



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Local Government, Housing and Planning Committee

Tuesday 23 January 2024

Session 6



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Pàrlamaid na h-Alba

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**LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE**  
**3<sup>rd</sup> Meeting 2024, Session 6**

**CONVENER**

\*Ariane Burgess (Highlands and Islands) (Green)

**DEPUTY CONVENER**

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

**COMMITTEE MEMBERS**

\*Miles Briggs (Lothian) (Con)

\*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

\*Pam Gosal (West Scotland) (Con)

Mark Griffin (Central Scotland) (Lab)

\*Marie McNair (Clydebank and Milngavie) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Stephen Andrew (Taylor Wimpey plc)

Chris Ashurst (High Rise Scotland Action Group)

Sean Clerkin (Scottish Tenants Organisation)

Julie Jackson (Miller Homes Ltd)

Perry Jenkins

David Jones (Queensborough Owners and Residents Association)

Fionna Kell (Homes for Scotland)

John Low (Robertson Homes Ltd)

Alan Millar

Stefano Pessina (Mizu Tenants Committee)

Jodi Terras

Paul Turnbull (Cladding Working Group)

Kieran Walker (Barratt Developments plc)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Local Government, Housing and Planning Committee

Tuesday 23 January 2024

*[The Convener opened the meeting at 09:05]*

### Housing (Cladding Remediation) (Scotland) Bill: Stage 1

**The Convener (Ariane Burgess):** Good morning and welcome to the third meeting in 2024 of the Local Government, Housing and Planning Committee. Apologies have been received from Mark Griffin. I remind all members and witnesses to ensure that their devices are on silent during the meeting—she says, turning off her device.

The first item on our agenda is to take evidence from two panels of witnesses, in the form of round-table sessions, on the Housing (Cladding Remediation) (Scotland) Bill. On our first panel, we have with us in the room David Jones, who is a senior associate at Taylor & Martin and a representative of Queensborough Owners and Residents Association; Chris Ashurst, who is the group co-ordinator of the High Rise Scotland Action Group; Sean Clerkin, who is a representative of the Scottish Tenants Organisation; Alan Millar, who is an owner of affected property; Stefano Pessina, who is a representative of Mizu Tenants Committee; Jodi Terras, who is an owner of affected property; and Perry Jenkins, who is an owner of affected property. We are joined online by Paul Turnbull, who is a representative of the Cladding Working Group. I welcome everybody to the meeting.

I will begin our conversation by inviting everyone to briefly introduce themselves. I am an MSP for the Highlands and Islands and the convener of the Local Government, Housing and Planning Committee.

**Perry Jenkins:** I am an owner of a rather beautiful property in the north of Edinburgh that is part of a £100 million development. It is a sizeable development of 278 dwellings. However, I am now an accidental landlord, as I moved from that development some two and a half years ago. I now stay in Perthshire.

**Stefano Pessina (Mizu Tenants Committee):** I am representing the Mizu committee. The Mizu development is made up of 44 properties in Finnieston in Glasgow.

**Marie McNair (Clydebank and Milngavie) (SNP):** I represent the Clydebank and Milngavie constituency.

**Sean Clerkin (Scottish Tenants Organisation):** I am from the Scottish Tenants Organisation. I am representing local authority and housing association tenants who live in tower blocks.

**Jodi Terras:** I am an owner of a property in Glasgow that is affected by the issue, and I live in Kilmarnock. I have been trying to sell since the summer of 2019. I have probably met every kind of stakeholder you would want to know in this process.

**Miles Briggs (Lothian) (Con):** I am an MSP for Lothian region.

**Alan Millar:** I am a home owner in Glasgow who currently cannot sell or move on.

**David Jones (Queensborough Owners and Residents Association):** I am a senior associate at Taylor & Martin, property factors, and I am also representing the Queensborough Owners and Residents Association.

**Chris Ashurst (High Rise Scotland Action Group):** I lead the High Rise Scotland Action Group, which is made up of various owners across Scotland.

**The Convener:** Thank you very much. We will now go to our online participants. Willie Coffey, would you like to start?

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Hi folks. I am the member of the Scottish Parliament for Kilmarnock and Irvine Valley.

**Paul Turnbull (Cladding Working Group):** I am a member of the Cladding Working Group, which is a small group of owners. Three or four of us have been working on the issue for four years, but we have the support of the majority of owners in our building.

**Stephanie Callaghan (Uddingston and Bellshill) (SNP):** Good morning. I am the MSP for Uddingston and Bellshill constituency in Lanarkshire.

**The Convener:** Thank you. We now proceed to questions from members. I ask the witnesses to indicate to me if they would like to respond to a question or to something that someone else has said. As Paul Turnbull is participating virtually, I ask him to do that by typing an R in the chat function. I ask my colleagues Stephanie Callaghan and Willie Coffey to do that, too.

The intention is that this should be a free-flowing conversation rather than a question-and-answer session. We will see how we do with that. We have quite a few questions and prompts. There is

no need for you to manually turn on your microphones, as we will do that for you.

I will begin. I have a few questions, one of which is a big question about the bill. Chris Ashurst, I will direct it at you initially, so that you pay attention when I ask it. The Scottish Government has not publicly consulted on the proposals in the bill. Given that, do you think that the bill addresses the concerns that owners and residents have been raising with the Scottish Government over the past few years?

**Chris Ashurst:** I think that the bill is a really good attempt at seeking to address those concerns. Whether it actually addresses them all is a moot point. I have read some of the responses that the committee has had from owners, some of which are quite reasoned and helpful, which pick up on quite a few issues that are of concern to them. Clarification is needed on those issues, because there is more confusion than clarity at the moment—in particular, for example, with regard to what should be included. That comes down to working out the single building assessment guidelines that will need to be agreed with the banks and so on. We have been up and down.

Builders and owners have commented to me that the project has grown legs. It started off by looking only at external cladding, but the December 2021 Scottish advice note, in particular, introduced the whole concept of a holistic approach in quite a bold way. Now, owners are thinking, “Hold on—we’ve got a carport. I thought we were talking about that.” Clarification is needed. The lack of clarity is causing frustration and anger for people, and it is causing concern for the builders as well. That is one of the big issues that needs to be nailed.

**The Convener:** You say that the scope has grown arms and legs, and you identified a couple of examples of that. We will explore that further as we go on. Do you think that speedy progress on cladding remediation is dependent on the bill, or are there things that could be done now to get on with the job?

**Chris Ashurst:** That is difficult to answer, because the builders are caught between the devil and the deep blue sea when it comes to what to agree, and the builders need to be involved. In my view, we also need the resources and the people to do the work. We could have the very best plan—we could sit here today and say, “This bill absolutely nails it”—but if we do not have the people or the resources to do it, it will not happen. My concern is that, given the number of buildings across Scotland that we are talking about, the number of assessors who are making themselves available, or who are even qualified to do the work, is insufficient. That needs to be addressed very quickly, otherwise we will not go anywhere.

In addition, the emphasis has been on “remediation”—that is the word that you see everywhere. It is even in the title of the bill, is it not?

**The Convener:** Yes.

**Chris Ashurst:** That is understandable, but there are some issues that could be dealt with by mitigation rather than remediation, which would not involve huge costs. There needs to be more clarity on that and on what we are trying to do. People have lived in buildings with risk for thousands of years.

**The Convener:** Yes, that is a very good point. Sean Clerkin wants to come in.

09:15

**Sean Clerkin:** I disagree with Chris Ashurst on that latter aspect. People might have lived in buildings for thousands of years, but the precautionary principle should be the thing that guides us all. Essentially, it should be about the life safety of tenants and home owners. The fact of the matter is that the bill is very narrow in its focus. It focuses only on tower blocks that were built between 1992 and the present day. It does not go back beyond 1992. In Glasgow, where I live, there are tower blocks that go back to the 1960s and 1970s that need to be looked at.

Social tenants have been largely ignored in the whole exercise. All the way through, the Scottish Government’s focus has always been on home owners. There has been very little focus on the safety of social tenants, who—especially in the west of Scotland—live in loads of tower blocks that have fire safety and cladding issues.

Last but not least, the concentration in the bill is only on aluminium composite material cladding. It is not on non-ACM cladding, such as high-pressure laminate cladding, which is as dangerous as ACM. The scope of the bill needs to be far wider and far bigger. The Scottish Government now has £400 million from the Treasury to look at the issue. What has it spent? It has spent £4.5 million over the past seven years.

You mentioned the speed of the process. The remediation in Scotland is absolutely hopeless—one tower block has been remediated and another is undergoing mitigation work. In England, Gove and the Government down there have helped to remediate 634 tower blocks over 18m high. That includes 212 non-ACM buildings, as well as 422 ACM buildings, so non-ACM cladding has been tackled south of the border. There has been very little progress up here. It is very poor indeed.

**The Convener:** You made an interesting point about the bill’s scope covering buildings from 1992 to today and the fact that some of the buildings are

older and were built in the 1960s. Do those buildings have non-ACM cladding, too, or is it a contemporary issue?

**Sean Clerkin:** I think that North Lanarkshire, for example, has 33 of the 95 tower blocks with high-pressure laminate cladding in Scotland. A study in the *Journal of Hazardous Materials* said that HPL cladding materials release heat 25 times faster and release 115 times more heat than non-combustible products. Rockwool, which is a company that provides a lot of the non-combustible cladding and insulation, does not want any of its products to be associated with HPL cladding. In 2020, it said to the equivalent of this committee in the House of Commons that all the materials in HPL cladding are combustible by nature and have a poor “reaction to fire” performance. It recommended that the Government should urgently get building owners to remove all HPL cladding from high-rise and high-risk buildings.

HPL cladding is highly combustible. The expert panel down south and the equivalent panel up here said that HPL cladding is not as dangerous as ACM cladding, but the fact of the matter is that the fire test that that view was based on—the BS8414 test—has now largely been rubbished by many experts. Even the Fire Protection Association said that it could not give an end-use performance based on the cladding passing that test. Dr Barbara Lane said that the test is very different from real life. She is an architect and works with real-life buildings, whereas, in the overprotected fire test, every mitigation is used and everything is done to try to allow the manufacturers to pass. In fact, HPL cladding is highly dangerous and highly toxic, and, as I said, it is in 95 tower blocks in Scotland.

**The Convener:** Does anyone else want to come in on the question of whether the bill addresses the concerns or on the issue relating to speedy progress?

**Jodi Terras:** I will give my opinion as an owner of what has been called an orphan building, although we have never been officially told that that is the terminology that is used. Through Chris Ashurst, a call was organised with the head of the cladding unit back in December 2020, during lockdown. At that time, it was spelled out what the legislation would be, that that would be the fifth and final step for the unit, that much more immediate work needed to be done on the proof of concept for the pilot and that, ultimately, the money that was mentioned would be spent on orphan buildings.

During that time, we never had any official engagement with the unit. Through cabinet secretary inquiries, I got a response last December to say that the unit was engaging with

our factor to appoint an inspection. In the summer of 2023, we found out, through the factor’s annual reports, that an inspection was done in spring 2022. We do not have an owners group constituted. We own an orphan building. The crux of the legislation was meant to tick all those boxes. This was meant to be a sweep-up exercise after the pilot was concluded, but I do not see much that could do anything for us in the immediate term.

I will qualify my input by saying that I work for Glasgow City Council on its housing strategy and housing-led regeneration. In my day job, I have to engage with every area of public service, from health and social care to planning and education. What I said to the guy back in December—in whichever year it was—was that legislation does not really matter; engagement with the people involved in the pilot was the immediate action that was needed. If you name an area of public service, you have it, whether it be a team around the child so as to get it right for every child, or community-based regeneration. Hats off to Chris Ashurst for the work of his grass-roots action group, but it should not be suggested that what happened was meaningful engagement—that just would not come to the table in my line of work.

**The Convener:** Thanks very much for sharing your perspective. It is very helpful to hear about orphan buildings and the lack of engagement.

**Perry Jenkins:** Thank you for the invitation to attend today. Having followed the issue in real detail for the first couple of years, I do not doubt how complex and multifaceted the challenge is for everybody who is working on it. It is a toughie, for sure.

I know that you want us to focus predominantly on the bill, so I will build on Jodi Terras’s comments. I established and run, as an administrator, various community groups for our development. As I mentioned, the development includes 278 dwellings, and the community group, which talks to both tenants and owners, has about 215 members.

My sense is that the bill does not deliver a sigh of relief or a fist pump. It is legalese, but it is welcome, because it talks about taking a tangible step forward towards, I hope, addressing this highly complex issue. Obviously, each development is unique in its own right, but does the bill address the key concerns of owners? Not really, until there is proof. The owners who followed the Scottish Government’s work on cladding had an expectation. On Jodi Terras’s point, the pilot scheme was heralded, with people saying, “Fantastic. It all works. We’re now ready to scale up.” I think that those were the comments that were made in questions in the Parliament. Quite clearly, that is not the case. Sean Clerkin

talked about the number of buildings that have been tangibly remediated in all the time that the issue has been worked on. Clearly, there are gaps in the pilot.

Jodi Terras talked about the lack of engagement. It is welcome that there is now more widespread public engagement by the good folk in this room. Organisations were established with, no doubt, good intentions, on the premise of representing owners across Scotland and maintaining a line of sight on the Scottish Government's work through communications, but, unfortunately, it seems to me that a lot of the feedback, a lot of which was quite challenging and direct, has simply been ignored, or it might have been filtered in translation. I do not know. The communication—the feedback loop—with citizens who are impacted needs to be significantly broadened to ensure that you good folk get the right messages about what is important to owners and, indeed, residents.

For example, it can cost thousands of pounds to obtain an EWS—external wall system—1 certificate, which means that people such as Alan Millar are trapped and cannot move out. That is a real challenge. At the time, there was a dearth of guidance about how one could go about getting that document—a piece of paper—which can cost up to £3,000.

There are also issues with moving, mortgaging, buying, selling and—certainly for the development in which I am an owner—insurance. For two years, the £100 million development has not been insured, and the reasons that are given for its not being insured simply do not cut the mustard, given that two adjacent sizeable developments continue to enjoy insurance. That points to something having gone badly wrong.

Citizens rightly feel aggrieved that those things have not been looked into forensically. Those are the real issues that need to be solved. What is contained in the bill is fantastic, from a legal standpoint, in relation to taking significant steps forward, but would citizens fly the flag for it and say, "Thank you very much"? At the moment, I am not sure.

**The Convener:** I want to clarify something. Are the two adjacent buildings that have insurance of a similar size and design to your development?

**Perry Jenkins:** They are a similar size. Some of our questions are answered and some are rebuffed, but the owners have been told that the reason is to do with the different construction of the development. The custodians of the development have been changing tack in relation to the reasons why it is no longer insured. That poses a significant risk to this day. Owners do not know how many of the units have been insured

individually, and that is after a period of two to three months when there was no insurance whatsoever.

We have had storm Isha, and another storm is hot on its heels. If a roof were to be ripped off, how the repairs would be paid for would be debatable. I am not entirely convinced that the construction of the two other developments—the convener has visited the area—is significantly different. About three years ago, I went around with a fire expert, Paul Nelis, who pulled out expandable foam from an adjacent development, and the existence of such material was, supposedly, one of the reasons why Aviva, the insurer that was lined up to insure my development, decided to withdraw its offer.

**The Convener:** I will bring in Paul Turnbull. A number of questions have been asked, but I will roll in another one, given that you are from the cladding working group. In addition to the bill addressing concerns, what actions could be taken now? Chris Ashurst said that the bill is growing arms and legs. I am interested in your thoughts on whether the bill should focus solely on cladding remediation or whether it should be extended to cover all fire safety issues or even all significant building safety matters.

**Paul Turnbull:** Thank you for inviting me to the meeting. We welcome the bill, which includes a number of quite useful steps. For example, it will prevent individuals from disrupting progress that would benefit the majority, including those who might be disruptive. It will therefore increase speed, but I do not think that it is the critical thing for increasing speed. It will also remove the ability of any one individual to veto any activity. Given that some people argue that such changes are an improvement to a building, the deeds quite often require that there be unanimous agreement to a change. The bill will remove the ability of one person to apply a veto, which is great.

09:30

I am pleased that developers will be forced to accept their responsibilities. In our case, it is very clear exactly what has happened, but we cannot see how to get any legal redress. The bill will bring in developers in a practical way when the legal route has failed. That emphasises to me that the current enforcement regime does not cut the mustard at all. Why are we in this situation? Why can we not get developers to sort this out without having to go through all this activity?

I quite like the list of buildings that the bill includes. It will give lenders a single source of reference for determining the status of a building, which should maintain conformity of process.

However, we would like all this to go a lot faster. It looks as though the issues will take years to



resolve. Our SBA was one of the first—if not the first—to be completed, in September 2022. We have had absolutely no progress since then—none at all. I hear that another building has been remediated, so it is interesting that it has progressed from an SBA to completion whereas we have seen nothing.

I struggle to understand what the position is with lenders now. The Scottish Government will remediate the buildings, either through forcing developers to step up or by using the funding that it has from Westminster, so what are the issues for lenders? Why are they not lending? Their security is fine now. I know that they are private companies, but they are regulated.

**The Convener:** I will pause there because you are opening up more questions and we will go into them in more detail later. I appreciate what you have said so far and it is good to hear that you welcome the bill. I am interested to hear whether you think that the bill should be solely focused on cladding remediation or does it need to cover all fire safety issues?

**Paul Turnbull:** There are other buildings around that are multi-occupancy and they have their own issues. I agree with Chris Ashurst that we live in situations where the status and safety of buildings change over time. The more obvious things need to be sorted, but do you have to fix them all? If you investigated any building, you would find some problems. It might be difficult for the Government, because if you say that it is okay not to do this, what does that mean for your regulations? I can see the conundrum. If you say it is okay not to do something, everybody does not do it.

**Stefano Pessina:** As some general feedback on the bill, I agree with other witnesses about the idea of the list. The single building assessment has the right sentiment, so I welcome that. Parts of the bill are quite logical and detailed, so that is good to see. It is good that it contains steps to stop residents who are owners who are perhaps blocking progress at the moment, so I also welcome that.

What is still missing from the bill or where there is no detail is on Chris Ashurst's point about the resources to undertake all those single building assessments. There will be a lot of work to do. Who will do it all? The bill does not really reflect on when all that work will commence. It seems to lay the foundations, which is good, but 90 per cent of the work will still have to be done after that. It is a good first step but it does not feel as though it will remediate issues for owners quickly.

A couple of witnesses have mentioned orphan buildings. The Mizu development is an orphan building. The bill outlines the Scottish

Government's strategy, which is to make developers, where they are still functioning, pay to remediate any issues. However, orphan developments that have no developers are just waiting for help, and there is no one else that can help us. No one in our development, and probably in plenty other developments, is blocking progress. We would welcome with open arms being on an SBA scheme. The bill does not seem to go quickly or far enough for orphan buildings.

The final point that I will make is about insurers and lenders. Our building has been lucky enough to continue to get buildings insurance. However, each owner is paying £2,000 per annum, which is a very high amount. It went up by 10 per cent this year; it might go up by another 10 per cent next year. However, at least we have buildings insurance where other buildings do not.

On the list and SBA with the insurers and lenders, I am interested to learn how the Scottish Government will hold insurers and lenders to account to make sure that they recognise the value or the legal standing of the SBA and the list that will be compiled. If those two groups of organisations do not do that, it will not help people to buy and sell properties or to get insurance for them.

**David Jones:** Moving on from one of Stefano Pessina's points about insurers and lenders recognising the single building assessment, is there actually a structured format to it? One of the issues that we have had with the EWS 1 form previously is that it does not always necessarily state exactly what the cladding or the infill system is. That is more directed at lenders, so insurers do not always recognise that. Is there a structure in place where all this will be mentioned in the single building assessment so that insurers can also utilise that information, which will hopefully help with buildings such as the Mizu building?

On the point about whether the bill should respond to broader fire safety issues in buildings, as Chris Ashurst said, it could grow arms and legs by looking at other elements of the building. Other aspects should be looked at, such as any buildings that have a communal gas supply. Essentially, there is a utility asset manager who has to survey the buildings and make sure that they are compliant. Does the funding that is being offered by the Scottish Government also extend to remediation works for that? That would have quite a big knock-on effect on the fire safety of the building. I understand that we cannot look at every small point, but that is quite a large item that should be addressed, if it is not already, in the future.

**The Convener:** That is very helpful. It is about where you draw the line. If you draw the line too tightly, you might miss something that has a

critical knock-on effect, as you say. Alan Millar wants to come in.

**Alan Millar:** I must have emailed the cladding team about a hundred times. My MSPs, constituency and area, have all emailed. At no point have any of the responses been that we need legislation to do X or Y. They always say, “We are trying to procure a survey” or, “We do not know”. If this legislation is to address the issues, I do not think that is what the cladding team on the ground are seeing. Otherwise they would simply say, “We need the power to do X or Y”. That might be because our building is an orphan, but that is my experience.

The second point is that when we talk about growing arms and legs, England has managed to remediate 600 or so using the EWS 1 system. I am slightly at a loss as to why we have tried to complicate it and make it more far reaching. If you simply got a fire safety assessor to look at that EWS and make a proposal, I imagine that you could get the work done in some of these buildings within about a fortnight. People obviously know how to fix the issues that have been raised. We have just created a monster here—where do you stop? It sounds a bit like people have bitten off more than they can chew because there is a way to do it, a way to fix it, but it looks like we have just ignored that and tried to be a bit smarter.

**The Convener:** I wonder about the different legal contexts—I do not know enough about that.

**Alan Millar:** My understanding is that, in Scotland, the EWS 1 is done by an individual owner. In England it is done on the building because it is leasehold versus freehold. The actual premise of the EWS 1 form is that if the building does not meet a certain standard, you must do X to fix it, essentially. If you just applied that to Scotland, notwithstanding the leasehold-freehold thing, you could simply put in place a solution to make the building compliant, to unlock the market and to fix things. If I am wrong someone can correct me, but that is my understanding.

**The Convener:** Does anybody else want to come in on that? David Jones can go first and then Chris Ashurst. A lot of hands went up, so if someone else gives the answer that you were going to give, let me know and I will not come to you. Pam Gosal, I will weave your question into the next round of pulling people in. Do you still want to ask it?

**Pam Gosal (West Scotland) (Con):** No; that is fine. I will go on to question 4 because my first question has been answered. Thank you.

**The Convener:** The question is about the assurance register. I will go with David Jones first and then Chris Ashurst, and then I will bring Pam Gosal in with her question. Pam, you can kick off

with Perry Jenkins, who is at the top of my stack and when Pam Gosal asks her question, Perry, you can weave it in to your answer on this question.

**David Jones:** A number of the concerns that have been raised are about speed, the progress that is being made and the surveys that are being undertaken on buildings now. I understand that the Scottish Government is outsourcing those surveys to external contractors. The problem is that the pool of contractors is very small because they struggle to get indemnity insurance. A number of the large surveying firms feel that it is not worth the risk to undertake such surveys. How is the Scottish Government sourcing contractors? Is there a vetting process? How many contractors are utilising the services to do that to speed up the process? Has there been some mapping of how many surveys can be done and the timeframe by which they can be completed? How do you also ensure that there are no errors? For example, one of the developments that is under our management has had conflicting reports from two well-established surveyors whose names you would know, leaving the developments in a difficult situation where one report says it is fine, but the other report says it is not. Lenders and insurers will just say, “We will go with the safe option and say it is not”. How do you avoid that situation if you are just going to the same contractors?

**The Convener:** Thanks for that. Those are very practical ideas about the mapping process.

**Chris Ashurst:** On the point that Sean Clerkin made about ACM, in the Scottish advice note that was issued in December 2022, the only bit that is in bold in the text other than the headings says that this is a safety of life issue. That is what it is about. It develops in the regime that they wish to impose on people undertaking the assessments, and there is a procedure laid down.

The advice note refers to other materials. The buildings that Perry Jenkins and I are in do not have ACM. Our cladding is fine. However, they do have expanded polystyrene. The instruction to the people undertaking the surveys at the moment, based on that Scottish advice note of December 2022, is that if the building has EPS in it as well as other listed materials, that is definitely a fail.

I have spoken with the surveyor and he says, “I do not have anywhere to go. That is what is written down at the moment. That is what I have to do”. So the advice note also extends beyond ACM into other areas.

On the insurance point, I was speaking to an owner yesterday and this morning. The committee might be interested to know that one of the more substantial builders has made a contribution to the insurance costs at a building where they are

undertaking remediation. I can give you details of that later, should you want them. I found that helpful to know and I think that it is something that should be pursued. It might help to unlock some of the insurance issues.

The Hackitt report speaks of a “golden thread”. When work is done now, there ought to be a trace-back of what is in the building. We have talked about giving buildings MOTs so that we know what is in them. That has been a huge problem in Scotland, but the work that is being undertaken now needs to be incorporated into the golden thread for each building so that you know what has happened, what has changed and, indeed, what the roots of that were.

The EWS 1 form in England was designed by the Royal Institution of Chartered Surveyors and the form is clear that it was to be used on buildings, not individual flats. You cannot assess the risk to a property such as a flat without taking into account the surrounding buildings that affect it. It was a fix. It was a pragmatic response in Scotland, “Okay, we will get one done for each flat”. Nevertheless, the underlying survey should have included the whole building.

On the way in which work is being placed, I understand that the Government is using a procurement agency or organisation at the moment. That has been a fairly recent development. There is a process through that organisation.

09:45

**The Convener:** Great. Thanks for bringing in those clarifying points. I will bring in Pam Gosal with her question, which will be directed to Perry Jenkins, and then we will see where we go. Then I will come to Sean Clerkin.

**Pam Gosal:** Good morning, panel members. One of my constituents owns a buy-to-let property in a building that was included in the post-Grenfell pilot programme run by the Scottish Government to reclad buildings. Although the factor has been proactive in engaging with residents, the developer has not been co-operative. The impact of that is that numerous flats in the block have been repossessed, pushing the insurance cover for the building sky-high, and residents and landlords are unable to sell their properties, because new mortgages will not be issued to potential buyers due to the on-going cladding issue. Will the establishment of a cladding assurance register assist in resolving issues with acquiring building insurance or a mortgage for affected structures?

**Perry Jenkins:** On reflection, without the agreement and endorsement of the key stakeholders, the question should really be, “Why

should they?”. For a lot of this, over the years of some no doubt fantastic work, it seems to me that there have been very welcome soundings and platitudes from the key stakeholders—UK Financial Investments, the Association of British Insurers, RICS and so on—but I have never seen a real public endorsement from them saying, “Deliver this, Scot Gov, and we will follow through and fulfil our obligations”. It is a dangerous place to be.

For many years, I worked in project management and product management. You can have a stakeholder group around the table, and they will nod, agree and make all the right noises, but when it comes to a document being circulated and your saying, “Here it is. Do you approve?”, they say, “Whoa!”. That is a real challenge.

It is distressing to hear of instances where people feel trapped after all this time, to hear of repossessions and to hear of developers not getting on board. Will anything change from the existence of a register? When you hear an anecdote such as that, for me, the answer is no.

**Pam Gosal:** What needs to be done? You talked about stakeholders coming together. Does there need to be a public announcement, as you have just said, to agree on this?

**Perry Jenkins:** It is really important that the Scottish Government looks at some robust and different ways of engaging the citizens who are impacted and that it creates some good, effective feedback loops. That has been desperately missing.

I am concerned that some of the challenges that are being talked to today have been highlighted in the past—two-plus years ago—but those messages have perhaps been ignored or lost in translation and have not filtered through. For example, citizens with related experience in the corporate world are saying that they have concerns about the scope creep of what is happening and about having almost a cap on it, which talks to taxpayer money and how that will be well used, but here we are today talking about something that has grown arms and legs, which is the term that has been used.

At a pragmatic level, the Scottish Government and the civil servants who are working hard on this need to knuckle down and spend a bit of time looking at the scope and what needs to be delivered. I think that Ariane Burgess posed the question to Paul Turnbull about whether it should be either/or. What is the priority: should it be the life-critical stuff or the other stuff that poses a fire risk? My answer to that is: why does it need to be either/or? Why can it not be both but over different periods? Deal with the critical stuff first, ensuring that the key stakeholders—UKFI, the ABI and the

likes—are on board with that, and then, if there is other stuff to go after, park it.

Another practical observation is that it seems that the outcomes of the SBA talk to a red and a green. That is a dangerous place to be. You could have a fundamentally sound building but, for whatever reason—for example, the Scottish advice note talks about 13 per cent of the construction having EPS, yet the regulations previously said no more than 20 per cent—we will slap a label on your beautiful building, which might have stood for 15 or 18 years without issue. That will be like a black mark, which will be incredibly difficult to remove.

There is an argument to ask why a traffic light system—red, amber and green—has not been introduced. Quite reasonably, amber could relate to issues that have been identified by fire experts but about which there is no need for stakeholders to take fright. Those would be perfectly mortgageable properties. The risk has not changed. They have been insured for 15 or 20 years previously, and nothing has changed with the building.

You could take a holistic approach, which is a reasonable thing to do, but you can see the difficulties. Why should it apply only to buildings with ACM or cladding? By extension, it should surely apply to all properties across Scotland. If I happened to live in a thatched cottage in Perthshire—which I do not—why is somebody from the Scottish Government not knocking on my door and saying, “We’re not comfortable with your roof. It is highly flammable”? That is a nuance to the debate.

The territory of having only red or green as an outcome of an SBA is quite dangerous territory to be in. It should be phased, in terms of risk. Crucially, the Scottish Government must get tough on the stakeholders and say, “We need public endorsements. We need, very rapidly, to get to a place where everybody publicly agrees and stands behind a solution to move the situation forward.”

**The Convener:** Thanks very much for that. I will bring in Sean Clerkin, Jodi Terras and then Paul Turnbull. Stephanie Callaghan, I will bring you in to open up the next bit of the conversation. Folk might have other points that they want to make from earlier questions, but anyone who wants to make a comment on the cladding assurance register should bottom that out a little bit more now.

**Sean Clerkin:** A cladding assurance register would help, but you need hard regulation and you need it to be enforced.

With regard to what Ariane Burgess said earlier on, is it just cladding remediation that we should be looking at in buildings? The bottom line is that

Grenfell killed 72 people. That is what happened, and those who died were all tenants. A lot were injured. The precautionary principle has to be taken seriously, and all types of cladding—EPS and HPL; the whole lot—have to be looked at seriously.

Scotland’s biggest building is the Queen Elizabeth university hospital in Glasgow. The Irish company Kingspan put its highly flammable insulation, K15, into Grenfell. That same insulation is currently on the QEUH in the constituency of Glasgow Govan. For years, the health board has been fighting on K15, saying that it is safe, it is this and it is that. However, gradually, it is moving slightly away from that. It is not so sure any more. K15—that highly flammable and combustible insulation, built by Kingspan, which has been condemned by the Grenfell inquiry—is up on the biggest building in Scotland, which is one of our newest hospitals. The health board does not want to take it down and neither does the Scottish Government, because money is always put over human life. I am pointing out the precautionary principle: life safety is the be all and end all and should be the primary focus.

I will put you in the picture. In a survey, the Scottish Government identified 393 buildings in Scotland as having HPL cladding. They include hospitals, schools and student accommodation. The bottom line is that, when Patrick Harvie passed the Building (Scotland) Amendment Regulations 2022 that said that certain cladding could not be put into new buildings, HPL was one of those materials. It was not to be put into any new buildings over 11 metres high—or 18 metres high, whichever it was. If HPL is dangerous and not to be included in new buildings, it should be taken out of existing buildings, because it is unsafe. People could die in a Scottish Grenfell situation. That is why I am here today, because I think that people’s lives matter more than money.

**Jodi Terras:** I do not know how to follow that.

On Pam Gosal’s question, there is certainly good potential in the long term, and the list will act like a road-tax check.

Bleeding into the previous two questions, what are the broader requirements that the bill wants to meet? The scope creep confuses me. I keep trying to pose myself as a guinea pig for this process—an owner trying to sell in an orphan development.

Taking a step back, looking at the Hackitt report, there was a plethora of documents post-Grenfell that everyone—the UK and Scottish Governments—seemed to agree on. However, as Perry Jenkins said, when it comes to stakeholder engagement, factors, insurers and lenders are all in the working group, but you can see from the responses that they are not proposing any

commitment to it. I feel as though they are taking the opportunity to just lump in what they would factor into their own commercial risk factoring process.

In my case, I am trying to conclude a gifted sale to my brother. It is not an open market sale and it is below value. My outstanding mortgage is £65,000 and he needs to borrow £95,000. The lender has reduced the amount from his eligibility for £120,000 just because it is a pilot-related property. The property is valued at £200,000 and that has flatlined since 2019. You can look at the market economics of it all. It does not make sense to me that a lender cannot accept that proposal, particularly if they are meant to be an actively engaged stakeholder in the process and agreeing to the parameters of the SBA. I do not know what needs to go into the MOT, but we need to be careful what public money is going into monitoring what commercial businesses would be inspecting themselves on.

**Paul Turnbull:** We have HPL on our building and, as far as I am aware, the Scottish Government has committed to paying for remediation of that building. Therefore, I suspect that HPL is within scope.

On the register, it should be helpful to have that, but clearly the banks and insurers will need to agree to and be comfortable with the type of remediation that will get a building on the register as being fire safe.

I have not been involved in discussions with the banks and insurers but, as far as I am aware, a bank looks for security. When it lends £200,000, it would like the building to be worth £250,000 so that, if the mortgagor defaults, the bank is likely to be able to sell the building and get its money back. With cladding, you are no longer confident, because you do not know how much it will cost to remediate. Therefore, a bank could end up foreclosing on a building that is worth only £100,000 and so not get its money back. I think that that is the main issue for banks.

10:00

If the Scottish Government has said that it will pay for this or get the developers to pay for it, suddenly the cost of the cladding as an issue disappears. Therefore, I cannot understand why the banks would be overcautious if they know that they will get their money back.

I know that banks are private companies, but they provide a social service. They are regulated by the UK, so they should be able to do their lending only if they make sure that they comply with enabling the country to run and that individuals can manage their lives as they wish to. I suspect that they would like buildings to be

remediated before they start lending so that they are forcing the Government to get on with the job, which is completely unreasonable. I do not want to be the person who the banks use as a stick to get the Government to get on with the job.

Therefore, I would like to understand where the banks are coming from. They are famously shy about saying what their concerns are. They will not reveal their lending criteria, so the regulator needs to tell them to get on and explain what the issues are and why they are concerned.

I understand that insurers price the cost of insurance by looking at the loss of one flat. The idea of the fire regulations is that if there is a fire in one flat, the fire stays in that flat. The cladding destroys that concept, so the insurers are now worried that, if one flat catches fire, multiple flats will catch fire and the cost skyrockets. Therefore, basically, once that risk has gone, the insurers should be comfortable, so they should also be explaining exactly what they need in order to be comfortable with insuring it. The insurers sit there and wait for people to say what they will do and then they opine on it. They need to say what they want to happen. It is completely unacceptable that they just sit there and wait. As I say, they are regulated; they should get on with it.

**The Convener:** We have UK Finance coming to one of our future sessions, so thanks for raising those issues.

Jodi Terras indicated that he wants to come back in on this point.

**Jodi Terras:** On the point that Paul Turnbull mentioned, I will give more context from speaking to banks. As I said, I have been engaged with the banks since the summer of 2019. Their requirements have not changed. You submit an application, and they make a request for additional information, but they hold the line of, "It's up to the brokers to decide," or whatever. The lenders are meant to be part of the working group.

I went to every bank, and I ended up with Santander, as it was the most hospitable, if you like. It was quite willing to lend; it just wanted to see the technical documentation on what the Scottish Government has undertaken on the building. To go back to Perry Jenkins's point, that bank is more willing to look at that amber space rather than the red and green. However, it ended up pulling out—I think that it was in the autumn—purely because of the length of time that had elapsed in the request for additional information. My current lender is Nationwide, so it already has my property in its list of insured properties but, again, it is still waiting for the additional information that the Scottish Government holds. That is the roadblock in it all.

I mentioned that it was our factor who made us aware that an inspection had been done. In his report, he said that our property was “on hold”. I do not even know what that means in terms of the pilot. I do not want to espouse a conspiracy that our property is in danger—I think that it is probably the opposite, in that it has been seen as low risk and the process has moved on to higher-risk properties. A pilot is meant to prove the concept. It would be a quick win to prove it from front to back.

Ultimately, it goes back to the point about speeding up the process. We need to look at the live market. Somebody mentioned the cost of inspections. Paul Nelis quoted £800 back in early 2020. In early 2023, I got a quote from the guy who the committee went round with before Christmas, and that was just shy of two grand. Another person involved with supporting properties in the pilot gave the same quote. As soon as I proposed a full building inspection—I know that multiple owners are willing to put money in a pot—the assessors stepped back. I feel as though there is exploitation of individual owners. You can make a lot more money charging 100 people two grand than you can charging 10 grand for one building. There is much more immediate exploitation that needs to be addressed here.

**The Convener:** Thanks for that. Before I bring in Stephanie Callaghan, a couple of people have indicated that they want to come back in briefly. They are Chris Ashurst and Perry Jenkins. David Jones wants to come in as well, but I will get Stephanie Callaghan in with her question and then we can pull David Jones into the mix, because time is marching on, although this is an important conversation.

**Chris Ashurst:** On insurance, it is absolutely right that the understanding was that insurance was being offered on a flat-by-flat basis, but the insurers took fright, basically, following Grenfell and all of that, and the knowledge that, certainly in Scotland—I do not know what the position is in England—the records on what was in buildings maintained by local authorities were faulty and reflected an untrue position, which was discovered by actually inspecting. That was because they thought that they could rely on building warrants, building plans and so on, but they then found that some of those records were false, so they were not insuring what they thought they were insuring.

Insurers now look at what happens if there is what they call a “catastrophic loss”—that term has been used to me by people in the insurance world several times. It has shifted away from the situation of people simply saying, “This is my flat; please would you insure it?”. Whatever we think of it, when insurers quote for a flat now, they look at what would be the effect of a catastrophic loss and how that would impact them.

One point in the current proposals on which we need clarity is whether insurers would be entitled to look at the register. Insurers are pressing for clarity on that, as it is not clear as we sit here today. I am sure that that must be the intent, but it is still vague and questions have been asked and not answered on that, so we need clarity.

**Perry Jenkins:** From my experience of 25 years working for some pretty big banks in the UK, and without wanting to speak for the banks, because I am not in a position to do so, what I would offer—this relates to Paul Turnbull’s points—is that banks look to professional valuers to set a valuation on a security. Ultimately, their lending policy will be driven by the findings of that professional valuation. As long as RICS is comfortable with the risk, the open market valuation and the lending valuation, it is in the interests of banks to lend, as they want to make a profit. However, that is easily said, and obviously there are lots of nuances to do with the type of building, the collateral and all of that good stuff.

From talking to the banks, part of the problem that I sense in Scotland is that, ultimately, banks that are covering the UK want simplicity. They just want to take simple regulation that is consistent across the UK and apply it to their customers, thereby driving out the cost involved in adopting models and policies for different regulation in different parts of the UK. I imagine that some banks are scratching their heads about just how far the approach has gone in Scotland, which, ultimately, is a much smaller part of their business than England. A lot of people will be in rooms discussing policy and scratching their heads.

The catastrophic loss model in insurance is an emergent situation. If I had a query, it would be to ask exactly how many buildings across Scotland are not insured and whether the Scottish Government is aware of that. In considering solutions, it would not be in the interests of any stakeholder to have a building uninsured. To clarify, for my building in north Edinburgh, although it is not insured with comprehensive development-wide buildings and landlord insurance, we hope that individual owners have, by and large, been able to obtain cost-effective insurance. However, if the industry starts moving to a catastrophic loss model, particularly in insuring individual large buildings rather than on a portfolio basis where the risk is very much shared, maybe the Scottish Government needs to think about being the insurer of last resort.

That is point 1. Point 2 is that, frankly, we have all been disgusted about the situation with the Post Office. The insurers have taken the money out of these developments for decades. Maybe there is a case to be made to say, “If you are not prepared to step up and insure buildings that you

have been quite happy to profit from for an awful long time, maybe we need to think about a bit of a return on that revenue to subsidise and support owners.”

**The Convener:** That is an interesting point.

I am going to have to move the conversation on. Stephanie Callaghan, please direct your question to David Jones, who wants to come in next. Stefano Pessina can come in after that.

**Stephanie Callaghan:** Thank you, convener. I was just waiting to be unmuted there.

I am happy for David Jones to answer this. Paul Turnbull and Stefano Pessina have picked up on this point already, so they might be interested in coming in as well. It is about the bill preventing owners from being obstructive and stopping things moving forward. Is there any history or evidence that things have been held up by owners and residents who are being obstructive?

**David Jones:** One of the things that this bill addresses, which I think has been mentioned in this meeting today, is that title deeds restrict you to maintenance by a majority vote. In most cases, when something is considered an improvement to the building, a unanimous agreement is required, and that has been one of the issues that has caused delays previously.

This bill will basically go around that. Changes to a building might take so long to go through because when you cannot obtain unanimous agreement, a minimum of 25 per cent of homeowners have to go to the land register to put in an appeal to change the title deeds. Previously, when trying to make changes, you had to go through that process to change the title deeds to allow changes to be made by majority vote. That has been the issue previously, but that should be resolved with this new bill.

My follow-up comment was going to be on Jodi Terras's point about the EWS 1 surveys. I will keep this very brief. This is one of the reasons why I am here on behalf of the Queensborough Owners and Residents Association. The trouble that we are having in Queensborough is that the building is completely safe, but because the surveyors say that their indemnity insurance will extend only as far as the single property that they are evaluating, that means that they will not give it for, say, a postcode or for a core. Essentially, for one property they are charging, say, £3,000 to undertake a survey. If anyone else within that stair wants to sell well, it is another £3,000, or it might be a slightly discounted rate.

The argument is that surely that is not fair. It is just a licence to print money. It comes back to the indemnity insurance point of view. If the surveyors say, “Here is a survey for the whole block,” they

are far more liable if their report is incorrect. I do not really know what the answer is to that apart from the single building assessment. How long will it be until that can be undertaken at specifically a non-risk development, which essentially has passed already? Homeowners will have to pay through the nose for surveys for quite a long time. Again, I do not really know what the answer is to that.

**The Convener:** Thanks very much for that, and for your comments on recalcitrant owners. Stefano Pessina, do you want to come in?

**Stefano Pessina:** I have two points. In response to Stephanie Callaghan's question about owners who might be obstructing progress, that is not something that I have seen in the development that I am representing. Our owners are seeing insurance premiums going up and up every year and they know the reason for that, so there is no reason for them to obstruct progress on getting cladding remediated. I understand that the situation might be different in other developments, but I do not see that obstruction. Perhaps a little bit too much emphasis has been placed on owners obstructing cladding remediation, when I am sure that, in the majority of cases, most owners would not be doing that. Maybe too much emphasis has been put on that in the bill. It is good that there is protection, but I do not really see that issue as a common thread.

10:15

I have a final point about insurance, the insurer of last resort and underwriting risk. The Scottish Government could be more proactive regarding properties that either cannot get insurance or have very high insurance premiums, and that are either on the pilot or due to go on the pilot. It could step up and say to insurers that it would underwrite the risk, which would help massively. That is something that the Government could do quickly, in relative terms, and it would help thousands of owners with obtaining insurance and paying for it.

**The Convener:** Thanks very much for that constructive point.

I am going to bring in Jodi Terras and Perry Jenkins, then I will bring in Willie Coffey for his questions.

**Jodi Terras:** I agree with David Jones's point. I heard the same thing about inspections for insurance. Again, that might vary from deed to deed. External walls are clearly part of a shared area, so I do not understand how inspectors can charge individual owners for inspections when cladding is clearly the fabric of shared areas.

On reluctant owners, I see the bill's provisions as an act of last resort. I see it almost like a

compulsory purchase order process: you have to prove that continuous engagement before raising the matter with the Scottish Government for it to take action on behalf of the owner.

I have spoken to estate agents in Glasgow. Our building has a high proportion of buy-to-let properties, so there is that difficulty. It goes back to the issue around communication and being able to access the owners. I tried in 2021 to reach out to owners. We need a majority, which would be about 70, and I got 60-odd owners wanting to hold a meeting. Elected members were keen to support the co-ordination of those meetings, but we fell short. It would be pointless having a meeting if properly constituted action could not be taken off the back of it.

I will note that local and national government have the powers to find owners and reach out to them. I feel as though the bill's provisions would be a route of last resort. There are means already available to address any situation involving reluctant owners.

**Perry Jenkins:** I will build on the point about restrictive or reluctant owners. I think that there is a piece about owners being uncertain and there is a piece about education. A number of owners still do not fully understand cladding, fire risk and all of that good stuff. Then there is a piece about trust. The information has been shared over the past many years by various different parties and stakeholders, and it is felt that the stakeholders who have been sharing that information can no longer be trusted. The information that was shared previously was, "Listen, guys, the development is 99.9 per cent safe. No problem here. No, this is not a problem north of the border." People were taking that stuff on and taking it as a given through, for example, owner committees, without any real evidence, and here we are.

On reluctant owners, if you are moving to an improved future state for a development, at no cost to the owners, any reluctance will, funnily enough, drop away. The difficulty arises when improvements or changes are being introduced and there is uncertainty about who will pay for them. It is absolutely right, and I am glad, that there is a veto provision in the bill to help owners who—as has been the case with my development—have been flagging very real concerns about decisions that have been taken. It is debatable whether changing the deeds for a development was required to almost shoehorn and retrospectively tackle issues that have impacted the development. It has to be right that owners can have a voice to say, "Whoa, whoa—foot on the ball! I am not sure this is a good idea and these are the reasons why." That option has to be available, as it is important.

Ultimately, if a trustworthy demonstration can be made that we are moving towards an improved future state for the benefit of owners and residents, at no cost to owners—because why should there be?—the reluctance will fall away.

**The Convener:** We heard, maybe in our visit sessions, that the reluctance might not be just because something is not paid for, but because of the unknown level of upheaval that comes into an owner's life.

Willie Coffey, I am going to bring you in with your question. Chris Ashurst has just indicated that he wants to come in, but on stuff that is already in the mix. If you could come in with your first question, Willie, we will then see where we go.

**Willie Coffey:** Good morning, everyone. Thank you for coming to do this work. I particularly want to ask for views on the impacts on the social rented sector, which has been mentioned a couple of times.

First, however, I would like to ask about the 1992 starting point in the bill. I think that that mirrors the UK Government's legislation. Could the panel offer any views about why that should be the starting point for the 30-year timeframe in the bill? Is it fairly arbitrary, or does the problem with cladding materials only involve buildings constructed in the last 30 years? Do we have the intelligence or knowledge to be sure about that? Is it the panel's view that there should not be an arbitrary starting point—for example, 1992—within legislation that applies in the UK?

**The Convener:** Sean Clerkin, I will bring you in first because you mentioned the 1992 issue. I also have indications from Chris Ashurst and Paul Turnbull that they want to come in.

**Sean Clerkin:** Yes. I want to clarify the point about the high-pressure laminate cladding. In the advice notes and in all the Scottish Government documents, it is quite clear that the only real focus is on aluminium composite material cladding. HPL cladding can be split into two types. There is what we call HPL cladding class C and D, which has no fire retardants, and the Government is for taking them down. However, some HPL cladding is clad with non-combustible insulation—it passed the BS 8414 test—and they want to keep that HPL cladding up. Everybody says that that test is in disrepute, yet HPL cladding with non-combustible insulation is being championed by various panels and the Scottish Government as being able to stay up. No, it cannot stay up. HPL cladding has to come out of all social rented homes. There are 95 tower blocks in Scotland that have it and it has to be taken out completely. Non-combustible cladding has to be put in for the tenants. It is the precautionary principle.



Going back to what the convener said earlier about insulation and the wider aspects of safety in homes and elsewhere, the Kingspan K15 insulation that was on Grenfell is on the Queen Elizabeth university hospital.

There are nine social rented housing tower blocks in Glasgow alone that have what we call the large-panel system. The large-panel system is basically prefabricated concrete panels, which could collapse at any time. They have been in Glasgow for about the last 30 years. Ronan Point was the large-panel system building that collapsed in 1968 and killed people.

You have to go back to Grenfell; the bottom line is safety, safety, safety and life safety above all. The Scottish Government has got to get its finger out and start tackling social rented tower blocks. The people who live there are on low incomes and they need the local authorities and the Scottish Government to step up. There is £400 million available. That money should be used to take out the highly combustible and highly dangerous HPL cladding for not just homeowners, but tenants.

**The Convener:** Thanks for that. I appreciate all the technical detail that you are bringing in. We will take that away and look into it with our research team. I will bring in Chris Ashurst, Paul Turnbull and then Jodi Terras.

**Chris Ashurst:** I do not wish to have a spat with anyone, but the statement that the building was 99.9 per cent safe was not made. I know, since I wrote the document. It said that there was a 99.9 per cent understanding or assurance that it would be safe. On the same slide, which was presented to all the owners at that time, it also said:

“However, other issues have been identified when this work has been undertaken, such as missing fire breaks”,

and so on. It was never said that the building was 99.9 per cent safe. That has been corrected many times but never acknowledged.

**The Convener:** Thanks for that clarification. Paul Turnbull, you wanted to come in.

**Paul Turnbull:** Yes, thank you. The issue of maintenance has been raised. I have repeatedly suggested in feedback to the Government that it would be really helpful if the Government clarified that any health and safety issue on a building should be regarded as a maintenance issue. That would enable all buildings to treat things like cladding or any other safety issue that is identified in the building in the same way as maintenance issues and they could be sorted out by a majority vote of the owners. That would enable groups that represent a majority to push this stuff through and make sure that buildings are safe without the objections of a few people preventing that. I am not sure about the motivations of some people. It

may be that they just do not want to pay for anything unless they absolutely have to, but it is probably more important that the majority feel safe. The Government confirming that, in title deeds, all health and safety issues should be regarded as maintenance, would be helpful.

We have experience of obstruction. When the SBA was being done, the fire engineer selected sample points at which to test the building. One person made it very clear that their part of the building should not be touched. I offered my flat for that inspection instead of his flat. I do not know why I needed to do that; it should not have been an issue, but it was. One or two people have suggested that we cannot represent them, which is fine—I do not need to represent anybody. I just want to work as positively as possible with people. I am not really sure what happened, but we had good relations and discussions with the Scottish Government and suddenly the Scottish Government withdrew the opportunity to talk to it. I suspect that there was a complaint of some sort and I am not sure what the nature of it was, but it meant that we were unable to tell all other owners what was going on because we were not getting communications.

**The Convener:** Thanks very much for that. Willie Coffey, do you want to come in with your next question?

**Willie Coffey:** Thank you. Colleagues, should the bill be clearer about timescales for completion? It would not be usual to put deadlines and so on in a bill, but what do colleagues around the table feel about including in the bill some real hard and fast deadlines for completion of this work, from when the single building assessments are completed to actually getting the work done? Should we be firmer about including guidance on that in the bill?

**Alan Millar:** I think the obvious answer to that is yes. As I said earlier, I have emailed the cladding team many, many times and I am regularly told, “We cannot give you a timescale.” If it was any other project, public or private sector, the idea that you could fix one building in 100 in that amount of time, or survey 16 out of 100 in that time, would be classed as a fail by all accounts. While I get the complexity of it, the uncertainty that owners and residents have is largely driven by this open-ended, almost “We will get to it when we get to it” attitude. I just cannot believe that it is being allowed to happen.

**Stefano Pessina:** I agree with Willie Coffey, there must be deadlines in place. Everything is taking far too long. Years have been lost and we have to try to get that time back. Yes, deadlines should be in place.

**The Convener:** Thanks. Does anyone have anything to say other than yes?

**Perry Jenkins:** That is a great question and observation, Willie. Absolutely, there will be frustration about getting stuff done. I guess it is one thing putting in timelines: whether those are achievable in terms of people being on the ground to do the work is a question.

10:30

Given the discussion that we have had about people generally, all stakeholders, not being comfortable with the fully defined scope of what needs to be done makes it very challenging to say, "Well, that is the thing that we need to go after; let's work back and say how long that will take."

There are a couple of different elements to this. It would be fantastic to see service level agreements built in. I come back to feedback loops with the Scottish Government, good communication around SBAs and so on. An example here on my desk is that I wrote to the Scottish Government independently in April last year and it took a full month for a response. That response, as welcome as it was, was very high level, completely devoid of any form of timescale and here we are almost a year on and I am not entirely sure that a great deal has moved on since.

My expectation, per the letter, would have certainly been a completed single building assessment or certainly a draft that could be shared as a heads-up visibility for owners. They deserve that at least. However, we are where we are. On the one hand, I get the aspiration. On the other hand, at a practical level, I am not sure that that would be doable.

**The Convener:** Thanks very much for that. Before I bring in Marie McNair with her questions, I want to come back to Jodi Terras. You indicated that you wanted to come in. Is there something that you want to add?

**Jodi Terras:** Yes, I always assumed that the timescales came from the lenders, who were advising that they would expect to see remediation undertaken within 12 months. I am hearing that they now want to see commitments that the work would be started within three months, but they do not actually go out and investigate whether there are boots on the ground.

Willie Coffey asked about the social rented properties. You have Sean Clerkin here—I cannot represent the views of tenants—and I saw that the Glasgow and West of Scotland Forum of Housing Associations responded. They represent 63 community-based housing associations. I wonder if there is maybe a crossover in responsibility, if maybe the social sector is part of "more homes"

discussions. Professionally, I would see that community-based housing associations in particular are very active in making sure that their properties are up to scratch. I wonder if it is just out of scope for this study and also the funding. I do not know.

I would like to quickly talk about the wider affordable housing industry, given the wider remit of the committee. There is a problem in the wider housing ecosystem. Cladding-affected properties are predominantly two-bed city centre homes that are ideal first-time buyer properties. City of Edinburgh Council and Glasgow City Council have announced housing crises, and values and sales in these properties have flatlined, as I said, since 2018 or 2019. The only sales are cash and are discounted purchases at 60 per cent of the value, so you are seeing equity being drawn out of local communities. If there was better collaboration on this, there could have been an acquisition strategy developed with the Scottish Government, potentially to encourage registered social landlords to look at shared equity and mid-market rent. The pressures that we have seen with supporting the rehousing of refugees and the homelessness crisis are part of the wider problem. The limitation on the age of the buildings is a question for me. There are wider housing issues. There is the retrofit programme that needs to be delivered as part of "Housing to 2040". I would see those as having priority, in front of all those properties. Basically everything in Scotland needs improved for energy efficiency. There is a wider economic study and impact that needs to be understood here before any legalese discussions.

**The Convener:** Thanks very much for adding those perspectives.

**Marie McNair:** Good morning, panel. My question is on the role that developers should play in carrying out and funding the single building assessment and cladding remediation process. There have been a few suggestions already, but I am just going to pop the issue back out there.

On the back of that, do you have a view on the likely effectiveness of the proposed responsible developer scheme? I will pop that to Chris Ashurst first.

**Chris Ashurst:** It is a difficult one, isn't it? I understand that you will be taking evidence later from Homes for Scotland. Can you just give me the heart of your question again?

**Marie McNair:** It was about the role that developers should play in carrying out and funding the single building assessment.

**Chris Ashurst:** You could bring all sorts of judgments as to whether this is morally right and all that stuff, but I note that one of the responses from building companies to the survey sets out the

difficulty that small to medium-sized enterprise building companies would have in financing such a thing. We might sit here and say “It is absolutely right that builders should pay—of course they should,” but speaking as a fellow of the Insolvency Practitioners Association and having wound up a few companies, I can tell you that, if the money is not in the pot, it is not there to pay out. You could have a commitment that it be paid but if the money ain't there, it is not going to happen.

Unfortunately, Stewart Milne was one of the companies that submitted a response, and it actually said in that response that, if what you have suggested were to happen, there would be a very real prospect of companies having to file for administration. Within a month of making that submission, it did so.

We can talk about what is right and so on, but some realities need to be brought into this. How can we possibly deal with this matter? Indeed, who should deal with it? I was about to say that it is beyond me to resolve that, but it does need Government assistance. These are pseudo-orphaned buildings, are they not? In other words, the builder is still there, but they do not have the resource or the wherewithal to meet any huge claims.

**David Jones:** Obviously one of the points in this respect is resource. Can developers actually afford to do it? Secondly, was the building constructed according to the legislation at that time and did it go through planning? In most cases, the answer to that second question is yes. From the builder's perspective, it did everything right at the time of construction. Does this set a dangerous precedent in which legislation needs to be backdated to include everything that has been constructed? When the new fire safety legislation went through that said that you had to have smoke alarms in private properties, should we have gone to developers and said, “Right, this new legislation has come in, and we should backdate it”? I think that it is quite a hard issue to deal with.

**The Convener:** Thanks for that. I call Jodi Terras, to be followed by Paul Turnbull, who is online, Alan Millar and Perry Jenkins.

**Jodi Terras:** On the point about effectiveness, I would assume that all the developers have already come on board just from a reputational point of view rather than because of any technical or financial issue. However, that probably does not address the issue of liability in respect of the parent-child incorporation that has created the orphan developments.

Again, from speaking to other owners where the developers have been on board, I have not heard that it has been completely smooth sailing. There have been issues with potential double invoicing to

owners as well as visits by factors or developers; I should say, though, that I do not know enough about it and Chris Ashurst might correct me on that. The Scottish Government will fund that time as part of the programme, but it is also being invoiced back to owners.

This links back to my points about the scope creep in market economics. I am starting to see a real reluctance among developers to even look forward at building developments of such scale. As far as Glasgow is concerned, I cannot think of any private-ownership developments of such a scale that they would need a city centre renewal policy. The only buildings that are going up are under the buy-to-rent leasehold model or are student accommodation. Again, it goes back to the wider housing ecosystem; we are facing real risk here, and we need to unlock development, not just mortgages.

**Paul Turnbull:** I get Chris Ashurst's point entirely: if the money is not there, the route that is suggested will not be very effective.

That said, I feel that developers should feel the pain to some extent, because without feeling pain, they will just keep on doing the things that they have been doing. As I have said, other industries have better ways of ensuring that if the company fails, the resources are there to sort out the problem. I do not think that exists in the developer community.

We have an SME and our building has been orphaned, because, as I understand it, the Government does not believe that the resources are there to pay out. However, I am pretty sure that a big part of the problem was caused by the architect, and we wonder whether professional indemnity insurance would pay for a large part of our building. I am not sure where the discussion is on that matter, but I would have thought that such insurance, wherever it might be helpful, would provide an excellent source of resource.

I therefore do think that developers should pay, as long as it does not bankrupt them. I get that there is no point in bankrupting companies, as they can then go on and do other good economic activity—providing that it is regulated, of course. Government funding needs to come in and the Government should step up where the developer cannot afford it. Of course, you need to challenge the developers properly and ensure that when they say, “We cannot afford this”, that is actually the case.

**The Convener:** Thanks very much for that. I will bring in Alan Millar and Perry Jenkins, but before I do so, I ask Marie McNair to ask her final question, and people can add in their responses to that, too. We have now gone over the hour, so we will need succinct answers.

**Marie McNair:** This will be my last question. Is there anything else that you would like to see in the bill or is there any action that the Scottish Government should take and which has not already been highlighted to the committee? Again, a number of suggestions have already been made, but this will be your last chance to put in your comments.

**The Convener:** I say once again that we are over time, so responses should be succinct. I call Alan Millar and Perry Jenkins, and if anyone else has anything new and different to drop into the conversation that we have not heard yet, it would be great to hear it.

**Alan Millar:** I just want to make two small points. I do not know whether the bill or anything else draws out the distinction between what were historic things that were wrong to begin with and the changes that have since been made through legislation, but they feel like two separate issues to be dealt with. With the stuff that was not complied with initially, it feels like the council that signed it off got off somewhat lightly, given that they said, "Yes, that building is compliant." Someone can correct me on this, but I do not believe that the process has changed; if it was flawed back then, it is probably flawed now.

Secondly, every business in the world will say, "Oh no, we can't afford that—we'll go bust." If we stop them selling properties, I am sure that they will all suddenly fall into line. If it is a good business and has been run accordingly and responsibly over time, it should have the money to do this work. Ironically, I would highlight, maybe rightly or wrongly, Stewart Milne saying, "Oh no, we wouldn't be able to do that" and yet, weeks later, going bust completely independently of that. We definitely have a bit to go to decouple these issues and hold businesses' feet to the fire.

**Perry Jenkins:** Should owners pay? No. In fact, there is movement in the market; owners are now stepping up and buying into these properties and developments, and I think that it would be borderline criminal to turn around at a point in the future and say, "You now need to find £10,000, £15,000 or £20,000." I would therefore say no, in principle. People are buying these properties with good intent, based on the information that they have, valuations and so on, and presumably with mortgages, too.

I have to say sorry to the people at the back of the room, if they are from the developer fraternity, but I cannot defend their pockets from a corporate standpoint. The reality is that, with my development in the north of Edinburgh, we had a great developer, but errors were made in construction. It is an important issue and I think that they are addressing it, although they need further clarity on what exactly the Scottish

Government wants and approval from other stakeholders on what to go after and put right.

It comes back to the issue of scope and the need for any change in terms of resolution to be proportionate; it cannot mean a full retrofit for a £100 million development. That is an issue for the developers, though, who can speak for themselves—or certainly their finance people can speak for them.

I go back to my earlier point about a phased approach. Is it necessary to say, "Here is a £5 million or £10 million bill for remediation, and we need it paid in this financial year"? A sustainability lens has to be put on this issue.

I think that those are my observations. Thank you.

**The Convener:** That is great. Does anybody else want to come in?

10:45

**Jodi Terras:** I think that I have already mentioned wider issues such as the new deal for local government. I have heard in the background that there is a role for local government to play in this, but when I made professional inquiries to the head of the cladding remediation team in developing the new housing strategy for Glasgow, I never got a response. That is why the strategy is lacking detail in that respect. I am speaking on behalf of colleagues, but I am sure that we would be keen to have that discussion. Whether that sort of thing should be in the bill, I do not know.

**Sean Clerkin:** Marie McNair asked whether anything else can be done. We need to speed up the whole process, and it has to be comprehensive with high standards and tight timescales. We need all combustible cladding, whatever it is, to be taken out and non-combustible or non-flammable cladding put in. I think that insulation has to be looked at, too.

I would also say to the person from Glasgow regeneration—Jodi Terras—that we should be retrofitting. He talked about the housing ecosystem, but there are two things to highlight. The first is that instead of demolishing the four tower blocks at Wyndford in Glasgow, we should be retrofitting them to house lots of homeless people who are currently on the streets.

Secondly, developers should pay. Indeed, all developers should pay, because at the end of the day, they messed up—that is a fact. However, as far as orphaned buildings and financial gaps are concerned, I would point out that there is £400 million there, but only less than 2 per cent of that money has been spent. Two years ago, £97 million was given, and there has been another £300 million since; that makes £400 million and

less than 2 per cent of that money has been spent. I say, "Speed it up, Scottish Government, get on with it and make these buildings safer for everybody."

**The Convener:** Okay. Thanks very much for that. Paul Turnbull, I think that you will have the last word.

**Paul Turnbull:** The Government could usefully think about its project management approach. Perhaps it needs to be more creative in order to speed things up; after all, this is not some standard project that the Scottish Government can take time over. It needs to be done quickly.

My assets have been frozen for four years so far and I see no prospect of their being released any time soon. Not even Vladimir Putin's oligarchs have suffered that level of asset freeze.

Ten per cent of our households have suffered a death in the last four years. How many more are likely to die or have life-changing events before this is sorted out? I cannot emphasise enough the sense of utter frustration with this whole event.

**The Convener:** Thank you very much for those poignant closing words.

I thank everyone very much for coming. We could have taken a bit more time, but I think that you managed to get across all the points that we really need to hear. We can go away and look into some of the detail that you have highlighted. Thank you so much for making the effort to come in between storms Isha and Jocelyn.

I briefly suspend the meeting to allow for a changeover of witnesses.

10:48

*Meeting suspended.*

10:56

*On resuming—*

**The Convener:** On our second panel today, we are joined in the room by Stephen Andrew, who is the group technical director at Taylor Wimpey plc; Fionna Kell, who is the director of policy for Homes for Scotland; John Low, who is the chief executive at Robertson Homes Ltd; and Kieran Walker, who is the senior technical director at Barratt Developments plc. We are joined online by Julie Jackson, who is general counsel and company director at Miller Homes Ltd.

As with the first panel, I will begin our conversation by inviting everyone to briefly introduce themselves. I am a Highlands and Islands MSP and the convener of the committee.

**Stephen Andrew (Taylor Wimpey plc):** Good morning. I am the group technical director for Taylor Wimpey. Part of my remit is cladding remediation across the United Kingdom.

**Marie McNair:** I am an MSP representing the Clydebank and Milngavie constituency.

**Kieran Walker (Barratt Developments plc):** Good morning. I am a senior technical director at Barratt Developments plc.

**Fionna Kell (Homes for Scotland):** Good morning. I am the director of policy at Homes for Scotland and have been leading on cladding remediation work for the past two years.

**Miles Briggs:** Good morning, everyone. I am an MSP for the Lothian region.

**Pam Gosal:** Good morning. I am a member of the Scottish Parliament for West Scotland.

**John Low (Robertson Homes Ltd):** Good morning. I am chief executive at Robertson Homes.

**Julie Jackson (Miller Homes Ltd):** Hi, everyone. I am general counsel and company secretary for Miller Homes.

**Stephanie Callaghan:** Good morning. I am the MSP for Uddingston and Bellshill.

**Willie Coffey:** Hi, folks. I am the MSP for Kilmarnock and Irvine Valley.

**The Convener:** Thanks very much. We will turn to questions from members. Please indicate to me or my clerk if you would like to respond to a question or to something that a panel member has said. Julie Jackson, as you are participating remotely, if you type R in the chat function we will pick up that you want to come in.

As I said to the first panel, the intention is that this will be a free-flowing conversation rather than a question-and-answer session. It will be quite tricky to get done in the time that we have, but let us see what we can do. As you have learned from going round the table, you do not need to operate your microphones. We will do that.

I will begin. I am interested to hear your views on the fact that the Scottish Government has not publicly consulted on the proposals in the bill. Given that, do you think that the bill addresses the concerns that house builders have been raising with the Scottish Government about cladding remediation over the past few years? Stephen Andrew is closest to me. You said you have that remit, so I will start with you.

**Stephen Andrew:** I am sorry. What is the question, specifically?

11:00

**The Convener:** Does the bill address the concerns that house builders have been raising with the Scottish Government about cladding remediation over the past few years?

**Stephen Andrew:** In large part, it does. We caught the end of the earlier part of the meeting, in which there was a lot of synergy with our view, as a responsible developer. At Taylor Wimpey we take our responsibility very seriously. We were one of the first developers to set aside provision to remediate buildings for our customers. We have remediated around 39 buildings in England and are very keen to make progress in Scotland.

One of the key parts of the bill that needs to be addressed is scope; we need to understand what the scope of the work will be and what sign-off of buildings will ultimately require. My point of view is that that is, essentially, what is preventing developers from making progress.

As I said, we are treating the matter very responsibly. We acted immediately after Grenfell, and moved to tackle some of the challenges. We identified a high-risk development at Glasgow Harbour and we have been there for about four years. Part of the challenge is that we did not understand the scope at the time, but we took the decision to remediate the high-risk cladding at that point. One of the key parts of the bill for me, to aid residents and the whole project, is about scope. We need to understand the scope and it needs to be made clear what the expectations are, what sign-off requires and what the assessment protocol looks like.

**The Convener:** Thanks very much. That is very clear: you need to know about scope and sign-off. Does anyone have anything to add to that?

**John Low:** With our not being wave 1 developer, we and other SMEs were brought to the table a bit later, so there has been a fair bit of catching up to do. My view is that the broad principles are set out, but a lot of the detail that we need does not exist, at the moment. I find it difficult to get to the nub of precisely where responsibility is and the “how” of the process. As we engage and work through that we will find a way through, but coming to the party late is proving to be a bit of a challenge.

**The Convener:** Is that detail something that needs to be in the bill? Some bills provide enabling powers to do something. Is that something that can be worked out?

**John Low:** I am hopeful that we can work it out. From the perspective of my organisation and, I think, that of other SMEs, there is a series of things that we need to bottom out and understand so that we can tackle the issues. I have quite a

few thoughts on that. Maybe we will come back to that.

**The Convener:** We hope that we can bring those thoughts out, as we go on.

**Fionna Kell:** We recognise that a number of elements of policy development can be covered by secondary legislation or future regulation. Given the scale and importance of what we are talking about, however, and the impact of primary legislation, a lot more should be set out in the primary legislation, rather than it waiting for future regulation or secondary legislation. Clarity, as has been said, around scope, treatment of SMEs, the register and the obligations of ministers could all be set out much more clearly and in detail, at this stage.

**The Convener:** Maybe as we go through our questions we can dig into some of that. That would be great.

I will ask my next question; you can mix my questions together if you have not already spoken. We are aware that house builders have raised concerns in written evidence about the lack of detail—which we have been talking about in general—on the single building assessment. Could you explain briefly those concerns and outline how they could be addressed?

**Kieran Walker:** Principally, as my colleagues and fellow house builders have mentioned, the fundamental issue is the lack of clarity around the SBA process. We have proactively engaged with the Scottish Government over the last 18-plus months and in that time we have repeatedly asked questions about proportionality, how buildings are to be assessed, how the SBA is undertaken and what the end product of the SBA will be. Only in recent weeks, through the cladding and remediation directorate’s task and finish working group, have we started to get clarity on that, which has been welcome.

We are moving towards a point where the potential harmonisation and adoption of PAS—publicly available specification—9980 as the standard in Scotland would be very much welcomed by developers. If, however, we are aiming to harmonise or to adopt PAS 9980 we need to understand other elements of the SBA, such as what are the role and constitution of the expert panel, and why it exists.

In England and Wales, we are a number of months, if not years, down the line since signing up to pledges and pacts. We have seen where there are benefits to public sector intervention in the process and where, through professional indemnity and professional services in the marketplace, accredited fire engineers and fire assessors can undertake the role of an expert panel.

Then, there is the output—the cladding assurance register. The bill addresses that to a certain extent. We also need to understand the full scope of roles and responsibilities for building sign-off. At a round-table meeting last week with Paul McLennan, it seemed quite clear that the Scottish Government’s perspective is that the cladding and remediation directorate is dealing solely with cladding, and not the whole building. There are various views on that and there are concerns about it dealing solely with cladding, because at some point in the future it might be necessary to come back to deal with internal fire stopping, compartmentation and so on. I do not think that cladding can be dealt with in isolation.

**Julie Jackson:** First, along with peers in the room from the house-building fraternity, we are very keen to get on with and carry out any remediation that is needed to make buildings safe. We have been very clear about that for 18 months to two years. We are, like Paul Turnbull in the earlier evidence session, incredibly frustrated that we cannot do that because of the lack of clarity. There is no real scope for what we are expected to do and no real understanding. We would have been working on the buildings that we know have problems two or three years ago, but we have not been able to do that because we have been completely frustrated by the SBA process.

Miller is in a joint venture with Cala Homes at a large development at Lancefield Quay, which is being run as a pilot SBA process. We are two years on from the SBA process starting there and are still no clearer about what we need to do to remediate the buildings. I echo what Kieran Walker has just said: you cannot divorce replacement cladding from other fire-safety issues in the building. I am not a technical person and do not have a technical background, but I know that because of that we have been unable to get on and remediate a building that has high-risk combustible cladding on it.

It is almost as if we have tackled the issue backwards by coming up with an SBA process that is not clear. There is a bill that will, in effect, provide penalties for developers for not proceeding with remediation, but at this stage we do not know what that even looks like. We are unable to commence, never mind to complete, rectification of buildings. We will come back to the same point again and again: without clarity on the scope, the work will not get off the ground.

**The Convener:** Stephanie Callaghan, who joins us online, has a couple of questions.

**Stephanie Callaghan:** It would be helpful if you could outline any concerns that you have about the operation of the proposed cladding assurance register and explain how you think that those

concerns could be addressed. That is for Fionna Kell, initially.

**Fionna Kell:** In principle, we understand the desire to have a record of buildings that have had their remediation completed. There is no problem with the principle. However, we are concerned about the way in which the SBA runs at the moment and about the overall programme.

We come back to the issue of high and low risk. If all buildings in Scotland can be only high risk or low risk, the default position is that everything will be high risk until such time as it has been further investigated and subsequently remediated. That means that, if we end up with a register, not being on that register will imply that a building is at high risk. We could have buildings that are not high risk that are not on the register because they have not yet been through the process. In effect, those buildings would be in limbo.

The proposed register might increase the incidence of issues that we heard some of the residents talking about, such as the inability to sell or to get insurance; it might increase the volume of properties that are impacted as a result of the sheer scale of the process. That is the main concern. There is no problem with the principle, but the scale and nature of the process will mean that we will end up with a larger register.

The other issue is the fact that there are cladding-related and non-cladding-related issues. There will be issues in a building that will not be the responsibility of the home builder to remediate. For example, if the building has an alarm system that is faulty and that has not been maintained by the residents, it is clear that the remediation of that sits with the residents. What happens if the developer has completed the cladding remediation part of the work but is unable to get the building put on the register because the home owners have not completed their part of the work? Again, we will be left with buildings that are, in effect, sterilised, because although some of the works have been completed, not all of them have been.

We might need to separate the register into two parts—a cladding register and a register for other issues. Those sorts of details need to be teased out at this stage of the legislative process, rather than being left for subsequent legislation and regulation, because they are so fundamental.

**The Convener:** The idea of separating out the issues is an interesting one. Stephen Andrew wants to come in.

**Stephen Andrew:** I want to build on that point about the register. It is also important to recognise that it reflects the situation at a point in time. When a building is remediated—assuming that it is remediated—that is its condition at a point in time. What happens after that? How do we ensure that

the building remains safe? We differ from England in that, here, audits are not required annually, or whatever the frequency is that is applied. How do we maintain the register once the register has been set? That is a question that needs to be explored.

**The Convener:** That is a good point. I will just pop this in. We have heard the idea that, because all buildings need some kind of MOT, we should have a register so that everyone understands what buildings are made of and so on. Do you think that it would be useful to take that approach in Scotland?

11:15

**Stephen Andrew:** Yes, I think so. Elsewhere, there is a requirement for a fire safety audit. As I said, the frequency varies, but, at worst, it is carried out annually. That picks up any deficiencies in sprinklers, fire doors, operating systems and so on. If that were to feature as part of an MOT, it would work quite well. The issue is identifying someone who would be responsible for ensuring that that happened. At the moment, the factors—our management companies—do not tend to take responsibility. They are appointed by the residents and they push it back to the residents. That conversation needs to be opened up and the issue better understood in order to make a success of that.

**Stephanie Callaghan:** Homes for Scotland's response to the call for views on the bill mentioned the concept of "tolerable risk", which Fiona Kell touched on earlier. Could you briefly outline what that is, how it might apply to the bill and what it would mean for cladding remediation in practice?

**Fionna Kell:** I will pass the buck on that to one of my technical colleagues, who will be able to give you a more technically proficient answer.

In layperson's terms, as I understand it, you cannot eliminate risk from any building—there will always be something that will have a tolerable level of risk. As long as that is managed adequately and some of the other, more fundamental problematic issues have been dealt with, the risk will be of a tolerable level. That is standard. In all risk assessment, there is always high, medium and low risk. It is not possible to eliminate risk completely. Our issue is that, the way things stand at the moment, the legislation and the standards seem to imply that a building can be only high risk or low risk, which is just not practicable. My technical colleagues might be able to give a more technical answer.

**Kieran Walker:** Fiona Kell has put that in lay terms very well. The Scottish Government advice note that was published on 22 December is quite binary. You can have either high risk or low risk.

As Fiona Kell rightly said, we are dealing with proportionate risk. We are dealing with a level of risk; the issue is how we manage that risk in a proportionate manner. We will always be dealing with risks when it comes to multiple occupancy buildings with different entrances and exits and so on.

To date, the question of proportionate risk has been missed out of the Scottish advice note. The direction of the single building assessment approach has always been to say that something is right or wrong—it is a case of yes or no, black or white, red or green. In England and Wales, we are some months down the line with a system in which work is being done alongside accredited international fire engineers and assessors to take forward the concept of proportionate risk to allow us to undertake assessment and, ultimately, remediation on affected buildings and ensure that people can be safe in their buildings.

**Stephanie Callaghan:** To go back to risk assessments and health and safety, is it a question of balancing probabilities and the severity of what could happen if something goes wrong?

**Kieran Walker:** I think that it is. It is a case of understanding the risk and the likelihood or significance of the risk. It is also about understanding the roles and responsibilities that are involved. Fiona Kell made a point about a lack of maintenance of things such as fire doors. That is a major risk. If fire doors are not maintained by the factor or by residents and a fire breaks out in a communal area, that is a significant risk.

A less proportionate risk, such as an internal issue to do with the demise of a property—for example, a light not working on a main egress route from an apartment or a failure to maintain signage to the egress route from a building—is probably less of an issue. Those are examples of two very different levels of risk. I hope that that makes sense.

**Stephanie Callaghan:** It absolutely does. If you are talking about bringing in tolerable risk, are you able to say any more about how that concept might apply to the bill and what that would mean for cladding remediation?

**Kieran Walker:** We need to address the points that the developer fraternity has raised about the SBA and the potential harmonisation of PAS 9980 within the bill. Before rushing headlong into getting the bill through Parliament and on to royal assent, we need to resolve those fundamentals, which will involve adopting the concept of proportionate risk—a red, amber, green categorisation of risk—rather than doing it in reverse order and having to amend the bill accordingly. Again, I hope that that makes sense.



**Stephanie Callaghan:** Yes, it does. Thank you—that was really helpful.

**John Low:** I agree with the other contributors on that point.

Another issue that we need to consider is that, given that we are going back over a 30-year period, it is likely that adaptations will have been carried out in a number of buildings. To come back to the point about an MOT in relation to potential future adaptations, none of the adaptations that will have been carried out over that span of years will have been designed or contemplated by the developer. It is important to understand where the responsibility sits, because there are likely to be things that a single building assessment would pick up that have happened well after the developer has completed the building.

**The Convener:** That is a very good point. It seems to me that there needs to be some kind of operating and maintenance manual that should be handed over, if we are to address the issue that Kieran Walker mentioned in relation to who is responsible for what and where the line is.

Pam Gosal has a couple of questions.

**Pam Gosal:** Good morning. My question is for Fionna Kell from Homes for Scotland, but others are welcome to contribute.

In your submission, you warn that the failure to mention the proportionate treatment of SMEs in the bill could force many out of business and result in significant losses of the social and economic contribution that they make at local and national level. Will you expand on the effect that the bill could have on SMEs? What impact will it have on house building if many SMEs are forced to close?

**Fionna Kell:** The bill introduces the concept of a responsible developers scheme. As things stand, every home builder in Scotland could be covered by that scheme. With the equivalent scheme in England, a very clear threshold has been identified, whereby SMEs that make a profit of less than £10 million are excluded. That decision was made on the basis of an understanding of the potential impact of the proposal on SMEs. In England, a threshold was introduced, and SMEs that were under that threshold were excluded. There is no such threshold in Scotland and the bill makes no reference to any thresholds. As it stands, the bill directly puts Scottish SMEs at a much higher risk of failure than their equivalents in England, which I do not think is a proportionate response.

We already know that the number of SMEs in Scotland has fallen significantly since the 2007-08 recession. The number of home builders never recovered after that. Although there was a bit of a recovery in 2017-18, post-Covid that number has

fallen again. We know that there is an increased impact on SMEs. If we combine that with all the additional regulatory changes that are coming, such as the ban on gas boilers and the potential introduction of housing for varying needs, it is clear that we must recognise that all those important policy decisions have a cumulative impact on home builders and on SMEs, in particular. The absence of such a threshold in the bill will put an additional burden on SMEs.

**Pam Gosal:** Have you brought up the threshold issue with the Scottish Government?

**Fionna Kell:** Yes—we raised that on day 1. The very first question that we asked was, “Who falls within the scope of this?” The answer is still unresolved.

**John Low:** On the broader point, when it comes to the SME cohort of developers, it would appear from the process that we have had explained to us, which we have been trying to get our heads around, that the expectation is that we would sign up to a long-form contract to agree to remediate. Let us assume that the SBA and all the other technical bits and pieces are aligned and agreed.

On the process, an SME is unlikely to be able to sign the contract at the time of being requested to do so because the extent of what requires to be conducted and addressed will be unknown. The directors of an SME may well find themselves in a position in which they cannot sign up to an unquantifiable level of remediation, because most SMEs are debt funded. That might inadvertently have the impact that the business is no longer solvent. Therefore, the directors will not be able to sign up in advance of knowing and quantifying what the challenges are, because it is beyond their capability to do so. The technicality of that process needs to be understood. I think that that is unique to the SME wave of developers, as opposed to the larger plc organisations.

**The Convener:** That is an interesting distinction.

Before Pam Gosal asks her next question, I have a supplementary for Fionna Kell. How many SMEs in Scotland would fall under the £10 million threshold that you mentioned? Do you have that number?

**Fionna Kell:** I am afraid that I do not. I know the number of Homes for Scotland members, but that does not account for all the SME home builders in Scotland. However, the absence of such a threshold is a significant risk.

**Pam Gosal:** My next question is again to Fionna Kell, but I am happy to take responses from anybody else.

In your submission you note that the Housing (Cladding Remediation) (Scotland) Bill, as drafted,

fails to recognise that many of the buildings in the scope of the bill were built according to the building standards that were set out by the Scottish Government at the time, and that they were approved prior to and on completion by local authorities. Do you have a view on the appropriate balance of responsibility for funding cladding remediation work and on how that could be achieved in practice?

**Fionna Kell:** The principle is as we have set out. I will revert back to SMEs. If an SME developer built a building in good faith with materials that were specified and it was signed off, but the developer is now required to remediate as a result of retrospective changes to legislation, it is quite rightly asking what else you will change in a few years' time in some other legislation that will mean that it has to go back and do it over again. I do not have a mechanism in front of me for dealing with the proportionality but, certainly, the introduction of a threshold for the smaller SMEs would be cognisance of the fact that it was not just the responsibility of the SME to fund the work. I know that this is an issue that John Low feels particularly strongly about.

**John Low:** Yes, thank you. Unlike in England, responsibility for the whole process of assessment, verification and approval before you start doing anything sits solely with the Government through a licence to all the local authorities in Scotland to approve whatever it was going back to 1992 that was going to be fitted to buildings. In my mind, I could not see a developer proposing to put materials on a building that were not believed to be compatible and compliant with the regulations, and I have equally no doubt that those approving it would have thought similarly. We then come through the whole process to sign off that the building meets all the standards at the time, so the retrospective bit presents a challenge for me personally—I should add that, in my business, we have not found any buildings that would be subject to cladding remediation.

It seems odd that we look back retrospectively, and there is also further provision in the bill for a decision to be taken to change that again to some other requirement. I struggle with that, because I do not know, if I am asked to sign up to something, what I am being physically asked to sign up and agree to.

11:30

**Julie Jackson:** Miller and, no doubt, our plc colleagues have already thought about and made provision for funding remediation. We have a rough idea of what it might cost us, but I come back to the point that we made earlier: if you are making a building safe, there will be some elements of that, such as the fire alarm system

and the fire doors, that are the residents' responsibility. It is an uncomfortable position to be in—not from a developer perspective but from a whole-industry perspective—but those costs will need to be funded by someone and, effectively, they are the residents' responsibility.

I understand why that might be a difficult subject to tackle. Although the buildings need to be remediated at no cost to the residents, the fact is that there are costs that are the residents' responsibility, and that needs to be addressed somewhere probably more holistically. It goes back to the SBA. The SBA covers all fire risks in a building and not just cladding. If we are starting with the SBA as a funding principle of the bill and the whole remediation programme, the issue of liability and the cost that may be attributed to the residents needs to be tackled head on because, otherwise, it is a glaring hole in the legislation.

**The Convener:** Not to do with this bill but going forward, do we need to be clear in Scotland about that line of responsibility and the handover moment?

**Julie Jackson:** I think that it is wider than just the handover moment. It is a gap in Scottish legislation generally that we do not have any liability on residents for maintaining their buildings in a safe way. As somebody said earlier, it is a health and safety matter. There is a gap in Scottish legislation that needs to be addressed.

**Stephen Andrew:** Building on the liability and cost piece, I note that one area on which the bill is fairly silent—it is quite an important point, particularly for the SMEs and orphan buildings that are funded through the Scottish Government, but equally so for the plcs—is the other actors, such as contractors, professional consultants, architects, engineers and, in particular, material manufacturers. Where something might not have been certified, designed or constructed properly, we should all have the ability to seek recompense and contributions from those parties. In relation to the orphan buildings and SMEs, in particular, and the plcs, we are already doing something similar in England where it is appropriate. That is not particularly addressed in the bill and it should be.

**The Convener:** Do you think that it has to be addressed in this bill, or is it a piece of legislation that needs to happen?

**Stephen Andrew:** What we probably need to try to do here is inject pace into the conversation. The more we can build into the bill that does not require other legislation or secondary legislation to enable progress, the better. That would be the best outcome.

**The Convener:** Thanks. I will bring in Willie Coffey, who is joining us online.

**Willie Coffey:** Thanks and good morning. From listening to the conversation so far—and I am trying to place myself in the position of someone who has bought a property from you and lives in that property with this continuing risk—I get the feeling that the lack of progress has been pinned on complexities in the legislation, rather than the focus being on making the houses that people live in safe. Have you assessed your own stock over the 30-year period that the legislation covers and do you know which properties you built fall within the remit of the bill to have the cladding remediated? The big question is whether there is anything that you could have done or could do reasonably to address that, given that you know the condition of the buildings and the cladding that you may have. Is there anything that you could be doing outwith the complexities that you are describing this morning to get on with it, as some of the people in the previous panel were asking us all to do?

**Fionna Kell:** I understand that a number of developers have progressed with undertaking those initial assessments themselves and, as has been said, a number of them have already commenced remediation works in Scotland and in the rest of the UK. We keep coming back to the same point, but I think that the frustration is not having full clarity about what is required and to what standard. Nobody wants to go back in to remediate a building and then, in 12 months' time, be told, "By the way, we now want you to do this and could you go back in again and do that?" It is a very disruptive process.

It is not a question of hesitancy or pushing back against the principle of doing the work. It is about wanting to do it once and right. That is the principle that people want to get on with and, without the initial part—the SBA—we cannot put the rest of the process in place. The whole thing hinges on getting that right at the outset. Until then, we cannot do anything, because we do not know what is required, how it is to be done and to what standard. Until we can answer those questions, we cannot remediate the buildings.

**The Convener:** I will ask a quick supplementary question. When you describe that concern, what are you imagining that a developer might be asked to go back in to do several months later? Do you have anything in mind that would allow us to understand it a bit more?

**Fionna Kell:** I do not have a specific thing in mind. I am not a technical person, but is it cladding or is it a building safety issue that we are being asked to do? Are we going to go in and just do cladding, and that is it, and then in six months' time be told, "Hang on, it is not just the cladding that you need to fix. It is the rest of it as well"? It is about getting that right at the outset, because it is

disruptive to residents and we do not want to go in and do that on a number of occasions.

**The Convener:** The other thing that has come up this morning here and also in the earlier panel is that there are other things in the air that need to be addressed. If you are already going in to do something, do you need to be addressing other things? You look puzzled, but I am thinking about retrofitting and the net zero agenda, which were talked about.

**Fionna Kell:** It is just about having clarity and having something specified. I have seen a recent communication saying that the Scottish Government has been procuring a team to write the specification for an SBA. The Government said in that that it recognises that it has had 17 SBAs undertaken to date at various stages and they have taken 17 different approaches. Now the Government is saying, "We need this standard specification." We have been asking for that for two years, because we said on day 1, "If you do not have that specification and you do 17 SBAs, you will get 17 answers." That is how it all hinges, and now we are moving towards that, but it is fundamental to get it nailed down at this point.

**The Convener:** I can see that it would not work if you have even more different SBAs.

**Willie Coffey:** I would like to hear from the builders around the table, but can I ask the question in another way? Supposing some of your stock had the same cladding on it that Grenfell had, are you telling me that you would still need to clarify the processes and so on to act immediately to remove that? Surely not. Surely, if you know that the material on any of your buildings is risky and should be removed, you can act without demanding further clarity. I have to say to you that constituents talk to me about this. It sounds as though we are hiding behind process issues rather than taking on board the action that needs to be taken when we know that it needs to be taken in many cases. Is that a fair or unfair assessment?

**Stephen Andrew:** At Taylor Wimpey, we are proud of what we have done and the action that we took very early on in all of this. We are just coming to the very end of a four-year cladding and remediation programme at Glasgow Harbour, where there were 321 affected apartments. There was an ACM product on those apartments and there were two blocks of 18 and 19 storeys, so we were not comfortable at all with the risk profile there. We took very early action to move in there and remediate that. We had to overcome a lot of challenges. We have had the minister and officials out there to demonstrate how we have overcome some of the resident problems, the ownership problems and so on, but we very clearly demonstrated that we got past all that.

It is a good question and I understand both sides of this, because we have remediated those buildings. We have taken off the ACM and we have re-clad the buildings with non-combustible material. We committed to the residents and we provided an AWS 1 certificate, because that was what we knew at the time. We have subsequently run PAS 9980 assessments against the buildings. Where the concern comes with people moving in advance of the scoping requirements being set and the assessment requirements being clear—and I do not think that this will happen in this case because we have run PAS 9980, so we are very confident—is that they could end up having to go back into those buildings again.

If you think of the experience of people living in that development site for the past four years with scaffolds, mast climbers and disrupted parking, Fionna Kell's point is very relevant. You only want to go into the buildings once and get them remediated properly and well, leaving the residents with a building that they can insure and sell. Given the risk profile in Glasgow, we had to act in all good faith. We have done reviews of the rest of the portfolio and we do not have similar material elsewhere.

**John Low:** For the avoidance of doubt, we went back circa 20 years and found no buildings with cladding or issues similar to Grenfell. We are also trying to find records. Not all of us have had computers since 1992, so there is a different route to try to source records on those buildings that were completed back in those days, but that exercise continues. Personally, I have no doubt in my mind that, if we had come across that type of material, we would have sought to get it addressed.

I will pick up on Fionna Kell's earlier point. This is a cladding remediation bill and you were talking specifically about the cladding. The difficulty seems to be when you are dealing with the external fabric of the building and then putting in the internals as well, which means that you cannot get things moving, get it completed and then ultimately get it on the safe building register. It makes sense that you separate the two and have different registers for the cladding and the internals, for the reasons that we heard earlier this morning.

**The Convener:** Does Willie Coffey have any more questions?

**Willie Coffey:** In the interests of time, no. I thank the witnesses very much for those contributions.

**The Convener:** Julie Jackson wants to come in.

**Julie Jackson:** I would like to address Willie Coffey's question. We have done exactly that at Miller Homes. We have looked at all our buildings

that would potentially be in scope. We have some that need some work done to them. Other things can be done to make the buildings a bit safer in the interim before remediation is carried out, such as putting in advanced fire detection or a waking watch to give residents assurances about safety.

When we have found buildings in which things need to be done immediately, we have, like Taylor Wimpey, carried out works in accordance with PAS 9980 because we know that the fire engineers, fire safety consultants, building surveyors and cost consultants understand that. That is recognised. We do not mess around with anything, and that gives us the ability to get in and get work done quickly.

11:45

That goes back to the point that we could move things on a lot more quickly than we have done to date by adopting some of the methodology and standards that have been used in England instead of creating new ones. If we did that, that would have quite a significant impact on timing.

**The Convener:** Quite a few people have referred to the idea that we need to adopt what is going on in England, where there is different legislation. From your understanding, why are we not doing that?

**Julie Jackson:** I struggle with that a bit. That is what the bill could do. The bill should address the gaps. We could start off from a basic standard that everyone knows and understands and, where the Scottish legislation is deficient, we should use the bill to plug the gaps. We do not seem to be doing that. I find it quite difficult to get my head around why the bill has not been used in that way.

**Marie McNair:** That takes me neatly on to my question. The committee would be really interested to hear whether any lessons have been learned from cladding remediation elsewhere in the UK that might improve the bill or the wider Scottish Government response to the issue. Does Julie Jackson want to expand on that a wee bit, or should I put the question to her colleagues first?

**Julie Jackson:** I will pass that question to Kieran Walker because he has much more experience in England than I have. Although we have buildings in England that we are remediating and we have experience of that, I think that the Barratt Developments' experience will be fuller than ours.

**Kieran Walker:** As was mentioned earlier, we were among the first to sign up to the pledge in England and the pact in Wales. I think that we have undertaken over 90 per cent of the PAS assessments in our portfolio in England and Wales.

Fundamentally, the lessons that we have learned are that we are talking about people's homes and lives, people's homes are the biggest purchases in their lives, and we need to get this right. That relates back to doing it right and doing it once rather than causing continuing disruption to people's lives. Potentially reducing the daylight coming into people's apartments really does have an impact on their lives. We are in the depths of winter now, and it is cold out there. If insulation and cladding are removed from buildings for a period of time, that will have an impact on people's lives. That is the fundamental point. We have always said that no leaseholder should ever pay for that, and we are undertaking a major programme of remediation assessment on a significant number of buildings.

The lessons that we have learned and that we continue to learn are about ensuring that we put the customer first. We have set up a specialist division in Barratt Developments that deals purely with building safety and fire risk. Within that, we have a dedicated communications and customer team.

Although people may not have been our initial customers for up to 30 years, they are still our customers now, and it is important that we treat them with the respect and value that they deserve. It is not their fault or problem that they are in that situation, and it is vital that we learn and continue to learn to ensure that we put residents first in the process.

**Marie McNair:** Finally, I will ask the same question that I have asked previously. Is there anything else that you would like to see in the bill or any action that you would like the Scottish Government to take that has not already been highlighted in the meeting? I will pop that out to Fionna Kell first.

**Fionna Kell:** We have covered most of that. We outlined a number of points in our written submission to the committee. As I said at the beginning, it is about specification of the SBA, clarity on the treatment of SMEs, and detail on the scope, content and management of the register, including clear obligations and timescales for the Scottish ministers. A point was made about timescales earlier. We need those obligations on all parties and a recognition of the principle of proportionality and the role of wider stakeholders and the wider supply chain. We have touched on all of those but, to be succinct, we think that that is what the bill is lacking at the moment.

**The Convener:** That was a comprehensive list. Does anyone else want to come in on that?

**John Low:** I agree with Fionna Kell, and I want to pick up on some of the commentary in the previous evidence session. There was something

about the timescales to get things done. I get the point about that. On the way that the bill is currently drafted, it is important to understand that, whatever the scope of the SBA will be, to bring it up to today's standards, there will have to be a whole building warrant process to go through. The control and delivery of the outcome of the building warrant application is not in the gift of the applicant. If there is an appetite to wrap a timeframe around that, there is an unknown in respect of putting in an application and the duration and potential output from that, even once the scope of an SBA is agreed. That is something to be mindful of.

The current application processes are becoming more elongated, and there is a question about the resources in those at the local authority level. That needs to be understood, and appropriate resources need to be put in place. Unless that is understood and tackled, I do not understand how a thought process of wrapping a timeframe around that could be done thoroughly.

**Kieran Walker:** I, too, will go back to the previous point. Another lesson that Barratt Developments has learned is about the critical importance of the supply chain and the infrastructure behind trying to deliver a cladding or building safety remediation programme at scale. We have a significant back line of assessors, engineers, contractors, approved inspectors and so on in England and Wales. To add to John Low's point, we need to understand the levels of resource and expertise in the public sector but also in the private sector, because the pool of specialist contractors, fire assessors, engineers and so on is finite.

In England and Wales, we have experienced at times that we have been competing for the same resources as the building safety fund, which is the Government's mechanism or delivery vehicle for setting up cladding remediation for orphan buildings. We have competed with that system when we have tried to invite tenders or to appoint engineers and assessors. One of the learnings is that we need the infrastructure and the supply chain behind us to deliver at scale as well as the expediency from a policy and legal mechanism perspective.

**Stephen Andrew:** To reiterate some of Kieran Walker's points, people are at the heart of this. We are talking about a building safety problem and people's homes. The problem is causing a lot of people stress and distress as a result of not being able to remortgage, move home or buy and sell, and it is affecting life events. It is a significant matter.

We need to find a way to really inject speed into the conversation. From our point of view, we are ready. Kieran Walker has talked about the lessons

learned in England. I agree with what was said. In England, it has taken some time, but we now have consultants and contractors available, and everybody has now become quite familiar with cladding remediation. We have already completed 39 buildings in England. A lot of the contractors and consultants work north and south of the border, so the infrastructure is already there, albeit its availability would be diluted slightly.

From our point of view, we are ready to do it. We need to remember that this is about people, so the quicker we can clarify the scope the better. I know that good work has been done in recent meetings on PAS 9980 becoming the standard. The developers will very quickly know which buildings fall into and out of scope. Orphan buildings could be assessed very quickly against that, because all the fire and engineering community is familiar with it. The number of buildings and the number of people who are currently uncertain about whether they are affected would very quickly start to narrow. People could then move very quickly to the council's point about why people cannot get on and do something now. I believe that, if that was agreed very quickly, the developers would start to move, and that would really start to address some of the residents' concerns.

**The Convener:** Great—thanks. I will bring in Julie Jackson and then other members who have indicated that they want to come back in.

**Julie Jackson:** I will expand on the previous point that was made. Despite all the problems that we have in trying to start to remediate, including access to consultants and contractors to make progress, developers in Scotland will be remediating only a small proportion of the affected buildings. The Scottish Government will have multiple times the number of problems that we have. It is absolutely in everyone's interest that we get a speedy, efficient and—dare I say it?—a cost-effective resolution. If we do not come up with a solution to the scope and the question of tolerable risk, this will have a massive financial impact on the public purse.

**The Convener:** Thanks very much for that.

Before I bring in Miles Briggs—apologies, Miles; your moment will come—I will bring in Kieran Walker, who needs to leave at 12.00. Is there anything that you want us to hear, Kieran, or do you think we have covered it?

**Kieran Walker:** No. I think that we have covered the majority of points, to be honest with you, but thank you for the opportunity.

**Miles Briggs:** I have a couple of questions, the first of which is about the scope. Why do you feel that the Scottish Government has excluded student accommodation, hotels and care homes?

We know from the conversation that England seems to be way ahead in getting work on those properties taken forward. I think that 21 per cent of them are now having remedial works done, whereas the figure is just 1 per cent in Scotland. Why do you think the Scottish Government has taken that decision in the legislation?

**Fionna Kell:** We represent home builders and, to be honest, we have not looked at the issue elsewhere, so I have no thoughts as to why those properties have been excluded.

**John Low:** I cannot shed light as to why they have been excluded. To my knowledge, there has been no consultation outwith the developers. The bill is about developers and cladding. That is what we, as members of Homes for Scotland on the house-developing side, have been engaged in. That is all that I can say on that.

**Julie Jackson:** Contractors are excluded from liability under the English system, and I think that, similarly, from the outset, it was proposed in Scotland, under the accord, that if you were developing solely as a contractor and taking a contractor profit, rather than a developer profit, you would not be within scope. The types of accommodation that you have just referenced, such as student accommodation, tend to be built by contractors, so I wonder whether that is why they have been excluded. For hospitals and so on, there is maybe a different model.

**Miles Briggs:** That is helpful, but I wonder how many developers have a mixed portfolio of developments—not just home building.

**Julie Jackson:** Very few. It is not really a model that home builders would operate. It is generally contractors that build commercial buildings.

12:00

**Miles Briggs:** On the impact of taking a different approach, some of my case work—which all members will have—around rebuilding confidence in the insurance industry and getting a solution shows that there are concerns about a different approach potentially being taken at the end of this process and having the situation that has been outlined around high-risk and low-risk buildings. We will have representatives of the insurance industry at the committee in the future. What concerns are there about that approach creating two very different situations north and south of the border, and have you fed those back to the Scottish Government?

**Fionna Kell:** We are obviously not insurers—they can speak for themselves—but I understand that there has been an improvement, from the lending and insuring point of view, in the appetite for looking at those buildings elsewhere in the UK,

which are now identified as being part of a programme even if the remediation has not started yet. It has been said on several occasions that, if we can increase the overall pace of things in Scotland—if we can start to get that scope and get the buildings identified—that might, hopefully, improve the sentiment towards lending and insurance in Scotland. If you have the insurers in front of you in a few weeks' time, that is a point worth exploring.

**Miles Briggs:** Finally, I want to go back to Stephen Andrew's point, from the very beginning—it was also raised by the previous panel—about communication. The bill does not necessarily capture this, because it probably sits within a factors bill on the future management of risk.

A lot of people who are currently in buildings do not feel that there is that standard communication with them. We have heard feedback loops mentioned, which, for people in social rented properties, are the responsibility of the housing association or the council. Looking specifically at how that communication should be improved under the bill, what suggestions do you have? Although it is not your area of responsibility—it may be for the factor who has been appointed, or there are often connections between developers and factors—do you have any suggestions of what that should look like in any potential amendments to suggest to Government? I think that that is at the heart of what a lot of people are frustrated about—not having proper communication over this period and not knowing what is going on, even if good work is sometimes taking place.

I mentioned Stephen Andrew, so I will bring you back in.

**Stephen Andrew:** Talking to lessons learned, the importance of communication is probably the biggest one. It is a complex topic and the layperson might not understand a lot of the content, but they are directly affected and they experience the emotional impact that will come with some of this. So, from our point of view, communication is fundamental to making a success of any of these projects.

I will take the Glasgow harbour scheme as an example. Newsletters go out there very regularly, and we have been to a number of AGMs and EGMs with residents. With the factor, we took steps to set up a slightly different arrangement there so that far more attention was given to those residents for the duration of the works.

There are things that we have implemented that can be replicated elsewhere to improve the situation—even things such as the considerate constructors scheme, which improves communication between the contractors on site

and the residents. One thing that we all need to bear in mind is that, when all these buildings were built, there were no people living in them, so the circumstances are very different when we go back in to remediate the buildings. The approach needs to be sensitive to that fact and take account of it.

I am not sure how that communication should be addressed through the bill, but it needs to feature. Some thought should be given to the obligation of developers—and the Scottish Government—to communicate with residents.

**The Convener:** Yes. Maybe there should be some guidelines after the bill comes in.

**John Low:** I will pick up on the broader question. In the longer term, beyond the remediation phase—this goes back to some of the questions about building MOTs—some thought could probably be given to maintenance-type manuals and so on that factors could pick up at completion and the handover. In the longer term, that could provide a lot of knowledge, awareness and peace of mind about what has to be done and when.

**Fionna Kell:** It is not something that the bill specifically can address, but I think that the resourcing within the Scottish Government is important in the context of the bill. Over the past couple of years, there has been substantial underinvestment in the resourcing of the Scottish Government team, which I think is part of the reason why this has struggled to build momentum. We have seen an improvement in that resourcing in recent months, but, given the overall scale of what needs to be delivered once this moves into the operational and delivery phase, we cannot overestimate the resourcing required within the Government to deliver it.

Co-ordinating all the buildings and communicating with all the residents of all those buildings is a huge and complex task that Scotland has never done before—and that the UK has never done before. We cannot overestimate the resource-intensive nature of that task, and I am not sure it is fully reflected. I know that you are not looking specifically at the financial memorandum, which is being looked at elsewhere, but we have made the point that there are financial implications for Government resourcing, not just the capital expenditure.

**Julie Jackson:** I wonder whether the bill could do something around a responsibility for communication, not just for the developers but for the residents and factors, and whether it could establish a platform for that, because there is not one at the moment. It is perhaps something that you could pick up with the Law Society in looking at how the property law piece is established in Scotland at the moment, because there is a gap

there as well. There are roles that are taken up by managing agents in England that we just do not see here, and the factors here do not have the same level of responsibility for, or control over, anything. There may be something to look at there from a communication perspective.

We have found that communicating directly with the residents associations is great. There is no obligation to have a residents association, but, if there is one, it is great—it is a channel. There are possibilities there.

**The Convener:** Thank you. Willie, are you still there? Do you want to ask a question?

**Willie Coffey:** I would like to go back to the point about how we could hasten progress and what the barriers to that are. We talked about building standards, and I think that Julie Jackson replied to a point about that. In Scotland, we are particularly proud of our building standards, and the legislation is more rigorous than that which applies down south. Julie, I have to come back to you on that point. Are you saying that Scotland should either loosen, slacken, lessen or abandon our building standards in order to make further progress?

**Julie Jackson:** Sorry—I lost you a little bit there, but I think you were asking whether we should abandon building standards. No, absolutely not. There are building standards that have been in place in Scotland for a number of years that are higher standards than those in England. For example, sprinklers came in in Scotland much earlier than they did in England and Wales.

This is about making buildings safe retrospectively for people to live in. It may be that we cannot retrospectively remediate to current standards, but what we must do is make a building tolerably safe for the residents to live in.

**Willie Coffey:** Yes, but, in your view, this is about Scottish building standards somehow slowing that process down. That was the sense that I got from you earlier—that, if only we could adopt the same standards as apply down south, that would somehow speed up the process in Scotland.

**Julie Jackson:** Sorry—what I was suggesting is that we use the current standard in England, which is PAS 9980, as the standard to which we remediate the buildings. Not only do we understand that, but all the professionals, including architects, would understand what would need to be done to make the building safe according to that publicly available standard in England.

**Willie Coffey:** I will leave it at that. Thanks very much.

**The Convener:** I think that we heard earlier that there has been movement on PAS 9980 and that we are heading towards agreement on its adoption.

Stephen Andrew wants to come in.

**Stephen Andrew:** On the building control point, we have a live example: Glasgow Harbour. We are getting the completion certificates for the various towers now. The building standards process has worked well and the support from building control in Glasgow City Council has been excellent.

However, I will note a couple of important points. One point is resource within the local authority, which we know is under pressure, particularly in relation to specialisms such as fire engineering and structural engineering.

Another point—again, this is something that we have learned lessons from—relates to the process for dealing with older properties. When building to new designs, we might go through the structural engineers report process with our structural engineer. However, we cannot do that for older buildings, because a structural engineer would not take on full responsibility for the rest of the existing structure.

We had to go through the more traditional structural engineering approach with Glasgow City Council. I think that it had two structural engineers in the building control team. They were dealing with fire issues in Sauchiehall Street and all sorts of other things, so we were competing for that resource, but the council gave us a very good service.

The building standards process works well, but resource is probably something that we need to think about as all the buildings come forward for remediation. That then goes back to the issue of scope and consideration of the number of buildings that are presented.

To be clear, this is a building safety issue; it is not a building improvement programme. This is neither about improving the U-value of walls or applying various parts of building regulations, nor is it about developers being asked to come back to upgrade buildings that are 30 years old so that they meet all aspects of the building standards, because that would not be possible. It is important that the bill has a refined scope.

**The Convener:** That is a good point.

You may not be able to or may not want to answer this question, but it strikes me that some of what has come up this morning is about mobilising the right workforce—you have just highlighted the specialisms in local authorities. It is also about the supply chain, and the need to have all the materials ready in order to do the cladding project



in Scotland. That made me wonder whether local authorities need to direct that resource for a period. If the bill is passed, what would that mean? Will there be a 10-year project? What level of resource will be needed to address the situation?

**Stephen Andrew:** That is a very difficult question to answer. Every building will have its own complexities. Again, that goes back to the scope of the bill. At the moment, the Scottish Government will not know how many buildings fall within the scope of the bill because its scope is not clear. Once we clarify the scope, the number of buildings in need of assessment and then potential remediation will reduce. That will allow the local authority to set the resource levels, which will give everybody else, including consultants and contractors, some idea of what the runway of remediation looks like.

The Glasgow Harbour development has 321 apartments in six towers, so it offers a large-scale example. The project has been going on for four years—we have had a contractor and suite of consultants tied up on the project for four years to reach the current point.

It is a difficult question to answer, but the duration of the project will be significant.

**The Convener:** It is helpful to have that answer. Of course, although you are doing that work, not everyone else is. Therefore, we need to be aware that, at some point, a lot more work will need to be done.

There are many takeaways from this conversation, but am I right in thinking that your view is that PAS 9980 would provide the right scope for the remediation work?

**Stephen Andrew:** Yes.

**The Convener:** Okay—great.

I thank those who were able to join us in the room this morning, and I thank Julie Jackson for joining us online—it was very useful to hear from you all.

We previously agreed to take the next item in private, so that ends the public part of the meeting.

12:14

*Meeting continued in private until 12:30.*



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

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