

12 March 2018

Appendix A

Dame Judith Hackitt DBE FREng,
Independent Review of Building Regulations and Fire Safety,
3rd Floor Fry,
Building 2,
Marsham Street,
London. SW1P 4DF

Dear Dame Judith,

Interim report

I am writing on behalf of the Local Government Association (LGA) to respond to the findings and direction of travel you set out in your interim report.

Before getting into the detail, I want to say how impressed we are with the speed with which you and your team have produced a clear and concise, but also comprehensive report on a very complex regulatory system.

Differentiated approach to risk

The LGA agrees with the great majority of your findings to date, the direction of travel you set out and your recommendations. In particular we agree that the current regulatory system for high rise and complex buildings is not fit for purpose, and needs to be fully overhauled to address the wide-ranging issues inherent to the model. We were also pleased to see a paragraph emphasising the importance of widening the scope of the review to cover complex and high risk buildings. It would seem deficient not to grasp the opportunity to protect people in all high-rise and complex buildings in which they live and work.

We support your ambition of designing a revised regulatory system which is simpler, clearer and delivers better building safety outcomes. We also agree that there needs to be a differentiated approach to risk in the regulatory system, with there being a proportionate approach to the greater fire safety risks associated with high-rise and complex buildings.

In addition we strongly agree with you that we need a significant shift in culture, behaviour and practice around the construction, operation and maintenance of high-rise and complex buildings. If we are to achieve that aim, we believe certain elements of your proposals need special emphasis. The LGA would single out the need for easily identifiable individuals with responsibility for building and fire safety, greater clarity in the inspection and enforcement regime, and heavier penalties for breaches of the regulations. We would also support a debate about how we ensure new methods of improving building safety can be used to upgrade and improve existing buildings.

Clarity of roles and responsibilities

As the interim report highlights, there is a lack of clarity around roles and responsibilities in the current system. It is vital therefore that there are easily identifiable dutyholders with responsibility for ensuring compliance with the building regulations and fire safety measures, both during construction and throughout the lifetime of the building. There need to be

12 March 2018

individuals who can readily be held to account for any failures or breaches who have an interest in changing culture and behaviour to bring about the necessary paradigm shift.

A requirement to have a clerk of works to act as a gatekeeper for quality assurance is mentioned in your report. We would emphasise the importance of such a role to oversee construction and refurbishment works, ensuring the quality of construction and materials. Further, a clear responsibility on those who commission and design work to ensure a building is fit for purpose would seem essential to bring about the required change.

Ensuring compliance through inspection and enforcement

Having people with clearly identifiable roles and responsibilities who can be easily held to account, will only drive cultural and behaviour change if there is also a robust inspection and enforcement regime. As the interim report notes, a key issue is that work can commence on buildings without the plans being approved by building control. Preventing work on site (as in Scotland) until approval has been given would strengthen the enforcement regime. In addition, there are also issues with the information that councils receive from approved inspectors about buildings they have inspected. Going forward we need to ensure that approved inspectors have an obligation to provide local authority building control, as the building control enforcement body, with all the necessary information on buildings they have inspected.

There are also a number of other weaknesses in the current regime to ensure building and fire safety standards are being complied with post-construction. At the heart of these problems is the fact that neither the Housing Act, and the housing health and safety rating system (HHSRS) it creates, nor the Fire Safety Order, were designed to deal with significant building and fire safety problems resulting from modifications, alterations or changes to the fabric of a building. The problematic interaction between these pieces of legislation and regulation must be addressed.

This should include examining and rectifying the ambiguity over responsibilities for inspection, the lack of certainty in key definitions, the question of whether flammable cladding can ever constitute a Category 1 hazard under the HHSRS, and the absence of powers to deal consistently with breaches of building or fire safety standards irrespective of the type of tenure that might be found in one block. It would be a significant failure if at the end of the review's work there were no recommendations that ensured, for example, that action can be taken against residents who cause fire hazards within their own homes.

One final point on building and fire safety inspections is that there is a vast array of differing complexities among buildings. This means that inspectors must demonstrate hugely varying levels of knowledge. While a universal standard should certainly be applied to inspectors across the board i.e. fire authorities, approved inspectors, or from local authority building control, it would be prudent to offer different levels of expertise within such a framework. Local Authority Building Control (LABC) have recently developed and commissioned their ISO accreditation framework which promises to enshrine a single set of consistent national standards. In discussion with a LABC they have also suggested that their framework would cater for the different levels of expertise needed among building inspectors to serve these varying building complexities. As such we would encourage the review to investigate this as a possibility.

12 March 2018

Product testing and accrediting

As the immediate national response to the Grenfell Tower fire highlighted, inspection and enforcement would be made significantly easier if there were a robust independent process to test and accredit products, with appropriate testing and accreditation marks visible on products. Aluminium composite panels on tower blocks had to be subjected to screening tests to confirm what sort of panel they were because this was not possible by visual inspection. Product certification is not clear and transparent about what particular type of product meets which particular standard, meaning the wrong material could be specified and installed in error.

Over the last week a number of concerns about the full scale tests using the BS 8414 standard have called into question how well it can gauge the fire risks associated with particular cladding systems, and in our view there is an urgent need to evaluate whether it continues to be fit for purpose, and an alternative test needs to be developed. This is a clear area of concern; if product fire tests cannot be relied upon, it brings into question the validity of other recommendations of the building regulations review.

Sanctions

Addressing the above points over clear lines of responsibility and unambiguous legislation will go some way towards changing the culture in the construction sector. To create a robust system though, those who breach building and safety regulations must be prosecuted if we are to successfully encourage people to recognise the importance of building and fire safety regulations.

A number of issues need to be addressed. The reductions in the size of councils' building control and legal teams limits their capacity to take enforcement action. At the same time the competitive market in building control means a prosecution could result in an existing or potential client using an approved inspector in the future. Too often the level of fine and cost awards in the case of a successful prosecution still leave offenders better off than if they had not breached the building or fire safety requirements, and do not cover the costs incurred by the council in bringing the case.

Upgrading and improving existing buildings

The interim report states that consideration should be given to what is reasonable and practicable to do to upgrade and improve the fire safety of existing facilities throughout their lifespan. The LGA supports the idea that existing buildings should be upgraded as near as practicably possible to the latest fire safety standards. There are obviously a range of practical considerations in how this process would work, including how judgements are reached about what is reasonable and practicable to do, and we are keen to contribute to that process.

Resources

A consistent element across all these changes in the current regulatory system is the need for the proper resourcing of those involved in inspecting and enforcing against the building and fire safety regulations. Unless the changes that the review advocates are properly resourced, councils and fire and rescue services will be unable to play their role in delivering the cultural and behavioural change needed across the construction sector.

12 March 2018

Compartmentation

One area we would welcome greater clarity on is the section in the interim report on compartmentation in buildings. We understand the review has drawn on the experience of other industries where there is an emphasis on creating barriers to minimise the risk of accidents, and a range of measures to ensure that if something does go wrong, the impact of that event is minimised. The interim report is right that breaches in compartmentation can have a serious impact on the safety of a building.

While other fire protection measures can protect against breaches in compartmentation we would be reluctant to move away from a position where compartmentation is the first line of defence against a fire. The 'stay put' policy allows firefighters to move through a building to fight a fire without having to deal with residents evacuating simultaneously in large numbers. A change to it may not only make fighting a fire more difficult, but may also place lives at greater risk where there are limited exit routes from a building due to panicked residents being crushed together. We believe that any recommendations in this area need to be developed in conjunction with professional advice from fire and rescue services.

Timetable for implementation of the review's recommendations

When the final report is being written we believe it should set a clear timetable for implementation of its recommendations. As has already been pointed out to the review team a number of the recommendations from the coroner's inquest into the Lakanal House fire have yet to be implemented, and we would not want to see the sense of urgency to change the currently regulatory system lost, and the recommendations from the review never fully implemented.

Finally, you have kindly invited the LGA to participate in three of the working groups being established to take forward the next phase of the review. We would ask that in the interest of transparency, the membership of the working groups be made publically available.

Thank you for your consideration of these comments. We look forward to working closely with you in the immediate future.

Yours sincerely,

Cllr Paul Carter CBE,
Chair, LGA's Grenfell Tower Task and Finish Group