HOUSE OF COMMONS

Housing, Communities and Local Government Committee

Oral evidence: Pre-legislative scrutiny of the Building Safety Bill, HC 466

Monday 28 September 2020

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Watch the meeting

Members present: Mr Clive Betts (Chair); Bob Blackman; Ian Byrne; Brendan Clarke-Smith; Ben Everitt; Rachel Hopkins; Abena Oppong-Asare; Mary Robinson; Mohammad Yasin.

Questions 115 - 164

Witnesses

I: Martin Boyd, Chair, Leasehold Knowledge Partnership; and Victoria Moffett, Head of Building and Fire Safety Programmes, National Housing Federation.

II: Dr Nigel Glen, CEO, Association of Residential Managing Agents; Richard Silva, Executive Director, Long Harbour; and James Dalton, Director of General Insurance Policy, Association of British Insurers.

Examination of Witnesses

Witnesses: Martin Boyd and Victoria Moffett.

Chair: Welcome to this afternoon session of the Housing, Communities and Local Government Select Committee. We have two panels looking at pre-legislative scrutiny of the draft Building Safety Bill. This is the Bill being put forward by the Government to hopefully stop any disasters like Grenfell ever happening again. Before I go over to our first witnesses, I want any members of the Committee who have interests that may directly impact on this session to declare them. I am a vice-president of the Local Government Association.

Mary Robinson: I employ a councillor in my team.

Ian Byrne: I am a councillor in Liverpool.

Abena Oppong-Asare: I employ councillors in my team.

Rachel Hopkins: I am still a councillor in Luton.

Ben Everitt: I am a councillor in Buckinghamshire.

Bob Blackman: I employ a councillor in my office and I am a vice-president of the LGA.

Q115 **Chair:** That is all on the record, to show particular interests that we may have. Thank you very much to our witnesses for coming. I am going to go over to you individually and ask you to introduce yourself and the organisation that you are representing.

Martin Boyd: Good afternoon. I am Martin Boyd, chair of trustees of the Leasehold Knowledge Partnership charity.

Victoria Moffett: I am Victoria Moffett. I am the head of building and fire safety programmes at the National Housing Federation. We represent housing associations in England.

Q116 **Chair:** Thank you both for coming to give evidence this afternoon. When members are asking questions, they will probably indicate who they want to answer first. Most of the questions will probably be directed to both of you, but not necessarily all of them. As I said at the beginning, the ultimate intention is to make sure through this legislation, when eventually enacted, that we never again have a disaster like Grenfell Tower. What is your view of that? Do you think this will actually avoid another disaster like Grenfell?

Martin Boyd: I have to be honest and say that I am not exactly sure what this Bill will have to do with that at all. The changes to the regulations seem to be the important elements that are changed. While we do not have any particular knowledge of the construction side of this Bill, during the occupation phase there are a number of things that are very worrying.

Chair: I am sure we will come back to some of those details as we go through with particular questions.

Victoria Moffett: There is a huge amount in this Bill to be welcomed. Some of the principles that Dame Judith Hackitt identified as being absolutely pivotal to ensuring there is not another disaster like Grenfell are there, but I would stress that they are there in principle. Those include the need for clear lines of responsibility across the lifecycle of the building and the demonstrable golden thread of information that goes from the construction phase through to the occupation phase, as well as the requirement to engage with residents, because of course they play such a crucial role in the safety of a building.

However, it is light on detail. It feels like there is broad consensus on that among a range of stakeholders, and not just our members. The things we are asking for Government to do to help us move towards the new system even more quickly than we have are just to provide greater intention of the direction of travel, so that we as housing associations can

continue to prepare our buildings and work towards implementing this new system until that detail comes through in secondary legislation.

Q117 **Chair:** One of the key issues, following from what you just said, Victoria, is that the most stringent elements of the Bill will initially apply to high-rise buildings. The Government have not put it on the face of the legislation, but have indicated that regulations will begin by saying that the most stringent regulations apply to buildings that are 18 metres, or six storeys, in height. Does this effectively deal with those buildings that are at risk? Is that a relevant categorisation for the Government to look at?

Victoria Moffett: We have always argued that there should be a risk-based approach to buildings that are brought into the higher-risk regime. My understanding of the reason for the 18-metre threshold is that it is to do with evidence that demonstrates the outcomes in a building and for people's lives following a fire in a high-rise building. While that is one factor, there are other factors that need to be considered, and the Government are conducting some research into different risks. That could be the people who are living in a building, so if it is supported housing, for example, you might have people who inherently would not be able to evacuate without significant support. You might want to consider how the building is constructed, when it was constructed and a range of other factors.

Height is not the only factor you would think about in terms of risk. It is important to note that, regardless of how higher risk is identified, there needs to be a managed transition period to bringing those buildings online. The reason I say that is because there are huge numbers of buildings that would fall under the definition of higher risk as it stands. There might be hundreds of those owned by a single housing association, so it has a task in preparing those buildings. There are also smaller associations with a really small number of staff that might be preparing one building to come into the new system.

That gives you an idea of how varied our sector is and the challenges in bringing those buildings forward. At the same time—and I know it is a separate piece of legislation—the Fire Safety Bill is bringing in changes, which are right and that we want to deliver, but, given the capacity of our sector and the sectors we need to work with to deliver those, there is a possibility that it will be overwhelmed. If we tightly define what counts as higher risk, based on evidence, it gives us the opportunity to manage the transition to the new system appropriately.

Q118 **Chair:** Bearing in mind what you said about needing to know a bit about what is going to happen in the future in order to plan, should the Government be identifying from the beginning the sorts of factors they are going to take into account in future definitions of buildings that come within scope, and maybe even at least a prospective timetable for how they might see that scope being widened in the future?

Victoria Moffett: That would be hugely helpful. The organisations we represent are organisations that have multi-year business plans. This is stuff we can be thinking about budgeting for now, to be able to deliver in the future. An overall sense of what changes are coming and when they are coming would allow us, as organisations in receipt of some public funding, to do that in the most efficient way and achieve those safety outcomes quickly.

Q119 **Chair:** Martin, do you want to come back to the scope of the Bill as it stands, and the point about transition for existing buildings and whether you can do it all, even for the buildings within scope, on day one?

Martin Boyd: The transition period is going to be massively complex. Although we talk about over-18-metre buildings as being the ones of higher risk, we have seen more buildings below 18 metres with quite serious fires in recent years. The market is not going to react well if we have no certainty about when buildings below 18 metres may come into scope in the future. I agree with you: there very much needs to be a timetable set and we need to look at what factors other than just height give rise to risk. In Australia, they have very much gone down the route of deciding that some tall buildings with cladding are safe to leave. Over here, we have taken a binary approach. We know that some buildings with a very, very small amount of ACM have had the cladding removed, whereas we have a large number of buildings that are fully clad, under 18 metres, which have no chance of the Government supporting their cladding removal at the moment.

Q120 **Chair:** One of the proposals is that a building safety case report has to be assembled for existing buildings. Do you think that is going to be easy to do? What do you see as the challenges there?

Martin Boyd: I happened to be talking to Nigel Glen earlier this morning about this issue, so I will let him go through the numbers in detail, but, if you have to go back and retrospectively verify the safety of the building, it is an expensive process. As we have seen from EWS, the system is moving very slowly, it is very expensive and there are very few qualified people out there who can do the work. That is a critical issue. We have to consider that this Bill is only going to work if there are actually people out there to do the jobs that the Bill envisages.

Victoria Moffett: I agree. The building safety case, in particular, represents a significant amount of work. It is a perfect example of one of the things the Government could provide some interim direction on, such as what a safety case might look like, so that we can direct our resource to making those exist until the legislation passes, with the knowledge that the work we have been doing so far is accurate.

Chair: As you say, a lot of your members are quite small organisations, which are going to struggle without guidance and direction. That is a very fair point.

Q121 **Bob Blackman:** One of the concerns here is that the accountable person is being introduced as one of the measures. What is your view on the clarity of the role and, indeed, what they are actually going to be doing as the Bill stands?

Victoria Moffett: There is some clarity on the accountable person. For a housing association that already has responsibilities for compliance with other safety legislation, there is perhaps some level of comfort in knowing that those governance structures already exist. Where we have the greatest concern is that there are a number of complex ownership structures within our sector. You might remember the fire in Barking that happened in a low-rise building. It did have some housing association residents in there, but it was not a housing association management team, for example, or freeholder. We will have circumstances where we have an interest in a building that we do not have the accountable person responsibility for, or we are the accountable person for a building that other organisations might have leaseholders in as well.

Because of that, as the Bill was written it would expect that there could be more than one accountable person. We are not clear on how you deliver a whole-building approach—because that is what Dame Judith Hackitt wanted, so it is clear who that single responsible person is—and hold that person to account on areas where they are not directly responsible. I do not think that has been entirely worked through yet. That could present problems in buildings where those complex ownership structures exist.

Q122 **Bob Blackman:** One of our roles here is to scrutinise this legislation and make recommendations for changes. Do you have a view that the Bill should be changed in respect of such buildings that are complex structures?

Victoria Moffett: We have not formulated a view yet, but we could have conversations with Government, with the Select Committee, if useful, and with a range of our members who are already working in those structures, so that they will have a sense of what the day-to-day problems could be and what the potential resolutions could be.

Martin Boyd: When we first met Judith Hackitt, at the very beginning of her work, and tried to explain the impact that leasehold will have on how a building is managed, her view was that she was not interested in tenure type and that her interest was only in building safety. Unfortunately, that is like saying you are interested in making cars, but not how they are going to be driven. As Victoria has just mentioned, on big, complex sites, we have the potential for two, possibly three or even more accountable entities that are responsible for their element of the building. You can, as well as having mixed private residential and social housing, have a commercial element. The idea that you have one person sitting above that who is entirely responsible is rather difficult.

There is also the problem that you have to make a number of these roles such that an ordinary person is able to take them on. Buildings are not per se dangerous entities. They are not oil refineries. We all live in buildings. We do not have a safety officer outside our front door, most days. Dame Judith seems to bring across a structure that is relevant to a production industry, where you quite rightly have a whole range of people responsible for safety issues. In a building, an accountable person started off, as I understand it, as someone you could contact. One of the big difficulties we have at the moment is that the building owner—as Government insist on using the term now—is very often an offshore entity. As you heard last week from Mr Wilsher, it has been quite difficult to contact anyone who is responsible for some of these buildings.

We need someone who can be accountable for the building, but whether we want to put on them the liabilities that the Bill proposes is very questionable. I, for one, as a director of what is meant to be the most complex leaseholder-run site in the country, do not want to be made criminally liable should something horrible happen on our site. We appoint a professional managing agent to make sure that they look after the building for us. As we move to an era of commonhold, we are going to have that as the de facto system that exists. A commonhold is collectively owned by the people who live in that building.

Bob Blackman: We do not want to get into the issues of commonhold, leasehold and so on. The crunch is this legislation. We could have a very good conversation, I am sure, about leasehold, commonhold and so on, and this Committee has reported on it.

Martin Boyd: I would only make one point on that: the legislation has not addressed the commonhold issue.

Q123 **Bob Blackman:** Yes, that is a fair point in terms of this legislation. Have either of you considered who will actually want to take on this role? Martin, as you have quite rightly said, as a director of a complex organisation, you do not want to take on this role. You appoint a managing agent to take it on. Are managing agents going to want to take it on, because of the potential criminal responsibilities?

Martin Boyd: No, with the way it is structured, I would imagine Nigel is going to tell you later that very few managing agents would want to. What has not failed so far is property management, as far as this Bill is concerned. We are not seeing buildings that are being damaged while they are running in a steady state. We are seeing buildings that have defects in the construction phase, and we have obviously seen the tragedy with the refurbishment that took place at Grenfell. The idea that these roles somehow ought to continue with that higher level of competence seems rather odd to me.

Victoria Moffett: Just to add what I think is the main point of feedback from our members, I would not say I hear from organisations that do not want to take on the role. What I hear is that they want to know what the

responsibilities are that they are taking on. Provided they are clear, as professional social landlords we feel competent to do that.

What is missing for us—and I come back to my point about this being the main point of feedback from our members—is that, as the Bill stands, our members do not see that they would have the ability to be responsible for the whole building. What they mean by that is that there is a really small minority of cases where, despite extensive engagement, a resident might not permit their landlord into their flat to carry out an essential repair. I saw something similar, in that the Housing Ombudsman recently produced a report around complaints, leasehold and what have you, in which it recommended that landlords should have powers of access to individual properties where they need to deal with, for example, a leak that is affecting another property.

It feels to us that, if that is the case for something like a leak, a landlord really needs to have very quick, easy access to somebody's property should they need it to ensure the safety of the rest of the building. I could see that having that power of access might sit uncomfortably with some people, so we are totally open to checks and balances to make sure it is proportionate and is only used in situations between an emergency where you would need to have access immediately and something that really cannot wait a number of days. It is so important, so that they can take full responsibility for the whole building, to be able to access all of it.

Q124 **Bob Blackman:** Moving on, the accountable person is going to have to appoint a building safety manager. What qualifications and experience do you envisage that person having? Victoria, do you want to kick off, because you probably have people in place to do some of this at the moment?

Victoria Moffett: We have been contributing to one of the working group reports that defined the competence levels for a building safety manager as part of the competence steering group. I understand that some of that is now being consulted upon, which is really good news, because that definition is something our members are really keen to see, so that they can start recruiting people.

We are worried about the way this role might be fulfilled. Something we have been pleased that the Bill has moved on is that that role can be carried out by an organisation or an individual, provided there is a named person for residents to contact. The reason that is beneficial to housing associations is because, for a large organisation, you might have those skills—for example the resident engagement, or the understanding of safety compliance and how a building works—across various different teams. That seems a lot more likely than that you would have somebody who has those understandings but also understands how a fire works and how to prevent fire. The idea that those skills might exist in one person seems like quite a tall order, so we have been pleased to see that the Bill would permit a building safety manager to be an organisational role.

We are, as I say, quite keen to see the full definition of competence for that role, but we also wonder how that would work for a smaller housing association, for example, which might have one higher-risk building. Can they take a consultancy approach to the building safety manager role, and perhaps procure a building safety manager over a number of buildings with other smaller housing associations? That is the kind of level we are looking at, the practicalities of delivering it.

Q125 **Bob Blackman:** That makes sense. Martin, do you have a view on the competences and the type of person we need?

Martin Boyd: The BSI is just about to start up a consultation on this. It is obviously going to be under review for some time. I agree with Victoria that there has to be an enormous question about whether this is a function or a person. The reality is that we have not had building safety managers up until now. They are another group that does not exist. We are struggling to get fire engineers to go out and assess whether these buildings are safe. We now have a new category of building safety managers.

I have not read any explanation that tells me why we actually need one. The property manager that we currently have in most buildings, when it comes to doing something that is a particular specialist fire-related matter, would employ subcontractors to do that. Once every 10 or 15 years, when the fire alarm system is upgraded, the property manager will go out and contract a surveyor to produce a specification of works, who will then go out and find three potential suppliers for those products. Similarly, every year, the property manager will contract a specialist company to carry out the fire risk assessment.

I looked at the impact assessment. At paragraph 321, it gives estimates as to how many days a year this building safety manager has to work. It says 28 days per building, per year. Doing the sums from their numbers, the charge-out rate looks to be about £800 per day per building. I have four buildings on my site. That is going to be split between 240 flats. That equates to about 10% of our overall budget. That is when nothing is happening. It is an additional cost that this Bill is proposing, and that seems entirely disproportionate.

Q126 **Bob Blackman:** On the sanctions that are available, what is your view on whether they will change the culture that has been criticised by many people?

Martin Boyd: Again, we need to differentiate between the construction phase and the occupation phase. There is no clear evidence of defective behaviour during the occupation phase. The problems that we have and the criticisms that Ministers, civil servants and Judith Hackitt have made are of the development sector. I would not fully agree; I do not think the blame all sits on their shoulders. But there has to be a question: why are we trying to impose the same sort of sanctions during the occupation phase as we have during the development phase?

There is a bit of a problem with the sanctions that are missing in the Bill. One thing that is proposed to be removed is the civil right to take an action should there be a breach of building regulations. I know there is a plan to extend the criminal from a two-year to a 10-year period, but ordinary people do not have the right to take these criminal actions. Are we reliant on Judith Hackitt to decide to take action? It seems illogical that we are limiting the building liability to six years. It would have been much more sensible to say, "There is a civil right that lasts for at least 10 years for defects on this building you are buying into," which is meant to last 999 years sometimes.

Bob Blackman: We will take that into account.

Victoria Moffett: It is understandable that sanctions need to be there in some circumstances, where people really are not taking on the new system. In terms of a culture of safety, if I think about that, it is one of transparency where there is an adult conversation between the responsible people in the new system and the regulator. I hope that that would be one of intense engagement in ensuring that there are many opportunities for people to understand what the regulations are and how to comply with them, prior to anything like sanctions being needed.

To specifically answer the question in terms of culture, I would want to see transparency and an adult conversation between the responsible people and the regulator prior to those things being brought in. I can understand why sanctions are needed as a backstop for anybody who really is not implementing the new legislation.

Q127 **Bob Blackman:** Are you content that the sanctions are set at the right sort of level, as you understand them?

Victoria Moffett: I do not think I could comment specifically on whether they are set at the right level, but the idea that there needs to be some is appropriate.

Chair: We will move on to the issue of residents' involvement, which Dame Judith Hackitt was particularly clear about in her report.

Q128 **Mary Robinson:** The Bill looks at the rights and responsibilities of residents. First, how easy will it be to identify residents? Is it right that the definition in the Bill refers to lawfully residing in the building, so could feasibly exclude a number of people living in the building who are not classed as lawful residents, such as sub-letters? What is your view on that?

Martin Boyd: This is such a difficult issue. I know from our own experience that it is utterly, utterly impossible to have a full record of who is legitimately living in a building. People simply do not pass on the information. They do not remember. They do not even understand why they have to do it. In terms of your reference to people who are subletting, yes. By the time we get over to the Airbnb-type subletting that occurs, your managing agent would have to employ an additional

member of staff to monitor it on some sites. It is implausible that we are going to get to that level of information.

Q129 **Mary Robinson:** Victoria, is it impossible and implausible?

Victoria Moffett: I agree with Martin. It is difficult to know who is living in a building at any one time, because people will sublet properties. People will come to stay and you might want to have some level of engagement with them. In terms of the definition of "lawful residents," I would raise a question as to whether that also excludes people who are leasing a property. They are not the person residing there, but they are the person who owns that lease. They might also have contributions to make to engaging on safety.

Q130 **Mary Robinson:** Could I stay with you, please, Victoria? On the subject of who those residents would be, the Bill imposes specific duties on them, in relation to keeping any relevant item in repair and proper working order, and taking reasonable care not to damage any relevant safety items. Is the approach set out in the Bill appropriate? Should there be a general duty to co-operate with the accountable person, for example?

Victoria Moffett: A general duty to co-operate seems like a reasonable compromise, because the people who are living in a building know a lot about what that is like, living their lives and what that means for who they have coming over. Can they easily evacuate? They want to live in their properties, and that is a reasonable thing for them to want to do.

In terms of some of the other duties, there appears to be a duty on the residents in the Bill, as you have set out, to make sure that electrical appliances are in working repair. It would be quite immoral of us to agree to something that would have disproportionate financial burdens on residents, particularly because the vast majority of people who live in our properties are on lower incomes. We should not agree to a disproportionate financial burden on them. If we want to look at preventing fires, as well as how the building performs in a fire, we might want to work with the industries creating those white goods. How are we ensuring that they are operating safely in the first place? How could we work with them to recall products that are found not to be in working order?

As a general principle, it is reasonable that a resident, regardless of the tenure they are living in, would not know whether one of their white goods is working appropriately. Even though the Bill might be drafted in such a way that, if they know, they have to inform someone, I do not think they should have the responsibility where that would place a financial burden on them.

Martin Boyd: I fully agree. We had a reasonably serious fire at our site a couple of weeks ago, where a dishwasher caught fire. There is no way that the leaseholder had any prior knowledge that that was a defective device. Under other legislation, we have moved towards stricter

requirements for ensuring we have electrical safety. In blocks of flats, it is a more precarious issue than it might be in an ordinary residence. It is a careful line to draw, but I am not sure whether some of the proposals are practical.

Q131 **Mary Robinson:** It is not clear whether the Bill imposes a duty on residents to inform the accountable person of names and contact details either. Do you think that should be a specific duty on residents?

Martin Boyd: It is horribly difficult. If somebody is intending to be in the building for an extended period, yes, they should be known. However, if it is just somebody visiting for the weekend, are you expected to go down to the concierge and fill in all the forms to say that your auntie has come to pop in? What happens if auntie goes a day early? Are we then going to have the fire authorities searching for someone who is not in the building?

Victoria Moffett: It would just be a question of what that information was going to be used for. Any resident would reasonably raise questions about doing that. Coming back to this point about lawful residents, are you potentially making people worry about providing those details? They might have some misgivings about people in authority and what is going to happen to that information. There are some parallel measures in the Fire Safety Bill whereby a landlord is required to ask people to self-identify if they would need assistance in evacuating. That seems like a reasonable approach, where somebody is in that position, but to extrapolate that across all general-needs stock would be onerous for a responsible person as well. Unless you have specific ways you are going to use that, I am not sure that is a reasonable thing to do.

Q132 **Mary Robinson:** There is also going to be more consideration of the engagement that takes place. The accountable person will have a duty to prepare a residents' engagement strategy. Do you think the provisions set out in the Bill are sufficient to make this engagement meaningful?

Victoria Moffett: At the moment, I do not. What is represented in the Bill is a very prescriptive list of information that you would consider an absolute bare minimum, such as evacuation information for people in a means they can reasonably be expected to understand. In terms of true resident engagement, we have been doing a huge amount of work on this, not just in relation to building safety. It needs to be co-created with the residents who are going to be engaged. If they set out the best way of engaging with them, it is going to be a lot more successful. It also needs to be outcomes-driven, so people define what they want. Do they want to feel safe? Do they want to understand what to do in an emergency? There are lots of different things that they might want to be engaged on. They are the best people to stipulate exactly how that should work.

A key principle that we have found from our work on resident engagement is that there are significant barriers to engagement. Anyone

conducting a resident engagement strategy needs to work with residents to overcome those, so there is an equitable approach across all types of residents and they can engage appropriately. On something like building and fire safety, it is critical.

Martin Boyd: We can sum it up by saying that Dame Judith's approach to resident engagement throughout the whole of her project was that she has had no engagement with private residents whatsoever. We have never met her to discuss the issues she thinks are relevant to residents. That tells you her mindset. The way she looks at this is that she is going to set up a committee at some point in the future, as is proposed in the Bill, to decide how these residents should be engaged with. It is a very top-down approach.

As Victoria just pointed out, it is about co-operation. We have proposed to the Minister, and I have put it in our written submissions, that there is an ideal opportunity within the Bill to create a residents' organisation on every site, to have one that you can ensure operates democratically and represents all the different interests. There are at least four different types of residents in various blocks. You will have everything from the long leaseholder through to the private rental sector tenant. You will have the social sector shared owner and the social sector rental tenant.

They all have slightly different interests, and in almost no site in the country are all those groups properly represented. In the social sector, some of the tenants and residents associations will actively decide they do not want to represent the leaseholders on the site. Under the recognised tenants legislation in the leasehold sector, you are not allowed to include PRS tenants as formal members of your group. You can set up a sub-entity that deals with them, but the law actively encourages a divide and rule approach at the moment.

Resident engagement must be made meaningful, because we are potentially dealing with some very complex issues here. If somebody said, "We are thinking of installing a new fire alarm system," I would have no idea whether what was proposed is the right or wrong solution. I do, however, know that I have at least three people on the site who will know an awful lot about that, and they can talk to me and make sure I make an informed decision. We ought to be looking at that far more seriously than the Bill has so far.

Q133 **Mary Robinson:** You said that Dame Judith perhaps did not speak to private residents? In your view, what would she have heard had she done so?

Martin Boyd: She would have heard that she perhaps needed to take a very different approach. In her committee group, she did have a resident engagement group. She did engage with some groups in the social sector. But, mainly, her group was made up of people representing everyone but leaseholders and residents. It is time for a culture change in the way we operate buildings. If we are going to engage properly with

residents, we have to give them the resources to organise themselves professionally.

Q134 **Mary Robinson:** Can I go to Victoria? Martin mentioned culture change. The building safety regulator would be required to establish a consultative residents panel to advise on guidance and other issues. Who do you think would sit on it and make sure it is able to effectively contribute to policy considerations and be respected? Communication is really part of the culture change that Martin would seek.

Victoria Moffett: It is a really positive thing that they would be looking to set up such a panel. I would come back to my previous point about the need for the panel to overcome any barriers to engagement. We see within our sector that routes to engagement do not always effectively represent the people living in a building. That could be because there are certain people who are more available to participate, or there may be financial barriers. All those things need to be considered so it would be truly representative.

Martin Boyd: In terms of who is involved, beyond the residents, it is really no one. How the residents organise themselves is up to them. That is part of the culture change. We should not be asking landlords or even, with respect to them, managing agents. It is not their group that is being organised. It is up to the people. We need to treat people as grown-ups rather than spoon feeding them and deciding, "This is how we are going to talk to you, and this is what we are going to tell you."

Q135 **Mary Robinson:** Victoria, you alluded to this earlier. The Bill includes provision about access to dwellings. Do the provisions, as set out, provide a workable solution, in your view? The Bill appears to allow access for the purposes of taking measurements or photographs, but not undertaking any necessary work or using force to gain entry. What should happen in cases where there may be noncompliance, for instance?

Victoria Moffett: We have been talking about this. We agree that there should be a court process, as the Bill alludes to. As it stands, if a landlord needs to get urgent access to a property, going through the courts can be very lengthy and costly, and that is not something we have the luxury of when it comes to building safety. We have some suggestions about exactly how that could work, which I could share in more detail. As described before, we need to recognise that there will be a small number of instances where we do not need to call the fire brigade to knock down the door immediately, but we cannot wait 24 hours or a week to address the problem that is inside. There needs to be some kind of recognition of that and an appropriate process to enable access to the property in cases where that happens.

Q136 **Mary Robinson:** Martin, do you think the solutions are workable, as described in the Bill?

Martin Boyd: That is the bit that starts at 17(a). It is essential that we get the access point sorted out. I perfectly understand that there are

currently a number of problems in how we gain access to people's homes. We just have to ensure there are enough protections in there. Going to court is not the right route because, if you have to do it urgently, waiting for two or three weeks is not the right route. You have to put some sort of objective test in there. Did the landlord legitimately need to come into the property?

Chair: Something that has caused quite a bit of interest and consternation is the building safety charge. On this set of questions, could you deal with the charges for ongoing work? The historical charges that may fall on leaseholders will come in the next set of questions.

Q137 **Ian Byrne:** The Bill introduces a building safety charge, the Government say, to facilitate transparent recovery of costs incurred by landlords in putting in place building safety measures. Although the Government state that the costs are limited to those that are reasonable, the impact assessment puts a possible upper figure of £78,000 for the total estimated costs for leaseholders. Is this reasonable, Victoria?

Victoria Moffett: Looking at the impact assessment, some of the costs of overcoming historical issues are included in that as well. In terms of the running costs of implementing the new system, it is quite difficult to determine what is reasonable when we do not yet know some of the detail that we need to understand how we will implement that. For example, until the skills and competencies required of the building safety manager are absolutely defined, we cannot really say if there are people to fill that role, whether they would demand a higher salary by virtue of there not being many of them on the market and how that is then paid for by leaseholders.

The main thing I want to get across is that we have absolutely no interest in making our homes unaffordable to people. We are a movement that exists to provide affordable housing to those who need it. We use funds that we raise through selling homes on the private market to provide more social housing. Any shift in the balance of how unreasonable or reasonable that may be changes our ability to provide new affordable homes. It is something we really need to get across.

There are a number of routes that housing associations go through to ensure that existing service charges are reasonable. We do not profit from them, for example. We have to meet value for money and other regulatory requirements. We would make sure that the running costs of implementing new systems were going through those rules as well, so as to contain them. Like I say, we do not have an interest in making service charges unaffordable to people.

Q138 **Ian Byrne:** Giles Peaker stated that no one should buy a leasehold property until this is sorted out. Would you agree with that sentiment?

Victoria Moffett: As I understand from the EWS1 issues, it would be very difficult for anybody to buy a leasehold property as it stands anyway. It is fair to say that there is uncertainty that needs to be

overcome, and we will talk more about the historical charges. Sessions like this and ongoing dialogue with Government are helping to overcome that.

Martin Boyd: You might know that I started my written submission with a quite contentious statement. Giles Peaker is responsible for the first part of that. He is the solicitor who described this Bill as a dog's dinner. Things got worse from there, as you know, in the statement. We are talking here about a charge that will apply to a building that has already been made safe. We are taking out the historical issue.

Ian Byrne: That is coming up, yes.

Martin Boyd: All new build going up is built safely; all historical stock has somehow been fixed. There is a massive question, therefore, of why, in the name of transparency, you have to make this a separate charge. By making it a separate charge, that creates costs in itself. Also, why take away some of the existing protections we have for other service charge items? The concept that you can send out one of these demands with 28 days' notice at any point seems mad. You go away on your summer holidays, you take a couple of days to get home and you arrive back to a bill that you have to settle within a week or so. While we hopefully have fixed the historical costs, there is no reason why, in theory, some of these costs could not be quite large in the future. You suddenly have to go and find £5,000 or £10,000, and you have to do it in less than a week. It is illogical.

Q139 **Ian Byrne:** Thanks, Martin. You have answered two, three or four of my questions. Victoria, the measures apply to shared ownership long leases. Does this cause any issues?

Victoria Moffett: As a shared owner myself, it has made impeccably clear what the shared owner's responsibility is when they take on the lease. With regards to service charges for the management of the building, there is a responsibility for 100% of those. As I say, that is made very clear to shared owners before they buy their property.

Q140 **Ian Byrne:** I am going through the questions now, to try to pull one out that Martin did not answer before—brilliant answer, by the way, Martin. The Secretary of State can set the appropriate amount, as we talked about before, which is the cost to the leaseholder. They are looking at £100 and £400 per year, with a central estimate of £200. What should this appropriate amount be, Martin? You have outlined what you think.

Martin Boyd: It should be zero, because you should incorporate it within the standard service charge.

Victoria Moffett: When it comes to the building safety charge, there will be housing associations that are paying this as it is charged by the freeholder, so where they might be the head lessee. There will not always be the opportunity or ability to pass that on. We are absorbing more costs than just those of implementing the new system in buildings we are

responsible for. To make the point again, there are a lot of moving parts, in which we want to play and are playing our role, in terms of taking responsibility. But the overall impact on the affordable housing supply is going to be a consequence.

Chair: I said we would move on next to the costs of historical building safety defects.

Q141 **Abena Oppong-Asare:** Thank you, Martin and Victoria, for your answers so far. The Government have said they are rapidly identifying financial solutions that protect leaseholders from unaffordable costs. I know you have covered some of this already within the previous answer from my colleague, Ian, but they have also said they want to ensure that these kinds of costs do not fall on taxpayers. What do you think the legislation should include in relation to solving historical safety defects and protecting leaseholders?

Martin Boyd: We have had nearly 1,200 days of Secretaries of State saying that leaseholders should not be paying for defective buildings. It is not their fault; they did not build them; they had no means to know when they were buying their homes that they were going to be deemed defective later on. This Bill then flips that round and says, "We will specifically make you, as the leaseholder, liable for all historical defects, including defects we have not yet found." That is a major issue. It is completely the opposite approach to the one we take with almost all other goods.

The Bill should have spent a lot more time working out how the costs can be spread across the sector. There are only two groups that are potentially liable for these defects, either the developers or the Government. We had either defective regulations or defective building. As part of applying for the Government funds, you have to hand over your right as the building owner for the Government to be able to take action against the developer or the cladding contractor. That has not happened yet but, if the Government think that is what should take place, they should put that in the Bill.

Q142 **Abena Oppong-Asare:** The Bill mentions that it will extend developers' liability to 10 years. I know there has been concern about the fact that this is only with new buildings, not the older ones. You are saying the costs should be spread. Do you have concerns about the extension of developers' liability, and do you have specific recommendations for what the Government could be doing to protect leaseholders?

Martin Boyd: On new build, as well as the extension of the criminal sanction that exists, there should be a civil right. Why should it be that you buy these properties and your civil rights to claim against the defect run out so quickly? They should last on building safety issues for at least 10 years. On the historical problems, it is a horrible situation. Governments around the world are struggling to find answers. We just do

not seem to be finding as good an answer as some of the other countries do.

Abena Oppong-Asare: That is really helpful.

Victoria Moffett: When it comes to a financial solution to historical remedial works, there are a couple of principles we think should be met. We do not think leaseholders should have to foot the bill for works, but we do not think that charitable housing associations should either. Some of the statements that have been made about leaseholders not paying, by various Government Ministers, are right. They should not be paying. There have been cases where housing associations have paid for some of the remedial works but, as the scale of that has grown, it is just not sustainable.

We did our own piece of research on the amount we might have to pay, not just for remedial works but for building safety and new measures generally. It could easily exceed £10 billion. I know there have been various assumptions and predictions of that figure. For us, as charities, we are obliged by our charitable objectives to spend our money on the people we want to house who are on lower incomes. There is an impact on that of any housing association meeting the cost. It is an important principle that leaseholders should not have to pay, but neither should charitable housing associations.

Also, the financing for remedial works really needs to be focusing on increasing speed of remediation. That is the most important thing. If people are living in buildings where they do not feel safe, or materials on the outside of their building mean they potentially are not safe, funding needs to come forward to make sure that can happen at pace. One of our key asks of Government, ever since the fire at Grenfell Tower, is that they make funding for remedial works available up front and we establish liabilities later, because remedial works need to be dealt with in the first instance.

Q143 **Abena Oppong-Asare:** That is very helpful. You have both covered this already, but I wanted to hear from you. Is there anything specific in this Bill that you are worried about in terms of the historical safety defects and the costs associated with rectifying them? Martin, I know you have mentioned the importance of having a civil right to make sure that is included. Is there anything else you wanted to add?

Martin Boyd: There is this huge problem that, when these buildings went up, they were not necessarily defective. All the things we are now requiring to be fixed were not in any way in breach of building regulations at the time. You can quite understand that everyone is sitting there saying, "It is not my fault that it is wrong." I do not have an easy solution to that.

We have to ensure that we are not going to use this Bill to massively damage housing stock. As Ian mentioned, Giles Peaker said, "Do not buy

a leasehold flat". Giles is absolutely right, because if you were to buy a flat at the moment, it might be subject to future regulations that are retrospective. You have a building that is 16 metres tall and in four years' time they decide that is now going to come within scope of the new rules. All of a sudden, your cladding has to come off and various other things, and we are up to our £78,000 per flat, although it is only £75,000 on an under-18-metre building according to their estimate. It is not just the costs that people who have cladding are facing. There is huge damage happening to the value of our building stock, which may be safe or it may have some small level of issue.

Q144 **Abena Oppong-Asare:** Yes, it is something I have also seen with a few leaseholders who have contacted me with concerns about their properties, in terms of selling them in the future and the impact of legislation. What do you want to see the Government do in the short term?

Martin Boyd: This is not specific to the Bill, but we have reached a stage where the Government have spent three years working in silos. They have spent ages working with the surveyors and the lenders. They have talked to the managing agents and to the developers. They very occasionally see leaseholders. It is at a point now where there just needs to be a roundtable, where all the groups get together and we all try to work out what the possible solutions are. At the moment, we have another three, four or five years of this.

Abena Oppong-Asare: That is really helpful.

Victoria Moffett: I would repeat my points about the need for finances to make sure that remedial works can take place quickly. Another call that we have been making on Government is around co-ordinating the approach. We know that we have limited resources, whether we are talking about financial or capacity among the experts who are needed to make sure that remedial works can happen. Government are the only agency that can take those and direct them first at the buildings that need them most. It would be an awful situation where any building that was considered high risk was not attended to first in terms of remediating historical defects.

At the moment, we have a building safety fund that is concentrated on buildings that are 18 metres and over, in recognition of the additional risk of high-rise buildings. As Martin said, there are a number of low-rise buildings where there could be fire risks, if we are thinking about a risk-based approach. That means there are leaseholders in those buildings who may be facing bills as well. It would not be an acceptable situation if there was funding available for leaseholders based on the type of building they were in according to height, because that is entirely an accident and not of their doing.

Abena Oppong-Asare: That is really helpful. Thank you both.

Chair: Thank you to both our witnesses for coming to give evidence to us

this afternoon. That is appreciated.

Examination of Witnesses

Witnesses: Dr Nigel Glen, Richard Silva and James Dalton.

Q145 **Chair:** We move on to our second panel for this afternoon. We have three new witnesses. Thank you very much for joining us. I will begin by getting you to introduce yourselves.

Dr Glen: My name is Nigel Glen. I am the chief executive officer of the Association of Residential Managing Agents. We manage the communal areas of larger blocks.

Richard Silva: I am Richard Silva, a director of Long Harbour and HomeGround. We have responsibility for approximately 5,000 blocks of apartments in England and Wales.

James Dalton: Good afternoon. My name is James Dalton. I am the director of general insurance policy at the Association of British Insurers.

Chair: Thank you for coming to join the Committee this afternoon. When questions are asked, I will ask the members of the Committee to indicate who they want to answer first and then move on from there.

Q146 **Mohammad Yasin:** Good afternoon, everybody. My question is about the draft Bill. What is your assessment of the Bill as drafted? Will it avoid another fire on the scale of Grenfell Tower?

Dr Glen: I do not think anybody can guarantee that a fire will not start. If you think of how Grenfell started, it was somebody's fridge, which then spread through a mechanism that nobody had foreseen. I am sure there may be other mechanisms that we cannot possibly foresee. Looking at the Bill itself, it improves safety and provides a framework for that safety. We will be coming to this later on, I am sure, but it addresses new build much more, rather than the legacy stock. There are some issues there that we need to look at.

Otherwise, the Bill is welcome. You just have to look at the buildings we are trying to deal with at the moment, in terms of cladding and compartmentalisation, to realise that what happened before has not worked very well. Anything that can improve that is more than welcome.

Richard Silva: The Bill is a good thing. It will hopefully delineate accountability in far greater detail and make the expectations from a building safety perspective far clearer to both stakeholders and, most importantly, people living in their own homes.

As Nigel alluded to, there are two aspects of the Bill. One is the look forward for new-build properties. In facilitating the aims of the Bill, that is going to be a lot more straightforward. The accountable person regime,

the building safety manager, costs and all of that detail is to follow, but implementing that going forward should be, in a relative sense, easier than looking to what effectively is an attempt to retrofit the same instruments into the existing stock. Let us be clear: existing homeowners are going to have significantly greater costs foisted upon them as a result of, frankly, systemic regulatory failure over the last 10 years or even longer in the development of these properties.

James Dalton: As a representative of the industry that protects so many people's houses and businesses, we have been calling for fundamental reform of the building safety regulatory framework for many years. The unfortunate reality is that Grenfell happened and now action is being taken. That is a national tragedy. There are many things in this Bill that are to be commended. There are many things in this Bill that will improve safety going forward. There are a number of comments on the Bill in terms of how we think it could be improved. Much of the detail remains for secondary legislation, but I might come back to questions and comments on that later, if that is welcome.

Q147 **Mohammad Yasin:** While the Bill does not set a specified scope for the scheme, the Secretary of State has indicated that it will initially use height: 18 metres or six storeys. What is your assessment of how effectively this reflects the risks present in buildings?

James Dalton: Fundamentally, this is one of the things that we would argue need to be improved in the Bill. The Bill needs to cover multi-occupancy residential buildings over 18 metres. That is what the Bill does now, but I think consideration of the risks posed by particular buildings is a more important criterion. Who will or could occupy a particular building should be the key driver here.

At the moment, the Bill is excluding from the scope of these new regulatory powers some of the buildings that house some of the most vulnerable people in society. You think about places like care homes, hospitals, hotels and hostels, for example. In our submission, when you are only going to include buildings that are over 18 metres in height, you are running a risk that you are unnecessarily going to water down the public safety benefits that the Bill provides.

Richard Silva: The Government have to start somewhere. This is a huge project, especially for existing stock. There are some technical reasons why a threshold of 18 metres should bring into scope most of the buildings that pose the biggest risks. The reality is that the Bill should actually have a much longer time horizon in terms of futureproofing, first, all the existing stock in the UK. Over time, through a phased transition period, it should look at different metrics, whether that is a lower height or the complexity of a building. Some buildings will have their own combined heat and power plants in the basement or lots of different lifts. There are lots of different things that constitute complicated pieces of infrastructure. The Government have to start somewhere. An 18-metre threshold is a start, but the sophistication of the detail in this Bill should

attempt to accommodate a much broader set of risk parameters going forward.

Dr Glen: As Rich said, 18 metres is pretty much an arbitrary number, but you have to start somewhere. The problem is that, if you cast the net too widely straightaway, you will completely swamp the market's capacity to remediate. For example, under ARMA, we have 5,500 blocks that are above 50 units. We have nearly 19,000 in the next tranche down, which is 11 to 50 units, so you have suddenly gone up 400% on the number of blocks you have to go for. Being arbitrary, you need to overlay a risk matrix. An 18-metre building might, for example, have just a tiny amount of cladding, whereas one of 14 metres might be absolutely plastered in HPL, with wooden decking and balconies—you name it—and will be a much greater risk but is excluded from the Bill. It is difficult to know. You cannot do everything at once, but just going on height is a little too arbitrary for my tastes.

Q148 **Mohammad Yasin:** How will the role of professional freeholders and managing agents be impacted by the proposals?

Dr Glen: It depends how the proposals roll out. Under the current one, managing agents, and I will only speak about those, will be impacted pretty massively because we will have to find building safety managers. The managing agent or the property manager is very unlikely to be the building safety manager. The analogy we use is that the property manager is like a GP, who knows a little about a lot of things, whereas the building safety manager, as defined, is a very senior, competent person and an expert in fire safety. That is more like a heart surgeon. The property manager would have to refer to the building safety manager.

That brings in all sorts of administrative issues. How it is currently put is that the leaseholders will have to talk to the building safety manager and not the property manager on safety-related issues. The property manager will have to go to the building safety manager and say, "Here is a contractor I am thinking of using. Can you approve this contractor? These are the works we are thinking of. Can you approve those works and have them done?" There is going to be quite a lot of administration put on us, so it will have a tremendous effect, I think, on how we operate.

Richard Silva: From a freeholder's perspective, one of the aspects of the Bill that we find quite interesting is the accountable person role. De facto, we have been acting as the accountable person in about one third of our developments since we have acquired them. Why one third of them? It is because they are subject to two-party leases where the freeholder is responsible for providing the services at the development level by appointing a managing agent, typically one of Nigel's members.

The Bill codifying what we and others do in our sector—not everybody does it—in auditing the managing agents, making sure they are doing a

good job and understanding the fire and life safety aspects of a building, which we do through our fire and life safety team, is a good thing. It provides transparency and sets a bar as to where people should aspire to, whether it is a resident-led management structure or a third-party freeholder.

I would echo Nigel's comments in respect of the building safety manager, in that there is an extra layer of administration and activity that will need to be undertaken at every block in scope. As I said in my previous comments, we would expect more and more blocks to come into scope over time. That length of time is to be defined, but it could ultimately be 10 or even 15 years. With administration and extra activity comes cost. We will come to the building safety charges later, but the cost and capacity of employing the building safety manager, whether that is by the managing agent on behalf of a resident-led management structure or by the freeholder to protect its interests, will inevitably result in greater costs to the consumer.

Chair: The issue was raised there about the accountable person and the building safety manager. The next questions are precisely about those, so this is a timely point.

Q149 **Ben Everitt:** Nigel, I will start with you because you referred to swamping the market in one of your previous answers to Mohammad. This is a real risk, because we are setting up this new role that does not really exist at the moment. This is a bit of a leading question, to be honest, but do we think that the accountable person and what their role should be are set out properly in the Bill?

Dr Glen: The main role of the accountable person is, in a sense, to appoint the building safety manager and be responsible for everything that goes on in the building. We have to remember that there are a significant number of properties managed by lay directors, in RMCs and RTMs. Whether they will have the ability to do that is one question. For me, a bigger question would be whether they will have the appetite to do that. I certainly would not want to be an accountable person with the liabilities that come with it. That is a big issue that we need to address.

There are possible ways round that, for example, if the lease allows you to appoint a professional director who does understand the role of the accountable person and who does carry the requisite insurance. Again, you have a cost issue there. That is where I get concerned on this particular structure, if you like. We will come to the building safety manager costs later, I am sure, on the BSC question.

Q150 **Ben Everitt:** Do you think there is probably going to have to be more than one accountable person in multi-use buildings?

Dr Glen: That is inevitable. There is going to be a bit of a conflict with the fire safety order, where somebody could be the responsible person, and you would then have an accountable person, somebody who, under the terms of the Bill, is entitled to reversion, I think. You could have

multiple accountable persons, each of whom is responsible for potentially setting multiple BSMs. You can see that we might be building a rather large administrative burden, but it is the confusion over that. One thing to look at is perhaps the CDM regulations, which mean that the parties can agree in writing to appoint one accountable person who can then appoint one building safety manager. That might bring a bit of clarity and sense to what could otherwise be a very difficult situation.

Q151 **Ben Everitt:** Yes, that sounds like a sensible workaround. You have essentially wrapped up a load of the questions we were going to ask in one neat, concise answer. Thank you very much, Nigel.

James, what are your thoughts on the clarity around the role and the ability to define the role between different individuals? Then, of course, the point Nigel made is absolutely bang on: who would want to do this role anyway, if we are making it so complicated and adding so much burden of risk and accountability? What is the solution there, as far as you see it?

James Dalton: That is a very good question. The answers are probably better provided by the likes of Nigel and Rich. From an insurance industry perspective, what is important is clarity of role, responsibility and accountability, because that is what an insurer can price a risk based on. There is potentially a requirement for these individuals or corporates to have some form of insurance.

A lot of the detail in the legislation will come from secondary legislation and regulations. It is great that the Government have put the Bill to pre-legislative scrutiny. One of the asks I had coming into this conversation was that, given the complexity and the technical nature of some of the roles, responsibilities and accountabilities on what is really technical and difficult stuff, putting the secondary regulations out to pre-legislative scrutiny as well would be really useful. Then you can get the benefit of input from all sectors on those rules before they take effect.

Q152 **Ben Everitt:** We need to be careful what we wish for here, James, because there is a lot of Government in this Bill already. Yes, it is a very good point well made. Rich, I am going to come to you. As well as the points Nigel brought up there, he also mentioned the duties that designers have in the CDM 2015 and how we may delegate some roles or legislate for the line of sight for those rules in terms of the accountable person. Do you have any thoughts on that?

Richard Silva: When I think about the accountable person role in a new-build property, by the time that property is fit for occupation, it should have had several levels of sign-off through the gateway process at design, planning and construction. Take a nice new shiny block of flats above 18 metres, appropriately built and signed off by an appropriate regulatory officer and then handed over to an accountable person regime for occupation. In that scenario, at the point of handover there will be a building safety case.

In a multi-tenure building, where there is commercial, social housing, leasehold, freehold and commonhold, whatever the structure is, that building safety case should inform who the accountable person is and should be part of the handover process from design and build to operation. That would provide clarity. If there could be some clarity in the Bill as to how that process works, ultimately the most appropriate person or organisation within the ecosystem of that new-build building should take on that role.

It is also interesting that, in the previous panel, Victoria Moffett mentioned the fire in Barking. That is one of our blocks. From an accountable person perspective, one of the big lessons we learned from that awful event—thankfully nobody died—was that, because it is a multi-tenure block, in the understandable emotion of the actual event happening, there were a lot people running around and not really knowing where to turn. Strong leadership in that environment is important, as is making sure it is very clear who the residents need to go to in a complicated situation like that. I am jumping around a bit here because of the residents' voice point.

Ben Everitt: That case study really brings home to us that we have a situation that is complicated enough when we are applying it, in theory, to new builds. It is fiendishly complicated when we are applying it to buildings that already exist, and it has to stand up to the test that Rich just highlighted. In a crisis, it needs to be clear enough so that people understand what is going on.

Q153 **Bob Blackman:** I think you said originally, Nigel, that the most important function the accountable person has is to appoint the building safety manager. What qualifications and experience do you think the building safety manager will require?

Dr Glen: I do not know if it is me or you, but I missed the first half of what you were saying there. The qualifications are still under development. I was lucky enough to be on the WG8 working group to come up with those. It is a senior competent professional. One of the questions we have, and I am sorry to inflect a little bit away, is where these BSMs are actually going to come from. If we have thousands of buildings that require them, at the moment I do not know where they are.

Some of the larger managing agents are interested in developing an in-house BSM capability but, for the bulk of managing agents—80% of my members manage fewer than 2,000 units—they will only need a bit of a BSM, so they will need to contract it in. I do not know where these people are coming from. I have raised with MHCLG that we need clarity on which organisations are gearing up to provide these people.

Q154 **Bob Blackman:** We heard in evidence last week that we may have to have university courses in the long term. Clearly you do not magic those out of the air, and you certainly do not magic students or even those who

are going to give the instruction leading to that degree. What is going to happen in the interim?

Dr Glen: That is a point of great concern. You introduce legislation that requires us to employ people who do not exist, so what do we do?

Richard Silva: On the qualification point, again, Government have to start somewhere. There is a reason it is 18 metres: that is a starting point. The working group that Nigel mentioned, WG8, is doing a very important piece of work, but some buildings are going to be more complex and riskier from a building safety perspective than others. The building safety case is really where everything should start. If that can inform the perils from a fire risk perspective of living in a particular building, that would inform the level of competency the building safety manager would need to have.

Say there are eight qualifications and, if it is a certain type of building, you only need a building safety manager with qualifications 1 and 2, while a very complicated building would need all eight qualifications. Whatever the certification process is, that will start to bring it down into bitesize, more manageable chunks. A transition period will inevitably need to be put in place, for who knows how long, depending on the level of resource available. That is the first point.

Secondly, culturally, we are going to have to make it an aspirational role. I take your point about university degrees or whatever else. Actually, one thing that is absent more generally, and has been for a long time, especially in the housebuilding industry across this country, is that it will inevitably require some academic excellence. It will also require a lot of experience and on-the-job training. There is a role here for a more apprenticeship-based, vocational role. As Nigel said, his membership is very broad. There are a lot of people employed in managing agents across this country. That could be a very good starting point in collaboration with relevant fire services to start that ball rolling now. Once the working group 8 parameters are published, even in draft form, that will start informing the market of what is required.

Q155 **Bob Blackman:** We are hearing that whoever fulfils this role is going to be a highly competent technical person. Within the legislation, whoever that person is, they will be required to operate the complaints system. Should it be the case that residents' complaints are referred to someone at this highly technical level, particularly, as we have heard on previous evidence today, when this could be a very expensive overload on residents, particularly leaseholders? Is that fair and reasonable? Should there be someone else doing it?

Richard Silva: It is very important that consumers have the ability to officially complain and have a process they can trust to make sure that their complaint is legitimately and appropriately dealt with. As for whether that complaint mechanism is administered by the highly skilled

and highly trained professional building safety manager, I am not convinced that is the best use of his or her resource.

Where there is a managing agent in a block, all managing agents should have a formal complaints procedure, so there can be an overlap where that managing agent can be responsible for complaints across the piece. Where a block does not have a managing agent but is self-run by the residents, de facto it is probably going to be a less risky, smaller block. Nevertheless, that complaints procedure could and should be run by the resident management company or the commonhold association in the future. It would be incumbent upon them, almost via the accountable person regime, to inform the building safety manager of that complaint and how to get it dealt with. Administratively, I do not think it is the best use of that person's time.

Bob Blackman: Nigel, do you want to comment on that particular issue?

Dr Glen: Yes, thank you for raising it. It does concern me. It is in the impact assessment that a building safety manager would have a salary of around £60,000 and would be able to manage seven to 11 blocks. If they are required to handle day-to-day complaints, which, having quizzed this with MHCLG, I am told is still currently the plan, there is a tremendous underestimate of how much time the building safety manager will have to spend on this. "Please, there is a bicycle parked in the corridor." That is never one letter. A whole range of things can crack out from that.

With the parameters they have put in, that is £6,400 to £10,000 per building per annum. We think that is optimistic. It is probably going to be double that. Is it a good use of a highly specialised person on those sorts of salaries? No. We believe there should be a building safety manager function put in place, and then you can use people such as property managers or administration staff to actually look at the complaints. Currently, the building safety manager is the person whose name is written on the door, and residents should directly contact that very senior person. That is gold plating it.

Q156 **Bob Blackman:** James, do you have any comments on the qualifications or expertise, or any of the other questions I have asked?

James Dalton: They are all very good questions, but not really ones from an insurance industry perspective.

Bob Blackman: I understand that. I just wanted to make sure you did not feel left out.

James Dalton: I am not feeling left out, I promise.

Q157 **Bob Blackman:** There is some suggestion that there should be a register of duty holders under the legislation. Do you believe we should go further and support the proposals for a central register of competence for anyone working on high-risk residential buildings?

Dr Glen: I would definitely support that. We are trying to do things efficiently so as not to place too great a burden on leaseholders. Under the current scenario, if the property manager wants to do something, they will have to refer that to the building safety manager, as I mentioned, saying, "This is the contractor I am thinking of using. Are they okay? This is the work I am thinking of doing. Can you go and check that, please?" This is another layer whereas, if there was some form of accreditation, as long as the property manager could use a firm that has this accreditation, and it is taken as de facto that it will be an acceptable standard, that will simplify matters tremendously. Otherwise, there is going to be an awful lot of crisscrossing between the BSM and the property manager trying to figure out who is managing a particular project and who is not.

Richard Silva: I completely agree with Nigel's comments. As in the gas safety industry, where you have the CORGI-registered accreditation process with a kitemark and a certain standard, this should absolutely be implemented in this instance.

Q158 **Chair:** Costs have certainly come into this and have been raised already. On the building safety charge, there are a number of issues about amounts. The impact assessment says that the figure could rise, in hypothetical circumstances, to £78,000 for a leaseholder. First, is that charge reasonable? Should there be an upper limit that can be charged? The legislation also says the Secretary of State can lay out by regulation an appropriate amount above which there has to be consultation. Should there be a maximum amount, and what should the amount be above which there has to be consultation where people are likely to end up paying it?

Dr Glen: It is a difficult one because, if you set a maximum amount, you are not going to make that building as safe as it should be. If the works require £120,000 per leaseholder and the maximum amount is £50,000, what on earth happens to other £70,000? The number of £78,000, as Martin suggested, incorporates historical. There are three levels of cost we should look at. There is the historical one. I am pretty clear that I do not think leaseholders should pay for that. We have seen that for cladding, et cetera. There is the ongoing cost, which we mentioned with the cost of the building safety manager.

I would like to mention something there, which ties into your question about whether there should be a defined amount where things get triggered. It does not make sense to me to have the building safety charge, apart from transparency, outside the service charge. I think that enters a whole new regime of costs that we do not need. They are not necessary. You have to have separate bank accounts, separate debt recovery, separate everything, so that is double the amount of administration.

Simultaneously, by taking it outwith the service charge, you are removing all the protections of section 20 that you currently have, which has the

£250 threshold at the moment. It does not seem to make sense to take that one outside because, if it does go outside, we are going to spend years through tribunals and courts trying to figure out the parameters of that building safety charge. Again, that is going to be loads of test cases with managing agents dragged into that and leaseholders paying for it.

It would make far more sense to bring the building safety charge into the service charge. That also makes it easier for the consumer. At the moment, your building service charge goes out and you expect that every six months. Again, as Martin alluded to, somewhere in the middle a charge can pop up and you have only 28 days to pay it, and you just do not know how you are going to do that. It could cause a lot of confusion. Sorry, I went slightly off pace there, but I think that is the better way of doing it.

As to £78,000 being reasonable, I think none of us expects that to be reasonable whatsoever, but that is more the question of what we do about historical costs. This is why, when I started off with the Building Safety Bill, I felt it was very good for new builds, but it does not address at all the issue of what on earth we do with legacy. Just giving the ability to give leaseholders 28 days to pay anything cannot be held as reasonable.

Richard Silva: I echo Nigel's sentiments on the new builds. That cost regime can be managed and will manifest itself very clearly. Frankly, there should not be any surprises from a building safety charge perspective on a new build, because the five-year building safety case should accommodate any large expenditure, outside of something untoward happening.

The existing stock is a problem. We are engaged with both the GLA and Homes England, which are the delivery partners for MHCLG, on both the ACM and non-ACM cladding funds, which are very welcome. We certainly adopted the approach that they are financial solutions of last resort where the developer no longer exists or the warranty period for a building has expired. There is no way that the leaseholders should be paying those fees. We are working hard across many sites with GLA and Homes England to get these buildings remediated.

I do not think the leaseholders should pay for the existing stock. Unfortunately, as Victoria Moffett mentioned in the last session, the funding is very welcome but I do not think it is enough.

James Dalton: I echo the comments of both Nigel and Rich in saying that the Bill is prospective. The biggest challenges are historical and current. Conversations about the appropriate level of it or how you charge for the building safety charge in the future have been addressed by the other commentators. For me, part of the biggest challenge has been the historical issues, and I do not think this Bill is going to address that.

Q159 **Chair:** Nigel has already mentioned the 28 days as not being particularly reasonable. There are just two other aspects then. Should there be sanctions if payments are not made? Is the right to apply to a tribunal for determination a reasonable way to resolve any disputes?

Dr Glen: The tribunal is the established way to go if things have got that far. Obviously you always try to mediate beforehand, so I am reasonably comfortable with a tribunal. Should there be sanctions? You have to have sanctions in a sense; otherwise people probably would not pay. What you have to balance, though, is where people cannot pay. This is the problem with communal living. If everybody does not pay, how on earth do you take the whole project further forward? If only 80% can pay, you are still left 20% short.

Do you need sanctions? Yes, you do. You have to use them wisely, carefully and proportionately. Is the tribunal the right place to go? I would say it has worked so far. It does incur a delay, but it seems to be working so far.

Richard Silva: In the context of the building safety case and the charges levied on that, I have some sympathy with Nigel's view that it could just be a separate element or line item within the service charge budget for administration and bookkeeping costs. The building safety case needs to be approved, and it ultimately needs to be approved by a regulator. If there is a dispute over that aspect of the costs of living in a block, ultimately, the regulator needs to think about how it can work with its building safety managers, who will present these building safety cases, to ensure that, where residents dispute a particular building safety charge, there is a more direct line of sight into administrating that dispute.

The non-payment sanctions need to exist. Let us not forget that building safety charges or service charges are not profit centres. Basically, they are designed ideally to match to the penny the costs of running a block. The managing agent will levy a fee for its services on top of that but, ultimately, the gas bill is the gas bill. The lift maintenance bill is the lift maintenance bill and, ideally, there is a balancing item at the end of the year. If very many leaseholders do not pay, it means the whole provision of a particular service, and the building safety service is a very important one, may not be delivered until extra funds are raised. Sanctions at an appropriate level are very important.

Chair: Thank you for answering those questions. Just in case James was starting to feel left out, Rachel Hopkins is going to come in with some questions about insurance.

Q160 **Rachel Hopkins:** I will ask the opener, and feel free to comment, everyone. We have heard evidence that high insurance premiums for professional indemnity, or even a lack of cover, could prevent competent roles from being delivered, therefore potentially undermining the entire new regime. What are your thoughts? Do you agree?

James Dalton: Professional indemnity insurance in the UK specifically, but globally, has historically not made money. As a result, a number of firms have withdrawn the capacity they provide and/or have increased their insurance premiums to cover professional indemnity insurance. You see this in another market here in the UK. Solicitors' professional indemnity insurance is a good example, but you see that specifically in construction. The reason you see that specifically in construction is because the construction sector has historically had a number of very large and very expensive claims.

The professional indemnity insurance market in the UK is challenging. There is no getting around that. There is almost inevitably going to be a role for professional indemnity insurance in the context of some of the roles that we have just been speaking about. What we cannot say at the moment is whether the market will provide them. We cannot say that for two reasons. One is because of the global nature of the market, but the second is because we need the detail. I said earlier that it is critical for us to understand the roles, responsibilities, accountabilities and the specific detail of each of the individuals involved in the process and the regulatory underpinnings of that. That is when you can go to the market, in an insurance sense, and ask, "Is this capacity going to be made available to cover those types of individuals?"

Dr Glen: It is undeniable that there is a hard market on professional indemnity insurance. It is significantly affecting the ability for, for example, cladding remediation, because trying to find the fire assessors who have the requisite level of insurance is proving quite a stumbling block. The secondary one is buildings insurance. We are seeing massive increases in premiums, particularly for buildings with cladding, of 300%, 400% or 500%, which is, again, just kicking leaseholders while they are down.

Richard Silva: The PI cover for cladding remediation is a problem. It can be blamed in part, therefore, on the lack of progress on some of the schemes that have been brought forward. It is not just as simple as coming up with a solution, finding a contractor and funding it. There is all of the detail behind it that needs to be put in place. That is a real challenge. I do not know whether there is some sort of initiative where the Government can underwrite a certain type of policy in the same way that they do for terrorism cover like Pool Re. Maybe that is something officials in the Ministry can consider for this specific issue, to kick start it and get things moving a bit more quickly.

I am no insurance expert, but Nigel mentioned that property insurance premiums have hardened significantly this year. James mentioned that insurance businesses are global businesses, so lots of different factors will affect the premium changes, not just the cladding issues that we have heard about.

We have just done quite a large renewal for a number of blocks where we are responsible for placing the insurance. Insurance companies are withdrawing from the residential insurance market because it is not profitable for a lot of them. Forget the big claims for blocks burning down and that sort of thing. It is characterised by a significant volume of low-value claims from their perspective—water leaks and so forth—and the administration behind that means they are often not making money. As a result, they are seeing this as an opportunity to correct that business line and bring back the premium levels that, in their view—whether this is right or wrong—are commensurate with the risk and cost they are taking on.

Q161 **Rachel Hopkins:** You all touched on points I want to press you on, but I might ask James to elaborate a little more. I understand you are in discussions with Government officials and Ministers on whether joint schemes could help open up the market. Is there any update on what sort of solutions might be on the table?

James Dalton: There are two separate but linked issues here. The first is who pays for the cost of remediation for buildings with cladding. Those discussions are ongoing. There is then a separate but linked issue. How do you provide the professional indemnity insurance for those people, in particular fire inspectors, who are involved in that cladding remediation process? It is not going to come as a surprise to you that, in the context of a building regulatory system that Dame Judith Hackitt found to be not fit for purpose, the insurance industry has lost confidence in the responsibilities, accountabilities, certification frameworks and all the regulatory underpinnings that should exist in a well-functioning building control system. As a result, when you have no confidence, it is not a surprise that firms are withdrawing their cover and/or increasing the price of professional indemnity insurance, linked back to some of the issues that I was talking about earlier.

There is a third separate issue, which is the cost of the insurance for the building itself. That has nothing to do with professional indemnity insurance. That is the cost of the property insurance and is a direct function of how risky that building is. If you have found that a building has combustible and flammable cladding on the outside, it is a virtual certainty that prices are going to increase for insuring that property. Why? It is dangerous and it is risky. The real important thing we have to do is get that cladding off, because what that unpacks is the insurability of that building and certainty and safety for the people who live in it.

Q162 **Rachel Hopkins:** You have covered my final line of questioning, but I might ask if there is anything you want to add. As a Committee, we have suggested that Government might ensure that residents have access to affordable building insurance until the remediation of cladding is sorted out. What do you think to this in the short term?

James Dalton: It is a great idea. I suppose the devil is in the detail of how you operationalise that. Who is going to pay for the building that

burns down? At the end of the day, all these conversations are about liability and negligence because we live in a legal, litigious environment. One of the challenges of the discussions that we have been engaged in with the Government is about who is responsible and who pays now, because that is what needs to happen. We need the cladding to be remediated now.

Some of the conversations are about very long-term schemes that could help spread the cost of that funding. Again, the key thing is the detail. From an insurance industry perspective, we have some contributions and expertise to offer. We have continued to work with the Government as collaboratively and as constructively as possible to ensure that we get these things sorted. Progress remains ongoing.

Chair: That just left us wondering what progress and when, but I am sure we will come back to those issues in due course. Finally, we come back to these issues of historical costs, which are really important to so many leaseholders at present.

Q163 **Brendan Clarke-Smith:** The Government have said that they are rapidly identifying financial solutions that protect leaseholders from unaffordable costs but must also ensure that the bill does not fall on taxpayers. Bearing that in mind, gentlemen, what could the legislation include in relation to solving historical safety defects and protecting leaseholders?

Dr Glen: The Bill itself does not do that at all, does it? It says that anything can be put on the leaseholders and they have to pay within 28 days. If anything, the Bill actually does the opposite to that.

The problem, if the taxpayer should not pay and the leaseholder should not pay, is who does pay in that case? We need the funding now. My view on this would be that we have to get people safe, first and foremost. I am afraid that is where I think Government step in. I am a taxpayer myself, but that is one of the things. The Government should then try and recoup those costs from maybe, as we have mentioned, the developers, the installers, the cladding companies themselves and the manufacturers, but I do not think it should be the leaseholders.

I would just like to point out that we are just talking about remediation costs. We are seeing leaseholder reserve funds utterly drained by waking watch costs and insurance costs. There are other costs that are really, really punishing leaseholders at this very moment. It is not a quick fix. If you turn around tomorrow and say, "I will tell you what, Nigel, here is £50 billion," it is still going to take years to remediate. We do have to think long term about building insurance costs. We do have to think about people not being able to move from abusive relationships or for jobs for maybe five to 10 years. There are only so many cladders, scaffolders or fire engineers. There are 93 fire engineers on the IFE registered website. Money is important, but that is not the problem here. The capacity to do this remediation is also a big, big issue.

Q164 **Brendan Clarke-Smith:** That was going to be my next question. Is there anything that worries you particularly about how these historical safety defects and the costs of rectifying them are going to be dealt with? Obviously you have elaborated more on that, so thank you. That is a very interesting answer. James, do you have anything to add on this?

James Dalton: I agree with a lot of what Nigel has just said. At the end of the day, the question comes back to who pays. The Government can say they do not want to pay, and the managing agents and the leaseholders can say they do not want to pay, but someone has to pay. That is why, in the ongoing conversations with the Government that I have been involved in, which I spoke about in response to the question Rachel asked earlier, we are finally coming to a recognition that we cannot just keep saying, "I am not going to pay." When you have that scenario, it is ultimately going to have to be the taxpayer who pays. The question is how much, when and over what time horizon.

Richard Silva: Definitely, unambiguously, the leaseholders should not pay. They did not build these things and they did not sign them off. I also think the same of freeholders because we also did not build them and we did not sign them off. We have a different role to play in the marketplace.

In terms of the taxpayer paying, it does not seem right but actually, if there is no developer in existence any more, there is no recourse there. If the contractors have disappeared, whatever that means, and there are no warranties on the building, as James and Nigel said, someone has to pay and someone needs to pay now. Again, I think the clever minds within the Department should come up with some schemes. It does not have to be one entity or one cohort of society that pays for this. For 10 years, there could be a levy on certain types of certification when a planning application is granted to subsidise the up-front cost.

The £1.6 billion of funding that is in place currently is a good start. It is not going to fix everything. If we just try to do one size fits all, and he or she who shouts loudest says, "The taxpayer is going to have to pay; the Government have to find the money," that is fine, but let us create a pathway to reimbursing that money over the fullness of time. Creativity is required here in that specific instance.

James Dalton: I completely agree with that. Do not misunderstand what I am saying. I am not advocating that taxpayers should pay, but there are very complex cross-subsidisation questions that need to be worked through. For example, Rich, in the example you just gave, you would simply be passing the cost of historical liabilities on to the purchasers of future new-build houses. From a public policy perspective, is that right and fair? I am not convinced personally. Again, it is very easy to say X or Y should pay, but how you operationalise that going forward becomes extremely important to get right. That is where the detailed technical conversations need to take place.

Richard Silva: There are, of course, other instances where the Government is not allowed to be seen to pay. There are quite strict state aid rules around individuals receiving money, which is how the leaseholders would get reimbursed or paid to get their buildings clad. In our business, about 50% of our 200,000 leaseholders are buy-to-let investors. They are actually businesspeople who do not live in these apartments. They sublet them out. I forget the threshold, so forgive me and I am happy to come back to the Committee with the level, but it is not a very high threshold. If you have a buy-to-let investor with a portfolio of 10 flats spread around the country and each one has a cladding problem, it might be that only three or four of those flats can be funded by any Government schemes anyway because it breaches state aid rules. It is a very complex issue, which is why there needs to be a broader debate with lots of different stakeholders in the room to come up with really creative solutions. I do not think one size fits all.

Brendan Clarke-Smith: Thank you. That certainly gives us a lot to think about.

Chair: Thank you to all three witnesses for that very interesting evidence. It was challenging in many respects, but with a lot of professional expertise behind it. Thank you all for coming and giving evidence to the Committee this afternoon.