



Tithe an  
Oireachtais  
Houses of the  
Oireachtas

**TITHE AN OIREACHTAIS**

**An Comhchoiste um Thithíocht, Pleanáil agus Rialtas Áitiúil**

**Slán Sábháilte?**

**Tuarascáil ar Chaighdeáin Foirgníochta, Rialuithe Foirgníochta  
agus Cosaint Tomhaltóirí**

**Nollaig 2017**

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**HOUSES OF THE OIREACHTAS**

**Joint Committee on Housing, Planning & Local Government**

**Safe as Houses?**

**A Report on Building Standards, Building Controls & Consumer  
Protection**

**December 2017**

**HPLG/06**





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## CHAIR'S PREFACE



The issue of building regulations, building control and consumer protection was identified as a key topic for consideration by the Joint Committee on Housing, Planning & Local Government. We have witnessed numerous housing defects come to light in Ireland in recent years and as the building industry starts to steadily increase again following nearly a decade of inactivity, building regulations and controls have a key role to play in ensuring that we do not see a repeat of past mistakes in this area.

While requirements under the Building Control (Amendment) Regulations 2014 and proposed legislation placing Construction Industry Register Ireland (CIRI) on a statutory footing will undoubtedly contribute to a cultural change in compliance with building regulations and controls, the Committee examined if they were sufficient to prevent any past mistakes being repeated. Consumer protection is also an important aspect of this topic, as buying a home is the most expensive purchase in a person's life. If a homeowner does experience a defect in their home, it is vital that a system is in place to remedy the situation swiftly and comprehensively. However, what we have witnessed is a lack of effective and accessible legal remedies for home owners who discover defects in their home.

On foot of a proposal from Deputy O'Broin the Joint Committee agreed to appoint Deputy O'Broin as a rapporteur for the Committee in the preparation of

this report. The Committee held meetings with invited stakeholders and experts from a range of perspectives and also sought written submissions. On behalf of the Joint Committee, I would like to thank Deputy O’Broin for all the detailed work done in producing the draft report and to the organisations and individuals who came before the Joint Committee to give evidence as well as the organisations and individuals who submitted written submissions. The Joint Committee gained valuable insights from all those who had an input into the preparation of the report.

The Joint Committee in consultation with the relevant Ministers, Departments, State Agencies and stakeholders is fully committed to monitoring the progress being made on the on-going implementation of the recommendations contained in this report as well as other policy initiatives.

A handwritten signature in black ink, appearing to read 'Maria Bailey', with a long horizontal flourish extending to the right.

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Maria Bailey TD  
Chair  
December 2017



## RAPPORTEUR'S INTRODUCTION



A decade has passed since the collapse of the Celtic Tiger housing boom. Across the country thousands of people continue to live with the legacy of poor building standards, ineffective building control and non-existent consumer protection.

Priory Hall, Longboat Quay, Beacon South Quarter, Millfield Manor and Balgaddy are just some of the private and public housing developments built before 2014 where residents continue to live in defective buildings. Unresolved issues remain for people living in homes affected by Pyrite and Mica.

Poor design, shoddy workmanship and improper products resulted in badly built homes in breach of building and fire safety standards. Greed, dishonesty and incompetence left many home owners and Council tenants with poor quality homes and hefty repair bills. All of this was made possible by a weak regime of regulation and compliance in which self-certification and limited independent inspections were the order of the day.

We do not know the full extent of this legacy. Other developments, in which defects were discovered, often by accident, were quietly resolved between the parties involved. In some instances this resolution took huge effort by residents and met with stiff resistance from those responsible.

There are also other developments, the number unknown, where today people live in homes with various levels of defects that have yet to be discovered.

There has also been a significant cost to the taxpayer arising from remedial interventions and actions to building defects taken by local and central government.

Following high profile cases such as Priory Hall, the Government initiated a review of the building control regulations in 2011. This resulted in significant changes, a summary of which is outlined in Chapter 3.

However, the continued impact of these high profile legacy cases combined with the prospect of a significant increase in residential construction in the coming years led the Joint Oireachtas Committee on Housing, Planning and Local Government (the Committee) to agree to examine the issue of building standards, building controls and consumer protection as part of its 2017 Work Programme.

Two days of oral hearings were held in April 2017 during which officials from the Department of Housing, Planning and Local Government, industry professionals from a range of sectors and legal and construction academics gave their views both on the pre and post 2014 regulatory regime.

Others, including residents affected by the legacy of bad building, made written submissions, outlining the impact of this regulatory failure on their lives and urging specific actions both to assist them in remedying their problems and ensuring that such failures do not happen again.

The Committee's recommendations set out in Chapter 4 are intended to build on the changes introduced in 2014 to ensure that we have the most robust system of building control, ensuring the highest possible standards and the greatest level of consumer protection possible, and accessible, effective remedies when defects do occur.

Buying your own home or signing a tenancy for your Council house is one of the most important decisions in your life, affecting you and your family for decades. When such an important occasion occurs, people should feel confident that the building they plan to live in is safe and fully compliant with all building and fire safety standards. They must have confidence that the State, as the enforcer of the regulations, has done its job properly.

As a Committee, we hope Government will consider our recommendations carefully and make the necessary legislative and policy changes in the interest of citizens and society as a whole.

A handwritten signature in black ink, appearing to read 'Eoin O'Broin'.

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Eoin O'Broin TD  
Rapporteur  
December 2017

## CHAPTER 1

### THE PRE 2014 BUILDING CONTROL REGIME

The Building Control Regime prior to 2014 was marked by a number of key features. The Building Control Acts 1990-1997 placed the primary responsibility for compliance with designers, builders and owners of buildings. This was done through a system of non statutory Certificates of Compliance in which professionals stated their opinion that the building substantially complied with the Building Regulations.

Enforcement of this system was in the hands of Local Authorities, designated under the acts as Building Control Authorities. However, inspections were not mandatory and it appears that in most cases Certificates of Compliance were provided without any independent checks on whether the building was constructed in line with design, planning or fire safety standards.

In his submission to the Joint Committee Mr Eamon O'Boyle, a chartered engineer specialising in fire safety and a former Assistant Chief Fire Officer in the Dublin Fire Brigade, outlined how this system worked in practice with respect to fire safety.

*"Under the Building Control Act 1990, building regulations in respect of fire safety were introduced in June 1992. At the same time Building Control Regulations were introduced which made it mandatory to make an application for a Fire Safety Certificate. A Fire Safety Certificate Application was assessed by a Building Control Authority and is either granted, granted with conditions or refused. The certificate states that if a building is constructed in accordance with the application it will comply with the Building Regulations... In many cases the Fire Safety Certificate was viewed as an administrative requirement and NOT as a very important design and safety document."*<sup>1</sup>

While many apartment buyers assumed that the issuing of a fire safety certificate indicated that their property was compliant with the regulations, in fact all it stated was that the property may be compliant if it was built in

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<sup>1</sup> Mr Eamon O'Boyle and Associates, Submission to the Dáil Committee on Housing, Planning, Community and Local Government, 5 April 2017, p5

accordance with the plans. In the absence of independent inspections, including during the construction process, such certificates were of little meaningful value.

For home owners who discovered defects or non-compliance, there was little available by way of recourse to rectify the problems. The statute of limitations for breach of contract is limited to six years (or twelve in some cases), only applies to the initial purchaser and cannot be pursued where the developer/builder has gone into liquidation.

Witnesses to the Committee highlighted significant problems with both the Home Bond scheme and other forms of home insurance in terms of financial limits and works excluded.

Witnesses also highlighted long standing calls for legal reform to strengthen consumer protections including: transferable warranties beyond the first purchaser; a statute of limitations determined from the time of discovery of defects rather than the time of purchase; minimum mandatory terms for contracts to fairly balance the rights of buyers and sellers; and greater access by purchasers to information about standards and liabilities.

Where the only available remedy for the home owner is court litigation or arbitration the costs and the lack of legal clarity as to who is ultimately responsible – the developer, the builder, the architect, - means that home owners already facing hefty bills for remedial works cannot realistically pursue this avenue.

Taken together, self-certification, low levels of independent inspection and limited redress for home owners once defects are discovered is clearly a recipe for disaster.

As the demand for delivery during the construction boom of the 2000s combined with the availability of cheap credit and excessive profit, the temptation for some to cut corners was simply too great.

In the absence of any meaningful checks on such excess by the State, buildings were constructed that not only failed to meet building regulations, but actually put people's lives at risk.

While the majority of professionals in the construction industry and the building control sector acted professionally and in line with legal requirements, the aftermath of the property boom revealed a significant level of non-compliance, negligence and incompetence, with devastating consequences on many people's lives.

## CHAPTER 2

### THE 2014 BUILDING CONTROL REFORM

As the impact of the significant level of non-compliance with building regulations became apparent, post 2008 Government decided to conduct a review of the building regulations and building control system.

In 2011 the then Minister announced a number of measures which were hoped to improve compliance. A high level working group was tasked with reviewing the existing regulations. This led to the Building Control (Amendment) Regulations 2014 (S.I. 9 of 2014).

S.I.9 introduced a new system of mandatory certification with respect to building design, fire safety and disability access certificates and of mandatory certificates of compliance in respect of design and compliance with Building Regulations. Assigned Certifiers, employed by the developer/builder would be required to conduct onsite inspections during construction and submit certificates to the Building Control Authority.

Building Control Authorities would still have the power to conduct inspections and the system of certification would assist them in identifying risks.

A statutory Certificate of Compliance on Completion signed by both the assigned certifier and the builder must be in place before a building is occupied.

Design Certifiers and Assigned Certifiers would have legal liability with respect to their work and the documentation associated with the certification process would be available to future purchasers of the property.

Alongside the certification regime, a Code of Practice for Inspecting and Certifying Buildings and Works was developed as was a Framework for Building Control Authorities.

A review of the Building Control (Amendment) Regulations in 2015 led to the exclusion of one off housing and extensions from the provisions control element of S.I.9. The review also introduced an opt-in for Local Authorities for social housing developments.

The new system was operationalised through an online platform known as the Building Control Management System managed through the Local Government Management Agency.

Government, in conjunction with the Construction Industry Federation (CIF) created a voluntary Construction Industry Register to promote competence, good practice and compliance with the power to hear complaints, mediate resolution and remove noncompliant builders and tradespersons from the register. At the time of writing, legislation seeking to place the Construction Industry Register on a statutory footing is making its way through the Oireachtas.

In her presentation to the Joint Committee, Sarah Neary, Principal Adviser on Building Standards with the Department of Housing, Planning and Local Government stated that:

*"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 that improves and reinforces a culture of compliance with Building Regulations, securing safe and healthy buildings."*<sup>2</sup>

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<sup>2</sup> Ms Sara Neary, Opening Statement, Joint Committee, 13 April 2017



## CHAPTER 3

### STRENGTHS AND WEAKNESSES OF THE 2014 REFORMS

A considerable portion of the discussion at the two Committee hearings in April focussed on the impact of the Building Control (Amendment) Regulations and accompanying changes. While the low level of construction since 2014 makes a full assessment of the impact of the reforms difficult to gauge, many stakeholders welcomed the changes.

However, there were also a range of weaknesses identified. A summary of these strengths and weaknesses is presented below. For a full exposition of the various views see Appendix 4 for the full transcript of the committee hearings.

#### **Strengths**

- Requires competent designers and builders and professionals to work together to an inspection plan
- Provides for better developed design before commencement
- Buildings are inspected at all stages during construction
- There is a much more rigorous certification process at each stage of construction
- Ongoing certification assists Building Control Authorities in identifying risks
- Development of a centralised structure for training, inspection and compliance
- Establishment of the Construction Industry Register improves and controls standards in construction
- Reforms provide additional protection for consumers by improving controls and demanding greater accountability and traceability in construction

#### **Weaknesses**

- Puts the existing system of self-certification on a statutory footing as assigned certifier's are employed directly by developer/builder
- Design Certifiers and Assigned Certifiers may have conflicts of interest as they can also be employed by the developer/builder elsewhere on the same project or on other projects in other capacities

- Controlling costs of certification is problematic with the possibility of low quality undercutting at one end and excessive charging at the other end of the market
- Regulatory regime remains fragmented across multiple Building Control Authorities and design certifiers and assigned certifiers
- Levels of Building Control Authority independent inspections remain low
- Liability for defects is disproportionately placed on certifier's rather than developer/builder
- Low level of compliance and enforcement during voluntary phase of Construction Industry Register (0 complaints in 2014, one complaint in 2015 resolved via negotiation, no complaints in 2016, three complaints to date in 2017 two of which resolved via negotiation and the third ongoing)
- Construction Industry Register located within Construction Industry Federation is not independent and amounts to self-regulation
- Consumer protection issues such as legal actions being statute barred, transferable warranties of quality, minimum mandatory terms for residential construction contracts, imbalance of information between sellers and buyers and inadequate insurance cover remain unaddressed and ultimately inaccessible
- Liability for defects once discovered is unclear and dispersed across multiple actors –developer, builder, designer, assigned certifier, sub-contracted certifier, planner, building control section- thus making legal remedy prohibitively complex and expensive
- Lack of mandatory latent defects insurance on all new buildings and restrictive terms of existing insurance products
- No systematic remedy or redress scheme for those living with defects caused by non-compliance and regulatory failure pre 2014
- No proposal for investigation and discovery of full extent of defective building during the housing boom of the 2000s particularly in multiple unit developments
- Assigned certifiers may have longstanding relationships with builders/developers generating further conflicts of interests
- No systematic feedback to building control authorities about defects on multiple sites
- No independent inspection of structural designs.

## CHAPTER 4

### COMMITTEE RECOMMENDATIONS FOR FURTHER REFORM

Having listened to the evidence presented in April and considered the issues very carefully, the Committee is of the view that the 2014 reforms represent significant progress towards a more robust building control regime. However, to further improve building standards and to increase confidence in both the construction sector and the regulatory framework and to strengthen the protection of the consumer the Committee propose the following reforms.

#### **1. Building Standards and Consumer Protection Agency**

- i. Create a new Building Standards and Consumer Protection Agency along the lines of the Food Safety Authority and Environmental Protection Agency
- ii. The Agency would not take over the functions of Building Control Authorities but assist them in ensuring greater levels of and consistency of compliance
- iii. The Agency would assist Building Control Agencies with developing and implementing best practice, monitoring and reporting in compliance and enforcement
- iv. The Agency would also have a consumer protection role providing an information, advice, complaints, mediation and dispute resolution service similar to the roles carried out by the Residential Tenancies Board and the Financial Services Ombudsman
- v. The Agency would also provide a fully independent location for the Construction Industry Register
- vi. The Agency would also assist Government and Industry with policy development, research and data collection
- vii. The Agency could have a role as a construction qualifications registration authority
- viii. The Agency would be the custodian of the Building Control Management System.

## **2. Making BCAR truly independent**

- i. To completely break the self-certification element that remains with S.I.9 Design Certifiers and Assigned Certifiers should be employed directly by local authorities, either on a contract basis or as full time local authority employees. The costs of certification would remain with the developer/builder who would pay local authorities directly in respect of fees with no additional handling fee being levied by the local authority.
- ii. Neither Design Certifiers nor Assigned Certifiers should be employed by a developer/builder on either the project they are certifying or any other project with that developer in any other role
- iii. Local authorities would not be allowed to self-certify or employer assigned certifier's for their own social housing developments. This would be contracted out via the Building Standards and Consumer Protection Agency
- iv. Resourcing of and targets for Building Control Authority's would be increased to ensure a higher level of inspections
- v. Mandatory fire safety inspections by specialist Building Control officers on all multiple occupancy developments or developments with a higher level of fire risk would be required prior to the submission of a Completion Certificate
- vi. No building work could be opened, used or occupied without a partial or completion certificate being issued.

## **3. Protecting Against Latent Defects**

- i. Latent Defects Insurance should be a legal requirement to be provided by the developer/builder on the sale of all new residential properties
- ii. Transmissible warranties of quality from developers/builders and those involved in the building process in favour of first and subsequent purchasers should be introduced via primary legislation
- iii. A new statute of limitations of two years from discovery of defect rather than six years from purchase of the property should be introduced via primary legislation

- iv. Minimum mandatory terms for contracts should be introduced to ensure a fair balance between the rights of the developer/builder and those of the purchaser
- v. Non-disclosure orders on home owners who resolve their latent defects issues with the developer/builder should be outlawed
- vi. A review of the existing sanctions and punishments for developers/builders who breach building and fire safety standards should be undertaken and appropriate reforms introduced via primary legislation to ensure a greater level of deterrent is in place for those tempted to break the law
- vii. A bar on the awarding of publically funded construction project tenders should be introduced to prevent such contracts from being awarded to developers/builders or associated construction professionals found to be in serious breach of building standards or fire safety regulations.

#### **4. Addressing the legacy of bad building and poor regulation**

- i. Government should establish a redress scheme to assist home owners with latent defects
- ii. The mission statement of the Redress Scheme should be: "Ordinary owners who purchased in good faith should not be liable for the costs of remediation caused by the incompetence, negligence or deliberate non-compliance of others"
- iii. The redress scheme should provide an information and advice service for those affected by non-compliance and regulatory failure
- iv. The redress scheme should examine a number of possible funding mechanisms for assisting owners affected by pre 2014 non-compliance including:
  - An industry levy funded levy matched by Government funding
  - Allowing home owners to write off the costs of remedial works against
  - their tax liabilities
  - An interest free loan scheme to assist home owners fund the cost of
  - remedial works

- v. The redress scheme should be accompanied by a programme of fire risk assessments based on a methodology designed to assess those boom time developments deemed potentially at risk of containing latent defects.

# APPENDICES

## APPENDIX 1 - ORDERS OF REFERENCE

### **a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
  - (c) Estimates for Public Services, and
  - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of



such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.

(7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.
- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

## APPENDIX 2 - MEMBERSHIP

Deputies: Maria Bailey – Chair (FG)  
Pat Casey – Vice Chair (FF)  
Ruth Coppinger (Solidarity-PBP)  
Barry Cowen (FF)  
Mattie McGrath (IND) – Rural Independent Technical Group  
Eoin O Broin (SF)  
Fergus O'Dowd (FG)

Senators: Victor Boyhan (IND)  
Paudie Coffey (FG)  
Jennifer Murnane O'Connor (FF)  
Grace O'Sullivan (GP)

### Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 21 July 2016.
3. Elected Vice Chair on 24 May 2017

### APPENDIX 3 - LIST OF WITNESSES

#### Committee Room 3 LH2000 at 5.00 p.m. on Wednesday, 5 April, 2017

<b>Witness</b>	<b>Organisation</b>	<b>Presentation by</b>
Ms. Deirdre Ni Fhloinn	Trinity College Dublin	
Mr. Eamon O'Boyle	Eamon O' Boyle & Associates, Health & Safety Consultancy Services	
Mr. Mel O'Reilly	Construction Industry Federation	
Mr. Brian McKeon	Construction Industry Federation	
Mr. Hubert Fitzpatrick	Construction Industry Federation	Mr. Hubert Fitzpatrick

#### Committee Room 1 LH2000 at 9.30 p.m. on Thursday, 13 April, 2017

<b>Witness</b>	<b>Organisation</b>	<b>Presentation by</b>
Ms. Orla Hegarty	University College Dublin	
Mr. Alan Baldwin	Society of Chartered Surveyors in Ireland (SCSI)	Mr. Alan Baldwin
Mr. Kevin Hollingsworth	Society of Chartered Surveyors in Ireland (SCSI)	
Ms. Deirdre Fallon	Irish Planning Institute	Ms. Deirdre Fallon
Mr. Paul O' Neill	Irish Planning Institute	

Ms. Sarah Neary	Department Housing, Planning and Local Government	Ms. Sarah Neary
Mr. John Barry	Department Housing, Planning and Local Government	
Mr. John Wickham	Department Housing, Planning and Local Government	
Mr. David Hannigan	Department Housing, Planning and Local Government	
Ms. Mary Hurley	Department Housing, Planning and Local Government	

## APPENDIX 4 - OFFICIAL MEETING TRANSCRIPTS

### Review of Building Regulations, Building Controls and Consumer Protection: Discussion

Wednesday 5<sup>th</sup> April 2017

**Chairman:** At the request of the broadcasting and recording services, delegates and those in the Visitors Gallery are requested to ensure that for the duration of the meeting their mobile phones are turned off completely or switched to aeroplane, safe or flight mode, depending on their device. It is not sufficient for members to put their phones on silent mode as this will maintain a level of interference with the broadcasting system.

*Deputy Pat Casey took the Chair.*

**Acting Chairman (Deputy Pat Casey):** I welcome, Ms Deirdre Ní Fhloinn and Mr. Eamon O'Boyle and from the Construction Industry Federation, Mr. Mel O'Reilly, Mr. Brian McKeon and Mr. Hubert Fitzpatrick. We begin today with the review of building regulations, building control and consumer protection.

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 House or an official either by name or in such a way as to make him or her identifiable.

**Mr. Hubert Fitzpatrick:** This topic is one of the most pressing and important to the building industry that we represent. It is timely that we are meeting today to discuss regulations, controls and ultimately protecting the consumer. I am joined by Mr. Mel O'Reilly of MDY Construction, who chairs the CIF building regulations committee, and Mr. Brian McKeown of MKN Property Group, who is vice chairman of that committee. Mr. Shane Dempsey has joined us in the Visitors Gallery.

Today, the building industry is steadily increasing the level of new buildings and housing supply to meet the demands of the population after nearly a decade of inactivity. The committee and our industry have a key role in ensuring the building regulation, control and consumer protection regime deliver quality construction and sustainable growth across the industry. CIF represents about 1,350 construction companies across the economy and at the outset, I reaffirm CIF's commitment to the Building Control (Amendment) Regulations, BCAR, and other regulations targeted at delivering quality construction. CIF played a positive role in the formulation of the Building Control (Amendment) Regulations 2014 because our members and the wider industry will ultimately benefit when these regulations are applied to all those operating within the industry. The CSO calculates that there are 46,000 construction-related companies and about 46,000 self-employed people operating in the sector. Even though we represent only a fraction of these companies, it is in our interest to ensure that there is a robust building regulation and controls system in place to ensure that only reputable builders can operate in the industry. By 2014, we had seen numerous high-profile cases arising from building control issues during an unprecedented period of building activity. The CIF believed that these highlighted the real need for a more robust building control regime. We engaged extensively with the Department and other stakeholders, including the RIAI, SCSI, Engineers Ireland and ACEI, when the Building Control (Amendment) Regulations 2014 were being formulated.

BCAR has introduced greater transparency, traceability and accountability across all companies in the construction industry. A key issue CIF identified was the ineffective system of certification that applied prior to the economic collapse. These opinions were often based on inspections of buildings after construction and with caveats to the opinions expressed offering little to no consumer protection. Thankfully, this system has now changed. BCAR now requires that competent builders and professionals work together to an inspection plan, with certification of compliance on completion for all stages of the construction process. This has introduced significant discipline into every stage of the process from detailed design to ordering of materials to inspections and certification of relevant works as they progress and come to completion. In addition, commencement notices must now be accompanied by outline plans and documentation; a certificate of compliance design; a certificate of compliance - undertaken by an assigned certifier who must be a registered architect, a registered building surveyor, or a chartered engineer; and a certificate of compliance undertaken by the builder confirming his competence and the competence of his team. The builder must also undertake to construct the works in accordance with the plans and specifications supplied; co-operate with the inspections carried out; and certify the works comply with the building regulations. Before works or a building can be opened, occupied or used, a valid certificate of compliance on completion must be included on the statutory register maintained by the relevant building control authority. The builder and the assigned certifier must sign this document and it must be accompanied by the inspection plan as implemented by the assigned certifier. It is, therefore, safe to say there is a much more rigorous certification process at each stage of construction for new construction in the State.

To further embed these practices throughout the entire construction industry, the CIF, in conjunction with the Department, developed the register of builders Construction Industry Register Ireland, CIRI. CIRI has a high threshold for quality that will essentially exclude inexperienced or *ad hoc* builders securing registration. This will mean consumers can seek out builders on the register to carry out works. CIRI reinforces the building regulations and drives standards by showing the consumer which builders are up to the required standards. I ask the committee for its support for the introduction of CIRI on a statutory footing. CIRI has an independent board including a chairman and ten members to assess the eligibility of applicants for registration. The chairman of this board is appointed with the consent of the Minister for Housing Planning Community and Local Government. Departments and agencies appoint five other board members - two are registered professionals while the remaining three are representatives of building contractors, house builders and specialist

contractors. CIRI registration will be contingent on compliance with building regulations, track record, financial standing, current level of expertise and competence on a category basis, etc.

To further ensure standards are adopted across all the industry, the Government should legislate in order that self-builders cannot opt out of BCAR requirements for one-off houses. Considering that up to 50% of building activity since 2014 has been one-off, we cannot understand the decision to create an opt-out provision for BCAR at that time. The opt-out provision means that these builders do not need to appoint designers, competent builders and assigned certifiers, nor is there any requirement for development of an inspection plan. This is unacceptable. I will not be popular for stating this, but all one-off builders should be subject to the standards set out in BCAR. There must be a level playing field in respect of regulation if the consumer is to be truly protected.

The CIF fully supports the implementation of the Building Control (Amendment) Regulations 2014 as an effective tool to protect consumers and ensure compliance with the building regulations. Further legislation is now required to put CIRI on a statutory basis. This will provide the mechanism for assessment of builders' competence and experience for registration, and also provide a means to penalise registered builders where breach of obligations under building control arises. This can include removal from the register. I reaffirm our commitment to standards in the industry and will work with the wider breadth of stakeholders to ensure our building regulations stimulate sustainable quality construction for the consumer.

**Ms Deirdre Ní Fhloinn:** I am grateful to the committee for this opportunity to speak about my research, and I have made a written submission to the committee.

I am specialist construction lawyer in my third year of a PhD at Trinity College Dublin. The title of my thesis is "Consumer remedies for defective dwellings: devising a model for effective redress", for which I have been awarded a scholarship by the Irish Research Council, supported by the Housing Agency and Dublin City Council. I was in practice as a solicitor for 14 years before starting a PhD at Reddy Charlton Solicitors here in Dublin and as in-house counsel at London Underground, in each case specialising in construction law.

I would like to provide a synopsis of my submission for the benefit of the members, following which I am happy to take questions. Numerous housing defects have come to light in Ireland in recent years, which have highlighted the lack of effective, accessible legal remedies under domestic law. Speaking as someone who has examined the legal context for these housing failures in detail over the past four years, I have grave concerns that Ireland will embark upon a major programme of building homes without considering lessons learned, and without improving legal remedies for home owners. My submission, and the preliminary recommendations emerging from my research are grouped under the themes of reform, remedies, and regulation and I will briefly address each. I will use the term "home" to include both houses and apartments.

Irish law is stacked against home owners who discover defects. We are all familiar with the stories of warranty policies that failed to provide the cover that home buyers expected, and with the problem of widespread insolvencies in the construction industry which left many home buyers with no-one to pursue for defects.

The Building Control (Amendment) Regulations 2014, which were mentioned in detail by Mr. Fitzpatrick, with their requirements for periodic inspections and certification by those involved in construction, have undoubtedly contributed to a cultural change in compliance with regulations, but they did not address the underlying problems of Irish law and practice that left people without legal remedies. Irish law is unclear in a number of important respects with regard to remedies for building defects. The relationship between sellers and buyers of new houses in Ireland is contained in two contracts: a contract for sale of the land or a lease in the case of an apartments, and a building



agreement, usually in the form of the building agreement agreed between the Law Society and the CIF in 1987.

That agreement is entered into with the first purchaser of a home, who is the only person who may sue under that contract. It is drafted on the basis that it will be signed under seal, for which the period for bringing proceedings is 12 years from the date of breach of contract. The agreement contains a warranty in favour of the buyer but if the home is sold during that 12-year period, the agreement does not transfer with the house, and the benefit of the warranty is lost.

I mention in my submission the statutory duty in English law for builders to carry out their work in a workmanlike manner with proper materials in order that the house is fit to live in when completed; this duty is owed to the first and subsequent purchasers. I also refer to the law of New South Wales, which implies warranties into contracts for building work, which also pass to subsequent purchasers. The Sale of Goods and Supply of Services Act of 1980 implies a term that a provider of services, which would include a builder, will supply the service with due skill, care and diligence, using materials that are sound and reasonably fit for purpose. This is an important protection, but the term also remains with the building agreement and, therefore, the first purchaser of a home if the home is sold during the 12-year period.

In Ireland, a second purchaser may be able to rely on a defects insurance policy, which should transfer with the property, but which will be subject to various exclusions and limitations. Defects policies have an essential role to play, but will often provide substantially less protection than the first buyer would have had by law.

Another problem is that an action may also be statute-barred before an owner has had the opportunity to identify and investigate a defect in their home. The Law Reform Commission recommended a change in law to deal with this in a 2011 report in order that time for bringing proceedings would start once the owner knew or ought to have known of the defect, but this has not been implemented. Even where the standard building agreement is used, solicitors acting for builders may include unfair terms in the agreement. In the past these terms have included limiting the buyer to one snag list, imposing short timescales for snagging, and allowing the builder to change materials, specifications and even dimensions of a site or building after the contract is signed. The High Court banned the use of a number of sample terms in 2001, but this was still a problem as recently as 2016. Legislation could be introduced to provide for minimum mandatory terms that would apply in all contracts for residential building work and that would pass automatically to subsequent purchasers.

These problems are not new. The Law Reform Commission described them in 1977 and again in 1982 in a report that included the defective premises Bill. The Bill includes a statutory duty on a person undertaking or executing work in favour of the person who commissioned the work and any person who acquires an interest in it – for instance, the second purchaser in my original example - to ensure the work was undertaken in a good and workmanlike manner with suitable and proper materials. The Bill never passed into law.

The Law Society of Ireland building agreement also contains an arbitration clause. Recent research suggests that many consumers have little understanding of the effect of an arbitration clause. In parts of Australia, arbitration clauses may not be included in building agreements with consumers. Arbitration can be a daunting, costly and time-consuming process for a home owner. The same can be said of bringing proceedings through the courts. Cost-effective and accessible remedies are an essential part of housing quality. Even if compliance with building regulations has improved dramatically following the 2014 regulations, some percentage of new homes will have defects. Remedies are essential when defects emerge. A review should be carried out of the operation to date of the Building Control (Amendment) Regulations 2014,

as well as the resourcing and enforcement activities of building control authorities. The Food Safety Authority of Ireland provides a model for a transparent regulatory system. Under that system, the authority publishes annual reports and significant amounts of information on enforcement activities. This is not done by building control authorities in Ireland in general. Little information is available in respect of their activities.

I suggest that an Irish building authority be established to administer building control on a nationwide basis. A single national building inspectorate service was part of the programme for Government in 2011. The infrastructure is in place with the building control management system, which is a national system for lodgement of certificates and other documents required under the building control regulations. The authority could monitor local inspection and enforcement of building control, serve as a hub of knowledge gathered from throughout the country from building control activity and have a regulatory role in licensing those involved in construction.

I will conclude with a quotation from the Law Reform Commission report of 1982. It was made in response to the suggestion made at the time that increased protection for consumers would increase the cost of houses. The Commission stated, "Economies achieved at the expense of defective building work were not in the interests of purchasers or lessees of houses." Now that we have evidence of tens of millions of euro being spent by the State and home owners to deal with housing failures, I suggest that the cost of ensuring quality housing and effective, accessible remedies for defects must be seen as an essential part of the cost of building homes.

**Mr. Eamon O'Boyle:** I thank the committee for inviting me to contribute in respect of its review of building regulations, building controls and consumer protection. In particular I have been asked to address the issues around fire safety within buildings and how they are detected, problems with past buildings and the procedures currently in place. I hope I can assist the committee in its important work.

I am a chartered engineer. I specialise in fire safety engineering. I am managing director of a consulting engineering practice, Eamon O'Boyle and Associates, established in 2002. Prior to establishing Eamon O'Boyle and Associates, I was the assistant chief fire officer in Dublin Fire Brigade and had responsibility for the administration and implementation of regulatory fire safety throughout the greater Dublin area. I propose to address the issues I have been asked to address as follows: to discuss issues around fire safety; to discuss how deficiencies have been detected; to outline problems with past buildings; and to outline procedures now in place.

I will address issues around fire safety first. Buildings are designed with in-built fire safety measures based on robust construction and properly designed services, for example, electrical services. The fire design for buildings, other than houses, is approved by a building control authority by way of a fire safety certificate. The major issue that has arisen is the failure to implement aspects of the design. In buildings where there are interdependencies, for example, apartments, hospitals or office buildings, a fire in one area can affect another area not directly involved in the fire.

I have provided the committee with some photographs and sketches. I will refer to these now. They illustrate the typical deficiencies observed. A key feature in these sketches is poor fire stopping. By fire stopping, I mean the methods used to seal around openings in fire walls for the passage of pipes, wires or ducts. Fire stopping also refers to the closing off of cavities to prevent the spread or smoke from one part of a building to another. Image 1 on the screen is a

photograph of pipes that go through a wall. The photograph shows how easy it would be for fire or smoke to go from one part of a building to another. The second photograph shows how this can happen as well. Work has not been completed properly in the building in that photograph. The third sketch shows the mechanism by which smoke can move from one part of a building to another. The image on display shows an apartment at a lower level where there is a fire and how the fire can spread to an independent apartment located overhead. It illustrates how the ingress of smoke occurs if fire stopping is not executed properly between the floors and around windows.

It is evident from these images that fire stopping is critical to fire safety within a building. Another aspect of fire safety that needs to be addressed relates to active fire safety systems. These are features designed to operate in the event of a fire or power failure. Examples include fire detection and alarm systems, emergency lighting and sprinklers.

Fire safety management is another factor. This concerns: ongoing maintenance of active systems; good housekeeping, for example, the removal of combustibles; ensuring the availability of fire exits; and the development of procedures relating to actions to be taken in the event of fire. Passive fire protection is another factor. This is developed to slow the spread of fire through use of fire-resistant walls, floors, and doors, among other examples. An integral part of a passive fire safety system is referred to as fire stopping, an element to which I have referred already.

Active systems and fire safety management systems require ongoing monitoring to ensure appropriate maintenance and to guarantee appropriate actions are taken in the event of a fire. On the other hand, passive systems are provided at construction stage and must be installed correctly to ensure effectiveness. Fire stopping is generally concealed behind plasterboard or in door frames. It is hidden before the building is used and deficiencies only become apparent during a fire survey, generally referred to as a fire risk assessment. The absence of passive fire systems can also become apparent when a fire occurs - the most serious situation. This is the key focus of this presentation.

Generally speaking, these deficiencies are detected by two methods. The first becomes apparent during the outbreak of fire when heat or smoke travels from one part of a building and emerges in another. This is shown in the diagram to which I referred earlier. The other becomes apparent during what we term a fire risk assessment, which is usually undertaken by a fire engineer as part of a survey of the building.

Problems with past buildings relate to buildings constructed prior to the introduction of the BCAR system referred to by previous speakers. In order to address these, we need to describe the regulatory system that applied previously as well as the extent to which it still applies. Under the Building Control Act 1990, building regulations in respect of fire safety were introduced in June 1992. At the same time, building control regulations were introduced. These made it mandatory to make an application for a fire safety certificate. A fire safety certificate application is assessed by a building control authority and is either granted, granted with conditions or refused. The certificate states that if a building is constructed in accordance with the application, it will comply with the building regulations. The application contains details of how compliance with the fire safety requirements of the building regulations is to be achieved.

Many of the high-profile cases that have appeared in the media and that have been witnessed by my company have had fire safety certificates granted, but the design, as described in the application, has not been complied with. This is particularly true in the case of passive fire

safety systems. In my experience, some applicants are satisfied to have a fire safety certificate but do not understand the importance of compliance. In many cases, the fire safety certificate is viewed as an administrative requirement and not as an important design safety document. While many high-profile apartment buildings have received media attention, it is worth noting that office blocks, hospitals and other buildings may have been constructed with similar defects during the busy building period.

I will outline the procedures now in place. Since the introduction of the Building Control (Amendment) Regulations 2014, it is mandatory to appoint professionals to undertake inspections and provide certification that building regulations have been complied with. While the BCAR system is still in its infancy, I am of the view that it will provide a mechanism where at the very least buildings are inspected at all stages during construction. I also believe that it will provide a level of consumer protection and that it must remain under continuous review.

It is worthwhile examining the system that operates in the United Kingdom where codes and technical guidance are similar to those which apply in Ireland. During the design phase in the United Kingdom developers or builders have the option of going to a local authority to have their designs approved or to use independent inspectors. This contrasts with the Irish system where only the Building Control Authority, BCA, can approve a design or fire officers of the BCA in the case of fire safety. Staff shortages may prolong decision periods which leads to frustration within the construction programme. The builder or developer generally provides 24 hours notice to enable the local authority to inspect at these key stages. Once all inspections are complete, the BCA provides a completion certificate for the building prior to occupation. In contrast, in Ireland, that job has been effectively outsourced to the private sector by way of the BCAR which is used by qualified professionals.

In summary, there are significant fire safety legacy issues associated with some of the building stock nationally. It is possible to address these issues in a proportionate way by undertaking a national programme of fire risk assessments. Priority should be given to buildings in which people reside or sleep and other buildings should be assessed on a risk basis. This approach will take time but it is necessary as there is strong evidence that there are deficiencies and it is essential they are identified and remedial action taken in a planned and methodical manner based on risk and within an agreed timeframe.

**Deputy Eoin Ó Broin:** I thank the witnesses for their presentations. By way of background, the reason for this hearing and the hearing next week is that several of us in respect of our constituencies but also through discussions in the committee are concerned that we need to better understand the new regulations and the important issues raised by cases that have gained a high media profile. The purpose of these hearings is for the committee to issue a report to examine these issues and, if required, we will make proposals to Government for changes to legislation.

Most of us have had some dealings with the issues raised today. The witnesses are the experts, which is why we invited them here.

Do the witnesses think there has been enough time since the regulations changed in 2014 to assess whether they are adequate to fix the problems that existed prior to that date? I am particularly interested in the content of the regulations but also in compliance because while there is a move to more inspection, and this is not to question the professional integrity of any those carrying out inspections, it is my sense that when it is outsourced someone is brought in who is not independent because he or she is being paid for that inspection and certification. Is that the

best regime we could have?

While we know of the high profile cases, many of us know of constituents who hear that the neighbours have accidentally come across firestopping that was not done. One does not just see that, one has to be renovating one's house to discover it. They wonder should they check this themselves and, if so, what they will find and what will be their liability for rectifying those problems. How widespread is the non-compliance although there are fire safety or other certificates? If there is to be a national fire risk assessment programme even just to consider buildings that might pose a high risk because of the time they were built, that could be a big programme. How would that roll out?

The committee is having a separate discussion and the Government is undertaking two pieces of research to find ways to bring down the cost of producing private sector units, in respect of building, compliance, land, financing and tax related costs. Ms Ní Fhloinn mentioned this. Many of us are keen to find a way to reduce the overall cost of producing units without in any way compromising standards and compliance with standards. We would be interested in witnesses' thoughts on whether there is a way to bring down the cost while also increasing standards and compliance.

The area we are most concerned about is what happens the homeowner who discovers the defect. In cases I have been directly involved with, the clear impression is that unless the inspectors were able to find some way of negotiating outside the formal mechanisms with a developer who is still trading with a local authority, which may have had some involvement in the development, the cost for the homeowner can be very substantial. Even for relatively small levels of firestopping it can be thousands of euro. Consumer protection is the one aspect that is failing absolutely. I would like to hear the witnesses' views in as much detail as they can give on what needs to be put in place, such as changes to defects insurance or other mechanisms. If I buy a CD today and it is broken I will bring it back to the record store tomorrow and get a replacement. Most people think it is the same for most things they buy. A house is the single biggest purchase most people make in their lives yet they find when major defects are discovered, unless they are willing to take a civil action against somebody to fight it in the courts, they could be left with the full liability and risk. The committee will want to come forward with suggestions on that.

The purpose of this report is to offer solutions, not to lay blame, criticism or to play politics. It is to set out solutions in the context of the forthcoming building control Bill, the heads, or a draft of which, the Minister says we should have before the end of this session. I am interested in hearing, in as much detail as the witnesses can give, what they think needs to change in the primary legislation or in regulations on standards, compliance, consumer protections and remedies, or in terms of implementation and policy areas that might not require legislation or a change of emphasis by State agencies.

**Deputy Fergus O'Dowd:** I welcome the witnesses. I have met several of them before. I think Mr. Fitzpatrick was once my local county manager or assistant county manager. I welcome their comments, particularly what Ms Ní Fhloinn. If I buy a property that is built by a member of Mr. Fitzpatrick's association I presume that what I am getting is as permitted. Instead of outsourcing the responsibility to Tom, Dick or Harry, whoever that might be, whether the local authority or the fire expert, all the liability should rest on the association or the professional who signs it for the association. Part of that is how the membership is policed. Has the witness ever kicked any member or any builder out of the Construction Industry Federation? People would go to a member of that association in the belief that they would meet certain

standards. How does the witness exclude members from his association? Has that ever been done?

It has been suggested that part of the solution is that builders should provide a significant fund available to meet scenarios where people avoid their responsibility or go bankrupt. A builder can be here one day and gone the next. The Construction Industry Federation should have a significant part to play in assuring and funding the things that have to be done.

To return to the role of local authorities, I may be misquoting the witness but he said at the beginning that there was a lack of supervision during the boom. Is that a fair summary of what was said? It was implied that there was a lack of supervision during the construction period and that local authorities were not doing their job. If that is what the witness said I would agree with that. They were not doing their job. Huge fees were charged for planning permission and yet, in terms of numbers, there was a total lack of professional people within the local authority to do the work that needed to be done. Much of the infrastructure that was built above and below the ground was very poor. As Eamon O'Boyle said, much of it is unknown but it is out there. We do not know where it is. The witness was suggesting a series of audits based on the perceived high risk of fire hazards, for example, in certain types of construction. I would like to think that whatever report this committee comes up with would put the onus back on the Construction Industry Federation, and particularly the builders. Where does the Construction Industry Federation stand on those matters, what is it doing about it, and what has been done up to now to protect consumers? Most people who buy a house are in hock for the rest of their lives. They buy innocently and in good faith, buying houses from planning permission. In many cases that is exactly what they get, but in many cases they do not.

**Acting Chairman (Deputy Pat Casey):** We will now go back and get some answers before we go to the next round of questions.

**Mr. Hubert Fitzpatrick:** I will start and my two colleagues can join in, because quite a range of issues have been raised. Deputy Ó Broin asked if we have enough time to assess whether these regulations are adequate. Certainly the culture within the industry has changed significantly since the beginning of the regulations, from design of the buildings to inspection plans to appointment of competent persons. I am aware that there is a huge amount of resources employed to ensure compliance with the building regulations under the new regime. We welcome that and fully support it. We must ensure that we have buildings that are built to the proper regulations and standards and that can be stood over.

On the issue of consumer protection and what needs to be in place, we recognised four to five years ago that there were shortcomings attached to the previous certification process that was in place. By and large the only certification required was post-completion. It was based on visual inspection, in many places, of domestic buildings, and opinions on compliance were expressed at that juncture. That was not satisfactory. We fully supported the introduction of the new building control amendment regulations. There is one piece missing at the moment. We recognised that we require a register of competent builders, and that only builders with competence should be allowed to build structures in particular categories for where they had relevant experience. At the time we set about developing what was called the construction industry register Ireland in conjunction with the Department of the Environment, Community and Local Government, and that was included as one of the Government actions to be put on a statutory footing during the current Government. We would hope that that register would be put on a statutory footing, that it would be mandatory for all builders to be on that register and that it would be an offence for them to build anything for which they are not registered. The advantage of a register of that nature is that builders would have to ensure that they undergo

continuous professional development to ensure that they are kept up to date with the changing regulations and standards that are introduced by the Department of Housing, Planning, Community and Local Government. We would like to see that approved.

In terms of consumer protection, it is fair to say that the insurance policies that are now in place differ greatly from the warranty schemes that would have applied in the past. The insurance policies now available includes first-party insurance cover, so that in the event of the claim the policy holder does not have to go through the builder any more but can go straight to the insurance company to remedy any defect which might be identified. The policy in these situations attaches to the house or unit, and that would subsequently transfer to subsequent purchasers of that unit, so that if someone buys a house or an apartment the policy will be in their name, and if they sell that unit two or three years down the road the policy will transfer to subsequent owners of that unit so that they will have the benefit of that policy for its term, which is generally ten years. The policy today covers defective workmanship, design and materials. The previous materials were purely structural policies. The policies offer much greater protection than before. They offer protection from fire safety, dealing appropriately with radon, mechanical equipment and drainage. Some of those policies can be for up to €200,000, plus €50,000 in respect of various plant and equipment. Any purchaser of a new residential unit will insist on having that insurance policy because they will not be able to secure funding from their bank or building society for a mortgage. Any of our members that are building new units for sale on the open market will insist on having that insurance policy in place, because if they do not they will not sell it. In effect it is mandatory in the market place because funders will not advance mortgages without that cover.

With regards the issues that Deputy O'Dowd raised, the buildings must be constructed in accordance with the permission. When one is selling a building one has to ensure that there are certificates of compliance with planning issued at that particular stage. In addition, under the new building control amendment regulations, BCAR, requirements the builder must give a certificate of compliance on completion that the building meets the building regulations. The assigned certifier must also certify that the building has been built in accordance with the building regulations. The building control authority has the ultimate power to refuse to register that building on the register, and no sale of a unit can or will take place unless that unit has been registered with the building control authority. The measures are much stronger than they have been heretofore because there was no statutory requirement for any of these certificates in the past. The insurance policy that is currently available in respect of all residential units does provide an adequate fund to ensure that various defects can be remedied and that people can gain direct access to the insurance company, which is a major change from what happened before.

With regards the role of the local authorities, certainly we would love to see the building control authorities resourced more effectively so that they have the adequate resources to carry out more inspections. The industry is not fearful of inspections. It supports more inspections. The more inspections, the better. Certainly the culture within the industry is much changed in terms of ensuring that products purchased for use in the buildings comply with the construction projects regulations and that all elements of the workmanship comply with the building regulations, and that there is an appropriate chain of responsibility established within the overall building process. We want the construction industry register Ireland, CIRI, in place on a mandatory basis. The current regime provides that a registered member should be capable of being removed from the register if he has breached the requirements of the building regulations. Those penalties would be determined by the independently appointed registration board, who have teeth and make decisions on an independent basis. I have covered a range of issues and

my colleagues Mr. O'Reilly or Mr. McKeon might like to elaborate on some of those key points.

**Mr. Mel O'Reilly:** Deputy Ó Broin asked if sufficient time has elapsed to assess whether or not the new building control amendment regulations regime has changed things. It has changed things on the ground but if we are to find any way of assessing that objectively then some more time would be needed. Very few buildings have been completed and occupied over that period to give any kind of representative sample. From a working building contractor on the ground - we build under contract rather than for sale - we can see that the whole regime has changed enormously by what is done at the start with design drawings etc., by the inspections of the ancillary certifiers as well as the assigned certifiers and by what we ourselves do in relation to inspections and the compilation of construction records. There is a cultural change afoot in the industry and it is gaining momentum as time goes by. There are, however, two issues; some more time would need to go by before it is fully right through the industry and - not to beat the drum again - we need some sort of statutory basis for the CIRI. Measures are required to ensure only those who are building properly are allowed to continue to build. This is essential.

**Mr. Brian McKeon:** I will follow on from that, as someone who has been involved with the BCAR since the day it came into being, I can see there has been a huge change of culture. Reference was made earlier to the assigned certifiers we take on. We pay them but they can only be members of three institutions, the Royal Institute of Architects in Ireland, the Institution of Engineers of Ireland and the Society of Chartered Surveyors Ireland. The certifiers also fall under codes of practice and ethics. They take their job very seriously and there is no bending of the rules. I can state quite categorically that they take their role very seriously. They must sign documents prior to starting and sign the end document, with me as the builder, to say that the property is built in accordance with the building regulations. Their professional indemnity insurance is on the line and their job is on the line, as is mine. When the Construction Industry Regulations Ireland, CIRI, becomes statutory then if a person does not comply with the rules and regulations he or she would be removed from the CIRI and that is their livelihood gone. That is the reality. From a consumer point of view the quicker that comes into being the better because this industry will be a better industry.

**Ms Deirdre Ní Fhloinn:** I will go back to the first point made by Deputy Ó Broin around whether or not we have had enough time, since 2014, to assess the performance of the building control regulations. The building control regulations are part of the regulatory regime that operates for construction in Ireland. There are different elements to this regime. The planning process is another part of it. It is part of a regulatory regime. Any process like this needs to be assessed for its effectiveness and needs to be tested and monitored. As Mr. O'Boyle has said, it needs to be kept under review. I believe that three years is certainly enough time to be able to find out from the building control authorities their view on how the building control regulations are working in practice. There are a number of procedures referred to in the code of practice for inspecting and certifying buildings from September of last year. These involve the building control authorities interacting with the building control management system, which is the online system for submission of documentation around building control. Procedures are referred to in the code of practice whereby building control authorities, for example, can use the system to assess whether or not the assigned certifier has resigned from their role on a project. This might indicate if there are difficulties on a project and it might prompt an inspection. Part of what we should be looking at in building control is whether or not the regulatory model is fit for purpose. Consider the model for the regulation of food safety - which is one model I like to refer to - and which operates in a relatively similar way to building control. There are inspections happening all over the State on a regular basis and these are fed into a regulatory system



that involves an audit and review of how effective the system is. If one looks at the annual reports of local authorities from 2015, most of which are available online, one will find virtually no reference whatsoever to enforcement activities by building control authorities. Usually there is quite a lot of detail about other types of enforcement activities, for example in relation to planning. There is, however, very little information on building control.

I will make this general point, which is also referred to in the report of the UK's all-party parliamentary group for new housing in England, published in July last year. The report consisted, essentially, of a review similar to the one being carried out by this committee. That group heard evidence that many consumers do not really understand the roles of their local authority or building control. From my research and from people I have spoken to I believe there is a lack of understanding about the limit of what the building control authority is able to do and how frequently building control inspections are carried out. If we look at the annual reports of the local authorities some building control authorities are inspecting 12% to 15% , which is the target set in the code of practice. Some are inspecting 50% of new buildings. That information needs to be captured, aggregated on a national level and analysed. The BCAR was such a substantial change in practice that it should absolutely be possible to assess performance, even though it may well be there are not defects or claims yet coming out from the system it set up.

I also wish to address Deputy Ó Broin's question about what happens to owners who find defects. Again I refer back to one of the observations of the UK all-party parliamentary group report that builders need to put consumers first. Their primary focus should be on the consumer. The report found there is a huge gap between what people think they are getting and in what they actually receive in practice in respect of warranties and the finish of their homes. Consumer education is very important. The point around effective redress is made several times in that UK report and is also referred to in my submission along with timely, effective and cost effective dispute resolution to avoid arbitration and litigation.

My final point is on defects insurance, which has an essential role to play. I believe that a warranty from a builder should transfer with a new housing unit. There was a case before the High Court, decided in 2016, with respect to a seriously defective house in Donegal. It was a one-off build and I use it as an example of precisely the problem identified by Mr. Fitzpatrick where one-off houses were exempted from the requirements of building control in 2015. This was a decision I disagreed with at the time and I still disagree with it. One-off houses are just as likely, and no less likely, to have defects. Much of our litigation has been in regard to one-off houses. The house in Donegal had defects and in order to fix it the estimate put on the claim by the plaintiff's surveyor was €277,000. Even with the policy that might be in place today for that unit and if €200,000 is the limit of the policy, who would pay the €77,000? There must be a remedy in contract, alongside the defects policy.

**Acting Chairman (Deputy Pat Casey):** Before we go on to the next speaker I will explain that the BCAR is the building controls amendment regulations. We would appreciate if witnesses could avoid using acronyms. I invite Mr. O'Boyle.

**Deputy Ruth Coppinger:** I apologise to the Chairman but I must leave to speak in the Dáil now. I would have liked to participate in this discussion.

**Acting Chairman (Deputy Pat Casey):** I thank the Deputy.

**Mr. Eamon O'Boyle:** Deputy Ó Broin asked if the BCAR has been in place long enough to allow an assessment. It is not yet known. I am an assigned certifier on some projects, but it has

been very few to date because the building process has not happened. I reflect what the other speakers have said and it is my sense that there has been a huge change of culture in building contractors and professionals. The degree of detail required is now quite extensive in terms of the inspection plans and all the material that goes with them. I will keep housing on one side and multiple housing, that is, apartments on the other. In the case of the latter, there are inter-dependencies and one apartment is dependent on the other. There are requirements to construct common spaces and they have to operate the way they should. If one piece is missing it has an impact on everybody.

The question of associated costs was raised. The building control regulations added to the costs, with the need for a signed certifier, ancillary certifiers and other people for various responsibilities. My preference would be to have very good people doing the work. Consumer protection is achieved by good people doing their jobs properly. The CIRI is the way to go and there needs to be ongoing training not just for contractors, but for people who can contribute to fire stopping. Fire stopping is important because it is like the airbag in a car - one does not know if it works until one crashes. If it is not in place, there is a huge impact.

We were asked for solutions. The BCAR system is operating well but refinements could take place. I was involved in a project in Germany some time ago where the developer had to pay for the appointment of an independent inspector who was employed by the local authority, creating an arms-length arrangement which seemed to work pretty well. I disagree with Ms Ní Fhloinn on the need for a nationwide building control authority because when building control authorities make assessments on plans, they do so on the basis of local knowledge, which contrasts with the Food Safety Authority. For example, a building would have a water supply for fire fighting and the local fire chief would know about it. I do not think this could be dealt with nationally in the same way. Dealing with things locally would be preferable.

Deputy O'Dowd asked about inspections that were carried out by local authorities. There was a lack of professional staff in local authorities to undertake inspections and there was no oversight but the Building Control (Amendment) Regulations plugged the gap in one fell swoop. Professionals carry out the work now, even though they are not employed by the local authorities, and there are substantial penalties for professionals who do not do their work well. They cannot even occupy the building if they are not on the register. I will leave the matters of sinking funds and money to my legal colleague.

**Mr. Hubert Fitzpatrick:** Deputy Ó Broin asked about building costs and we are working with the Department of Housing, Planning, Community and Local Government in another committee to address them. We have to be certain we do not do anything to compromise standards. A recent study by the Society of Chartered Surveyors Ireland showed that 50% of the overall costs of a house are construction costs.

**Mr. Mel O'Reilly:** The best way of protecting the consumer is to prevent defects occurring in the first place. There are different stages in building control and the competency of both the design and the builders is important. However, CIRI is not just to be a register of builders but also one of specialist subcontractors. Mr. Eamon O'Boyle said fire stopping was essential but it is not covered by a trade - it is done by people who are semi-skilled. The objective of CIRI is to ensure that people who carry out these essential works are trained in the exercise of those activities. In the longer term, the builder will be competent but he will also only employ competent contractors who are on the register.

**Deputy Fergus O'Dowd:** I did not get an answer to my question on the policing of the

organisation of builders. I asked whether members of the association had ever been kicked out of the association. How does the CIF regulate members?

**Mr. Hubert Fitzpatrick:** The function of the CIF is not to regulate members.

**Deputy Fergus O'Dowd:** The CIF is a member of the Irish Home Builders Association and Mr. Fitzpatrick speaks for his members.

**Chairman:** The Deputy might let Mr. Fitzpatrick answer.

**Deputy Fergus O'Dowd:** He did not answer the question originally. I want to hold him to account.

**Mr. Hubert Fitzpatrick:** The Irish Home Builders Association has developed codes of practice and it has expelled a member for non-compliance with a code of practice.

**Deputy Fergus O'Dowd:** In what year did that happen?

**Mr. Hubert Fitzpatrick:** It happened five or six years ago. It does not happen regularly.

**Chairman:** I want to move on.

**Deputy Fergus O'Dowd:** This is a very important question. I agree with everything I have heard but the problem for us is whether we can believe what the witnesses say about building in this country. It is critical that they police their membership and that being a member of the association gives credibility. It does not make sense, from a regulatory perspective, that they have only ever kicked out one member.

**Mr. Hubert Fitzpatrick:** We, in the federation and the association, want CIRI to be put on a statutory footing and all our members to register. Where members do not comply in any way with their legal obligations and the regulations laid down by CIRI they will be expelled and, if they are, they will also be automatically expelled from the CIF and the Irish Home Builders Association. We want an organisation with teeth which supports standards. If members do not comply with standards they will no longer be members of the organisation.

**Senator Jennifer Murnane O'Connor:** Most of many questions have been answered. It is sad that, since 2015, so many buildings have been affected. There have been good buildings but there were, especially in the boom, many buildings that were not regulated by the local authority or others. It is a massive issue. There is a recommendation for more homes and fewer complaints, based on a model from England. There are ten recommendations, one of which is to set up a new ombudsman for building and sales. I am a firm believer that if a person has a home it is their home for life, their castle. We have to make sure that the rules and regulations are enforced and that people who have homes feel secure in them. Over the years there have been issues with fire safety and wheelchair accessibility, among other things, and I have seen apartments built with no light. There might be a tiny window and I cannot understand how this was allowed to happen. It is a bit too late now but we are where we are. The programme for Government contains a commitment to build thousands of houses between now and 2021 and it is crucial that these buildings are regulated and controlled.

The biggest issue over the years was accountability. There needs to be accountability for this. In the future, once that is in place, people will have lovely homes and will be very happy in them. I know of many cases over the years which I felt should never have been approved. I would be concerned about the once-off housing as well. There are still many concerns that need

to be addressed but in future, everybody should be working in the interests of the homeowner and the builder. There are definitely many issues that need to be addressed.

**Deputy Dessie Ellis:** I thank the witnesses for their presentations.

I have seen it all when it comes to building over the past years. I was at many meetings about pyrite, mica and so on. The witnesses mentioned a number of things about local authorities and more resources, including fire officers and such. There is no doubt that we have many more problems. I know we have a massive complex in Finglas, on the Finglas Road, where there are fire issues, as the witnesses are probably aware. Fire-stopping is an area that the witnesses mentioned and in which we need more expertise and to have people on-site and giving advice. We have seen it happen there. We have also seen the mica issue in Donegal. It has not been properly addressed, even now, and it is a massive issue. I know Ms Ní Fhloinn mentioned that the law is stacked against homeowners who discover defects. The witnesses said this and I believe that is true at present. There are still many issues there. One of the issues the witnesses mentioned was the transfer of policies. It makes sense that there should be some way to transfer those policies over. Just because someone else gets a place should not change what a person is entitled to in those areas.

I have a concern about what the witnesses said on self-builds. They mentioned that people can opt out of the building control amendment regulations, BCAR. I do not know whether that is down to cost or something else. The witnesses might be able give an explanation on what they mean by people being able to opt out. I believe we should have the construction industry register Ireland, CIRI. Some builders behaved very poorly indeed and in some cases, I consider the behaviour to have been criminal. We cannot afford to have such builders and those people who were on site and who took part in some of this coming back. Some of the construction I saw was just appalling and I went to many estates and had a good look at them. The certificate of compliance has to be properly enforced. We have to make sure that we have better standards than what we had before. What happened in the past is just not good enough.

Foremen on sites was a big thing in the past. That seems to have gone downhill for some reason. We do not seem to have that emphasis. We had fewer problems when we had foremen on sites. I do not know if that is Mr. Hubert Fitzpatrick's experience, but it is my experience that shortcuts were taken during the so-called boom. That disappeared. I also worry that, over the years, there were practically no prosecutions or actions taken against many of these builders. We have seen all these things that have happened, all the bad building and some matters bordering on criminal, and yet we have never seen any real action taken against these people. I do not know if the witnesses have opinions on that.

The last thing I want to mention is about quarries and builders and the defective materials that came from quarries and builders' suppliers. I did not really hear any mention of that issue. What is the opinion of the witnesses on that? Is there a need for more controls in this regard? Some very good controls were in place in the quarries in the south of the country but in the north of the country, where most of the issues of mica and pyrite arose, the quarries were a big problem and do not seem to have had the controls and proper mechanisms in place. I would like to hear the witnesses' opinion on that too.

**Acting Chairman (Deputy Pat Casey):** I thank the Deputy.

I might add a few questions as well. I am interested in this whole area of building control regulation and I believe we should be taking it entirely back into local authorities and should

have an independent review and inspection regime. I would like a comprehensive inspection regime of all the different stages of construction. I still have concerns that the current BCAR is not doing exactly what it should be doing. While more large-scale developments probably have the resources and skills behind them for assigned certification and auxiliary assigned certification, I do not believe smaller-scale projects would be as strong on the professional side of the regulation.

I refer to the other major issue with building regulation. While we often talk about new builds, much renovation work is going on, extensions are being built and different work is being carried out in commercial buildings where no regulation is being realistically applied. I think fire certification and disability certification have to be applied for and I think it stops there. As a country, we need to educate the people in the value of building control regulation. If we can do nothing else but have people understand it is worth paying that little bit extra for entirely independent inspection, I would be fully in favour of that.

I have several examples, even in my own business, which is the hotel game. I can go back to a very small fire that we had back in the early 1990s, where we zoned fire panels, so we knew it was in a zone but that was a big zone and we had to suss it out. We had a very small fire two years ago but what we had was able to tell us exactly that it was in room 133. Huge advances have been made in fire detection. I have serious concerns about any renovation work that is done where gaps are left in fire safety provision. There is no inspection. From my understanding, there is no inspection with regard to fire safety. One gets a certificate after providing a drawing. It stops there. No fire officer goes out to ensure the information strips are on the door, the doors are closing properly, the sewer pipe going through the wall has been filled in, or to check whatever else. That is not happening. While we are saying the assigned certifier is signing off on it, I still have concerns about it. I am putting my cards on the table.

I had one other constituent who moved into his house 17 years ago but had to move out seven years ago because of an issue. It took seven years to discover what the problem was, and then it took him seven years more to go through the court system. When he eventually got to the court, he was told that he was statute-barred. He wasted €37,000 on legal fees in bringing that case. That was a simple case of the damp-proof course being placed too low, which allowed water to come into the building. I believe, and will be urging my own party, which I think is coming with me, that we need a top-down, local authority approach to building control. We need entirely independent inspection at all the different stages of the building construction industry, and we need to get the people behind us and to educate them in how valuable building control is to them. Mr. Hubert Fitzpatrick said that he would welcome extra resources being provided to the local authorities to allow this happen. I want to ask him whether he would agree that the best place for building control may be with the local authority with a move away from assigned certification and design teams. There are also the smaller developments where the owner of the property has to sign off on a design team and assigned certifications and would have no knowledge of the building industry at all.

Drawings are going in through the BCAR system and I honestly believe that nobody is looking at them. Very few people are looking at construction drawings. I wonder how many developments are actually starting based on planning drawings as opposed to construction drawings. I am concerned that construction drawings are never drawn up for one-off rural houses. I have probably said enough at this stage. I call Mr. Hubert Fitzpatrick.

**Mr. Hubert Fitzpatrick:** I will start and then I want my colleagues to come in. We need full accountability in this regard. Deputy Casey asked how many developments start with

planning drawings. No development should do so. Under the new building control system, one must submit construction drawings. I share the Deputy's view that many one-off houses may be built on planning drawings which is totally unacceptable. Detailed construction drawings need to be prepared in for all builds.

Should building control regulation rest with the local authority? The current system provides for assigned certifiers to be appointed from within the registered architect, the registered building surveyor and the chartered engineer. It has the potential to work very effectively. The resources of the building control authority should be increased to ensure that they have greater monitoring and enforcement powers. The system can work well.

The problem that arose 17 years ago is an example of what was often the case when we did not have adequate supervision and inspection of buildings built. I hope that that would not happen today. An assigned certifier would ensure at the outset that the damp-proofing is put in at the right area. That is a critical part of any inspection.

We need to educate the public about the value of building control. Many people building one-off houses in particular do not appreciate the value of the current Building Control (Amendment) Regulations and the necessity to have a professional come in and certify compliance with the building regulations. It is for that reason that the opt-out option for people building one-off houses should be removed. These builds should be brought back into full compliance with building control as it is for all other developments.

Any development or renovation works which require a fire certificate will require compliance with the new Building Control (Amendment) Regulations. That should require the appointment of an assigned certifier and a competent builder to undertake those works. If that is being policed effectively, any work, such as the fire certificate, should be fully in compliance with the building regulations. That would address some of those issues.

Some self-builders are opting out because they are of the view that the cost of compliance with building control is a lot greater than it is. It was said it could cost €15,000 to comply with Building Control (Amendment) Regulations. According to our information, the real cost of compliance with the regulations could be closer to €2,000 or €2,500 per assigned certifier. Everybody should have an obligation to prepare detailed construction drawings for anything that they are building.

I will let my colleagues come in with regard to accountability, foremen on site and issues of that nature.

**Mr. Brian McKeon:** In regard to foremen, we have more supervision on site now than ever before. Over the past few years, there is more onus on employers to educate and to keep educating our foremen and engineers and so on. There are more courses available. Many younger foremen have been told in college to insist on receiving annual continuing professional development as part of their agreement. There are more courses run by the Construction Industry Federation, CIF, the Royal Institute of the Architects of Ireland, RIAI, and Engineers Ireland to which we send our people responsible for building and complying with regulations and drawings and specifications. It is better now than it ever was before.

Builders phone quarries and builders providers in good faith and order material. We order it according to the specification that is in our possession at the time and we get it delivered to site. We get supporting documentation which says the material is capable of doing what it is

meant to do. We have previously been given that documentation by the quarries even though the material did not meet the specification. There were not sufficient regulations. Since then, there are new regulations, particularly in regard to stone, which is detailed in SR 21. There is a regime for ordering stone. When my foreman picks up the phone, he needs to know exactly what stone he is ordering and where it is going. There is a regime where we have to monitor it and know where it is going. There is an onus on us to get it independently tested. Along with test certificates and more documentation than ever before to say that it is fit for purpose, many of my colleagues contact independent laboratories to get verification that the stone is suitable for purpose. We need to do that more and more because we are relying on documentation and there is always plenty of documentation.

**Mr. Mel O'Reilly:** As a builder, I yearn for the days when there were old-type general foremen who had come up through the trenches and knew almost everything that moved on a building site. Over the years, there has been an emphasis on third level qualification for almost everything and probably an absence of the same attention to skills within the industry and allowing people to grow in the industry. That needs to be tackled at a national level. If one looks at most sites nowadays, the first thing that goes in is a plethora of cabins to store all the staff that we have on site. As Mr. McKeon said, there is a far higher level of supervision now.

Mr. McKeon has mentioned the quarries.

I doubt the local authorities, without major investment, would be able to supply the skills necessary to fulfil what is required for all of the inspections. Before we had the building regulation system, certain cities had by-laws. An inspector used to come out. From memory, there were about six or seven inspections at the time. Buildings were very simple then. Nowadays, buildings are very complex. I do not think there are very many single designers who could design an ordinary domestic building fully and to the proper extent. They would need input from mechanical or Part L contractors or whatever else. It has become very complex. The current legislation only deals with the role of the ancillary certifier, the builder and the owner but beneath that, as part of the process within the industry, all of these ancillary certifiers, the structural engineer, the mechanical consultant, the electrical consultant, the Part L compliance, fire safety and so on are all there doing their inspections as well. There is a multi-disciplinary approach. Very few buildings we start do not change during the process. Schools might be on the cards for years. If they are built, there will be changes made during the process. Designers have to be on top of that. They are more likely to see all of the issues that need to be done and put in place when that happens. The present system should be given a chance for a number of years to see if it produces the goods.

**Ms Deirdre Ní Fhloinn:** In terms of national review of building control, this information is already being fed into a national system. To come back to my example of the Food Safety Authority, it works as a regulatory superstructure that monitors and supervises enforcement activities and inspections by lots of local inspectors. It could work with our current system of building control. That regulatory superstructure brings a consistency of inspection protocols and reporting of enforcement activity. I went onto the Food Safety Authority website today and I found out the number of closure orders that were made for restaurants in February of this year and the total number of enforcement that were made last year. I went onto the Commission for Communications Regulation, ComReg, website and I found out about a non-compliance notice that was served on Three in the last few weeks. It is impossible to find that information publicly with regard to building control enforcement. This relates to the question about the public perception of building control. I went to the launch of a county council annual report today,

and the report did not contain the term “building control”. I was shocked by that. People need to understand what building control means. It needs to have that public profile because that is partly how we will educate people about the value of building control.

On a related point of local authority versus assigned certifier building control, we have set up this architecture now in the building control (amendment) regulations where we have a parallel private and public system but the public system is essential. I become concerned when I hear statements being made to the effect that building regulations compliance is a matter for owners and their teams. It is also a matter for monitoring and enforcement, and the State needs to be in this space. The Deputy asked what people do when they find defects. I spoke at a conference in London last year and I said that when someone in Ireland has a defect and they find out how bad their legal position is, they ring a disc jockey called Joe Duffy. That is partly how we solve some of our governance problems in Ireland. That is unacceptable. People’s lives have been destroyed, and we need to consider coming up with proper regulation.

The new homes ombudsman recommendation in the English parliamentary group is one that should be considered. We need to have an accessible dispute resolution process. Coming back to the Food Safety Authority, thousands of calls about food safety are made to its help line every year. The Irish Government has not even set up a helpline for people with defects in their homes, not to mention a regulator.

On the point about building control, public and private building control have different objectives. If I am an assigned certifier on a major project I have a very different set of objectives and duties from the local authority building inspector. They work side by side, and I know from speaking to assigned certifiers that their roles can complement each other, but we have to recognise that the public role is still essential.

**Mr. Eamon O’Boyle:** On the point raised by Deputy Ellis about foremen and clerks of works on building sites, the traditional form of general foreman had huge advantages. I can relate an anecdote in regard to one inspection I was involved in recently where parts of a fire wall were not constructed correctly and when I asked the clerk of works, he said that that happened the week he was on holidays because the rest of the place had been done properly. That level of on-site supervision was hugely important.

Mention was made by the other speakers and some Deputies of prosecutions. As someone who was fairly close to the building control and regulatory systems, I know of very few prosecutions that have taken place here and some of those that have taken place were on the administrative provisions in terms of people having started work in advance of the granting of a fire safety certificate and so on.

Regarding the defectiveness of materials the Deputy raised, in my particular domain regarding fire safety and so on, all of the materials we get are manufactured materials so it would not necessarily arise. On the issues the Acting Chairman raised as to whether the work should be undertaken by the local authority or within the private sector, I would not have a major opinion on that but it certainly needs to be done by somebody. The general view among industry practitioners is that the current system is very stringent. I believe it deserves a chance to work. That is fine when there is a fire consultant, mechanical and electrical people, structural engineers, civil engineers and so on within the design team. That can work perfectly well but it is an issue in the smaller scale projects.

Mention was made of buildings where changes are taking place and so on. Mr. Fitzpatrick



mentioned the requirement to obtain a fire safety certificate for changes of use. However, there are three categories of buildings, namely, offices, retail and industrial buildings to which material alterations can be made without the need to make an application for a fire safety or a disability access certificate. There is a requirement to comply with the building regulations and our experience is that people we would deal with, particularly in the pharmaceutical industry where compliance is a huge issue, would require one to go through the same discipline, albeit not involving the local authority, in terms of doing it.

Value for money was mentioned earlier. We cannot get away from the fact that building projects are big and cost a lot of money. It is the type of industry where everybody is being squeezed constantly on margins but it is big expenditure and when so much money is being spent, it is important to do it correctly and to have all the professional advice one needs to do it well, and to make sure it is being done properly.

The Acting Chairman mentioned a constituent who had a house in which the damp proof course was installed incorrectly. While I do not want to reiterate the point, we have evidence from NAMA that it had to spend in excess of €100 million to remedy buildings in which it was involved so we cannot be certain that we have a good national stock of buildings. It is evident that there are legacy issues, and that is something we need to quantify to see what all of that means by way of detailed surveys being taken. It can be done over a period of time, but it is something that needs to be done.

**Acting Chairman (Deputy Pat Casey):** I think Mr. O'Reilly has to leave.

**Mr. Mel O'Reilly:** Yes.

**Acting Chairman (Deputy Pat Casey):** I thank Mr. O'Reilly for attending and for his time.

**Deputy Eoin Ó Broin:** I thank all the speakers because the information we are getting is exceptionally useful. I have a number of specific questions. To go back to the issue of the defects insurance about which Mr. Fitzpatrick and Ms. Ní Fhloinn spoke in the first round of answers, if I understand it correctly the liability for the cost of the repair still rests with the homeowner, albeit they have an insurance policy which will cover that. There is a cost over the lifetime of holding the policy. Is that the only model in place in terms of cases where defects are found and there is a financial cost to it or are there systems that work in other countries where, for example, if a builder or whoever is found to be responsible they share part or all of the financial liability as opposed to it just coming from the insurance?

Given the complexity of the buildings and the fact that there are so many moving parts in terms of architects, builders, sub-contractors, semi-skilled labour, apprentices and assigned certifiers, what happens if a dispute arises where someone says that they did their part of the properly but someone else did not do their part? Does that disrupt the insurance coverage? That is potentially a complex set of arguments and while these are pre-2014 buildings, issues have arisen which are trying to be resolved now and one of the comments I hear from homeowners is that they get completely locked in with regard to who is responsible for the defect that has been found and how they deal with that.

I wonder if losing one's livelihood is enough of a penalty given the scale of some of the bad buildings, so to speak. I am talking about the pre-2014 ones we know of, but we have to assume that something like that could happen again. Let us hope not but if I am responsible as a developer for 250 apartments that not only have no fire stopping or any fire safety requirements, is it

enough for me to lose my right to practise in that profession? Should there not be some greater level of penalty, whether it is financial liability, prosecution etc.? Perhaps they exist and I do not know about them but I am interested to hear the witnesses' views on that.

In terms of there being no bending of the rules, I always work on the basis that I trust people but the harder we make it to bend the rules the less likely the rules will be bent. Arguing for as tough a regime as possible is not in any way casting aspersions on the professional credibility of the individuals but I always get nervous when we are encouraged to take a certain level of issues on professional trust and the good name of the professional because it harps back somewhat to the old self-certification regimes we had previously, although, strictly speaking, I know that is not the case.

I also wonder to what extent any of this can be applied retrospectively, particularly in regard to Construction Industry Register Ireland, CIRI? For example, if I am a contractor of one kind or another and CIRI has been put on a statutory footing and I apply to go on it, if I was involved in something prior to the statutory establishment of CIRI such as a Priory Hall type situation or something like that, could I be automatically excluded from membership? Again, are there precedents from other jurisdictions for applying such retrospective rules? Ms Ní Fhloinn spoke about effective redress. Perhaps she would elaborate on what she means by that, both for the pre-2014 builds and the post-2014 builds. As regards dispute resolution, how does that happen in other jurisdictions?

Mr. O'Boyle correctly highlighted the difference between the multiple-unit developments and the single or terraced houses. If I buy a home in an apartment complex, for example, are the certificates and warranties I get with the purchase for everything across the boundary door of the balcony? How does all of this conversation affect the communal areas, the communally insured areas, the roof spaces and so forth?

We are also not just discussing new builds. The Government is about to launch a major refurbishment strategy and the committee is putting pressure on it to ensure that we get more than 6,600 of the currently vacant stock back into use over the next number of years. How does all of this apply to what we are hoping will be not just a stock of new builds but also a significant increase in the number of vacant properties being brought back into use?

On the issue of costs, we have seen the Society of Chartered Surveyors Ireland study of the eight housing developments in Dublin. If I recall correctly, the report referred to certification costs of €5,000 to €8,000. However, other industry commentators who have detailed knowledge of this have put other figures into the public domain. In some cases they go as high as €35,000 in terms of overall compliance costs. While some of this is straying into the other work the witness is doing, and I am not asking the witness to comment on that before it is finished, is there a sense from the industry that the level of compliance costs could reach €20,000 or €30,000 on units and is that a concern, or is the €5,000 to €8,000 range from the report of the Society of Chartered Surveyors Ireland closer to the ballpark?

I am midway between Mr. O'Boyle and Ms Ní Fhloinn with respect to the responsibility for the inspections lying with the local authorities and fire officers. They have the local knowledge and the Acting Chairman and I are strong defenders of increasing the capacity of local authorities to do that work. However, I like what Ms Ní Fhloinn said in terms of not taking that away from local authorities and fire inspectors but having some type of State-wide building authority that ensures consistency, collation of data and so forth. If it is not about taking the responsibility away from local authorities or fire officers but working to increase, enhance and strengthen that

and provide good data, is it something that could be helpful to local authorities in their work?

On the issue of effective redress, the big cases in the public domain are units that are all pre-BCAR. We will be examining recommendations for future legislation and consumer protection. Are any of the witnesses aware of other jurisdictions that have introduced stronger consumer protections and allowed them to be applied retrospectively for a limited period of time to buildings that were built prior to those regulations coming into effect? Is that legally possible and has it been tried in other jurisdictions? Is it something the committee should examine, so it is not just somebody who acquires a property built today who gets the better protections but also the people who are currently seeking assistance from the State to deal with the legacies of the time pre-2014? Can we do something for them in this as well?

**Deputy Fergus O'Dowd:** I regret that I remain cynical about our builders, not just in the context of my past experience but also on foot of my current experience. About a month ago I visited a local authority building site where houses have been completed in the past couple of years. I visited a particular house the interior of which had been destroyed with condensation. The tenant had gone through numerous fights with the council and there were more battles when I got involved. We eventually discovered, as in the case 17 years ago, that a damp-proof course was not put into the house involved 17 months ago. The house was built in the wrong location and potentially it could flood regularly. I could not understand how the builder got away with that because it was disgraceful, shameful and unacceptable. The mother, who has five or six children to look after, has been left in a disgraceful state by a local authority that passed a totally unacceptable house. It has been left this way. There have been dehumidifiers in the house for a couple of months. They are on 24/7 in some of the bedrooms. She has been told that if this does not work the solution is to knock her house down. This is happening now. I have no doubt that when I look up the CIRI or the construction register the builders concerned will be on it. Will they be kicked out? I cannot believe something like this is still happening. That is the problem - the lack of credibility.

I acknowledge the major changes that have taken place. That lady should not have had to ring me because the house should never have been built. However, she should have been able to make a call to a one-stop shop independent authority to say, "There is something wrong with my house and I do not know what it is. Will you sort it out for me?", rather than having a long battle with the council, getting me involved and having all sorts of people coming and going, day and night. This is still the reality. Eternal vigilance is the price of peace, so there must be continuous vigilance in respect of all of these matters. I cannot understand a builder who would build a house, get a good price for it from the local authority but not put a damp-proof floor in it. It does not make sense, but that is what they did. It is callous and a disgrace. That will happen again and again unless we maintain what will be, in a way, a bureaucracy. It must be an independent one-stop shop to which a person can make a complaint and then it can come down like a ton of bricks on everybody concerned. The professional bodies should be involved as well. Johnny Murphy or whoever signed off on that house should get the bullet from his association. He could not professionally sign off on that house and say it was built properly, because it was not. That is the eternal problem we have.

I welcome Ms Ní Fhloinn's comments and those from Mr. O'Boyle. We must go further and look at best practice in other countries. However, the penalties should apply to builders in real time. They should be blacklisted. If some guy does this, he should be gone for all time. If he does that, he is not a fit person to build a house ever again.

**Acting Chairman (Deputy Pat Casey):** I have a few final comments. We are all

concerned because we are heading into another significant increase in property construction, but we are doing so with a lack of skills. There is a significant skills shortage at present. The practical operation of the BCAR system is that if I am the owner of the property that is being developed, I am paying the assigned certifier and the auxiliary certifier. In theory, they are under my control. If I am about to pour concrete and have five lorry loads of concrete waiting, but the assigned certifier suddenly realises there is something wrong with the steel, there is immediate pressure because of the presence of those five lorries. That is the practical operation of it that concerns me. That is the reason an independent control is required in respect of building control regulations into the future. That is the right way to proceed. Mr. Fitzpatrick said he would welcome further building control inspections, but there is no point in paying for it twice. There is no point in the private sector paying for it and then in us having to pay the public sector to watch the private sector. If the public sector could do it entirely, I would favour that system. Equally, I am of the view that, in light of the framework agreements, we can get the expertise that is required to inspect buildings.

The local authorities are only inspecting 10% to 15% of buildings, if they are even doing that much. They do not do so at all stages because buildings are picked at random. We need to put in place a more comprehensive system, with independent control and inspection.

**Mr. Hubert Fitzpatrick:** In the event of a dispute over building controls, there is scope to refer an issue to the Building Control Authority for clarity. With regard to penalties and people losing their livelihood, other penalties are incorporated in the Building Control Act, up to and including imprisonment, and these penalties must remain.

The certificates which apply are mandatory and there is no scope for changing any word in them. The certificate is prescribed in statutory instruments.

I am not sure whether retrospective application is feasible. The issue with regard to the BCAR is that people are appointed at particular times to do jobs during the process. I do not know how any of this could be done retrospectively.

I do not agree the cost of compliance is €35,000. Perhaps people are incorporating all of the planning application fees, design fees and the preparation of all the drawings. The cost of appointing a signed certifier is approximately €2,000 or €2,500 and perhaps less if it is of scale. We do not feel the cost of complying with the BCAR is prohibitive in any way or adds significantly to the cost of building.

Deputy O'Dowd spoke about being cynical because of past experience, and the case to which he referred should not happen and there is no condoning this type of behaviour. This is the type of behaviour we want to root out of the overall system. We do not want this type of person involved in building. We want to ensure we have an effective statutory registration of builder scheme in place. Individuals who have undertaken work of this nature have no place in the industry and they should be deprived of the right to build again. We want a system with teeth, which will work for the betterment of the consumer and the industry. We want a registration of builder scheme up and running with full power and independence to deal with these issues. We want to ensure continued vigilance to ensure requirements are dealt with.

There is a skills shortage. We have undertaken a major study on this in recent months, which has identified a significant skills shortage. We need major recruitment of new apprentices and professionals in the industry because we will have an acute shortage of people for the construction industry in the coming years.

**Ms Deirdre Ní Fhloinn:** On whether builders should share part of the liability notwithstanding insurance, one of my first observations on this area when I first sat down to look at it four years ago was there is a disconnection of the risk between those who can control risk on site of residential construction and those who ultimately have to pay for it if they find there is a defect. If the defects policy will not pay out and the contractor is no longer available as a mark, such as if the contractor is insolvent, the home owner is left, and many home owners have been left having to pay for the repairs to their houses and apartment blocks. However, the only people entitled to be on site when a house is being built are the Building Control Authority inspectors or contractors.

If I commissioned the building of a commercial building I would have my own representative, who would be entitled to go on site, look at what is happening, point out where there are problems and tell the contractor to put it right. A consumer cannot do any of this. A consumer signs a contract and waits to be told it is time for snagging. Most consumers would not want this right and would not want to have to go to the expense of appointing their own representatives on site, but it illustrates the problem that there is very little incentive in terms of the actual risk carried.

We have spoken about enforcement by building control authorities, and that it seems to be at very low levels. People state they are not aware of any prosecutions. I have not found any information on prosecutions. When a major apartment defect came to light a few years ago, I was asked whether there should be personal liability. I extracted the section of the Act and said there is personal liability, exactly as Mr. Fitzpatrick has said, with the potential for fines and imprisonment. It is not just applicable to the company but also to directors and people involved in the management of the company. It is available, but we do not seem to have activated it. Perhaps it is a cultural thing. The right against the builder should not disappear because of the fact there is defects insurance. If somebody has signed a contract he or she should be able to rely on it. If someone happens to sell a house a month after buying it, the building contract which contains warranties with the builder for a period of 12 years should go with the house.

A point was made on home owners getting locked into who is responsible for the defects. This certainly is a feature of the small number of cases which have come before the courts. I mentioned that the Law Society's building agreement has an arbitration clause. There is very little case law from the Irish courts on the liability of builders under the contract because there is an arbitration agreement. These cases never got to the courts, but when they did there was a long list of defendants. The home owners had been involved in proceedings for years. There was a case before the Court of Appeal last year where the opinion on compliance had been given in 2000 and the case was still ongoing. This is impossible for everyone concerned, including the defendant engineer who was not in a position to defend the claim because the builder was in receivership.

We have spoken about whether losing one's livelihood is enough and about personal liability. With regard to the construction industry register, when I speak to people who have defects in their homes they are surprised there is not already a regulation system for builders, and this is part of the point about consumer education. Regulation for people who are responsible for the biggest investment we all make in our lives, and on whom we are totally dependent, is a given. Of course there should be regulation, but there is regulation of many professions and activities in Irish society and there are still defects and negligence by people who must complete annual reports stating they have fulfilled their continuous professional development, they have not had any misconduct proceedings against them and they have not been adjudicated a bankrupt. This

will not remove the need for effective remedies.

A question was asked about what is meant by effective remedies and what dispute resolution looks like. I mentioned there is not even a helpline in Ireland on what to do when people discover a defect in their houses. I also mentioned New South Wales, where the office of fair trading has a dispute resolution and advocacy service, which can start quite informally and can involve various methods of dispute resolution including mediation. How exactly it would be designed would have to be looked at, but the key is that it would be fast, cost-effective and people would know where to turn when it happened.

With regard to what to do about buildings with legacy defects, I am afraid that in other jurisdictions state intervention has been required. In Ireland, unless someone comes within the pyrite resolution scheme, responsibility for legacy defects is left with the home owner. We could go the way of Canada and New Zealand, where compensation funds and various measures have been introduced. I do not know whether anything can be done. Dealing with legacy defects is essential. The Rebuilding Ireland plan has nothing in it about people who have legacy defects in their homes. It is all about delivering new homes, but we have a huge problem, obviously, with the homes we have.

**Mr. Eamon O'Boyle:** With regard to the points raised by Deputy Ó Broin, the problem is that all of the parts of buildings with legacy issues are interdependent. We know there are quite a few in existence with difficulties, and this can only really be determined by inspection, which is very laborious and will take time. There is a time period required for it to be addressed. It is a binary issue, either we have it or we do not, and this needs to be done. The points made on the consequences of not doing it have been dealt with by other speakers.

It is worth noting that there is a facility under the Fire Services Act for fire authorities to serve orders on people to undertake fire safety risk assessments where there are suspicions. Knowledge of where these buildings are, for example, apartments, is a factor. The committee's focus has been on housing, but it is important to remember that people also stay in hotels, hospitals and other buildings.

Regarding what Ms Ní Fhloinn and I stated, the building control management system, which is a computer portal for uploading documents relating to BCAR, is helpful. It would be useful if we had national standards in that regard and possessed a databank of inspections, faults and solutions so as to provide us with a way of dealing with these matters nationally. Mr. O'Reilly mentioned a difficulty with fire-stopping contractors, where the standards are set by industry groups rather than some other system. It would be useful if national standards, competences and skills were set. It is easy to install firestopping when there are standard sizes. It becomes more difficult when there are non-standard sizes and awkward places to get to.

I cannot argue with the point on the independence or vigilance of the one-stop-shop. Such an idea is a good one.

The Chairman made a point about a lack of skills. In terms of engineering, one university runs a postgraduate programme on fire safety, one institute of technology runs a degree programme on fire engineering and a masters programme is available in the North. A number of universities in the UK also provide that programme. At technician level within the building industry, Mr. O'Reilly mentioned how firestopping would be viewed as semi-skilled work, albeit important within the overall envelope of the building. There are skill shortages, so there must be training systems if people are to be able to execute firestopping properly. It is the most

critical item that is not installed properly. A new fire detection alarm system can be installed retrospectively if it is not working. One can have an addressable system as opposed to a zoned one, which is the older type. If one does not have fire-stopping around windows and cavities, though, one will not realise that until it is too late.

Ireland has a legacy issue with fire safety and buildings. Powers exist to deal with that and they should be executed.

**Mr. Brian McKeon:** The insurance policy that our company is providing with each property is just like a car insurance policy. People phone the insurance company. They do not go near the warranty company or the builder. The company then carries out inspections, so that is another independent body carrying out inspections. No matter how many assigned certifiers one has, insurance companies insist on conducting their own inspections.

**Acting Chairman (Deputy Pat Casey):** I thank our guests for their contributions, which I am sure will lead into a further debate, and for attending. This is the first of our meetings on this topic. The committee will meet with other relevant stakeholders next week to resume our considerations on the issue.

The joint committee adjourned 7.05 p.m. until 9.30 a.m. on Thursday, 13 April 2017

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

**Thursday 13<sup>th</sup> April 2017**

**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)(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 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, 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 subcontracted. 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 consideration

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 multi residential 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 SCSl'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 SCSl 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 spurned 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 150,000 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 regulate

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 who is 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 a 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 hangover 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 presume

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 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 works 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 less 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. Manufactures 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

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

## **APPENDIX 5 – SUBMISSIONS RECEIVED**

- **Mr Killian Ryan, Beacon South Quarter**
- **Ms Jane Mullins, Millfield Hawthorns**
- **Ms Nina Buckley, Long Boat Quay**
- **Mr Mel Reynolds**
- **Marsh Ireland**
- **Engineers Ireland**
- **Royal Institute of Architects in Ireland (RIAI)**
- **Society of Chartered Surveyors in Ireland (SCSI)**
- **Institution of Civil Engineers (ICE)**

