



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 5 September 2018

Session 5



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Pàrlamaid na h-Alba

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
23rd Meeting 2018, Session 5

CONVENER

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

DEPUTY CONVENER

Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)

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

*Graham Simpson (Central Scotland) (Con)

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

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor John Cole (Review Panel on Building Standards Compliance and Enforcement)

Dame Judith Hackitt (Independent Review of Building Regulations and Fire Safety)

Kevin Stewart (Minister for Local Government, Housing and Planning)

Dr Paul Stollard (Review Panel on Building Standards (Fire Safety) in Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
**Local Government and
 Communities Committee**

Wednesday 5 September 2018

[The Convener opened the meeting at 10:04]

**Decision on Taking Business in
 Private**

The Convener (Bob Doris): Good morning. I welcome everyone to the 23rd meeting in 2018 of the Local Government and Communities Committee and remind everyone present to turn off their mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting.

Unfortunately, our deputy convener, Monica Lennon, cannot make it to the meeting, so she has passed on her apologies.

Agenda item 1 is a decision on taking business in private. Do members agree to take agenda item 6, which is consideration of the committee's work programme, in private?

Members indicated agreement.

**Building Regulations and Fire
 Safety**

10:04

The Convener: Under agenda item 2, the committee will take evidence on building regulations and fire safety in Scotland. The session follows an inquiry into the issue that our committee carried out in 2017.

We have quite a lot of witnesses this morning. I welcome Kevin Stewart, the Minister for Local Government, Housing and Planning and a member of the ministerial working group on building and fire safety. He is accompanied by Dr Stephen Garvin, head of building standards at the Scottish Government, and Jessica McPherson, programme manager in the Scottish Government's building standards division. I thank them for coming along. I also welcome the chair of the United Kingdom independent review of building regulations and fire safety, Dame Judith Hackitt, and thank her for taking the time to speak to me over the summer, ahead of this meeting—that was very welcome. I welcome also Professor John Cole CBE, chair of the review panel on building standards compliance and enforcement, and Dr Paul Stollard, chair of the review panel on building standards (fire safety) in Scotland.

We will hear a couple of opening statements before we go to questions.

The Minister for Local Government, Housing and Planning (Kevin Stewart): I thank the committee for the invitation to attend the meeting and for the opportunity to update members on the progress of the Scottish Government's ministerial working group on building and fire safety.

We have made significant progress since I appeared before the committee last September. I thank the committee for its work on building standards. The report that it published in October last year clearly sets out, and in many ways aligns with, the broad range of issues that the Scottish Government seeks to address, and it has been beneficial to have oversight of the committee's investigations as we progress.

I welcome having Dame Judith Hackitt on the panel, as she has undertaken an important review of the English building standards system. Although the system in Scotland is very different from that, her work has highlighted key areas for improvement in which our interests are aligned—skills and competence, for example—and we have kept a very close eye on her work.

I am also very pleased to see here Professor John Cole and Dr Paul Stollard, who were the chairs of the review panels on enforcement and

compliance and on fire safety and building standards. On 13 June, they presented the recommendations of their respective panels to the working group, which were accepted. On 4 July, we launched a 12-week public consultation on the proposals. After that consultation closes, we will review the findings and move to implement improvement measures.

The third review of our work programme, the review of the fire regime and regulatory framework for high-rise domestic buildings, is on-going and is expected to report its recommendations to the working group by November.

On 20 June, the Scottish Government confirmed that it will initiate legislation within the current parliamentary session to require new-build Scottish social housing to be fitted with automatic fire suppression systems. That follows our decision to take over David Stewart's proposed member's bill, to which the legislation will give full effect. I thank David Stewart for his campaigning and his stalwart work in this area. The Government will continue to work with him.

The sprinkler bill is in addition to our intention to bring forward regulations this autumn to extend the current high standard for fire and smoke alarms in private rented homes to all other homes. In addition, the establishment of an inventory of high-rise residential buildings is nearing completion. Once that is complete, the ministerial working group will consider its on-going maintenance and purpose.

As well as identifying appropriate action to improve the safety of buildings in Scotland, the group has continued to provide reassurance to residents and the wider public. Between October and December, the Scottish Fire and Rescue Service ran a targeted fire safety campaign for residents of high-rise buildings. Analysis of the feedback on that campaign showed that it had been successful in sharing information and helping residents to feel safer in their homes.

On 6 August, I provided a written update to the committee on the fire-door testing programme being taken forward by the UK Ministry of Housing, Communities and Local Government. Fire-door performance came to light as a result of the police investigation into the Grenfell tower fire, and as the testing programme progresses, the Scottish and UK Governments remain in regular communication, with information being shared more widely where appropriate. However, the advice from both the independent expert panel for building safety and the Scottish Fire and Rescue Service is that the risk to public safety remains low.

I hope that this brief update reassures the committee that the ministerial working group is

maintaining priority and focus on improving the safety of buildings that people live in and use in their daily lives. I am happy to take questions, convener.

The Convener: Thank you, minister. I invite Dame Judith Hackitt to make some comments.

Dame Judith Hackitt (Independent Review of Building Regulations and Fire Safety): First of all, thank you very much for inviting me to come to Edinburgh to talk to the committee about my report. I want to be clear about the scope of my work, because it is important that you understand that I was working under a somewhat different—indeed, broader—remit than were my two colleagues to my left. I am grateful to them for their support and their input into our review, but we need to recognise that the reviews were slightly different.

As you will be aware, my review looked at fire safety and building regulations specifically in relation to high-rise buildings. The remit included a time limit; I was asked to produce the final report in less than a year from the outset and in advance of the public inquiry into the Grenfell disaster. I was therefore working in a somewhat challenging space where we were trying to make recommendations for changing the system without in any way compromising the process of pursuing the detail of what happened in the disaster at Grenfell tower. That, I think, has led to some of the confusion that you will be aware of about expectations of what I was and was not going to do and about certain specific areas that people had hoped my review would cover but in which recommendations did not come out, because they fell outside its scope.

That said, we published the review in May and it has received strong support from industry and many industry stakeholders. There was one thing on which there was real recognition and that came to me throughout the process; consistently, people told me, "This system is broken and needs to be changed." We were able to put forward proposals for a major change in managing high-rise and higher-risk buildings throughout their life cycle, and again it is important to recognise that part of my challenge and task was to look at not just at how we build new and better but how we address the issue of the many existing high-rise buildings that we have and which might not be at the level that we want and need them to be at in future if people are to feel safe in their homes.

I know that you have seen the report. I was pleased to have access to a lot of information about what is happening here in Scotland and we had some very useful discussions. The access that we had to some meetings with stakeholders was particularly valuable in helping us to see how residents in social housing in Scotland are much

better engaged in the process than has been the case thus far in England. I also learned more about the way in which building control works here and, as you will know, we have built some of that into our recommendations for the system in England in the future. That runs alongside a number of other recommendations, not least of which is a “golden thread of information” safety approach to high-rise buildings.

The Convener: Thank you, Dame Judith. I know that there will be a lot of questions from members.

We heard the minister talk about the inventory of high-rise buildings and the idea of having at our fingertips all the essential information on what is on a building and how it is constructed. That could be part of the “golden thread of information” that you spoke of.

10:15

We had a slightly unfortunate or unedifying situation in Scotland where, post-Grenfell, when we were trying to ascertain what types of cladding were on the high-rise buildings that we had, individual officers in local authorities had to go through antiquated files and bits of paper to see what was written down. It was a time-consuming and onerous job. The Scottish Government offered additional support to local authorities that were struggling to do it within the time constraints.

On the golden thread of information, I am interested to know whether something similar to an inventory has been suggested in England and whether it should be a living inventory. What kinds of thing should be on it? I am rolling together a number of small questions, to get a flavour. Should new builds be on it? If significant adaptations take place, what should be on the inventory? How can we have an inventory that is effective while having the granular detail needed for the golden thread?

Let us hope that we never again have a situation where we have to interrogate what is on a building because there has been a disaster, but, if we do, I do not want local authorities to have to go through individual bits of paper, trying to work out what is going on. That was simply not good enough. What should we take from England in relation to that golden thread?

I would also be interested to have an update from the minister on progress on the inventory in Scotland.

Dame Judith Hackitt: Work is already going on, looking at what the pack of information should contain. My report did not go into that level of detail. We said that the information pack needs to

exist. It needs to exist for all new high-rise buildings.

This is where the fact that I was looking at high-rise buildings comes sharply into focus. We have said that, first and foremost, our priority in England is to address this issue for high-rise, higher-risk buildings that are new, about to be built and already existing. We need that golden thread, which includes an information pack.

As you identified, currently we have to go back into old files and bits of paper. That is symptomatic of an industry that has failed to keep up with the state-of-the-art technology that is commonplace in the food industry, the automotive industry and every other industry that already has information in digital form. Part of our drive in England is to get people to think about how to put the information pack together not just as a large file of paper but digitally.

The Convener: Minister, do you want to add anything?

Kevin Stewart: You asked where we are with the inventory. The data gathering for the inventory is being led by Capita and is still under way. It is expected to be complete within the next few weeks. My officials are preparing an options paper for consideration by the ministerial working group at our next meeting on 27 September, on how the inventory can be maintained and updated.

The inventory itself will give the current national picture of high-rise housing. It will be invaluable as a starting point—I reiterate, as a starting point—for understanding the make-up of our high-rise housing stock. Discussion at the next meeting of the ministerial working group will include consideration of the purposes for which the inventory could be used, the time and associated costs involved and ownership accessibility, including how updates or amendments could be made.

As well as that, there needs to be a focus on accuracy and the quality assurance of the data that is supplied. This is not an easy job, but it is one that we committed to do and needed to do.

As the convener said, we must ensure that the inventory remains a living tool that can be updated as we move forward. That is where we are with the inventory. As we normally do, we will continue to keep the committee updated on that.

The Convener: That is appreciated, minister.

I wonder whether Professor Cole or Dr Stollard thinks that there are certain key elements—no-brainers, if you like—that it is fundamental to include in the inventory.

Professor John Cole (Review Panel on Building Standards Compliance and Enforcement): As has been described, one of the problems that we found in the Edinburgh schools inquiry and the DG One inquiry was that there were totally inaccurate records of what had been built, and the absence of information meant that it was extremely difficult and much more expensive to carry out the necessary work. That reflected the fact that significant design changes had been made during the construction process that had not been controlled by the original designers of the project, which meant that the golden thread was broken even before the building was finished. As a result, the people who operated the building did not have the information that they needed to operate it properly.

Some of the recommendations that I have made on compliance relate to the need to have a standardised protocol for collection and delivery of information to building control in advance of a project. After completion of a building, fully documented and certified as-built drawings and specifications should have to be submitted to show what has been built, and they should be marked to highlight all divergences from the original approved warrants. That is not happening at the moment, because the process is too complicated. Contractors do not slow up—they want to get away from a building quickly.

The concept of recording what has been built and what happens during the life of a building is fundamental to its safety. We need to have a standardised protocol for the use of a template to create a digital record, so that that information is available to building control. If the information is recorded during the construction of a building, it will help to demonstrate that particular aspects of the construction have been carried out in a way that is compliant with what was in the original design. As well as serving as a record, that will give an indication of compliance throughout the process. We do not have enough people inspecting buildings to check that they are being built to the quality that is required.

The Convener: I would like to explore that a bit further. I apologise to Dr Stollard—I will come back to you, if that is okay.

You are quite right, Professor Cole. We could have the best system in the world, but we rely on what is documented being accurate and up to date and reflecting what has been built. You do not seem to have faith that that happens at present—

Professor Cole: It does not.

The Convener: That is because of the desire to get off site and to get payment for the contract.

Professor Cole: It is an extra piece of work.

If I may digress slightly, the issue is complicated by the procurement process. In general, in the design-and-build model, the original designers are not necessarily deeply involved in inspection of the construction process, largely because contractors do not want to pay them extra fees for coming on site to find fault with the work that they have done. At that stage, the contractor rather than the client is the employer of the design team, which I feel is a problem.

Because of that, the original designers often do not know what has happened on site. Because so much design is done by subcontractors who get involved late in the process—changes might be made through the value engineering process, for example—the design team that produced the original drawings are often unwilling to say, “We can certify that this is what was built,” because they were not on site frequently enough to confirm that, and they were not advised of all the changes in a structured and appropriate way.

As a result, we are finding that, at the end of a project, such information has not been recorded by anyone to any great degree. To record that information costs money. The quality aspects of how we manage our buildings are the ones that have suffered in the squeezing that takes place in an effort to achieve the lowest cost or the maximum profit. That means that, in many cases, nobody is aware of exactly what has been built.

In the Edinburgh schools inquiry and the inquiry in Dumfries, we had great difficulty in getting accurate details that reflected what we could see on site. What had been built did not reflect what had been passed by building control and was subsequently the subject of a completion certificate. There is a lack of continuity and a break in the golden thread, which means that nobody really knows whether a building is compliant or not. We found huge cases of non-compliance in all those examples.

The Convener: It appears, Professor Cole, that the issue of who is responsible is a bit murky, at best. If no individual or company has responsibility, how can there be a sanction after the event? How can we address some of that?

Professor Cole: The contract is the basic way to define responsibility, and it says that contractors will complete accurate as-built drawings and hand them over to the client. However, clients are not in a position to check whether that process is being carried out in a thorough and conscientious fashion, because they do not generally have people watching what the contractor is doing. In most cases, therefore, the contractor is responsible for making those amendments, but he will have to pay designers or others to amend drawings. If that is an expensive item, the contractor may be unwilling to do that.

In the evidence that was given to our inquiries, many architects and engineers said that they were unhappy to certify that the drawings were as-built, because they were not there when the project was built and were not able to say that it had been built that way. As we know, the projects in our inquiries were not built that way, to a large degree.

Ultimately, the client is the person who should carry the responsibility for delivering the building. We have to make that the responsibility, but we have to have sufficient checks and balances in the system. One of our recommendations, which is not a requirement now, is for building control to get a full set of documents that are certified as accurate by the contractor and by an independent design team member, to say that a project has been built in the documented way and is compliant with the regulations. Building inspectors can then ensure that that is what has happened by going out and checking it.

However, the number of visits carried out by building inspectors is totally insufficient, and will never be sufficient for us to rely solely on that aspect. We have to put more focus and responsibility for buildings on to the clients, designers and contractors, and we have to make sure that that is integrated in a fashion that provides a set of documentation that can be relied upon for the completion of the building, to ensure that it has been built properly, and for the future operational use of the building over its lifetime.

The Convener: There clearly has to be a degree of trust, because even with 1,000 additional inspectors out on building sites across the country, there will not always be a second pair of eyes for every piece of work done on site. That is not practical, nor would it be required.

I get that the process is risk based, but it seems to be far too light touch at the moment. You suggest that the liability sits with whoever commissioned the school or high-rise, which is the local authority or housing association. However, the poor workmanship would be the responsibility of the contractor or developer.

It is about getting the liability, responsibility and accountability over to the boots on site that are building and delivering the product. Do you have any take-home messages about how we can do that, before I let Mr Simpson in to pursue this line of questioning further?

Professor Cole: A very simple way would be the restoration of the clerk of works. When I started as a young architect, we had a clerk of works on every site, who was there on a continuous basis once there was a major job. They would constantly check the work of all the people on site. The architect and everyone else relied on that information so that they could sign

certificates to confirm that the work was compliant, although they would still do their higher-level check, and building control would be a higher-level check again.

The hands-on check has to happen, unfortunately, despite the so-called quality assurance systems that all contractors now sell when they bid for a job and say that they are fully qualified and quality assured. The quality assurance systems that we saw had been filed, signed in and ticked as being fully compliant, but when we went on site we saw that that was not the case. Many of the forms are filled out by people in offices who never go out on site and look at the work.

We need independent scrutiny of contractors. We have relied far too much on self-regulation and self-certification. Local authorities have lost the skills that they used to have. Many of them do not employ clerks of works any more and do not have that resource to get on site. That capacity needs to be rebuilt, and to do that we have to develop courses and encourage people to take up the profession as a career—it has largely died out.

Another example is the resident engineer. When I started as a young architect, many years ago, we had resident engineers on site, checking the structural aspects of the building—that the reinforcement was the right size and in the right place and so on. I interviewed numerous consultants who said that they had not been asked for a resident engineer to go on a job for the past 10 to 15 years. That is a way of cutting the fees and cutting the costs of the project. We are sacrificing quality for short-term cost gain, and the ultimate cost of that over the life of the building is immense.

10:30

The Convener: That is helpful, Professor Cole. I am trying to refrain from making suggestions, because I know that Mr Simpson wants to pursue some of this, but it is worth putting on the record that one of the take-home messages from this committee's rather short inquiry was that clerks of works should be on site more consistently, doing more robust inspections. A lot of the on-site work that takes place is basically warranty providers doing key stage checks. That is about protecting the developer from future claims, which is a different beast from looking at the overall quality of the build and protecting the client. A clerk of works was certainly one of the things that the committee talked about.

Graham Simpson (Central Scotland) (Con): Unfortunately, nothing that the witnesses have said is news to us. As you know, the committee did its own inquiry. We did not focus just on public

buildings and high rises; we started by looking at domestic buildings—normal houses—and issues that people had had with new-build houses. The inquiry showed up exactly the same problems that you have described.

I would go as far as to say that the system is broken. I do not think that that is too strong. There are certainly failings in the system in Scotland, which Professor Cole has outlined. It is too easy to build anything and issue a completion certificate, which simply says that the building is complete and does not prove anything to do with quality or standard. Professor Cole has said it all.

The committee made a series of recommendations, which were designed to improve the system and protect people who buy properties. One recommendation was that there should be a clerk of works. I did not see that in your recommendations, Professor Cole—you will correct me if I have missed it. I think that it is an important point.

Dame Judith said something similar, I think. You called for duty holders. Is that the same sort of thing?

Dame Judith Hackitt: I agree with everything that has been said. There is no doubt in my mind that we have to make responsibility clear and explicit, at every stage of a building's life cycle. Someone has to be the responsible person. That responsibility to be the duty holder can be delegated to someone like a clerk of works, and in many cases should be—I am very much a supporter of the reinstatement of that sort of role in complex building projects.

It is about putting back in place explicit responsibilities and, at the same time, making the penalties for failing to do things serious enough that people will accept and deliver on those responsibilities. Part of the problem with the current system is that even if someone gets caught—and we all know that the risk of getting caught is low—the penalties are risible. That makes it worth taking the risk. We have to change the balance in that regard, so that people who would otherwise take a chance know that it is not worth doing so. That requires whole-system change, in many different aspects.

Professor Cole: I did not particularly mention clerks of works in the recent review of compliance, because I was looking at the issue from the perspective of compliance with and enforcement of building regulations. What I have said is that the client must employ sufficient independent scrutiny to ensure that he can deliver to building control officers evidence on which they can rely to a sufficient degree—with the right level of checking. That would involve a combination of different processes, including independent experts,

residential engineers, clerks of works, architects and structural engineers—it would be about how those resources were managed.

In both the Edinburgh schools inquiry and Dumfries inquiry reports, we referred to the restoration of the clerk of works. The recommendation on what the industry and clients should do is very much as you outlined. Clerks of works are a fundamental element. They are independent of the contractor and check at a level of sufficient granularity to see whether what has been built is of quality. "Clerk of works" and associated names have been used, but it does not have to be a clerk of works; a range of people can do that activity. The scrutiny needs to be done at a level that will provide reassurance.

Those were the two recommendations, and, to be fair to the Government, an indication was given very shortly after the Edinburgh schools report was published that all public sector authorities would be required to look at the use of independent scrutiny on site, particularly the employment of clerks of works. I believe that public authorities have already made significant changes in that regard.

Graham Simpson: What about private buildings, rather than public buildings, such as an estate of houses?

Professor Cole: First, the recommendations in the Edinburgh report were not solely for the public sector; they referred to the industry as a whole. We asked the industry, and clients, to make the changes. Best practice is to use a clerk of works for the sort of project that requires hands-on inspection.

On housing, the National House Building Council has rigorous systems in place. Whether they are strong enough is something that we need to look at.

Graham Simpson: It is all voluntary, Professor Cole.

Professor Cole: Yes.

Graham Simpson: It needs to be tougher. It should not be voluntary. Builders should be required to do certain things that they are not doing.

Professor Cole: There is no question but that the builder is responsible for building to the standard that is specified. He is required to comply with the building regulations. That is a fundamental requirement. The problem is, who is checking that he is doing that?

Graham Simpson: Absolutely.

Professor Cole: The checking has to be outside the builder; it should not be done by the builder. There has to be independent scrutiny.

That has to apply to any good client. If you get your house painted, before you pay the guy at the end, you walk around to make sure that he has painted behind the gutters and done what you asked him to do. You always check before you pay. Unfortunately, we have got to a position where an awful lot of the building industry work is not checked by those who are paying for it, whether they are in the public or private sector.

Graham Simpson: That is the missing ingredient.

Professor Cole: It is.

Graham Simpson: And it is down to the minister to put something in place.

Kevin Stewart: We are very grateful to Professor Cole for his recommendations. The compliance-plan approach that has been suggested is the way that we should pursue this. As Professor Cole highlighted in the reports on Edinburgh schools and DG One, often the emphasis was not on the substantive things. If I remember rightly, Professor Cole said in the Edinburgh schools report that there was more emphasis on drains than on anything else. We have to change that.

As Professor Cole rightly highlighted, 80 per cent of building warrants are for low-value and non-complex building work; 20 per cent are for much more complex design and construction, which we need to emphasise.

I have said exactly the same thing as the committee about clerks of works. Local authorities that used clerks of works on site found themselves in a much better position in terms of what they delivered. On the housing programme, as I go round the country, I see that housing associations and local authorities that put clerks of works at the forefront of what they are doing build quality buildings that will require much less maintenance in the future. Before we came into the meeting, we had a discussion about the fact that the clerks of works in certain places are also responsible for the future maintenance of properties. They will do everything that they can to ensure that the buildings are top notch so that they do not have to go back and fix whatever part it is in a few years.

The industry across the board, whether public or private sector, needs to rethink, go back to some of the old ways of doing things—as some folk would see it—and bring back the folk who were on site regularly inspecting buildings as they went along. I am sure that Professor Cole would not forgive me if I did not say that we have a job to do to train up people to garner some of the skills that have been lost. There is an onus on us all, whether we are in Government, local government or the industry, to look back, see what worked and

reinstate it. There will never be any argument from me about bringing back clerks of works.

The Convener: I apologise to Mr Simpson because I do not want to take over his line of questioning, but I want to clarify something. Is the Scottish Government actively considering giving local authorities the power, when they give planning approval to developments of a certain risk or scale, to insist that an independent, skilled professional be on site to do the job of a clerk of works or similar? Could that be made mandatory and put in guidance that is issued before building warrants and approvals are given? Is the Scottish Government considering that in partnership with the Convention of Scottish Local Authorities? The verifiers are all independent at the moment.

Kevin Stewart: I will have to check this out, but I do not think that that can be done through the planning system. However, I will continue to emphasise that that is the way forward on the matter. Across the Government we are considering how we lay out procurement policy for the future. I encourage local authorities and others to have clerks of works. I will have to get back to you because I am not sure off the top of my head whether that can be done through the planning system. We are considering the issues through the procurement system but I will get back to you in more depth about what can or cannot be done in that regard.

The Convener: I appreciate that. I will ask a different question much more straightforwardly: is the Scottish Government giving live consideration to bringing back a mandatory clerk of works for large-scale and complex projects, irrespective of the legislative or delivery mechanism?

Kevin Stewart: As I said, we are considering what we do on procurement. It would be wise to consider the procurement situation and reintroduce clerks of works. Off the top of my head, I do not think that it could be done through the planning system, but I will get back to you on the specifics.

The Convener: Thanks, minister.

Graham, I am sorry for that. I just wanted a bit of clarity on the matter.

Graham Simpson: Quite right, convener.

A couple of our recommendations were about protecting people when things go wrong after they have bought a property, which can happen. One recommendation was to introduce standardised missives—for Dame Judith Hackitt's benefit, I clarify that that is the contract that a person signs when they buy a property in Scotland—with built-in protections. When I asked the Law Society of Scotland about that at the committee, its representative said that that would be a good idea.

When I asked what was required to introduce that, he said that a change in the law was needed. In the minister's response to us, he said that it is down to the Law Society, but it appears to be down to a change in the law—we need to change the law to bring that in.

The other recommendation that we made was to introduce a homes ombudsman to protect people. That option is being looked at down south, but it would apply only down south, so we would need something separate here.

What are your thoughts on those issues?

10:45

The Convener: Who would like to go first? I apologise to Dr Stollard—I have not forgotten you, but the conversation has moved on. We will come back to your area of expertise, although you are welcome to comment on the current issue or to let some of your colleagues come in.

Professor Cole: I have not looked into the issue of a homes ombudsman in any great depth. It certainly sounds as if it would be positive. Are you thinking about that in England?

Dame Judith Hackitt: We certainly are. As part of my review, it was clear to me that in England we are further back than you are in Scotland in this respect. I found here that people living in multiple occupancy buildings that are local authority owned or in social housing have a much better route for raising concerns, but with properties that are owned and in the private sector, things are not so advanced. We all need to ensure that people who have genuine concerns have a clear and effective route through which to raise those concerns and get a response.

The Convener: Minister, do you want to comment on the suggestions?

Kevin Stewart: In terms of all those suggestions, I will continue to consider the best way forward.

I do not have anything to hand on missives, but I will look at what the Law Society has said on the issue. I do not know whether that point was made in response to the committee or in written evidence, but I will look at what the Law Society has to say and I will get back to the committee after my consideration of that.

Andy Wightman (Lothian) (Green): I thank the witnesses for coming, and I thank Professor Cole, Dame Judith and Dr Stollard for their work, which is extremely useful.

I have a few specific questions, but I will begin with a rather general one. Dame Judith said that the system in England is not fit for purpose—it is broken—and that the system in Scotland is not

broken but needs attention. In broad terms, can you give us a sense of the magnitude and timescale of the work that is required to fix the system in both jurisdictions? To what extent are we talking about legislative or fiscal changes or changes in culture, standards or practice? It sounds as though the challenge is greatest in England, but can you give us some sense of that? I know that the minister is consulting on the issue, so I do not expect him to have fully formed thoughts on it at the moment, but I am interested to get from the chairs of the reviews some sense of the magnitude and timescale of the work that you think we need to do to fix this.

Dr Paul Stollard (Review Panel on Building Standards (Fire Safety) in Scotland): I will break the issue into two parts, because we have had parallel reviews, which is important. On the format of the current regulations and the standards that we set for buildings, the review panel concluded that, in essence, the system is working. The principle that we have of functional standards supported by guidance needs to be improved, and we have some recommendations about how that can be done, but it is fundamentally a sound system. That system relies on the fact that the verifiers in Scotland are quite tightly controlled and regulated to an extent. That is done by the local authorities, although we make a suggestion about a national hub for complex buildings. In that sense, the issue can be fixed relatively quickly. Amendments to the guidance documents could certainly be made in a fairly short time of about six months to a maximum of 12 months.

The slight caveat to that is that, as Dame Judith said, we are working slightly in advance of the Grenfell inquiry. Although we have a lot of crossover and two members of my panel are expert witnesses in the Grenfell inquiry, we need to keep a record of and check what is going on there. I think that we know 99 per cent of what happened at Grenfell, but we do not know the final bits. However, the work on the technical side and the regulations would take six to 12 months.

Professor Cole: The issue concerns culture and practice. As I have said, the regulations and the system will cover an awful lot of what we need to do, but the issue is what has happened over the years. I never saw the final number, but I was advised that the number of building inspectors has dramatically reduced in past years, although the demand for them has increased because the technology in buildings has increased.

Few visits to sites are made. As the minister said, we found that the preponderance of visits was about where drainage joined the local authority system, and it was rare for much time to be spent on other issues. A difficult example was that, of 31 visits to a site, 29 were to do with

drainage and two were of the building after completion, so while the work in which a lot of the faults were hidden was being done, nobody visited the site to see that work. That is to do with habit and practice.

I have said many times that nobody has ever been injured by a set of drawings falling on them—that might have happened, but I do not know of it. However, we spend huge resources on ensuring that drawings are absolutely correct, while nobody goes to see that the building—the whole purpose of the drawings—is built according to the drawings.

Our focus should be on building safe buildings and not on producing safe drawings, but huge effort goes into the drawings in offices in building regulations departments around the land. The focus on what is built has been insufficient; we need to turn that round and talk about having a compliant building rather than a compliant set of drawings, because the connection disappears as soon as the drawings go out of the office and on to the site.

Capacity and capability in local authority building inspector teams are an issue, and recruiting inspectors is difficult. Universities no longer run training programmes for inspectors, although I know that Local Authority Building Standards Scotland and others have work under way, which is to be encouraged, to develop such courses at local universities. We are not training or recruiting inspectors, and existing inspectors are getting older. The level of skill that is required for recruits has dropped, because the salaries are not attractive enough for people. The further the location is from the central belt, the more difficult recruiting people is.

How we apply the system is a problem. The rules are all there, as is the capacity to extend the information that we ask for from contractors and the requirements on them, but we do not apply the system with sufficient rigour. The system is not broken, but its application is insufficient.

Kevin Stewart: It is important to point out that one of the main reasons why our system is better than that south of the border is the flexibility that was put into legislation here to allow changes to be made quite quickly. That is why, as Dr Stollard said, we can make some changes quite quickly in comparison with the process south of the border, where primary legislation will be required.

In the past, we built in a level of flexibility that allows us to update and maintain standards. That is why we are in a better position. However, we will not be complacent.

A lot of this harks back to compliance issues—that is a key finding of Professor Cole's report. I

and the ministerial working group take that seriously, and we need to move forward on that.

Mr Wightman mentioned culture and skills. Cultural change is needed across the board, and we must ensure that the industry recognises that it needs to change. In our discussions outside, when all of us have come into contact with the industry on numerous occasions of late, people have agreed that things need to change. However, when we ask what they are going to do, we hit a wee bit of a stumbling block and we need to get over that. If we adopt the compliance regime as envisaged by Professor Cole, as we are likely to do, that will push folk and will change the culture, which will help us in some regard.

On the skill-set scenario, whether in building standards or in the industry, I recognise that we need to create a situation in which we attract folk to building standards in local authorities. One of the reasons why I recently agreed to raise fees was so that local authorities had the ability to invest in building standards. As Professor Cole said, we are working closely with Local Authority Building Standards Scotland to see what can be done, not only in ensuring that we have the right courses but in getting the right people to join an industry in which the demographic is, shall we say, quite high. We have the challenge of ensuring that we have the right folks, and we are up for that challenge. LABSS has been extremely supportive and helpful in that regard. We need to move forward together to ensure that building standards is seen as an attractive career in the future.

Dame Judith Hackitt: One of the most striking differences between the systems south of the border and in Scotland, which I encountered early in my review, is the fact that people are not allowed to break ground for a building in Scotland until they have demonstrated to building control what they will build and have put a design in front of it. That is different from the system that we currently have in England, and it is a powerful and effective gateway in the process.

What became apparent from the discussions that I had with people subsequent to encountering that was that, when you put a simple gateway such as that in the process, lots of other things change as a result. Because the gateway exists, people put more effort up front into getting the design right so that they can get through it easily, rather than coming along with a sketchy design that has to be filled out during the course of the construction process.

It is a powerful gateway in the process, and on that basis I have proposed that the system in England needs to have in place not just that gateway but a similar gateway at the completion stage. Rather than talking about sending regulators out to see whether people have

complied, the onus shifts, which goes back to what Professor Cole said earlier. The onus is with the client to come to the regulator and say, "I can demonstrate to you that I have built a building that is in compliance, and I now need you to give me permission for that building to be occupied".

Andy Wightman: That is extremely useful. I have a few quick questions. Dame Judith, I was struck by the flow chart that you produced in your report. Briefly, apart from a few details, is it broadly the same from the Scottish point of view, or is it very different?

Dr Stollard: I would like to respond to that. It is quite different, because the origins of our systems are different and we have totally different ways. As Dame Judith said, in Scotland, we have a strict rule about not starting on a site until there is a building warrant. There is another strict rule in law—although it might not be properly enforced—that people cannot occupy a building until the completion certificate has been accepted by the verifier. In his report, Professor Cole very carefully explored the problems of temporary occupation certificates that are sometimes used to get around that rule.

I suggest that the flow chart in Scotland is measurably different. Yes, it has complexity, but we also have the Fire (Scotland) Act 2005, which means that in Scotland, the Fire and Rescue Service's relationship with the system is different from the relationship in England. We do not have a private sector of approved verifiers, which seems to complicate the English system enormously. We have only 32 verifiers in Scotland. The difference between the two systems is significant.

11:00

Andy Wightman: That is helpful; thank you very much. It struck me when reading your reports that a lot of this is about culture and how we have changed the way that we build buildings. Professor Cole mentioned that, historically, when a university wanted to build a building it would employ an architect, engage a contractor, run competitor tenders and a clerk of works would be accountable to the client and therefore take forward their interests. Now we have a lot of speculative building.

Dame Judith, in your introduction, you say:

"the primary motivation is to do things as quickly and cheaply as possible".

An example is the schools that my daughter has attended. She went from a primary school that is 125 years old and will last for another 125 years to a high school with a 40-year design life. It seems to me that some of the cultural issues are about not just how we do things, but the commissioning and how long a building is designed to last for.

Another issue is whether the client will be around after occupation. If it is a speculative build, they will not be. However, if the client is a university, a hospital board or a local authority, they will be around and therefore attached to those builds.

I was struck by paragraph 64 of Professor Cole's report, which says:

"It must be made clear that it is the legal responsibility of clients for all buildings that will be occupied, used, worked in or visited by members of the public to ensure that these buildings are compliant with the regulations."

However, in paragraph 24, you draw our attention to the design and build regime in which

"Such appointments of design teams frequently contain confidentiality clauses whereby the professional design team are prevented from conveying concerns to the actual client for the project as to defective construction quality or changes from the approved design".

How can a client uphold their legal responsibilities when things are being hidden from them?

Professor Cole: They do that by employing independent scrutiny, either in the form of their own architect or representatives such as an employer's agent or a clerk of works. If you go down the design-and-build route, you are standing back and saying that the contractors are responsible for the design.

Yesterday, I was in a meeting in London where the issue was discussed. Someone who is building a building, getting rid of it immediately and moving on to the next one is not worried about the 20, 30 or 40-year life of that building; they are worried about building it as cheaply as possible and getting the biggest profit when they sell it. However, a public sector client building a building should be thinking about its lifespan and what it will contribute to the local society and community. That is the difference. If you pass the build to a contractor and ask them to design and build it, you are standing back from that approach. We cannot delegate that responsibility. Clients must be intelligent customers—they have to know what they are building for and they have to set down a strategy for a building's lifetime.

The first thing that we should do, before an architect even lifts a pencil, is sit down and describe what the objectives of the building are. Buildings are a means to an end, not an end in themselves, yet quite often they are treated as the latter, just as other commodities are. As you say, they are things that will shape and affect society over centuries.

We look around and treasure so many parts of the built infrastructure that make Edinburgh and other cities what they are. However, we are very casual in how we describe what we are seeking to achieve with our buildings. We need stronger, clearer and more strategic clients, we need a long-

term view of the future and we need to procure our buildings in a way that protects that future and ensures that the objectives that we set at the start are being delivered in relation to the function of the building, what it does to society as a whole and how its individual bits work in terms of safety and functionality.

Dr Stollard: As the Scottish system stands, the moment that you buy, take over or become the owner of a building, you accept those obligations. A problem in the system is that clients lack awareness that they are accepting those obligations when they take over a building, whether in a design and build situation or otherwise. There needs to be a “buyer beware” approach. Missives have been mentioned. There has to be an awareness that those are being accepted and when the transfer from the design and build company to the operating company takes place it is the owner who society will act against if there are faults. You will see that in some organisations and commercial businesses, but in many, there is a level of ignorance about their having to take on those responsibilities.

Professor Cole: The problem is that the objectives are not necessarily aligned. On the issue that was raised about the design team being prevented from speaking to what I call the real client—the owner of the building—you should have seen the number of people who came to us and said, “We’ve signed a confidentiality agreement, so we’re not allowed to go on site to check whether the design has been changed or whether the specification has been downgraded. We’re not even allowed to tell the actual client.” For example, in Dumfries, there was no discussion between the architects and designers of the building and the client; everything was done through the contractor, which determined what the architect and designer did; how often they could come to the site, if they came at all; and whether they did snagging, reviews or quality assurance during the process. Clients naively think that once an architect is involved, he is somehow or other working for the wider good; in fact, he is in a contract that says, “This is what you’re going to do—and all you’ll be doing. We only want your design so that we can win the job and get through to the next stage, but we don’t want you to come and tell us how to build it. We’ll do that—because we’ll take shortcuts and value engineer.”

We really need to redefine the term “value engineering”, because essentially it is cost—and, quite often, quality—cutting. We need to look at value in its proper sense of the building’s long life and what it offers to the people who are going to use it. We have to align those objectives and get contractors from procurement in a place where their aim is to go in the same long-term direction for buildings as the rest of society. At the moment,

that is not necessarily their aim, and that has been partly been driven by Government procurement.

Andy Wightman: I have a few other questions, convener, but I am conscious of time.

The Convener: If we have time at the end, we might come back to you.

Alexander Stewart (Mid Scotland and Fife) (Con): This morning, we have identified some very worrying indications. You have set those out in your reports. For example, you have talked about the system not being fit for purpose and have referred to the difficulties, the flaws and the checks and balances. Surely, then, we cannot guarantee safety, as it might well have been compromised in some of these buildings and locations. That is very worrying for those who, in a professional capacity, have to deal with the situation. If we do not have the checks and balances in place, if procurement is poor and if we do not really have enforcement, how can we ensure that safety is not being compromised and give visitors and those living in buildings the confidence that that is the case?

Dame Judith Hackitt: It is fundamental that the system has that check and balance. Indeed, that is why I have recommended in my report not only that a building above the risk threshold that we have set—and I will say a little bit more about why we have set it at that level—must go through a gatekeeping process during construction, but that such a process needs to continue through the building’s life cycle. We have also recommended that, for existing buildings above that threshold, the regime should be applied retrospectively, and the new competent authority that we will set up, which will combine the skills of three different regulators, will conduct safety reviews of all buildings above the threshold.

The threshold that we have set in the report has been based on taking, first of all, those buildings at highest risk, as demonstrated by the evidence of where most fires and multiple fatalities have occurred. That sets the bar for the number of buildings that we will have to look at retrospectively in England at somewhere in the region of 3,000 to 5,000. However, in my view, there is every reason to lower that threshold with time. Going back to the question of how quickly we can do this, I think that if we try to do everything at once, we will never get there. We have to prioritise, look at those buildings that we are most concerned about first and then extend the regime once we have demonstrated its effectiveness. That is my view on how we have to do this.

The Convener: Does anyone else have comments?

Professor Cole: It is exactly as Dame Judith has said. We have no alternative but to have enforcement—in other words, people on site

carrying out inspections—until we have confidence that the industry is delivering this right first time.

We need to change the culture of the industry. That is a long-term process. It will not happen overnight; it will take years. In the meantime, if we cannot rely on the industry to do what has been asked of it and what has been specified, we need to have independent scrutiny. That means that clients have to invest and put in the right resources, whether that is a clerk of works, architects or independent consultants, to ensure that they are getting it right. That can be easily helped by requiring, as a standard part of the building control process, digital time-and-date-recorded certified information. I will bow to others with experience, but I do not think that that would need extra legislation. It can be part of the process now. We should insist on that information being available and ensure that we look at the high-risk issues.

In my recommendations, I have asked for compliance certification evidence documentation to be identified in advance of a project by building control. That would require evidence of various aspects of the building to be shown and digitally recorded and certified by independent experts before a building is accepted. Those extra requirements need to be put in place. That will require money, so we need to put back in the money that has been stripped out of the process. We have stripped out a lot of money that was there to protect quality, in a false economy.

Dr Stollard: Through the Building (Scotland) Act 2003 and the Fire (Scotland) Act 2005, we have the primary legislation that gives us the groundwork that we need. Through the procedural regulations under that legislation, we can cover most of those issues in a relatively short time—I suspect that we could do it significantly faster than England could do, if it needs primary legislation.

The idea of taking off a group of buildings takes us back to the inventory, which the minister talked about at the beginning of the meeting, through which we identify high-rise residential buildings. Due to the decisions that were taken in 2005 on what we would permit as cladding on those buildings, the number of buildings that have particularly dangerous cladding—I do not want to go into technical details—is significantly lower than the number in England and Wales, because they did not choose at that time to adopt the same standard that we did for buildings that have floors above 18m. One of the recommendations of my review panel is to bring that figure down from 18m to 11m, so we have the process in place.

The other thing to say about the inventory is that it is essential that it includes changes to buildings. The inventory should be a live thing; it is no use as it is today. That requires investment for the long

term. In the classic example of Grenfell, the problem was the refurbishment of the building, not the building itself.

Kevin Stewart: We cannot emphasise enough the difference that the 2005 act made in Scotland compared with the situation south of the border. It has allowed us to move on and ensure that standards continue to improve. The changes that were put in place as a result of the act are one of the reasons why we do not have the same difficulties that have arisen south of the border with aluminium composite material. As was pointed out to Andy Wightman in answer to his question, the act means that we are still able to be flexible and make changes without too much bother, whereas primary legislation takes a long time and involves a huge amount of consultation. We are in a better position in that regard, without a doubt.

On verifiers, we still have local authorities as verifiers in Scotland, whereas south of the border there is a hodgepodge. I know that the committee came under some pressure from folks to try to get me to extend verification to private bodies, but I have not done so.

We are not complacent about the 32 local authorities. As the committee is aware, I was not quite so happy with three local authorities: Glasgow City Council, the City of Edinburgh Council and Stirling Council. We are seeing improvement in Glasgow. We are seeing improvement in Edinburgh, because we have put in a team of experts to help the authority on its way. Things are holding steady in Stirling. I am getting regular updates and will continue to keep a close eye on those authorities.

11:15

One of the recommendations that is extremely important as far as I am concerned is that we ensure that we share expertise. That has not always happened to the extent that we would all like. Beyond that, it may be that expertise is not available in certain authorities. That is why the recommendation on a central hub, on which we are consulting, is a very important recommendation about the pooling of resources. The hub could not only verify design but perhaps play a part in looking at construction itself.

The convener and others have touched on record keeping. In the past, records were largely kept in a paper format, as the convener pointed out. We have moved on from that. We now have e-building standards, which allows us a degree of flexibility in moving forward with some of the recommendations that have been made.

Those are the issues that we need to look at. That is where we are. Alexander Stewart is right to

talk about risk, but we are in a much better place than is the case south of the border. We are not being complacent about any of this. We will look very closely at the consultation and the recommendations, which are pretty good, and move forward on that front.

As per usual, as we move forward we will continue to keep the committee informed about where we are.

The Convener: We welcome that, minister.

Alexander Stewart: You have all answered the questions, and the minister hit the nail on the head. We find ourselves in a stronger position in Scotland because of the quality and the checks and balances that we now have. As you have all identified, all that comes at a cost—the cost of maintaining that position and ensuring that it continues in difficult circumstances.

The minister identified a number of councils that are doing extremely well and a number that give him cause for concern—although those are now being addressed. At the same time, there is still anxiety in some communities that some local authorities are not giving the issue the priority that other authorities, which see the need for such a system, are giving it. Unless it is supported financially and unless the manner in which the business is undertaken and the attitude are right, we will not succeed. There might be more work required in some local authorities to ensure that they comply and that they make progress. At the end of the day, it is important that we have checks and balances in place but also the financial resources that can support and maintain them going forward.

Kevin Stewart: Sure—

The Convener: I apologise for interrupting, minister, because that is an important issue to raise. I am the member for Glasgow Maryhill and Springburn, where many of my constituents stay in high-rise buildings. The housing associations, of which there are several, and the fire service have been proactive and have gone out of their way to give communities and residents as much confidence as they can that where they are staying is safe, secure, looked after and well maintained. I like to put that on the record from time to time. I will pursue the issue in a terrier-like way to make sure that there is absolute safety, but we do not want to worry families who, by and large, are staying in safe, secure, well-maintained properties. I am sorry if it seems a little self-indulgent of me to say all that, but I have many constituents staying in those properties and I wanted to put that on the record.

Kevin Stewart: It is right to put that on the record. After the tragedy at Grenfell, the Scottish Fire and Rescue Service immediately carried out

inspections to ensure that people knew that they were safe in their homes. I pay tribute to the service for its efforts.

Off the top of my head, I think that hundreds of visits were carried out by the Scottish Fire and Rescue Service—more than 800, if I remember rightly; 800 is the figure that springs to mind, and I see my officials nodding. Those visits gave people confidence.

Like you, convener, I have a large number of high-rise residential buildings in my constituency. There are 59 in total in Aberdeen, of which the vast bulk are in my constituency, and I know that the meetings that took place gave folks confidence about where they were living.

As for Alexander Stewart's point about investment, one of the reasons why I agreed to raise building standards fees, which had not been raised for a number of years, was to ensure that the income was there. It is good to see that in their budgets this year, a number of local authorities are investing in planning and building standards, and I would like many more of them to do the same. It might get to the point where we have to look at ring fencing in that respect. As a Government, we really do not like ring fencing—as a councillor, I never liked it—but this is an area of business that some have neglected for too long. I hope that we do not have to do that, and I hope that local authorities recognise that they need to invest in the area. However, there is always the possibility of taking those actions if they do not.

On providing additional support, we have said all along that my building standards officials will help in whatever way they can if an authority is not performing well. Just after Grenfell, a number of authorities took up that offer—although one did not, which, in my opinion, was not very wise. Edinburgh has the expert team in at the moment, and I am glad that the authority accepted that help. It might well be that we will have to do similar things in other authorities.

That said, according to figures that I saw the other day, standards are rising in 20 local authorities; in other authorities, they are on a par with what they were previously; and, with regard to customer service, the figures for some authorities have gone down. It is very important to keep looking at the matter, and I will take all of this into account as we move forward with decisions that I will make about verifiers. However, the committee can be assured that I am not afraid to move people in to help if that is required.

Finally, I could also remove verification powers from one local authority and give them to another if we find that things are not satisfactory.

The Convener: I have a couple of questions to end with. I note that Mr Simpson wants back in, too, perhaps on a similar line.

We have talked a lot about building standards and verification. I suppose that with Grenfell the media spotlight fell on the type of cladding that had been used on the building. Members of the committee are sometimes approached by different stakeholders in the field; sometimes they are commercial stakeholders, who will—very appropriately—say, “Look—our insulation product is the best. Here’s a video of a test that shows how well it performs under lab conditions.” Another company will then come along, show us a test of its insulation product, tell us why it is the best under laboratory conditions and question others’ lab conditions.

I have gone into that level of detail because all of that leaves MSPs asking how they can be assured that the testing regime in the lab is robust, appropriate and replicates the real-life situation when a product is put on a building. It is easy to artificially produce a result that shows that something is safe in a controlled environment—well, it is maybe not easy, but it can be done. However, when the cladding or whatever is attached to a building, the experience can be very different.

When we are contacted by people telling us that a test shows that their product is the safest that it can be and is made of non-combustible or limited-combustible material, how do we know that there is a robustness in relation to the lab tests?

Dr Stollard: You pose a good question. Fire testing has a long history, going back to the second world war. In about 2000, along with European Union countries, we established a series of European harmonised tests that test for specific purposes in specific contexts. My review panel suggests that those should be the only tests that we use from now on. Since 2005, we have run two tests in parallel: the British standard tests and the European harmonised tests. That long run-off has been sufficient, and we should now use only European harmonised tests.

The tests cannot replicate the situation that will pertain in every building, because every building is slightly different. Therefore, you look for certain characteristics of materials and extrapolate from that information in a reasonable manner. For that reason, we suggest that there should be a degree of caution and that high standards should be adopted. My review panel therefore recommends that only classes A1 and A2 be used and not B, C, D and E. That is a conservative approach. You cannot guarantee that standard in every situation and you do not want to remove the ability to be flexible occasionally. Therefore, the review panel also recommends that we should allow a large-

scale test that basically involves building a three-storey section of the building and testing that on a large-scale rig.

There can be no guarantees around any of this. What you are looking at is the best that the industry can do and the best quality control. You want to have test houses that are testing properly and are subject to a regime of checking. There is a building research establishment in England that serves the United Kingdom and elsewhere. The head of testing there, Dr Debbie Smith, was one of the members of my review panel and gave her advice on how we should proceed.

What I am talking about is not perfect but it is the best that we have, and we are being deliberately cautious in the standards that we are setting to ensure that we have a margin of safety.

The Convener: For clarity, are you talking about our current standards or improved standards?

Dr Stollard: I am talking about current standards. We are going to improve the situation by recommending the use of A1 and A2 classes on floors over 11m, instead of 18m, which is the case at the moment. That is related to fire brigade jet throws. We are also extending slightly the number of building types to which that will apply. That is what we are consulting on at the moment, and it is different from what the English approved document said.

The Convener: Again, for clarity, do the A1 and A2 classes involve non-combustible—although everything burns if you bring it to a high enough temperature—and limited-combustible products?

Dr Stollard: In England, they have used “non-combustible” for A1 and “limited-combustible” for A2. However, those are not terribly useful phrases and the media uses them out of context. I prefer to use A1 and A2, because then there is a scientific test that you can check against. As you say, you must have exactly the right test furnace and exactly the right test fire.

Basically, A1 and A2 are the two lowest categories.

The Convener: I apologise to anyone who is trying to follow this.

Dr Stollard: I am trying to keep it simple.

The Convener: I understand that, and I apologise for having to get you to mirror back to me what it is that I think that I understand, because it is not straightforward and is not written down in basic, obvious and commonsense language anywhere.

I have a further question. If someone passes your A1 or A2 test, does that get them your BR 135 certificate?

Dr Stollard: No—that is more complicated.

The Convener: Oh, dear. I thought that it might be.

Dr Stollard: It sets extra conditions about fixing and assembly and how the tests are performed.

11:30

The Convener: I thought that it was worth asking those questions because the underlying issue is the question of how people are supposed to have absolute confidence in a system that they cannot understand at first glance when they read about it. We need a system that provides such confidence.

I promise that I will let Dr Stollard back in, but Dame Judith Hackitt wanted to contribute during that line of questioning.

Dame Judith Hackitt: It is also important to recognise the limitations of tests. All that the test tells us is that, if we use the materials, install them properly and do not substitute anything else at any time in the future for any of the elements, we will have a system that meets the standard. Someone can start with the right materials but, if they do not install them correctly on the building or if the building is unsuitable for them to be applied, the assurance that the test offers is meaningless, because other factors compromise the materials' performance. It is really important for us all to understand that the test says that, if the materials are installed right and all the other things are equal, the work will be okay. We need to worry about being able to assure the other things just as much as the materials that we start with.

The Convener: That is helpful. I hope that the next couple of questions will lead us to information on that.

Dr Stollard: I do not at all suggest that the tests are perfect. They are the best that we have, they have a track record and they are widely accepted in other jurisdictions. We use the best that we have, but Dame Judith Hackitt is correct that materials must be used in the way in which they are meant to be used and without circumventing requirements. There have been examples in Scotland of innocent substitution when, because the delivery time was shorter, contractors used a product that looked physically the same as another product and did not realise that it was not the same. We must be absolutely sure that what is specified is put up on the building.

Professor Cole: I go back to inspections. In test conditions, the thing is fitted and installed perfectly, with the fire stopping in exactly the right place. However, there is no requirement for a site to have a trained fire-stopping installer; such work is done by labourers, who generally come on to

the site to do things after a couple of hours' training off site. That is where the inspection comes in.

No matter what installation materials are used—whether they are combustible, non-combustible or of limited combustibility—if there are air flues that let air move up and create chimneys, that will be a problem. Unfortunately, in many examples that I have seen in inquiries, we have found the compartmentation that is supposed to stop the spread of fire to protect life and buildings, has been badly done, if it has been done at all. I go back to the point about inspecting what has been built, no matter what fire tests show.

Dame Judith Hackitt: The installers must be competent.

Professor Cole: The installers must be competent and must follow the requirements to the detail. People are building blocks of 18 storeys or whatever height up in the wind, and some guy can climb up and go off for lunch. Somebody must inspect those things, because the bigger risk is that the faults will happen in installation, rather than in the specification of materials.

The Convener: That has helped to tie together both ends of the process, but Dame Judith Hackitt referred to a bit in the middle. A product can be tested and fitted as beautifully and competently as it can be by professionals in laboratory conditions, but the issue is ensuring that it is fitted competently in the real world.

The point that has been put to me about the bit in the middle is about changing a widget on the product. The insulation might be the same, but a panel or a bit of material might be varied slightly, which dramatically changes how the installation performs, yet the same certificate is signed off somewhere down the line to say that the work is compliant. It is about ensuring the traceability of the overall product that eventually goes on to the building to make sure that it is competent and appropriate. My understanding is that desktop exercises take place where a relevant individual will look at the variation and sign it off as being appropriate without particularly knowing whether it is. Could that be the situation?

Dr Stollard: Because the A1 and A2 tests basically deal with materials, it is more about what the material is and how the panel is assembled, rather than how the assembly of components on site goes. If you are doing the full rig test, it is harder. Obviously, you are concerned about how the different layers assemble. I can offer you a little bit of comfort on the A1 and A2 tests because the product will be to that standard.

You are quite right to say that, as John Cole and Dame Judith Hackitt have said, you need to have the building built as it was intended to be built, but

the product itself is fairly sound with regard to the A1 or A2 tests. The difficulty is when you put other products that are not sound around one that is sound. The A1 or A2 standard has to apply not only to the one product but to the other products that are going around it—it has to apply to the whole thing.

On the extrapolation of desktop exercises, in Scotland, we allow verifiers to choose to depart from the basic guidance and to accept variations if the verifier is competent to do that, but that is rarer than what was happening in England, and we have said that, for the really complex fire engineering buildings, we would like to have a national hub so that the verifiers who are making those decisions are people who are at least as competent as the designers.

A difficulty arises if you get someone checking the design who is not even as knowledgeable as the designer. In my opinion, we need to have in Scotland, for the complex buildings, a hub of people who are equals in fire safety engineering.

The Convener: It certainly gives me more reassurance to know that those who are signing these things off at a desktop level have that level of competence, experience and professionalism. Dame Judith, do you want to comment?

Dame Judith Hackitt: I agree with that. You have to have people involved in the process who are competent to make the decisions that they are making. Dr Stollard is right. The use and misuse of desktop studies was identified very early on in my review, and even in my interim report I recommended that some severe restrictions be placed on the way in which desktop studies were being used in England.

The Convener: Thank you. Graham Simpson has been very patient. I should say to the witnesses that he is not always patient, but—

Graham Simpson: I was patient because you were covering the subject in admirable detail, convener.

Can I ask about the test? I think it is the BS 8414 test. The UK Government has expressed concerns about that, but Dr Stollard has suggested retaining it.

Dr Stollard: Local Authority Building Control in England is recommending in its consultation response that it would not permit it, at least as a defined test. It does not recommend an actual ban on it; it is just saying that it is not going to give it as much credence as it had. That is for England. Sorry to be complex, but it has functional standards like we do.

What we have said is that, at this stage, we are consulting on retaining it. Frankly, the tests are not done very often, as they are incredibly

expensive—you need to build a three-storey section of a building and then burn it down, because these tests are specific to a building; they are not generality tests that you use for 20 different buildings.

We have kept it in as an option simply on the advice of BRE—I mentioned Dr Debbie Smith—and because it is the best test available. If we say that we will not even permit that one, we are really closing down the doors, and we do not have even a benchmark. We are consulting on keeping it, and I will be interested to see the responses to the consultation.

Graham Simpson: Why would they not want to keep it in England?

Dr Stollard: I think that you would have to ask them that.

Graham Simpson: In May, the Prime Minister suggested that, in England, they would look to ban the use of combustible materials for cladding on high-rise buildings. We do not appear to be going down that route here, although I might be wrong.

Dr Stollard: With the exception of that one test, which may be possible. It depends on how she is using the term “combustibility”. I suspect that she means the A1 and A2 standards.

As I said earlier, I am a little uneasy about using the layman’s term “combustibility”; I would rather stick with the A1/A2 test, which is what the Ministry of Housing, Communities and Local Government is consulting on in England. It is consulting on the same thing that we are consulting on. The only difference relates to the heights of the buildings on which it will be used.

Graham Simpson: So, Scotland will end up being as safe as England.

Dr Stollard: I would argue that we are safer than England.

Dame Judith Hackitt: I think that we will end up in a very similar place as regards what cladding is allowed to be used. A consultation on cladding was announced on the same day that my final report was published. My interpretation of the current regulations and guidance in England is that they already ban anything that would be classed as “combustible”, but I agree absolutely with Dr Stollard that we must get away from such qualitative terms and refer back to real standards, such as A1 and A2.

The Convener: I should point out that it is no bad thing if we have competition in making building standards and fire safety as robust as possible. That is a good thing. I enjoyed that useful exchange about how we are taking things forward.

Andy Wightman: I will ask a few questions that have been left hanging over.

Judith, you were chair of the Health and Safety Executive, and you point out in your report that, when the HSE was introduced in the 1970s, it was considered that residential buildings should be part of that regime, but they were not included in it. Does that have any relevance to the debate as it proceeds? Is there any case for making those buildings subject to the HSE?

Dame Judith Hackitt: To clarify, section 3 of the Health and Safety at Work etc Act 1974 gave the Health and Safety Executive jurisdiction over work that affects those who are affected by work, as opposed to employers. To provide clarity on roles and responsibilities, a letter was issued by a minister at the time that said that that remit took a back seat behind building regulations as far as assuring the safety of buildings for the public was concerned.

Does the role of the HSE have a relevance? I think that it does because, as a result of that, the implementation of the construction, design and management regulations in subsequent years has not gone as far in England as has been the case in some other parts of Europe. When it comes to the boundary between building control in local authorities and the health and safety not just of employees but of the public, the regulator has held back on some of that.

The whole purpose of the proposal in my report to set up a joint competent authority for high-rise buildings is to remove that barrier and to get local authorities and the HSE to work together so that they get the right answer for everyone and we do not continue to have that delineation of responsibilities. With health and safety, where we draw the boundary between the responsibilities of one regulator and those of another is always a problem. There are numerous examples of the existence of such boundaries, but in this case the solution is fairly straightforward—we should bring the two aspects together.

Andy Wightman: Thanks very much.

Dr Stollard, in paragraph 36 of your report, you said, in the context of high-rise buildings:

“On the need for additional stairways there was no consensus amongst the Review Panel members. However the view of the chair, which was endorsed by all members of the international sub-group, was that there was a need to require at least two stairways in ... buildings ... of 18m.”

Could you explain briefly why there was no consensus? What were the issues at play?

Dr Stollard: We have a policy whereby people should stay put initially. The key word there is “initially”. People should stay put initially, but if the stay-put policy fails, people must be evacuated.

That policy has stood us in good stead for a very long time.

I am not saying that the policy is wrong. I am saying that when we build new high-rise buildings in the future, we should ensure that, if the stay-put policy does not work initially and there needs to be an evacuation, there is a choice of two staircases. That gives a level of redundancy and it permits firefighting to take place in one staircase while fire evacuation occurs in the other staircase. When I discussed that with the checking group that involved representatives from Australia, the Netherlands, Austria and the US, they were all in agreement that we should be doing that.

11:45

Andy Wightman: Why was there not a consensus among the review panel members on that question?

Dr Stollard: Some took the conservative view that, because the policy has not failed in Scotland, we should leave it as it is. However, having seen the failure at Grenfell, and the fact that the fire brigade had not trained or prepared for what to do after the stay-put period—if the initial stay-put policy does not work, people need to evacuate—we should, out of common sense, prepare for such events.

Kevin Stewart: Thus far, the consultation on the two-staircase issue shows that folk are in favour of two staircases, in principle. That gives a flavour of what has come back from the engagement.

Dr Stollard: We are talking about the policy only for buildings that are above the level at which high-reach appliances from the fire brigade cannot be used to lift people off.

Andy Wightman: Dame Judith Hackitt talked about a more effective testing regime for construction products and labelling, and we have talked quite a bit about product traceability and the testing regime. What issues are involved in that? I recollect that some of the conversation around Grenfell related to the fact that a lot of the material comes from all over the world. There is a very complex supply chain. Sometimes something that is certified looks the same as something else, as Dr Stollard said. The new regime seems quite ambitious and I am sure that it would be good, but we are dealing with international supply chains and products from outwith the European Union, and we will not be part of the EU. How will the regime work? Is it achievable?

Dame Judith Hackitt: I think that it is. I was referring to something that we have already talked about: one test at one point in time of a given set of materials is then used extensively by the

industry to market that product for many years. It seems to me that, in any other industry sector, we would not simply rely on a test that was done at one point in time. Instead, we would try to verify that the materials still perform as was the case at the time of the test. As you say, with complex supply chains and materials coming in from other parts of the world, we do not have to worry only about substitution that takes place on site; we also have to worry about whether substitution that has not been declared has happened elsewhere in the supply chain. Ultimately, the only way to find that out is to instigate a system of periodic random testing of products. However, that has to be coupled with traceability, because if we discover a failure, we need to be able to trace where the product has gone in the same way as happens in the automobile industry: if a failure is discovered, a product recall is instigated to fix the problem.

Andy Wightman: That is helpful.

Professor Cole: A model of practice that is used increasingly in procurement is design by subcontractors, in which portions of a building are not designed at the initial stage when the building warrant is granted. Subsequently, subcontractors take on the design of an element of a building—it could be the cladding system or the windows system. The problem is that, if at that point there is not somebody who has designed the whole building—the conductor of the orchestra—and knows how all the pieces work together, we can find pieces that do not work together. The problems are generally in the boundaries where two different elements of the building meet.

A phenomenon has developed in which risk is pushed down the line. People go out and seek tighter and tighter tenders from different subcontractors, and quite often they ask them to substitute materials without proper approval or an overall holistic view of how the integrated system works. The elements themselves might all be fine, but how they go together and impact on one another is important.

As I said, the compartmentation issue in particular is key. There is an issue over how a procurement process can create extra risks by separating the elements into individual design packages, so that the total overall package is lost.

In the older model of procurement, the architect was responsible for ensuring that all the elements worked together. That would be part of the original design intent, produced in the warrant drawings. That can often be lost by sub-contractor design of little elements. The subcontractor can ignore the elements next to him and do his own bit.

The Convener: There are no more questions from committee members. Before I end this session, does anyone have any additional

information or comments that they wanted to place on the public record?

Professor Cole: I want to raise a small point, without making too much of it. The current system in Scotland does not require the person who signs a completion certificate to have any competence whatsoever. It can be anybody. Unfortunately, that means that the process of producing a completion certificate, which is supposed to confirm to building control that the building is fully compliant, can be done by somebody who would not know a nail from a screw.

We should reprofessionalise that process, to provide the needed checks and balances. Those have been lost in the system, to some degree. The system allows somebody who has no qualifications, no knowledge that the building is compliant and probably has not been on the site to sign the certificate and provide it to building control. That needs to be looked at.

The Convener: I thank everyone for coming this morning. I have said on several occasions that we never intended to second guess the scrutiny that has been taking place in the ministerial working group, Dame Judith Hackitt's review group down south or Professor Cole's and Dr Stollard's groups. We are engaged in a proactive, constructive additional layer of scrutiny, to keep a watching eye on progress.

This morning's meeting has been a useful discussion of the issues that underpin the challenges that face us.

17:52

Meeting suspended.

11:54

On resuming—

Subordinate Legislation

Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 [Draft]

The Convener: Agenda item 3 is subordinate legislation. The committee will now take evidence on a draft statutory instrument. I welcome back Kevin Stewart, the Minister for Local Government, Housing and Planning—this is a marathon session for you, minister—who is joined by Simon Roberts, policy manager, housing standards and quality, from the Scottish Government.

The instrument has been laid under the affirmative procedure, which means that the Parliament must approve it before the provisions can come into force. Following this evidence session, under the next agenda item the committee will be invited to consider a motion to approve the instrument. The Delegated Powers and Law Reform Committee has reported on the instrument and did not draw it to the Parliament's attention on any of its reporting grounds.

I invite the minister to make a short opening statement.

Kevin Stewart: Thank you for the opportunity to speak to the motion to approve the regulations.

When we introduced missing share powers for local authorities in the Housing (Scotland) Act 2014, we also introduced a power, subject to consultation, to extend those powers to registered social landlords. There are situations in which a social landlord is the owner of some but not all of the flats in a tenement and requires the co-operation of other owners to carry out essential work to repair and maintain the common parts of the tenement. We know that owners are not always able or willing to co-operate in common works and that that problem can lead to deterioration in the condition of the building, which has a direct impact on the living conditions of the social landlord's tenants who live there.

Under the existing provisions of the Tenements (Scotland) Act 2004, a registered social landlord has a right, as do other owners, to participate in the majority decision-making process set out in the tenement management scheme. If the RSL owns a majority of the flats or can form a majority with some of the other owners, work to repair or maintain common parts can go ahead, but if an owner cannot or will not pay their share of the costs, the RSL is in the difficult position of using tenants' money to pay for owners' shares if its constitution or covenant allows it to do so.

Alternatively, of course, it can leave the repairs and maintenance work undone.

The regulations should help in some cases by providing a more effective route to get owners to pay for their share of common works. They allow a registered social landlord to enforce a majority decision by creating a repayment charge, which is a form of security that is recorded in the land register against title deeds. The landlord can seek to recover the charge in instalments from the owner in question over a period of five to 30 years and the security means that the owner will be obliged to pay their share of the cost before they can sell their home to another person.

This is not a solution for every case. It will not help if the landlord cannot get a majority in favour of works or if the value of the owner's flat is so low that their equity does not cover a charge. However, it will be a useful additional tool for landlords who are looking to repair and maintain buildings in which they have a share.

I am happy to take any questions that members might have.

Andy Wightman: Why have you introduced the regulations? Is it against a background of social landlords wanting them? If so, what is the scale of the problem that could be addressed by the regulations?

Kevin Stewart: It would be fair to say that there are mixed opinions among registered social landlords about the proposal. Some say that they would use the power and others say that they would never do so. The regulations are intended to give folks the flexibility to use the power if they want to do so.

When we previously discussed the issue of missing shares in the context of local authorities, I said that I would extend the power to registered social landlords, and that is what I am doing. I am not forcing folk to use the power, but I want folks who want to have it to be able to use it.

12:00

Andy Wightman: Is there practical evidence of where it would be useful?

Kevin Stewart: We have only to look at what local authorities have done. A number of local authorities are making use of the missing share power and, as I have previously pointed out, a number of them are not. So far, eight local authorities have a missing share policy in place, and seven of them—South Ayrshire Council, Glasgow City Council, the City of Edinburgh Council, Dundee City Council, Aberdeen City Council, East Lothian Council and East Renfrewshire Council—have used the power. Inverclyde Council has put the policy in place, but

it has not used the missing share power. I want to give registered social landlords in other places, perhaps where the missing share power has not been used, the ability to use it if they wish to do so.

The Convener: I call Mr Simpson.

Graham Simpson: Convener, I just want to make a comment, if that is okay.

The Convener: You can do so now, but I should note that you will also have an opportunity to do so under item 4, which is the debate on the regulations.

Graham Simpson: I will make it whenever appropriate.

The Convener: Why not make it just now?

Graham Simpson: Okay.

I think that the regulations are important, because, as the minister has said, they give registered social landlords this power. They do not have to use it, but at least they will have it. As everyone in the room should know, there is an issue with the maintenance of tenements; indeed, that is why the Parliament has a tenement maintenance working group, which is working closely with the minister. The new regulations are just part of the picture, but they are an important part. When I made a freedom of information request on the issue to local authorities, I came up with 10 that had used the missing share power. That is still a minority, but at least they have the power. It is important that registered social landlords have it, too, because it is vital that we bring our buildings up to scratch instead of allowing them to deteriorate. I am certainly in favour of the regulations.

The Convener: I guess that if you had said, "Do you agree, minister?", it would have become a question.

Kevin Stewart: I welcome Mr Simpson's comments. The regulations are just another tool in the box that folks can choose to use. I wish that more local authorities were using the missing share power than is currently the case, and we will continue to try to persuade folk. In using it, some local authorities have seen the advantage of it. Quite often, it is not even the use of the power but the threat of using it that can change attitudes. I have seen that happen, and I am sure that others have, too. I am sure that the scenario will be the same if we give RSLs this power. It might move folk towards thinking differently as we move forward, and it might be that the threat of using the power rather than its actual use will make the difference.

Mr Simpson mentioned the cross-party working group, and as I have said in Parliament, I will work

closely with it. We all recognise that there is work to be done with regard to repairs in tenement buildings. I do not think that these regulations are the panacea for everything, but they are another tool in the box.

The Convener: Thank you, minister. As there are no more questions, we move to item 4, which is formal consideration of motion S5M-12905. Only the minister and members may speak in the debate.

Motion moved,

That the Local Government and Communities Committee recommends that the Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 [draft] be approved.—[Kevin Stewart]

The Convener: I should say that there is no requirement to have a debate on the motion, but the opportunity is available for members to make any additional comments.

Minister, would you like to respond to the wealth of points that were made in that dynamic debate?

Kevin Stewart: No, thank you, convener.

Motion agreed to.

The Convener: I thank the minister and Mr Roberts. The committee will report on the outcome of its consideration of the instrument shortly.

As previously agreed, we now move into private session for agenda item 5.

12:05

Meeting continued in private until 12:25.

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