

DÁIL ÉIREANN

AN COMHCHOISTE UM THITHÍOCHT, PLEANÁIL, POBAL AGUS RIALTAS ÁITIÚIL

JOINT COMMITTEE ON HOUSING, PLANNING, COMMUNITY AND LOCAL GOVERNMENT

Déardaoin, 13 Aibreán 2017

Thursday, 13 April 2017

The Joint Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Pat Casey,	Senator Grace O’Sullivan.
Deputy Eoin Ó Broin,	

DEPUTY MARIA BAILEY IN THE CHAIR.

Business of Joint Committee

Chairman: At the request of the broadcasting and recording services, members are asked to ensure that, for the duration of the meeting, their mobile phones are turned off completely or, depending on the device, switched to aeroplane, safe or flight mode. It is not sufficient for members to leave them in silent mode as that would maintain a level of interference with the broadcasting system.

Apologies have been received from Senators Murnane O'Connor and Victor Boyhan. With the agreement of members, I propose that we go into private session to deal with housekeeping matters. Is that agreed? Agreed.

The joint committee went into private session at 9.35 a.m. and resumed in public session at 9.44 a.m.

Review of Building Regulations, Building Controls and Consumer Protection: Discussion (Resumed)

Chairman: This morning we will continue our review of building regulations, building controls and consumer protection. I remind members that we will have two sessions today. To our first session I welcome Ms Orla Hegarty from the school of architecture, planning and environmental policy at University College Dublin, UCD; Mr. Alan Baldwin and Mr. Kevin Hollingsworth from the Society of Chartered Surveyors Ireland, SCSi, and Ms Deirdre Fallon and Mr. Paul O'Neill from the Irish Planning Institute, IPI. Our first session will take approximately one hour.

Before we begin, I draw the attention of witnesses to the fact that by virtue of section 17(2) (f) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I call on Ms Hegarty to make her opening statement.

Ms Orla Hegarty: I thank the Chairman and members for the opportunity to attend this session. I have made a submission that sets out the background and some of the context of building control in Ireland but I would like to address some of the issues, principally the features of a cost-effective and robust system that accords with international best practice.

First, I will explain why housebuilding is high risk. This sector is very vulnerable to non-compliance and needs robust controls of construction to protect life and reliable consumer protections to protect property. These issues are not unique to Ireland and are a consequence of the way that housing is procured, which is generally different to construction procured under

commercial contracts between an owner and a builder. The housebuilding sector requires immediate and sustained focus, particularly the areas of spec-building and self-building. There are two separate issues but the nub of both relates to the role of the State and the responsibilities of owners. First, there is a State building control system which is to protect people. The role of the State is to ensure that all buildings are safe and sustainable. The first aspect of that is to ensure technical compliance in order to make occupation by owners safe and to make buildings sustainable. The second aspect is protection of the State to ensure technical compliance on energy efficiency, environmental protections and contamination. Aside from that, there is the issue of protection of property which involves consumer safeguards, particularly for owners and buyers who invest in housing and apartments because they are buying a product. Consumer protection is important. Building control means technical standards such as fire safety, access for the disabled, structural design, drainage, staircases, and sound transmission between apartments. These are compliance issues that can be measured by a professional. They can be designed, measured, checked and tested, and a professional can stand over them. Consumer protection issues concern the property, the product delivered from the market by a developer or a construction company. This is important because problems do not appear immediately, they often take a lot of time.

In commercial and institutional buildings, such as schools, hospitals, hotels, factories, offices and shops the owner and the builder are separate entities. Contracts are generally in place to deal with issues on site and latent defects after completion. This is because commercial owners are generally more experienced, more invested in the durability and quality of building they produce and protect their capital investment through professional oversight, warranties, insurance and retention moneys. There are mechanisms in place for that. One size, however, does not fit all. In housing, the owner and developer in a spec development situation or self-build are the same entity and these protections are not in place. There is a conflict of interest. The role of the State needs to be defined. Its role is to protect consumers because they could be involved in this process without any of these safeguards and to protect people who come in at the end of the process and buy the product because the seller - the developer - may not be around by the time the problems appear.

For a home buyer, some elements of non-compliance technical issues might be evident or provable at completion but many defects take some time to appear and they can be complex and take a great deal of time, effort and legal issues to unravel. They could be due to design faults, construction errors, an issue with low-quality materials or a failure of products, components or equipment that are put into the building. Over time, all of these problems could be compounded by poor maintenance, subsequent work to the building, accidental damage or even just the environmental conditions of the material. The priority in all of this consumer protection should be about fixing the problem first and sorting out the claims later. It is more important to the consumer to get the issue dealt with.

We must ask why this is happening, where the flaws are in the system that allowed it to happen and what went wrong at Priory Hall, Longboat Quay and other developments. First, there was an absence of third-party oversight of design and construction to prevent non-compliance at the design stage and on site. Under the Building Control (Amendment) Regulations, BCAR, the legal responsibility is on the owner to appoint somebody to police the system. In the case of a self-builder or a developer, however, they are effectively appointing somebody to police themselves so there is a conflict of interest there. In addition, the appointed person does not have to be independent of the process and they have no legal powers.

The second issue is a lack of regulation of housing developers. I make a distinction here between housing developers and builders. The nature of the market is that most work is sub-contracted. A housing developer is undertaking an enterprise. They may or may not have experience in the building industry and they may not be qualified or have technical expertise. That is fine as they will appoint numerous people under them. The regulation of the housing developer - the person controlling the process, controlling the supply chain and selling to the owner - is important here rather than the regulation of builders. Speculative housebuilding probably does not have the same priority of the building being durable or a long-term investment. That is another concern.

The third point is that there are inadequate consumer protections. This relates to the legal rights and remedies for these people.

Those three issues were failings in the past that have not been addressed under BCAR. The principal focus of BCAR is the availability of documentation, some improvements in the home warranty scheme and some statutory registration. However, these are very much secondary issues to the core problem that people have with defective units. BCAR has also been presented to consumers as a solution to the two problems of the protection of life and the protection of property. This is a difficulty for a number of reasons. First, the scope of building control regulations is not to protect property but to protect life. Building control was never intended to be used as a 100% asset guarantee on a commercial property transaction. That is a problem for the State because the scope of the State involvement has been stretched.

The second issue is what constitutes this rolling set of guarantees that has been promised and what it means. Nobody is quite clear what it means. Is it a single point liability on one person? In that case, is it insurable? Is the owner of a defective property expected to sue one person, and that person sues down the line, or is the owner of the defective property expected to sue everybody and hope something might stick? There is no clarity on that. There is also the problem that if the courts decide in the coming years that a compliance certificate is a property guarantee - and the courts will have to decide that - there might not be any insurance available to meet that award. Even if an owner gets an award in court, professional insurance might not step in to deal with that. The professional has no control over whether his or her insurance meets that claim. That is a decision for the insurance companies.

It is clear that home buyers with problems will have to litigate or enter into arbitration or both. There is no mechanism for them. The new home warranties available in the market are limited in time and cover. They do not include pyrite and there are other exclusions. The expectation that professional insurance will stretch to cover these claims is doubtful. In any event, it will be the professional insurance company which will decide if that is the case. There is no guarantee that the professional insurance will be available or affordable for these claims in the future. There is a great deal of doubt regarding this. There are justified fears among professionals about entering into open-ended liability for the work of others on this and not just on their own work. Under our legal system, if one is found 1% responsible, one can be 100% liable for the cost. There are genuine fears among people that they could have a very small input into a problem yet they could carry the risk of all of it and their insurance might not be available to them.

The other difficulty is that all of the paperwork - the micromanagement of certificates, sub-certificates and sub-sub-certificates - is a barrier to collaboration. It is a waste of resources and a barrier to the use of shared technologies. Owners in this system have the cost of managing and paying for the system but they do not have any certainty about benefits. There is a question

over cost and benefit in the system.

To summarise on the costs, BCAR was designed to be forensic. It was designed to document and record every process and every component. That is very expensive. The question is whether the market can bear this level of cost. Increasingly, there is an administrative drain in this regard. There is also a drain on people with the expertise to do the work properly to this level. As a result, there are wide variations in how it is being interpreted on the ground. At one end, commercial owners in many cases are paying very high costs for a quality assurance, QA, that is gold-plated. If owners feel that is justified with their investment, they should be allowed to do it. However, I am not sure that the State should regulate for it. At the other end of the market, it has reverted to business as usual. Certificates and inspections are available at low cost and there is a significant risk of repetition of past failings.

In terms of resources, the issue is that BCAR was rolled out at a time of very low levels of construction activity. We already have a skills shortage. There is an anticipation that there will be full employment next year, but there are 80,000 new jobs anticipated in construction. Will the system be fit for purpose if we double the output in the coming years? If there is a substantial change in construction technical methods which we have to achieve by 2020 and there is an influx of tens of thousands of workers, is the system robust enough to deal with that?

I will conclude with some suggestions and recommendations on what is needed for an effective system. On the building control side, which is to do with the protection of life and the element the State would regulate for all buildings, first, the inspection of design and construction should be independent of the owner and under State control. Whether that is through the local authority, panels of inspectors or by some other means is something that could be considered but it should be independent of the process. Second, it should be a national standard for substantial compliance, so everybody knows exactly what they are standing over and what they are doing. Issues of compliance should be clear and measurable. This will also help owners, because if something is measurable it is easy to prove that it is wrong. Third, there should be supports for designers and builders through producing approved construction details that everybody can use and which everybody knows are compliant. We do not have that at present. Fourth, the Building Regulations Advisory Body, BRAB, should be re-established. It should have a technical support function and be a driver of innovation. Last, there should be a standard system of registration for key professions and critical trades which would be a single point of contact for consumers and is clear and working to the same standard.

With regard to consumer protections, the commercial and institutional construction industry probably can look after most of its own arrangements. There should be flexibility in the market for the market to decide and for owners to decide what is appropriate for their situation. In the housing sector, there should be licensing of speculative housing developers and some mechanism of redress, perhaps through bonding, so that if they cease trading, there would still be an entity in place to protect buyers. Second, there should be a robust system of mandatory warranty. That could be tied to either an insurance product or possibly a national fund for defects that would go beyond the scope of the current warranties that are available. Third, there should be a strategy to look at the construction industry insurance generally and to review the regulatory environment in that regard to find where the weaknesses lie. There is a great deal of reliance and talk about the insurance that is available but there is no certainty that any of the insurance products will meet the need in any of this.

Fourth, there should be market surveillance of construction products, which is envisaged under the construction products regulations from Europe. That has numerous advantages. First, it

will help the builders to know that their supply chain is compliant and that the materials are not dangerous and fraudulent. It will help owners because they will have the benefit of this support. It will also help the State. If Ireland is the only country in Europe not actively implementing market surveillance, there is a risk it will become the dumping ground in Europe because there is no policing of the construction product sector.

A consumer support should be put in through a portal for information which gives them clear advice about how all of this works, what to expect and their entitlements.

We need to examine cutting administration costs, to deploy resources more strategically and to focus on a consistency of standards for owners, consumers, designers, builders and the trades.

Chairman: I invite Mr. Alan Baldwin to make his opening statement.

Mr. Alan Baldwin: I thank the committee for the opportunity to present to it this morning.

I am a chartered building surveyor and the current chairperson of the Society of Chartered Surveyors Ireland, SCSi. I am also the managing director of the Building Consultancy, a private consultancy practice offering building surveying and design and project management services. I am joined by Kevin Hollingsworth, a chartered building surveyor and past chair of the SCSi building surveying professional group committee. He is also the managing director of Omega Surveying Services and is actively involved in remediation of multi-unit complexes.

The SCSi is the largest professional body representing a membership of over 5,000 chartered surveyors and the home of 12 professional disciplines that straddle property, land and the construction sectors. One of the SCSi's main priorities is to advance and maintain standards in our built environment in the public interest. It is closely associated with the Royal Institution of Chartered Surveyors, RICS, the global organisation representing over 100,000 chartered surveyors worldwide.

Building surveying is a discipline which offers a variety of services across the entire built environment. The knowledge base and competence of a chartered building surveyor is broad but based on a solid technical understanding of how buildings work both technically and functionally. Their role, therefore, touches on all aspects of the construction and property industries, allowing them to approach their jobs from a holistic angle. Some of their areas of expertise include design, building pathology advice, pre-purchase advice and building surveys, dilapidations, property management, contract administration, project management and statutory compliance.

In terms of statutory compliance, building surveyors are one of three disciplines designated under the new Building Control (Amendment) Regulations, BCAR, to be design and assigned certifiers. Assigned certifiers are responsible for co-ordinating the inspection and certification of building projects and provide the final certificate of completion when building works are finished and ready for occupation. During the implementation of BCAR, the SCSi welcomed its introduction and actively participated throughout the Department's stakeholder consultation process. The SCSi, through the construction industry council, works closely with the Department of Housing, Planning, Community and Local Government to develop the documentation assisting certification of BCAR on ancillary certificates.

The SCSi is supportive of the new building control regime and acknowledges it is a significant improvement from what was in place previously. As a body, we believe that consid-

eration should be given to the following matters. There should be no opt-out provision for one-off houses and the Government should ensure all builders are subject to the same standards set down in BCAR. The assigned certifier should be independent and preferably not a direct employee of the developer or builder. There should be additional resourcing of independent oversight by local authority inspection staff to support a culture of transparency, traceability and accountability, as well as to assist in deterring cases of non-compliance with appropriate standards of buildings. We also contend that a statutory system should be put in place to ensure only those builders and specialist contractors who are competent in their specific areas of activity are regulated to offer their services, while appropriate sanctions are in place to protect the public from such legacies experienced in recent times.

We welcome recent developments in home insurance policies covering latent defects insurance. The policy typically is a first-party insurance cover where the policyholder does not have to go through the builder in the event of a claim and the policy attaches to the dwelling and transfers to subsequent purchasers during the ten-year cover period. The policy must cover defective workmanship, design and materials and include structural failures, fire safety, mechanical equipment and drainage. Such cover should provide for a sensible level of cover and not be constrained by low thresholds where the owner is required to pick up the cost of artificially low levels where excesses apply.

Recent regrettable high-profile failures, particularly in multiresidential complexes, were in evidence with the former regulatory system. With that in mind, the SCSi wrote to the Minister for Housing, Planning, Community and Local Government in March 2017, highlighting concerns and putting forward a set of recommendations to address these issues. A copy of this submission has been made available to all committee members.

The SCSi suggests the development of a methodology to appropriately assess high-risk legacy buildings in consultation with industry and the Government to be carried out in a proportional manner. Many developments may not have any recourse available to them to rectify the defects or do not have the funds available to solve the issues. We recommend consideration be given to the financial impact on schemes where serious deficiencies are identified and investigate possible solutions to fund such repairs.

Much of what we will be discussing today is likely to focus on our building control oversight and legacy issues coming to the fore in terms of building defects. As Ireland is now in the midst of a housing crisis, we need to plan for the future so we learn from mistakes of the past. Our construction industry is only now showing signs of gearing up to cater for demand for house purchasing, which was blighted with problems since the downturn. Our organisation has been active in response to our national housing crisis in highlighting the barriers to construction and housing supply.

In May 2016, the SCSi published a comprehensive report on the costs of delivering a three-bedroom semi-detached house to the market in Dublin. We will shortly be publishing figures on the delivery of apartments to the market that will identify the costs of construction, as well as the additional costs associated with regulations, taxes, levies, finance and land. All of these are part of the overall story in providing value for money and cost-effective housing solutions for those requiring accommodation.

As a professional body and professionals working at the coalface in the industry, we are here to share our experiences and thoughts regarding potential solutions. However, it is up to policy makers to implement regulation changes which will work for our industry. With this in mind,

we remind the committee of the SCSi's recommendations to tackle the legacy issues pertaining to multi-unit complexes that have come to light through the media. We have recommended that a mechanism is established whereby studies of high-risk multi-unit residential buildings, built in the recent past, are considered regarding serious immediate building defects impacting on safety health and well-being of its occupants. Serious consideration should be given to setting up an emergency fund to deal with the most urgent of issues such as notification of fire to occupants, the risk of fire spread from apartment to apartment and from common area to apartment. The CIRI, Construction Industry Register Ireland, register of competent builders with specialist contractors and individual crafts and construction entities should be established on a statutory footing to protect consumers in the future against recurring defects of this kind. CIRI registration is conditional on compliance with all statutory regulations and appropriate competence in the designated category of service provided. The SCSi proposes the Government considers setting up a loan facility over a relatively long term for building owners for serious building defects which would be outside the scope of any emergency scheme and where there is a current funding shortfall.

We request the Government reviews these proposals and considers convening a multi-stakeholder working group, involving relevant industry players and Government agencies, representatives of owner management companies and licensed managing agents.

Chairman: I invite Ms Deirdre Fallon to make her opening statement.

Ms Deirdre Fallon: We thank the committee for the invitation to discuss the review of building regulations, building controls and consumer protection.

Although they are often considered and criticised together, it is important to restate that the planning and building control systems are entirely separate. Legislation provides for different procedures in terms of the operation of the planning and building control systems. The planning system seeks to provide high-quality development in the right location and at the right time. The building regulation and control system should support this goal.

The future of our city, town and village centres and appropriate re-use of our vacant building stock are key aspects of building the sustainable communities of the future. In the opinion of the institute, the latter could make a significant contribution towards the provision of urgently-needed homes.

The planning system cannot be said to be the main constraint on supply of housing. There have been a number of changes to planning legislation to significantly reduce the costs of providing new homes such as changes in apartment standards guidelines, the reduction of the Part V contribution for social housing, reduced development contributions and a targeted development contribution schemes rebate. When it comes to the reuse of buildings, however, the institute is of the view that building standards are a more significant barrier than planning permission *per se*, particularly where historic buildings are concerned. Previous Living Over the Shop incentives have been ineffective in the main as refurbishment costs and complying with building and fire regulations have been the main barriers.

We previously recommended to the committee that local authority rapid response teams for housing developments be established. These could be one-stop-shops for obtaining advice on all aspects of the statutory consent processes for new housing developments and proposals aimed at maximising the use of existing building stock. They could be project managed by a professional planner who has responsibility for co-ordinating housing applications within a

planning authority from pre-planning through to application stage.

There are a number of practical and regulatory issues which need to be taken into account in developing the criteria for exempted development for a change of use of vacant commercial properties to residential use, as proposed under the Action Plan for Rural Development. These issues relate in particular to compliance with building regulations. For example, the change of use of the upper floors of a commercial building to residential use or the subdivision of the entirety of a commercial building to multiple residential units raise the issue of compliance with building regulations. Change of use to a single unit simplifies this process, but it does not negate the obligation on an individual to comply with regulations and to ensure the overall goal is the provision of high quality housing and homes for people who urgently require them.

In terms of consumer protection, one of the Irish Planning Institute's objectives is to raise the standards of the planning profession and to facilitate public awareness of planning and the planning profession. Although the planning system requires planners to deliver an effective planning system, the term "planner" is used imprecisely. Ministerial guidelines issued under section 28 of the Planning and Development Act refer to the term "planner" and also refer to the need for reports to be prepared and assessed by "competent persons" and "competent authorities". We believe that greater clarity is required around the title to emphasise that professional planners are suitably qualified professionals with competency secured by meeting continuous professional development obligations and acting in accordance with ethical obligations. In keeping with the ethos of the planning tribunal report, this would increase public confidence in professional planners by making their knowledge and ethical obligations clear, although others could continue to provide planning services. We believe that this can be achieved by inserting a definition of "planner" in legislation and guidelines and by establishing a register of planners. We ask for the committee's support in this regard. We believe that the definition of the profession of "planner" in legislation along with regulation of the profession would give a clear signal to the public that all aspects of the planning system are structured to protect and support the public interest and thus would assist in building confidence in the system.

Recommendations which relate to the construction stage of development and the planning system include allowing minor amendments to permitted development in certain circumstances, as long as they are not considered material amendments in the context of the overall development. We recommend that consideration be given to the introduction of a system for the provision of certificates of lawful use and-or development which could be issued on foot of an application. This will grant landowners and developers greater certainty in carrying out exempted development. Commencement notices should include a site layout map indicating the units being commenced. This would help overcome issues where more than one commencement notice is lodged over time for the same units or where a number of commencement notices are being applied for on the same site. It would also make clear the units being proposed to be built for monitoring purposes.

The agreement of compliance issues before commencement of development can be a very major issue for the delivery of developments that have planning permissions. Statutory provisions should be put in place requiring planning authorities to resolve compliance submissions within a specific timeframe and to give statutory effect to compliance approvals so that they can be relied on by applicants. There should be no difference in standards of residential amenity and quality of development and place-making between built-to-rent schemes and residential schemes targeted at other tenures. Statutory timeframes for the provision of pre-planning consultation meetings should be explored.

Guidance and information for property owners or potential developers on planning and its interaction with building regulations is limited. In this regard, we hope to work with the Department of Housing, Planning, Community and Local Government on revising and expanding its useful but out-of-date public information leaflet series. The consolidation of planning legislation is, in our view, the clearest way to avoid delay, confusion and frustration any user of the system may experience and we urge the committee to support our call for it. Addressing procedural and practical deficiencies in the existing planning code identified by practitioners as impeding the efficient delivery of housing should be prioritised.

The successful delivery of many of these recommendations will require a clear commitment to adequate resourcing of planning authorities and An Bord Pleanála. Adequate resourcing needs to be put in place in the first instance. The last survey of the planning profession carried out by the Irish Planning Institute found that the number of planners employed in local authorities decreased by almost one third from 2006 to 2014. A snapshot survey carried out by the institute earlier this year found that the numbers employed had only marginally increased. The figure was in the order of 8% in the authorities which participated. In order to meet the demands of a modern planning system, planning authorities must be properly resourced, including in terms of staffing and, particularly, in having an adequate complement of professional planners.

The institute is conscious of the need to avoid untimely delays in planning but any streamlining must have regard to the rights of the public to participate in decision-making, transparency and accountability in the development management process, and the need to safeguard proper planning and sustainable development. We have noted to the committee previously that there is a worrying trend for the piecemeal centralisation or nationalisation of the planning system, which is not set out in any Government policy. Moreover, a piecemeal approach to the removal of planning function from local authorities has the potential to utterly undermine certainty, efficiency and the efficacy of the planning system in Ireland. There is increasingly limited opportunity for flexibility from local authorities. We believe a suitable balance can be struck.

We thank the members for their time and the committee's staff for their assistance. We are available to take questions or further comments.

Chairman: I thank Ms Fallon and call Deputy Ó Broin.

Deputy Eoin Ó Broin: I thank the witnesses for the three presentations. By way of introduction, with these two hearings and the report that will arise from them we are hoping to not so much focus on the past but to try to come up with what we, as a committee, think are sensible recommendations to Government for both legislative and policy change. While we are conscious of the high profile cases that have spurred our interest as politicians, we are also conscious of the fact that, to date, most of those have been pre-2014 developments. Therefore, what happened in those instances is not necessarily as applicable to the regulatory regime we are currently examining. Having said that, I have some specific questions for Ms Orla Hegarty and Mr. Alan Baldwin and then some general questions.

One of the things I am trying to get my head around in terms of the regulatory regime is the theoretical and actual relationship between the certifiers under the BCAR and the building control inspectors in the local authorities. Ms Hegarty has commented on it. Will she talk through it a little more? From the outside, it seems like there is a privatised self-regulation or paid-for self-regulation while, at the same time, there are independent local authority inspections. It

does not seem to me that the two fit together clearly or well. What is Ms Hegarty's view?

I raised my next question at the last hearing. We get wildly differing figures on the BCAR costs. Ms Hegarty outlined some figures. However, Ronan Lyons, for example, has published figures for multiple unit developments. These figures are in the region of €27,000, just for the BCAR elements. He is clear that there is no comprehensive audit or research and that these are just snapshot figures. I am interested to know where people think the average figures lie. Do we need to do some more significant research or keep some kind of an audit to track those costs so that we have actual data rather than the snapshot data we have to date?

It is obvious that there is a huge complexity of professionals, from the developer to the architect, involved in the design, building, and certifying etc. and there are many bodies regulating them or there is self-regulation. Even when the construction industry register Ireland, CIRI, goes on a statutory footing, it will only cover some of the professionals involved in the construction end. Does it make sense to have such a fragmented system? I am interested in hearing all three panellists' response. Is there a better model to standardise - not centralise - or to create a more coherent way of managing all of it, both in terms of registration and when something goes wrong? If home owners want to make a complaint, to whom do they make it? Are the procedures and all of those types of things the same?

Ms Hegarty mentioned an independent inspection regime. We discussed this at the last hearing and an obvious issue was how long it would take a local authority to acquire the capacity for this. Even before the recruitment embargo and the consequent reduction in numbers, the building control sections were pretty small. What numbers would be needed? This is a very big policy proposition and, while I have a lot of sympathy with it, if this committee is to make recommendations it needs to be realistic in terms of the cost implications to the State and the time it would take. Ms Hegarty also talked about warranties, a national fund and bonding. I would be interested in hearing the detail of these. What are they and who would pay for them? How would they be accessed? Are there models of best practice?

I ask Mr. Baldwin the same question I put to Ms Hegarty. As practitioners, how would the witnesses describe the relationship between certifiers and building control inspectors? Mr. Baldwin spoke of the high-level study but the difficulty with this is in deciding how far to go. In my constituency there have been two high-profile cases where residents accidentally discovered significant non-compliance with fire safety and building standards in the course of doing renovation works. There would be tens of thousands of units in total across all the similar complexes built in the same area in that era. Does Mr. Baldwin have any more detail on the high-level study?

The big questions surrounding the emergency fund are about who would pay into it and how would one access it. Does Mr. Baldwin have any suggestions or recommendations on those points? I was interested in what he had to say about BCAR. It was said that the new system of privatised statutory self-certification was unique to Ireland, it did not operate in any other country, it reinforced the previous failed system and did not accord with international best practice. The SCSI has some recommendations for reforming the BCAR and the assigned certifier system. Can Mr. Baldwin give a little more detail on that?

The committee is trying to grapple with some issues. For example, what is the best dispute resolution method when defects are found, and what is an effective redress? Who foots the bill and what is the best way of putting in place a system for cases similar to Longboat Quay or Beacon south? The witnesses are professionals in the field, while we are just political rep-

representatives, but there have been many hearings and I find it to be very fragmented. I am very confused about how it all operates and I can only imagine how the individual home owner finds it when he or she discovers that there are no safety provisions in the property. How do we make the system more coherent and more easily accessible and understandable to the home owners who find themselves in a defective building and do not know what to do?

Deputy Pat Casey: I thank the witnesses. Deputy Ó Broin covered most of the issues. Ms Hegarty spoke of the difference between regulation and control, and the desktop and paper submissions on energy standards as compared to the administration of the building control regulations, which involve going on site visits to give approvals. The witnesses spoke of a pre-1990 period, before the local authorities carried out inspections on site as part of by-laws. We might end up going back to that type of system in the future. The witnesses suggested that the BCAR system amounted to self-regulation and was not the ideal way to move forward, saying we were the only country to have such a system.

Last week we received a couple of presentations and a report from the House of Commons in London following an investigation into its system, which was one of completely independent third-party inspections. It frightened me that 93% of buyers reported problems with their buildings but, reading a bit further into it, I read that 70% of those complaints related to aesthetic finishes and decor and this put my mind at ease. In the long term, the only way we can do this properly is by an independent third-party inspection regime. We are still in a self-regulatory regime. I might employ a builder, an assigned certifier and an auxiliary certifier but while this is an improvement on what was there before, which was nothing, the overall objective has to be to nip problems in the bud so that a problem does not arise in the first place.

The witnesses said they recognised the shortage of skills in the industry and that is a huge concern as we head into the most extensive programme of building activity that we have seen in years. What impact will that have? What is the level of professionalism available to manage these sites? I gave crude examples last week of a major construction site where there was about to be a large pour of concrete and five or six lorries were waiting. If the assigned certifier discovers something is wrong with the steel but his employer is standing over him, what is actually going to happen? A staff shortage and skills shortages will cause problems where things need to get done. Building control should be independent and we should not have self-regulation.

Later on we will ask the Department about the system but a lot of it involves submitting documents online. One scans them in and puts them up and everything is hunky dory. What level of local oversight is there of the documents? There is an independent visit from the building control authority to a site but there are different stages of the inspection regime for every construction job and, according to the figure in the 2015 report, the local authority gets out to a job in 27% of new builds.

Deputy Ó Broin asked how best we could have independent regulation in building control. Are the skills out there? If the private sector has the skills to certify, the State should be in a position to put in place a framework agreement for independent certification. I will ask questions at a later stage on the practical, day-to-day operation of BCAR. Do the witnesses believe it is working and that it is the way we should be moving forward? Should we move to another system?

Chairman: For people watching the proceedings, the CIRI is the construction industry register of Ireland, an online register of competent builders. Deputy Casey talked about the shortage of skills. At the height of the boom, one in eight worked in the construction industry.

Can Ms Hegarty tell us what the figure is now? We lost a lot of very skilled people during the downturn and this particularly affected local authorities, where people took early retirement. The three members of this committee who are present were probably members of local authorities at the time and our planning departments, in particular, saw a decrease in staffing because of the fact that larger applications were not coming in. It takes a long time to build that back up but we have been given assurances that the funding has been put in place and local authority staffing is being ramped up in that area, as well as in An Bord Pleanála, something that was touched on by Ms Hegarty. Does she see that as an ongoing problem or are people starting to take up construction studies, town planning and such academic subjects again?

Ms Fallon or Mr. Baldwin touched on the issue of commencement notices. I like their idea about the layout of a plan on a commencement notice but that might not be suitable for a one-off house or an application under 20 units. Is that for larger developments to ensure there is natural monitoring of them so that it can be seen if the scheme is changed in terms of access into the site or whatever?

Many figures were given on the difference in cost in terms of all the standards and regulations that have been brought forward. The Construction Industry Federation, CIF, says it is 2% and we also have the other extreme. For clarification, what is the impact of all these standards on the cost? We have to separate that from the standards we should have versus the cost of compliance. It is about going on site and inspecting the developments but how do we choose in that regard? Do we go with the larger scale developments because the witnesses cannot cover everybody? Are larger scale developments the sites we have to monitor very closely or the one-off house in somebody's garden? Where they prioritise will be different throughout the country.

While we have a register for people in the construction industry I like the idea of a planning register. I had a couple of other questions and when they are answered I might ask some supplementary questions on that. Deputy Casey asked two of mine; one would think I had been talking to him before the meeting. I will go back to Ms Hegarty first.

Ms Orla Hegarty: I make that 12 or 13 questions so I will try to answer them from my notes. If I have misunderstood any, the Chairman might clarify them for me as I go through them.

The first was from Deputy Casey on private self-certification versus local authority inspectors. I have a note here that that was in regard to their powers. Under the legislation local authority inspectors have many powers. They can go onto site, look for materials, take samples and look for documentation. Assigned certifiers do not have any of those powers so to go back to the Chairman's scenario of somebody looking to pour concrete, even if the assigned certifier says they are not happy with that, they cannot do anything about it other than to say that when the building is finished they will not sign a final certificate.

Deputy Pat Casey: And they are then forwarded on to somebody else.

Ms Orla Hegarty: If the owner of that site chose to put them off the site for the day, he or she is within his or her rights to do that. If they did not give him or her the documentation for the steel, he or she is within his or her rights to do that. If the owner chose to replace them the next day with somebody else who was more manageable, he or she can do that as well. Those are weaknesses in the system.

My second point is in regard to the impact of cost. This is very difficult to quantify. The

issue is that it is designed to be expensive but the reality is that people either cannot or will not pay or cannot resource it to that level. In a part of Australia where they went this way, there was a race to the bottom on fees and it became very cheap and ineffective. From my research on the building register last year I know there is one assigned certifier who was inspecting more than 500 houses. That is from my own count on the building register. They were not on one site; they were on sites throughout the country. I cannot imagine that high fees were being paid. The fees were probably quite low. The problem is that the diligent people who want to do this carefully and forensically in accordance with the law are being underpriced and cannot compete in that market. The system favours the people who are not diligent rather than favouring the diligent. Any system of control should favour the diligent and support them in trying to do a good job and remove the people undercutting them or those who are not doing a good service. It should not favour the people who are cutting corners.

With regard to the impact on cost, people talk a lot about assigned certifier fees. That is just one piece of it. A design certifier who has to do all the design verification has to be paid also. That is not talked about very much at all. Under that, a great deal of sub-certification is being required from everybody, and many of those people are being asked to put additional insurances in place as well. It is very difficult to quantify that because it gets buried in contracts, tenders and sub-contracts. It is very difficult to sort out what that is because the requirement is in with everything else.

There is also an issue of specification because if professionals are being asked to be liable over time for everything, they will always look to raise the specification. Rather than going with what is the national accepted standard on something they will always look to go higher. That is inflationary as well in terms of what owners are actually getting.

The third question was about the fact that there are many bodies involved and the system being fragmented in terms of professionals. It is, and there is not a consistent approach in the way any of that is managed and policed. It is also an issue for cost because if we consider a level of an additional 80,000 people in the construction industry, are we looking at registering an additional 80,000 people on top of the potential 100,000 we have at the moment?

To go back to the numbers, at the height of the boom we had 170,000 or 180,000 people in the construction industry. The number is approximately 120,000 now so in broad terms there are still 50,000 fewer in the industry than we had ten years ago. Are we talking about registering all of those, assessing them all at point of entry and charging a fee on all of them every year, and the backlog of migrant workers coming here who have to be assessed before they can work? There are major issues in that regard. If we are talking about registering 100,000 people at €600 each, that is a €60 million cost to the construction industry so the benefit has to be weighed up in terms of what is important. There are key professionals and trades that very much needed to be regulated, and that would include fire stoppers, alarm installers, engineers and others.

The next question was about an independent inspection regime and the capacity in local authorities. There is a precedent in that regard. The Building Control Act 1990 already makes provision for authorised persons to be appointed by the local authority. They do not have to be employees of the local authority. They can be on a panel of the local authority. There is a precedent in the 2009 regulations where people were brought in to do fire safety certificate applications. There is a precedent and a mechanism, and that is all possible. It would be a lot to ask of the local authorities to upskill and employ staff very quickly. It would also be very inflexible because if they take on staff one local authority might not have the volume of work

but another local authority might need them. It is a much more flexible process to use a panel. It also means they can bring in expertise in strategic ways so if a specific fire engineering issue arises, they could bring in a technical expert through this sort of mechanism rather than expecting people in local authorities to be skilled in everything. As I said, the mechanism is in place.

To go back to the point made about existing buildings and inspection, that panel could be a mechanism through which to do that to a national standard and with an inspection list of things that need to be done. There would be consistency and a mechanism to gather that information and to apply standards across the board. There could be huge benefits in that.

A question was asked about who pays for bonds. My thoughts on that are similar to an issue that can arise with the travel industry. When an issue arose with people being stranded in Spain because travel companies collapsed a bonding mechanism was brought in whereby these companies were bonded and if someone was on holidays they were protected in that they were brought home or allowed to continue the holiday because there was a fund to cover that. I wonder if a model like that, particularly for speculative housing developers, could be considered, the point being that the owner buys from the seller. If the seller is no longer around or has ceased trading voluntarily or involuntarily, there is no redress. A bonding mechanism would put different controls on people who are selling housing and would mean that people who buy from those entities have some immediate redress in those circumstances.

That was the first set of questions. The second set was to do with third party inspection, and mention was made of the United Kingdom. Deputy Casey said that 93% had problems but 70% of those were aesthetic. That comes back to the issue of compliance which the technical experts can measure and should be accountable for versus the shoddy construction part. At the end of the day, developers are the ones who control the process. They buy the materials, pay the workers when things are done correctly or incorrectly and deliver the product into the market. The shoddy construction element is an issue for the person providing the product not for the person checking technical compliance. Perhaps the issue with BCAR is that technical inspectors are being asked to stand over shoddy workmanship as well. Where does it stop? Division of the two is important. There is a problem with house building standards in the UK. There are many reasons for that on which we could expand. Some of it is to do with the inspection regime and some is to do with the procurement model, as I said earlier, where there are conflicts of interest. Some of it is to do with the warranty scheme or even competition in the market. Many big players control much of the market and there is no competition for buyers to go to the better product.

Skills shortage is the single biggest issue for the construction industry at the moment. There are two sides to this and a skills shortage will have two impacts. One is that prices will go up because people are not available to do the work so other people can charge more. The other side is that quality generally goes down because the people who are doing the work have another job to move onto. They need to get paid and they need to move on. It is very fractured. Since 99% of the construction industry is in micro-enterprises, we are dealing with very small entities. We do not have traditional house building companies like we had 30 years ago. We have management companies that will employ people to do specific tasks who will then move on. That is why this outside intervention is important. If people are coming in for a week or two weeks to do some work in a house and they have to bring in a crew to do something, they are being asked for an ancillary certificate before they get paid. If they are not going to be on the site the next week, they will produce the certificate but what value does that certificate have to anybody in the process?

The next question was on the local authorities and the level of oversight in the BCMS. I do

not know how much oversight there is and my instinct is that resources are very constrained in the local authorities. Planning departments were generally resourced and people understand what planning is, but building control departments are very under resourced. In some local authorities, it is one person and not even a full-time person. I made the point in the report that there are fewer building control officers in the country than dog wardens. There are statistics published for dog control but not for building control. It is very hard to get an insight into what is going on. It is no criticism of the people in the local authorities who are trying to manage with what they have. It is not reasonable to expect them to have full technical oversight of every drawing when thousands of drawings are being uploaded in a system that does not really balance which drawings have priority or which things are more important. How do they manage that level of information?

In terms of the level of inspection by the local authorities, statistics are published on target rates. They are not obliged to inspect but there are target rates for each local authority. I will speak from my own experience. In my role, I monitor the work of graduate architects who are working out in the market on live building projects. I have probably seen 400 or 500 in the past 20-plus years of live building projects in Ireland. If I looked back on how many cases had issues with building control in a construction product, I could count the number on one hand. That is my take on what actually happens on the ground in terms of local authority involvement. Some of that is not just resources; it is because the law is very unworkable around enforcement. It is very expensive for the local authorities to get into this and that is a barrier to them acting.

The Deputy asked if BCAR is working on the ground. In my experience, I have seen many different things and that is why it is very hard to quantify what it is costing. I have seen the very high standard that some corporate clients have put in place. Similarly, at the other end there is a lot of box ticking and people not really engaging with it. It is not always that people have bad intent; sometimes they just do not have the skill or the necessary information to do the job properly. Some buildings are being occupied without completion certificates because the tiniest detail can hold up a completion certificate. It is not feasible for people not to move in if there is a tiny snag in a building. That is a barrier so people are occupying buildings that do not have completion certificates. The other problem is there is a three-week standstill period when a job is complete for the local authority to validate the completion certificate. The code of practice says they should not start a technical assessment of the drawing at that stage. What that means is the local building control officer should not start opening all the drawings at completion to check them. He should check them if there is an ongoing concern during the course of the job but if there has not been an ongoing issue, they should just be filed. The regulations allow three weeks for that process to happen.

What I have noticed is that in the first year people were planning to do that more quickly. Over the past year, people are starting to put into their contracts that there is a standstill period of three weeks for this to happen at the end of a job. That is a huge cost if the builder is keeping the heat and light on in the building and security on the site and the owner is delayed in occupying the building. It could be an office building or a hotel. There are costs associated with all of that. That mechanism is certainly not working. There is also an issue for assigned certifiers who find themselves in a situation they do not want to be in. There is no mechanism for an assigned certifier to resign. They have to be released by the owner. That is another oversight in the regulations. If an assigned certifier is in the very difficult situation of seeing bad practices on the site that they cannot stand over, they cannot take themselves out of the process.

I mentioned some of the issues of skills and numbers. It also concerns what we will regu-

late and whether we will regulate people, that is individual plumbers, electricians, architects and engineers, or whether we will regulate companies and entities. At the moment there is a mismatch because builders are regulated by limited liability companies and professionals are regulated as individuals and are individually personally liable. If a company ceases trading, there is protection for anybody involved but the professionals are very exposed because it is a lifelong commitment.

Whether the money is spent on larger or smaller developments, there should be consistency. If somebody is a self-builder building a house in a rural location there are risks for that person in terms of the building being energy compliant and properly connected to the drainage system which could impact locally if there is contamination. There are key things that are actually measurable in terms of compliance that a professional can look at. The same thing goes for larger, multi-unit developments. We need to move away from the concept of a product guarantee and the signing off on shoddy workmanship and be very clear about what compliance is and what the role of the State and the market is in terms of product to establish the consumer protections that are necessary in the market.

Chairman: I will come back to Ms Hegarty. I want to let Mr. Baldwin and Ms Fallon in.

Mr. Alan Baldwin: I will start by making a number of observations and then let Mr. Kevin Hollingsworth share some of his experience. The first observation that was made stemmed from our relationship with BCAR as assigned certifiers. To speak from practical experience, when we take on an instruction and we start the process of preparing and submitting the documentation, it is a desktop exercise. We are not engaging with any person. There is no third party on the local authority side. It is very much a process and procedure that one follows. There is no relationship between us and the local authority. It is a formality in terms of what one sends in and companies do it to a good standard. We are very pleased with the system because it supports high standards which is what the society is about. There is no relationship with the building control authority. It is a desktop exercise. In terms of our experience over the past three years, to echo what people have said previously, I do not think I have ever met a building control official. Over the past three years we have been heavily involved in numerous projects where there was a requirement to provide fire safety certificates, disability access certificates, DACs, and act as assigned certifiers and designers. I can honestly say that I have never met a building controller or am aware of meeting anyone coming to our sites.

As for the end user, the consumer, I am strongly of the view that we need a standardised system. We need a person to act as a watchdog who has control and oversight. As I travelled here this morning I recalled that when I left college 20 years ago, the 1995 construction regulations on health, safety and welfare were introduced. At that time the regulations were fairly radical in terms of the responsibilities, procedures and processes that they introduced. At the time the construction industry and the other stakeholders needed time and we need time with the BCAR system to come to terms with how it works. The existing health and safety model and regime in the construction sector is first class and the Health and Safety Authority, HSA, model is very good. The HSA is involved in oversight and enforcement and it works. The new process could work well if we learned some lessons from the HSA model and applied them to building control. We need a watchdog that barks and bites occasionally. Regrettably, and I will not be thanked for saying so, prosecutions will be necessary just as there were prosecutions when the health and safety legislation was rolled out. There were some high-profile instances in which members were penalised quite significantly, and rightly so, but that is what is lacking in the current system.

On the capacity of a local authority, my society actively encourages the Government to look at current resources in the local authority. To echo one of the other speakers, an analysis probably is needed on how many building control inspectors exist in this country. The Government must first provide a report that sets out the current number. Is it adequate? Probably not.

As for how the private sector can help, independent oversight has advantages. It might be that the local authority could engage an assigned certifier independently of the overall process. As to how that could be funded, the model already exists in respect of the financial contributions obtained from developers and just needs to be extended to allow that facility to happen. There are costs and fees associated with providing assigned certification. It is difficult to quantify the level of fees. Throughout the industry there have been many reports, from different institutions, on the level of fees. From personal experience I know that fees are dictated by the complexity of the job, how much work is involved in assessing the information that one has been provided with and how frequently one must attend a site. Site inspection is a fundamental part of this exercise. It is not just confined to a desktop exercise and one needs to be on site. There are costs associated with providing the service. I genuinely cannot give an average figure as the fee varies from site to site. I am happy to say that with most of our clients, the service has become part and parcel of what one provides. One must do things to a certain standard anyway. As one must now upload additional information or documentation on to the building control management system, BCMS, the clients are already paying for it so the information exists and should be made readily available to the local authority. As to whether the local authorities are scrutinising the information, I leave it up to the committee to decide. I suspect they are in some instances but a risk management strategy should be put in place to assist local authorities to identify buildings they need to look at. I do not think the model exists to physically look at property.

On who should foot the bill for latent defects, I like the idea of an insurance bond. Similar bonds exist in the motor industry for those who do not have insurance but have been involved in an accident. As to whether I am suggesting a levy, Members of Parliament are the policymakers and make the decisions but, ultimately, the scheme must be funded in a certain way.

My colleague, Mr. Hollingsworth, shall comment on some of the other questions.

Mr. Kevin Hollingsworth: Deputy Ó Broin asked specifically about the potential high-level study. He touched on the issue of accidental discovery, which is one methodology used to fund issues. People also go looking for problems because the matter is in the media. There is another cohort of people who have not looked, do not want to look or are totally oblivious to this matter. The number of latent defects over the past three years is scary. I have remediated 28 multi-unit developments. Eleven of them are privately owned and funded by members to keep them out of the media and I am working on eight developments at present. Only two weeks ago I sat in front of an extraordinary general meeting, EGM, and told people they would have to pay €7,500 to remediate defects. That situation is the genesis of our submission and it cannot continue. The cause of these issues was, in my opinion, the Building Control Act 1990.

We have not had enough time to evaluate the Building Control (Amendment) Regulations. It appears positive from the level of professional involvement and oversight but 27 years after the introduction of the 1990 regulations, it has been confirmed that self-certification was a bad decision and we have been left with legacy issues. It is too early in the BCAR process. From the society's involvement, we know there is a much higher level of on-site oversight and questions are being asked. We do not think the process is perfect and improvements can be made.

We were asked for international comparisons. I finished my education in the UK. I worked between the UK and Australia for a decade before coming here. In response to Deputy Casey's specific point, internationally, if the building control officer is on site and the trench is open, the concrete does not normally arrive until the next day. It does not arrive until the building control officer assesses whether the foundations have been dug adequately and the soil has good bearing capacity. It is only then that the foreman rings. The building control officer is always present and he or she is independent and unimpeachable. The system works. Ireland uses a hybrid system that is unique when compared internationally, as stated by Mr. Baldwin. Resources are a barrier to having an international system. Deputy Casey mentioned that the by-laws were disbanded in 1990 and replaced by self-certification. It would be incredibly difficult to ramp up the system immediately so there must be a staging process. Ms Hegarty mentioned there is a facility to have authorised persons appointed by the local authority. That aspect could deal with the undercutting that she pointed out. Mr. Baldwin also touched on the need for an oversight tsar. We have that provision with HIQA and the Financial Regulator. We need it in the construction industry for both the actual construction and the local authorities. We need to know the types of inspections, how many are being done and whether they are at key stages. Somebody needs to monitor the entire construction industry.

To answer some of the Chairman's questions on how the local authority monitors red flag issues and whether the assigned certifier has changed matters, as we have said, we do not know how much of that has actually and tangibly been undertaken. The skills shortage is key. We would have been churning out, through Dundalk Institute of Technology, an average of 50 graduates per year. Last year and this year it will only be 13. We will have to wait another four years before that is back up to 50.

Another issue is the professionals appointed to act as assigned certifiers, including chartered engineers, registered building surveyors and registered architects. The proper professionals are building control officers but we have no building control course in this country. The Irish system we have created is putting people in who are not specialists in the field in which they are asked to work. There is no short solution to that problem. I hope I have answered all the questions.

Ms Deirdre Fallon: I will clarify the point raised regarding commencement notices from multi-unit developments. If it is proposed to start some of the units, the site layout plan would show which units are proposed and it would make for easier monitoring at a later stage. Deputy Ó Broin referred to the great number of professionals involved with the construction industry and the issue has been touched on by everybody here. From the perspective of professional planners, registration is something our members very much support inasmuch that it makes clear to the public that if they are engaging a planner, they are engaging somebody with that professional qualification and there is a means for addressing any complaint that could arise at a later stage. They can be sure that somebody is engaged with and continues with professional development and upskilling. It is an important component of the overall planning and construction system. There is a challenge to ensure that there is awareness among members of the public of the different roles people play. As professional institutes, we all have a role and perhaps this raises the point of having some kind of centralised source of information for the public so people will know what body to approach in the event that they need redress or wish to make a complaint. I hope this is something that will be taken up in time.

Deputy Eoin Ó Broin: I am thankful for all the responses, which were very helpful. It is interesting because we discussed many of the same issues at our previous meeting and many of

the same kinds of solutions seem to be emerging, which is really helpful. These will be half-questions and half-observations. It seems the witnesses are all moving towards the idea that one way of removing self-certification, as a sensible and pragmatic staging process, is to keep the BCAR but have local authorities as the employers or contractors for the certified assessors. Under the legislation, would that give the certified assessors the power that building control officers currently have so, for example, they can go on site when they want, etc.? It would seem that if this is possible, there would be a series of benefits.

First, it would not be a complete system overhaul and one would work within the existing model and make some changes that would not even require legislative alterations. As the witnesses say, it would be a way of controlling costs, managing jobs properly and recording data, albeit at local authority level. Am I right in thinking that is the direction in which that part of the discussion is going? If it is, it is a very sensible idea. The insurance bond came up at our previous meeting and it seems to be an interesting model to explore. I wonder if there are other jurisdictions which operate something like that in this context. Is it something at which we, as a committee, should be looking?

There was some discussion at our previous meeting regarding a kind of building authority. With the Health and Safety Authority or the example cited by witnesses, should the committee perhaps look at some kind of building control and compliance authority? This would not be instead of local authorities. One of the points made on the previous occasion by the fire safety certifier related to the fact that there is much good local knowledge and information but it is about providing that kind of overarching watchdog role, which involves data collection and consistency of standards. Is that something we should be considering?

I asked about the relationship between assessors and building control inspectors but I was not asking about their actual working relationship. My question was probably not very clear. It just seems that the two ideas do not fit together and it is almost as if they are from two different ways of thinking about building control and compliance. One is a bit of a legacy that is a hang-over from the previous system and is not really operating. I am wondering if there is no actual relationship or clear added value in having both, is the solution not to merge them in the way I suggested at the start, with the local authority being the employer of the certifier?

Deputy Pat Casey: We are using BCAR now but if I have a problem with a property ten years on, I can look at the building owner, the assigned certifier, the design certifier, the auxiliary certifier and sub-certification. Where would I go with that claim, where would I start and how complicated will that claim be in ten years if we have all these different layers of certification and signing off? Would I be dragged through the mill, starting with the owner, who would drag in the assigned certifier, the design certifier, the auxiliary certifier and then the sub-certification of a lift installation, for example?

Mr. Baldwin stated that he had not seen a building control officer on a site, which is worrying. Mr. Hollingsworth stated there is no course or certification in Ireland for building control officers. With local authorities and building control, it is currently subdivided into three sections, with a fire officer looking at fire certification; the disability section looking after its issues; and building control itself. My understanding is that if a building control officer is fully educated and has the relevant skill set, he or she would control all of that. In other words, it would all come under one heading. This would mean that when somebody is dealing with a local authority, he or she would deal with one department and, possibly, one person.

I stated last week that the decision to remove one-off rural housing from the BCAR system

and a number of extensions was wrong and it was done because of a concern about added cost of BCAR on one-off rural housing. We need to educate people about the value of building control for their own safety. An exercise must be done in that regard. We need to bring all developments under building control, whether it is an extension or one-off rural house. Every aspect of development should come under building control. As has been pointed out, planning permission is completely separate to building control. What is the view of the delegation on certification of rapid builds or modern technology now being used in building houses? Some of these are not rapid builds but there is modular building off-site where the structure is craned into and installed to a site. Is there any inspection of the manufacturing of those types of buildings or does this depend on supplier certification?

Chairman: As we are running out of time, we will go through this section a little quicker. Most of the questions were directed at Mr. Baldwin.

Mr. Alan Baldwin: With regard to the existing BCAR system, there are two distinct systems at play. There is the local authority, with the regulatory framework, and an assigned certifier. I made the point this morning and I strongly believe that the State should take responsibility for there being a single watchdog or body - whatever it is called - to bring oversight and enforcement. They compliment one another. It would be unrealistic to expect the local authority officials to do the level of work in detail we are expected to do but we are providing them with the information in order to assist them in the process of ensuring compliance with regulations. Mr. Hollingsworth might have a view on that.

Mr. Kevin Hollingsworth: I have a few points. There is the issue of whether the assigned certifier could be appointed by the local authority. That is a question of how the legislation is written and whether it can be done.

On international comparisons for insurance, in France there is decennial insurance, which is a ten-year insurance bond and that is the first point of redress for any policy. That answers Deputy Casey's next question as to who is the first point of call in ten years' time. If it is within that ten-year period, the policy would be the first point of call. Six years is the statute of limitations for the professionals and for their professional indemnity, PI, and that policy would be key as to the extent of the cover and the mechanisms for claiming.

An overarching building control authority is the way forward. The local authorities simply cannot be resourced up because of the skills shortage and even the courses to do it in the country. Deputy Casey asked about the fragmented building control authority applications. They are fragmented but the building control officers also do the disability access certificate, DACs. The same person does the DAC, does the general building control inspections - whether or not they actually occur - and looks after dangerous building occurrences. That person does a lot. When there is approximately one or a half such officer per local authority, that is extremely difficult.

There is some wisdom in a single point of application combining the fire safety certificate and the DAC. I personally do not understand why disability is more important than any of the other parts of the building control, such as ventilation which can cause condensation, mould and health problems. On structure, when one makes an application in the UK to knock down a wall in one's home, one must provide structural calculations. That is as important as anything else.

Deputy Casey raised the one-off house. It is not merely for the initial builder that it needs to be protected because when that house is sold on, as it inevitably will be, there will be another

consumer who also needs to be protected. Although there is a cost for compliance, both in terms of the assigned certifier and the increased construction costs, those costs have to be met to protect both those who are initially building it and any subsequent purchasers. The Deputy's final question related to modular building. I do not know of any independent inspection of manufactured systems but the manufactured systems, in my experience of building pathology and finding defects, are where the major defects are. When a new system comes onto the market and everybody starts building it, they do not read the instruction booklet. It is not traditional cavity-block construction and more of the defects are associated with it. It is a valid point.

Ms Orla Hegarty: I have a couple of points. First, the issue of cost has been coming up. I am picking up that it is perceived that local authority building control would be a cost barrier or a cost to the State. The Northern Ireland model of building control is actually cheaper for owners and they have a rigorous regime. Everything is inspected. Whether one is taking down a wall in one's house, converting one's attic or building a porch, one may pay a couple of hundred euro for one inspection that gives some reassurance about that, but if one is building a new house it is considerably cheaper than our system would be under the assigned certifier inspections. That is quite responsive. People come out within a couple of days when they are called for state inspections. There is a model that is virtually self-funding, paid for by owners and developers, in the North that could be looked at.

As for off-site construction, there is a lot of confusion about this because what we think of as traditional construction in housing is normally concrete-block based and where we are probably going in the future is towards more system building. There is a lot of debate around this and it comes back to the issue of the asset value, and the protection of people as well. The building regulations protect people long enough to escape from buildings. They do not protect the building from burning down. One is dealing with different issues here. The other problem has been that although system building has come in and obviously will become more common because it is cheaper, there have been a lot of half measures of putting elements together on-site, that is, putting together timber party walls or construction that can fail easily with somebody, for instance, a neighbour, putting up a shelf or drilling a hole in the wall next door. It is a policy decision as to whether that is acceptable because it only really happens in housing. We do not see it in other building types. It is to do with saving money at the construction stage but one would have to question the long-term durability and investment in that and the risk for people on the site.

Finally, on the issue of decennial insurance, which is a ten-year policy, France is under a different legal regime but there also are project insurance policies available in the UK that are becoming more common and even those who are building office buildings would be looking at that type of policy. The advantage for the owner is he or she has one point of contact and if there is anything wrong, the owner goes there. If they want to sue somebody down the line or follow up with other policies or other insurances, that is not the owner's problem as a consumer. They can do that in the background over time but the owner gets the problem sorted out immediately.

Chairman: Does Ms Fallon want to come back in on anything?

Ms Deirdre Fallon: Not at this point.

Chairman: I thank the witnesses for attending this morning. Obviously, after they leave here, if there is anything further that they think would be valuable to the report, we would appreciate if they might send it in to the committee so that we can include it if necessary. I pre-

sume we will be seeing them all again at a certain stage.

I propose that suspend for a few minutes to allow our second panel to take its seats.

Sitting suspended at 11.16 a.m. and resumed at 11.24 a.m.

Chairman: I welcome the witnesses from the Department of Housing, Planning, Community and Local Government, Ms Mary Hurley, Ms Sarah Neary, Mr. John Barry, Mr. John Wickham and Mr. David Hannigan. Before we begin, I draw their attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I invite Ms Sarah Neary to make her opening statement.

Ms Sarah Neary: I thank the Chairman and members of the committee for inviting my colleagues and me to appear before them today. We welcome very much this opportunity to discuss the building regulations, building control and consumer protection matters and to provide a comprehensive account of what has happened over recent years in reforming the building control system and our other work. It was very interesting to listen to the earlier exchange of views and I hope we will address some of the issues raised in the opening statement and the discussions that follow.

The design and construction of buildings is regulated under the Building Control Acts 1990 to 2014. The 1990 Act provides for the making of building regulations and building control regulations and establishes local authorities as the building control authorities, specifying the powers of inspection and enforcement they have. The primary purpose of the building regulations is to protect the health and safety of people in and around buildings and their focus is on the protection of people rather than of property. The second schedule of the building regulations 1997 to 2017 is comprised of 12 distinct parts, classified as parts A to M, each of which deals with a functional requirement for buildings or works, for example structure, fire safety, energy conservation, accessibility, etc. Accompanying each part is a technical guidance document which the Department produces. Where works are carried out in accordance with the relevant technical guidance, they are considered to be *prima facie* evidence of compliance with the regulations. The Department's aim is to develop and promote a strong and evolving building code in support of quality construction and sustainable development. The building regulations are subject to ongoing review in the interests of safety and the well-being of persons in light of emerging national issues and innovation and change in the sector and to implement European legislation. The purpose of the building control regulations is to set out the procedures, administration and control mechanisms to secure the implementation of and compliance with the requirements of building regulations.

While it is important to recognise that there are many good quality buildings which comply with building regulations, we are all too well aware, unfortunately, of the many instances of building failures which have come to light over the past decade. The economic and personal consequences of these situations have been very significant. To address this situation, the then Minister announced in July 2011 that the system was to be strengthened. A high level working group, which included officials from the Department and local government, liaised closely with industry to review the building control regulatory framework. The group identified two key deficiencies. These were the lack of professional involvement on site and the lack of accountability in relation to compliance with the building regulations. After much negotiation and consultation, it was through the Building Control (Amendment) Regulations 2011, SI 9 of 2014, that the reform agenda emerged. The key measures in the 2011 regulations are the requirement that designs be certified by a registered construction professional and submitted before works commence; the requirement that owners appoint a competent builder who in turn must certify that construction works comply with building regulations at the end of the process, and the requirement that owners appoint an assigned certifier to prepare an inspection plan, carry out or oversee it and, ultimately, certify compliance with the building regulations on completion.

The assigned certifier must prepare an inspection plan, carry out or oversee that inspection plan and ultimately certify compliance with building regulations on completion. Any changes in the circumstances of the owner, builder or assigned certifier must be notified to the local building control authority within a very short space of time during the construction works, that is, within two weeks. A certificate of compliance on completion is jointly signed by the builder and the assigned certifier. This must be accompanied by plans and documentation to show how the constructed building complies with the building regulations and also the inspection plan, as implemented. The certificate of compliance, on completion, must be sent to the building control authority and included on a register before the building can be opened, occupied or used. SI 9 also details what should be publicly available in relation to a building or works, in terms of the building register, which is made public for everyone. In addition, SI 9 also provides that the drawings and particulars of any building or works should be accessible under freedom of information from the building control authority to any person who has an interest in the property. It also provides for a more detailed outline of the roles and responsibilities of the key personnel, including owners, designers, assigned certifiers and builders, through a code of practice known as the code of practice for inspecting and certifying buildings and works. That code was produced in late 2014 and revised last year.

I will now turn to building control authorities, about which there has already been much talk this morning. I wish to clarify again that while the primary responsibility for compliance with the requirements of the building regulations rests with the designers, builders and the owners of the buildings, as part of the major reform that has occurred in recent years, the oversight and governance of the building control system was also scrutinised. To improve the effectiveness of building control authorities, a number of changes have occurred. The building control management system, BCMS, was developed. BCMS is a national IT enabler which was launched to coincide with the commencement of SI 9 of 2014. It ensures the consistent implementation of the measures in SI 9 and assists local authorities with the increased volume of documentation they are receiving. The BCMS provides a common platform for clear and consistent administration of building control matters across the local authority sector. In addition to the BCMS, a framework for building control authorities was published in 2014. It standardised operational activity, that is, work practices, systems, procedures and decision-making in relation to oversight of building control activity across the sector. I can provide more detail on that later, if necessary.

Another measure introduced was a compliance support work stream to support local authorities further in dealing with their own queries or with queries that had been brought to them by private practitioners. These queries are dealt with at a centralised level and can then be applied nationally. Training programmes are currently being developed to empower staff fully at building control authorities to carry out their work effectively. These include foundation level courses, continuing professional development courses and also a professional postgraduate course. Finally, and most fundamentally, is the requirement for meaningful inspections of building activity. In this regard, a BCMS module is being developed on the inspection process whereby, at commencement stage, those engaging with the commencement notice would have to fill out an online assessment of the building with which they are involved. This would inform a risk assessment at the back end of BCMS, which would then provide information to local authorities to carry out risk-based and targeted inspections, thus using their staff in the most effective and efficient way.

The Local Government Management Agency, LGMA, and the County and City Management Association, CCMA, have been instrumental in driving these reforms. To sustain the momentum and commitment among the sector we are working towards encapsulating all of these work streams into a centralised structure for the governance and oversight of the building control function. This structure will ultimately be a shared service embedded in a lead local authority. The concept of shared services is to consolidate transactional activities, ideally using automated processes such as the BCMS, thereby allowing concentration on core and strategic activities at building control level.

In terms of consumer protection, there are a number of points to note. Prior to its introduction, a commitment was given that SI 9 of 2014 would be reviewed after 12 months. This review took place early in 2015. The review found that industry stakeholders considered the reforms to be necessary, effective and that they should continue. Statutory certification was welcomed by the insurance, banking and legal sectors and is perceived as a responsible regulatory measure which makes Ireland a more attractive place for construction related trade and investment. It is worth noting that there has been an increase in the availability of construction related insurance products such as first party latent defects insurance. Some of these insurance products also cover non-damage related issues and product failures. This increase demonstrates that Ireland is a more attractive place for insurance and that the measures that have been put in place have worked. This must be viewed in the context of the major retrenchment and conservatism in the wider insurance industry at the moment.

Another significant change that has happened in the recent past is the introduction of the construction products regulation which came into effect in July 2013. The regulation establishes a common technical language across Europe for products being placed on the market. This allows specifiers to define very clearly what they require from construction products. The State has been involved in developing recommendations and guidelines for specifiers in this regard for various products. On the other side, the regulation also requires that manufacturers declare performance using the same common technical language, thus informing specifiers, designers and builders very clearly whether the products meet the performance requirements stipulated and can be considered proper materials under the building regulations.

Another piece of the jigsaw in terms of consumer protection is the placing of the Construction Industry Register Ireland, CIRI, on a statutory footing. The main objective of this is to develop and promote a culture of competence, good practice and compliance with the building regulations in the builder community of the construction sector which will benefit consumers

and the general public. The legislative proposals in this regard are being finalised by the Department with a view to them being presented to Government for consideration shortly.

The failures of the past in construction arose largely due to inadequate design, poor workmanship, the use of improper products or a combination of these. The significant reforms that have been introduced and are under way are aimed at addressing these three distinct areas. The reforms that have been in operation for a number of years now have brought a new order and discipline to bear on construction projects and have created a culture of compliance with the building regulations. I thank the members for their attention and look forward to their questions.

Chairman: I thank Ms Neary for her presentation and invite Deputy Ó Broin to pose some questions.

Deputy Eoin Ó Broin: I thank Ms. Neary for her presentation. Our questions to her will be slightly different from those that we put to the other witnesses. A lot of our attention is focused on potential future policy and legislative change, which we are not going to try to pin the Department down on today. That said, I have quite a lot of questions for Ms. Neary.

One of the reasons we are dealing with this issue now is that we have an eye to the building control Bill. Will Ms Neary give us an indication of where that is at, what kinds of issues are being examined and the timescale for the publication of the heads of that Bill or a draft? That would be helpful in terms of our own deliberations in the coming weeks.

Ms Neary will have heard the previous speakers talk about the low levels of inspections by local authorities, the low numbers of staff and the fact that staff were burdened with other responsibilities. In that context, does the Department have figures for the total number of building control staff? Is the Department collecting figures on the numbers of inspections and compliance and enforcement related issues? If such data are being collated, can they be shared with the committee today or at a later stage?

Deputy Casey's point on the rapid builds was a very good one and the answer was quite worrying. Most of us have accepted that some of those new technologies have a positive potential in terms of delivery of the units, which is why I would be interested in any reaction Ms Neary has either to Deputy Casey's question or the responses that were given to it.

This is probably an unfair question as the witness will not be able to answer in the way I would like her to. Much debate in the two meetings of this committee on this issue has centred on the contrast between self-certification, even the much more robust system of self-certification now in place, and independent third party inspection and certification, whether it is by local authorities or others. What are the witnesses' thoughts on that issue? What has the Department been considering?

This is another question which the witness probably will not be able to answer but I will ask it anyway. There is much merit in the idea of a building control and compliance authority. Is the Department considering that possibility? Does the witness have any thoughts on it?

At the two committee meetings we have had on this issue, we have either implicitly or explicitly been discussing private residential dwellings which are built to be sold on the private market. We are also very interested in the issue of social housing. While it is well known that some private estates have experienced defects in their constructions, in 1997 the flagship social housing development at Balgaddy in Clondalkin suffered widespread compliance

failures which were independently verified and accepted by the local authority. How does the presentation of compliance failures in social housing fit in with the overall presentation given by the witness? A significant part of the Minister's plan involves the use of public private partnerships, joint ventures and the use of Part V agreements. That is another set of relationships between builders and the local authority as the contracting body for the social houses. Where do those types of units fit within SI 9?

I presume that the building control management system, BCMS, module and on-site inspections referred to by Ms Neary are carried out by the assigned certifiers and, if information is then sent to the local authority, inspections are considered at that point. Perhaps the witness could clarify whether that is so and give some more detail on the issue.

Ms Neary said that it is more attractive for insurance. I am not sure that is a good thing. As discussed at a previous committee meeting, the difficulty with defects insurance taken out by a home purchaser is that they have to take out the policy and pay for it. As I said previously, if I go into a record store and buy a CD and find out a couple of weeks later it is broken, I go back to the store and exchange the CD. I do not have to take out an insurance policy to cover me for the selling of a faulty product. I am not against defect insurance. However, in light of the evidence of witnesses that other EU member states cover the cost of setting up some kind of fund or support scheme to cover the cost of defects discovered subsequent to building and the builder bears the liability the rather than the purchaser, is the Department considering adopting that model?

Deputy Pat Casey: My contribution is targeted at the process rather than any individual. I want to put on record my thanks for the offer to me to have an in-depth look at the BCMS system. I will take it up in due time.

I am focused on trying to create significantly more independent oversight of building controls. Currently, there are not sufficient resources at local authority level to do much more. The figures given indicate an increase from 17% inspected in 2014 to 27% in 2015.

I am concerned by the inspections. The BCMS system identifies seven or eight key actions within building construction where potential inspection could take place, such as excavations, foundations, basement, substructure, drainage, superstructure and completion. If one divides the headline figure for inspections by the potential number of sub-inspections that should be happening on one project, it shows that the level of oversight is diluted. Has there been one building project where a complete oversight of all the stages has been independently carried out?

There needs to be oversight from the initial stage where commencement notice and drawings are submitted. In smaller-scale developments, the builder often starts without even construction drawings and is probably operating off planning drawings. This is particularly so for one-off rural houses, a significant number of which are commenced off planning drawings. The potential to opt-out for one-off rural houses is a bad decision. This is equally true for extensions.

Deputy Ó Broin mentioned different types of building. I own a commercial business. I can carry out a significant amount of work in refurbishing the business premises without notifying anybody. I do not need certification. I could probably apply for a fire certificate if there is significant change and would receive that certification.

There is not enough independent oversight of the building industry. I accept that there has

been an improvement and significant steps taken because there was nothing there before. The Building Control (Amendment) Regulations, BCAR, system has helped. We need to look at how to ramp up the witnesses' ability to enable further oversight and inspections.

Chairman: I think the question regarding rapid build has already been put. Following on from our previous session, how many staff have been approved in housing over the past couple of years and in the building control area particularly? There was a significant loss of staff between 2006 and 2011. It will take time to rebuild that.

The watchdog argument was raised with the previous panel of witnesses. I would like to hear Ms Neary's comments on that.

I welcome that significant reforms have been introduced and are under way. As Deputy Casey said, we did not have any oversight at all so we have come a very long way in a couple of years, particularly in the development of the centralised structure for training, inspection, compliance and support, the building control management system and the proposed establishment of the Construction Industry Register Ireland, CIRI, which the witness mentioned. However, certain issues that arose in the past decade need to be addressed. Could the pyrite or concrete block issues happen again? Are we doing things to ensure that does not reoccur? Do the new regulations make it harder to bring older or historic buildings in cities back into use? If there are problems in this regard, what are they? How effective are current building control inspections compared with what they were previously? What are the cost implications associated with compliance now and will the witness outline the various aspects of those cost implications?

Standards of energy efficiency have improved. It is a cost in construction but the output costs of a purchaser are diminished because he or she will have massive savings if his or her house holds an A1 or A2 rating. Do the witnesses have any figures in this regard?

Ms Sarah Neary: A wide range of questions have been asked and, hopefully, I will cover them all in my response. I will reply to the questions in no particular order. On the CIRI, it is at an advanced stage of drafting and we are working with the Attorney General's office on some specific issues to bring forward the heads of a Bill. First, it will be circulated on the eCabinet system to the Departments and we hope to do that in the next few weeks. It will then go to the Government for approval to proceed to pre-legislative scrutiny, at which time we probably will return to this committee to have a more in-depth conversation on it. Its aim is to provide consumer protection whereby anybody on the register would be competent and compliant and anybody carrying out works under the Building Control Act would have to be a CIRI registered builder. I will leave my comments on CIRI at that.

On inspections and the question regarding staff, we show on our website a list of building control officers and a point of contact. There are about 70 points of contact for the 31 local authorities and the total number of people working in the building control area across the country is 332. Those are the statistics from 2015. The breakdown of that figure of 332 is 37 technicians, 111 administrative staff and 185 fire officers, engineers or building surveyors. It works out at approximately 177 whole-time equivalents because the staff have other functions in the area of planning, fire control or housing. It is up to each local authority and manager as to how they distribute that work.

The embargo on recruitment was only lifted in the local authorities in 2015. There were slightly more than 111 approvals for sanction from this Department to employ people in local authorities and in that respect, 657 were housing related. That indicates where the activity lies.

Chairman: Some 657 were allocated since 2015.

Ms Sarah Neary: Recruited since 2015.

Deputy Eoin Ó Broin: Does Ms Neary know how many of those are in the building control area?

Ms Sarah Neary: We do not have those statistics today but we can work on those and come back to the Deputy on them. Of the 657 approvals for sanction, 642 of them have been approved and 15 are pending awaiting further information.

Inspections are a function of the building control authorities. A target inspection of 12% to 15% of new buildings was agreed with the County and City Management Association, CCMA, some time ago. That has been achieved across most local authorities during the past ten to 12 years. There have been instances on occasion where it has not been achieved related to resources or where staff have been deflected to other work in a building control area but just not in new buildings. Both the target and what is reported through the National Oversight and Audit Commission, NOAC, and the Local Government Management Agency, LGMA, specifically pertain to new buildings and only show one slice of the inspections that are happening. We have engaged with local authorities in a survey of all the activity in which building control authorities are involved, whether it be in extensions, material alternations, change of use of buildings or new buildings. With respect to construction products, they have powers of inspection under market surveillance. We are trying to capture what building control authorities are doing at present. The new buildings indicator may not be showing the full range of their work. On average, 25% of all buildings are inspected by local authorities and there are examples of local authorities which are way in excess of that percentage, for example, Dublin City Council had a level of 75% last year.

Deputy Eoin Ó Broin: Is that a reflection of the very small number of new builds or is it that it is very good at its job, or is it a mixture of both?

Ms Sarah Neary: It is well staffed, has a dedicated team and is pushing to achieve that target. It is very committed to it.

Deputy Eoin Ó Broin: Okay.

Ms Sarah Neary: An important point to note is that inspections carried out by building control authorities are probably more effective than they were prior to the introduction of SI 9. When a building control officer finds issues on a site, he or she goes to a single point of contact, which is the assigned certifier. It is that person's responsibility to address the issue. The anecdotal evidence is that the issues are being addressed quickly. At the other end of the scale, when it comes down to the completion works, if there are loose ends or issues that have not been addressed through the process, that will delay the completion certificate being put up on the register, which can affect conveyancing and it would also be an offence to use or occupy the building. There is a very different regime in place now for building control authorities.

A question was asked about the inspection module. That module is an IT development in the building control management system, BCMS. When people lodge commencement notices, they will be asked for key information about the construction, the height of the building or key elements of the construction that would inform risk. A risk assessment will be carried out and then it will be a matter of whether it is a building that is flagged for inspection or the time such inspection should take place, for example, if there is a point at which the fire-stopping system

or compartmentation should be examined. That is the level of sophistication towards which we are trying to move in terms of informing and supporting local authorities.

Deputy Eoin Ó Broin: The risk assessment is done by-----

Ms Sarah Neary: It is a computer algorithm within the BCMS. That is where it is being developed.

Deputy Eoin Ó Broin: The data are inputted by, for example, the assigned certifier.

Ms Sarah Neary: Exactly.

Deputy Eoin Ó Broin: The algorithm does its work and then it flags it to the assigned certifier and to the local authority - to both of them.

Ms Sarah Neary: Not to the assigned certifier. This is the building control function.

Deputy Eoin Ó Broin: Yes. It the local authority that-----

Ms Sarah Neary: It is the building control authority and it is to ensure it gets the best bang for its buck when it inspects by ensuring it inspects the highest risk points.

Deputy Casey spoke about five inspections and he listed the various types. That was an item of work we did on guidance on a sample inspection plan for the assigned certifier. We would view it to be the role of the assigned certifier to inspect at those points. While he or she, in his or her professional judgment, might consider more or fewer were required, we view that as a benchmark for non-complex buildings or dwellings. We would never envisage a situation where the local authority would be inspecting at all those levels. The assigned certifier would be the primary inspector of key stages and then the local authority could carry out a risk-based targeted inspection but to a lesser extent.

Deputy Pat Casey: That was my point. Ms Neary said that Dublin City Council had reached a level of 75% but those inspections might have only involved one visit.

Ms Sarah Neary: In some cases it might have been one visit and in others within that 75% level there would have been multiple inspections.

Deputy Pat Casey: In fairness, the exposure to risk can happen at any stage in a building development. If there is not an independent inspection of a foundation, identification of such risk is lost. While Ms Neary said that Dublin City Council has achieved an inspection level of 75%, that might have involved only one visit to a site while some sites would require multiple visits.

Ms Sarah Neary: The multiple visits are being made by the assigned certifier. The term “watch dog” was used and the watch dog role comes in-----

Deputy Pat Casey: I appreciate that but I am looking at this from an independent point of view. The assigned certifier constitutes self-regulation from the local authority side. Does Ms Neary understand the point I am making? I am differentiating there. I believe the assigned certifier constitutes self-regulation. Third party regulation is what the Department is doing. Ms Neary said that there are seven key stages in a simple building and that there could be 15 stages in a more complex building. Those 15 stages are not being inspected, only one or two visits may be made to a site. That is the point I am making.

Ms Sarah Neary: However, it is being inspected at those stages and the Deputy's point is that that is not independent

Deputy Pat Casey: Yes.

Ms Sarah Neary: Okay. Let me focus on that for a minute. While they are not required to be independent from the builder or the developer, the only person who can carry out the function of an assigned certifier is a construction professional registered with one of the three statutory registration bodies. They are the only people who can do this work. There are codes of conduct within each of those. There are professional conduct committees. If there is any issue with poor performance, complaints can be made and they can be brought before those committees. That can result in them being taken off the register, which means they can no longer work in that field. While they may not be independent of the teams, their work is governed by a statutory register and we would envisage a similar situation for the builders in the long run through CIRI.

Regarding other jurisdictions, while the UK had a full-approval system by the local authorities, it recently moved towards having independent private sector involvement. It is a slight hybrid. We have recently had visits from Dutch delegations. The Netherlands had a full approval system that was becoming unworkable and it is looking to what we have done to see if it can learn and bring forward its reforms.

Also mentioned this morning was the success of the Health and Safety Authority. Its model very much involves identifying key personnel as part of the building and construction teams to act specifically in the role of health and safety. Similarly, under building control, we are identifying key professionally competent people to take responsibility for ensuring compliance. There are many similarities. In addition there is the audit function of the HSA.

Coming back to the concept of a national watchdog-type body, we would see that being the building control authorities. They all work independently in each local authority, but there is a concept of a shared service offering compliance support, training and identification of when inspections should be carried out, and the BCMS developed to its full potential. Such a shared service led by a lead local authority would provide that sort of centralised and national oversight to ensure consistency and risk-based inspections across the country. It would also have the ability to produce statistics on inspections and enforcements.

An example of that is each local authority is required to have a building register with details of each commencement notice at local authority level. The BCMS allows that to be brought at a national level into one building register, which is much more informative and easily accessible for everyone. That is being developed into a more searchable format at the moment and will be available in the coming weeks. In the fullness of time we would like to see enforcements recorded on that. The shared service should be able to give a greater insight into the level of inspections that are happening across local authorities.

Another subject that came up was the rapid-build or modern methods of construction. We were involved in developing the Office of Government Procurement framework last year which requires that these forms of construction have a six-year durability and fully comply with building regulations. The innovation here is that they are built off site or are prefabricated before coming to site. Third-party certification is required for that. Some third party must analyse the system to ensure it complies with all parts of the building regulations. That is the document assigned certifiers would use as a basis for inspecting what happens in the factory and then

what happens on site with assembly. All of the details should be covered in that. We have been involved in this process on a number of social housing projects. The assigned certifiers have certainly been very clear about their role in inspecting at the factory, as well as on site. We have seen some very successful outcomes of it. The Irish Building Control Institute held its national conference last month at which a building control officer gave a very good account of engaging with a site that had a modern method of construction. He liaised closely with the manufacturer, which provided the third-party certification. He was in a position to get from the factory records of when these were built. It came to a very successful outcome. He was satisfied that it had carried out due diligence in terms of compliance. It is certainly on the radar. That presentation was given to all building control officers to inform them of the process.

On social housing, another aspect of SI 9 that I did not cover was that the building control exemption previously available to local authorities was removed through SI 9. All social housing must go through the SI 9 process or the BCAR process. So there is no difference-----

Deputy Eoin Ó Broin: I presume the local authority does not employ-----

Ms Sarah Neary: An assigned certifier?

Deputy Eoin Ó Broin: Yes. Do they do that in-house or how is it done?

Ms Sarah Neary: It is a mixture and both avenues are available. Some do it in-house with their housing technical staff. Others hire in the expertise. It is a mix, depending on the resources available.

Deputy Eoin Ó Broin: However, exactly the same procedure has to be followed in terms of the various points of inspection etc.

Ms Sarah Neary: It is absolutely identical. The role of the assigned certifier was particularly interesting with the rapid-build projects. He has shared his experience widely, which has been very interesting.

Deputy Eoin Ó Broin: I presume exactly the same thing applies to any of the other models of social housing delivery, including PPPs. It is basically the same system irrespective of the delivery model.

Ms Sarah Neary: Absolutely.

Mr. John Wickham: The Chairman asked if the pyrite problem could happen again and what steps had been put in place to mitigate that risk. One recommendation of the 2012 pyrite panel report was to review the specifications for hardcore in light of the experiences over the legacy period. The aggregates panel set up under the National Standards Authority of Ireland embarked on a review of that specification and published an edition in 2014. There was a subsequent small amendment in 2016. It basically outlines the precautions to be taken at the quarry and place of manufacture. It incorporates the involvement of a professional competent geologist with a knowledge of the raw material. It puts in place a process of checks and balances and a specification of performance that has become an industry standard. That is harnessing one of the harmonised standards under the construction products regulation. It has created a level playing field for all involved in the supply of aggregate products, particularly hardcore.

In tandem with that, a code of practice for the procurement and placement of hardcore was developed. Manufacturers are required to follow the technical specification in the quarry

but once it leaves the quarry gate, the chain of custody as to what happens to it before it gets placed in the ground is also crucial. It outlines the responsibility for all the actors involved in that chain, from the builder when he or she places the order for the product to when he or she receives it on site, and how documentation can be controlled and understood in a practical manner so that the person gets what he or she has requested. Both of these documents have been in place now for a number of years. They will be referenced in our latest edition of technical guidance documents C, which is under review.

Pyrite has been an Irish experience and is one which the panel has brought before to the European Committee for Standardization to ensure that there is general awareness of it in the harmonised standard, which is the common standard for aggregates across Europe. The latest addition of that will reference the special precautions that need to be taken if pyrite is identified in the product.

Hard core is just one example of an aggregate with which we have experienced problems. With regard to concrete blocks, the constituents of concrete blocks are predominantly aggregate and spent. A similar level of responsibility has been incorporated into the latest edition of the standard for aggregates in concrete. The industry has embraced the value of third-party oversight of the production process and from December of this year will allow for work practices to change. The aggregate standard, SR 16, which gives guidance on the particular European standard for aggregates for concrete, has made a recommendation that is already published to involve a third party to give oversight to the process and ensure that the quarries that are making this product have the confidence to do so and are able to do so. That is a positive measure to enable the declaration of the performance of those products to be placed on the market in a manner in which they are easily understood.

Deputy Eoin Ó Broin: I have a couple of supplementary questions. Ms Neary mentioned three pieces of information: the building inspector's rapid build presentation; the SI 9 review from some years ago; and the survey building control activity. If some or all of that information - or a summary of it - was available to the committee, that would be really helpful.

I will return to the issue of the percentage of inspections. Notwithstanding the fact that there are now obviously staffing increases, given the scale of increased construction activity that we all want to see in the private and social sector, I imagine it would be difficult to see the staffing increases at local authorities keeping pace with the level of increased construction and restoration of vacant units. Is there a plan for or has the Department been discussing how to keep building control in line with the increased output that is desired?

Ms Neary spoke very briefly about the Dutch system and how the Dutch came here and looked at our model. She said that their system is unworkable. I would be interested to hear about countries in which there is 100% independent State inspector certification with which the Department has had engagement and the identified problems with that system. If there is anything pertinent from that engagement that the witness could share, I think it would be of interest to the committee.

I have a worry about local authorities inspecting and certifying their own properties. Again, this is not to cast aspersions on the quality of any local authority staff. We do have developments such as Balgaddy, however, so we have to keep that in mind. Who is the watchdog for the local authority social housing building control? If the building control officers are the watchdogs, as the witness described, for the private sector, who fulfils that role when the local authorities are constructing buildings and, at the same time, inspecting and certifying them?

The final issue may involve a question the witnesses cannot answer. We already have local authorities employing assigned certifiers for social housing projects. There would be nothing to prevent the local authorities doing that for private developments. Clearly, if the private developer was still footing the bill, it would be cost-neutral. The value of doing it that way would be that it would not be too disruptive to the current system, but it would tackle the difficulty that Deputy Casey raised, which I share. Again, this is not in any way to cast aspersions on people's professional integrity, but when I am employing somebody to do something, I have a particular relationship with that person. When an independent third party appoints the person, that changes the relationship. It is just a matter of fact. Has or could the Department look at the idea of removing that last bit of self-certification, albeit a more robust system under SI 9 than was there before it, and could the assigned assessor not be appointed by the local authority and the costs still rest with the developer, albeit paid to the local authority?

Deputy Pat Casey: I will be brief. One thing Ms Hegarty mentioned in the previous session was the fact that the assigned certifier cannot stop something happening on-site. That is a worrying thing of which I was not quite aware. I wonder if anything can be done with that down the line. Perhaps it is not true.

Chairman: I think it is the case that the assigned certifier will not sign off on the final-----

Ms Sarah Neary: Exactly.

Deputy Pat Casey: Unless it is replaced.

Chairman: I would presume the builder would take cognisance of what the recommendation is. I am only presuming that. Hopefully, we are not going back to the way it used to be and the builder would take cognisance of the advice. If they do not, the assigned certifier cannot sign off on the final product, so to speak, or dwelling or building.

Deputy Eoin Ó Broin: We understand that because it is how it is designed. At last week's hearing, we had this discussion with other professionals. It is not that we think there are loads of dishonest professionals out there who are desperate to game the system. However, the more difficult it is made for anybody to do such a thing, the less likely it is going to happen. That is why it is an issue of concern. If a building control officer from a local authority or an assigned assessor appointed by the local authority has a set of powers that are greater than the privately employed one, does the first option not give a better result than the second?

Chairman: I presume there would be a red flag. They obviously cannot take themselves out of that process. They have to be let go. I presume that would be a red flag and that there would then be further inspections.

Ms Sarah Neary: It has to be notified to the system. Absolutely.

Deputy Pat Casey: The point comes back to the fact that prevention is better than a cure. When the red flag is raised, the damage has been done.

Ms Sarah Neary: Even before that, these sorts of relationships and situations arise in every construction project. That is nothing new. Assigned certifiers have not created that. The whole concept of an inspection plan is about planning when inspections are needed. If one is doing a concrete pour, the builder should notify the inspector that the concrete pour is happening next Wednesday. On the Monday and Tuesday, the inspector goes out and sees where things are and by Tuesday evening it should be ready. What has changed under SI 9 is that there is an

orderly and planned way of constructing. That is what the system is empowering professionals to engage with. It is defining those roles. The code of practice is all about that relationship and integration between what the builder is doing on-site and when the assigned certifier needs to be there. The well-organised assigned certifiers will give first-hand experience of this. They have extensive spreadsheets of when things are happening on-site and when their inspections are going to happen.

Deputy Pat Casey: The witness mentioned well-organised builders there. The fear is that the larger the scale of development, the more oversight there is. However, down in the middle ground where there are small-scale developments of two or three houses, the same level of oversight by the assigned assessor might not be there. I have a concern in that regard.

Ms Sarah Neary: The assigned certifier has a role to play and codes of conduct to abide by.

Deputy Pat Casey: I know.

Ms Sarah Neary: As the Chairman said, it is a major red flag from a building controls perspective if the assigned certifier changes. They are going to be out there wondering what is going on. There is also the tension that always exists in construction projects. When one person leaves a site, the next person coming on site will be very wary of what he or she is taking on. All of the normal procedures take place; that has not changed. Statutory Instrument No. 9 empowered the assigned certifiers, got them on site and gave them the tools required to carry out their work professionally. On completion, the builder needs the certificate of compliance to move on with the project and pursue his or her commercial interests.

A question was asked on historical buildings. The re-utilisation of vacant historical properties is a complex issue and key priority under Rebuilding Ireland. It is associated with a significant degree of uncertainty. We have been made aware that individuals and developers are finding it difficult to engage with the system because of the singular regulatory requirements, whether in respect of fire safety, building control, planning, accessibility or conservation. At times, it appears as if these areas are in conflict. We are, therefore, anxious to address the matter. The Living City initiative is a financial mechanism aimed at stimulating activity in this area. Some local authorities are establishing multidisciplinary groups to facilitate developers in liaising with all of the key regulatory requirement personnel at the same time to ascertain what constraints will apply to their developments. We are shadowing this activity in the hope of finding common areas on which we can expand guidance to streamline or improve the system in this regard. We hope this work, in which we are very interested and to which we are very committed, will be fruitful.

On the building control amendment regulations, BCAR, as part of the review in 2015 we attempted to put a cost on the assigned certifier role and the overall cost of the regulations for a one-off dwelling. These costs amounted to approximately €3,800 for the assigned certifier role and €6,000 for a single dwelling. Industry quotations do not appear to exceed those figures and may be even be a little lower. The Society of Chartered Surveyors Ireland report found the average cost for an average three-bedroom dwelling was approximately €5,500, which was approximately 2% of the overall cost. The 2% figure is mirrored in social housing projects. While this cost may be identified as the cost of compliance, the cost of non-compliance is far in excess of this figure. For example, by the end of this year, taxpayers will have spent approximately €60 million on pyrite remediation works on approximately 1,000 houses.

Deputy Ó Broin referred to BCAR costs which are far in excess of our estimate. These may

be costs associated with building regulations and the actual performance requirements, rather than BCAR compliance issues.

Deputy Eoin Ó Broin: I will not stand over the figures as they are not mine, However, the claim made by Ronan Lyons relates specifically to the BCAR requirements. In his article on the issue he outlined the specific BCAR elements and then listed other costs.

Ms Sarah Neary: Our figures are as they are. Any time we make a change to building regulations, whether on foot of progress in the industry, national issues, safety matters or European directives, we carry out a regulatory impact assessment and consult for a three-month period both here and at European level. We deal with comments as we receive them. The Department is always mindful of the additional costs we are imposing on building and we reduce these as much as possible. We are interested in low cost and high value measures.

The energy sector stands out as an area that attracts significant cost in addition to all others in terms of buildings. However, this is on foot of the energy performance of buildings directive with which we are legally obliged to comply. This has the reward of delivering low running costs for dwellings and non-commercial buildings. We are engaging in public consultation on part L of the regulations which relates to non-domestic buildings.

On staffing and the building control function, this is under review as construction activity increases. The Department has its study on the activity in which the building control authorities are currently engaged and we want to see what has happened in this regard. We have a benchmark of resources at local authority level from 2015. The Minister is very committed to ensuring building control and housing are adequately resourced. The issue is not always one of additional resources. We will consistently focus on securing more effective use of existing resources. We have the inspection module and risk assessment, after which local authorities are informed of what may be the appropriate inspection regime. The risk assessment empowers the better use of resources. We are reviewing this matter with the County and City Management Association on an ongoing basis.

Chairman: Ms Neary appears to have addressed most of the issues raised.

Deputy Eoin Ó Broin: I asked a question on the Dutch system where local authorities self-certify.

Ms Sarah Neary: I would not like to put words in the mouths of Dutch officials.

Deputy Eoin Ó Broin: Perhaps Ms Neary will make some general observations on the Dutch system, rather than giving a damning indictment of it.

Ms Sarah Neary: The Dutch are changing their system for various reasons which I am not in a position to outline. Areas that one would consider would be the impact on construction sites, the time impact, the responsibility and costs associated with that and the costs incurred by the State. While it may be a low cost for the private sector to engage, it is a significant resource requirement which would have to be taken into consideration. Maybe that is the position facing the Dutch authorities.

Deputy Eoin Ó Broin: Who acts as watchdog for the certification of social houses? There is no such watchdog.

Ms Sarah Neary: Building control still has the same function. While they are under the

same local authority, we are confident that building control authorities act responsibly, irrespective of whether it is in their own area.

Deputy Eoin Ó Broin: I am not questioning that. As a former member of a local authority, I can stand over the quality and integrity of local authority staff. However, we must be mindful that there are clear examples in recent history of local authorities demonstrably failing to provide the standard of accommodation required under the building control regulations in place at the time. There is one clearly documented example of this in my constituency where something clearly went wrong. The reason we have watchdogs is not that we do not trust local authority staff but that a watchdog reduces the likelihood of problems arising. It is a little like the inspection regime for properties. We have increasingly strong requirements for the inspection of private rental properties and approved housing bodies, whereas local authorities are allowed to self-regulate in this area. This will also be the case in this area.

Ms Sarah Neary: As we move towards a shared service and a lead local authority having national oversight, the issue the Deputy raises could be dealt with, perhaps through the inspection or compliance work stream where protocols may be put in place.

Ms Mary Hurley: It is important to note that the same principles apply to assigned certifiers in local authorities who must also be members of one of the three professional bodies.

Chairman: Are there any further questions?

Deputy Pat Casey: I have a quick question for Mr. Wickham. He mentioned a geologist in his presentation. Is the geologist involved in the certification of quarries?

Mr. John Wickham: The role of the professional geologist is to look at the quarried material to understand its properties and make sure it does not have harmful impurities that would be likely to be incorporated into the construction works and cause a defect at a later stage. An example of the third party, which I talked about, is the National Standards Authority of Ireland, NSAI. It is a notified body under the construction products regulation. The Department is to notify an authority so we appointed the NSAI, which proved its competence to conduct auditing of manufacturers by means of the Irish National Accreditation Board. If the checks and balances are in place and the manufacturer has a factory production control process consistent with the harmonised standards, the NSAI gives it a certificate of factory production control which allows it to lawfully place its product on the market. The NSAI does not certify the materials; it certifies the process. The obligation rests on the manufacturer.

What has changed is that we have market surveillance of construction products, which is a function of the Building Control Authority.

Chairman: Are there any further questions?

Deputy Eoin Ó Broin: It would be great if the witness could share those three bits of information.

Chairman: We would welcome any further information the witnesses think is relevant to the report so that it will be a very robust document. I thank our witnesses, Ms Sarah Neary, Ms Mary Hurley, Mr. David Hannigan, Mr. John Wickham and Mr. John Barry, for coming in this morning and for the ongoing communications to this committee. I thank the committee members and the committee staff for all the work behind the scenes that goes into these meetings. The meeting is now adjourned and the next meeting of the joint committee will be held

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on Thursday, 4 May at 9 a.m. for scrutiny of the Thirty-fifth Amendment of the Constitution (Water in Public Ownership) Bill.

The joint committee adjourned at 12.35 p.m. until 9 a.m. on Thursday, 4 May 2017.