

Building a Safer Future
Proposals for reform of the building safety regulatory system
A consultation

NFA response
July 2019

Introduction

The NFA represents 31 ALMOs which manage around 420,000 council homes across 34 local authorities stretching from Cornwall to Newcastle. Our members manage a wide range of social housing stock and many of them manage existing buildings which would fall under these proposals in occupation and some are building or planning to build new blocks of flats which would also be “in-scope”.

The NFA welcomes this consultation paper and the associated work being undertaken by the Government in response to the Independent Review of Building Regulations and Fire Safety. However, we are concerned that some of these proposals seem overly bureaucratic, especially in the occupation phase and are not risk based. We are still waiting for a review of the building regulations, which we believe is where many of the current problems stem from and clarity over which products are safe to use and can be relied upon. We believe a balance needs to be struck within the framework, with more effort made at the beginning of the process to get construction/renovation right so less is required in occupation when it gets much more complex to manage

We have not answered all 122 questions in the consultation paper, but instead have provided a more generalised response, focusing on the issues of concern raised by our members. We would also like to note that the timescale for consultation on such a detailed and complicated set of proposals was insufficient, especially over the holiday season. The tight timescale also made it very difficult to get tenants views. We would appreciate on-going engagement with the Department as the draft legislation is prepared and published to allow tenants, Councils and ALMOs to raise issues as and when they can over the summer and early autumn.

Our response is split into themes:

- 1. Scope**
- 2. Framework**
- 3. Leaseholders**
- 4. Overlap of Regulators**
- 5. Accountable Person**
- 6. Building Safety Manager**
- 7. Safety Case**
- 8. New Build**

1. Scope

- 1.1. The NFA understands the reasons for the dropping of the scope for buildings to be covered by the new building safety regime from 30 metres/10 storeys or more to 18 metres/six storeys or more and recognises that residents of these buildings want reassurance that their homes are safe and adequate measures are in place to deal with incidents of fire or other health and safety issues.
- 1.2. However, if this is the definition which is chosen, the government needs to recognise the additional costs and resources required to implement the new regime. For some councils and ALMOs this brings a significant number of additional buildings into scope and will therefore require more resourcing from already stretched Housing Revenue Accounts.
- 1.3. Given the additional work that this will require for some councils and ALMOs in preparing safety cases for buildings in scope, recruiting new building safety managers and engaging thoroughly with residents, we would urge the government to consider a transitional or phased approach to bringing in this framework, starting with buildings over 10 storeys or 30 metres as originally recommended by Dame Judith Hackitt. We would also argue that buildings with additional safety measures such as sprinklers should be phased in on a risk-based assessment. Some blocks of 10 storeys with two stairways, good compartmentation and sprinklers will be much lower risk than other, lower blocks and a risk based approach should be taken in conjunction with the Regulator in agreeing a sensible phased implementation with each landlord.
- 1.4. The new requirements for “in-scope” blocks of flats will inevitably increase the costs of managing tower blocks. In some places, high rise blocks are already unpopular and tenants do not want to and/or cannot afford to pay additional rent or service charges to cover the extra costs and feel it is unfair compared to fellow tenants who have managed to get a house or low rise flat. In some areas of the country this may tip the balance and make these places financially unsustainable and cause councils and ALMOs to consider demolishing them.

2. Framework

- 2.1. Whilst we very much welcome the new approach and improved regulation of building safety we have concerns that this approach is still missing key elements at the front end of the process and is therefore too onerous once the building is in occupation. The focus should be on ensuring the building is safe for people to live in when built, maintained and after any major refurbishment and ensuring the correct products and processes are followed to keep the building safe.
- 2.2. The implementation of this framework with better building regulations and tested and trusted building products makes sense for new buildings in the construction phase and during major refurbishment programmes, but as soon as the buildings are occupied the management of safety becomes more complicated and less controllable. These blocks are generally open to the public, lived in by hundreds of

people with visitors coming and going, private utility services attaching pipes, cables etc. to communal and private areas or knocking through internal walls. The risks therefore need to be kept to a minimum during building and refurbishment so that any problems caused by human error later, do not end up being catastrophic for the whole block.

- 2.3. We have supported and welcomed the banning of combustible materials on new high-rise homes but are still waiting to see the outcome of the call for evidence on the technical review of the building regulations and associated fire safety guidance (approved Document B) which Dame Judith Hackitt concluded were “too complex and unclear”.
- 2.4. Although some work has been undertaken on fire doors, there is still not clarity for landlords as to what doors to use when replacing failed composite fire doors in their blocks and landlords have generally lost faith in building products actually being what they purport to be. There needs to be a trusted, independently run, process for testing and approving such products which can rebuild trust in the market again.
- 2.5. The framework should also be agile enough to prevent unforeseen future health and safety issues as things change and new technologies or ways of working are introduced to the construction industry. We need to ensure any innovations are thoroughly tested and thought about in relation to the difference they would make to the building as a whole, if subject to fire or other safety issues.

3. Leaseholders

- 3.1. A duty for residents to cooperate with the Accountable Person and Building Safety Manager would be a useful tool to help ALMOs and Councils manage health and safety in their blocks of flats, but we believe it needs to be clearer and the Accountable Person and Building Safety Manager given some clear routes for quick escalation and action if residents refuse. Changes to the powers of landlords over leaseholders on health and safety grounds are necessary and possibly certain actions being made a criminal offence to ensure that all residents comply with important safety rules and landlords can act swiftly and in the knowledge they will be backed up in court if necessary. We have been told of some blocks where a council landlord has offered sprinklers to all residents free of charge, including to leaseholders, but because of faith in other measures such as compartmentation and a reluctance to have the disruption caused by the fitting of such products, there has been a 40% refusal rate within the block.
- 3.2. If this new building safety system is introduced by government for blocks of flats over 18m there needs to be a recognition by everyone across the property world and residents that these flats are different to other forms of dwellings and require a different set of behaviours for the good of everyone and not one where a resident thinks they can do whatever they want, for example, knocking down internal walls, using service areas for storage, changing front doors to non-fire doors etc. Conveyancing surveyors, estate agents who sell or manage rented flats in these

blocks also need to be aware of these new rules and regulations and ensure new owners are fully aware of their responsibilities as well as rights.

- 3.3. There also needs to be clarity on who the term “residents” would apply to. In many council blocks, especially in London and the south-east, flats are owned by leaseholders who no longer live in them but rent them out. Some leaseholders also let their flats on a temporary basis through AirBnB. For a Building Safety Manager to have sufficient control to ensure the building remains safe, they will need leaseholders and the occupants to cooperate at different times and both will need to be aware of the up to date health and safety information and rules for the building. Without enforceable rules, the Building Safety Manager will not necessarily know who is living in any one property at a point in time
- 3.4. If residents refuse to cooperate, there needs to be a clear and quick escalation route supported by law and the courts to ensure compliance. In cases where leaseholders have already undertaken works without the necessary permission which breaches the structural or fire safety of the building, such as knocking down internal walls to make an open plan flat, leaseholders have refused to re-instate them and courts have not given forfeiture of the lease as this is both depriving the owner of their home and the asset, so intermediary measures are required that can be enforced.
- 3.5. We still believe that there should be additional and specific legislation to deal with leasehold issues in terms of delivering safe blocks of flats and this opportunity should be used to set out rights for freeholders to enforce health and safety requirements such as fire doors on flat entrances, annual gas safety checks and electrical testing as well as improving the rules on subletting.

4. Overlap of Regulators

- 4.1. We are concerned that this framework only covers fire and structure for the buildings in scope leaving many other health and safety issues to other regulators. This creates confusion for both tenants and landlords and there will be overlaps where things could be duplicated or worse, fall between the cracks.
- 4.2. Other Health and Safety compliance in terms of statutory inspections and testing include:
 - Asbestos
 - Legionella
 - Electrical testing
 - Dampness/condensation prevention
- 4.3. Where a resident complains about a couple of issues crossing both “normal” health and safety” and fire or structural issues, under these proposals, there will be a need to refer to two different regulators for the same block. This is not unusual, and we recently had a case within the ALMO sector, where the Council as the Registered Provider, was served with a Regulatory Notice for fire, electrical and asbestos issues. We think it would be better to put all of the health and safety

issues for blocks in scope under the new regulator and for the Building Safety Manager to be responsible for all aspects of health and safety for those blocks as this is what residents will expect and would be the simplest to understand.

- 4.4. Given the desire to put residents at the heart of the new regulatory system, the proposals need to be clearer on where resident complaints would go and who should deal with them for these blocks. There is an overlap with the work flowing from the Social Housing Green Paper, new consumer regulation proposals and the role of the Housing Ombudsman and how all of these organisations will work together in future, needs to be clear.

5. Role of the Accountable Person

- 5.1. The NFA had thought this would be the Council (through a named Chief Executive or Housing Director) in the case of council owned stock managed by an ALMO, but paragraphs 159-160 do not clarify this as it refers to both the person/body entitled to receive rents or service charges “directly or indirectly, from leasehold owners and other tenants of the buildings, which contribute to the cost of maintenance and upkeep of the structure of the building, and the services, plant and commons parts within it, which are the responsibility of that person, whether through contract or by law” “This person may be an individual, partnership or corporate body.... The accountable person would therefore in most cases be the relevant building owner or a management company”. Given the ALMO receives a management fee from the HRA which is funded from rents and service charges, they could be said to receive the rent indirectly and they are a management company.
- 5.2. At the moment, our members have differing views about how that would work out locally with some saying the Council would like the ALMO to be the Accountable Person and appoint a Building Safety Manager and others saying the council will take on the Accountable Person role and the ALMO will carry out the Building Safety Manager role.
- 5.3. If the Government’s intention is for the Council to be the Accountable Person this needs to be clarified and set out clearly in the legislation. If it can be a matter to be decided and agreed locally then that also needs to be clarified. It would also help if it gave guidance to councils as to whether it should be an accountable politician, e.g. the Leader or lead member for housing or an officer.
- 5.4. For Councils with ALMOs, it would also be very helpful and less costly if MHCLG could provide some draft templates for new management agreements which cover the designation of these roles and provide clarity to everyone in the sector.

6. Role of Building Safety Manager

- 6.1. The proposals suggest the Building Safety Manager has to be one individual. However, where a landlord has over 100 buildings in scope, which some of our London members do, that is not practical. They have started to look at likely

numbers and estimate a ratio of about one Building Safety Manager to three to four blocks of flats so some London ALMOs are going to need 20-30 people.

- 6.2. The difficulty of finding 20 -30 people with the required skills and expertise could be significant, especially if these regulations come in at the same time for all existing buildings in scope. Some members are looking at whether the ALMO itself could be designated as the Building Safety Manager (with the Chief Executive or Chair taking individual responsibility) and then build a team of people with different roles to cover all of the requirements for all of their blocks.
- 6.3. Members who have started to look at this and make some very draft costings on the basis of one Building Safety Manager per three-four blocks depending on their complexity and location and don't have anyone internally at the moment who could fulfil as aspects of the role. Others are saying it cannot just be one person per block given the different technical expertise required to pull a full safety case together and monitor it.
- 6.4. All of our affected members are concerned that the expectations for this new role are too much, the competencies are in scarce supply, the responsibility is significant, they are not always available in one person and the demand at the beginning of this regime will be so high that the costs of employing one will be huge. Everyone in urban areas like London, Birmingham and Manchester will be after the same people and not just social landlords but the private sector too. Members report it is already difficult to get good fire risk assessors and fear this will just add to the problems.
- 6.5. The Building Safety Manager will also need some powers to go along with their responsibility, we have already mentioned the leaseholder issues our members already have but there are also issues with third parties such as the utility companies who work on blocks or have plant in the block which housing staff do not have control over. For example, a number of social housing blocks have electrical sub-stations in their basements which are locked and only accessible via the utility company, Building Safety Managers would need powers to access and assess safety of the utility company's property if they are to perform their duties correctly. Many blocks have had their compartmentation compromised by work done for tenants or leaseholders by broadband or television providers, as well as other improvement works inside flats. Although residents are required to get permission in these circumstances, they very rarely do and policing it is impossible without 24-hour concierge and the resources to inspect every job carried out privately within a block. You would also need be able to inspect all properties on an annual basis and take follow up action where necessary.
- 6.6. Examples of these sorts of issues still persisting post-Grenfell when you would expect residents to be more aware of the seriousness of issues within tower blocks on fire safety, indicate there is still a lot of work to do to educate people and make them comply. For example, Nottingham City Homes are putting sprinklers in all their tower blocks at the moment and discovered some compartmentation comprised by utility company and plastered over so no-one knew. They rectified it

but a few weeks later it was knocked through again. Manchester City Council are also putting in sprinklers in tower blocks at the moment and discovered a leasehold flat where they had removed all of the internal walls which were part of the fire safety structure. They have insisted the leaseholder re-instate them but they have refused, it has been to court but the judge refused a forfeiture of the lease even though this makes the whole block more unsafe for all its residents and would allow a fire to spread more quickly through the block.

7. Safety Case

7.1. We agree these would be useful documents and can see how they would work for new buildings from now on. However, the majority of buildings that our members will be managing will be existing blocks of flats built from anytime since the 1890s to the present day with much of the high-rise stock being built in the 1960s and 70s.

7.2. There is limited information available on these blocks in many councils and original plans or details of major refurbishments over the years have been stored away, lost or inaccessible.

7.3. We expect landlords may have to undertake intrusive surveys for many existing blocks so that they can build up a fit for purpose safety case. This will be an expensive and time-consuming activity for landlords with many buildings in scope.

8. New Build

8.1. Many councils and ALMOs will not be building anything over 6 storeys, especially in areas where the price of land is not as high as London and the South-East.

8.2. However, in high price areas such as London and other city centres, they will have to build high if they are to meet the demand for new housing and make schemes financially viable. We recognise that meeting these requirements will be much easier in new builds and agree that the proposals are a good idea.

8.3. However, our members do have concerns around the resources and capacity of the new regulator as well as local authority planners and building control to deal with the demand and the capacity of the construction industry to cope with the new requirements. They believe this will add significant cost and delays to building new homes precisely in the areas they are most needed.

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