultaneously. We have sorted out the approach to internal compartmentation in buildings, which is now good. However, the external envelope of the building is a specialised issue and so needs special management.

Any guidance that can reinforce the strength of that external envelope would be welcome, not only for fires of the types that we have seen, but for others. For example, we are seeing a propensity for fires to break into buildings from external sources; that is not covered by the current regulations. If the scope of the regulations were to be extended so that they dealt with not only fires that start inside buildings but ingress from external fires, that would be a major improvement that would quickly provide benefits.

Jeremy Balfour: Thank you. I am done, convener.

Kenneth Gibson (Cunninghame North) (SNP): I declare an interest in that I have one of the 46,530 flats in Scotland that are at a height of more than 18m.

In its evidence, the Fire Protection Association suggested that the considered height—the trigger height, as Laura Hughes called it—should be reduced to 11m. I understand the reason for that. However, how can we expand the number of properties that would be included if we cannot currently address the problems associated with even those 46,530 flats, such as the lack of specialists who are able to survey them and the difficulty in getting everyone round the table to agree to pay for that? Surely we should deal with the properties over 18m before we try to expand our approach? I take into account what Laura Hughes said about the risk being high whatever the height that is involved, but we must surely deal with the manageable aspects of the problem before we try to grow it.

Dr Glockling: From my perspective, the situation is complicated, because we are left with very few degrees of freedom in which to find a solution. Combustible cladding is one aspect of the issue, but we are also talking about its use on

very tall buildings. People who live at the top of such buildings are remote from help, and egress from them can be difficult and lengthy. That is all compounded by another problem, which is that such properties often have only single stairwells.

When we consider those three factors—combustible cladding, which, in the event of a fire, can connect all spaces; people being at height, where they are remote from help and the means of egress is difficult; and the limited scope for speedy evacuation—such a building is a difficult place to be.

We are therefore in a difficult position as regards the current building stock, because the situation is complicated. Very few solutions could work there, without undertaking the rather draconian measure of changing cladding systems. For future buildings, though, things could be helped enormously. Combustible products in low buildings carry less risk; those on buildings with multiple escape routes might carry a tolerable level of risk. However, at the moment, everything is being nibbled away, so the degrees of freedom do not support the easy pursuit of solutions.

I am not sure whether I have answered your question properly.

The Convener: I do not think that Mr Gibson will be able to get back to you to say whether you have done so. I understand that his battery has gone and he is now out of contact with us.

Thank you for that, Dr Glockling. Would anyone else like to answer Mr Gibson's question? If not, I will take the opportunity—

Laura Hughes: It is a difficult question. However, we have to start somewhere, and buildings over 18m seem like a good place to do so. However, we are saying that it is not just those buildings over 18m that there will be a problem with. We should start with them but we need to look more widely at those other trigger heights and other high-risk buildings.

The Convener: We have time for two supplementaries.

Graham Simpson: I refer to Jeremy Balfour's question. Can you say in a nutshell whether Scotland should ban combustible materials on buildings? As Jim Glockling said, such a ban has not happened. It strikes me that it should happen. What do you think?

Laura Hughes: I am happy to supplement Jim Glockling's response on that. We do not believe that it is appropriate to use the BS 8414 test in Scotland. I flagged that up when I gave evidence to the committee in November and our views on that remain the same. We do not believe that it is appropriate to have combustible material on the

outside of high-rise or high-risk buildings that could lead to further fire spread.

Graham Simpson: Thank you. Is Paul Stewart with us? No, we have lost the connection.

The Convener: We will move on to Jim Glockling.

Graham Simpson: Jim—is your answer yes or no?

Dr Glockling: Yes, but I need to declare an interest. Our interests are in property protection and business resilience. In all the guidance that we produce, including the twelve commandments of safe buildings, the first commandment is to limit the combustible make-up of a building.

The benefits are not just in relation to the issues that we are talking about; the benefits of selection for non-combustibility operate throughout the entire lifespan of the building. We always talk about poor insulation being a problem. We talk about maintenance being a problem. We talk about wear and tear and through-life destruction. Many of those issues become irrelevant when you have a selection for non-combustible material because the buildings are then less susceptible to all those issues over time.

The Convener: Thank you very much for that expanded "yes" answer.

Sarah Boyack: Paul Stewart has been disconnected from the meeting, but perhaps Dr Glockling will have an answer for me.

I understand the point about the exterior of the building, but I am still concerned about interior fire safety, including fire safety doors and the capacity to either stop a fire or slow its progress. Are we at a point where we now need to require fire safety doors to be installed if a building is compromised?

Dr Glockling: The standards that we have in place for internal passive fire protection are strong and generally they only fail when they are not adhered to. I absolutely agree that the preservation of the fire compartment is fundamental to the overall fire safety of the building.

If problems are identified, particularly with fire safety doors, those need to be addressed. The rules have not been written for no reason. They are there for very good reason and, time after time, they have saved a lot of lives over the years.

On the need for additional levels of fire protection, such as the provision of sprinklers, I entirely agree with Paul Stewart that those are not compensatory features for buildings that are inadequate in other ways, such as lacking compartmentation elsewhere or having combustible material on the outside. In fact, that may be a good way of ensuring that the additional

protections fail to perform their remit. Under certain circumstances, particularly where people are remote from help or are vulnerable, sprinkler systems have an important safety role, but every active fire protection system must operate within a good passive envelope and such systems may fail if that passive envelope is not there.

The Convener: I believe that Paul Stewart has been reconnected so he may want to comment as well—no, he is not there. Sorry about that.

That brings us to the end of this evidence session. I thank Jim Glockling, Paul Stewart and Laura Hughes for taking part. We will suspend briefly before we move on.

11:10

Meeting suspended.

11:15

On resuming—

The Convener: I am pleased to welcome our second panel of witnesses, who are Chris Ashurst, group co-ordinator in the High Rise Scotland Action Group; John Baguley, tangible assets valuation director with the Royal Institution of Chartered Surveyors; and Nicola Barclay, chief executive of Homes for Scotland. Thank you for your written submissions. We have allocated a maximum of 70 minutes for the session. As I said to the first panel, we have a number of important issues to get through, and I know that the subject is complicated, but it would be helpful if you could answer as concisely as you can.

For the purposes of broadcasting, I will call each panel member before you speak in response to a question. I ask witnesses and members please to give broadcasting staff a few seconds to operate your microphones before you speak.

I have a couple of questions on EWS1 surveys. Does any panel member feel that there is a fully competitive market in Scotland among professionals who are suitably qualified and insured to undertake the service? If not, what impact is that having on the operation of the system and what needs to be done to create that competitive market for the work?

John Baguley (Royal Institution of Chartered Surveyors): Thank you for the opportunity to join the conversation. The EWS1 form process came about because of the uncertainty about existing buildings that were certified under building regulations or building warrants. As to the competitiveness of the market in Scotland, the committee heard from the previous panel about the restrictions on professional indemnity insurance and the hard position in that regard. The

number of qualified and competent fire engineers is as much a problem in England and Wales and Northern Ireland as it is in Scotland.

The competitiveness and openness of the market depend very much on the availability of professional indemnity on affordable terms and on the volume and quantity of qualified and competent experts in external wall systems. It is important to make the point that, although there are fire experts north and south of the border, assessing the precise problem with a wall system is a very different type of assessment from traditional fire risk assessment, which in properties south of the border is more associated with communal issues such as fire extinguishers and signage.

The two issues need addressing. I would say that we probably need not a competitive market but a functional market for EWS1 forms north of the border.

Chris Ashurst (High Rise Scotland Action Group): Thank you for the opportunity to be here. The evidence from owners in properties across Scotland is that it is almost impossible to ascertain who can undertake the EWS1 certification process. A couple of names have cropped up a couple of times, but the factors in each development have found it extremely difficult to recommend anyone, or even to approach anyone, because the position is so unclear. The EWS1 certification process is unclear, as is who can do it.

The Convener: I apologise; my signal is not great here. Does Nicola Barclay have any comment to make?

Nicola Barclay (Homes for Scotland): Yes. I am here with my hand up, convener. I apologise if you cannot see me.

The Convener: I ask that, when anyone wants to speak, they type “R” in the chat. That would make it easier for us.

Nicola Barclay: I will do.

I agree with what the others have said. Accessing surveyors for the EWS1 form is not easy—in fact, in certain circumstances it is impossible, and it is not helped by the fact that more and more lenders are asking for EWS1 forms for all types of buildings, not just those over 18m. What is already a thin volume of surveyors who are able to do the work is being stretched even thinner, which does not help anybody.

The Convener: Do you have any idea why there is a shortage?

Nicola Barclay: It comes back to what was outlined in the previous session. There is a lack of surveyors who are able to afford PI insurance. When the process started, there were a number of

surveyors who were able to do it but, as the issue arose more at the tail end of last year, it became unaffordable for them to renew their insurance, so they had to withdraw from the market, and there are no new players coming in.

The Convener: I am still at a loss as to how some people can still afford PII and others cannot, but I accept that sometimes that will be about size. I was a wee bit concerned at the talk about surveyors' relationship with their insurers. Surely it should not be based on a relationship with an organisation that somebody has been working with for years; the insurance should be available to everybody at the same cost and for the same reasons. Chris, do you want to come in on that? It is you that the issue affects most, I suppose.

Chris Ashurst: As far as we can discern, the experience is that many surveyors are unclear about what they have to do, despite some guidelines being put in place. This morning, I have been given a copy of an EWS1 form relating to a flat in our 279-flat development—I have not followed it up, because I am in this meeting—and it is signed off as A2. However, as far as we can tell, no inspection took place that actually looked at the cladding. The factors were certainly not approached about removing anything, and the form covers only that flat.

This is my understanding of how the PII matter is resolved. The people who are giving EWS1 forms inspect a block—in our development, there are 10 blocks, of which eight are higher than 16m, and, as I understand the process, each stair will have its own certification. The people who are undertaking the surveys appear to be making them available to the factor, but their risk is limited to the flat that the person is trying to sell. Each person in that block who subsequently wants to sell has to approach the factor and the certificate provider to gain a certificate for their property, for which they have to pay. That appears to be an attempt to limit the individual liability on each certificate, which I guess is a way to limit the cost.

The Convener: That takes us on to something that I wanted to ask about, which was whether there is evidence of inadequate or poor-quality investigations; you are saying that, to some extent, investigations are inadequate. Are you satisfied that cladding systems that are signed off as safe meet the standards that are set out in the building regulations? The question is for everyone on the panel.

Chris Ashurst: I want to talk on behalf of all owners and residents in Scotland, but of course my experience is largely about where I live, so I will talk personally in that regard. We have a problem, in that the final plans for this building have not become available. It was finished in about 2008, but the final plans appear to have got

lost somewhere along the way. We have done our own research, by going back to the planning application to see what materials were specified and trying to establish that the materials on the building are those that were specified. We have no ultimate proof in that regard, but we are reasonably satisfied. However, that would not satisfy a surveyor, because we have not got the evidence, so what was built—this is the case in other places, too—does not tally with the building warrant. That is a significant problem.

The Convener: Thank you. I will move on to John Baguley, because time is an issue for us.

John Baguley: Let me hit a couple of points about the EWS1 process head on. It is important to remember why the process was created in the first place. As Chris Ashurst said, it was because there are buildings that have not been built to the plans and to the certification that is out there. It is also because of the emergence of guidance under which buildings that were once deemed to be satisfactory are no longer satisfactory. Therefore, a special process is needed.

On the issue to do with one form per flat and multiple flats per block, the legislative challenge in Scotland is that there is not a single entity, as there is in England and Wales. The thinking behind the EWS1 form is that there is one form per block, which is created for the single entity that is responsible for the fire safety of the building. That means that there are not multiple forms for multiple blocks; there is one form, which is used by the lender and the valuer.

In Scotland, for as long as the situation remains in which there is no such single entity, it will be difficult to have a single-block inspection and therefore a single form. We need to think about how to resolve that.

We are talking about checking that the wall systems on blocks are satisfactory. Where there are multiple blocks on a site, one block might well be built completely differently from another block—hence the need for one form per block. We have to get to the heart of whether the wall system contains combustible materials; after that, a decision can be made for the purpose of lending or valuation.

We need to ensure that we focus on the core reason for this conversation, which is that buildings are routinely found to have combustible materials in the wall system—at varying heights. There are reasons why buildings below 18m have come into scope, not least the guidance that MHCLG issued but also because combustible materials are routinely found in buildings below 18m, which represents a risk to life and limb.

To resolve that, we need to get an inspection regime for all buildings as quickly as possible, so

that we can risk assess, identify and focus on the most dangerous buildings in the housing stock. I respect what Chris Ashurst said about EWS; we need to think about how we get to a resolution on housing stock that is affected by flammable materials.

11:30

Sarah Boyack: I want to follow up on some of the questions that we have just been discussing, such as how we get a resolution. In the previous session, we talked about the high-rise inventory. Can more be done to make use of it? How do we make progress on getting that information for existing buildings?

In its submission, RICS suggested the creation of a building safety manager role to help us progress through the process. I would be interested to hear Homes for Scotland's view on detailed records. One issue that has been raised is that what was given planning permission or building warranty permission is not what has gone up. I am interested to hear from each of the witnesses on how we progress and make sure that we have the right knowledge about what is currently on those buildings.

John Baguley: As I said in my previous response, any resolution requires certainty and clarity in respect of the housing stock that is affected by the problem that we are talking about. The HRI is a valuable step forward in the identification of buildings and materials, but we need to go a step further and risk assess the buildings using a standard methodology.

One of the criticisms of EWS1, to which Chris Ashurst alluded, concerns what is expected of the fire experts when they are on site. The EWS1 style provides for a technical note with the pro forma, but there is no standard agreed approach to assessing wall systems. We need to think about how we create clarity, and from there we can create confidence in the market. That will involve undertaking an inspection of all the buildings, doing a risk assessment using a standard methodology and making the data available in a safe way to the parties that need it.

In the previous session, Laura Hughes mentioned the potential for fraud with the EWS1 form and the need for a central register. RICS has been working alongside the industry associations on that area since the launch of the EWS1 process, and there will—it is hoped—be funding from the MHCLG to provide a portal. That portal could be developed further as a central register for buildings so that the data are available.

The challenge that we currently have is that there are no data available on affected housing stock across the UK—I say “UK” because we are

facing the same problems. We need to assess consistently in a clear manner, and for all parties to know the results. From there, we can focus first on the most dangerous buildings, given that there is a capacity issue. It is very important, first, that the owners know about the fire safety of a building and, secondly, that all the other parties know about which buildings are affected to the worst extent.

From there, we need to look forward and think about how we create more certainty in the market for lenders, valuers, buyers and sellers. There needs to be transparency so that they know the extent of the remediation—“danger” would be the wrong word—that is needed on the building that they are in or that they want to buy or lend against. Those are the considerations that the general public, lenders and valuers need to know about.

If we create certainty for the professional indemnity insurance market, it will have a greater degree of certainty as to the risk, because it is about risk as well.

Nicola Barclay: Sarah Boyack touched on the question of how we know what information is available. As of today, we are in a much better position, because we now have digital registration and digital capturing of building warrant applications. The golden thread, which has been mentioned on a number of occasions, feeds through: we can see the inspection regime, and we are now collecting photographic and other digital evidence as buildings are constructed. The HRI is a great resource, which should be developed much further. As new buildings are constructed, they should be added to that central portal of information, so that we need not go hunting for it.

We are dealing with the legacy of previous standard procedures in which there were paper-based warrants and no requirement for “as built” drawings. Chris Ashurst mentioned that that is a challenge for him and his fellow block owners. The HRI is a useful starting point, but it could be populated with a lot more information in order to make it useful for all the people who have an interest.

You asked earlier about the accessibility of the information. I am not aware that it is a publicly available resource. I think that someone must have a specific need in order to access it. We have to be careful that the HRI does not blight certain buildings in the short term. I am happy to take that issue back to the ministerial working group on building and fire safety that I am a part of.

Chris Ashurst: The HRI has, in a sense, caused a blight in itself, because people can check which buildings are on it but not what

materials have been used on them. Even buildings that are probably 98 per cent safe—I hesitate to say 100 per cent safe—are on the list, so everyone is affected. It is a significant issue.

The HRI it is a great step forward. I cannot see where else the Government could have started from—it had to start somewhere. However, it is a starting point. In your previous evidence session on the topic, the representative of the property management companies used the phrase

“putting boots on the ground.”—[*Official Report, Local Government and Communities Committee*, 26 February 2020; c 38.]

Doing that would be expensive.

There are two expensive things. The most expensive is remediation. Inspections are also expensive. Perhaps there needs to be a fund to meet the cost of inspecting each building. We could then get on with it and get properly qualified people looking at the building to ascertain the problem.

As it stands, the HRI needs to be developed. My car is more than three years old, so it must have an MOT test. I can look online to check whether my car has had an MOT test. The HRI could form the basis of a Government-held register similar to that used for the MOT process. People could look online and check whether a building was previously tested. There could be a test every five years, so if it was previously tested four years ago, it would be okay. The test results should be made widely available, so that anyone can check.

That might be slightly crazy thinking, but I sense that the HRI could be developed into much more, on the basis of proper inspections having been carried out.

The Convener: That is probably the type of idea that we will discuss in the private session, but we really must move on. It is a detailed topic, and I ask that the witnesses try to make their answers a bit shorter, so that we can get in more questions.

Sarah Boyack: A fund is available down south. Should we have one up here, too? What should be prioritised? Should the focus be on inspections first, which would then enable us to have a proper discussion about potential remediation and who pays for it?

Nicola Barclay: Yes, we should have a fund.

The Convener: That was brief.

Nicola Barclay: You asked for short answers, convener. [*Laughter.*]

The Convener: Thank you very much.

John Baguley: It is a yes from me.

Chris Ashurst: It is a yes from me, too.

The Convener: There you go. If we had followed that example from the start, we would have been finished and having our lunch by now. [*Laughter.*]

Sarah Boyack: I suppose that the question is about the priority that is assigned to the issue. From the evidence that we have received, we can see that knowledge of what has been used in the construction of the buildings is critical. I understand that, over the summer, the ministerial working group will consult on a Scottish advice note. Should that advice note deal with the issue of potential funding, how it would be prioritised and what would be implemented on the ground?

John Baguley: Yes, absolutely. There is a really welcome piece of work going on in relation to the advice note. There needs to be clarity and consistency, and people need to be able to act with speed when they risk assess the buildings. Anything that can increase the amount of information that is available to enable people to do that in a consistent manner is to be applauded. We very much welcome developments in that regard.

Some thought needs to be given to the mechanics of how the remediation fund might be accessed. South of the border, it is accessed on a first come, first served basis, but perhaps it should be the riskiest propositions that are able to access it first. Further, it might be necessary to think about ring fencing funds using the sort of bad book of loans scenario that we had during the credit crisis. That might enable us to move forward without fear of reprisals, so professional indemnity can get involved, too.

I absolutely welcome the advice note, which will create consistency. That should be front and centre in the development of the advice note.

Nicola Barclay: We need to look at privatisation. I have to admit that I have not examined the HRI in any detail, so I do not know whether it lists who or where the developers are. I am aware that a lot of the buildings that are affected were built before 2008, so the developer probably does not exist anymore. That means that there might be no one to go back to. I am aware of a couple of our members who are voluntarily paying to re-clad buildings. That involves a significant cost, but they are doing the right thing morally. However, there will be circumstances in which there is no one to go back to, so any funding that is available will have to be prioritised.

Even though the £1 billion fund from Westminster sounds like a lot of money, it will not even touch the sides of the issue, because there is a suggestion that the work might cost £50 billion in total in England.

The Convener: Jeremy Balfour will ask the next question.

Jeremy Balfour: Obviously, we are talking about a long-term issue, but I would like to look at the short term, with the housing market starting to open and people starting to sell and buy houses. What effect will the issue that we are discussing have in the property market, particularly in the central belt—Edinburgh and Glasgow specifically—and how can we mitigate that effect in the short term? If I want to put my third-floor flat on the market and move house, will that be possible?

Nicola Barclay: I am concerned that the issue is going to have a catastrophic impact, layered on top of the already challenging market that we will be in over the next 18 months as we come out of the furlough scheme and see a real economic downturn.

My main concerns have already been recorded. We have already discussed how the EWS1 process does not really work in Scotland, because of blocks that are in multi-ownership without one individual owner. We definitely need legislation to enable factors to have the power to go in and fill out one form per stair, at the very least. Allowing people who need and want to move home to do so must be the priority. If we do not do that, I am extremely concerned about the impact that there will be on the market at a point at which things will be difficult anyway.

Jeremy Balfour: I do not know whether John Baguley wants to comment.

11:45

John Baguley: Yes, I do. I agree entirely with Nicola Barclay's comment. The legislative differences that apply when we are not dealing with a single entity are challenging.

In addition, we must not forget that it is not a resolution to replace one flat owner with another flat owner. The resolution must be to get to the heart of the problem as quickly as we can. I have absolute sympathy for everyone who is caught up in the flats-with-cladding scenario, but it would not be appropriate just to facilitate a transaction so that somebody could buy a property and the burden of the person who was in situ could be eased. There is a danger that, in facilitating a transaction for a new buyer, we will not address the root cause, which will remain. The root cause is potentially the raw materials that have been used for the housing stock. I say "potentially", because until the materials are risk assessed, we will not know the extent of the remediation works that are needed.

Chris Ashurst: I agree whole-heartedly with Nicola Barclay. In owners' minds, the EWS1 form is the holy grail—that is what they have to obtain. However, in the past week, we have found that even people who hold an EWS1 form, whether in the A category or the B category, have still been declined lending facilities and have not been able to obtain finance.

Jeremy Balfour: My second question is one that I put to the first panel; it is about buildings that are still being constructed and whether, in your experience, this is still an issue. How do we address the issue, in the short term and in the medium terms?

Nicola Barclay: Yes, it is still an issue. Members tell us that they are being asked by mortgage lenders for EWS1 forms on buildings that are under construction at the moment, which are being built to the current building regs and meet all the legal fire safety requirements. Lenders are being so risk averse that they are asking for EWS1 forms even when there is absolutely no requirement for them.

I wish that I knew the answer. We are seeing a real tightening of the lending market. Mortgage lenders are becoming more risk averse and are reducing the loan-to-value ratio almost daily. Unfortunately, the issue that we are discussing might be just another excuse for them not to lend, especially to potential owners in the new-build market.

John Baguley: It is interesting to hear that buildings that are being built to the latest regulations are being captured within the EWS1 form regime. A challenge that exists north and south of the border is the fact that there are still building sites where buildings are being built to the building regulations that were in place prior to the ban on the use of combustible materials. To an extent, the system allows that to happen. There will be new sites where buildings are still being built under the old system.

The decision to request an EWS1 form is still a lender-based decision. The way forward would be to have a conversation with UK Finance and the Building Societies Association to get to the heart of what the concerns are with new-build properties. In the discussion with the previous panel, mention was made of the credibility of the inspection regime and the building regulations. I suspect that there is still a lack of confidence about whether buildings are being built in the way that they are supposed to be built as per the plans. We know that, with current stock, that has not been happening.

Jeremy Balfour: Thank you. Because we are short of time, I will leave it there.

Andy Wightman: In this whole saga, it seems that we solve one problem and then another one appears. We need to keep them all in mind. I was struck by Nicola Barclay's comment, which I think that John Baguley agreed with, that legislation would be one way of at least making sure that the EWS process could apply to the whole block. There might still be problems, of course, but it could apply to the whole block. I encourage you to push that point hard in the ministerial working group.

I have one question about the ministerial working group. Why are owners not represented on it?

The Convener: Who is the question to?

Andy Wightman: It is for Chris Ashurst. Have you had any contact from the Government, Mr Ashurst?

Chris Ashurst: That is exactly our point. If the group is to benefit Scotland and the owners, it would be sensible to have an owner's voice on it. That is why we have set up the High Rise Scotland Action Group. Our aim is not to criticise; it is to try to co-operate and have a voice in the process. If owners had had a voice when the EWS1 forms were being designed, there might have been some change in the design, although of course they were designed primarily for England.

Andy Wightman: Do you know how many owners of properties in Scotland face problems with zero valuations or not being able to sell?

Chris Ashurst: No, but we are building up that information. We have been going for about two and a half weeks. Obviously, there are thousands upon thousands of owners. Using the inventory, we are still trying to ascertain where the flats are. We then contact the owners associations to get the information. We are building a spreadsheet on that as we speak. I am sorry, but I do not have the answer.

Andy Wightman: On the high-rise inventory, I note that all that the Government has published is a summary report and that the actual inventory or database does not seem to be in the public domain. In the previous session, Paul Stewart from the Scottish Fire and Rescue Service told the committee that the fire service has access to that. Are any of the panellists aware of plans to publish that information? I understand some of the concerns, which were reflected earlier, but I think that making it all transparent and publishing information will not cause any significant problems. There might be some short-term blight but, in the longer term, the more that people know, the better. Does anyone know whether it will be published?

Nicola Barclay: I will first comment on Andy Wightman's previous question. I absolutely believe that owners and occupiers should be involved in the working group. During the lockdown period, a number of owners have contacted me directly about other things. It can only be a good thing if they are involved, because they are the people who are directly affected.

On accessibility of the HRI, like Andy Wightman, I have seen only what is on the Government portal and I believe that the information should be publicly available. I am sure that only those with an interest will go looking for it, but it should be available for those who have an interest.

Andy Wightman: I will follow up on a previous answer that Chris Ashurst gave. He claimed that he knows of owners who have had EWS1 forms and who have been compliant yet who have still been refused lending. Can you confirm that that refusal of lending was based on the EWS1 form result and not on any other factor?

Chris Ashurst: Obviously, I do not know what the decision process was in the lender's mind, but, certainly, in one case in which an EWS form was provided, there was then a request—I am not clear whether it was from the buyer or from the mortgage lender—to add to that a certificate stating that the buildings were built in accordance with the building regulations.

That is one case. I do not know why that situation has occurred in other cases. With many buildings from 2003 right up to date, the buildings are okay. We have a metal balcony, but there are wooden slats outside the building. Everything else is fine, but the wooden slats on the building perhaps seem to be the stumbling block.

Andy Wightman: I was also—

The Convener: John Baguley wants to come in on that.

John Baguley: On the A1 A2 B1 classification in the EWS1 form, whether the lender lends against it is their decision, but my understanding from speaking to the Nationwide Building Society is that the A1 A2 B1 EWS classification would not prevent lending. So many other factors go into lending, but it has confirmed that EWS classification alone would not prevent lending. As the number of lending decisions goes up, more funds are released.

Andy Wightman: I understand that point, and it is an important distinction to be made. The EWS1 form was created to provide some confidence, but other factors come in. I was just concerned, following Chris Ashurst's evidence, that perhaps the EWS1 form was being used when a building was found to be compliant but lenders were still

reluctant to lend, on the basis of doubts about the building.

Nicola Barclay mentioned new builds and the fact that EWS1 forms are still required and lenders are reluctant to lend. If lenders are so risk averse for current homes that have been built according to the latest regulations, that has massive implications for the whole housing market. I presume that there is much more transparency now around new build that has been built in the past year or two because it is much easier for lenders to know exactly what products have been used. Does that not suggest that there should perhaps be some scheme of Government underwriting for the market, to ensure that it continues to function and that buildings that are clearly compliant with the latest standards are marketable?

Nicola Barclay: I assume that Andy Wightman's question is for me. I do not want to comment on whether the solution is Government underwriting, as I have not thought in great detail about the solution.

Our members are not putting any cladding on the outside of buildings that are now being built. As Chris Ashurst mentioned, on outside balconies, small bits of decorative timber that have a distance from the steel frame balcony that is attached to the building are being refused because of the gap. Members are going back to take off wooden panelling and put on other things, and those then have to go for retrospective planning consent, because the detail is different. All our members who are building or designing products now use no form of cladding, because they do not want to risk not being able to sell their stock once it is up. The question of what to do about the products that are in the process of being built to current regulations needs to be taken back to the ministerial working group. I am sure that your committee will advise the group accordingly on what the solutions might be.

Andy Wightman: I have a final question for Nicola Barclay, which Chris Ashurst hinted at. If I purchase a car for £25,000, I will get a pdf file with 100 pages of certifications for all the vehicle's elements, including its materials and safety standards from various European Union and international directives. If anyone doubts that it was built to modern standards, I will have the copies and certificates.

You said that the information for new builds is being captured digitally, but is it provided to the home owners in a document that says, "This is exactly what your house is" and that includes the materials and all the rest of it? It seems to me that, although it is great, and an improvement, if the information is captured centrally, we are still rather neglecting the fact that people own these

properties and have paid money for them. There is less risk if everybody knows the information than there is if the information is held in one central repository—perhaps the local authority—where it is vulnerable to being lost.

12:00

Nicola Barclay: New-build homeowners get a comprehensive home pack when they move in, but I do not know the specifics, so I cannot give you an answer. I will ask about that and come back to the committee, if that is okay.

Andy Wightman: Okay, but will you say whether you think that it would be a good idea to provide that information?

Nicola Barclay: I absolutely do. There is concern that, when people move into their new home, they are overwhelmed with all the information that they are given. However, I know that more and more of our members, particularly the larger ones, are providing digital information. It makes sense to provide the element that you are talking about, but I cannot say categorically that that happens just now. I will find out for you.

Andy Wightman: Okay. I have another question, convener, but I am not sure that there is time—

The Convener: No, I am afraid there is not. Let us see whether there is time at the end of the meeting, but I doubt that there will be. I am sorry.

Annabelle Ewing: John Baguley referred to an issue that I raised in my opening question, which is lenders' potential lack of confidence in the building standards process and compliance therewith on the part of builders. Will you expand on that?

John Baguley: This will be more a suggestion than a statement, I think. On why the EWS1 form is being requested for new buildings that are clearly built to the most recent building regs, with the ban on combustibles, I think that we should have a conversation with the lenders, because it is the lender's decision. The RICS guidance is that an EWS1 form should be requested if someone is not satisfied that a building is built to the most recent building regulations. If we are to get to the heart of the issue, we need to speak to the lenders.

I would gladly be involved in that for RICS, with UK Finance, because I do not really understand why lenders are requesting the EWS1 forms. Maybe there is a confidence issue, but I do not know.

Annabelle Ewing: It seems that many roads lead back to UK Finance.

I can see that Chris Ashurst wants to come in. Before he does, I want to ask John Baguley about scenarios in which there are historical problems. Why are there problems? After 2005 or 2006—I am sorry; I have a lot of dates in my head—the rules were clear. Is there a problem with the process of local authorities granting completion certs? Are they under too much pressure from developers to do that quickly? In many cases, we have to go back in time a bit. What has been the role of local authorities in that regard?

John Baguley: I cannot comment on the reasons for this, but there are buildings that could not be built to the plans, so what is constructed on site is very different from the plans. The inspection regime might have found different construction techniques going on on-site—I am thinking about missing fire breaks and cavity barriers. Inspectors routinely find buildings—at heights above and below 18m—that contain materials that they did not expect or that are not built to the plans.

The greatest challenge is that the valuation process has traditionally been predicated on the assumption that the building regulations, building warrant and inspection process confirm that the parts of the building that cannot be seen are properly constructed. In the post-Grenfell era, it is clear that that is not the case. In essence, people are re-inspecting buildings that have already gone through an inspection regime. That is why the challenges that are before us are so great and voluminous.

When we consider the additional guidance that was published in January, together with the balcony guidance that emerged post-Barking, which brings buildings of any height into scope, there is a real chance that remediation work will be recommended. We routinely hear of fire and rescue services requiring removal of wall systems on existing buildings. That is a challenging proposition in respect of lending and valuation—and, more importantly, for somebody who wants to invest or buy. People need transparency around the state of the building, for a number of reasons. For example, the building may not have been constructed as the plans suggest.

The outcome of the current process will tell us whether, ultimately, there is confidence in the building regulations and the building warrant process for existing stock with the wall system. For as long as that confidence and credibility is not there, we have to work at pace to risk assess buildings as quickly as we can, so that we know the extent of the remediation work that is required. Thereafter, parties can act with confidence and transparency, and there will be clarity as to the extent of the works that are needed.

That was rather long-winded—I apologise.

Chris Ashurst: On the point about where we are now, historically, although building warrants were signed off, there was precious little actual inspection by local authorities. Essentially, the larger builders—we are talking about larger builders, because of the size of the developments—self-certified and told the local authority, “This is all right.” From the evidence that we are getting everywhere, it certainly seems that very few cases were followed up or inspected.

To back up John Baguley’s point—I am sorry, convener; I cannot remember what I was going to say. Forget about it—my brain has gone.

Annabelle Ewing: There is a lot of risk involved in such a complex area. I have a question for Nicola Barclay, and then a general question for all three witnesses, if anybody wishes to respond.

We are hearing that there is great difficulty in getting the planning documents. What rules apply to developers in that regard? Are there any such rules? A lawyer, for example, has to keep certain files for 10 years. What is the practice?

Nicola Barclay: I am afraid that I do not know the answer to that question. I would think that rules on keeping plans would come from building standards, so it may be a question for that division.

We have to remember that many of these buildings were constructed by companies that may no longer exist. I would slightly contradict what Chris Ashurst said about most of the construction companies involved being larger companies. Pre-recession, many smaller companies were able to access finance to build even quite high-rise buildings on a design-and-build contract, but they did not continue to operate beyond the recession. If a company no longer exists, I can only assume that the only place where records would still be available would be the building control department of a local authority. I imagine that those archives would be fairly robust.

Annabelle Ewing: That was indeed the planning route that companies took before all the online provision came in, so we can make inquiries about that to help people who are in the situation that we are talking about.

You mentioned a few times the idea that companies developed buildings, went out of business and that is that. That is one issue to consider, but there will be many instances of the problem arising where the builder is still very much in business. You mentioned that a few companies have stepped up to the plate. What is the percentage in that respect? Do you have figures for those instances in which the builder, where they are still in existence, has stepped up to the plate? Is that something that you would be able to find out?

Nicola Barclay: As the issues are emerging, and we are turning our attention to cladding now that we are moving out of the Covid lockdown, it is certainly something to which I will turn my attention. As I said, I am aware that a couple of larger Homes for Scotland members are going in proactively to reclad buildings that they constructed, although they obviously no longer own those buildings, which have been handed over to all the individual owners. That work would relate to the high-rise inventory—if we have a list in there that shows who the developer of a building was, we will quickly be able to find out whether they still exist.

We have not discussed the role of the warranty provider. Those buildings would all have a 10-year warranty from the National House Building Council or some other body that would have checked the buildings. I know that the NHBC has done some retrospective cladding work when builders are no longer available. We could look at that route too. I am not saying that that absolves developers of their responsibility, but the warranty provider also has a role.

Annabelle Ewing: Absolutely, if the warranty is still extant. That is a good point, and one that the committee might pursue by getting further information from the NHBC.

My last question is open to all three witnesses. We have broadly discussed what is happening down south and the possible use of remediation funds. My understanding of the scheme down south—unless it has been amended—is that it is applicable only to buildings over 18m in height and that the individual is required to take reasonable steps to recover the sums involved, whatever that means in practice, so there are caveats.

Are we looking to have some sort of loan fund in Scotland? We are in the middle of a mega challenge for our economy because of Covid-19. I do not imagine that there will be much spare money. How do we best proceed? We want a way to solve the problem and to allow owners to feel safe in their homes and to be able to sell them and move on. We all want to find a way to do that. Has a loan fund been considered as part of the solution?

The Convener: Can we keep the answers brief, please?

John Baguley: The answer is all of the above. Nothing should be off the table. A pot of money is available in England. There are challenges in how to access that. It is important to use the available money wisely, to remediate as quickly as possible and then to think about how the money can be clawed back. I do not have a magic bullet, but we must think about how to risk assess and pay quickly to have buildings remediated. There can

be a process to claw back the cost at some later point. We need a centralised and co-ordinated approach.

Nicola Barclay: John Baguley has said exactly what I would have said; I will leave it at that.

Chris Ashurst: The question that I have been asked is whether any of the money that was supposedly coming from Westminster is being earmarked to cover the costs that come from cladding.

The Convener: That is something that we can look into.

Graham Simpson: The panel will be pleased to know that I am probably the final questioner.

The committee has done a lot of work on this issue over the years. Much of what has been said—particularly with regard to the system of issuing building warrants and signing off on buildings—is something that we looked at a number of years ago. It was clear then, and it is clear today, that buildings can be, and have been, built and go through the building warrant process and through building standards but we do not know what has been built. That seems to be the issue. All the information on the inventory comes from local authority building standards, who do not know what has been built. Does that make the inventory flawed?

John Baguley: My theme today has been that the HRI is a great step forward for documenting buildings based on the information that is available, but we still need to know what is on the buildings, to risk assess and to know what the reality is. HRI is a great first step, which we all welcome, but to reach a resolution here we have to risk assess exactly what is on site. Unfortunately, that can mean intrusive works.

12:15

It is possible—this feeds into the EWS1 form process and is one of the reasons why a desktop exercise might be carried out—that there will be sufficient records from building services and involvement of experts who know how the building was built. However, fundamentally, we need to know exactly what is on the outside of the building and whether it has been completed and constructed as it should have been. That is one of the biggest issues that we face with the current housing stock.

Graham Simpson: The inventory will not tell us that—the only thing that will tell us that is for someone to go out and have a look. The inventory is a paper exercise, based on local government records, which may not be accurate.

Some positive ideas have come out of this evidence, one of which was for what we might call a building MOT. Would that be a good idea? I do not know how easy it would be to carry out such an MOT on existing buildings, but we could do it for any new building from here on in.

John Baguley: I will keep my answer short: yes, that would be a fantastic idea.

Nicola Barclay: I agree. There is an issue just now with buildings that have already been constructed but have no clear maintenance regime in place—we have seen that with the tenement work that the committee is very familiar with. It is fundamental to the built environment that we have some kind of regular monitoring and testing of all buildings. That regime is not there just now.

Graham Simpson: I will come to Chris Ashurst in a moment. First, I have a question for Nicola Barclay on a point that Andy Wightman made earlier. Do you not think that, when a building is built, the owners should know exactly what is there and not just what has been approved? That would mean that the builder would have to say, “This is how we’ve built it and this is what you’ve got.”

Nicola Barclay: Yes. That is important, particularly for low-rise residential where, at some point in the future, someone might wish to extend that home, so they would need to know the construction method and exactly what was done. As we move to off-site manufacture, there will be a wider range of construction types being delivered. Ordinary customers will not know the technical details of those, so we will need to ensure that we have that information for any future maintenance or work that the owner wants to carry out in their home. As I have said, I will check whether that is available and come back to the committee on that point.

Graham Simpson: I doubt that it is. Do you not think that legislation would be needed to introduce such a system and make it mandatory?

Nicola Barclay: I will see whether it happens just now and, if it does not, that is a recommendation that the committee would want to decide on.

Chris Ashurst: I agree 100 per cent with that idea. The sooner that happens, the better. Owners need to know what they are living in.

Graham Simpson: Yes, it should be just like when someone has bought a car.

Down south, there was a proposal for a building safety bill—I do not think that it has been introduced. Do you think that it would be good to have something similar in Scotland?

Chris Ashurst: I am not able to answer that question. It sounds like a good idea, but I cannot go further than that.

John Baguley: The Fire Safety Bill is due to receive royal assent shortly and will come into force in October. It creates statutory obligations on parties in relation to the fire safety of buildings. The bill amends the Regulatory Reform (Fire Safety) Order 2005 in England and Wales and creates a single entity, but it also extends the current fire risk assessment to include the external wall system. The Fire Safety Bill creates some safety mechanisms. The original problem with the EWS1 process in Scotland is that there is no single entity to confirm the fire safety of a building. One of the themes of the Fire Safety Bill is that there is a single entity and it creates the role of a person with responsibility for fire safety. That is the takeaway to think about for the legislation in Scotland. That would also facilitate being able to quickly risk assess the buildings, which we need to do.

Graham Simpson: My final question is for John Baguley and Nicola Barclay, who both sit on the working group. According to a letter from Kevin Stewart to the committee, that group was established

“to develop a Scottish Advice Note on external wall systems.”

That seems quite narrow. The letter does not say when the group will publish its advice. Can you tell us when the group will publish its advice or at least a list of recommendations?

John Baguley: That is a separate workstream, which is for the advice note. The ministerial working group that Nicola Barclay and I sit on is focused on the EWS1 process and the inspection process to ensure that it is fit for Scotland. I am leading the portal side of that group. There are two separate workstreams.

Graham Simpson: Are you on the ministerial working group?

John Baguley: Yes.

Graham Simpson: Will that group be publishing recommendations?

John Baguley: The group has met only once. I would have thought that it will make recommendations, but I do not know for sure.

Graham Simpson: When did it meet?

John Baguley: It met in March, just as Covid came in.

The Convener: That completes the committee’s questions and concludes our evidence session. I thank Chris Ashurst, John Baguley and Nicola Barclay for taking part in today’s meeting.

12:22

Meeting continued in private until 12:54.

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

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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