

# Fire safety in high-rise buildings (private sector)

November 2018



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# **Fire safety in high-rise buildings (private sector)**

November 2018



# About the Committee

The Committee was established on 28 June 2016. Its remit can be found at:  
[www.assembly.wales/SeneddCommunities](http://www.assembly.wales/SeneddCommunities)

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## Committee Chair:



**John Griffiths AM**  
Welsh Labour  
Newport East

## Current Committee membership:



**Gareth Bennett AM**  
UKIP Wales  
South Wales Central



**Jayne Bryant AM**  
Welsh Labour  
Newport West



**Siân Gwenllïan AM**  
Plaid Cymru  
Arfon



**Mark Isherwood AM**  
Welsh Conservatives  
Islwyn



**Jenny Rathbone AM**  
Welsh Labour  
Cardiff Central



**Jack Sargeant AM**  
Welsh Labour  
Alyn and Deeside



**Leanne Wood AM**  
Plaid Cymru  
Rhondda

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The following Members were also members of the Committee during this inquiry:



**Janet Finch-Saunders AM**  
Welsh Conservatives  
Aberconwy



**Rhianon Passmore AM**  
Welsh Labour  
Islwyn



**Bethan Sayed AM**  
Plaid Cymru  
South Wales West

The following Member attended as a substitute during this inquiry:



**David Melding AM**  
Welsh Conservatives  
South Wales Central

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## Recommendations

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- Standards for persons undertaking fire risk assessments;
- A requirement for fire risk assessments to be undertaken as a minimum annually for high rise residential buildings;
- Clarification that fire doors which act as the front doors to flats are considered part of the communal areas and therefore covered by the legislation replacing the Fire Safety Order 2005. ....Page 16

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# 1. Introduction

18 months after the terrible tragedy at Grenfell Tower, it is imperative that the Welsh Government addresses on-going issues around fire safety in high-rise private sector residential buildings.

- 1.** Immediately following the horrific events at Grenfell Tower, we undertook work looking at fire safety in high-rise residential buildings in Wales. We initially focused on the social housing sector and were broadly reassured by what we heard from landlords, the fire and rescue services (the FRS) and the Welsh Government.
- 2.** However, as we continued to follow up this issue in correspondence with the Welsh Government; and monitored wider developments including the Grenfell Tower public inquiry and the Independent Review of Building Regulations and Fire Safety (commonly known as the “the Hackitt Review”), we became increasingly concerned that we had not looked in great detail at the issues facing high-rise buildings in the private sector in Wales.
- 3.** It was clear that while some of the basic issues were the same, there were additional complexities within the private sector. In particular, the range of different actors involved including managing agents, developers, leaseholders and residents, meant it was difficult to get a full understanding of the challenges.
- 4.** We took oral evidence from representatives of all the major parties involved including the Minister for Housing and Regeneration (the Minister). Our work also takes account of the Hackitt Review, and broader developments arising from the Grenfell Tower fire.
- 5.** The aim of this short report is to inform the work of Welsh Government and the Building Safety Expert Group, which the Minister established “to consider a Welsh response to the Independent Review’s recommendations and the extent of their application in and to Wales”. The Expert Group is expected to agree a “road map” in early 2019.<sup>1</sup>
- 6.** This report does not aim to set out all the evidence but provides a summary of our conclusions. We hope that it will prove useful to the Minister and Expert

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<sup>1</sup> [ELGC\(5\)-27-18 Paper 1 - Evidence from the Minister for Housing and Regeneration](#)

Group in drawing up the roadmap and prioritising the work that needs to be taken forward.

**7.** We accept that some of the actions we want to see taken may require primary legislation, which can take time to develop and bring forward. But it is essential that the Welsh Government acts with a clear sense of urgency on this issue. The safety of a person's home is a basic and fundamental foundation to their lives.

**8.** While accepting that a phased response is an appropriate response to such a complex and important issue, we believe that over a year after the terrible tragedy at Grenfell, we need to see more urgency in the Welsh Government's actions to ensure that issues beyond residents' control are not affecting their life choices or well-being.

**9.** In defining high-rise buildings, we share and support the Welsh Government's definition of buildings seven storeys high and above. We note that the Hackitt Review defined high-rise as 10 storeys and above. We are defining residential buildings as buildings where people live. We are aware that other buildings affected by these issues could include hotels, hospitals and social care settings where people may sleep on a temporary or permanent basis. However, we have not received evidence exploring the additional complexities around these buildings.

## 2. Effective building management is critical

We note buildings with Aluminium Composite Material (ACM) cladding have been identified but we still are concerned about other fire safety issues being identified. Managing agents play a key role in fire safety in high rise buildings. They are currently unregulated and we believe this needs to change.

**10.** The impetus behind this work was to better understand the issues of fire safety in high-rise private sector buildings across Wales. We knew there were buildings with ACM cladding, but were less clear on the number of buildings with other fire safety issues.

**11.** We note the Minister's confidence that all the buildings with ACM cladding had been identified.<sup>2</sup> However, we heard about other fire safety issues unrelated to cladding. In particular, a building known as "Property 4"<sup>3</sup> where invasive investigations concluded that it was of "a substandard build".<sup>4</sup> While it was reassuring to hear that interim measures had been put in place to reduce the fire risk, it raised a fundamental question as to how other such buildings would be identified. We consider the issue of invasive survey work in the next chapter on the Fire Safety Order.

**12.** The Welsh Government told us that while they were confident that they had identified all buildings with ACM cladding, they could "not possibly know for sure" if they were aware of all buildings with issues such as those identified in "Property 4". But they were confident that there was a greater awareness of fire safety issues amongst the public and professionals, resulting in people being "much more forthright" about raising concerns.<sup>5</sup>

**13.** The Chief Fire and Rescue Advisor and Inspector for Wales said that people in Wales are not living in unsafe blocks. He stated this was because interim measures have been put in place in those blocks where fire safety concerns have

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<sup>2</sup> ELGC Committee, 11 October 2018, RoP [32]

<sup>3</sup> "Property 4" is a building managed by Mainstay and was highlighted in their written evidence. Due to on-going discussions with the developer about remedial work, it was referred to as "Property 4" in the written evidence. Throughout the report, we also use this to refer to the property.

<sup>4</sup> FSPS06, [Mainstay written evidence](#).

<sup>5</sup> ELGC Committee, 11 October 2018, Record of Proceedings, [80]

been highlighted. He told us that the task is now about moving from interim measures to more sustainable and permanent measures.<sup>6</sup>

**14.** We note that the deficiencies that related to the build quality in “Property 4” were only identified because the managing agent had concerns about the quality of workmanship throughout the building. This brings us to the importance of the competence of the people responsible for managing a building. The evidence we heard focused on the role of managing agents.<sup>7</sup>

**15.** We took evidence from Mainstay, Warwick Estates and the Association of Residential Managing Agents (ARMA). Their evidence was reassuring regarding the work they are undertaking to ensure fire safety is maintained in residential high rise buildings.

**16.** We note that some managing agents belong to trade associations and professional bodies and agree to be bound by those organisations’ rules. However, there is no statutory regulation for people wishing to manage high rise residential buildings.

**17.** We know that there is a range of work currently being undertaken by the Welsh Government on issues around leasehold reform. We believe that there is a clear need for regulation of agents managing high-rise residential buildings. All managing agents who gave oral evidence supported this.<sup>8</sup> It will help set minimum standards in a range of areas, but most importantly in terms of resident safety. Reputable agents have nothing to fear from regulation, as we heard from the witnesses, and it will help create a fairer market.

**18.** As an interim measure, we believe the Welsh Government could look to change the remit of Rent Smart Wales to bring agents who manage high rise residential buildings into their purview. This could be a short term measure that would provide greater regulation while more comprehensive plans are developed and possibly primary legislation is brought forward.

**Recommendation 1.** We recommend that the Welsh Government establishes regulation of agents who manage high-rise residential buildings. In the interim, the Welsh Government should consider the feasibility of extending Rent Smart

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<sup>6</sup> ELGC Committee, 11 October 2018, RoP [106]

<sup>7</sup> A landlord is normally responsible for the overall management of a building. According to the Association of Residential Managing Agents, while some landlords may manage a building themselves, it’s more common for a professional managing agent to be appointed to do this on the behalf of the landlord.

<sup>8</sup> ELGC Committee, 27 September 2018, RoP [309-310]

Wales' remit to cover the licensing of managing agents for high-rise residential buildings in Wales.

### 3. The Fire Safety Order needs updating

We have identified a number of issues with the Regulatory Reform (Fire Safety) Order 2005, and call for it to be replaced with new legislation to address those issues. In particular, providing greater clarity of regulatory oversight on fire doors, and setting requirements for fire risk assessors.

**19.** The communal areas of high-rise residential buildings are covered by the *Regulatory Reform (Fire Safety) Order 2005* (commonly referred to as the “Fire Safety Order”). The Fire Safety Order places obligations on responsible persons to carry out a detailed fire risk assessment to identify any risks and hazards in buildings for which they are responsible. The Hackitt Review noted that under the Fire Safety Order there are usually a number of persons subject to the obligations of a Responsible Person for a building. In residential buildings it is usually the building owner, landlord or managing agent, but it can be any other persons with a degree of control over the premises.<sup>9</sup>

**20.** The Fire Safety Order only covers communal areas, and does not cover individual flats. Fire safety in individual flats is regulated by the Housing Act 2004. Enforcement action under the 2004 Act can be taken by local authorities.

**21.** One of the threads between our work on high rise buildings in the public and private sectors have been concerns around the Fire Safety Order. We have been calling for it to be revised since last year. Since April 2018; the subject matter of the Fire Safety Order has been devolved. However, the Minister highlighted that while it was now devolved, the powers under which the it was made (Section 1 of the *Regulatory Reform Act 2001*) have been repealed and therefore primary legislation would be required to make any changes.<sup>10</sup>

**22.** We want to see changes made to the Fire Safety Order. We believe this is a matter of critical importance and that the Welsh Government needs to prioritise bringing forward the changes we detail below.

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<sup>9</sup> [Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final report, paragraphs 3.10](#)

<sup>10</sup> [Letter from Minister for Housing and Regeneration, 12 June 2018](#)

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## Fire risk assessments

- 23.** The Fire Safety Order does not place any requirements on the competence or qualifications of a person undertaking a fire risk assessment. Mainstay told us that they use the Fire Risk Assessment Competency Council criteria as the basis for selecting fire risk assessors; in conjunction with the “associated qualifications”.<sup>11</sup>
- 24.** The Minister told us that she would “strongly endorse” the guidance produced by the National Fire Chiefs Council, called “A Guide to Choosing a Competent Fire Risk Assessor”.<sup>12</sup>
- 25.** We believe the lack of basic requirements set out in legislation is a clear gap, and is not in line with other comparable work such as gas safety checks.
- 26.** We note that our views on this issue differ from the Hackitt Review, which states that competence “should not be mandated” by Government.<sup>13</sup>
- 27.** In terms of how often a Fire Risk Assessment should be undertaken, we believe that for these types of buildings, they should be undertaken on an annual basis. We note that the interim report of the Hackitt Review recommended that fire risk assessments required by the Fire Safety Order should be undertaken on an annual basis. The final version of the report suggests that annual checks should continue until the move to the safety case review approach for all high-rise residential buildings.<sup>14</sup>

## Fire doors

- 28.** Another critical issue is fire doors and their importance in maintaining compartmentation in a building. Our references to fire doors throughout this report mean the front door of a flat, and do not cover internal fire doors within an individual flat. We were alarmed by the findings arising from the criminal investigation into the Grenfell fire, that one of the fire doors only provided 15 minutes protection when it was marketed as giving 30 minutes protection. Following this, we note that a number of fire doors from a range of manufacturers also failed similar safety tests.

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<sup>11</sup> ELGC Committee, 27 September 2018, RoP [306]

<sup>12</sup> ELGC Committee, 11 October 2018, RoP [49]

<sup>13</sup> [Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final report, paragraphs 3.38-](#)

<sup>14</sup> [Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final report, paragraphs 3.38-3.39](#)

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**29.** The Welsh Government wrote to all managing agents and owners of high rise buildings asking for fire risk assessments to be refreshed.<sup>15</sup> This is very welcome but we want more to be done. Whilst acknowledging that fire doors are only one component of preventing the spread of fire, we believe there should be more urgency in addressing the quality of fire doors. We hope that the Building Safety Expert Group’s roadmap (paragraph 5) emphasises the importance of dealing with these matters.

**30.** We note that the Welsh Government have issued guidance to responsible persons on fire doors. However, we believe there is a need for wider guidance to be issued to all affected parties.<sup>16</sup>

**Recommendation 2.** We recommend that the Welsh Government gives priority to addressing safety concerns surrounding fire doors and ensuring that all fire doors provide a minimum of 30 minutes protection. This should include providing guidance to residents, leaseholders, managing agents and developers in addressing concerns and replacing any current fire doors over which there are safety concerns.

**31.** During this work, and our earlier work last year, we had heard that as well as concerns about the quality of fire doors; residents may well make modifications which impact on the level of protection fire doors provide, or that they may replace fire doors with doors which do not provide any fire protection at all:

“People will change the front door to the flat, the fire door—put a cat flap in it or something—without realising the impact that has on the compartmentalisation.”<sup>17</sup>

**32.** Clearly this is a matter of serious concern. The managing agents told us that they would prefer for the manager of a building to be responsible for fire-doors at the entry to each flat.<sup>18</sup> This leads us to concerns about the lack of clarity in the Fire Safety Order.

**33.** All the stakeholders we spoke to talked about the lack of clarity on whether fire doors came under the Fire Safety Order. This was of particular concern to both

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<sup>15</sup> ELGC Committee, 11 October 2018, RoP [53]

<sup>16</sup> Welsh Government, [Regulatory Reform \(Fire Safety\) Order 2005, Fire Doors in Blocks of Flats and Similar Buildings, Guidance for Responsible Persons](#)

<sup>17</sup> ELGC Committee, 27 September 2018, RoP [331]

<sup>18</sup> ELGC Committee, 27 September 2018, RoP [366-369]

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the FRS and the managing agents. Witnesses told us that there was a “conflict” between the two pieces of legislation which cover fire safety (see paragraph 20).<sup>19</sup>

**34.** The Welsh Government acknowledged the confusion. This was because of the “piecemeal” approach in the past, and different pieces of legislation interacting with each other.<sup>20</sup>

**35.** The Chief Fire and Rescue Advisor said that while it was still open to interpretation, he believed the Order covered fire doors and in his professional opinion “there is no doubt whatsoever that we’ve got logic on our side, when you look at what the purpose of having those doors in high-rise buildings is”. He said the Welsh Government’s legal advice supported this.<sup>21</sup>

**36.** Greater clarity was later provided on the Welsh Government’s legal advice in correspondence. The Minister reiterated that while their legal position had not been confirmed by the courts, their interpretation of the legislation was that fire doors were covered by the Fire Safety Order.<sup>22</sup>

**37.** The Welsh Government’s position is clear, but we are concerned that it has never been confirmed by the courts. Whilst we are pleased that statutory guidance has been issued to all responsible persons on this important matter, there is still significant ambiguity and confusion.

**38.** While the Welsh Government may be clear that the Fire Safety Order covers fire doors, we heard from the individual FRS, that it was not clear. South Wales FRS told us:

“The Order we work within doesn’t explicitly say that fire doors are contained within the Order, so historically, when we’ve been dealing with fire doors, it can be quite a challenge.....

The responsibility can come down to a lease agreement or down to a contractual agreement, and to pick that apart in the first instance, before you even go any further, can be time consuming.”<sup>23</sup>

**39.** The legal advice we have received suggests a different interpretation. The Fire Safety Order does not apply to “domestic premises”. This is defined as “premises

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<sup>19</sup> ELGC Committee, 27 September 2018, RoP [370]

<sup>20</sup> ELGC Committee, 11 October 2018, RoP [56]

<sup>21</sup> ELGC Committee, 11 October 2018, RoP [58]

<sup>22</sup> Letter from the Minister for Housing and Regeneration, 18 October 2018

<sup>23</sup> ELGC Committee, 27 September 2018, RoP [55-57]

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occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises) which is not used in common by the occupants of more than one such dwelling”. We therefore remain unconvinced by an argument that flat doors are used by the occupants of more than one dwelling. Although the Minister’s letter makes two submissions in terms of safety and common sense, the Fire Safety Order as drafted does not clearly support this view.

**40.** Given the evidence received in relation to the importance of fire doors and their integrity for fire safety the Committee strongly recommend that the Fire Safety Order is replaced to clarify and to remove all doubt that fire doors are included within the ambit of common areas and subsequently within the jurisdiction of the respective FRS.

**Recommendation 3.** We recommend that the Welsh Government brings forward new legislation to replace the Regulatory Reform (Fire Safety) Order 2005 in the current Assembly term. We believe this should be prioritised as part of the roadmap the Building Safety Expert Group is preparing. The new legislation should include:

- Standards for persons undertaking fire risk assessments;
- A requirement for fire risk assessments to be undertaken as a minimum annually for high rise residential buildings;
- Clarification that fire doors which act as the front doors to flats are considered part of the communal areas and therefore covered by the legislation replacing the Fire Safety Order 2005.

## Invasive building surveys

**41.** As we highlighted in paragraph 11, as part of this work we explored the issues around “Property 4”. The substantive problems with this property were only highlighted after a detailed passive and structural fire protection survey of the building was undertaken. This was commissioned by the managing agent, Mainstay, following concerns about the quality of workmanship around the building. This survey concluded the building was of a sub-standard build and there were major issues of non-compliance with a large risk to life.<sup>24</sup> As a result interim fire safety measures were put in place to mitigate these risks, and the building is considered safe for occupation.<sup>25</sup> Whilst we were reassured by the

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<sup>24</sup> [FSPS06 Mainstay written evidence](#)

<sup>25</sup> ELGC Committee, 27 September 2018, RoP [244-258]

actions of the managing agent, it did raise a fundamental question as to whether the issues would have come to light if the agent had not commissioned the survey.

**42.** Mid and West Wales Fire and Rescue Service said that such “invasive level 4 surveys” which had identified the issues, cannot be undertaken by the FRS. This was for a range of reasons, including a lack of resources; and the need for further training to ensure their assessors would have the requisite expertise.<sup>26</sup> North Wales FRS also highlighted that the legislative powers within the Fire Safety Order do not give FRS the powers to undertake such surveys:

“So, for us to do more invasive surveys and actually start taking things apart and having a proper look, yes, we would need that training, but we’d need the legislation and support to be able to do that as well.”<sup>27</sup>

**43.** Without the managing agent going beyond basic legal requirements, people could have unknowingly been living in a building that was potentially dangerous. This highlights the importance of effective investigations into the fire safety of a building. Whilst we have not been able to take more detailed evidence on the effectiveness of invasive surveys, we believe this example highlights the need for the Welsh Government to investigate further whether there is a need for a more systematic approach to undertaking them on all high-rise residential buildings. We certainly think that any new fire safety legislation should provide FRS with the powers to be able to undertake these surveys if necessary.

**Recommendation 4.** We recommend that the Welsh Government explores the feasibility of ensuring invasive level four surveys for all high-rise residential buildings. This should include the impact on fire and rescue services’ capacity, levels of skills and expertise needed and the lifting of any legislative restrictions.

**Recommendation 5.** We recommend that the Welsh Government ensures that any changes in the fire safety legislation as called for in recommendation 3, provides fire and rescue services with the legislative powers to require level 4 invasive surveys.

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<sup>26</sup> ELGC Committee, 27 September 2018, RoP [43-45]

<sup>27</sup> ELGC Committee, 27 September 2018, RoP [47]

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## 4. Effective, enforced and robust building regulations are paramount

Building Regulations are key to ensuring buildings are safe. We want to see a number of changes to improve the process, and reduce the disconnect between a design on paper and the final constructed building.

**44.** Throughout our work the importance of effective building regulations has been absolutely clear. The findings of the Hackitt Review should strongly influence the approach taken in Wales in relation to the creation of a Joint Competent Authority (JCA) for high rise residential buildings.

**45.** The JCA would bring together local authority building standards (the proposed new name for local authority building control), fire and rescue authorities and the Health and Safety Executive to oversee the management of safety risks throughout the whole life cycle of a building from construction, to occupation and refurbishment. We hope to see the Building Safety Expert Group follow a similar approach in Wales.

**Recommendation 6.** We recommend that the Welsh Government commit to the establishment of a new regulatory framework that follows the JCA model outlined in the Hackitt Review.

### Role of the FRS in the development process

**46.** The FRS highlighted that they are often involved too late in the development process to really influence the design of a building.<sup>28</sup> We heard that early consultation is critical to avoid key hazards.<sup>29</sup> We note that the Hackitt Review talks about the importance of engaging with the FRS at planning permission stage but that this is focused on ensuring there is sufficient access to building by the FRS.<sup>30</sup>

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<sup>28</sup> ELGC Committee, 27 September 2018, RoP [126]

<sup>29</sup> ELGC Committee, 27 September 2018, RoP [124]

<sup>30</sup> [Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final report, paragraphs 2.27 – 2.28](#)

**47.** The Hackitt Review’s final report expands on this, and calls for detailed specifications of building works including fire and structural safety being provided as part of a full plan’s approval. We strongly support this.

**48.** Mid and West Wales Fire and Rescue Service described that while they will respond to consultations during the Building Regulations approval process, it is at the building control officer / approved inspector’s discretion as to whether they will incorporate the FRS observations.<sup>31</sup> North Wales FRS said:

“...when a building’s being developed or extensively refurbished and it comes under building control, the powers sit with building control—we can just advise and give advice and give observations. And we do that based on our relationships with local authority building control. But the challenges, are again when you’re looking at approved inspectors, you may not actually see any plans until it’s completed. And, by then, it’s too late.”<sup>32</sup>

**49.** We are pleased that the Minister told us that she was looking to involve the FRS “more formally in the planning process”.<sup>33</sup>

**50.** We therefore call on the Welsh Government to address when and to what extent the FRS are involved in the planning and building regulation process for high rise buildings. It is our view on the evidence we have heard that they need to be included earlier in the process, and that their comments should be given more weight in the process. FRS advice must be done at a stage in the planning and building regulation process, which enables maximum influence to ensure the building design takes full account of fire safety, and is engineered in a way to best minimise the risk of a catastrophic fire.

**Recommendation 7.** We recommend that the Welsh Government consider how the planning and building regulation process can be revised to ensure the Fire and Rescue Services are included much earlier in the process so that their fire safety expertise can be utilised to ensure high-rise residential buildings can adequately resist fire.

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<sup>31</sup> ELGC Committee, 27 September 2018, RoP [102]

<sup>32</sup> ELGC Committee, 27 September 2018, RoP [126]

<sup>33</sup> ELGC Committee, 11 October 2018, RoP [16]

## Minimising the difference between design and build

**51.** It was alarming to hear most witnesses acknowledge that there can be a difference between the building design and what is eventually constructed. We heard that this could be for a number of reasons, but the two biggest factors are:

- A wide range of competence by contractors and sub-contractors and the level of supervision on-site;
- An inspection regime which is not resourced and has insufficient powers to closely monitor what is happening on every build.

**52.** North Wales FRS told us that during the construction process you will encounter problems that were not foreseen, and that builders then have to work out how to overcome these problems. They said drawing up plans on paper is “easy” but the reality of implementing the plans “is totally different”. Additionally if on-site workers are not highly skilled, this can cause problems.<sup>34</sup>

**53.** Mid and West Wales FRS told us that as well as the competence of tradespeople on-site, these problems can also arise because of a lack of supervision.<sup>35</sup> On matters of competence on-site they said:

“...even though the guys may be entirely competent in doing what they’re doing, they’re doing it in the wrong way through lack of understanding of what was meant to be done, not because they’re incompetent in doing it....”<sup>36</sup>

**54.** We heard from Viridis, a developer, how they try to ensure the differences between design and construction are minimised. They employ the architect to continue in a quality assurance role once construction begins.<sup>37</sup> This involves regular (often weekly) inspection visits. We commend this good practice.

**55.** In discussing their recent development in Cardiff, they told us that because the construction involved building the same set of units to the same specification repeatedly, they benchmarked quality early in the process to ensure that any deficiencies were not repeated throughout the build.<sup>38</sup>

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<sup>34</sup> ELGC Committee, 27 September 2018, RoP [66-67]

<sup>35</sup> ELGC Committee, 27 September 2018, RoP [132]

<sup>36</sup> ELGC Committee, 27 September 2018, RoP [132]

<sup>37</sup> ELGC Committee, 25 October 2018, RoP [237]

<sup>38</sup> ELGC Committee, 25 October 2018, RoP [278]

**56.** They outlined that as a developer there is a heavy reliance on the main contractor to ensure that effective quality assurance is undertaken. However, it is in the contractor's best interest to do this properly if they want to be successful in further bids for business. Quality assurance is a mixture of paperwork, and physical checks.<sup>39</sup>

**57.** It was reassuring to hear from a developer of the ways in which they try to minimise the disconnect between plans on paper and the final building. We note though that we were only able to secure the attendance of one developer to give oral evidence. It is disappointing that others were either unwilling or unavailable, as we are unable to identify if Viridis follows standard practice across the sector, or whether they go beyond usual sector standards. We would hope it is the former, but we are not in a position to make that judgement.

**58.** We believe the good practice of Viridis, where the architect is placed on a retainer to undertake quality assurance, and is provided with whistle-blower protection<sup>40</sup> should be replicated across the construction industry, and in particular for high-rise residential buildings.

**Recommendation 8.** We recommend that the Welsh Government assesses the effectiveness of quality assurance of building works, and considers whether best practice can be mandated through regulation.

**59.** On the other weakness in this phase of the life cycle of a building, we heard from Local Authority Building Control (LABC) that they are not present throughout the construction phase, and that they only take "a snapshot" on a site visit. Cardiff Council told us that they "rely on other fellow construction professionals to do their part of the process".<sup>41</sup> They described the system as relying on trust.<sup>42</sup>

**60.** The Head of Shared Regulatory Services for Bridgend, Cardiff and Vale of Glamorgan told us that 25 years ago, regulatory services<sup>43</sup> would be on a site, and that there was a "a little bit of a bobby on the beat-type thing. Somebody might come along and somebody might take a look". But now he said "they've probably not seen us for 20 years...". He also described the impact of changes to the industry, where once materials were locally sourced and made, now they come

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<sup>39</sup> ELGC Committee, 25 October 2018, RoP [278]

<sup>40</sup> ELGC Committee, 25 October 2018, RoP [264]

<sup>41</sup> ELGC Committee, 27 September 2018, RoP [499]

<sup>42</sup> ELGC Committee, 27 September 2018, RoP [530]

<sup>43</sup> This could encompass Building Control; Environmental Health and Trading Standards Officers.

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from around the world, and you have to rely on their certification to demonstrate they comply with requirements.<sup>44</sup>

**61.** They explained that they simply did not have the resources to undertake this level of work.

“In 1991, when the regulations first came in, it’s an oddity that we had a community of capable enforcers in the trading standards service, reasonably well resourced, but a set of regulations that were difficult to apply. That’s now turned upside down; we have a fairly robust set of regulations, but we don’t have the competent enforcers and the resources anymore.”<sup>45</sup>

**62.** We note that Viridis said that Building Control do not have enough time on site to actually see issues.<sup>46</sup>

**63.** We acknowledge that after nine years of austerity, local authorities have had to make difficult decisions about resources, and that regulatory services, such as Building Control; Environmental Health and Trading Standards have faced the brunt of some of those decisions. We also highlight the importance of regulatory services, and how they play a key role in the preventative agenda that is at the heart of the approach all public services should be taking, and which is a legislative duty placed on them by the *Well-Being of Future Generations (Wales) Act 2015*.

**64.** We believe that as part of the roadmap that the Building Safety Expert Group is drawing up, further detailed consideration is needed on how local authority regulatory services can be supported to ensure that they are able to provide more regular and unannounced inspection visits. While we note that Building Control charge for their inspection services, as we detail in the next section, they are competing in a market place for this business. We also note the Welsh Government’s evidence:

“The fact is that local authorities are bidding for work. They’re competing with the private sector. There are actually regulations that allow the local authority to set its fee level, intended to break even over a three-year period, but, in fact, those regulations are not working as intended, because of the need to compete. Now, the fact is that

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<sup>44</sup> ELGC Committee, 27 September 2018, RoP [518]

<sup>45</sup> ELGC Committee, 27 September 2018, RoP [515]

<sup>46</sup> ELGC Committee, 25 October 2018, RoP [235]



resources have been reduced in local authorities, and there are serious capacity and competence issues, which have been flagged up. This whole balance between the private sector and local authorities is something the review is going to have to look at.”<sup>47</sup>

**Recommendation 9.** We recommend that the Welsh Government brings forward changes to the building regulation system for high rise residential buildings which provides for more regular on-site inspections during the construction stage by Local Authority Building Control.

## A conflict of interest?

**65.** Developers are allowed to choose between local authority building control (LABC) or an approved inspector (AI) from the private sector to provide regulatory oversight of the construction stage. The Hackitt Review is clear that this should not continue:

“Recommendation 2.11

a. It should not be possible for a client to choose their own regulator or for a regulator to be unable to apply sanctions against a duty holder where such action is warranted.”<sup>48</sup>

**66.** The report adds that for all high risk residential buildings (which the Hackitt Review defines as buildings of 10 storeys or higher) that oversight should only be provided by LABC.

**67.** We strongly endorse this approach, and want to see it applied in Wales, for all high rise residential buildings, which we define as being 7 storeys or higher, and as buildings where people live permanently (see paragraph 9).

**68.** However, while making LABC the responsible regulator, LABC should be able to appoint qualified Approved Inspectors to undertake this work, if resources or a lack of suitable expertise within the local authority do not allow the LABC to do the work themselves. However, the certification would be issued by the LABC, and they would be ultimately responsible for any issues arising from failings in the certification process.

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<sup>47</sup> ELGC Committee, 17 October 2018, RoP [85]

<sup>48</sup> [Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final report, recommendation 2.11](#)

**69.** We heard from an LABC that there is a clear conflict between their need to compete for business from developers in their role as building inspectors; and their other role as an enforcer of standards. Cardiff Council was very frank:

“The impact of that [reduction in resources and financial support] is obvious in terms of trying to resource enforcement action, and every other part of our business. But, coupled with that is the fact that enforcement and competition don’t exactly go hand in hand. They don’t sit comfortably. If we have a reputation for being heavy handed with enforcement against developers, then we will lose that work, readily to the private sector, and we can’t continue to maintain that either.”<sup>49</sup>

**70.** It was interesting to hear from a developer, that their preference would be to only have to deal with one inspection body. Viridis highlighted that the regulatory framework is very complicated, and it would be easier if they had to rely on one trusted source.<sup>50</sup>

**71.** We have touched on the impact of resource cuts in the previous section (paragraphs 59-63). We were concerned to hear that LABC are selected for approximately only 40% of high-rise residential buildings in Cardiff.<sup>51</sup> This is why we believe it is essential that the regulatory framework in Wales is changed as a matter of high priority to reflect the recommendations in Hackitt, to remove the choice of regulatory inspector for high-rise residential buildings.

**Recommendation 10.** We recommend that the Welsh Government urgently change the regulatory framework to only allow local authority building control to act as the regulator for high-rise residential buildings of seven storeys or higher. However, in changing the framework, LABCs should be able to appoint approved inspectors to undertake the work on their behalf.

## Building materials

**72.** It was striking to hear Viridis say that ACM cladding is now viewed in the industry in the same way that asbestos is.<sup>52</sup>

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<sup>49</sup> ELGC Committee, 27 September 2018, RoP [570]

<sup>50</sup> ELGC Committee, 25 October 2018, RoP [235]

<sup>51</sup> ELGC Committee, 27 September 2018, RoP [587]

<sup>52</sup> ELGC Committee, 25 October 2018, RoP [298]

**73.** On the issue of combustible materials being used in residential buildings, Viridis told us that these materials would not be allowed in other countries:

“The products that they sold in the UK complied with the regulations here, and can be used in various combinations to achieve the required compliance, which is what’s happened with us. But, in isolation, the product just sat on the edge of performance. Whereas in Europe, they just didn’t take the risk—they’d say, ‘We just don’t use that’, because then there’s no question about workmanship.”<sup>53</sup>

**74.** We note that the Welsh Government has consulted on banning the use of combustible materials in the inner leaf, insulation and cladding that are used in external wall systems on these buildings.<sup>54</sup> We look forward to hearing the findings from this consultation.

**75.** While we have touched on the testing regime, we have not taken sufficient evidence to make any recommendations or conclusions. We noted the evidence from the Minister that the testing capacity in the UK is significantly reduced and that some testing is having to be done in Germany, France and Dubai.<sup>55</sup>

**Recommendation 11.** We recommend that the Welsh Government updates the Committee in six months’ time on capacity in the UK for testing material and any impact that has had on fire safety in high-rise residential buildings in Wales.

## Retro-fitting of sprinklers

**76.** Wales is already ahead of the rest of the UK in relation to mandating the use of sprinklers in new-builds. However, most of the high-rise buildings in Wales were built before the *Domestic Fire Safety (Wales) Measure 2011* was commenced. The FRS told us that they have not seen any increase of retro-fitting sprinklers in the private sector.<sup>56</sup> They also told us that they will always mention sprinklers during the building regulations process but “we’ve never had any take-up”.<sup>57</sup> While we did not explore the issue of retro-fitting sprinklers in great detail, it was a matter that was touched upon during the evidence.

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<sup>53</sup> ELGC Committee, 25 October 2018, RoP [251]

<sup>54</sup> Welsh Government, [Consultation on Banning the use of combustible materials in the external walls of high-rise residential buildings](#)

<sup>55</sup> ELGC Committee, 11 October 2018, RoP [87]

<sup>56</sup> ELGC Committee, 27 September 2018, RoP [156]

<sup>57</sup> ELGC Committee, 27 September 2018, RoP [162]

**77.** In particular, it was interesting to hear Viridis talk about how in their recent development the inclusion of fire sprinklers took the pressure off everything else in terms of the fire safety of the building.<sup>58</sup>

**78.** We heard that retro-fitting sprinklers is potentially far more complex in private sector buildings, because all leaseholders have to agree to installation. The Welsh Government told us that they were aware of occasions where building owners wanted to retrofit, but that individual leaseholders “absolutely do not want the sprinkler system fitted within their properties...”.<sup>59</sup>

**79.** The Minister told us that she was considering what more the Welsh Government could do to encourage or incentivise retrofitting in multiple occupancy buildings. She said that at this stage they cannot currently require building owners to retrofit.<sup>60</sup>

**80.** We understand that there are additional obstacles around retrofitting in the private sector, most fundamentally that there may be resistance from individual leaseholders. There are also human rights considerations to be taken into account, namely Article 8 of the European Convention of Human Rights. Article 8 provides a qualified right for your family and private life, your home and your correspondence. It is a qualified right so not a bar to possible legislation in this area but careful consideration would have to be given to this issue.

**81.** Notwithstanding these difficulties, we would like to see the Minister outline further what work she is doing to encourage and incentivise retrofitting sprinklers. We believe there would be a benefit and improvement to fire safety in high rise residential buildings if retrofitting became more widespread across Wales.

**Recommendation 12.** We recommend that the Welsh Government outline what actions it is taking to encourage or incentivise the retrofitting of sprinklers in the private sector.

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<sup>58</sup> ELGC Committee, 25 October 2018, RoP [258]

<sup>59</sup> ELGC Committee, 11 October 2018, RoP [94]

<sup>60</sup> ELGC Committee, 11 October 2018, RoP [93; and 96]

## 5. Leaseholders and residents have faced over a year of worry and uncertainty.

The impact on leaseholders and residents has been significant. We support the view that leaseholders should not be liable for the costs of remedial work.

**82.** Throughout our consideration we have been pleased by the work that has been undertaken to provide residents and leaseholders with information and reassurance about the safety of their homes. We acknowledge that we may well have heard of the best examples, and that there may be a mixed picture across Wales. However, the evidence we heard seemed to indicate that there has been good dissemination of information to residents.<sup>61</sup> The Welsh Government told us that they used the approach taken by Newport City Homes in resident engagement as the “gold standard”.<sup>62</sup>

**83.** We note that there are a number of complicating factors in the private sector, as there will be a mixture of tenure within any single building, comprising of private tenants, owner-occupiers and potentially social housing tenants. One of the issues we have touched upon during this work are the complexities around leasehold.

**84.** All of our witnesses mentioned the fact that leaseholders often are not fully aware of their rights and responsibilities, and that leases can be unclear. In terms of fire safety, this was an issue that was particularly raised in relation to fire doors. However, more generally we acknowledge the evidence we heard that often people do not fully understand what they are taking on when buying leasehold properties.

**85.** We know this is a matter that the Welsh Government is currently looking at with the establishment of the Leasehold Task and Finish Group which is due to report its findings to the Government by Summer 2019.

### Who should pay for the remedial work?

**86.** One of the main outstanding questions is who will pay the costs for remedial work to bring buildings up to safety standards. While most of the discussion

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<sup>61</sup> ELGC Committee, 11 October 2018, RoP [102]

<sup>62</sup> ELGC Committee, 11 October 2018, RoP [103]

around this has focused on those buildings with ACM cladding, it is also relevant for other buildings. Mainstay explained that the remedial work needed on “Property 4” was £3.7 million.<sup>63</sup>

**87.** The uncertainty around who will be liable is clearly having a significant personal impact on leaseholders. The managing agents for Prospect Place in Cardiff told us that they are getting queries on a regular basis about the impact of the safety concerns, “yes there are people who can’t rent or sell at present within those buildings, or if they would, they’d be significantly lower than what they should be at this point”.<sup>64</sup>

**88.** We are pleased with the announcement that the removal of ACM cladding at the properties in Prospect Place, Cardiff, will be paid for by Bellway, the initial developer. We hope this will be followed by other developers paying for remedial work to ensure buildings meet fire safety standards.

**89.** The Minister in both correspondence<sup>65</sup> and oral evidence was very clear that she does not want to see leaseholders meeting the cost. We support her position on this. But we are concerned that we are over a year since the terrible tragedy at Grenfell, and leaseholders in some blocks are still unclear as to who will pay. As ARMA said, this will be causing undue stress and concerns for residents, including restricting their ability to move. They commented:

“In ARMA, when we did our study, we were talking to over 5,700 families who can’t sell, can’t move, if they have to go for a job. It’s placing these people under a lot of difficulty and they also have the additional worry of potential financial strain on them in coming years.”<sup>66</sup>

**90.** We also note that when some of these cases in England have gone to tribunals, leaseholders have been found liable for the work required. Although it has been suggested that leaseholders could claim against a number of different parties to reclaim some of these costs, including under the insurance / warranty; providers of cladding; developers; building control bodies and even the Government if it is found that the building regulation regime was not fit for purpose. However, such legal claims would take time, and there would be no guarantee of success.

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<sup>63</sup> [FSPS 06 Mainstay written evidence](#)

<sup>64</sup> [ELGC Committee, 27 September 2018, RoP \[364\]](#)

<sup>65</sup> [Letter from the Minister for Housing and Regeneration, 9 July 2018](#)

<sup>66</sup> [ELGC Committee, 27 September 2018, RoP \[233\]](#)

**91.** We are sympathetic to the calls from ARMA and the Residential Landlords Association for a low interest loan fund to be made available to cover remedial costs. Mainstay also supported this saying that making sure the right people are paying means things cannot be fixed overnight “unless there is...a pool of money into which people can dip and use legitimately while they have those discussions”.<sup>67</sup>

**92.** We explored whether a cap on service charges would achieve a similar result, but the managing agents were very clear that this would not work. ARMA told us that service charges are “a zero-sum game There’s no profit in there”.<sup>68</sup>

**93.** South Wales FRS acknowledged the problems and called for a formal scheme of arbitration which would “expediate matters”.<sup>69</sup>

**94.** The Committee is not aware, at the time of writing, of any cases going to tribunal in Wales. We believe it is essential that if there are any disputes about who will cover costs, the Welsh Government takes all available steps to ensure that remedial work is not held up because of disputes about liability. This could either take the form of a formal scheme of arbitration or providing either low interest or interest free loans to ensure that work is done as soon as possible.

**Recommendation 13.** We recommend that the Welsh Government liaises with the UK Government to identify any common approaches that can be taken in relation to addressing concerns about the cost of remedial work and leaseholders being held liable.

## Personal evacuation plans

**95.** During our work on fire safety in social housing, we were told that social housing providers keep personal evacuation plans (PEPs) for residents who may need additional support during an evacuation. These were kept in a location in the building known to the FRS. We thought this was a good idea. We therefore explored whether there were similar provisions within the private sector.

**96.** We heard that they were not very widespread in the private sector. North Wales FRS told us that they’ve offered the support to do this, but that the “take-up from it has not happened”.<sup>70</sup> Mid and West Wales FRS described the limitations of PEPs, saying that while they are useful, they cannot take account of everybody

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<sup>67</sup> ELGC Committee, 27 September 2018, RoP [272]

<sup>68</sup> ELGC Committee, 27 September 2018, RoP [276]

<sup>69</sup> [FSPS09 South Wales Fire and Rescue Service](#)

<sup>70</sup> ELGC Committee, 27 September 2018, RoP [176]

who at any particular time may have mobility issues, for example someone who may be temporarily incapacitated because of an accident. Yet even taking this into account they said they would like to see PEPs more widespread within the private sector.<sup>71</sup>

**97.** The Welsh Government highlighted the additional barriers in the private sector, saying that the relationship between a leaseholder and a managing agent is very different to one between a tenant and a social housing provider.<sup>72</sup>

**98.** We believe more work should be done to encourage the use of PEPs within the private sector. While we acknowledge that they have their limitations, and in particular cannot take account of temporary mobility issues, we still believe they have merit and could play an important role in an emergency situation. We welcome the commitment from the Welsh Government to raise this with the Leasehold Reform Group.

**Recommendation 14.** We recommend that the Welsh Government explore with the Building Safety Expert Group and the Leasehold Reform Group as to how the use of personal evacuation plans can be encouraged and supported in private sector high rise buildings.

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<sup>71</sup> ELGC Committee, 27 September 2018, RoP [179]

<sup>72</sup> ELGC Committee, 11 October 2018, RoP [112]