

## **RESIDENTIAL LANDLORDS ASSOCIATION**

### **A RESPONSE TO THE HACKITT REVIEW FOR THE HOUSING, COMMUNITIES AND LOCAL GOVERNMENT SELECT COMMITTEE**

#### **1.0 ABOUT THE RESIDENTIAL LANDLORDS ASSOCIATION**

- 1.1 The Residential Landlords Association (RLA) represents the interests of landlords in the private rented sector (PRS) across England and Wales. With over 30,000 subscribing members and an additional 20,000 registered guests who engage regularly with the Association, the RLA is the leading voice of private landlords. Combined, they manage over a quarter of a million properties.
- 1.2 The RLA provides support and advice to members and seeks to raise standards in the PRS through its code of conduct, training and accreditation, and the provision of guidance and updates on legislation affecting the sector. Many of the RLA's resources are available free to non-member landlords and tenants.
- 1.3 The Association campaigns to improve the PRS for both landlords and tenants, engaging with policymakers at all levels of Government to support its mission of making renting better.

#### **2.0 EXECUTIVE SUMMARY**

- 2.1 The RLA submitted evidence to the Hackitt Review proposing major changes to the way in which fire safety is regulated and enforced across all types of residential accommodation.
- 2.2 We agreed with the finding of the Interim Report that the current system is "*not fit for purpose*" which was in line with our own submissions.
- 2.3 Our view is that, other than for high rise buildings (over six storeys in height), the current benchmark standards for existing residential buildings are satisfactory which accords with the view of the National Council of Fire Chiefs. However, the current system is far too complex and this lack of clarity hinders compliance, along with inadequate enforcement.
- 2.4 While there are aspects of the Hackitt's final report which we welcome we have some major concerns.
- 2.5 We do not believe that the report was comprehensive enough, focussing almost solely on accommodation of 10 storeys or more and not using the opportunity for a thorough review across all accommodation types and sizes. This is despite the wide remit the inquiry had.
- 2.6 We concur that better enforcement is needed of fire safety regulations with clearer guidance but are not convinced that the Joint Competent Authority proposed in the report is the best approach. Rather we are calling for the Fire Service to be given a role as a Primary Authority for such matters, with improved training for local authority staff to identify fire hazards.
- 2.7 Given that many changes to buildings can be made without the need to invoke or refer to building regulations, the report did not properly look at how improved

management of accommodation can improve fire safety. Seeing everything within the context of building regulations and major building work is, we feel, too limited.

2.8 Although we have no problem with the outcome based approach to regulation proposed in Dame Judith's report, we nevertheless believe that for landlords a degree of prescription is required to support their work in ensuring tenants are safe. This includes clear guidance.

2.9 We suggest that the Government should make available low-cost loans to enable remedial work to be made to cladding (where needed) in privately owned buildings in the short term. This would enable safety improvements to be made while the larger legal disputes about responsibility for what could be wrongly applied cladding are concluded in the long term.

### 3.0 REPORT WAS NOT COMPREHENSIVE ENOUGH

3.1 Our main concern is that having found the current system not fit for purpose, and despite the wide terms of reference, the Review has focused almost exclusively on buildings of ten storeys and above. We acknowledge that the Review does recommend that the Government applies some (but not all) of the recommendations to high rise multi-occupied buildings (essentially blocks of flats) but there is no proper consideration of the vast majority of residential dwellings.

3.2 **Fewer than 3% of tenants in the private rented sector live in high rise residential buildings of ten storeys or more according to the 2016/17 English Housing Survey.** Whilst we appreciate the time constraints and need to produce recommendations urgently, the opportunity for much needed reform across all residential accommodation will be missed and the current unsatisfactory state of affairs will be allowed to continue.

3.3 As a result of this, the report, in many respects adds to the complexities within the system rather than clearing them up. At present:

- The Housing Health and Safety Rating System (HHSRS) is a risk-based evaluation tool designed to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in mainly private rented properties. It was introduced under the Housing Act 2004. The guidance for this is over 10 years old and is in urgent need of updating. It covers everything up to the front door either of someone's bedroom in a shared house or the flat door in a high rise residential block.
- The Regulatory Reform (Fire Safety) Order 2005 (FSO) applies to shared areas including stairways, landings, kitchens and bathrooms of dwellings contained in bedsits and flats, both converted and purpose built.

3.4 The Hackitt Review proposes a new third regime for properties of 10 storeys or above which we feel only adds to the complexity of the system.

3.5 It also remains an open question as to what constitutes a 10 storey building. For example, if a building is 9 storeys high, with what is effectively an added story attached at the back of the property rather than on top, would this be classed as a 10 storey building?

3.6 Likewise, under the proposals outlined by Hackitt, building inspectors would not focus on buildings of fewer than 10 storeys. What then happens in the case of a 9 storey

building which has an additional storey added within the rules that allow such changes without planning permission being made, such as in London as part of efforts to support so called rooftop extensions. Would such properties need to be inspected? If so, how would the authorities know about their existence?

#### **4.0 BETTER ENFORCEMENT IS NEEDED**

4.1 As with so much within the sphere of housing, regulations, laws and guidance mean very little without proper enforcement.

4.2 Dame Judith's report recommends establishing a Joint Competent Authority (JCA) comprising Local Authority Building Standards, fire and rescue authorities and the Health and Safety Executive (HSE) to oversee better management of safety risks in these buildings (through safety cases) across their entire life cycle.

4.3 Whilst a welcome proposal to stimulate debate, the RLA believes that the proposed authority raises many more questions than it answers. This includes:

- If such authorities are to meet locally comprised of a local authority, the local fire service and the HSE there is a very real danger that differing standards and guidance could be issued depending on a given local area. Wherever someone lives they are entitled to the same level of protection and approach taken by the relevant authorities. A localised approach such as this risks creating a safety postcode lottery.
- We remain concerned at the potential of responsibilities being shifted from one agency to another. Those living in affected buildings need to have a clear sense of which single agency is responsible, overall, for ensuring that they are fire safe.
- The RLA questions also the reason for including the HSE on this new body. It has no responsibility for fire safety risk assessments and has only ever had statutory responsibility in response to gas safety. Gas explosions are, thankfully, a rare occurrence. Therefore it is not clear what additional value the HSE will bring to the JCA.
- The challenge remains that in the case of local authority owned dwellings, they cannot take enforcement action against themselves where defects are found and are often reluctant to do so against housing associations and ALMOs. We are yet to be convinced that the joint authority model will address this.
- In many respects the authority proposal seeks to reinvent the wheel. There was already a previous arrangement between the Chief Fire Officers Association (CFOA) and the now defunct LACORS which saw the local authority responsible for enforcing the HHSRS in a flat itself, with the fire service responsible for the communal areas beyond the door. Over time this agreement has broken down, not helped by budgetary pressures on all sides.

4.4 The RLA believes that a much clearer and more transparent way forward would be to adopt the principle of a Primary Authority model. The primary authority should be the Fire Service. CFOA could then act as a national co-ordinating organisation to ensure a consistent approach is adopted nationwide. This should be coupled with enhanced training and support for local authority staff to be able to better identify fire risks in all types of property.

## **5.0 A GREATER FOCUS IS NEEDED ON THE MANAGEMENT OF BUILDINGS**

- 5.1 Whilst Dame Judith's report focusses largely on fire safety within the context of building regulations and major building work, the RLA believes it does not sufficiently address how fire safety can be improved in the day to day management of buildings.
- 5.2 Relying on building regulations as the context within which to improve fire safety ignores the fact that many changes to properties do not involve building regulations being invoked. For example, changes to occupancy, some electrical works and reconfiguring of flats can all occur with little reference to the building regulations.
- 5.3 In respect of tenant input and involvement, much greater clarity is needed about what this should look like in the private rented sector. For example, in the case of a House of Multiple Occupation, would the landlord need to write to tenants to explain any changes being proposed to the property and give tenants a set time to respond, or would they need to formally meet with each tenant in the property on a one-to-one basis. This might prove impracticable for shorter term tenancies where tenants are likely to be reluctant to engage in these matters.
- 5.4 We find it an anomaly also that Hackitt has made no reference to the LACORS guidance which seeks to support fire safety through improved management of properties.

## **6.0 SOME PRESCRIPTION IS NEEDED FOR LANDLORDS**

- 6.1 The approach adopted by Hackitt would see a move away from detailed guidance being provided towards more outcomes-focussed regulation. We believe however that a degree of prescription is still needed for landlords.
- 6.2 Traditionally the outcomes based model has applied to large organisations with specialist risk managers. It is after all hard to assess risk without the required skills. Applying this model across the private rented sector could therefore create significant challenges.
- 6.3 From the point of view of landlords, some statutory guidance is needed to support them in understanding what to be looking for within a property to ensure it is fire safe. The overwhelming majority of private landlords want to and do prioritise safety for their tenants, but rightly need the support to ensure that this is done properly. For example, the LACORS guidance should be updated and re-issued. Likewise, we would support a prescriptive approach which would ban cladding that catches fire.
- 6.4 Outcomes focused regulation has been adopted already by the Solicitors Regulation Authority and the Financial Conduct Authority. In both cases there has ultimately been a significant growth in guidance which, for some smaller companies especially, has been viewed as the rules to follow in order to ensure compliance with the law. It should be noted that both these authorities are also comparatively well funded and very tightly engaged with their regulated communities compared to, for example, the Fire Service.

## **7.0 ACCESS TO PROPERTIES**

- 7.1 Although the report makes mention of access to properties, it contains a fundamental misunderstanding. It is stated that there is a right for landlords to access properties to

carry out gas safety checks. This is true up to a point but in practice it is a right which can only be exercised through an injunction in the High Court.

- 7.2 The obtaining of gas safety injunctions consume a large amount of time and effort for local authorities and social landlords and the extension of this to also cover fire safety checks would be problematic for all parts of the rented sector as well as adding considerably to the burden on the already overstretched courts.

## **8.0 COST OF CLADDING**

- 8.1 While the Hackitt report does not deal with this issue specifically we are aware that the Committee has taken evidence discussing the existing situation relating to cladding.

- 8.2 Although the government has made some provision for properties within the social sector there are a considerable number of properties in the private sector that will need to be re-clad. This will lead to substantial service charge bills for the leaseholders and is also likely to lead to substantial disputes in the courts over liability for those bills depending on whether the cladding should have been placed on the buildings in the first place.

- 8.3 Service charge payers are likely to need to pay the cost of cladding works, often at considerable personal expense, and then seek to recover that money later on. This will lead to considerable personal hardship and may even result in individuals losing possession of their flats. Some of the legal disputes may take a considerable time and are likely to depend on existing reviews and disputes over the extent to which cladding systems in use did or did not comply with the Building Regulations at the time they were installed.

- 8.4 We would suggest that the Government should make available low-cost loans to enable this situation to be dealt with in the short term so that safety improvements can be made while the larger legal disputes are resolved.

## **9.0 CONCLUSION**

- 9.1 Whilst there are various recommendations coming from the Review which we endorse, the final Report leaves us with a sense of disappointment and an ongoing worry that we face the risk of a missed opportunity to introduce a comprehensive fire safety legislative code for all residential accommodation.

- 9.2 We need to make sure that residents and tenants of all types of residential accommodation are as safe as they possibly can be. We need a comprehensive, workable and easily understood approach.

**June 2018**