



Northern Ireland
Assembly

Committee for Regional Development

**OFFICIAL REPORT
(Hansard)**

**Inquiry into Unadopted Roads: Consumer
Council**

2 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Pat Doherty (Deputy Chairperson)

Mr John Dallat

Mr Stewart Dickson

Mr Ross Hussey

Mrs Dolores Kelly

Mr Seán Lynch

Mr Ian McCrea

Mr David McNarry

Mr Stephen Moutray

Mr Cathal Ó hOisín

Witnesses:

Mr Robert Dempster

Consumer Council

Mr Graham Smith

Consumer Council

The Deputy Chairperson: I welcome Robert and Graham and ask them to make a presentation. Members may then wish to ask questions.

Mr Graham Smith (Consumer Council): Thank you for the invitation to present to you today. By way of introductions, I am Graham Smith, acting head of water at the Consumer Council, and I am joined by Robert Dempster, who is the senior consumer affairs officer at the council. I will make a few introductory remarks and then pass over to Robert, who has been leading the council's work since your inquiry was announced.

Our evidence today will develop the written submission that was provided to you in March. Simply put, our role is to represent the consumer. It is from that perspective that we have approached our work on the inquiry and that we will be providing evidence today. Buying a home can be an exciting, complex, stressful and daunting process all at the same time. For most consumers, it is one of the biggest decisions and financial commitments that they will make, and we should not overlook or underestimate the emotional investments and attachments to our homes. When looking at the topic of unadopted roads and sewers through the eyes of the consumer, we split consumers into two rather crude but, we find, effective groups. First, there is the now, which involves the consumers who are living in properties facing problems with unadopted roads and sewers. The question about that is how we can resolve those issues. Secondly, there are the future consumers and buyers, and the question on that is how

we can prevent the problems continuing to happen. I will pass over to Robert now, who will take you through the main body of our evidence.

Mr Robert Dempster (Consumer Council): Thanks very much, Committee and Chair. In general, the Consumer Council does not receive a great deal of direct contact from the public regarding unadopted roads. When we do, we normally refer them to the bodies responsible. In some cases that will be the Roads Service, Northern Ireland Water or the developers directly. However, we recognise that it is obviously a very important issue that has an effect on a lot of people throughout the Province. We fully support the inquiry's terms of reference, and we believe that it is very important to fully identify the scale of the problems and the number of consumers that are directly affected. Based on some research that we have done into the area, we have identified what we believe to be the factors requiring consideration and investigation, along with some possible remedial action that might help to alleviate the current situation. We are conscious that our suggestions may require further input from witnesses who have more practical and in-depth knowledge, such as Roads Service and Northern Ireland Water.

Occupied properties with no bonds should also be given consideration in the inquiry. The need for that is highlighted by recent events at an estate in Coalisland, where a number of properties were completed and sold with no sewerage provision. I think that most people will be familiar with that, as it was heavily reported in the media. Raw sewage was flowing into a nearby field close to the River Torrent, which is a tributary of Lough Neagh. Those properties were sold with no water supply or adequate sewerage facilities. As far as the Consumer Council is aware, the current situation is that a bond is in place for the roads at those properties. There is no provision for sewerage and water facilities and no agreement with Northern Ireland Water. We are aware that a local MLA and Northern Ireland Water have intervened to provide a temporary water supply for the residents, but Northern Ireland Water is not able to assist any further, because it does not have the powers to provide those sewerage works without a bond being in place. At present, under current arrangements, the responsibility for the sewerage and provision of water lies with the owners of the properties, who, as far as we are aware, were unaware of those responsibilities prior to purchasing the properties.

There are some possible causes of such situations. One point that is worthy of note is that current planning procedures require developers and builders to submit detailed drawings of road layouts and lighting under article 32 of the Private Streets (Northern Ireland) Order 1980. However, it is not mandatory for the same level of detail and comparative drawings to be submitted for drainage and sewerage at the preliminary planning stage. Situations such as those in Coalisland highlight gaps in the current procedure. For example, if you look at things such as the certificate of completion that Building Control provide, you will see that those are very detailed and look at the construction of the house but do not directly link in with the provision of external sewerage and road services.

We also believe that the inquiry, and any solution that comes about as a result, should give priority to areas where there is inadequate sewerage and drainage. They should be given priority in recognition of the environmental, public health and safety concerns that are inherent in having inadequate sewerage and drainage facilities. One of the risk factors with unadopted roads and sewers is that unadopted sewers can cause no ill effects for a number of years, but it is not until much later that they can cause problems such as flooding or environmental damage, which is when it is too late for a resolution. So, the responsibility is left with the homeowners.

The level of risk to buyers is dictated by whether the developers or original builders of the property are still in a position to complete any necessary works while a bond is in place. Where no bond is in place, the risk to consumers is very much higher still. For buyers at the moment, it is still a case of let the buyer beware. As far as we are aware or are able to find, there is no direct duty on the seller of the property to provide information on the provision of sewerage and drainage facilities at a property. When buying a home, most consumers will take it for granted that, if there is something such as a certificate of completion or initial surveys, essential services such as roads and drainage will be in place.

One possible solution would be to place responsibility on sellers to provide information about the provision of roads and sewerage and what the purchaser can expect. The energy performance certificate is an example of that duty to provide information. At present, if a property is being sold,

information on its energy efficiency performance must be provided to any prospective purchaser. A similar situation could be adopted for the status of roads and sewerage. We also believe that, in instances where properties have bonds in place, and where they are occupied and pose a threat to health and safety, consideration should be given to assessing the risk and cost of the potential adoption of those sites, with, where possible, a means of recovery of the cost of said work from anyone who could be held accountable or responsible for the work that was done. It may require changes in legislation or policy to allow Northern Ireland Water or Roads Service to intervene in situations where there are health and safety concerns or a direct threat to public health or the environment.

Any solutions to this issue will require a multi-agency approach, whereby respective organisations work together and employ effective communication so that they can share information, which, in turn, can be relayed to the public. That approach could include stakeholders such as Roads Service, Northern Ireland Water, local councils, the Environment Agency, insolvency agencies and residents' groups. We are aware that Northern Ireland Water and Roads Service have already formed a working group to review unadopted roads and sewers. A similar approach has been adopted in the Republic of Ireland, which has led to the formation of the national co-ordination committee on unfinished housing. That committee is made up of a group of stakeholders, including banks, developers, local councils and residents' groups. It has drafted a code of practice through which each of the stakeholders signed up to an agreed set of responsibilities and approaches to the problem. Areas where there is that risk to health and safety have been prioritised. The committee has produced a guide for residents living in unfinished estates. In addition, each city and city council has been requested to establish an unfinished housing developments team as a central point of contact to focus on enabling resolution in the most problematic areas. If established here, such a working group would be very useful in prioritising sites where there is a health and safety risk, identifying problems and delays in construction work or the reclamation of bonds, and providing a platform for sharing information between relevant parties including, most importantly, residents of those estates.

Just to summarise some of the points that we made, any solution needs to prioritise occupied developments where there is a direct threat to the environment and public health and safety. We also suggest that a working group be formed that includes all the relevant stakeholders, that the properties for which no bonds are in place are identified and that a plan to resolve those is established. If possible, developers must submit plans for drainage and sewerage as part of their original application to the Planning Service. We also suggest that a duty of care be placed on sellers of properties to provide information on the status of roads and sewerage.

We hope that the Committee has found some of that information helpful. We in the Consumer Council would like to help with the ongoing inquiry and its results in any way that we can. We work quite closely with Northern Ireland Water and consumers in Northern Ireland. We do a lot of outreach work with the public, and we have an extensive outreach programme planned for the coming year. If there is any way that that can be a platform for sharing information with members of the public, we would be very glad to help. Thank you very much, and we welcome any questions that you may have.

The Deputy Chairperson: Just before I bring other members in, I have a question. You said that the number of unadopted roads is testament to the fact that the bond system is ineffective. What do you suggest should replace that?

Mr Dempster: As we said in our original submission, the current bond system would seem to be very effective. Builders must submit detailed plans for the construction of the work, and those plans are looked at throughout the investigation. However, we have seen situations where that system has broken down. Going forward, one of the really important things is to place a responsibility on sellers to provide information about drainage and sewerage. That will act as an incentive to developers and other people who are involved in the sale of houses. Members of the public would then be in a position where they would expect to get information about sewerage and drainage. If you are a prospective developer or are selling a property, the incentive will be there to make sure that those things are in place and that the appropriate bonds are in place. Although there are different reasons for the situation in each estate, in some cases builders or developers have gone ahead with the construction of properties without having bonds in place, meaning that it has worked the other way

round. The working group that we suggested, along with a responsibility on sellers, might help to counter that.

Mr Dickson: Thank you for your presentation. It has been very helpful to us this morning. To carry on from where you left off with bonds, do you believe that it would be helpful if we had a mandatory bond system for developments, meaning that a development could not be built without that being on the checklist? In other words, ground could not be broken until those things had been checked out. Likewise, at the other end of that process, building control or other stakeholders could be in a position where a certificate of fitness for occupation would be issued. That certificate would cover all those issues, including sewerage, roads and lighting.

Mr Dempster: Yes. The idea of a certificate of occupation would tie in with placing a responsibility on the seller. Our understanding is that, at the moment, everyone fulfils their individual role. Building Control does a great job, and Northern Ireland Water does everything that it can. However, there are gaps between the processes; therefore, something such as an enhanced certificate of completion or a fit-for-habitation certificate would be a potential solution. Mandatory bonds are another avenue that could be explored. However, the main thing is placing more responsibility on those who are responsible for developing and selling the house.

The education side is also important so that buyers know what they are getting into and can, therefore, make informed choices. However, the idea of a fit-for-habitation certificate is very good, and it might be simpler than imposing direct bonds, as a balance has to be struck between holding back on developments, and we would not want to encourage that. Those are all excellent ideas and are along the same lines as our suggestion.

Mr Dallat: I have just joined the Committee, so you will forgive me if I ask a silly question. Thousands of homes across the North are the product of the financial collapse, and many people find that documents are incomplete, or they may be bankrupt or find that the National Asset Management Agency (NAMA) has taken over and, therefore, it is virtually impossible to sort out the sewerage connections and the adopted roads. It is even difficult to sort out the basic things such as building control. I am talking about all the things that are needed to get a proper regulated mortgage and so on. Do you have any idea of how those issues could become part of a system that would get over the problem that always existed with bonds but that has now been compounded by the awful problems of contractors going into liquidation?

Mr Dempster: There are problems with unadopted roads, and the complexity that you are talking about with companies going into liquidation and those sorts of things has necessitated this inquiry. As this is a very multifaceted problem with lots of different aspects, with for example, some companies going into liquidation while others have not, it would be really useful to go back to our suggestion about having a group of stakeholders that would include developers and Roads Service. That group could meet and discuss a list of those issues and try to find a way forward. Again, to refer to the national co-ordination committee, NAMA in the Republic of Ireland is part of that, along with banks and developers and the Republic's equivalent to the Roads Service. Essentially, a solution could be reached with all the different groups. Also, if residents' groups were involved, it would give a voice to the people who are directly affected. It would require a considerable amount of work. Nevertheless, if a health and safety risk were involved, there might come a point when a solution would have to be found with all the individual stakeholders, and those sorts of situations would be given priority. I think that would be the best approach. I do not think there is a simple direct answer.

Mr Dallat: Chairperson, I think that that may be useful in any report that we publish, because there is not a town or village across the North that does not have incomplete facilities caused by what has happened. Individuals cannot sort the problems out. Some corporate decision coming from the Assembly would be very useful.

Mr McNarry: You are both very welcome. You seem to give the impression that you know what you are talking about, so I just want to find out how much you know. I am trying to establish what research and evidence you might be able to pass on to the Committee beyond what you have written here. How many unresolved complaints on this matter have you engaged in?

Mr Dempster: The role of the Consumer Council in complaints deals strictly with issues relating to the provision of service by Northern Ireland Water and also by transport companies and utility companies. Unfortunately, we are not directly able to engage with complaints on this issue. Our remit for complaints is specific. For example, we deal with issues where a customer has complaints with Northern Ireland Water and they are unhappy with the outcome. In those situations, for the most part, for example, on properties where there is no bond, one of the main problems for Northern Ireland Water is that it is unable to act under the Water Order. It cannot go onto that private land and resolve it. Legally, the responsibility lies with the owners of the property. We are not in a position to take up a complaint in that case, because we cannot hold Northern Ireland Water to account.

Mr McNarry: Who would you go to with that complaint to get it served?

Mr Dempster: It would vary. That is one of the things that has made the inquiry very important, and one of the reasons that we are suggesting the equivalent of a co-ordination committee. Our consumer support team handles incoming inquiries. What would happen is that we would receive an incoming inquiry and would use our knowledge of how Northern Ireland Water's processes work to establish who is the best person to speak to. In some cases we might suggest that the customer may want to speak to Roads Service, Northern Ireland Water, their solicitor or the property developer, if they have an avenue for contacting them. The problem for us is that, at the moment, that is really all that we can do. We cannot take on an active complaint because the issues are too broad and there are too many different people. That is why we think it would be very useful to have a stakeholder committee or individual officers in each council area that people could speak to directly. They will have attended those meetings. They will have that knowledge and will be able to say that, in estate A, they are addressing a meeting with all of the relevant parties.

Mr McNarry: OK. It might be very useful if you could furnish us with at least an idea of what evidence you have been gathering, so that we are not dealing with hearsay.

Mr Dempster: Of course; I understand entirely. We have spoken directly to the Department of the Environment in the Republic of Ireland about the issue. We also deal directly with Northern Ireland Water on the issue.

Mr McNarry: I am nearly going to ask you another obvious question that you have not got an answer to, but you do ask a good, pertinent question about how many developers did not consult before constructing roads and sewers. Do you have an answer?

Mr Dempster: We do not have a figure for that, unfortunately.

Mr McNarry: Why are you asking that question? What put it in your head that you would ask us to find out?

Mr Dempster: We just feel that it is a very important question that needs to be addressed, if it is at all possible to do so.

Mr McNarry: I agree with the question. Whether the answer is none or hundreds, I do not know, but I think we do need to find out.

Mr Dempster: It could be quite difficult to find that out, but we think it is very important that it is found out. Again, it comes down to prioritising. If there are people occupying properties where there are no bonds in place and there is a risk to health and safety, but people are not aware of that or are not financially in a position to rectify that, it is very important that we find out what those are and then look towards a solution. The situation in England and Wales is that there are many properties that have been unadopted for quite some time, but sewerage and road services have been built to quite a good standard, so they do not present an immediate threat. Although it is an issue, it is not an immediate issue. However, with unbonded properties and where there is no adequate sewerage —

Mr McNarry: Could I be indulged for one last question? Thank you. The body that you represent — the Consumer Council — does excellent work, but, at other times, it sticks its nose in where it should not, but that is neither here nor there. What intrigues me in this case is that, like us, you are identifying a problem, and you certainly are not able to address a public concern, whereas other members have pointed out that people are in stress over this and do not know where to go. Where do you think the end of this line is? You have told us that you really cannot help them too much if they go to you. At this moment, where would I, as an elected representative who might have directed them to you, thinking that you would be able to do something, direct someone in my constituency who may be under stress with that problem?

Mr Dempster: I appreciate your comments. I will address the first part of your question. Although we are not able to offer practical help in dealing with the complaint and engaging with those people, as it is beyond our responsibility, we are able to provide information, very much like the information that we have researched here, as to who they should go to and what their rights are. Our consumer support team is very converse with a wide range of those sorts of issues. If someone comes to us, we would be able to offer them a degree of assistance. Not many MLAs have come to us asking for help in that situation, but if they did, we would be happy to engage with Northern Ireland Water on their behalf or work together.

Mr McNarry: Could this MLA ask you to send him out a pack of whatever you would have if he asked you, because I am asking you now?

Mr Dempster: Yes. At the moment, there is not a great deal of assistance that we can offer. We can offer practical information, and we can point people in the right direction. Although we cannot offer any direct information or hard facts on unbonded properties, for example, we are suggesting a way forward by having a group of stakeholders. Therefore, if we get a call in the future, we can speak directly to that group of stakeholders or refer the customer directly to them, and they will be able to give accurate and timely information on the situation.

Mr Hussey: Anyone who lives in a rural constituency will know that people move into housing estates as soon as a house is built. They do not have a road structure in place, and I do not know about the sewerage position. However, as the estate is being built, people are buying houses knowing that the road is not constructed and that the whole development is not finished. You have scenarios where the builder finishes and leaves, and the road is not adopted by Road Service. Until that road is adopted, the councils will take no action. Councils will lift bins on the public road but will not go into the estate. Clearly, there is no responsibility on Roads Service or Northern Ireland Water until the road is adopted. Rogue builders are the problem.

I accept some of the comments that you have made, such as having a certificate of occupation. A certificate of occupation would be an ideal situation if the estate was finished, but most of those housing estates are built piecemeal. Developers start off with one house and they make their few pounds. They then build the next house and so on. In some cases, the estate is not finished at all. It will be difficult to put the responsibility back onto the Department for Regional Development (DRD) or the Planning Service. When you are doing a specific contract, the Planning Service will bring in DRD as a consultee and will say that a road has to be done and x, y and z, and they will not adopt it until it is up to that standard. Then there is the bond. Is it not the case that we are not going to have the bond enforced in some of those instances? We really have to go right up to the courthouse door before that happens. The biggest problem is the enforcement of the bond.

Mr Dempster: That is very true. One of the things that we would say about something like a certificate of completion is that, although it does not resolve all of those other aspects, it puts the ordinary person who is purchasing that property in a position where they can make an informed decision about that and they are clear about who is responsible. There is the risk that it might make a purchaser more reluctant to purchase a property, although it increases the incentive on the builders and developers to make sure all those things are in place. Something like a certificate of completion, which would include information about the provision of roads and sewerage, would not be a complete solution to the whole problem, but it would be a very important part of that.

Mr Hussey: I can see that working when you are building one house for one person on a site. I cannot see it working in an estate, because, clearly, as I said, you start at one point and you work your way around, and it is not until you get to the end that the estate is finished. I think there would be problems with that and, unfortunately, it is going to be your problem, as long as you have a road builder who is prepared not to put sewerage in at all, as in the situation in Coalisland. That was beyond belief, and, in those circumstances, at no point could DRD take responsibility, because everything is at the cost of the public purse. Is the suggestion that the public purse should take that over?

Mr Dempster: We are not suggesting that that is the case in all situations, but, if there are no other avenues to explore and there is a direct risk — to use the example of Coalisland, where there is pollution going into the watercourses and there is a direct threat to health and safety — then a decision would have to be made if there is no other recourse to repair that.

I refer back to the idea of having a co-ordination committee on those kinds of issues, so that it can analyse each of those issues one at a time to see what the best possible position is. There may be a point at which there is no other avenue, and where there is a direct risk to safety, there would have to be some sort of intervention. At the moment, Northern Ireland Water and Roads Service do not have the powers to intervene in those situations, so that might be something that needs to be facilitated. Again, that would have to be investigated to the point where there were no alternatives, but there may well be situations where that is the case.

Mr Hussey: I have one final point. My opinion is that, if we are going to go down that line, all of the developer's plans should be laid on the table in advance, and the responsibility should rest with the developer. If we have to then go to a higher bond, that is what we do, because the public purse quite simply cannot afford it.

Mrs D Kelly: To pick up on your latter points, a particular case that my colleague councillor Sharon Haughey has been dealing with is Loughadian Brae, Bann Road in Poyntzpass, where no permission was sought for a sewer at all. The pumping station breaks down and sewage sometimes runs into the canal. How is your role distinct in terms of holding other accounting agents, for example, NIEA or the water service itself, to account in relation to the bond issue? You said that there may be a lack of a legislative framework. Are there any specific legislative measures that you think the Committee should be endorsing? Given your research remit, have you looked at examples of best practice elsewhere, and will you indicate those to us?

Mr Dempster: One definite legislative change or change in procedure that we could recommend is something that we have referred to in our statement about the requirement for builders, during planning procedures, to submit drawings for roads and street lighting but not sewerage and drainage. That is one possible change that could be included. There is also the idea of placing responsibility on sellers, or a certificate of fitness for habitation could be another possible idea.

In terms of best practice in other areas, in England and Wales the situation is quite different. There are parallels, but, in October 2011, in England and Wales an Order went through that adopted all sewerage and drainage that had not been adopted up to that point, but it did not cover roads. At the moment in Northern Ireland, it is not possible for Northern Ireland Water to adopt sewerage and drains unless they have been adopted by Roads Service. So there is a degree of difference.

As to the success in England of adopting private sewers, that was done in October 2011, and there is not really any information on that. From the point of view of consumers who live in those areas, it has obviously been good to a degree, but there is a massive cost involved, and that is being passed on through bills to consumers. That is one avenue that is being explored in England, where the situation is proportionately much greater even than it is here. I think that there are something like 40,000 unadopted sewers, some of which have been unadopted for —

Mrs D Kelly: In England?

Mr Dempster: Yes.

Mrs D Kelly: Do you have any information on the number of unadopted sewers in Northern Ireland?

Mr Dempster: No. We do not have any information, other than the information on the unadopted roads, which has been provided to the Committee. We have not been able to find that information. Possibly, that is a question to which Northern Ireland Water would be able to give a more specific answer. Again, as was pointed out by another member of the Committee, it is quite difficult to establish the number of unadopted sewers and roads where there are no bonds in place, but it is important that we do establish that.

Mrs D Kelly: Perhaps those are a couple of questions we could put to Northern Ireland Water.

Mr Lynch: Could you expand on the Southern Ireland model and the role of the banks in it, which you mentioned? How far have they got on in practical terms? I live very close to the border, so I am aware that there is a major problem there as well. If there are not sufficient funds to finish a particular development, who finances that? Have they come to that point?

Mr Dempster: The co-ordination committee, as was said, meets all the various stakeholders. It has drawn up a code of practice, which is overseen by the Department of the Environment. We have some information on that, but you can get information on the code of practice and what is involved on the Environment Agency's website.

I cannot give you any examples of practical successes, such as estates where they have carried out work. However, due to the fact that they are working with all the different people involved, like the banks, developers and residents, I think that any outcome of that can only be positive. As for ultimate responsibility, if they find a development where there is no developer anymore and the developer has gone into liquidation and there is no other avenue to repair that, they prioritise that development, depending on whether there is a direct risk to public safety. If there is a direct risk, the burden of that cost is placed on the Department of the Environment, which will engage in action to repair that.

Mr Lynch: Are there lessons that we could learn from that?

Mr Dempster: I think it might be useful if, as a result of any inquiry or if there is any further work, we were to work more closely with them and see what direct results they have achieved in response to that.

The Deputy Chairperson: Graham, Robert, I thank you for your presentation and for answering our questions.