

Clive Betts MP
Chair
Housing, Communities and Local Government Select Committee
House of Commons
London
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Dear Clive

I wanted to thank the Committee for the opportunity to give evidence to its ongoing inquiry into the independent review of building regulations. As you know, the Local Government Association (LGA), like the Committee, has been calling for action on building regulations to ensure that another tragedy like Grenfell can never take place. Making sure that residents are safe in their homes is a priority for councils. Since the shocking events of June 2017, the LGA has been pushing the Government to provide the funds needed, both for councils and for private blocks, to ensure all dangerous materials are removed from buildings as quickly as possible.

During the session you asked a couple of questions that I promised to write to you with the answers for. In particular, the Committee was interested to understand whether the LGA has any information on the number of buildings that were found to have insulation that did not meet the required standards. Of the 45 Councils blocks identified as having ACM cladding after the Grenfell Tower fire, 33 had non-combustible stone-wool insulation, two had no insulation because the cladding was only on a stairwell and 10 had combustible insulation. We are aware that the stone-wool manufacturer has claimed that 90 per cent of cladding systems use combustible insulation but are not in a position to confirm this figure.¹

We welcomed the funds that the Government has provided for the removal of ACM cladding from both privately owned and social housing residential blocks. This was particularly important as in many cases councils had already started work to remove the ACM cladding before the funding was announced, so being able to claim for the costs they had already incurred was vital. However, as I stated, once the test results on all the external cladding materials and all the insulation have been published, it is likely that the Government will end up having to extend its fund to ensure nobody is left living in an unsafe building.

The Government will also need to resolve issues that the current funding arrangements have uncovered for PFI builds. As I mentioned, there are nine blocks managed under a PFI contract in Salford, where there have been lengthy negotiations about responsibilities as PFIs are excluded from both of the remediation funds. Any extension to the materials considered dangerous is likely to mean that more buildings of this nature will face this difficult position. We are keen to see the Government resolve this issue. It is unclear whether ministers have spoken to Salford.

Back in September 2017, we expressed our concerns to the Government about the limited scope of the remediation programme, focusing only on ACM. We are pleased that they have now taken these concerns on board and begun testing other types of cladding. We agree with Dr Jonathan Evans when he said that all information about the results of tests on materials need to be published as quickly as possible to ensure the developers do not continue to use materials that are unsafe. However, we do not believe the tests which the Ministry for Housing, Communities and Local Government (MHCLG) is using will give an accurate sense of how cladding systems will perform in real-world scenarios. Whilst we have no faith in the ability of the BS-8414 test to reflect real-life conditions, a large-scale test is still what is required at this stage.

We have seen a report on a test carried out at BRE in 2014 that suggests testing of a high pressure laminate product with combustible insulation had to be stopped before the test was complete. Although we are not technical experts, it implies that there may be issues with high pressure laminate products when combined with combustible insulation. MHCLG's comments reported in 'Inside Housing' recently on high pressure laminate products suggest they now think there are also safety issues with them as well.

In light of the 2014 report and MHCLG's reported comments it seems inevitable the test programme will result in the discovery of materials that pose similar risk to ACM. We anticipate that the Ministry will go out to councils with a data collection exercise imminently. The purpose will be to establish what materials are on the walls of buildings. Although this is a massive task for some councils, we support the Ministry's request that they start work before the new burdens funding is agreed because we think it is essential to quickly identify the location of any cladding that is shown by these tests to be dangerous.

I also wanted to pick up on the issue of fire doors that was raised with the final panel. It is now well over a year since the issue with Glass Reinforced Plastic composite fire doors was raised by the police investigating Grenfell fire. It appears that these doors were only being tested on one side, apparently on the advice of the test houses, when they should have been tested on both sides. As a result, the Government has said that none of them meet the 30 minute specification.

This poses significant questions for councils, who have several hundred thousand of these doors between them. They are left not knowing whether they should replace these doors and if so, where the cost of that will ultimately lie. We know some of the doors last less than half the time they should, whilst others were closer to the 30-minute requirement. As Roy Wilshire, Chair of the National Fire Chiefs Council, pointed out "*any closed door can help prevent smoke and fire from spreading*". He rightly states that doors do not start or spread fires, so given the range of problems with buildings, there is a challenge in understanding how much of a priority it should be for councils to replace them. We do not have figures for how long each and every make and model can be relied upon, so it is very difficult to take a risk-based approach.

We have been repeatedly promised an industry remediation plan but that has not materialised. We are concerned that anything the industry comes up with will do no more than scratch the surface in terms of the cost of replacing all of these doors. Meanwhile, there seems to be little accountability for the test houses in terms of the wrong advice they allegedly provided.

I wanted to add our support to the comments made by Mr Wilshire that there should be more widespread use of sprinklers. The LGA's view on Automatic Fire Suppression Systems (AFSS) is that the height of residential high-rise buildings in which AFSS should be installed in new buildings should be lowered to 18 meters (or lower depending on the outcome of ongoing reviews including the technical review of Approved Document B). They should also be installed in all newly-built premises of any height where vulnerable people sleep. This would include residential schools and care homes (the LGA supports the provision of sprinklers in all new schools in any case).

With existing buildings, we believe the use of AFSS should be considered as part of a risk-based approach. We want to see the requirements placed on duty holders to demonstrate the safety of existing high risk residential buildings (HRRB)s recommended in Dame Judith Hackitt's report extended to all residential buildings over 18 meters (or lower depending on the outcome of ongoing reviews including the review of Approved Document B) and all buildings where vulnerable people sleep (other than private dwellings).

If the scope of Dame Judith's recommendations is not extended, we believe owners of residential buildings over 18 meters high (or lower depending on the outcome of ongoing

reviews including the review of Approved Document B) and all buildings where vulnerable people sleep (other than private dwellings), should be required to retrofit AFSS where it is identified as needed as part of a proportionate risk-based programme of fire safety management. The definition of 'vulnerable people' is those who cannot reasonably be expected to evacuate a building as quickly as others due to disability or age, which includes children as well as the elderly. Any building owner installing AFSS under the provisions above should have the legal right to enter leasehold premises for the purposes of installing and maintaining sprinkler systems.

Crucially, the Government should commit to providing assistance to any council experiencing financial difficulty in meeting the retrospective obligations to install AFSS, as it had done in respect of the remediation of social housing blocks with flammable cladding.

I also wanted to follow up on a point put forward by the Association of Residential Managing Agents in response to Mohammed Yasin MP's question on complaint systems for residents. Dr Glen pointed the role of residents' own behaviour and the challenges faced by both building owners and managing agents to ensure that residents act in a way that complies with the terms of their lease and minimises the risk of fire. In particular, he said "*People have barbeques on their balconies and so forth. All we can do is send them a fairly stiff letter. We can threaten them with forfeiture, but that is never going to happen and people know that*".

Whilst we agree with him and Mr Silva that more needs to be done by building owners and managing agents in terms of the education process for the residents who live in blocks, so they understand the rules of living there, it must not be the case that a single failure to comply with the rules leads to the devastating scenes we saw at the fire in Barking and Dagenham. This failure stems from the lack of clarity in Approved Document B (ADB), which is not fit for purpose.

The fire in Barking demonstrates yet again the inadequacy of the guidance in Approved Document B. We wish to draw the committee's attention to the fact that while the Ministry has said that the balconies at Barking were non-compliant with the building regulations and implied that this was clear from ADB, Local Authority Building Control, the Association of Consultant Approved Inspectors and the National Housebuilding Council have written to the Ministry expressing the view that:

the building safety expert panel have offered guidance which conflicts with the application of the building regulations, which would be determined on a site by site basis based on regulations applicable at the time of the application. This Advice Note has created advice that gives a different view to that of Building Control Experts, and that of the BRE as contained in the BRE Report – Fire safety issues with balconies, and goes beyond that derived from the Approved Document to Part B. As a result this has created a great deal of uncertainty in the industry

The BRE report on fire safety issues with balconies stated in 2016 that 'there is currently no specific guidance for balconies in Approved Document B'.ⁱⁱ

The LGA's view is that while the building regulations themselves are clear, ADB is not sufficiently clear on balconies, just as it was not sufficiently clear on cladding and it is now difficult to avoid the conclusion that ADB currently does more harm than good. Whilst a rewritten version of ADB was published by the Government on the 5th July, we do not feel that the revised wording makes a significant improvement (the only change to the guidance itself is in response to the ban introduced last year on combustible materials in cladding systems on buildings over 18m). Two years on from the Grenfell Tower fire, the technical review of this document has still not commenced. The reforms dealt with in the consultation will not work if ADB is not made to work. This should have happened after the Lakanal House fire.

Finally there are a number of issues I wish to raise in relation to the Government's proposed reforms. Our chief concerns about the new regulatory system proposed in the current consultation are its scope and the structure of the regulator.

The question of scope is a particularly difficult one. We believe that the scope must be risk based, taking into account such factors as the vulnerability of residents and that height alone is too crude a determinant. However, if the height is to be used as the determining factor, then we have concerns about applying Gateway 1 only to buildings over 30 metres in height, which creates an inconsistency as the limit at Gateways 2 & 3 is 18 metres.

We acknowledge that the scope may need to be quite narrow at first and expand over time, due to the lack of fire engineering expertise in the UK. It will also need to be flexible enough to adapt if any new problems emerge in the future. For these reasons we think the scope should not be fixed in detail in primary legislation. We are equally wary of imposing costly demands regarding safety cases and building safety managers on residents and leaseholders in existing buildings that are not considered high risk.

The interaction of any new legislation with the Fire Safety Order (FSO) and Housing Act 2004 is also an essential point. There is a risk of a two-tier system which leaves buildings under 18 metres under-protected. It is essential that the existing enforcement of safety in Houses of Multiple Occupation (HMOs) by local environmental health officers is not undermined by any new arrangements. We are concerned that the division of responsibility which sees MHCLG lead on building safety reform, whilst the Home Office deals with the FSO, is not a good way to deal with the problems that have emerged from the enforcement gap between the FSO and the Housing Act 2004.

In terms of structure, the LGA's view is that the proposed new national regulator needs to have a role of setting national frameworks and ensuring consistency, but that local authority building control and local fire and rescue services (FRS) should continue to deliver front line enforcement and inspection. We consider it essential that the front-line enforcement of fire safety continues to be carried out by the FRS. There must not be situation in which the fire brigade turn up to fight a fire in a block where it is the responsibility of some other regulator to ensure the dry riser is working.

Separately, we are concerned at the proposal to allow an existing national regulator to pilot the new regulatory body. Any national body needs to be overseen by a board that contains representatives of local government. This is because that national body is likely to direct local authorities and fire services that are subject to democratic control, which should not be overridden by an arm's length national body without representatives of local government having some role in the oversight of its operation.

We would have further concerns at any proposal to create a national regulator with a front-line enforcement role. This would draw talent out of councils and FRSs, creating a particularly ineffective form of two-tier structure and leaving the rest of councils' building control responsibilities, which include the provision of safety at sports grounds, under-resourced and under-skilled.

In terms of the costs contained in the consultation document, the Ministry appear to have omitted the cost to landlords of hiring a building safety manager. The enforcement costs are difficult to quantify at this stage due to uncertainties around scope, but we have reservations over the extent to which these will be recoverable. We think the set-up costs of the regulator and in particular the cost of increasing the UK's fire engineering capacity will be considerable.

The final issue I wish to place on record is the apparent abandonment by MHCLG of its commitment to implement all of Dame Judith's recommendation and instead to preserve the role of Approved Inspectors (AIs). I attach a press release from Local Authority Building Control (LABC) expressing concern at this apparent change of direction. We would be very concerned if the changes it details were to prove accurate. As LABC point out, Dame Judith called for a 'single streamlined, regulatory route for the provision of building control... with oversight solely provided through Local Authority Building Control'.ⁱⁱⁱ We have been assured by the Ministry that building owners will not be able to choose their regulator. Whilst we have no reason to doubt that assurance, any suggestion that AIs will be able to compete for business in regulating high risk premises will undermine the quality of the service, by driving down either the rigour of inspections or their cost, which will then impact on rigour. No other local regulatory service operates in competition with private companies for the very good reason that to do so will undermine the safety of the public.

Once again, I wanted to thank the Committee for their valuable work on this issue and look forward to the publication of your report.

Yours sincerely

Lord Porter of Spalding, CBE

ⁱ <https://www.rockwool.co.uk/aboutus/news/2018/rockwool-analysis-shows-extent-of-combustible-materials-on-buildings/>

ⁱⁱ <https://www.bre.co.uk/filelibrary/Fire%20and%20Security/FI---Fire-safety-and-balconies-July-16.pdf>

ⁱⁱⁱ [Building a Safer Future – Independent Review of Building Regulations and Fire Safety P44](#)