

Briefing:

Independent Review of Building Regulations and Fire Safety

Interim Report

18 December 2017

Summary of key points:

Building a Safer Future, the interim report of the independent review led by Dame Judith Hackitt, was published by the Department for Communities and Local Government on Monday 18 December 2017. This briefing for members summarises the report, including:

- Dame Judith Hackitt's opening remarks
- Key findings so far
- Future direction of travel
- Interim recommendations and challenges
- The Government's response
- The Federation's response
- Next phase and future work

1. Introduction

In response to the tragic fire at Grenfell Tower and subsequent building safety concerns, Dame Judith Hackitt was asked in July to lead an independent review of building regulations and fire safety, with a particular focus on multi-occupancy high-rise residential buildings.

[The interim report](#), published on 18 December, contains a diagnosis of the problems, key findings to date, the future direction of travel and some actions/recommendations for relevant people to consider adopting voluntarily now. It is based on a systemic review of the regulatory system, including more than 250 responses to the call for evidence, a series of roundtable discussions with industry representatives and professional bodies, and bilateral conversations with key stakeholders. A final report will be published in spring 2018.

The National Housing Federation [responded](#) to the call for evidence, attended roundtable discussions with industry representatives and [arranged](#) a bilateral meeting between Dame Judith and Federation members. We will be proactive in engaging with and supporting the future work of the review on behalf of housing associations in England.

2. Summary of Dame Judith Hackitt's introduction

The interim report opens with a personal statement from Dame Judith in which she explains how the review is being carried out, initial findings, and areas for future work. This provides some useful context to the findings in the report, and is summarised below:

- The review has found the whole system of regulation – what is written down and the way it is enacted – to be “not fit for purpose”.
- Dame Judith is convinced of the need for a new intelligent system of regulation and enforcement for high-risk and complex buildings¹, a system which will encourage everyone to do the right thing and hold to account those who try to cut corners. Greater owner and landlord responsibility is a recurring theme.
- Cultural and behavioural change is required across the sector to deliver an effective system that ensures complex buildings are built and maintained to an appropriate standard. The key change must be away from doing the minimum required for compliance, to taking ownership and responsibility for delivering a safe system throughout the life cycle of a building.
- The work that has gone on across England to assess and remediate high-rise buildings has ensured that measures are in place to assure residents of their safety in the short term. However, Dame Judith urges landlords not to hesitate in replacing inadequate cladding in the short term. They must also ensure remedial works are carried out by competent contractors, and sufficient quality assurance is provided.
- A better system, which commands the trust of residents, must engage them fully and include robust ways for their views to be listened to and acted upon.

Dame Judith Hackitt expanded on these themes when she addressed the Communities and Local Government Select Committee. She described the interim report as a ‘call to action’ several times saying that the process of culture change can be started now without government. Dame Judith mentioned housing associations in the context of talking about the complexity of managing multiple tenures in many buildings. A full transcript of the session is available on the [committee site](#).

¹ Complex buildings will be defined in the spring 2018 report, but at this stage it includes other purpose-built flats, student accommodation and sheltered housing.

3. Key findings and direction of travel

The overall conclusion of the interim report is that the current regulatory system is not fit for purpose in relation to high-risk and complex buildings. The key findings in support of this conclusion are organised under six headings. In the sections below, we have summarised the key findings to date and the proposed direction of travel for each area.

- Regulation and guidance
- Roles and responsibilities
- Competence
- Process, compliance and enforcement
- Residents' voice and raising concerns
- Quality assurance and products

3.1 Regulation and guidance

Findings

The Building Regulations 2010 are clear about the outcomes to be achieved. However, supporting guidance in the form of the Approved Documents are not user-friendly and are often mistakenly referred to as 'the regulations'. Key terms not being adequately defined (e.g. 'high-rise' and 'limited combustibility') is also a problem, leaving too much room for interpretation.

Alongside this, the role of the Building Regulations Advisory Committee (BRAC) is unclear, in particular whether it is supposed to proactively advise on initiatives or purely take direction from the Government.

Direction of travel

- It is not appropriate for the Government to be solely responsible for the upkeep of all regulations and supporting documents. The Government should set the basic framework of standards and make clear who has responsibility for delivering against them, but it should not lead on the specification of detailed solutions as to how those standards will be met.
- Complex and high-risk is expected to include buildings where multiple people live or stay and for which exceptional events could lead to the risk of large-scale fatalities.
- A more rigorous risk-based regulatory process must be put in place for complex and high-risk buildings.

Recommendation one – The Government should review the suite of Approved Documents to make them more streamlined and holistic. Improving the clarity of Approved Document B should be prioritised as an interim measure.

3.2 Roles and responsibilities

Findings

There is a general lack of clarity around roles and responsibilities throughout the system, and even where key activities are required to take place, it is not always clear who has responsibility for making them happen. This includes there currently being no requirement for identifiable, named duty holders who ensure compliance with the Building Regulations. There is also no clear understanding of the

need to consult with others in the regulatory system at an appropriate time, nor of the need to take their views into account.

‘Responsible persons’ under the Regulatory Reform (Fire Safety) Order 2005 are frequently not identified when the building is due to be handed over following construction, meaning they are not aware of their responsibilities. And culturally, organisations too often wait to be told what to do by regulators rather than taking responsibility for building to correct standards, driven by a desire to achieve minimum compliance.

Direction of travel

- Primary responsibility for ensuring that buildings are built to the correct standards and are fit for purpose must rest with those who commission the work, and those who design and build the project.
- There must be a clear, responsible duty holder who is held to account for the performance of all of those to whom sub-contracts are let at all stages in the life of a building.
- ‘Value engineering’ processes must be undertaken by those with the responsibility and competence to ensure the integrity of the building design and function, especially when considering the equivalence of substituted materials.
- There is a need for greater industry responsibility for demonstrating that all buildings are designed and built to be fit for purpose, including where new materials or techniques are used.
- After completion and handover there must be clear responsibility assigned to a known person or persons for ensuring that the building remains fit for purpose throughout its life cycle.
- Greater clarity is needed over the assignment of responsibilities in blocks of flats. In particular, there needs to be a better definition of ‘common parts’ and clarification of who is qualified and able to properly inspect these areas and individual properties. This is critical for maintaining overall building integrity but is currently unclear due to the confusing overlap between the Housing Health and Safety Rating System Regulations 2006 and the Fire Safety Order.
- Regulators should seek assurance that standards are adhered to, but it is for industry to demonstrate compliance. Failure to comply must result in deficiencies being resolved and those responsible being held accountable.

3.3 Competence

Findings

The means of assessing and ensuring appropriate levels of competence throughout the system are unclear and inadequate. England and Wales appears to be lagging behind many other parts of the world, where key personnel throughout the system must be properly trained, assessed and licensed to carry out specific roles.

More specifically, the interim report notes a problematic lack of statutory registration or accreditation requirements for fire risk assessors, and inconsistent competence frameworks for private sector Approved Inspectors and Local Authority Building Control inspectors.

Direction of travel

- People working on complex and high-risk buildings need to have the appropriate qualifications and experience, and be able to evidence that this is the case.

- Raising levels of competence and establishing formal accreditation of those engaged at every stage of design, construction, inspection and maintenance of complex and high-risk buildings is essential. This can and should be led by professional bodies in the sector.

Recommendation two – the professional and accreditation bodies should come together to develop a joined-up system covering all levels of qualification in relevant construction and building safety disciplines. This would provide the framework for regulation to mandate the use of suitable, qualified professionals who can demonstrate that their skills are up to date. As a minimum, this should cover:

- Engineers
- Those installing and maintaining fire safety and other safety-critical systems
- Fire engineers
- Fire risk assessors
- Fire safety enforcing officers
- Building control inspectors

3.4 Process, compliance and enforcement

Findings

The review found widespread deviation from what is originally designed to what is actually built, without clear processes for authorising, reviewing or documenting changes. This can lead to some instances of non-compliance not being detected because work is undertaken and no longer visible prior to inspection, and the information and documentation provided to building control bodies does not provide an adequate public record to ensure building safety throughout the life of the building.

Design and build contracts were identified as being particularly problematic. There is also evidence of processes not being followed at a number of key control stages, such as the handover of fire safety information and the issuing of Completion Certificates. Fire and rescue service concerns also might not be acted upon because of cost, building work being too far advanced or simply because their advice is ignored.

The review notes that there is also no requirement in the Building Regulations to bring existing buildings up to the latest fire safety standards, as long as refurbishment does not make them worse. On top of this, across the life cycle of a complex and high-risk building the different regulations can overlap and are not always consistent.

Evidence submitted to the review suggested a range of views of the partial privatisation of building control, but overall it is felt to have led to a reduction in quality. Private sector Approved Inspectors are also perceived to be less independent and having no meaningful means of enforcement available to them. More broadly, enforcement and sanction measures are poor and do not provide adequate means of compliance assurance, deterrence or redress for non-compliance.

Information provided to residents of complex and high-risk buildings on key fire safety measures, their importance and residents' responsibilities is highly variable and too often non-existent. This includes there being no requirement for fire risk assessments to be reported to a regulator or shared with residents.

Direction of travel

Recommendation three – consultation with the fire and rescue services should take place early in the commissioning or building design process and their advice should be fully taken into account.

- There needs to be a golden thread for all complex and high-risk building projects so that the original design intent is preserved and recorded, and any changes go through a formal review process involving people who are competent and who understand the key features of the design.
- When complete, the project as built must be documented, and this documentation reviewed and handed over before the building can be occupied. The review will conduct research into the potential for Building Information Modelling (BIM) to transfer the documentation process onto a digital platform.

Recommendation four – building developers must ensure there is a formal review and handover process ahead of occupation of any part of a new high-rise residential building.

Recommendation five – building control bodies should do more to assure that fire safety information is provided by the person completing the work to the person responsible for the building in occupation.

- Once a complex and high-risk building is occupied there must be a clearly identified responsible person who continues to monitor the condition of the building and is responsible for all changes and maintenance work carried out within it. It must be clear to occupants and anyone who works in the building who the responsible person is, and they must be held to account. Residents must be provided with clear guidance on how to proceed if they choose to carry out work for themselves or bring in contractors to their own flats.
- Future modifications must be subject to the same rigorous processes as during original construction, and changes must be formally reviewed by competent professionals, documented after completion and formally handed over.
- Complex and high-risk buildings must be subject to regular and thorough reviews of their overall integrity, even if they are not subject to major change. These reviews would be the responsibility of the building owner and should be reported to the regulator and accessible information about them made available to residents.

Recommendation six – the responsible person must ensure fire risk assessments for high-rise residential buildings are undertaken at least annually, and when any significant alterations are made to the building. These should be shared in an accessible way with residents and notified to the fire and rescue service.

- There is a responsibility to give due consideration to what it is reasonable and practicable to do to upgrade and improve the fire safety of existing facilities throughout their lifespan.
- There needs to be a demonstration that building safety does not rely heavily on compartmentation, as this is liable to breach during building use. It should be for building owners and landlords, with expert advice and the involvement of residents, to demonstrate that appropriate risk mitigation measures are in place (e.g. extra staircases, smoke ventilation or sprinkler systems).
- The current model of partial privatisation of building control bodies raises concerns about independence and adds to the pressure on local authority resources.

3.5 Residents' voice and raising concerns

Findings

The review considers the route for residents' concerns to be raised and addressed to be unclear and inadequate. This is partly due to the complexity of ownership and management structures in multi-

occupancy residential buildings. There is also significant variation in practice by landlords, from the very good to the non-existent.

Many of the problems reported and fixed can very quickly revert to being a problem again (e.g. the propping open of fire doors), and there is no effective means of ensuring that residents meet their responsibilities to their fellow residents.

Direction of travel

- Residents need to be reassured that an effective system is in place to maintain building safety, and their trust needs to be restored through the development of a more transparent system in which they feel included.
- Where residents do not feel their views or concerns are being addressed by their landlord there should be a clear, quick and effective route established for their fire safety concerns, to be raised and addressed with an external enforcement body. Many have expressed the wish for this to include the fire and rescue services.
- Regular building survey results should be shared with residents and they should be consulted about plans to modify buildings. It is also important for them to understand the various layers of protection which are fundamental to fire safety.

3.6 Quality assurance and products

Findings

DCLG's Building Safety Programme identified more than 200 high-rise residential buildings across England fitted with ACM cladding systems that are likely to present a fire hazard, and there does not appear to be a single, simple reason to explain how this could have happened.

Part of the issue is the way specification data is presented during product marketing, individual elements being used as part of compound systems that are not fully tested, and the widespread use of desktop studies to assess equivalence of products and systems. Test results, desktop studies and the details of those who produce them are also not made public, and test conditions used do not adequately reflect real-life conditions.

Crucially, the integrity and efficacy of product and system classifications are highly dependent on correct installation by competent and knowledgeable persons.

Direction of travel

- Phase two of the review will examine the case for product testing data to be made transparent and publicly available, and for a much clearer system of product classification and labelling.

Recommendation seven – the Government should significantly restrict the use of desktop studies to approve changes to cladding and other systems to ensure they are only used where appropriate and with sufficient, relevant test evidence. Those undertaking desktop studies must be able to demonstrate suitable competence. The industry should ensure their use of desktop studies is responsible and consistent with this aim.

- There is a need to ensure oversight of the quality of installation work carried out as well as of the materials used. A number of respondents were supportive of reinstating the Clerk of Works or similar to act as the primary gatekeeper of quality assurance on significant projects.

4. Government response

The Secretary of State for Communities and Local Government [made a statement](#) to the House of Commons on the afternoon of Monday 18 December 2017, during which he responded to the interim findings.

He announced that the Government has accepted all of Dame Judith's recommendations and agrees with the proposed direction of travel and the need for widespread culture change. In addition, the Government will take a number of actions in the short term:

- Revise the Approved Documents on Fire Safety and commission work to produce a new British Standard on when and how desktop studies can be used.
- Work quickly with industry experts to clarify the Approved Documents on Fire Safety.
- Consider how the entire suite of guidance on compliance with Building Regulations can be restructured and reordered to make it more user-friendly.
- Write to building control bodies to highlight the recommendations around consultation with fire and rescue services and the need for fire safety information to be formally handed over at the right time.

The Secretary of State also urged the construction industry, the building control bodies, the fire and rescue services, landlords and others to play their part in improving the system and fixing the problems identified.

5. Federation's view

The interim report is comprehensive and balanced. It is consistent with the evidence submitted by the Federation in October 2017, and identifies very similar themes and challenges to those raised with us by our members over the past months.

While it is concerning that the review has uncovered a regulatory system which is not fit for purpose, we now at least have the opportunity to contribute to a fundamental overhaul of the system, with the objective of creating something which is more robust, simple and trustworthy.

We are supportive of all of the recommendations in the report and look forward to working with our members, the review team and other stakeholders, to make them a reality. The housing association sector is determined to be at the forefront of the cultural and behavioural change needed to place quality and value at the heart of the construction, maintenance and asset management industries.

We are in the process of developing a programme of work, based on the findings of the interim report, which will provide our members with a structured and impactful way of shaping all further evidence and information we provide to the review team as they work towards final recommendations in spring 2018.

6. Next phase and future work

Next phase of the review:

- Develop recommendations that will deliver the direction of travel ahead of the final report.
- Carry out targeted work in partnership with the sector and other stakeholders to make progress towards recommendations.
- Hold a summit on 22 January 2018 to set the direction and coordinate the work needed in advance of final recommendations.

- Final report and recommendations published in spring 2018.

Next steps for the Federation:

- Internal workshop for Federation staff – early January 2018
- Webinar for members to provide an overview of the interim report – 15 January 2018
- Member workshops in London and Manchester – January 2018
- Workshop with Fire Safety Expert Panel – January 2018
- Senior attendance at the review summit – 22 January 2018
- Written response to the interim report sent to the review team – February 2018
- Further engagement with the review team – until spring

7. Further information

[Federation response to the interim report of the independent review of building regulations and fire safety](#)

[Federation evidence submitted to the independent review of building regulations and fire safety](#)

[Member resources relating to Grenfell Tower](#)

[Independent review of building regulations and fire safety: interim report](#)

[Independent review of building regulations and fire safety: terms of reference](#)

8. Key contacts

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