

The Hackitt Review and fire safety in high rise buildings

Purpose of report

For discussion.

Summary

This report outlines the recommendations from the final report of the independent review of building regulations and fire safety led by Dame Judith Hackitt published in May, the implications of these for fire and rescue authorities, and the LGA's other building safety related work since the last Committee meeting.

Recommendations

That Fire Services Management Committee:

1. Note the publication of the final report from the independent review of building regulations and fire safety, and the government's announcements in response.
2. Comment on the review's recommendations and the implications for fire and rescue authorities to inform future LGA work.
3. Note and comment on the LGA's other building safety work.

Actions

Members' views on the review's recommendations will be used to inform the LGA's response to them and its lobbying around the government's plans to reform the building regulation and fire safety system.

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Background

1. Since the Committee's last meeting the final report from the independent review of building regulations and fire safety led by Dame Judith Hackitt has been published, while the government has also made a range of announcements related to the national building safety programme. This paper updates FSMC on the final recommendations of the Hackitt Review, the government's announcements and associated LGA work related to fire safety in high-rise buildings.

Investigation into the cause of the fire

2. The cause of the fire at Grenfell Tower and the reason it spread so quickly through the tower block is still the subject of an on-going investigation by the Metropolitan Police (MPS). However details of what happened on the day of the fire have started to emerge from the public inquiry chaired by Sir Martin Moore-Bick. From the expert reports that have been published it appears the fire started in the kitchen of a flat on the fourth floor, then travelled out of the window and took hold in the cladding system on the outside of the block.
3. These expert reports suggest there were a number of deficiencies with the refurbishment of Grenfell Tower, which they conclude failed to meet the fire safety standards set out in the building regulations. The deficiencies identified include:
 - 3.1. the fact that the core of the aluminium composite material (ACM) panels and the insulation used were combustible;
 - 3.2. the incorrect installation of cavity barriers, which meant a chimney effect was created in the cladding system;
 - 3.3. the materials used around the window frames allowed the fire to spread back into other flats rather than stopped its spread; and
 - 3.4. the absence of door closers on many front doors meant they were inadvertently left open, contributing to the breaching of compartmentation in the block.
4. These deficiencies will be further explored in the week leading up to the Committee meeting, as the inquiry starts to take oral evidence from the expert witnesses. Having heard from the experts the inquiry will then hear further evidence about the outbreak of the fire including from London Fire Brigade personnel who attended the flat and the fire in its initial stages.

The independent review of building regulations and fire safety

5. At its meetings in January and March FSMC considered the interim report published on 18 December 2017 by the independent review of building regulations and fire safety led by Dame Judith Hackitt; the LGA's response to the interim report; and our engagement in the review's second phase of work. The review's [final report](#) was published on 17 May 2018. A summary of the main sections of the report are set out below.

A new regulatory framework

6. In the report Dame Judith Hackitt sets out a proposal for a new regulatory framework for residential properties 10 or more storeys high – higher risk residential buildings (HRRBs). At the heart of this new framework is a new regulator, the Joint Competent Authority (JCA), to oversee better management of safety risks. This will not be a new body, but rather a mechanism for existing regulators (council building control functions, fire and rescue services and the Health and Safety Executive) to operate collectively to ensure the safety of HRRBs. The JCA will be funded on a cost recovery basis. Under the proposals a mandatory incident reporting system will also be put in place.

Design construction and refurbishment (chapter 2)

7. The proposals envisage 'dutyholders' with responsibility for building safety at the design, construction and refurbishment stage and also at the occupancy stage of the building's life cycle. Dutyholders will be subject to rigorous and demanding duties and responsibilities. The report suggests three Gateway Points are established where the dutyholders will have to satisfy the JCA they have met a robust set of criteria before they can progress on to the next stage in constructing a new HRRB. It also recommends the JCA has effective sanctions and powers to penalise non-compliance. Any significant changes from the approved full plans will need to be notified to the JCA. Building control oversight for HRRBs will be solely provided by councils.

Occupation and maintenance (chapter3)

8. Once occupied HRRBs will need to have a dutyholder with responsibility for the safety of all parts of the building, with a nominated building safety manager to manage the building on a day-to-day basis and act as a point of contact. The dutyholder will have to regularly demonstrate to the JCA that they are discharging their responsibilities, and as part of this process dutyholders for existing buildings will need to gather information on the design, structure and materials used. Residents will also have clear obligations to maintain the safety of their flats.

Residents' Voice (chapter 4)

9. In the report Dame Judith sets out measures to provide reassurance and recourse for residents, including a no-risk route for residents to escalate concerns about safety to an independent statutory body, potentially the suggested single housing ombudsman. The report also proposes that dutyholders should have resident engagement strategies in place and that residents should have access to fire risk assessments, safety case documentation and information on maintenance and asset management.

Competence (chapter 5)

10. To overcome the concerns that the current approach to levels of competence is disjointed and not rigorous enough, the report recommends that professional and accreditation bodies should present a coherent approach to government within one year that sets out the remit and role of an overarching body to provide oversight of competence requirements of competent people working on HRRBs.

Guidance and monitoring (chapter 6)

11. Dame Judith proposes that the responsibility for developing guidance on building regulations and fire safety should be moved to industry, with government support and a new structure to validate and assure guidance. The report argues that the full suite of building regulation guidance should be owned by industry who are accountable for managing risk and have an incentive to ensure that guidance keeps pace with innovation. The key focus is on building regulation guidance, but the report also suggests that the Fire Safety Order be reviewed and updated as necessary. It is proposed that there should be a periodic review, at least every five years, of the effectiveness of the whole system.

Products (Chapter 7)

12. Dame Judith's interim report sought to restrict the use of assessments in lieu, known as "desktop studies". The final report notes that the government is taking this recommendation forward and does not propose further restrictions on their use. The report notes that using products that are non-combustible or of limited combustibility is "undoubtedly" a lower risk option. But, rather than recommending that combustible products on the outside of HRRBs be banned, the final report argues that a system of mitigation be put in place when using materials that are required to pass a full system test. The report recommends that a more transparent and more effective specification and testing regime of construction products must be developed and that products that are critical to the safety of HRRBs should be subject to periodic retesting to ensure that quality and integrity has been maintained over time in production. In addition the report recommends that all products used in HRRBs must be traceable. A strengthened

compliance regime is proposed possibly through an extended remit for the Office of Product Safety and Standards.

Building information (chapter 8)

13. The report recommends the creation of a digital record throughout the building life cycle. A Business Information Modelling approach is proposed, which the report says will enable the dutyholders to ensure accuracy and quality of design and construction, and a suitable evidence base to maintain the safety and integrity throughout the life cycle of the building. The review also recommends that for existing buildings a set of minimum building data be included in the safety case provided to the JCA when the building is being refurbished or assessed.

Procurement and supply (chapter 9)

14. The review states that the aim of the procurement process should be to obtain best value rather than lower cost. The review recommends that for HRRBs principal contractors and clients should devise contracts that specifically state that safety requirements must not be compromised for cost reduction. Tenders should propose how any proposed building solution results in safe buildings.

Government's response

15. In his response to the report on 17 May 2018, the Rt. Hon. James Brokenshire MP, Secretary of State for Housing, Communities and Local Government, said that the government agreed with Dame Judith's analysis that the current system of building regulation is not fit for purpose, and supported the principles behind the report's recommendations for a new system. The Secretary of State went on to add that the government also agreed the system should be overseen by a more effective regulatory framework, with stronger powers to inspect high-rise buildings and stronger sanctions to tackle irresponsible behaviour. In addition the Secretary of State announced the government would be:

15.1. launching a consultation on banning the use of combustible materials in cladding systems on high-rise residential buildings;

15.2. banning desktop studies if the recent consultation – which closed on 25 May – does not demonstrate that they can be safely used;

15.3. ensuring residents have a better mechanism for blowing the whistle on landlords who do not maintain safe buildings;

- 15.4.changing the law to achieve meaningful and lasting reform of the building regulatory system, with strong sanctions for those who fail to comply;
- 15.5.inviting views on how culture and practice could start to be changed immediately, with the government using the responses to inform a more detailed statement in the autumn on how it intends to implement major reform of the regulatory system; and
- 15.6.restructuring building regulations fire safety guidance to ensure it is clear.

LGA response to the report

- 16. The LGA's immediate response to the report centred on the absence of recommendations to prohibit the use of combustible material in cladding systems on high-rise residential buildings and to ban the use of desktop studies. Reforms of this sort to the building regulation system would address concerns about the robustness of the testing regime, issues with the clarity of information on a product's performance as well as the ease of identifying it once in use the report seeks to address. The Secretary of State's commitment to consult on banning the use of combustible materials in cladding systems in response to the report's publication was therefore a welcome response to LGA lobbying.
- 17. Looking ahead we will want to consider the report's recommendations in more detail, and their implications for councils and fire and rescue authorities. Many of the recommendations in the report reflect LGA positions and our lobbying including a new regulator that brings together building control, fire and rescue services and the Health and Safety Executive; the creation of duty holder roles and responsibilities; treating HRRBs as a single entity for regulatory purposes; the introduction of Gateway Points which have to be passed before work can progress; clear obligations on residents of HRRBs around fire safety; and an improved testing regime for products.
- 18. It would be useful to have members' views on the recommendations and what they mean for fire and rescue authorities to guide further LGA work in this area, and to aid that discussion the following paragraphs highlight some of the issues the LGA will need to consider.

Implications for fire and rescue authorities

- 19. The final recommendations in the report have significant implications for fire and rescue authorities (FRAs). As a key element of the new tripartite regulator, the Joint Competent Authority, FRAs will have a significantly greater role in the approval process for building high rise residential buildings. This includes being consulted at the planning stage for the building of new HRRBs, and when any applications are submitted in relation to other buildings in the immediate vicinity of a HRRB. FRAs will also be involved in reviewing fire safety in existing buildings.

20. There will of course be resource implications to this for FRAs both in carrying out the work and ensuring they have suitably qualified people. The recommendation that the JCA should be funded on the basis of full cost recovery would provide the resources to pay for the work, but consideration may need to be given to funding training to increase the pool of qualified staff to undertake the work.

21. The detail of how the JCA will operate is not clear from the report and Dame Judith herself was unable to add any clarity when questioned on this by the Housing, Communities and Local Government Select Committee on 17 May. However as she pointed out to the Committee there are existing arrangements in place that could be used as a basis for the JCA. A key challenge though will be ensuring a consistency of approach by the JCA in different areas.

22. One issue that the LGA raised in its submission to the Dame Judith Hackitt's call for evidence last year, and again in the second phase of the review's work, was the interrelationship between the Fire Safety Order and the Housing Act 2004. Although the final report acknowledges there is an issue with their interaction, it does not specifically suggest that they are revised, relying instead on the JCA to ensure that enforcement under both regimes is coordinated.

Other building safety issues

Social housing high-rise buildings

Progress in remediation work

23. Councils and housing associations have continued to make steady progress in carrying out remediation work to the 45 council owned blocks and 100 plus housing association blocks with combinations of ACM cladding and insulation that have been found not to meet the building regulation standards. Undertaking this work is of course complex, and for many of the buildings involves the commissioning of major construction work that has to be planned, consulted on and carried out.

24. The latest published statistics by the Ministry of Housing, Communities and Local Government (MHCLG), which were made available at the end of May, show that remediation work has now started on 107 of the 159 social housing blocks. In the case of the 45 local authority blocks we understand the failed cladding systems have been removed from a significant majority, and the councils responsible for these blocks are now in the process of replacing the cladding with a new system or have commissioned work to replace it. Remediation work has been completed on ten of social housing blocks.

Materials to use in remediation

25. As members will recall the LGA has been pressing MHCLG for clarity around the materials that building owners can use to replace the cladding and insulation they have removed as part of the remediation process. Further questions have been raised about the validity of the BS 8414 fire safety test as a result of research conducted by the Fire Protection Association on behalf of the Association of British Insurers. This research attempted to more realistically model what actually happens in fires in high-rise residential buildings. It found for example that, given the materials commonly used in flats, the temperature at which a real fire would burn could be up to 100 degrees hotter than those created in a BS 8414 test, and the flames a metre longer.
26. With these uncertainties it was helpful that when MHCLG wrote to council leaders after the announcement on 16 May about funding for the costs of remediation work, they stated that unsafe cladding had to be replaced with materials which meet the A1 and A2 European classifications, and are therefore non-combustible.

Funding the costs of the remediation work

27. One issue social landlords have had to consider in commissioning the remediation work is the cost of doing the work. The LGA has highlighted the implications of funding this work to MHCLG since the fire at Grenfell Tower. The announcement during Prime Minister's Questions on 16 May that the government will fully fund the removal and replacement of unsafe cladding, at an estimated cost of £400 million, will assist the fifteen councils carrying out remediation work, though we are exploring what the implications are for the Affordable Home Programme where it appears the funding will come from.

Private high-rise buildings

Data Collection

28. Members will recall from previous reports that councils have for some months been gathering information on private high-rise residential buildings with ACM cladding systems, with fire and rescue services then ensuring appropriate interim fire safety measures are put in place. MHCLG set a deadline of the end of May for councils to complete this process. We anticipate that councils will have either confirmed which private high-rise residential buildings in their area have ACM cladding, or requested information from building owners using their powers under the Housing Act where councils have been unable to confirm whether the cladding on a building is ACM or not.
29. The next stage of work will be to confirm whether there is ACM on the outside of these 'unknown' buildings. Officers are in discussion with MHCLG, the National Fire Chiefs Council and London Councils about how local authorities can be supported in this work,

which may require applications to court to enable councils to take samples of the cladding for testing to confirm what it is.

30. It should be noted that this exercise on behalf of MHCLG has required councils and fire and rescue services to gather information on thousands of buildings, with some services having to inspect hundreds. It has presented a number of challenges for fire and rescue services and councils, including establishing the number of private high-rise residential buildings in their area when not all will have required planning consent, and working through complex management and ownership arrangements to identify who the building owners are. It is a testament to fire and rescue services' and councils' commitment to ensure all residents in their areas are safe that the process has been completed by the MHCLG deadline.
31. The work has also required considerable resources. MHCLG's new burdens assessment originally anticipated the total costs to the sector of this work would amount to £239,000. The LGA has been clear that this underestimates the actual cost to councils of the work they have had to undertake. MHCLG therefore wrote to the LGA on 1 March 2018 to announce an additional £1 million was being made available to assist councils with this work. This has been allocated to those authorities that had more than ten private high-rise residential buildings in their area. The costs to fire and rescue services have not yet been quantified and the Home Office has not provided funding in the same way as MHCLG.
32. It seems clear however that fire and rescue services will have to monitor the interim fire safety measures in place in those private high-rise buildings with ACM cladding until it has at least been removed. This will require continuing resource commitments from services, possibly over a number of years. Once the total number of high-rise buildings with ACM cladding becomes clear, and with it the longer term cost implications for services, the case for funding to cover these expenses could be included in the submission ahead of the next spending review.
33. Ensuring that building owners make swift progress with remediation work will of course reduce the cost burden on fire and rescue services. LGA officer have continued therefore to highlight the need for MHCLG to progress the suggestions the LGA and London Councils have made to reduce the risks to councils associated with taking action under the Housing Act and the Housing Health and Safety Rating System (HHSRS). Due to changes in personnel at MHCLG the work to examine the statutory guidance and the statutory operating directions relating to the HHSRS with a view to reinforcing local authorities ability to take action against private residential high-rise building owners has not yet progressed as far as we had hoped. .

Fire doors

34. An additional issue for some councils and therefore their local fire and rescue services has arisen in relation to the fire doors in their blocks. The MPS investigation into the

spread of the fire in Grenfell Tower identified concerns about whether some of the fire doors in the block could resist fire for 30 minutes, as is required by the building regulations. On 15 March the Secretary of State for Housing, Communities and Local Government announced that a door from the block tested by the MPS as part of their investigation had failed after only 15 minutes.

35. As a result MHCLG sought additional advice from its Expert Panel and the National Fire Chiefs Council (NFCC), as well as technical experts and the government's Chief Scientific Advisers. Extra tests on other doors from the same batch as those at Grenfell Tower made by Manse Masterdors (which ceased trading in 2014), were commissioned, as have tests on other doors from the same manufacturer. This testing has included taking the doors apart and analysing the materials used in this batch of doors.
36. A further statement about the fire doors testing programme was made on 16 May. This stated that the government's Expert Panel had concluded there is a performance issue with Manse Masterdor fire doors, as they do not consistently meet the 30 minute standard. The NFCC have advised that the risk to public safety remains low, as fire protection in a building relies on a range of measures, and all doors provide protection in a fire provided they are closed. Additional guidance has been produced for owners of buildings with this type of door by the Expert Panel. This advises that where a building owner suspects fire doors do not meet the 30 minute requirement a fire risk assessment process should be used to determine how quickly the doors should be replaced. Customers of Manse Masterdor have been written to by MHCLG to notify them they have bought fire doors where there are concerns. The letter asks the customers to carry out a further fire risk assessment to determine how quickly the doors should be replaced and to provide details of the buildings where the Manse Masterdor fire doors were installed to the NFCC. MHCLG is also looking at the wider fire door market and will be testing doors from other suppliers.

Large Panel System buildings

37. At the January meeting Members were updated on the developments in relation to large panel system buildings in Southwark and Haringey, which should have been strengthened following the explosion at Ronan Point in 1968. Since then issues in relation to the strengthening and construction of large panel system buildings have been identified in other local authorities. We are therefore looking to discuss the implications for large panel system blocks with MHCLG officials.

Implications for Wales

38. Building regulations and fire and rescue services are devolved responsibilities of the Welsh Assembly Government, and the main implications arising from the recommendations of the Hackitt Review and the government's response to it are on building regulations and fire safety in England. However the Welsh government has already announced that it will be making the changes recommended in the report to the

regulatory system in Wales. An expert group will be established to advise on how to incorporate these change into law, policy and practice in Wales.

39. As an interim measure the Welsh government has also announced that ti will be consulting, as MHCLG has indicated it will be doing to ban the use of combustible materials in cladding systems on high-rise buildings in Wales.

Financial Implications

40. None. The work arising from this report will continue to be delivered within the planned staffing budget, which includes new additional capacity to support the LGA's building safety work.

Next steps

41. The LGA will want to respond to the recommendations from Dame Judith Hackitt's review and shape the government's reforms of the building regulation and fire safety system as this work progresses over the summer and into the autumn.
42. Members' views on the review's recommendations and the other issues set out in this report will be used to inform the LGA's response to the review's report and its lobbying around the government's plans to reform the building regulation system.