Written Evidence

Scottish Parliament Local Government and Communities Committee – Fire Safety and Zero Home Valuation

February 2020

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Property Law Committee welcomes the opportunity to submit written evidence to the Local Government and Communities Committee on the issue of Fire Safety and Zero Value Homes. The Committee has the following comments to put forward for consideration.

# General Comments

The cladding issue is primarily a housing issue related to fire safety. Its effect on the housing market is a secondary issue. The former is properly a matter for government. The latter is one that stakeholders in the property market can try to alleviate, so far as that is within their collective competencies.

Stakeholders in the Property market have met regularly to discuss what can be done and have introduced the EWS1 to seek to provide clarity as to blocks which actually have issues with cladding. LSS consider however that government, and in particular the Scottish Government, must take the lead in this issue both in trying to work towards solutions and in communicating to the public. It is a government's role generally to involve itself in major issues which affect a significant number of its citizens. For example, those currently affected by flooding are looking to government to do what it can to assist.

There is an (understandable) concern at **any** fire risk existing in properties in the current climate. It seems unlikely that zero fire risk can ever be achieved in any building. Society needs to establish an acceptable combustibility standard so that the market can understand the risk.

Whist understanding post-Grenfell issues around potential liabilities it is felt that there are a number of initiatives government could undertake:-

1. A scheme to try to identify and record "green-flagged" blocks to remove them from concern and seek to move towards an understanding of the true extent of the problem.
2. Coordinating multi stakeholder efforts to try to find answers to problems including
   1. The barriers to providing single block reports due to the limitation in factor's powers and the nature of co-ownership in Scots law
   2. Find means to address the limitations on availability of suitable PI cover for those providing EWS1
   3. Providing clarity on who is qualified to provide such certification and seeking to increase the number of professionals available to carry out the testing.
3. Communicating with those potentially affected to understand the nature of the problem and encouraging/facilitating co-owners to get inspections done.
4. Conducting, and driving, the debate on where the acceptable level of combustibility of construction materials should lie.
5. Establishing the buildings which have unacceptable cladding materials, what the remediation costs are going to be and who is going to pay these.

It is perceived that there may be questions between UKG and SG as to who should take what initiatives but a cooperative approach by both is required here.

Stakeholders including LSS, RICS, ESPC and UK Finance have worked to try to find a workable system to start the market moving and have made good progress to date but there are issues which are in the process of being worked out or need working out:-

1. RICS are working on standardised procedures and wording around Home Reports to seek to avoid the variations and sometimes confusion arising from survey reports
2. Questions have arisen around competency of those carrying our inspections and whether they carry PI insurance to cover their reports. This makes it difficult to rely on reports
3. Fraudulent reports have been noted in England
4. Costs involved in obtaining EWS1 certification are not cheap and the inability to commission a single report means these costs will be multiplied.
5. A "register" of green, amber and red flagged buildings would help agents trying to market properties or buy for clients but GDPR and blight risk concerns hold that idea back.

For solicitors advising clients on a purchase, who are at the very end of the process, there is so much uncertainty, even with an EWS1, that it is difficult to advise clients and the tendency will naturally be to advise clients to be cautious. Potential remediation costs could be huge.

Confidence needs to be restored and that needs more certainty which can only come with a lead being taken to work through all the issues.

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