

LGA Response to Dame Judith Hackitt's review of building regulations and fire safety

July 2018

About the Local Government Association

1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross-party organisation, which works on behalf of councils to ensure local government has a strong, credible voice with national government.
2. We aim to influence and set the political agenda on issues that matter most to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

Key issues

3. The LGA welcomes the publication of Dame Judith Hackitt's final report, and supports many of the recommendations in it. However there are some areas where the LGA believes the report did not go far enough, and others where there needs to be further work on the detail of the recommendations for them to be taken forward. The LGA stands ready to assist in working up the necessary detail needed to implement some of the recommendations.
4. The definition of higher risk residential buildings (HRRBs) is too narrow. The LGA's view is that HRRB's should be defined as all buildings over 11 metres (the height at which Scotland proposes to define high-rise buildings, based on the practicalities of fighting fires at height) and all buildings in which vulnerable people will sleep (other than private dwellings), including student accommodation. There may be some non-residential buildings which need to be subject to the same regulatory approach due to the difficulty in effecting evacuation in the event of fire.
5. Retrospective action should be undertaken on a risk-based not a prescriptive basis, but the requirement to take action to make buildings safe should be robust and should include Houses in Multiple Occupation (HMOs).
6. Combustible materials should be banned from external cladding systems (except where no non-combustible option exists for a necessary component, in which case a system test will be necessary); the use of desktop studies should be prohibited in relation to external cladding systems; and any testing regime for external cladding systems must be subject to third party verification of products and system construction.
7. The creation of the Joint Competent Authority (JCA) needs to respect the democratic accountability of local council building control services and fire and rescue authorities. The JCA's functions will be predominantly exercised at a local level; collaborative national structures must be designed to support those local functions.

Submission

8. New burdens must be fully funded and this must recognise the limitations of cost recovery, the need to facilitate whistleblowing and the extent to which costs will need to be covered at an early stage of the new regime's existence, both in terms of training to increase capacity and initial funding of enforcement action.

A new regulatory framework

9. The new regime should apply to buildings over 11 metres (the proposed new definition of high rise for building regulations in Scotland). It should also apply to all buildings where vulnerable people sleep (except private dwellings) and HMOs.
10. This would mean that new buildings would be covered by the JCA (including building control) at the design, construction and occupation stages and that owner of existing buildings would need to demonstrate the building's safety to the JCA on a risk-based (rather than prescriptive) basis.
11. We acknowledge that work will be necessary to establish the precise meaning of vulnerable in this context but consider the essential principle to be that a building should be classed as an HRRB where the nature of its occupation means it would take significantly longer to evacuate than would usually be the case and where this delay significantly increases the risk to life.
12. It is as yet unclear what the JCA will look like. Dame Judith argued that its creation:

would not mean merging those organisations but rather providing a framework for [local authority building control, Health and Safety Executive (HSE) and fire and rescue services] to work together to more rigorously assess building safety and would create a more unified and consistent intervention process.

She added that:

The creation of the JCA is considered to be more appropriate than the creation of an entirely new single regulator that draws building safety expertise away from three pre-existing organisations who would still have critical work to take forward.

13. It is therefore unclear whether the JCA needs to exist in terms of having its own staff, premises etc. or whether it is simply an umbrella term to be applied to the liaison between its constituent parts and the enforcement undertaken by any one of those parts in pursuit of the aims set out elsewhere in her report.
14. In as much as the JCA does exist it is unclear whether this would be as a national body or a series of regional or local bodies or both.
15. Nor is it clear how, if the JCA is a concept rather than an organisation, the HSE will liaise with fire services which typically function at county level and building control services which function at district level; or how district housing services and planning authorities will liaise with it.
16. The LGA intends to undertake further work during the summer to establish a detailed position on the ideal form the JCA should take, as well as participating in joint work on this issue with the Government and other stakeholders, as it has been invited to do.

17. This work will be based on the following principles

17.1 The JCA must not create unnecessary bureaucracy.

17.1.1 A sensible and effective balance needs to be struck between the need for a consistent approach across the country and the democratic accountability of individual councils and Fire and Rescue Authorities (FRAs).

17.1.2 The starting point for striking this balance needs to establish how the regulatory regime will work at a local level and to make national arrangements that are designed to facilitate that process.

17.2 Whatever form the JCA takes its creation must be accompanied by new regulations and/or legislation to ensure its constituent bodies have the powers they need.

17.2.1 The Lakanal House inquest recognised the need to address the regulatory vacuum that exists between the Fire Safety Order (FSO) and the Housing Act. The problems generated by the failure to do so have been clearly illustrated in subsequent years.

17.2.2 Dame Judith expressed the view that the industry should ultimately take responsibility for ensuring safety. The LGA believes this can only take place alongside the creation of a stronger sanctions and enforcement regime. Without a strong and robust enforcement and sanctions regime there will be no incentives on the industry to drive the culture change Dame Judith highlights as being an essential part of the reform process.

17.3 The creation of the JCA itself will not solve the lack of capacity within its constituent services. Early thought needs to be given to the need for more trained staff.

17.3.1 Consideration will need to be given to the fact that for some district councils, a new HHRB will be a once-in-a-generation event. There may be a need to share services in order to ensure cost effective use of capacity and to allow for the acquisition of sufficient experience.

17.4 Councils' housing teams have taken a lead in identifying and remediating dangerous cladding systems in the private sector. It is not clear if this work would be covered by the JCA. If it is not, the creation of the JCA must not distract attention from the role of housing environmental health officers, the challenges of asking existing council housing teams to move into this new area of work and the lack of capacity within those teams at present.

17.5 Cost recovery powers must be adequate and an effective mechanism established for redistributing recovered costs between the constituent memberships of the JCA. Our experience is that cost recovery tends not to work in full.

17.5.1 Some costs will be incurred which cannot be attributed to specific actions, for example, in establishing the new framework of regulation and enforcement, including the JCA, and providing training.

17.5.2 Central Government will need to fund the establishment of the JCA and some of this funding will have to go into increasing the pool of qualified staff (which will also require a lead-in time) so that we increase the number of fire engineers for example.

17.5.3 Where costs are incurred by one partner and enforcement action taken by another, costs may be difficult to recover under existing law.

17.5.4 It is not always possible to recover the costs of court action and enforcement activity. Enforcing authorities must not be deterred from acting for fear that they will be left out of pocket. The courts must be able not only to impose robust penalties for breaches of the regulations, but also to work on the basis that the JCA, fire and rescue authorities, the HSE and councils' building control departments are able to fully recover their costs when they bring prosecutions.

17.5.5 There may be a need for some of the funds to be held centrally. A central enforcement pot for example might have advantages over lots of smaller ones.

Design construction and refurbishment (chapter 2)

18 The LGA supports the proposals in this section, in particular:

18.1 The moves in the Review's recommendations to increase accountability and provide greater clarity about who is responsible for what, as this will make the JCA's job easier. Without the clarity of duty-holder roles the JCA will be unable to have much impact.

18.2 Arming the JCA with effective sanctions and powers. The detail of the report makes it clear that the ability of the JCA to issue improvement and stop notices on duty-holders is the route by which the gaps between the FSO and the Housing Health and Safety Rating System can be filled.

18.3 The key information products proposal and the creation of the Fire and Emergency File in particular.

18.4 The idea that 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. Consideration should also be given to giving FRAs a say in highways related changes that impact on the access they have to HRRBs. FRAs will also be involved in reviewing fire safety in existing buildings. There will of course be resource implications to this for FRAs, both in carrying out the work and ensuring they have suitably qualified people. This is discussed above. We also need to build into the planning system an ability for planning committees to reject planning applications on fire safety grounds.

18.5 The restriction on duty-holders being able to start building work before the full plans for a building have been approved, and on allowing occupation of a building before the JCA is satisfied with the fire safety measures and the 'as-built' construction.

18.6 The clear requirement for duty holders to notify regulators of significant changes from the previously agreed full plans.

- 18.7 That building control oversight of HRRBs should be solely provided by local authority building control functions, with approved inspectors being utilised to expand the expertise and capacity in councils.
- 18.8 Some details will need to be considered. For example: should FRAs or building control inspectors be involved in assessing cases where they have, for instance, provided professional services through their commercial arms to a duty-holder for a HRRB? How does the JCA work where the local authority is the building owner/holder? And who leads enforcement in this case? The FRA?
- 19 We think it is essential that the JCA role at gateway one, as set out in Appendix B to the report (the planning stage), includes not only consultation with the fire service but also requires the approval of the FRS before the building can proceed to the next stage.
- 20 We note that the Ministry is currently considering responses to its consultation on the review of the National Planning Policy Framework and that this provides an opportunity to embed reform in the planning framework. We urge the Ministry to consider the Hackitt report and the preceding paragraph of this response when drafting its response to the consultation.
- 21 These proposals also have implications for councils as duty-holders. Safety cannot be compromised but problems with, for example, fire doors, as well as other as yet unknown issues, are likely to add significantly to the costs of remediating Aluminium Composite Material cladding, drawing funds away from meeting housing need and government ambitions. The Government should commit to providing assistance to any council experiencing financial difficulty in meeting its obligations as a duty-holder, as it has done in respect of the remediation of social housing blocks with flammable cladding.

Occupation and maintenance (chapter3)

- 22 The LGA supports the recommendation that HRRBs will need to have a duty-holder 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.
- 23 We also support the requirement that the duty-holder will have to regularly demonstrate to the JCA that they are discharging their responsibilities, subject to the frequency of the requirement to demonstrate compliance not being unnecessarily onerous.
- 24 The details of these demonstrations remain to be established and we have concerns over the capacity of enforcing bodies to meet demand. Funding is an issue here, as is competence (in particular the shortage of fire engineers in the UK).
- 25 As part of this process duty-holders for existing buildings will need to gather information on the design, structure and materials used. While we agree that this is right, there may be practical difficulties in obtaining information on some existing buildings.
- 26 It is particularly important that the JCA can enforce across the whole building and has access to robust sanctions.
- 27 The obligation on residents needs to include the right of councils as freeholders to enter leasehold flats to install and maintain automatic fire

suppression systems and either allow freeholders/duty-holders or enforcement agencies, or both, the right to inspect leasehold flats to ensure against breaches of compartmentation, removal of fire doors and door closers etc.

Residents Voice (chapter 4)

- 28 The LGA supports these recommendations and the measures Dame Judith sets out to provide reassurance and recourse for residents, many of which are already best practice in the sector. Indeed we believe many councils already go further.
- 29 The Review appears to envisage an independent body to which residents can escalate concerns, and might then refer them to the JCA. This seems somewhat convoluted and we question whether it might be more effective to have concerns flagged straight to the JCA. It could be that one element of the national JCA arrangements acts as this independent body.

Competence (chapter 5)

- 30 The report sets out concerns that the current approach regarding levels of competence is disjointed and not rigorous enough. To overcome them the report recommends that professional and accreditation bodies should present a coherent approach to government within one year. This approach should set out the remit and role of an overarching body to provide oversight of competence requirements of competent people working on HRRBs.
- 31 The LGA shares Dame Judith's concerns around competence, but this recommendation does not offer swift enough solutions.
- 32 It is unclear what the overarching body will look like and whether one body is the right approach, given the range of professions potentially affected (building control, cladding installation and maintenance, fire engineering etc.).
- 33 Nor is it clear what the relationship between it, and the work that the Construction Industry Council is now leading on competencies across the sector, will have to the Professional Standards Body that will be part of the National Fire Chiefs Council arrangements, and what role FRAs will have in these discussions.

Guidance and monitoring (chapter 6)

- 34 The LGA supports the intention of making the industry take greater responsibility for fire safety in the design, construction and refurbishment of HRRBs and to move the culture away from one where all too often meeting the guidance on fire safety is seen as a 'tick-box' exercise. The LGA believes though that industry can only have a greater role in developing new guidance, and in particular that industry can only be allowed to own new guidance, if such a transfer of responsibility is accompanied by a new, stronger and more robust sanctions regime that drives the culture change Dame Judith identified as being so crucial in improving fire safety in HRRBs. Without the creation of a stronger and more robust sanctions regime there are strong arguments in favour of responsibility for producing such guidance remaining the responsibility of the Ministry of Housing, Communities and Local Government.
- 35 The proposal that the FSO be updated, suggests that no reform of the Housing Act is necessary which in turn implies new burdens for FRAs rather than council housing enforcement. Any new burdens must be fully funded and

this is likely to include the need for up-front funding to set up new function and which will not easily be met through cost recovery.

- 36 Consideration needs to be given whether this focus on the FSO, rather than the Housing Act, is correct.

Products (Chapter 7)

- 37 The LGA has already called for combustible cladding and insulation to be banned from buildings over 18 metres and where vulnerable residents sleep. It has also called for desktop studies to be banned in relation to cladding systems.
- 38 The LGA does not regard the existing BS 8414 test as reliable in that the system can be gamed and the test does not adequately reflect real world conditions. The LGA wants to see all combustible materials banned from cladding systems. However, it recognises that there may be some components which cannot be substituted by non-combustibles (sealants etc.). These should be dealt with by specific exemption and this should never be used where a non-combustible alternative is available. The LGA is open to the possibility that expert advice may mean there needs to be some form of testing or other safety verification for cladding systems to take account of unavoidable use of combustibles and the possible chimney effect in a fully non-combustible system. This testing system, if used, will require both independent third party verification of the system tested and robust random sampling of product samples used in the system's construction.
- 39 The LGA supports a stronger regime of product safety but is considering its position on the national coordination role proposed for OFFPSS. Whatever system is used will require a robust process of random testing.

Building information (chapter 8)

- 40 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 duty-holders 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. The LGA supports this proposal, but recognises that in many cases the information referred to may not exist in relation to existing buildings.

Procurement and supply (chapter 9)

- 41 The LGA supports the review's proposals.