

Housing, Communities and Local Government Committee

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

Monday 5 October 2020

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

Questions 165 - 226

Witnesses

I: Sarah Albon, Chief Executive, Health and Safety Executive; Peter Baker, Director of Building Safety and Construction, Health and Safety Executive.

II: Dame Judith Hackitt.



Examination of Witnesses

Witnesses: Sarah Albon and Peter Baker.

Q165 **Chair:** Welcome to this afternoon's session of the Housing, Communities and Local Government Select Committee. Once again, we are taking evidence on the pre-legislative scrutiny of the draft Building Safety Bill. That is the Bill the Government have produced following the Grenfell disaster and the report produced by Dame Judith Hackitt into how we can make our buildings safer. We will be hearing from Dame Judith later on in our second panel.

On our first panel, we have representatives from the Health and Safety Executive. I will go to the two witnesses and ask them to introduce themselves.

Sarah Albon: Good afternoon. I am Sarah Albon. I am the chief executive of the HSE.

Peter Baker: Good afternoon. I am Peter Baker. I am director of building safety and construction at the Health and Safety Executive.

Q166 **Chair:** Welcome to you both. It is important that we have you here this afternoon. In the draft Bill we are considering, the Government are proposing that the new building safety regulator will be located in the Health and Safety Executive. Perhaps you can therefore tell us, being from the executive, what work has happened already to establish the regulator and how you see things moving forward. What stages do you see occurring to get the operation of the regulator up and running fully?

Sarah Albon: I suppose the work we have been doing is in three really quite distinct parts. We have been working very closely with MHCLG colleagues to support the creation of this draft Bill and the wider policy, bringing to that Bill and policy process our experience as a regulator in high-hazard and other environments, to help them create a new legislative framework that we feel will really work.

To support that and make sure it does work, we have had teams engaging closely with industry and other stakeholders to create early proofs of concept for the regulatory process, so that we can test some areas, get feedback from those who will have to make the new regulatory process work properly and reach out to other wider groups of stakeholders, to start engaging with them to explain our ethos around regulation, to get people to understand what we will be requiring of them and to listen and to understand what they are looking for in this new regulatory regime.

I would perhaps ask Peter, who has been very directly involved in this work, to put more flesh on the bones of some of those areas.

Peter Baker: To unpack that a little, we have been involved with the Government's response to Grenfell almost from the day after the tragedy.



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We had regulatory and specialist people on site supporting the emergency responders, and supporting the local resilience and local authorities with issues around the structural integrity of the building and so on. We are also heavily involved in Dame Judith's response, particularly given our background and knowledge of regulating both the construction and the major hazard industries. Since then, as Sarah said, we have been deploying that knowledge, in both health and safety policy and Government policy on safety, and our experience of regulation to support MHCLG and the Home Office with its Fire Safety Bill.

Turning more to the regulation, which is my part of HSE, I now chair a Joint Regulators Group, which was established as a forum for HSE and the local authorities and fire and rescue services to come together, initially to support MHCLG's policy-making. Since then, it has turned its focus to working together, along with a group of industry representatives called early adopters, to develop the way in which the new proposed gateways and the safety cases would work in practice, building on their experience as industry and stakeholders of managing their own businesses and estates, and sharing lessons from their experiences so far.

The joint regulators piloting work is important in two respects: in informing the policy going forward, to make sure that this is soundly based in practical experience, and in helping us to provide some very early indications as to how the new regime will work in practice. Having worked with duty-holders for many years, I recognise that they need the earliest sight they can get on how practically this is going to work, and how new terms and expressions such as "safety case methodologies" and "gateways" are going to work in practice, so they can start preparing for that. I am hopeful that over the next few months we will be able to produce some very early thinking about what a safety case looks like and what good looks like, so we can start engaging with prospective duty-holders on what the future will look like so they can get ready for it.

Stakeholder engagement is particularly important to us as well. Now that we have been identified as the future building safety regulator, I suppose we need to start flexing our muscles, being more visible as the prospective regulator and taking people with us on this journey, which is going to be really quite important. Setting the scene and starting conversations with them is part of a joint stakeholder engagement strategy we have with MHCLG.

Up until this point in the year, this has predominantly been about giving insights into the new regime at conferences and other opportunities that have arisen. That is going to become much more targeted over the coming months, through some very targeted interactions with stakeholders that we have identified—including parliamentarians, I might add—so that everybody is assured that the building safety regulator is taking the appropriate steps to get ready for the regime itself and work closely with our fellow regulators.



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HSE is not necessarily coming particularly new to this. Although workplace health and safety has been our focus for a number of years, HSE does operate in the built environment and in residential accommodation. We are responsible, for example, for asbestos in buildings, gas safety in the home and mains gas supply to residences. To illustrate some of the things HSE has been doing in this space, our energy division has been continuing with its inspection and review of network gas supplies to multiple-occupancy buildings and large estates.

We have also had a programme of inspection aligned to the cladding remediation programme, where inspectors from our construction division have been visiting remediation projects wearing our “health and safety at work” hat, for two main reasons. One is to make sure that workplaces are safe and the remediation is being done safely, because clearly nobody wants a major incident occurring when ACM cladding is being removed from buildings. It has also given us an opportunity to do joint visits with fire and rescue and, in some cases, building control bodies, so we can test the relationships and information flows, and start to think about how our relationship with local regulators will work more effectively in the future.

Q167 Chair: I want to explore one or two specific points. First of all, you talked about trying engage with stakeholders. In your current role, you are engaging with employers and employees on the safety at work aspect. Here you have the issue of residents. How easy are you finding it to engage with representative groups of residents at the early stages of formulating what you are going to do?

Sarah Albon: We recognise that this new regime has to work not only in the hard “nuts and bolts” way, but, following a tragedy like Grenfell, we have to bring residents with us, so they can see the regulator is putting their safety right at the heart of the new regime. That means we need to engage with residents’ groups, listen to their concerns and make sure we are seen as a responsive regulator that can take account of the various and varying different needs of residents up and down the country.

Peter referred to a stakeholder engagement plan, which I recognise is a very comms professional word, but at the heart of that we are planning a whole series of events, listening to different groups and talking to them about our future plans. Engaging with residents’ groups will be an absolutely key part of doing that successfully, so we can hear what they need from us as a regulator, give them assurance where we can and actually change our plans and make sure we are responsive to their requirements and needs as we start formulating those early strategies.

Q168 Chair: It might be helpful at some point if you could drop us a note about where you have actually heard from residents and changed your plans. That would probably be useful.

Can I move on to another issue, which is secondary legislation? So much of this Bill is a framework, and we do not really know how it is going to



work until we see the secondary legislation. Is that causing problems for you in trying to formulate what you want to do? If there are any specific examples where you think it would be helpful to have a bit more detail on the face of the Bill or at least some indication about secondary legislation, perhaps you could write to us in a bit more detail about that. Is it a challenge that there is so little detail in the Bill itself?

Sarah Albon: For us, it is not a challenge. We are working very closely with MHCLG, including on the secondary legislation. However, we and they recognise how important it is for Parliament to be able to see what intention lies behind the different powers and what is going to be done with secondary legislation.

The core policy team is intending, certainly for the really major chunks of secondary legislation, to publish that in draft alongside the Bill introduction in order for Parliament to have a proper view of what is intended. That is not going to be possible for every single piece of secondary legislation, but for the really key things that set out the fundamental aspects of the Bill it is important.

From my own perspective, it is important that there is flexibility in the Bill that does not require the regulator and the Department to return to Parliament. For example, I know one of the key areas of interest and possibly one for this Committee later on today is around scope.

Chair: We will be coming on to the scope specifically. When Dame Judith did her report, there was quite a strong emphasis, which the Committee supported very strongly, on the conflicts of interest in the building industry. Concerns have been raised that you are going to be both the regulator setting standards and then the building control body ensuring that the standards are met. Is there a conflict of interest there that we should be concerned about?

Sarah Albon: I understand the point. It is important to have the right kinds of Chinese walls, but the point is that, at the heart of what we are doing, we do not have a conflicting interest. We are interested in the safety of residents and the safety of these buildings. Whether we look at that through the lens of regulatory requirement or building control, for us it is all about trying to make sure the building is safe.

We do not have any other competing commercial interests. We are not also trying to be a landlord with the requirement to make profit from that or to sell units within our buildings. Nor are we trying to compete among a range of different building control bodies for the work. We are not going to have any incentive, as the building control body, to give landlords an answer they might want to hear. Rather, it will all be about safety. That is at the very heart of what we do in HSE.

Q169 **Ian Levy:** The Government have said that the benefits of establishing the building safety regulator within HSE include speed, experience and the reputation of the industry. How important is it that the regulator has



independence, and how can that independence be assured?

Sarah Albon: The question is independence from what. In HSE, we have over 40 years' experience of being a strong and independent regulator, including, where required, regulating other parts of Government and holding Government to account, including issuing Crown censures, which are the equivalent of a prosecution against a Government Department. Our individual inspectors carry out that function fearlessly, irrespective of the duty-holder they have to bring to account.

The advantage of setting up something like the new building safety regulator function within HSE is twofold. For me, the real advantage is our knowledge and experience of dealing with complex high-hazard environments and being able to cut through complexity, including multiple duty-holders and things like that, to ensure that overall the risks are managed in an appropriate way.

There is undoubtedly another benefit, to do with the pace of setting up a new organisation. By using HSE as the core seedcorn funding for a new regulator, you have access to our already excellent science team. We already employ mechanical and structural engineers. There is a wide range of specialists that can be called upon. The corporate functions, payroll, HR, finance and those kinds of things, already exist and do not have to be set up from scratch.

There are some real advantages of speed, but for me the fundamental reason to choose HSE is our knowledge and experience of dealing with and successfully managing risks, particularly complex risks.

Q170 **Ian Levy:** Thank you, Sarah. That was quite a detailed answer. Peter might be able to help me with the next one. Ministerial responsibility for HSE rests within DWP while the building safety programme sits with MHCLG. Do you see this as something that will work well?

Peter Baker: This is not unusual for HSE. We deliver other functions on behalf of other Government Departments. Most notably, we deliver the chemicals regulation function for biocides and pesticides, and REACH, on behalf of Defra. Defra owns the policy responsibility for that, whereas, because of the expertise and the capability we have in HSE, we deliver that function on its behalf. Therefore, you have an intergovernmental relationship that reflects the fact you have two key Government Departments, one responsible for the regulator and the other responsible for the legislation.

I see this relationship as no different from that. We will continue to be accountable to DWP, our sponsoring Department, as an arm's length body of DWP, with a relationship with Ministers and the Secretary of State through our non-executive board. We will also have a very thick black dotted line, if you like, to MHCLG, through the legislation but also through the auspices of an agency agreement, which enables us to deliver the functions on behalf of another Government Department. Quite



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reasonably, MHCLG will hold us to account for the delivery of that function on its behalf and have responsibility for funding HSE to deliver it.

Ian Levy: Thanks for that. I appreciate that.

Q171 **Rachel Hopkins:** The chief inspector of buildings is going to be a significant post and will be integral to the overall success of the regulator and the regime. What can you tell us about the process for recruiting that person and the skills they will need?

Sarah Albon: You are quite right in recognising that as a critical post. If the advert has not been published today, it is going to be published in the next few days. The post is a senior post within HSE. It will be reporting directly to me, and it will effectively be one of our executive directors on the HSE's senior management committee.

In thinking about the relevant skills and experience of the person we are looking for, this individual will need to be able to provide leadership to a team, when fully established, of 700 to 800 people based throughout England, predominantly in the metropolitan areas where the largest numbers of high-rise buildings are, but we will have staff right the way through the country. They will need to be able to provide that kind of leadership.

They will also need to be able to speak authoritatively about the management of risks and gain the confidence of the various representative bodies that are interested in this, especially thinking—as we were doing earlier when I was talking to the Chair—about engaging well with residents and residents' groups, to gain their confidence. They will also need the authority to speak to the various parts of industry that need to step their game up and improve the standard to which they are working and the way they are working, and to hold them, authoritatively, to account.

We are looking for somebody who has great leadership experience and maybe experience in construction or a high-risk regulatory environment. The area they have worked in is probably less important than the ability to show they can lead, become a creator of change and drive that appropriate change in this area.

Q172 **Rachel Hopkins:** You talked about the appointment process kicking off imminently. Will there be any parliamentary scrutiny of that appointment?

Sarah Albon: No, there will not. The post itself is a main Civil Service post. Technically, it is at senior Civil Service pay band 2. Those posts are pretty much not subject to parliamentary scrutiny. My post was not. None of the people who work for me is subject to parliamentary scrutiny. Of course, we would expect them to be accountable and to appear before this and no doubt other Select Committees, to answer for the work we do and the work they have done as part of that process.



Q173 **Rachel Hopkins:** Pushing on that slightly, as part of the recruitment process, reflecting the points made about ensuring residents have a voice in that, will there be a thorough process and will resident voice be part of that?

Sarah Albon: The process is being conducted under the Civil Service Commission rules, which means that a series of things have to take place to make sure it is conducted under fair and open competition. The residents' voice is not part of that process; nor indeed are any stakeholders part of the process. Rather, we are trying to judge—as objectively as any interview-type process with psychometrics and so forth can—people's skills and objective experience.

However, one key thing that is being tested in the interview process is the ability of people to relate to groups of people from all kinds of backgrounds through staff panels, so we are getting more than just a straightforward interview at the end of a CV-type process. That sort of staff panel process, where people at all grades within our organisation get to feed back on the different candidates, is now really quite standard among senior appointments in the Civil Service.

Q174 **Rachel Hopkins:** I have a final question about the staffing of the whole system. Are there concerns over capacity and having sufficient staff with the right skills? Has there been any assessment of the numbers and sorts of staff the regulator will need and where they will come from?

Sarah Albon: It is going to be a real mixture. I made reference earlier to being able to draw on the existing resources within HSE. We are expecting to transfer some of our existing staff into the new regulator function, as a seedcorn of regulatory and inspector-type experience. We are undoubtedly going to need to recruit significant numbers of new people. Some of those will be coming to us having had a professional background elsewhere and be already well trained and competent. Others we will need to train ourselves. In addition, we are expecting to continue working incredibly closely with local authorities and fire authorities, and to build up a way of regulators working jointly and effectively together, so that we make the best use of the overall resourcing available.

It is no secret that there are some areas of this where, in the UK, we are somewhat short of the necessary skills and experience. What can we do? We cannot start from a place where we have more resourcing available to us than currently exists. We need to work really closely together with the other regulators involved to make best use of scarce resource while, at the same time, starting to grow, train and recruit more. But we need to make sure that the resource available is targeted to the highest-risk areas of most concern, while looking across all the regulators involved to address skill shortages for the future.

Chair: We now move to the important issue of funding, where some concerns have been raised.

Q175 **Ben Everitt:** Sarah, you are still on the spot, I am afraid. This follows on



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very well from your previous answer. We have talked about the people resource to deliver the new duties. In answer to the previous question to my colleague Ian, you talked about how you are well placed or almost best placed across Government to scale up the people and processes aspect of this. We all know that regulation is complex, time consuming and involves relationships, data and, frankly, money. Are you confident that you are going to get the money you need to scale this up, get the right people in, hit the ground running and make sure we are doing the job we need to be doing as soon as possible?

Sarah Albon: As I am sure you are all only too well aware, at the moment Government are in the middle of a spending review process. As part of that process, we have been making bids jointly with our various sponsoring Departments. Peter made reference to the fact that we work with DWP; we also work with Defra and now with MHCLG. We have been working closely with their spending teams to get the best view of the resource that is going to be required and put those bids together.

What can I say? The funding we have had for this financial year has been sufficient to do whatever we need to do. We have had just over £16 million from MHCLG to support us in getting underway in what we are calling the shadow running period, doing the kinds of tasks Peter was talking about earlier with the Chair. Moving forward, we all await the result of the overall spending review and what the Treasury decides to do.

The thing I can say with confidence is that I know this a real priority for ministers, not just in MHCLG but right across Government, and a real priority for MHCLG. Without having the final dotted line of where we are getting to, yes, I am confident that the Department is prioritising this. Of course, the intention is that this will ultimately move to be a very nearly full cost recovery activity. There is going to be a need for considerable Government support in the early years, as we ramp up to a proper full cost recovery regime, but the regime, once mature, will not require anything like the same degree of public funding as it is going to need in the early years. Of course, to some extent that will inure us against the vicissitudes of spending review processes.

Q176 **Ben Everitt:** It is a bit "chicken and egg", isn't it? You need the money to get off the ground to do the enforcement activity that generates that income to become cost neutral. Are you confident that the funding in place for that gap period is there?

Sarah Albon: As I say, we await the outcome of the spending review, but I am confident that our colleagues in MHCLG are doing their very best. I am genuinely confident that Government see this as a real priority, that we will be given the resources we need to set up a regulator that the country can be proud of and that we will make a real difference to the safety of housing stock in the country as a result.

Q177 **Ben Everitt:** Sarah, thank you so much. Peter, let us give Sarah a rest.



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We are going to be looking at the development of a fees and charges regime. For duty-holders, there is going to be this hourly rate model rather than a fixed fee. Can you talk us through what that means for residents paying for their services through the building safety charge?

Peter Baker: The detail of the cost recovery regime is yet to be determined. It is one of the policy and operational workstreams that HSE is leading on behalf of MHCLG, because we have a lot of experience of charging and cost recovery in a whole range of regimes that HSE is responsible for. Those range from, as you say, hourly rates for work actually done to fees for intervention, which is very much based on the degree of breach of the law. There are various other ways in which we recover our costs, through levies in some regimes and so on.

We are yet to land the absolute detail of how this will work, but our preference would be for an hourly rate so that there is clarity over what duty-holders ultimately will pay for and how it relates to the relationship and the activities of the regulator. That will give us absolute clarity and transparency on all of that. The expectation is that the individual duty-holders would pay for the regulation. It will be their obligation to pay the costs of the regulator, so I would not expect anything to necessarily be passed on to anybody else for that matter.

Where there will be issues for leaseholders and residents is where the regulator decides that remediation or some improvement to a building is needed. That then needs to be funded by the duty-holder and through some mechanism, which I know is a challenge for MHCLG at the moment as well as in the sense of the Bill. In terms of cost recovery for the regulator, it would be the duty-holder who is charged and responsible for paying it. We would not expect it to be passed on to anybody else.

Q178 **Ben Everitt:** In reality, though, it is unlikely that they are going to hold that and not pass on some of that cost to residents. Surely you see that as a fair assumption.

Peter Baker: Ultimately, how a duty-holder funds the cost recovery is a matter for them and their relationship with their leaseholders. That is something MHCLG needs to think about in the context of the challenge of payment and who pays for the new regulatory regime, in particular the improvements.

The whole point of duty-holders paying the regulator's costs is, first, to incentivise compliance. If you are compliant with the law, you do what is necessary and you do it quickly, the level of intrusiveness by the regulator will therefore be lower and ultimately your costs will be lower. It would be absolutely unfair that a duty-holder passes on any of the costs associated with their, in some cases, criminal liabilities to anybody else. If there is a mechanism whereby that could be effected, that may be something MHCLG needs to look at, to make sure that any loopholes are very tightly secured down.



Sarah Albon: You are right that some cost inevitably is shared. There will be a new regulatory regime, with which every duty-holder is going to have to appropriately engage, and in which there will be some interaction with the regulator, for example, in the consideration of safety case. But our aim would be to keep that as tight and focused as we can, so that that inevitable part of the process does not form a new disproportionate charge compared with everything else a building owner is going to be doing as a matter of routine around service charges and maintaining property safety. The costs of proving that the building has had safety properly thought about and is being maintained safely should not be more than the costs of making it safe, if you see what I mean.

We would expect that kind of routine engagement with the regulator, in the grand and proportionate scheme of things, to be quite low impact compared with everything else a building owner needs to do. But that will inevitably get built into overall service charges or some other kind of overhead. The kinds of costs that Peter was saying absolutely must not be passed on are where we come in as regulator and find there has been a breach. If the building owner has done something wrong, and we take action against it to require it to do something else or take it through a criminal process, and it is ultimately fined for what it has done, that is a clear and distinct separate cost that must not be passed on.

Working with MHCLG, we can design the legislation in a way that prevents those one-off costs, which are intended, as much as anything else, as a punishment, if you are into the criminal law, being passed on to others who have done nothing wrong.

Q179 **Ben Everitt:** On that point, when we are talking about the system for reimbursing local authorities and fire authorities in that situation, you used the word "equitable", which is obviously not the same as "full". Can you explain where that is coming from and how that mechanism would work for reimbursing local authorities and fire authorities?

Sarah Albon: I do not think I did use the word "equitable".

Ben Everitt: I mean in the submission.

Sarah Albon: I am sorry, yes. The intention is to design something that does not get into too much complexity and bureaucracy of charging, cross-charging and passing things on. It is possible, where work is being distinctly and separately done by other regulators, that there will be a charging mechanism whereby they can charge directly. Equally, if we are sitting as the head regulator and organising a whole series of inputs and interventions from a wider team, which may include other authorities, we want to make sure that is passed on in a way that does not increase overall charges or the bureaucratic interaction between us and the duty-holders.

This is what we are trying to get a sense of. The fire authorities and the local authorities need to be able to get their costs back, as do we, but we



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do not want to create a bureaucratic industry in chasing down every last penny, which ultimately might cost more than some sort of sensible apportionment regime.

Ben Everitt: I am getting a feel for the principles behind your answers. Thank you so much.

Q180 **Mary Robinson:** While the Bill does not set a specific scope for the scheme, the Secretary of State has indicated that it will initially use height, so 18 metres or six storeys. In your evidence, you recognise that this is considered by many people too crude a risk factor. What is your assessment of how effectively this reflects the risks that are present in buildings?

Sarah Albon: For us, what is important in understanding the risk we are talking about is the impact of the worst-case scenario. Height is a very good proxy for trying to understand the potential impact, just because of the sheer number of people who are likely to be present in these much larger, higher buildings and, if the work does happen, the inherent difficulty that can be present in trying to get people out.

If you think of a very tall building laid on its side, even though there may be the same number of people affected, it is much more difficult to get them out of something very tall than something very spread. If you have a large, tall building, it is a good proxy for the potential impact in the event of a worst-case scenario. That is not to say that there are no other risk factors that may be present and that we should also think about. There is potentially the vulnerability of the people who are in the building and the ability of those individuals to escape quickly. Again, there are issues there. There may also be issues inherent in the construction methodology.

For us, what is really important is that the initial scope is objective. People need to understand whether they are in the scope of this new scheme or not. Something objective, like height or the number of storeys in a building, also cannot be gamed. It is important that people are not able to make some minor change to escape the regime. We do feel that height is a good proxy, as was recommended by Dame Judith in her report. Over the next few months, it is likely that MHCLG will ask us and other regulators formally to consider what those other elements might be and to make recommendations about whether it should be height alone or some other combination of factors. As I say, it is very important that they are objective.

If we increase the overall scope of the buildings that are in consideration, we might want to think again about the regime and be clear about which buildings are then required to do what. For example, if we think about our COMAH sites, where we look at sites that hold dangerous chemicals, there is a very clear scope that says, "You are or you are not a COMAH site". Within that, there are different tiers that put different types of obligation on higher-risk environments. I am overusing the word "scope",



but there may be scope for us to do something like that so that, for example, all buildings above a certain height are required to have a clearly identified duty-holder, who would have the general duty to ensure the building and the residents in the building are safe, but may not have the same full requirement, at least initially, of engaging with the regulator over a very detailed and perhaps fairly onerous safety case process.

I am really speculating here about the right thing to do. At the point we have the legislation, receive Royal Assent and go live, we estimate that, at the proposed height of six storeys or 18 metres, somewhere in the region of 12,000 to 13,000 buildings in England will already be in that scope. We have to be realistic about what that means for the paced of getting through those early regulatory stages, if we massively increase scope. For me, it is really important that we make sure that the highest-risk buildings are in scope initially. That is why it is important that this area can be regularly reviewed by Parliament through secondary legislation, rather than being fixed in stone for an inevitably longer period, if it is fully in primary legislation.

As we progress, we may want to recommend to Parliament and MHCLG that scope is increased and widened to bring increasingly large numbers of buildings within the overall ambit of the regulatory regime. With many tens of thousands of buildings, if we increase scope significantly from the 18-metre point, the reality of the situation is that, as a regulator, we would still have to look for those areas of highest risk and concentrate there first. It is unlikely to make a significant difference to what happens on day one or day two as we start our work.

Q181 **Mary Robinson:** How would you see that process working? On what sorts of timescales should other buildings be brought into scope?

Sarah Albon: It depends to some extent on the kinds of issues that we, as a regulator, find when we start on the first tranche of buildings. That will give us information about the state of the existing stock, issues that might be present elsewhere and other areas of concern that we might want to get involved with, make changes to or engage with. It is very difficult to state the pace at which it should change until we start that really detailed work and understand the kinds of problems that are present and how prevalent they are.

For me, the important thing is that we get to the heart of the things that are posing a risk to people and making buildings unsafe; that we can take effective action to require building owners to make their buildings safe; and that they are clear with their residents about why the building is safe, about the really important part that residents have to play in maintaining the overall fabric of the building and about the behaviours that are important from them. In totality, this will make sure that people have safe homes that they can sleep in securely, knowing that they are secure.



Q182 **Mary Robinson:** You will be looking at risk, so you can only advise bringing further buildings into scope if the risk has the potential to cause a significant number of deaths. What do you regard as a significant number, then?

Sarah Albon: Clearly, any death is a massive tragedy for the individuals. Inspectors in HSE deal, unfortunately, week in and week out, directly with people who have suffered catastrophic life-changing injuries or with bereaved families whose loved ones went to work in the morning expecting to come home safely and tragically did not. I would never want to give a sense that any death is not significant, because it is.

The drafting in the Bill that talks about significant numbers of deaths or serious injuries was trying to get a sense across that this is of general applicability across the whole of the building. Here we are only talking about buildings of a height and scale where multiple families in multiple different flats or units are going to be present and resident. It is getting the sense that it is not one serious incident that might be contained within a single flat or something like that, however tragic that would be for the individuals and occupants. It is about issues that have a wider applicability to the safety of the entire building or big chunks of it.

Q183 **Mary Robinson:** Is this reliant on taking a more subjective view than the objective view that you were speaking about earlier?

Sarah Albon: No. The sense of what is in scope will be objective: how high it is or some other objective measure. When we are talking about the kinds of things that have to be in a safety case, that is what this element of the Bill is setting out: the kinds of control measures the building owner has to ensure are considered, rigorously thought about and then documented, to show what they are doing within their overall area of control. Incidents that could affect multiple different dwellings or different parts of the building and, if they were to occur, could result in the serious injury or death of the occupants need to be part of the overall safety case, to show how those are controlled within an individual building.

Q184 **Mary Robinson:** We have heard there are concerns about the danger of a two-tier system being created, with a gold-plated one for high-risk buildings and other non-designated buildings not getting the same protections. How can those concerns be answered?

Sarah Albon: In a sense, this is back to the proportionality of risk. You could have the same allegation levelled at many of the things the Health and Safety Executive currently regulates. I made reference there to the COMAH sites, which deal with major hazards, typically large petrochemicals or other chemicals gathered in one place where the risk not only to the workplace, but to the surrounding environment or the people who live around it, if there were a catastrophic accident, is really significant. There is a strict cut-off: if you are storing more than X you are in this scheme, and if you are storing less than X you are not. That



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does not mean we are not interested in all the sites that store smaller amounts of chemicals or in workplaces that have a lower hazard.

This Bill brings a role for the building safety regulator into the competence of the entire profession that works within all buildings and in the overall built environment, looking not just at high-risk high-rise buildings but the entirety of the built environment in terms of the traditional building regulations and other regulations, which themselves are all about safety.

The Bill is trying to drive up standards right across the piece, whether it be in high-risk high-rise buildings or in our regular built environment and ordinary housing stock. It is also seeking to recognise that the nature of high-rise buildings does involve higher risk and a unique set of circumstances. If things go wrong, people are potentially put in more danger. Therefore, it is not about gold plating and not gold plating; it is about recognising that certain types of building need a greater sense of security and a greater attention paid to them for people to feel safe in those buildings.

Q185 Chair: I am conscious of time, but these are very important issues. Coming back to scope, would it be helpful if the principles and the factors that will determine whether other buildings are brought into scope in due course were laid out in the legislation?

Sarah Albon: My own view is that it would be helpful to set out the kinds of factors. I have seen that in other legislation. It could be numbers of people, building materials and those kinds of things. Equally, as civil servants, we are always told very firmly to leave those things to parliamentary draftsmen.

Q186 Chair: I am sure the draftsmen can put into words what you have just said. I am sure that is something we will want to follow up.

In terms of the duty-holders, is there a potential for confusion among residents in high-rise buildings? They might not be sure who is responsible for what. They could have more than one accountable person; there could be a property manager; there could be several building safety managers. Is this overlap a potential difficulty?

Sarah Albon: I am sure it has potential for residents and, indeed, others to find it complicated. The trouble is that this is recognising the complexity that exists. I could give you an example of a large building that might have commercial property, shops and so forth, on the ground floors and then flats above. Different types of leases would be made available to the shops and the flats; there would be different people responsible for the different parts of the building. We would need, as a regulator, to make sure that all the people who need to be held accountable for that building and operation are appropriately and properly accountable. It is very difficult to require someone to be accountable for something over which they have no control.



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We are used to this in large, complex building sites already, where we are there as a health and safety regulator. There will often be a lead contractor but many other subcontractors, all of whom are duty-holders. For me, these are the crucial things: that the regulations are overall effective; that we are capable of holding people appropriately to account where they need to be accountable; and that we work with the new committees that have to be set up by the duty-holders for residents to ensure that residents are given very clear information on a building-by-building basis about who they should talk to, in what circumstances and about what things.

It is essential that it can be explained in a way that makes sense on a case-by-case basis to those people who are affected by it, but recognising that some buildings are very complicated. There is no way around having multiple responsible people in different circumstances.

Q187 Chair: Can I move on to another important issue? It is quite widespread in the building industry. Some of us laypeople look and think, "How are people allowed to do that without any qualifications and without having any approval to do it from a regulator?" Should there be a register or a licensing system for duty-holders under the Bill? Should there be a central register of competence for anyone working on high-risk high-rise residential buildings?

Sarah Albon: There are various schemes already for people with different kinds of qualifications, if you think about electricians, people who are entitled to work in gas and those kinds of things.

Q188 Chair: Can I just pick you up there? Anybody can turn up and work on a site as an electrician, even if they have no qualifications.

Sarah Albon: They have to be working under the supervision and, effectively, control of somebody who is.

Q189 Chair: No, not under their control. They have to be working for an organisation that is part of the competent person scheme, but nobody who is competent has to be on site.

Sarah Albon: I accept that. To go back to your point, should accountable people be on a register? The buildings themselves will have to be on a register. One of the requirements in the early stages is that the buildings that are in scope of the high-rise scheme are to be registered, so we will have a complete list of the buildings within the overall scope.

The accountable person issue is not really about whether somebody is or is not qualified. It is a factual question about who owns and controls that building. There are other people in the wider scheme where competence in building safety is a real issue, the building safety manager and, as you say, some of the other people working there.

In thinking about registration schemes, it is important that we understand, in each potential series of who and what might be registered,



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what the register is for and who would use it. For us, in terms of the accountable person, we will have a register of the buildings themselves combined with the requirements for land registration and the incoming requirements that BEIS is bringing before Parliament for the register of beneficial ownership and things like that. Taken together, those things will give us, as regulator, overall sufficient knowledge of who the accountable person is.

There may well be other people and other schemes where members of the public or residents themselves would see benefit in being able to look up the skills, qualifications and experience of those involved. We need to look at that across the different aspects of work that can be done on a building on a case-by-case basis to ask, "Who would this register be for? What would be the right use of it? Are we getting the balance right between creating a machine that keeps registers up to date and making sure that the people who need to be held accountable, and need to be of the right kind of quality and competence, can be held to be of that level and can be held accountable by us as regulator?"

Q190 Chair: It might be helpful if you could drop us a further note on that. You seem to be indicating that there might be some benefit in exploring some of those ideas for registers so that residents at least can know what is happening.

There has been some concern expressed that some of these individuals, the building safety manager and the accountable person, might find it very difficult to get professional indemnity insurance. Have you looked at that as a problem? Is that an issue that has come before you?

Sarah Albon: I have certainly seen the other witnesses to this Committee suggesting that. I saw somebody saying that there is no insurance product available at the moment. I guess I would not expect there to be, given that the Bill has yet to be introduced into Parliament and certainly is not in force yet.

From my own perspective, it should be possible for the insurance industry to come up with appropriate products that give the right kind of insurance to people who need to take professional ownership of the quality of the work that they do. We see that in other areas and on much more high-hazard sites than high-rise buildings, such as offshore oil refineries. We do not have a problem with ensuring that there are appropriately qualified people on site or that the sites and the work of the individuals are appropriately insured.

From my perspective, provided the roles and responsibilities are clearly defined, and any limitation on them is also clearly defined, I expect that the insurance market will respond to that and offer products that let people take up those roles.

Q191 Chair: Talking about being clearly defined, the responsibilities of the duty-holder during the construction phase in clause 38 are all left to



secondary legislation. For the sake of clarity, ought we to have at least some of that set out in the Bill?

Sarah Albon: As I said, I believe that MHCLG is hoping to publish quite a lot of the secondary legislation in parallel with the Bill so Members of both Houses can see what the intention is of seeking such wide-ranging secondary legislation powers. It is important that the regulatory regime can keep up with changes that may happen, such as new knowledge about risks in different areas or about the safety or otherwise of products. It is always easier to bring back to Parliament something through the secondary legislation process where a change is required than it is to come back for primary legislation.

Chair: We will look forward to that secondary legislation, but it is something that the Committee may want to give further consideration to.

Q192 **Brendan Clarke-Smith:** The regime includes both mandatory and voluntary reporting of safety issues. How successful is the current CROSS reporting system? Would an expanded CROSS system that also covered fire safety be independent enough for people to be confident to voluntarily report safety failings?

Peter Baker: The key thing is that whatever system is deployed has the incentive to make sure that people want to make reports to the regulator of mandatory occurrences. We also want to encourage a culture within the industry that drives a behaviour whereby there is an openness to share experiences, where things have gone wrong, where issues have been put right and particular successes.

From my experience of working in the chemicals industry, it took quite a while for the industry to get used to the idea of sharing experiences and learning from each other. It was quite prevalent in the nuclear industry, but the chemical industry recognised the need to start sharing this information, if anything to enable it to properly manage risk and, to some extent, meet the expectations of the regulator. Gradually, over time, that sharing of information has become almost a daily occurrence. In the construction industry and particularly in the built environment where this does not happen very often, there is quite a lot to be done to encourage that spirit of openness and sharing of experiences. The CROSS and the SCOSS scheme were originally developed to promote that culture of sharing experience, understanding and sharing solutions.

I would certainly encourage this as an opportunity to increase the traction that the SCOSS and CROSS schemes have. If we can use what currently exists and build on that, that has to be a good way forward. I have already had conversations about this with the parties involved. Rather than trying to reinvent something, something that works reasonably well could be the seedcorn to a system that will have benefits to everybody.

Sarah Albon: I do not have very much to add to what Peter said there. We definitely have seen some industries where that self-reporting culture has developed very successfully. Peter mentioned chemicals. Outside



HSE, another one would be aviation where there is a strong sense of it being a no-blame culture, if you self-report, show that you are learning and help the rest of your industry to learn alongside. It is highly desirable, but it involves us as the regulator being able to build real trust with those who are regulated that, if they are open, we can take the right kind of regulatory action, but that people do not feel there is a penalty for sharing what they have learned and put right.

Q193 Brendan Clarke-Smith: Following on from that, the HSE has expertise of the process of safety cases through the COMAH regulations. In relation to the building safety cases required in the Bill, you recognise that they may have to be done in tranches, so how will you determine which buildings will be highest risk and should therefore be prioritised?

Sarah Albon: It is the same question that we were talking about under scope. For us, it is about making sure that we are capturing those highest-risk buildings first. It may be about the kind of people who are resident and whether they are vulnerable or immobile, the materials from which the buildings are constructed, the greatest heights or a mixture of all those things. For us, it is important to ensure that we create something that is transparent, helps people to understand where they are going to be, is seen as fair by the residents and helps people to understand why their building might be in the middle, at the front or at the back of the list. Then we can have an open and engaging conversation about where we see the greatest risk and how we are putting our resources into tackling that.

Once that first set of all the buildings is through, and either everything coming through is new stock or the existing stock has all had at least its safety case initially reviewed and in place, it is about making sure that the process of renewing the look at the safety cases is done on a risk-proportionate basis. For some buildings, as we do for COMAH sites, it may be that there are annual inspections and that carries on forever. For other buildings that we can see are much safer, the periodic inspection may be much less frequent.

I should say as well that part of the emerging picture about risk and risk management is the track record of the building owner itself. That is an important factor for us in our work with COMAH and other sites. If you are a duty-holder with a strong safety track record and a number of buildings, we would see that as an important piece of knowledge in the overall risk assessment when compared with either a new entrant to the industry or somebody who has a poor safety record.

Peter Baker: Sarah made the point that, as the regime starts to bite, you get a certain level of iteration as the safety cases will then lead to an inspection strategy, which helps the building safety regulator develop a much clearer picture and operational intelligence around the accountable person's performance, attitude, behaviour and ability to properly manage and control risk.



As we found with COMAH and other safety case regimes, we also need to make sure that duty-holders understand what a safety case is. It is not just something that they have to produce to get over some sort of regulatory hurdle and therefore it is for the regulator. The safety case is part and parcel of their risk management approach. It is there to help them to understand and properly manage the risk as well as, at the same time, demonstrate to the regulator that they understand what is needed.

An element of that is to be able to describe to and assure their residents that they are understanding, properly managing and controlling the risks that directly impact on them. The safety case is quite an important document in any high-risk management regime and should not be seen as just this hurdle that people have to get over.

Q194 Mohammad Yasin: Your written evidence says that you welcome the objective that those who create the risks should be responsible and accountable for them. Therefore, do you think the Bill does enough with regard to builders and developers, particularly on historic defects?

Sarah Albon: On historic defects, it is always a complex answer in the sense that it depends on the point from which you are looking. Going forward with the new gateways and the golden thread that this Bill introduces, I think there will be a strong method of holding people accountable for defects in buildings, even when those defects come to light some considerable time later because there will be a very clear record of who has done what and who authorised what. Starting from where we are now and looking back, there will be cases where it is possible. The principle should be one of polluter pays, so that, wherever possible, those people who have created some kind of defect are held accountable for putting it right or for the cost of putting it right.

The reality may be that, for very lengthy defects that come to light many years after they have happened, those who were responsible are no longer in business, the companies are no longer extant or, indeed, the individuals cannot be traced. This Bill will try to make sure that, going forward, if, in 30 or 40 years' time, somebody is sitting and looking back at a building that has a problem, whoever is responsible for what is clearly documented with the golden thread. This will enable much greater accountability to be embedded in the system.

Q195 Mohammad Yasin: Peter, you agree that leaseholders should not face unaffordable costs or have to worry about the costs of fixing historic safety defects. Are you worried that, until the issue is resolved, the proposal in the Bill might be undermined?

Peter Baker: From my perspective, I think that is really for the Government and MHCLG to deal with. It is an area that, as a regulator, I will come at from a particular perspective. Any part of the Bill that inadvertently leads to potential unintended consequences, or makes difficult either the duty-holder's job of complying with the law or the regulator's role of regulating and holding people to account, has to be looked at very carefully.



I appreciate the issue of payment for defects. I know the Minister of State at MHCLG is particularly alive to that, and other work is going on to look at that particular aspect and to inform the Bill. I know my MHCLG colleagues are very alive to and are looking at that.

Q196 **Chair:** Thank you to both our witnesses for those detailed answers to very important questions. Please come back to us with some more written information on areas we want to explore further with you. Indeed, given that you are going to be key to the operation of this new regime, if there is anything else at all that you have concerns about in the draft Bill, or you think should be made more explicit or clearer, we would be very happy to hear further from you in writing. Thank you very much indeed to both of you for coming.

Examination of Witness

Witness: Dame Judith Hackitt.

Q197 **Chair:** Let us move on to our second panel and final witness, Dame Judith Hackitt. Dame Judith, once again, thank you very much indeed for coming to be a witness at the Committee. I cannot remember how many times it is now, but several times you have been before us to give evidence. Thank you once again for coming. Obviously you are Dame Judith Hackitt, but perhaps you could say one or two things about your current roles, which might help inform the Committee and people watching as well.

Dame Judith Hackitt: It is quite important to explain what my role has been. As you will be aware, I conducted the independent review of building safety and fire regulations in high-rise buildings for the Government. I completed that work in 2018 and we recognised, at the time of writing that report, that the change that was required was not just a change of regulation but a major culture change for industry.

Since then, I have been chairing the Industry Safety Steering Group, which was set up to challenge industry to deliver on that change and to do so by acting early ahead of legislation. I have been doing that since July 2018 and we have had a meeting only today, so that group still meets. We are still pushing on just about every aspect of people involved in the built environment to recognise what change this is going to mean and the things they will need to do differently.

In addition, since the beginning of this year, I have chaired the transition board, at the invitation of the Secretary of State in MHCLG. That was set up to ensure good collaborative working between policy officials in MHCLG and HSE, which, as you know and have just been discussing, will be the new regulator. My role there is to chair those monthly meetings and to ensure a successful and timely delivery of the new regulatory regime.



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In addition to both of those, I am advising the Australian Government in Victoria on building safety regulation because they face similar issues. In all of those roles, I act in an independent capacity.

Q198 **Chair:** Thank you very much for that introduction to help us understand what your roles are and have been. As you said right at the beginning, you produced your report. Does this Bill fully and absolutely put into legislation all your recommendations?

Dame Judith Hackitt: No, not on its own, because, as I am sure everyone on this Committee recognises, it is part of a package of legislative measures. The Fire Safety Bill is equally important. Having said that, this is by far the biggest, most complex and most important part of the legislative package that will implement the recommendations. To answer the broader question, am I confident that my recommendations will be implemented in full through that package of legislative measures? Yes, I am.

Q199 **Chair:** Is there anything else that this Bill should contain that it does not?

Dame Judith Hackitt: Not that I am aware of, no.

Q200 **Chair:** If you become aware of anything in due course, you can always let the Committee know why it is wrong. You also said, when you came to the Committee about 18 months ago, that you were concerned that the Government had not got on with things as quickly as they should, following your report being published. Do you think that the pace of change and the intention to do things at a proper speed is now there?

Dame Judith Hackitt: Yes, I do. I still maintain that we could have been further forward earlier, but you cannot change the past. You can only influence the future and, in some respects, be careful what you wish for. As the chair of the transition board, I now see part of my responsibility as being to ensure that things continue at pace and that we get this implemented as quickly and effectively as possible.

Q201 **Chair:** There have been concerns at various times about the pace of change and whether everything will be implemented as it should be. One or two others have said that the way this is being done is gold-plating a system, which simply will put additional costs on residents. Is that a concern that has been expressed to you? Have you any views on it?

Dame Judith Hackitt: There are two points there. The cost to residents is concerning. The potential for cost to be placed on residents is a concern and it is well recognised. In relation to the existing stock of buildings, we all know that the whole issue of who pays is one of the biggest issues that we have to address.

The idea that this is gold-plating I find quite bizarre, if I am honest. I suggest that, if any of us forget why we are here and why we are doing this, it will be tragic. In the light of what we saw three years ago and a problem that was not just restricted to one building, but which



represented a degradation of standards and a system that simply was not working to deliver safe buildings for people to live in, I find it hard to imagine how anyone can see this as gold-plating. This is a proportionate response. It is, as Sarah and Peter have just explained to you at length, an approach that tackles the highest risks in an objective way but also seeks to raise the standards across the whole piece.

Chair: That is a pretty clear answer to that one. We are seeing one or two nods around the Committee with regard to that. We have also had discussions in the past about the scope and what buildings should be covered. We had those discussions earlier with the previous witnesses. Mary Robinson wanted to explore that further.

Q202 **Mary Robinson:** Thank you, Dame Judith, and welcome back. One of the main differences between your report and the Bill is that the Government are implementing a different scope than you had recommended of six storeys rather than 10. Do you agree with this scope?

Dame Judith Hackitt: I am comfortable with this scope. Although I recommended initially starting at 30 metres, I had always envisaged, much as we have been talking about earlier, that the scope would extend over time. The issue for me, as described earlier, is one of ensuring that we are successful in making this change and that we implement this new regulatory regime in a manageable way. By increasing the scope and moving from 30 metres to 18, as you have already heard, we have gone from an estimated 5,000 existing buildings in scope initially to 13,000. That increases the amount of resource that will be needed from day one, but it is right and proper that all those buildings are included and that we approach this in a way that tackles the biggest risks.

Q203 **Mary Robinson:** You envisaged the scope changing over time and the Bill gives the Government the power to widen it over time. What period of time would you envisage that being and what would you expect to change?

Dame Judith Hackitt: We need to start doing work quite soon now on establishing what those other criteria might be. I am very clear, and have been since the time I did my review, that height was not by any means the perfect way of determining how we should describe scope, but it is easy to understand and implement in law. It is also very difficult for people to game, as you heard earlier.

Having said that, at the time, we did look at whether we could include other risk factors. I know that it will not be as simple or straightforward, but we need to recognise the concerns that people are raising with regard to the vulnerability of people and their ability to look after themselves and evacuate themselves from a building in the event of the worst scenario occurring. Factors like that need to be built into the scope as we extend it. That work needs to begin soon and maybe needs to be used even in deciding which of those 13,000 existing buildings we look at first.



Even with height as our first filter, we will need to bring other factors into play to determine which have the highest priority among those 13,000.

Q204 **Mary Robinson:** Should there be any restrictions on the criteria?

Dame Judith Hackitt: There have to be some restrictions on the criteria because otherwise we will move into a scenario where we are applying a disproportionate regime to buildings that are not of the level of risk or potential consequence that justify that level of regime. Yes, we do have to be very clear that the highest level of attention and the safety case regime in its full form should only be applied to those highest-risk buildings where the consequences of a fire or structural failure are very significant indeed and would be likely to result in multiple fatalities.

Q205 **Mary Robinson:** Should there be any restrictions, in your view, on how often the scope could be widened?

Dame Judith Hackitt: It needs to be based upon evidence. By that, I am very clear that I do not mean we need to wait for failure before we react. We need to ensure that part of the role of the new regulator, working alongside the fire authorities and the local authorities, is to gather evidence. As we move into this new regime we will start to get a much greater bank of evidence of what the problems are with the buildings and what the risks are out there. It is very much the case for me that scope extension needs to be based on what we know and what we find rather than being speculative. We need to have some evidence to back up those decisions.

Q206 **Mary Robinson:** We have heard some concerns, Dame Judith, about a two-tier system being created, with a gold-plated system for high-risk buildings and another system that leaves buildings as bad as before without the levels of protection. Is it a concern of yours?

Dame Judith Hackitt: It has always been a concern that you create a two-tier system. As I hope I have made clear, I do not accept the gold-plating label at all for those highest risk-buildings. There is scope in this regime and some of the measures that are already included in the Bill as written, even at this stage without the detail, to ensure that some of the practices that apply to those higher-risk buildings are also applied to lower-risk buildings. We are endeavouring and I hope we will be successful in raising the standards across the whole of the industry.

It is unlikely that we will end up with all buildings other than those within scope not benefiting from this regime. I hope that we will succeed in ensuring that they benefit in a very structured way through that change in the culture, not just of a tougher regulatory regime but also of an industry that starts to recognise its role in delivering safe buildings. That is something that has been missing. There was a culture in the industry that we just build it and then it is somebody else's problem to look after it. We have to get not just a golden thread of information on paper but a sense of people feeling responsible for delivering and maintaining safe buildings whatever their shape or however many people are in them.



Q207 **Bob Blackman:** I apologise that I was slightly late for your session, because I was in the main Commons Chamber. You have vast experience as we know and you have been in front of our Committee on previous occasions. What are the advantages and disadvantages of the building safety regulator being established within the HSE?

Dame Judith Hackitt: One advantage is that they understand proportionate, outcomes-based regulation, which is what this is. They are very experienced in delivering a regulatory system that is outcomes-based and proportionate. They also have considerable experience of safety case regimes, which needs to be brought into play in this. They have a wealth of experience of the construction industry as a result of regulating it in relation to worker safety. While it is not the same as building safety, it is very closely related because, in my experience, you rarely find a company that cares about one thing and not the other.

That intelligence and the fact that HSE has been there for a long time regulating construction is a base of intelligence that will serve it well in this new role. The whole culture of the organisation will be a benefit in that it will infect the new building safety regulator in a positive way because it will become part of the same organisation. For the reasons that Sarah Albon outlined earlier, we will get it more speedily than we would have done if we had set up a separate and new regulatory body. Those are the advantages.

The only disadvantage I can see is that we now have to build this new relationship between MHCLG and HSE, but, as Peter Baker explained earlier, it is not new to HSE. They are used to working for other departments, like Defra. We have to build that strong bond between MHCLG and HSE. That is not a problem. It is just a fact that that has to be done. My role on the transition board is going to be instrumental in facilitating that.

Q208 **Bob Blackman:** One concern that leads to this question is that criticism has been made of the HSE for only starting enforcement proceedings against the worst offenders. Is that fair?

Dame Judith Hackitt: Is the criticism that they would not start enforcement proceedings?

Bob Blackman: It is that they only started enforcement proceedings against the worst offenders and not against all offenders.

Dame Judith Hackitt: I have to declare an interest, of which I am sure you are aware. Having been chair of HSE for almost a decade, for me, that is a misconception of what HSE does, because enforcement comes in many different forms. The bit that most people see, and which is most public, is prosecution, taking people to court and the very visible process of fining them. Enforcement starts much earlier than that.

Enforcement is about improvement notices, prohibition notices and fees for intervention. All those are tools in their armoury for enforcing



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regulation, but are mostly invisible to people outside the organisation on which they are enforcing that action. It would be a mistake for any of us to underestimate the effectiveness of that level of enforcement that goes on, which then means that the bit that people see is indeed the true recalcitrants, who do need to be held to account in a very public way. Let us not underestimate the power of that other enforcement activity that goes on.

Q209 Bob Blackman: Do you envisage that the new regime will work in a similar way?

Dame Judith Hackitt: Yes, of course. That is absolutely right. Let us take the example of what we are all most concerned about, which is the application of this regime to an existing building. In the way that the current HSE philosophy works, its approach to any duty-holder will depend upon whether it comes across someone who is trying to do the right thing and needs help, or someone who is trying to bluff their way out of something that they know is horribly wrong. Believe me; the tough action comes out in the latter case.

Where someone is trying to do the right thing, I fully expect that the new building safety regulator will take an approach of advising, guiding and helping that duty-holder to identify the most important things they can do first. It is likely to agree a programme of improvement over time because it will act in a way that is, as I have said before, proportionate.

Q210 Bob Blackman: Many people are concerned about the pace at which the Government are moving on this particular aspect. The Secretary of State announced the immediate establishment of the shadow board and regulator in January. What lessons have been learned since January about how this will all operate?

Dame Judith Hackitt: A lot of what has been going on in the last few months has been, in part, what I described to you earlier about translating policy into what it will look like in practice. What I should have said earlier in my list of advantages, but which was implicit in some of my other answers, is that bringing HSE's experience to the table of being a regulator out in the field and knowing what it means to enforce has been really helpful in translating the policy work that has been done within MHCLG into workable and enforceable principles, which are now in the Bill and in the regulation.

We have already seen some benefits of the two working together in the way that the Building Safety Bill is now drafted. I think you will see even more of that in the secondary legislation that comes out in the coming months.

Q211 Bob Blackman: Going on to that, you are chairing the transition board at the moment. A lot of the detail here is in the secondary legislation. How involved are you in the development of that secondary legislation?



Dame Judith Hackitt: I am not involved in the detail. It is right and proper that the two organisations, and the policy people in MHCLG and HSE, work closely together on this. My role is one of oversight, to ensure that that process between those two organisations works well and that any problems or issues that come up are resolved quickly. There have been one or two instances in the last eight months where we have had the discussion at the transition board about whether to go this way or that way, we have resolved them and that has helped them to move on. That tends to be the way in which we work. I am operating in much more of an oversight role, but it is right and proper that they work on the detail together.

Bob Blackman: Moving on to duty-holders, one point of concern that many of us have is the clarity required on roles and responsibility, particularly where there is more than one accountable person involved in the loop. A lot of the evidence we have had thus far suggests that this is confusing and could end up being costly for residents. I know you mentioned in an earlier answer the costs to residents, particularly where there is a property manager, several building managers and potentially overlapping duties. Is this proportionate to the risk involved and is there a better way of doing this?

Dame Judith Hackitt: I cannot think immediately of a way of resolving a problem that exists because of the way in which buildings have evolved, the way in which the sales of those buildings have been structured or, indeed, the uses that have been devised for those buildings. It is a problem that we inherit because of things that have happened. I am clear that, wherever possible, however many accountable persons there are, we should be looking to have one person identified for buildings in occupation who is the building safety manager. This will address the requirement, which I think is paramount in all of this, to consider the building as a system.

We will solve part of the problem in the domestic residency space if we have all the people there working together, but, even where there are other uses, we still need to look at the whole building as a system if we are to understand the risks that the residents can be exposed to, possibly not from their own building or apartment, but from the other activities going on around them. The building safety manager role has to be someone who can look at and view the overall integrity of the system.

Q212 **Bob Blackman:** The other issue is capacity. We are producing new roles for new people. Where are these building safety managers going to come from? How long is it going to take to develop the necessary skills for them to take responsibility?

Dame Judith Hackitt: I recognise that there is a capacity problem, but we need to recognise that we are also creating some new and responsible roles that people should aspire to fulfil because they have a very worthy purpose. Being a building safety manager ought to be regarded as an



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important role to fulfil. They should be rewarded accordingly once they have the necessary skills and competencies to do that job.

There is quite an array of people who could aspire to those roles if we describe them appropriately, in a way that talks about what they are there to achieve rather than talking about the negatives that might be associated and asking, "Who would want to do this job?" Actually, I think there are quite a few people out there who would want to do this job because it is important and we should talk about that more.

We should also recognise that this is a sector that does not have to learn from scratch for itself. As we talked about earlier, one of the reasons that HSE is the right place for this regulator is that much of the experience that it has from regulating high-hazard industries in chemicals, the oil and gas sector and so on can be transferred into the building safety regulator.

On the industry side, we also need to get people in the built environment sector to recognise that there are people out there in other industry sectors who can help them, support them and be part of training them and accelerating the speed with which they can get up to where they need to get to, by learning from the experiences of people who have gone through similar things in other industry sectors. It is really important to think through how we transfer that knowledge from those other sectors into the built environment.

Q213 Bob Blackman: What should the minimum qualifications and experience be for someone taking on this sort of role?

Dame Judith Hackitt: A lot of work has already been done on that through the competency framework that has been set. That needs further definition, in part to take some of the fear out of it. It is about people being able to present information to the regulator and ensure that they gather the right information from the golden thread and from the people who work for them, in order to present that case. It is not just about technical skills. It is also about communication skills, behaviours and so on. We very quickly need to start describing those roles in that way rather than just in terms of technical competence.

At the Industry Safety Steering Group, we have talked to people and had people come to talk to us from housing associations and other parts of this sector who are already more than capable of doing this role. Let us not walk into this thinking that we do not have anyone. We have some very good people. They can be role models and descriptors for the level of competence we need to see in other people. For me, being able to show people someone who is already doing this and has that level of competence will be as important to building people's belief in being able to do it as writing down a series of technical competencies that they need.

Q214 Bob Blackman: It has also been suggested in evidence that we have



some form of register or licensing regime for duty-holders. Is that the right approach?

Dame Judith Hackitt: For certain safety-critical roles in this system, there needs to be good and independent means of verifying competence, yes. That means that we need accreditation of people in specific roles, not throughout the whole piece. We need to raise competence across the whole sector, but, for certain critical roles, the principal designer, principal contractor and business safety manager, they will need to be accredited independently in the role that they fulfil. We talked at length about the need for third-party accreditation at our meeting today. The professional bodies are already on the case of thinking about this.

The bit we all feel is missing right now is not the technical competence but this ability to think of things as systems. That bit really needs to be added in. Yes, we need to have a register somewhere of who those competent people are. Whether that should be held by the regulator or by the professional bodies is yet to be determined, but that is at a detailed level.

Q215 **Bob Blackman:** One barrier that has been of concern to previous witnesses we have had has been the issue over professional indemnity insurance. Given the responsibilities and, potentially, the sanctions that could apply, there is a concern about people being able to get insurance at all and, indeed, what would be levied by insurance companies. What do you see as being the solution to that particular conundrum?

Dame Judith Hackitt: Personally, I think, as we go forward in a new regulatory regime, that fear will diminish as we are clearer about people's roles and responsibilities. In the new system, it will become clearer who is responsible for what, and that will be much easier for underwriters to look at and take a view on what liabilities attach to that.

I recognise this big problem with professional indemnity insurance that we are facing today. In large part, I think that is associated with the tail. It is to do with how you deal with who did or did not do what in the past in relation to buildings that we already have and we know are defective. The certainty that is going to come with the new regulatory regime will make it easier to get PI cover going forward, not necessarily cheaply, but I do not think this issue of cover not even being available will be a problem. I do think that we have a problem with the past.

Q216 **Bob Blackman:** What do we do on day one when this legislation is introduced and new people are in these roles? Naturally, people are going to say, "Well, hang on a minute. If I do not have personal insurance cover, I am personally exposed to quite serious problems. Therefore, if I cannot get insurance cover, I am not going to take it on". That is a "chicken and egg" situation, isn't it?

Dame Judith Hackitt: It is and I did not suggest that we have to wait until the day the Bill is passed before we talk to the insurance industry about what the new roles and responsibilities look like. That is early work



that has to be done to allay these concerns that people have. It is part and parcel of persuading people that these are jobs to which they can aspire with confidence and not aspire feeling they are going to be out on a limb, uninsured and so on. We have to address it, but when we are able to describe those roles and responsibilities in greater detail, some of which will come with secondary legislation, once that is available for us to discuss with insurers, we can start those discussions and start to plan the way forward for covering the new responsibilities, separating that from the immediate problem that we have around what has gone on in the past.

Q217 **Chair:** Dame Judith, moving on to a couple of other issues, some concern has been expressed that the Bill, as drafted currently, does not do enough to implement the polluter pays principle that the HSE was talking about, in that those who have been responsible for creating past defects should be held to account for them. Could the legislation have done that and should it have done that?

Dame Judith Hackitt: It would have been helpful to have been clearer about that at this point, yes. I would fully recognise that the lack of clarity at this point has raised a lot of anxiety, particularly for leaseholders, and that is a great pity. Everyone recognises that we must not implement this regulation in such a way that leaseholders are asked to pay for things that they simply cannot afford to pay for.

Chair: There is a set of questions coming about leaseholders in a minute. I do not want to pre-empt those.

Dame Judith Hackitt: Yes, it would have been better to be clearer sooner, but I do know that there is a huge amount of work going on in MHCLG on this right now. They recognise the size of the problem in how you tackle this historic liability issue where the people who omitted to do things may no longer be around. I know that there is a vast amount of work going on and Lord Greenhalgh is committed to finding a solution to this that is affordable, particularly with regard to residents.

Q218 **Chair:** We will keep pressing you on that one. You are probably aware of the report we have just done and I am sure we will come back to that issue. An important issue that you raised in your report and addressed again today is the culture in the industry. Are you seeing signs that the industry is really starting to change? You said in your most recent report that you were a bit concerned that some of the parts of the industry are sat back waiting for the legislation before they do anything.

Dame Judith Hackitt: Absolutely, I have seen both. The encouraging part for me is that I have met lots of people in the last two years to whom we, as the steering group, have been able to say, "This is great. This is good. We are really pleased to see you stepping up," and the actions are already being taken. They are not waiting for the legislation and that is very positive. We have also seen the early adopters coming forward and saying, "We want to work with the new regulator, work with



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MHCLG, work out how to make this workable and understand what is coming so that we can pre-empt it". That is all to the good.

Yes, of course there are those who are waiting to see and coming up with excuses for why this will not work, but that is always the case with new regulation. There are those who think they have better ideas and, if they have better ideas, they should articulate them, because we are always willing to learn and we need to make this as good as it can be. At the same time, there is now even less excuse for waiting because it is clear that this legislation is going to happen.

We still have to work on a lot of the detail, but I would argue quite strongly that a lot of the detail they crave is detail they have to find for themselves. We are about to shift responsibility on to industry. They are going to have to operate in a regime in the future where it is for them to demonstrate to the regulator that the building is safe. They can no longer rely on saying, "I did what the rules said". That culture change needs to start happening across the board. I am convinced that, having seen those who have done it, it is possible and it does not threaten the business—far from it. They have built better relations with their residents. We have heard today from the best in class for engagement with residents and it is all positive. The role models are there for the others to follow.

Q219 Abena Oppong-Asare: Thanks, Dame Judith. You started to talk about the building safety charges. As you know, the Bill introduced them. Is it how you expected it to look and do you think that the figures suggested by the Government are reasonable? You also mentioned that leaseholders may end up paying for things they cannot afford. Can you elaborate on that?

Dame Judith Hackitt: No, what I said was that we must not allow our system to develop so that leaseholders are in a place where they simply cannot afford to do things. We have to recognise those real anxieties that exist and find a way through this. I know that MHCLG is committed to that.

To your earlier question, is it how I expected it to be? Certainly, I envisaged that we would have a cost-recovery mechanism for the regulation. As Peter and Sarah described earlier, in the grand scheme of things, the cost of regulation and this regulatory regime is a small element when compared to all the other things that make up the service charge that leaseholders pick up.

I absolutely support the fact that they should not be paying for anything to do with the responsible person being found wanting by the regulator. I totally agree with that. One of the things that I did not cover in my initial review was this issue of addressing the historic costs. Part of the problem has been that, in the ensuing period since my review in 2018, the level of remediation required has increased, so we have gone from ACM to other types of cladding to other elements of the building. I cannot honestly say that I covered this in my review. It was always recognised as an issue but



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one that was being dealt with separately from putting the new regulatory regime in place.

Q220 Abena Oppong-Asare: People have raised concerns about the fact that it only applies to long leaseholders so there are concerns about how this provision will not apply to mixed-tenure estates, which, as you know, are common across the social housing sector. Do you have any thoughts on that?

Dame Judith Hackitt: Again, that complexity of the many different ownership models and tenancy models that we have across the stock of existing buildings has to be factored into the solution to this. This is one of the areas where, in the next few months, more detail on how this will all work in practice is really going to be important to gain the confidence of the people who we are all doing this for, who are the residents, because we all want them to feel safer. That does not mean that we have to pile all of the cost on them for other people's omissions.

Q221 Abena Oppong-Asare: That is helpful. Going back to regaining the confidence of all the people we are doing this for, we have touched up on this already. The Government say they are identifying financing solutions that will protect leaseholders from unaffordable cost. As we know, there are still some concerns about ensuring that the bill does not fall upon taxpayers. Are there any other things that you think that the legislation could include to solve historic safety defects and protect leaseholders?

Dame Judith Hackitt: This may only be a partial answer to your question. Like you, I heard lots of things from lots of different people and, even going back to the insurance issue, one of the things that I have heard is that insurers are fearful that the new regulator is going to change the rules and change the standards, and it is always going to be an ever-increasing hurdle to get over as we try to raise the bar on buildings.

The other way to look at that is that a proportionate regulator, which is what we are going to have, will take account of what is sensible and what is practicable to do in an existing building. Part of that will be about affordability and looking at the most cost-effective measures that can be taken. That is why I stated earlier that we have to recognise that they will work with duty-holders to help identify what those improvements might be rather than simply applying a blanket approach. Right now, part of what we are suffering from is an approach that is very black and white: "If there is any cladding on the building, we are all going to say you cannot finance it". We have to move people away from that kind of on-off approach to recognising levels of risk and that there are acceptable levels of risk in buildings that we may have to live with for a while, but that there are other risks that are unacceptable and need fixing straightaway.

Q222 Abena Oppong-Asare: Do you have any examples of that or is that too difficult at this stage?



Dame Judith Hackitt: The example for me is the cladding one. I hesitate to say this after all the flack I have taken about my position on cladding in the past, as Clive knows, but small amounts of cladding installed properly on a building do not necessarily present a major fire risk. At the moment, I can see that some people are overreacting to any cladding at all rather than taking a proportionate approach that asks whether this is a fire risk.

Q223 **Abena Oppong-Asare:** There are also concerns about mortgage lenders who are concerned about –

Dame Judith Hackitt: Those are the people I am talking about who are taking the approach that asks, “Is there anything here at all? If so, this is the answer”. In my book, that is not proportionate, so we have to try to educate many more people in the system about this risk-based approach.

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

Q224 **Chair:** Following up from that, Dame Judith, you were saying that the scope of your initial inquiry did not go into all the other issues that are now coming up as concerns. Do you think it would have been helpful if the Government had asked you to do a supplementary report to cover some of these areas so we could get a clearer framework of how things ought to move forward?

Dame Judith Hackitt: I do not honestly know. Some of the work has been done. It may have been done by other people. In some respects, I think that other people are better qualified than I am to do some of that thinking. I would not suggest that I was the best person to look at various financing options for remediation work, for instance. The Government have done the right thing in engaging with someone different who has experience in that sector to come up with potential solutions. In a sense, the Government have done the right thing in bringing me in on the bits that I can help with, like the Industry Safety Steering Group and the transition board, and in engaging with others to resolve the other issues.

Q225 **Chair:** I was trying to get at the sorts of defects we should now be concerned about, getting on and doing, and regarding as a risk that is not acceptable to leave there.

Dame Judith Hackitt: Again, I think that work is being covered by the fire protection board work that is going on and the surveys that are taking place of buildings. There is a wealth of knowledge being built up about what those defects are and we are getting a much better picture of that from some of those activities.

Q226 **Chair:** Finally, you say you are advising the Government in Victoria. We are told that they have a reasonably good system of regulation, as far as I know. Is there anything we could learn from how they have gone about things that we might apply here?



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Dame Judith Hackitt: There are things that can be learned both ways, yes, and I am trying to facilitate that in large measure. There are important differences and you always have to look at things in context. The size of the problem in Australia is much smaller, in terms of the existing stock of buildings. Any financial solution they might devise is more likely to be a smaller sum of money than we might need to do the same thing. I am confident that there is a good dialogue going on at multiple levels between officials in MHCLG and people in different states in Australia who are tackling this problem. Everyone is committed to learning and sharing lessons learned.

Chair: Thank you very much once again for coming to the Committee and speaking so straightforwardly and openly to us about the issues. Hopefully we are making progress. We have come quite a way since our first conversations on this issue. Maybe they will not be the last conversations. Thank you for what you have done to set us down this path, Dame Judith, and for, once again, coming to the Committee today.

Dame Judith Hackitt: Thank you. I am sure we are on the right track and we will get there as quickly as we can.