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Public Bill Committee

BUILDING SAFETY BILL

Second Sitting

Thursday 9 September 2021

(Afternoon)

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Monday 13 September 2021

The Committee consisted of the following Members:

Chairs: Philip Davies, Peter Dowd, Clive Efford, †Mrs Maria Miller

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Bailey, Shaun *(West Bromwich West)* (Con)
† Baillie, Siobhan *(Stroud)* (Con)
† Byrne, Ian *(Liverpool, West Derby)* (Lab)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Clarke, Theo *(Stafford)* (Con)
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† Cooper, Daisy *(St Albans)* (LD)
† Hopkins, Rachel *(Luton South)* (Lab)
† Hughes, Eddie *(Parliamentary Under-Secretary of State for Housing, Communities and Local Government)*
† Logan, Mark *(Bolton North East)* (Con)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
† Osborne, Kate *(Jarrow)* (Lab)
† Pincher, Christopher *(Minister for Housing)*
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Saxby, Selaine *(North Devon)* (Con)
† Young, Jacob *(Redcar)* (Con)

Yohanna Sallberg, Adam Mellows-Facer, Abi Samuels, *Committee Clerks*

† attended the Committee

Witnesses

Peter Caplehorn, CEO, Construction Products Association

Dr Scott Steedman CBE, Director of Standards, British Standards Institution

Victoria Moffett, Head of Building and Fire Safety Programmes, National Housing Federation

Kate Henderson, Chief Executive, National Housing Federation

Martin Taylor, Director of Regulatory Policy, Local Authority Building Control

Councillor David Renard, Chair of the Economy, Environment, Housing and Transport Board, Local Government Association

Liam Spender, spokesperson, UK Cladding Action Group

Giles Grover, spokesperson, End Our Cladding Scandal

Justin Bates, Barrister at Landmark Chambers and Editor of the Encyclopaedia of Housing Law

Giles Peaker, Partner, Anthony Gold Solicitors LLP

Public Bill Committee

Thursday 9 September 2021

(Afternoon)

[Mrs Maria Miller *in the Chair*]

Building Safety Bill

2 pm

The Chair: Before we start the next four evidence sessions that we will have before 5 o'clock, Theo Clarke wants to update the Committee.

Theo Clarke (Stafford) (Con): Thank you, Chair. I would like to draw attention to a possible interest: my husband is an estate agent at Hayman-Joyce.

The Chair: Thank you very much. To remind colleagues, if you have any interests, you can talk to the Clerks and they will ensure that they are properly declared.

Examination of Witnesses

Peter Caplehorn and Dr Scott Steedman gave evidence.

Q28 The Chair: We now move on to our third panel of witnesses. We are joined online by Peter Caplehorn, who is the chief executive officer of the Construction Products Association, and in person by Dr Scott Steedman, the director of standards at the British Standards Institution. We have 45 minutes, colleagues. Before we start, may I ask the witnesses to introduce themselves for the record?

Peter Caplehorn: Good afternoon, everybody. I am delighted to be part of this session. I am Peter Caplehorn, the chief exec of the Construction Products Association. I have held that role for the past two years. I have been with the CPA for seven years, and prior to that I spent 38 years in practice as a commercial architect, involved in technical matters and regulations, and involved with British standards and a lot of building regulation development. I hope that that is of help.

Dr Steedman: Good afternoon, ladies and gentlemen. I am Scott Steedman, director general of standards at the BSI, which incorporates the director of standards role. In my early career, I was an academic in civil engineering. I then spent around 20 years in industry on major building projects. Since 2012, I have been in the role of director of standards at the BSI, so I am responsible for the national standards body and all British standards.

Ms Marie Rimmer (St Helens South and Whiston) (Lab): Excuse me, Mrs Miller, but a number of us are having difficulty hearing on this side.

The Chair: Yes—when I chaired a Select Committee, I always used to remind everybody that these microphones are purely ornamental. They do not really amplify very much, so projection is always good at these events. I thank our witnesses for being with us today. Obviously we are hybrid. We have Peter online and Scott here in the room, so bear with me. Perhaps we will take this slightly slower to ensure that we include Peter in our conversation. Please just shout at me, Peter, if I have not quite seen that you want to intervene.

Q29 Daisy Cooper (St Albans) (LD): We have received a fairly hefty chunk of evidence from a number of different industry players who have set out to us the new regulations, the new technical frameworks and the new qualifications that will affect their bit of the industry, and quite a lot of it is statutory. I was particularly struck by the evidence that we received from the Construction Products Association, which mentioned only a competence framework and a code for construction, both of which appeared to be forms of voluntary "regulation".

I noted that in your evidence you urged us to

"resist the consequent serious danger of disproportionate reaction."

I was very struck by that because it was a very different piece of evidence than we received from almost every other actor in the sector. I would be grateful if you could set out whether you believe that those voluntary forms of regulation are sufficient, and what a disproportionate reaction would look like in relation to your part of the industry.

Peter Caplehorn: What I was trying to do was to set the scene. We fully appreciate and support all the statutory moves that are being made. Equally, I wanted to emphasise that industry and a lot of organisations across construction have also been working in the same direction. Perhaps I did not express the point clearly. It was not a case of saying that the other non-statutory initiatives are more important; it is simply the fact that this body of work is going on. I think that that is really important because the objective is to reform, enhance and have culture change across the whole industry. That is brought about by having good statutory powers, and by having the attention of industry and making it move of its own accord.

On the point about overreaction, I wanted to keep my evidence fairly succinct, to be honest, but I was referring to the issues in the industry with insurance. All of us will be concerned about the various reports in the media about insurance issues, and the impact of those. This has to do with the analysis of buildings. Some are clearly in need of remediation, but a lot have been given that label because the industry has overreacted to things that have been going on with regard to safety.

We need regulation; it is crucial. Way back when we started, there was a strong deregulatory movement, and that was unfortunate; it led us to this position. We need good, proportionate regulation, but there should be an equal measure of activity and seriousness from the industry to ensure that its morals, obligations and ethics are in tune with what we all want. I hope that sets the scene for you.

Dr Steedman: I support Peter warmly. It is all about standards, including the regulations. We are looking to achieve a generational change in the culture of an industry, and that will be quite a long process. I applaud the work of the Department and the Ministers here, and their engagement that has brought the Bill to this stage, but we are designing a new structure of powers, which will include standards set out in regulation, standards

set out in statutory guidance, supporting regulations, standards that will come from industry, and codes of practice used at an operational level. All of those need to be integrated so that they work together as a full ecosystem.

However, in the end, as Peter says—I totally support his point—you need the industry to want to do this. It needs to want to improve. You cannot police it on every nut and bolt; we know of countries where that happens, and it just does not work. If you want to achieve industry transformation, you need the industry to aspire to become better. We have seen that in important areas, including health and safety, where a change in approach has led to significant improvement in the health and safety of operatives on construction sites. This is an even greater task, in a sense. It is all about creating a system of standards, including higher-level regulatory powers and voluntary standards, that lead to the outcome that we want as a country.

Q30 Daisy Cooper: I am pleased to hear both of your answers; thank you for them. If I may get to the nuts and bolts, we all agree that there has to be culture change—we have heard that from a number of people—and we all recognise that it will take some time. Given your language—you warn of the "danger of disproportionate reaction"—can you point to any specific measure in the Bill that does not go far enough or goes too far, because that is the issue that members of the Committee have to grapple with?

Dr Steedman: My immediate reaction is that I think the Bill is proportionate, but there is a lot more work to do, and we look forward to working with the Department and industry on the supporting regulations and statutory guidance. They really ought to come along together—that would be very useful—but in so far as we are seeing the approach today, it is proportionate, and I welcome that. I do not think that it goes too far.

Peter Caplehorn: I absolutely support Scott in his analysis, which is exactly right. I add that it is important that industry sees that the Government are moving the agenda forward. I can point to several programmes in the past—nothing to do with building safety, of course—where the Government have announced a programme, industry has invested heavily, and then the programme has faltered. I think that is a shame. Many people with a memory of those circumstances will now see the Bill laid out in the way that it is, with all the elements to it.

Again, I reiterate that I do not think it is disproportionate; I think it sets the scene extremely well, and we can all see how we can work from it going forward. In fact, many people have already taken that up, but it is important that this is now a key moment, so that all the energy and effort from industry really get pushed forward. That is crucial.

Q31 Mike Amesbury (Weaver Vale) (Lab): Are the new regulator, the proposals, the powers, the responsibilities and, indeed, the resources appropriate, and is anything missing from the Bill?

Dr Steedman: There are some points that I think are missing. The regulator role is complex. I think we need a new regulator. In the work that we have done recently on competence standards, it is very clear that there needs to be a regulator. I think that the Health and Safety Executive is the right place to put the Building Safety Regulator. However, this goes beyond a regulator role; it turns into an enforcer role. Part of the complexity of this subject is the risk of creating a two-tier structure where you have structures that are in scope and structures that are out of scope, and a regulator that is regulator and enforcer for some buildings but just an ordinary regulator for other buildings.

I appreciate that building control is supporting this, but on the relationship between the Department and the regulator, in its role as regulator and enforcer for the buildings in scope and ordinary regulator for the buildings not in scope, and where determination will lie if someone is disputing the regulator's role as an enforcer, that kind of complexity will not help the industry. It needs to happen and we need to work it out, which will take time, but the role as specified is extremely important and well defined, and I think it is being taken up very earnestly. The people involved are extremely excellent. Peter Baker is a well-respected individual, and I think we are in good hands with him.

Peter Caplehorn: Again, I support entirely what Scott has just said. To contextualise this a little, one of the issues that has been upon us for at least the last 20 years is the lack of oversight and sanction that Dame Judith Hackitt pointed out clearly in her review, to such an extent that I think the generality of customer practice across the industry was that regulation can be treated with a certain degree of lip service—that we do not really need to focus on the essence of a lot of regulation, simply because nobody will pick up on it and there will be no real sanction.

This is a key turning point in where we need to go, because the industry needs to recapture a respect for regulation and for compliance. The regulatory situation that is mapped out in the Bill starts to address that, but I share the concerns that Scott has expressed over the complexity. We have to start somewhere. To me, there is a bigger question here about how we reform the whole industry and the mechanisms that come into play. At the moment, that is set out in terms of a definition of higher-risk buildings, with different implications for other buildings. We have to look forward to the prospect of a regime that would be the same in addressing all buildings. That would start to simplify some of the current complexity, but we have to start somewhere.

The Chair: Dr Steedman, do you want to come back in before I bring in the next question?

Dr Steedman: Mike asked other questions about the Bill itself and improvements or missing pieces, so I do not know whether you want me to take that now, Chair.

The Chair: Please do, and then I will bring in others.

Dr Steedman: I have four suggestions of areas for improvement. One is a technical matter, but it is extremely important. It is probably an accident, but the definition of designated standards is inconsistent with other statutory instruments. The definition of designation, which is the process whereby a Secretary of State designates a standard to support industry in demonstrating or claiming compliance, has been created since EU exit to reflect the history of the way we do things in the UK. It used to be called citation. The definition of what a designated standard is and the Secretary of State's ability to designate

a standard from a defined body is incorrectly described in the document today, so I would encourage some work on that.

You will see it in schedule 9, which relates to clause 133, on page 198 of the Bill, and the definition there needs to be improved. It talks, for example, about "EU harmonised standards", but there is no such thing—it does not exist. It is a harmonised European standard, not an EU standard, because the standards written by industry are not written by EU organisations. As it stands, there is no provision at all in the Bill that would allow the Secretary of State to request or designate a British standard from the BSI—the national standards body.

That is just an error or oversight, because if you look at other instruments, such as those relating to product safety and metrology, the definition is carefully written out. I encourage the officials in MHCLG to refer to the Department for Business, Energy and Industrial Strategy because the text is available. That would be an important clarification and alignment.

We have discussed the point about things being in scope or out of scope. That is something that we will have to work on, because creating a narrative for industry that is consistent and clear will require clarity in that, and we have discussed some of the complexities. However, I am not convinced that you actually can solve it now. We will have to move all these pieces forward together, including industry, so that we can achieve that learning. There are some excellent examples from industry of organisations that are really trying extremely hard, but there is a very long tail as well.

I have also hinted that it is not clear who will do what between the Department and the new Building Safety Regulator. For example, who will oversee secondary legislation, approved documents and changes? Is that the regulator and enforcer, or is it the Department? We need some support perhaps on who the regulator is. The Bill helpfully states that the Building Advisory Committee will report to the regulator, but does the Department need its own independent advisory committee? I am not clear about that.

Those are the four points I want to stress, but the most important one, technically, is the designation definition. We could provide texts, if that would be helpful.

The Chair: Peter, was there anything you wanted to add? I could see you nodding.

Peter Caplehorn: Nodding in agreement, Chair. I would just like to mention two areas. When we start to talk about the new duty holders—principal designer, principal contractor and the building safety manager—there are obviously publicly available specification standards being produced to amplify those roles, and that is important. The origination of the principal designer and principal contractor come from the Construction (Design and Management) Regulations 2015, which have been in place for some time and effectively try to ensure risk is managed during the design and construction process, including maintenance, which is often forgotten.

That is an existing set of criteria and duties. They are now going to be amalgamated with the new duties of the same name. I am slightly concerned that that means that individuals and individual organisations will have two distinct requirements placed upon them. What I would not want to see is an undermining of the health and safety issues in place of individuals and organisations focusing on building safety in the round. I think that that is something that needs some work as we go forward and develop the new regime.

The other area that I would like to mention is the establishment of the new gateway system. Again, that is fairly well defined and fairly easily laid out, but we must be aware that every building project that starts from an initial idea and moves through to completion has an inherent natural chronology. It is so often overlooked that the process will follow a natural sequence of events. A couple of times in the current proposals it is as if one thing will always follow directly after another, but sometimes that does not happen. You will get a scheme with planning consent, and then there might be quite a pause before work continues. You might get other intervals in the process. It will none the less still follow the same sequence, but just not as a smooth operation. Again, we need to ensure that the new proposals reflect how those processes go forward.

Dr Steedman: Peter is absolutely right. That is the reality of the construction sector. Perhaps to the earlier point about disproportionality, trying to prescribe things at this level in rigorous a way is not going to reflect the reality on the ground, and then people start doing their own thing.

To the point about principal designer, principal contractor and building safety manager, we have thought long and hard about that—when I say "we", I mean with the industry group—and the point was to try to avoid creating new roles and new titles and yet more division among who is actually accountable and responsible for safety through life and in the design and construction. My own recommendation was to stick with principal designer and principal contractor, even though the terms were originally used in the context of health and safety in construction, and in a sense to augment those roles to say that if individuals fulfilling the roles were working on higher-risk buildings, they should have these additional skills and competencies. In a sense, it was not about trying to bang two things together, but saying that someone may be an ordinary principal designer or a principal designer qualified to work on high-risk buildings. Therefore, you have one person and one title, but you may have a different gradation of qualification. That is where it came from, and I do not think Peter is disagreeing with the title.

Peter Caplehorn *indicated assent.*

The Chair: We will move on to Siobhan's question.

Q32 Siobhan Baillie (Stroud) (Con): The Bill gives the Secretary of State the power to regulate construction products. Does the Bill contain enough information about the new regime? Is there enough certainty about what products or types of products will be regulated?

Peter Caplehorn: The issue there is that we fully recognise that this legislation is needed and fully support it, but there is an ongoing conversation to be had with regard to the definitions. We have looked at how you would define a safe product and, indeed, a safety-critical product, and there is quite a bit of work to be done to balance out the needs of the regulations with the practicalities.

To give the Committee an example, if we were to take a sheet of plasterboard, it can be used in many different applications. If it is just used as a finishing element, I would suggest that it is not anywhere near a safety-critical item in most cases. Whereas when that same sheet of plasterboard is used in a compartment wall that is used to fire separate two areas of a building, then it very much is a safety-critical product, so there is that diversity within the product sector.

Equally, some products are clearly safety critical and should be strictly controlled and monitored. We need an ongoing conversation as the team develops the regulations, to ensure that the guidance and, eventually, the list of safety-critical products are clearly usable in a practical sense, and also so that there is complete clarity as we go forward.

Dr Steedman: It is an excellent question. We have to think of products as forming a system, and sometimes products that are completely safe in one system might be completely unsafe in another. Electrical cabling, for example, might be suitable in one jurisdiction, in one country, but if you mixed it up with electrical systems in the UK you would have a disaster on your hands. So this concept of safe products is very difficult to define, because products really have to be seen in context.

The onus should perhaps be on performance-based criteria, so we look to specify the performance of a product and them to demonstrate that that performance has been achieved, and not just by the class of product but by the actual individual product placed in the structure, ensuring that compliance is rigorous. This concept of shaping performance requirements and then allowing industry to innovate in order to achieve those requirements is very important. If you prescribe every detail—the diameter of everything, the thickness of this and that—rather than making things safe, you actually lead yourself down the path of blocking innovation and stifling progress.

We want to balance all of that out, and the best way of doing that is through performance regulations, with standards managed independently, that are required to be used in safety-critical situations to demonstrate that the products will actually do the job that the designer wants to achieve.

Q33 Siobhan Baillie: This might be a question for the Minister, but do you feel, given how the Bill and the regulations are going, that there will be scope for that wider definition and the performance-based work? Do you think the groundwork has been done and that we can fit around it?

Peter Caplehorn: I think there is a lot of work to be done in this area. We have been working closely with the MHCLG team as this has developed, but I still think that we probably need to map out a number of practical examples so that when the regulations eventually emerge we have the right practical answers. That might be in the form of guidance, but it certainly needs a little more development before we have a system that I could vouch for to deliver the outcomes needed.

Dr Steedman: There are interesting lessons from other sectors. The medical devices industry, for example, faces those challenges the entire time. Whether it is a sticking plaster or a heart device, there is a whole difference in the level of risk, so the way in which that type of product is regulated and the standard developed is another place to look. I agree with Peter that we need to take our time. The architecture of the Bill is there to do this, but there is a lot of work to do in developing the guidance and secondary legislation.

Q34 Ruth Cadbury (Brentford and Isleworth) (Lab): I asked the previous panel this question about construction products, but I should have held it for these two witnesses. By the way, I think that far too much plasterboard is used in homes anyway, and not for safety reasons but just because of quality of life, but that is another issue. The Bill does address construction products and future-proofs for products that we do not yet know about. That is fine, but quite a few historical building failures have resulted from the interrelationship—chemical, physical or whatever—between products that only emerged over time, or that should have been tested in the past. The products are safe on their own but not when put together in a certain way with other products. Could the Bill do more in that regard?

Peter Caplehorn: Thank you for that question, because it is of concern and it has been historically, as you said. The Bill as set out does start off in the right place. We have the structure to pursue those issues. In parallel, a lot of work is being done on the quality of testing and on verification of product quality. We are starting a new road that will start to address some of that, but equally, I would raise the move towards greater competence across the industry. Clearly, some product combinations will cause trouble and they can be seen by somebody fairly early on in the process who is competent in analysing those criteria. I would put designers and engineers firmly in that spot.

Some more difficult inherent problems that occur over time are in the province of the testing and research and development areas of product manufacturers themselves. They do a lot on research and development on products because, clearly, it is in nobody's interest for things to emerge later on that will cause problems. None the less, we do see them.

Back to our central subject of the Bill, it does set out the framework, and I believe that with the secondary legislation coming along behind it, it will give us more opportunity to ensure that products are fully tested in combinations, to ensure that we reduce the prospect of any failure like that happening in future. None the less, it is a challenging arena.

Dr Steedman: It is important to remember that we are focusing on safety here, and that means human safety affected by a physical object, and not necessarily quality. The Bill will not necessarily transform the quality of the industry—that is a different thing all together. You are absolutely right that if you look at historical failures of engineered structures, in many cases it is to do with communication between different parties involved in a very complex industry and the long chain that Peter described. The failure to understand the consequences of the assumptions of the person who did that piece of work leads to an issue in years to come that people cannot diagnose. There are some very famous examples of that.

Perhaps one of the additional points worth making is on the digital information. New standards are being developed today on digital management of fire safety information, for example, and new tools—there is a BSI

identifier tool to allow a persistent and enduring identifier to be applied to individual products, so that downstream, you could walk around a building in years' time and identify precisely what that was, and if an issue had arisen you would be able to trace it back.

Dame Judith Hackitt's recommendation on the "golden thread", the digital trail of construction products and how they are assembled, and the ownership of the building through life management are a vital part of the culture change that will enable a much easier identification of problems in future. As Peter says, the physics is relatively well understood; if people do the right tests, they will find the problem, but sometimes things surface many years on and we want to catch that at the earliest possible stage, to make sure we avoid safety issues.

Q35 Ms Rimmer: I am particularly interested in the building safety fund. It is not accessible for properties that have social tenants in them. How does that impact on housing associations? I understand that 40% of all social housing built last year was without grant. If the building fund is not accessible, how do they finance it?

Dr Steedman: I am very sorry, but I cannot really address any questions about the funds. I am not an expert.

The Chair: I would even go so far as to say that the funds are slightly outwith the Bill, so it is slightly out of scope. Was there something else?

Q36 Ms Rimmer: My concern is whether, under the Building Safety Bill, there is a risk of building safety being built for tenure, rather than risk.

Dr Steedman: Sorry, for?

Ms Rimmer: For tenure. If you own a property or if you are a social tenant, it is not available for your home.

Dr Steedman: I would anticipate that the building is designed, constructed and managed regardless of who the occupants are, or how the occupancy is structured. I would sincerely hope that the outcome of this Bill will be to achieve a building that meets our national expectations for public safety, regardless of who is in it or the ownership structure of the apartments inside. It would be entirely wrong if the Bill were to somehow separate out buildings on those grounds, and I would be very disappointed. I have not seen any evidence of that in this Bill, which is focusing very much on the technical aspects of safety, not on the occupants.

Ms Rimmer: It is about building safety systems, the priorities, and if the owners of properties just put in for any grants that they are eligible for—they are, for instance, eligible to claim from the building safety fund—they are not allocated according to risk. It is allocated based on eligibility, or is available according to eligibility, not risk.

Dr Steedman: It is an interesting point.

The Chair: Yes, it is an interesting point, but we are drawing Dr Steedman into things that are probably outwith the Bill.

Dr Steedman: It is outwith the Bill, I am afraid.

Ms Rimmer: Sorry, I am not hearing you.

The Chair: It is something that would be outside the scope of the Bill.

Ms Rimmer: Okay.

Q37 Ian Byrne (Liverpool, West Derby) (Lab): I am going to be quite blunt, Dr Steedman, having just listened to the evidence you have given. You mentioned safety and you mentioned culture change, so will the Building Safety Bill as it stands fundamentally improve the building safety regime in this country and change what many see as the corrupt culture that led us to the tragedy at Grenfell?

Dr Steedman: This Bill gives us the architecture, ultimately—it will take time—to change and improve the culture of the construction industry. The construction industry in the UK dates from around the Napoleonic times: the structures, the people, and the professions that work in the industry date from hundreds of years ago. I do not want to comment on the history or any assertions about the culture, but I am very confident that the structure of this Bill—the way it is laid out, with the supporting statutory guidance—will effect change. However, in the end, it has to be the industry that makes the change, and the industry needs to lead that process. It is no good simply writing it all in a Bill and expecting some magic wand to make it happen. In the end, the industry has to step up.

Q38 Ian Byrne: Won't that come from the regulation?

Dr Steedman: The outcome of the regulation, including the vast scope of industry standards, will together deliver the culture change, but regulation alone cannot deliver culture change, because you cannot regulate everything. In the end, you have to have a combination of carrot and stick that encourages people to realise that in order for companies and industries to become more successful and have more satisfied clients, they need to behave better, and they need to recognise the importance of safety in their work and the impact of their work on others.

A lot of the work that we have done on the competence standards development—the framework of new competence standards, the PAS standards that Peter referred to earlier for principal designer, principal contractor and building safety manager, and possibly for building control—is about recognising the importance of your work impacting others. Lots of people can do their work, but you can still have an unsafe situation. People need to realise that the impact of your work on others is where a lot of the big risk comes from, so that requires people to think wider than their own profession. This Bill will help us get there.

The Chair: I can feel Peter listening patiently online. Would you like to add to those comments?

Peter Caplehorn: Chair, I am grateful. I was absolutely going along with what Scott was saying. I would just like to add something, though. If I can take everybody back to the John Prescott summit in 2001 on health and safety in construction, he made the very clear point that the industry needed to change. That was primarily driven by the industry understanding the message and getting on with it. Of course, regulation came along later in the shape of the early Construction (Design

And Management) Regulations, but it was very much about the industry understanding the message and dealing with it. Again, I come back to what Scott has just said. This Bill sets out a very good framework and it marks a point of confidence that everybody should be marching in the same direction, but it will require the industry to do a lot of the heavy lifting as well.

I would like to highlight two points that I think have yet to be addressed and are fundamental in our steps to make sure that we get rid of the industry that we have had up until recent times. One is a reform of procurement processes, and the other is a change to the standard contracts that are used to procure buildings across the industry. Dame Judith Hackitt, in her report, identified both as seeding some of the bad behaviours that we have seen, and I think both are in need of work. In fact, that work has started, but it is outside the regulatory framework.

Dr Steedman: Just to close on that remark about procurement, I would warmly support it. We have not really grappled with procurement as a tool and yet we have standards that go back to 2011 on construction procurement policies, so the issue of procurement and how it is done is a very strong lever to drive behaviours in the right direction.

The Chair: This will probably have to be our last question to you and is from Ruth Cadbury.

Q39 Ruth Cadbury: It is the case for both of you that your competencies go across the building trade, yet the genesis of the Bill is residential buildings. Do you agree that the regime should be restricted? You have talked about buildings in scope—we are talking about residential buildings—yet there are fire risks to other tall buildings, including hospitals, student accommodation, care homes and offices, such as the BSI building in Chiswick. Do you think the fact that the Bill mainly focuses on residential buildings will cause problems down the line for the construction industry? We will start with Dr Steedman.

Dr Steedman: I made a few comments earlier about the complexity of the scope and the risk of a two-tier system. Peter and I both commented that you have to start somewhere; and it is a very high-risk place where you have members of the public living in buildings in multiple forms of ownership. It is a very complex and highly sensitive issue. I think, in terms of somewhere to start, that higher-risk residential buildings are the right place to start, but I have no doubt that over the years ahead the principles laid out in the Bill will enable us to approach other higher-risk buildings and assets and eventually to encompass much more of the built environment.

Peter Caplehorn: Absolutely. There is danger in complexity, and we do have to start somewhere, but I see the Bill also laying out reform in the whole of the construction sector. The focus is on buildings in scope, but there are quite a few provisions in the Bill about changing a lot of other aspects of the regulatory framework, and that is really important. I would like to see us moving forward as quickly as possible, actually ditching the higher-risk category and using the momentum, using all the issues that we have discussed in this session, to push forward so that everybody can be clear that all buildings are addressed to the same technical standard, all buildings are safe and all buildings will be proven to deliver the performance.

Can I just add another point? While this is absolutely about safety and, in particular—as Scott said—structure and fire, we have a big problem in terms of climate change and reducing carbon. Buildings in future must also take into account those issues. With all the groundwork we are now putting in place, I would hope that people will be equally—

The Chair: Order. I am afraid I am going to have to draw your comments to a close there, Peter. I am so sorry to interrupt you; we are strictly governed by the rules here. Thank you so much for the point you were making.

We have come to the end of the time allotted for this panel. I thank the witnesses, who have spent such a good deal of time with us today, providing such incredibly useful information—a huge thank you to both of you. That closes the third of our panels. Thank you very much.

Examination of witnesses

Victoria Moffett, Kate Henderson, Martin Taylor and Councillor David Renard gave evidence.

2.45 pm

The Chair: Good afternoon to the four witnesses on our next panel, who are going to introduce themselves. Kate, can I ask you to start?

Kate Henderson: Good afternoon. I am Kate Henderson, chief executive of the National Housing Federation. We represent housing associations in England, which are not-for-profit providers of more than 2.5 million homes to around 6 million people. Our members reinvest all their surpluses back into building more affordable homes and supporting residents.

By way of introduction, housing associations vary in size. They also vary in the profile of the buildings that they own and manage and in terms of the residents and communities they exist to serve. So, while many of our members provide general needs rented accommodation for people on lower incomes, they also provide specialist and supported housing, and with that come safety requirements. Across the board, the safety of residents is our No. 1 priority. We are really grateful to be able to give evidence to the Committee.

The Chair: That is brilliant—thank you. Victoria, and then I will ask Martin and David, who are joining us online, to introduce themselves as well.

Victoria Moffett: I am Victoria Moffett. I am the head of building and fire safety programmes at the National Housing Federation.

Martin Taylor: I am Martin Taylor, the executive director at Local Authority Building Control. We are a membership organisation for building control team members within local authorities across England and Wales and—

The Chair: Order. I am going to ask our technical people here if we can increase your volume. It is a little bit difficult to hear you. *[Interruption.]* The technical feedback is to ask you to stand nearer to the microphone, Martin. Is that possible?

Martin Taylor: Yes, Chair. Is that any better?

The Chair: It is, though please be aware that it is a little difficult for us to hear you. Great. Could you just say again which organisation you are from?

Martin Taylor: I am from Local Authority Building Control. I lead the technical operations within that organisation, which supports local authorities across England and Wales.

The Chair: Fantastic. David, could you introduce yourself, please? *[Interruption.]* We have no sound from David at the moment. *[Interruption.]* Are your headphones connected to your audio device? That is as much technical information as I can give. *[Interruption.]* We have lost David at this point. If you can hear me, David, can you make sure that your headphones are selected on the device you are trying to broadcast from? Hopefully, you will rejoin us shortly.

There are a number of questions we want to ask this panel. With four people on the panel, I am keen to ensure that we get cracking, as we only have until 3.30 pm for this session and then I will have to bring it to an end. If it is all right with colleagues, we will crack on, even though we are currently missing one of our witnesses. Mike Amesbury will kick off the questions and others can follow.

Mike Amesbury: It is good to see you in person, Kate and Victoria.

The Chair: David, you are back—hooray! It is lovely to see you. Can we check your audio?

Councillor Renard: Can you hear me?

The Chair: Yes. That is fantastic, David, thank you so much. Can you introduce yourself?

Councillor Renard: I am Councillor David Renard. I am the leader of Swindon Council, but I am speaking today on behalf of the Local Government Association, which represents most councils in England.

The Chair: That is fantastic. I will now hand over to Mike, who will ask the first question.

Q40 Mike Amesbury: I have the same question for all the witnesses. What is welcome in the Bill? What is bad, with unintended consequences, let us say around affordable housing and ambitions to build that? What is missing from the Bill? What should be in it?

The Chair: Who would like to kick off with that? Kate, go for it, and then I will bring in David.

Kate Henderson: We absolutely welcome the introduction of a fit-for-purpose regulatory system on building safety. This Bill is a really important starting point in ensuring that we have a safety system that protects residents.

One thing that the Bill does not attempt to address is the funding for remediation. Within the Bill, there are some financial protections for leaseholders in terms of extended liabilities. That is welcome, in that it assumes that developers are liable for poor workmanship, but it does not necessarily solve the problem for leaseholders. That is because leaseholders may still be facing building safety costs. They would have to pay for legal advice to go through this process, with no guarantee of outcome. We would suggest, as we have suggested throughout, that the Government provide the upfront cost for all remediation work, and that that is then recouped down the line from those responsible. We think that is missing from the Bill.

In terms of the new Building Safety Regulator and its role, as the Bill comes through we would like to see detail on transition. There is going to be a huge amount of change. While we welcome the regulation coming in, it needs to be risk based, as does funding. At the moment, it is very welcome to have the building safety fund, but it is based on tenure and on access for leaseholders in buildings over a certain height. It is not based on risk. We would like to see this based on risk and, similarly, as the regulation comes in, for that to be based on risk, and for us to have transition arrangements in place, prioritising the highest risk buildings.

My third point, before I stop and let others come in, is about access. There are provisions in the Bill for access to properties. We know from our members that they engage with their residents in many different ways around building safety checks, communication and access. The majority of the time, where a check needs to take place, access is provided by the residents through this dialogue. But there are circumstances in which access is difficult to attain, perhaps because the resident has multiple vulnerabilities, is concerned and does not want to allow access, perhaps because they are refusing or perhaps because the building is leasehold and the resident is not there.

We absolutely believe that residents should have the right to privacy, a quiet life and quiet enjoyment of their property, but we want to see good provisions for right to access, and at the moment the way the Bill is structured, in terms of going through the courts, gives us some concern. At best, it could take two months, but at worst we know from members at the moment that securing access can take up to a year. We absolutely want to be fully compliant as this comes in, but right to access is an area that we would like the Bill to pay some further attention to.

The Chair: Councillor David Renard indicated that he wanted to come in next.

Councillor Renard: The LGA also welcomes the Bill. We feel that it will strengthen the building safety system in England, particularly in relation to new buildings, but we have some concerns about the lack of focus on some buildings, particularly those converted under permitted development rights. However, overall we think the Bill is a step in the right direction.

On the scope of the Bill, it seems to us that it focuses very much on buildings over 18 metres, and we would also like to see a risk-based approach to buildings. It is quite possible that a building under 18 metres can be much higher risk than one that is over 18 metres. Therefore, we would much rather see a risk-based approach, which also included care homes and hospitals that fit into that risk profile. We also believe that the Bill does not do enough to protect leaseholders and social landlords from the costs that have resulted from developer failings.

We believe that the requirements around accountable persons need to be much clearer and that the Bill should end competition in building control, because otherwise we will end up with a two-tier system when it comes to safety.

The Chair: Martin Taylor has been indicating that he wants to come in.

Martin Taylor: In respect of what is welcome, we very much welcome the appointment of the HSE; we very much look forward to the gateway points; and, importantly, we welcome the way in which ownership has been introduced into the Bill. People will actually own responsibility for compliance, which we think will significantly change culture within the industry.

We feel that the unintended consequences of the Bill are that it will intensify competition in building control for buildings that sit outside the scope of the new regime. So, although there will be no competition for in-scope buildings, that will then intensify the competition for out-of-scope buildings.

We feel that what is missing in the Bill is that there should no longer be a position or a place for a duty-holder to be able to choose who regulates them. We think that the extension of duty-holder choice should extend across to all buildings and that people should no longer have the option to choose who regulates them through the building control process.

The Chair: That is really helpful. Thank you. Victoria, can I bring you in as well?

Victoria Moffett: Of course. Naturally, I agree with all the points that Kate made. However, specifically to answer the question about what is missing from the Bill, there is a lot of detail missing; we know that that detail will come later in secondary legislation. And there has been a huge amount of work to prepare for the recommendations that Dame Judith Hackitt made, in the last three years, since she made them.

However, to continue progressing with the preparations, just those final bits of clarity would really give people the confidence they need to see that they are going in the right direction. We represent not-for-profit housing associations that are regulated on value-for-money standards; they need to be absolutely certain that what they are doing is the right thing. There is so far you can go, and we will keep going in that direction, but to get it over the line we need that detail as well.

The Chair: That is brilliant; thank you. This is working well so far, with hybrid technology; thank you to our witnesses.

I will bring in Ruth Cadbury now.

Q41 Ruth Cadbury: This is a question for Martin Taylor; apologies if you have effectively covered this issue, Martin, but if you did, you did so very briefly. I asked a head of building control what his perspective was in terms of the way the system had gone in the last few years. He went back to the privatisation and choice-based system of building control, whereby building inspectors, including local authority building inspectors, had to compete on cost. Cost comes down if you have fewer visits on site, and he said that that was one of a number of causes of the failure that we have had in construction and buildings in recent years. Do you recognise that as an issue? Do you feel that the Bill addresses the competition to have less time on site for adequate inspection?

Martin Taylor: It is an excellent question. Yes, we have long maintained that there should not be competition in building control. In case members of the Committee are not aware, anyone who procures building work can choose who regulates them through the building control process. It could be a local authority building control team or a private sector approved inspector. As far as we are aware, that is the only regulatory function where you can actually choose who regulates you. It is a bit like marking your own homework at school. That means local authorities have to compete against the approved inspectors in respect of their big project. Those approved inspectors submit quotations of how much they think it will cost them to deliver that building control service. It goes without saying that anyone procuring building work will look to go with the lowest cost provider of that building control service.

Local authorities do not enjoy the facility of being able to offer a quotation. Their charge can only be based on what it costs them to deliver those services. Local authorities have to compete with the private sector, but they do not have a level playing field. We fundamentally disagree with that, but you could say we are bound to, because we represent local authorities rather than approved inspectors.

On the second part of your question about whether the Bill addresses this issue, it will very much address it, but only in respect of high-risk buildings. Local authorities will support the regulator in the delivery of building control services in respect of high-risk buildings. That will then intensify the competition for buildings that fall out of scope. The first intention of the Bill is that approved inspectors will not be able to support the regulator unless local authorities do not have the capacity, but that will intensify the competition for these lower-rise, smaller buildings and further intensify the problem. It will address it in respect of high-risk buildings, but not all risky buildings are over 18 meters—look at low-rise care homes and hospitals. I think I have answered your question. It will help, but only in respect of high-risk buildings.

The Chair: Witnesses should not feel compelled to speak to every question. That was a relatively specific one. Unless anyone has anything else to add, I will move on to Daisy's questions.

Q42 Daisy Cooper: I have two quick questions. The first is about how you think remediation should be funded. Some of us believe that leaseholders should not have to pay for fire safety defects that are not of their making. I note that the National Housing Federation's evidence stated that the Government should fund it up front and then recoup some of the costs. A second proposal suggests that where those responsible are still a going concern, they should pay for it, and only where companies are not a going concern should the Government pay for it. Would you support that model, or do you still think that it should be the first model, whereby the Government fund everything?

Turning to my second question, we have heard a lot from industry players today who talk about long-term change. I have noticed that although we recognise that long-term change is needed, that is very different from the sense of crisis and urgency that we hear from our constituents who are affected. I want to hear from any of you where you feel this is on that spectrum of emergency, urgency and long-term change.

Kate Henderson: We welcome the considerable funding in the building safety fund. That is a huge commitment from the Government, and recognition of the scale of this challenge. The cost of remediation will far exceed the £5 billion that has been put forward, but it is a welcome contribution. However, that money is available based not on the highest risk but on tenure. It is absolutely right that there be support for leaseholders—we do not think leaseholders should have to pay—but we also do not think social tenants should have to pay. There will be consequences to the fact that this funding is not available to social tenants and social landlords.

Our response to your first question is that we believe that the Government should provide the up-front costs for remediation based on a risk-based approach, with the highest-risk buildings remediated first, and then recoup them. No matter who has done the work, it is about how we expedite this based on risk. That is about prioritising safety and minimising the impact on leaseholders and social residents. The consequence of not having funding for social residents and landlords—this is non-negotiable; the work has to take place—is that money is diverted away from building much-needed affordable homes and investment in existing homes and communities.

This is absolutely a crisis. It is not a crisis of our making; it is a crisis that has been made over the last 30 years. It is a failure of regulation and of construction, development and workmanship. We are going at the fastest pace we possibly can to put it right, but there are huge uncertainties and complexities. One thing I have found incredibly useful is going out on site and seeing buildings that are going through this process with residents living there, and the time it takes to get that through. We absolutely think that this is a crisis, and that work needs to take place as quickly as possible, but the complexities of access to funding and establishing liabilities means that work is not taking place as quickly as it could. The building safety fund is hugely welcome. A number of our members have bids in with the building safety fund, and some have been successful—

The Chair: Order. The Bill does not include the building safety fund, so could we perhaps not focus on that too much? I am trying to draw the parameters tightly. Is that all right?

Kate Henderson: That is absolutely fine. My broader point is that we are waiting for some Government timelines. Yes, there is a crisis, but the speed at which we can work is also dependent on access to some of that funding.

The Chair: I will bring in David, who indicated that he would like to make a contribution.

Councillor Renard: The Local Government Association has similar views. We are extremely concerned about the impact that this could have on leaseholders, so we very much take the view that the Government should pay the up-front remediation costs and seek to claim back as much as possible from those directly responsible. The failure to protect leaseholders will leave councils to pick up the pieces if householders subsequently become homeless, and then the responsibility falls on to local councils to fund rehoming them.

We also take the view that any remediation that applies to social housing providers should also apply to local authority tenants; otherwise, money may be diverted away from repairs and maintenance and towards other costs, and that would just store up a problem for the future.

Victoria Moffett: The funding is obviously a really important point. The Government funding means that all the barriers to remediation can be overcome from a financial perspective. In support of that, you also need Government to co-ordinate the limited resources to carry out remediation works and prioritise the buildings that present the greatest risk. That is the best way to address risk across the board overall. We are not seeing that happening, and that is very much part of the same argument.

Q43 Ian Byrne: I want to touch on disabled people. You mentioned some of the tenures of the housing. BSI recently had to withdraw PAS 79-2 on personal emergency evacuation plans, because it did not cover disabled residents. We know that many disabled people perished in Grenfell. Will this Bill ensure that disabled people will be safe?

The Chair: Who would like to tackle that one?

Victoria Moffett: As far as I am aware, there is not anything in this Bill specifically about people with disabilities. The Fire Safety Act 2021, in making changes to the Regulatory Reform (Fire Safety) Order 2005, is the place where that would be appropriate from a legislative perspective. You probably know that the Government have recently consulted on a requirement for a personal emergency evacuation plan for anybody who might need one. Without a doubt it is key that people who have disabilities or mobility issues feel safe in their property.

We made the point in the consultation that we want a discussion about the questions that would arise if that were made a requirement. There might be questions specifically about a person's plan. For example, I think the Government talked about times when it could be appropriate for somebody to gain support from friends or family, and that might be right, but not in all cases. Those are the questions we need to find an answer to, but the premise of ensuring that people with disabilities or mobility issues are safe in their homes is absolutely non-negotiable.

Q44 Rachel Hopkins (Luton South) (Lab): My question is a reflection on something Councillor Renard said about the implications for leaseholders who may be hit with a significant lessee charge or safety charge, but have only a small amount of time to pay it and then cannot pay. They will be evicted, or bankrupt and evicted; fall on their councils, who are already stretched; and end up homeless. Is there sufficient means of redress for leaseholders and residents, so that they can challenge elements of that charge, and is the provision requiring payment within 28 days reasonable? I would like some thoughts on that.

Kate Henderson: We welcome the emphasis from Government on ensuring the costs associated with building safety through the building safety charge are proportionate and kept as low as possible for residents. We are very

committed to that. At this stage, it is quite hard to know what those costs are going to be without knowing the specific competencies of the building safety manager, the skills base and what that will cost.

On your question about protections for leaseholders, I must first say that as housing associations, we want to see all our residents sustain their homes, so we will do everything we can to support them with remediation costs—in pursuing funding from Government, pursuing developers or pursuing warranties. We will absolutely do that. On the building safety charge, the Bill suggests that it is separate from a service charge, and that you pay it within 28 days. Having looked at that, we think it places more vulnerabilities on leaseholders. With a service charge, there is case law, so you can hold your landlord to account, and that is an important point to address. If the building safety charge was transparently and openly included within the service charge, the leaseholder would have a right to redress through case law under service charges.

The other point here is that, if the building safety charge is within the service charge, it can be paid not within 28 days, but on a monthly basis. It would be estimated for the year ahead and then divided up by 12 months, as with service charges. You would then get to the point in the year when you compared budget with actuals and readjusted, and if that cost were to go up and your leaseholders were unable to pay it, you would work out an affordable repayment plan. Our recommendation is that there should not be 28 days. The charge should be included as a provision within the service charge, but in an open, accountable and transparent way, so that the leaseholder has not only a right to redress, but a more manageable payment plan.

Q45 Ruth Cadbury: My question rolls on from the last. The building safety charge is merely for leaseholders; I do not even know whether it depends on whether you are a leaseholder of a private developer, a housing association or even a local authority, and we are just talking about permanent residential housing. There are already many differences, and we already have the current difference in the building safety fund, which only applies for leasehold homes. Even housing associations cannot claim on it for their social rents, so they have to use funding for refurbishment or new build social rent housing to address those deficits. Do the panel members, particularly from the federation and the LGA, feel that if there was an indemnity scheme on freeholders, developers and builders, it would be more transparent and easier to claim, irrespective of who the user is or who the main building manager is, in terms of which sector?

Victoria Moffett: To be honest with you, that is an arrangement that we have not considered at all. Rather than answering on the hoof, we might have to go back and give that some thought. We can certainly do that and write to the Committee.

Councillor Renard: We will also provide a written answer to that. It is a really good question, and we will give it some thought and respond to the Committee.

Q46 Shaun Bailey (West Bromwich West) (Con): I want to touch on accountable persons. As we discussed earlier with clause 84, accountable persons have to "take all reasonable steps" to ensure safety. I know this might sound like I am asking you to pick your shopping list, but what do "reasonable steps" look like? We have these debates all the time, and I know this is coming out in secondary legislation later. To dovetail into that, on the duty to co-operate, we know there are some quite complex ownership structures. In my patch, we have a situation whereby you will often have a tenant management co-operative, which is an arm's length body of the council but is a separate organisation in its own right. In that scenario, how do you ensure there is not responsibility shunting? It seems that there is a risk there. In that scenario, how do we ultimately ensure that we have the accountability that the Bill, and the subsequent legislation, is trying to achieve?

The Chair: Right, a little package of questions there from our colleague. David, do you want to start? Then I will bring in others.

Councillor Renard: I will address a couple of those. We believe the Bill has some shortcomings when it comes to the issue of accountable persons, and we feel that the Government need to be very clear about where that accountability sits. If there is an arm's length management organisation, it needs to be clear in the guidance, so we need to have some regulatory guidance. We also think that the regulator needs to give accountable persons adequate time to implement the new system and provide the appropriate guidance. Of course, there is the need to ensure that there are enough accountable people with the right qualifications across the country, so thought needs to be given to whether there are enough skills and how long it will take to get them in place.

The Chair: Martin, do you want to add anything else on Shaun's question about taking reasonable steps and the duty to co-operate?

Martin Taylor: I think the key here will be the detail in the guidance that needs to come out for accountable persons. It is critical that people take accountability of the risk, which is what the Bill attempts to set out. One final thing I would add is that the risk in not just limited to fire, so it will be key that the guidance comes out. I know the guidance is being planned from the work that we are doing on the Joint Regulators Group.

The Chair: And our two witnesses appearing physically—would you like to jump in at this stage?

Kate Henderson: Sure. The duty to co-operate is very welcome, but there is still the potential for some issues to arise. The example that we have just heard is not uncommon. We can have buildings that are owned by freeholders that are shell companies, and sometimes those companies then demise the internal parts of the building to a long-term leaseholder. They can also discharge their management duties to a managing agent. Sometimes the long-term leaseholder and the managing agent might be the same entity, but they might not be. In that scenario, we understand that the principal accountable person would still be the freeholder, even though they have appointed a managing agent and have a long leaseholder. Our members have told us that it can be really difficult to engage with the freeholder in this sort of set-up, especially when they need to do things such as assess external wall materials or identify what

needs to be remediated. We would want some reassurance that the duty to co-operate has been really thought through for the most challenging of these buildings, in terms of absent freeholders.

A particular challenge is where the freeholder is overseas, potentially in the Isle of Man or Gibraltar. The entity might be outside UK jurisdiction, so I think we would like—we are seeking legal advice at the moment, which of course we will share with the Committee when we have it—an assurance from Government that we are working through the detail of this rather complicated situation. That is not just about us as social landlords; it is about the access that the new Building Safety Regulator can have to that freeholder, and it is about communication for residents. There is some really welcome content in the Bill on good communication with residents—we absolutely support that—but in that type of arrangement, how do we get the right information? If a housing association has a few properties in a wider block with an absent overseas freeholder, it is about making sure that we can reassure those residents and get them the information they require. It is those interrelationships that we still need to work through, and I am not sure that the duty to co-operate at this stage solves that, although we would like it to.

Victoria Moffett: On the question about reasonable steps, I agree with David and Martin about the need for guidance. I suggest that that guidance needs to be focused on what the risks are and what is appropriate to reduce those risks, as well as what outcomes in that building we want to achieve.

Q47 Daisy Cooper: The Minister knows that the Government have introduced legislation to do with putting broadband into buildings where freeholders do not respond. The Government have introduced a presumptive duty, where you can put broadband into a building if the absent freeholder has ignored repeated requests. Might that principle enable that kind of work? Rather than having "take reasonable steps", if you had a presumptive duty whereby you could have access if an absent freeholder ignored repeated requests, would that help?

Victoria Moffett: That sounds like an interesting concept. We would want to have further discussion of it. It is an interesting comparison. Some of our members have raised the fact that the presumption of access for broadband could minimise the compartmentation that is there to contain a fire to a flat of origin, but the presumption for access in this scenario could be quite a helpful thing.

The Chair: I was going to say that we had ended our questions, but Mike, please, come in.

Q48 Mike Amesbury: Dan Hewitt from ITN has been involved in a campaign—an exposé, really—on some of the standards across the sector. By your own admittance, they are not acceptable. Will this new building safety regime actually start to alter that landscape with the regulatory framework?

Kate Henderson: Thank you for highlighting the campaign, which is specifically around damp, mould and disrepair in homes. There have been some really unacceptable examples, which are being put right. It is absolutely incumbent on anyone, whether they are a social landlord or a private landlord, to ensure that residents have safe and secure homes.

On that and specifically on damp and mould—I know that is not what this Bill is about—context is important in terms of there being a consistent improvement in the quality of homes. Around 5% of housing association properties have some kind of damp or mould. It is higher in the private rented sector, but is still not good enough and we are working on it. Two per cent. is structural—that is a separate conversation about regeneration—and 3% is about things like condensation. Again, it is never the resident's fault, but there is more we can do to support that.

In addition to the question of the physical buildings, that investigation perhaps raises the issue of how residents are treated and rights to redress, transparency and accountability. There is some welcome provision here about communication, with resident engagement as part of the Building Safety Bill, but the consumer regulation that will come through the Social Housing White Paper is the really important place for ensuring that we get the right regulatory framework. It is interlinked with this regulatory framework, but it will also come through the regulator of social housing with new consumer regulation. On that front, there is an absolute commitment from us about being open, accountable and transparent, and wanting to have a really strong and positive relationship with residents in the social housing sector.

Q49 The Chair: Is there anything else to add on that issue? We have a couple of minutes at the end for anybody to raise any issues that you do not feel that we have covered so far. I can see that David has his hand up.

Councillor Renard: I have a quick comment on the last point. When it comes to building safety and other issues, local councils with responsibility for housing, housing stock and tenants have been very quick to respond to the needs of those tenants, as a general rule. Obviously, there may be some examples of where that has not been the case, but by and large local authorities have been very positive and proactive in responding to the building safety issues. I wanted to put that on the record.

Q50 The Chair: Thank you. Are there any other comments? Martin, would you like to raise anything that we have not raised yet in our questions?

Martin Taylor: Just one thing. We stand ready, as an organisation, to build the competency in building control. I know that there has been much discussion around competency across the wider industry. As an organisation we have established a competency foundation to build the competency of building control surveyors. We stand ready with a suite of qualifications and accredited learning, all ready to roll out to the industry. We just need to establish the burdens funding that we have applied for. Then we can assure you that we can deliver that competence across local authority building control.

Q51 The Chair: Brilliant. Victoria, do you have anything to add?

Victoria Moffett: Just a final point. Housing associations are absolutely committed to the safety of their residents. We think that it is really important that we move over to this new system as quickly as we can, but also diligently.

Doing that on a risk basis is key, and we are really happy to work with the Government and the HSE to define what that looks like.

Kate Henderson: I echo what Victoria just said. We really welcome the legislation coming forward. It is really important that this legislation dovetails with the legislation in the Fire Safety Act. We have concerns about the capacity to implement, and we want to work on that transition with Government and the Building Safety Regulator, and to work with Government to ensure that this is about not just funding, but about co-ordination and ensuring that we prioritise highest-risk buildings first. I reassure the Committee that the safety of residents is our absolute top priority.

The Chair: If there are no more questions from colleagues, on behalf of the whole Committee I thank all our physically present and online witnesses for your time, and your answers to all the questions. Thank you very much.

Examination of Witnesses

Liam Spender and Giles Grover gave evidence.

3.28 pm

Q52 The Chair: We will now move on to our fifth panel of evidence for the Bill, and we will hear from Liam Spender and Giles Grover, both of whom will join us online. May I ask our two witnesses to introduce themselves and say which organisation they are working with? This also acts as a technical check that we can all hear you.

Liam Spender: I am Liam Spender, representing the UK Cladding Action Group, and I am a leaseholder affected by cladding issues.

The Chair: Liam, we can hear you loud and clear. That is fabulous.

Giles Grover: Good afternoon. My name is Giles Grover. I am here on behalf of the End Our Cladding Scandal campaign team. I am an affected leaseholder as well; I have been affected for four years now, with no end in sight, unfortunately. I am here to represent the 20 or so resident groups across the United Kingdom.

The Chair: That is fantastic. We can hear you loud and clear as well. I remind colleagues that this session lasts until quarter past four.

Q53 Rachel Hopkins: It is good to have both witnesses here. As many MPs have done in their constituencies, I have spoken to people in my constituency of Luton South who are affected by unsafe cladding and other fire safety defects. I note that in your written evidence, you set out a number of key flaws, including in particular something that I have experienced myself. During the passage of the Fire Safety Act 2021, many of us asked questions about covering all remediation costs for leaseholders, and we were told that that was not the right Bill because those matters would fall within the scope of the Building Safety Bill. However, your evidence suggests that that is being palmed off again. Can you elaborate a bit more on that so that we understand it, and do you think there are any other flaws in the Bill?

Liam Spender: Thank you for the question. As you have picked up on, we set out in our written evidence quite a lot of detail about the flaws we saw in the Bill. The fundamental issue is the one that you have identified: we were promised a solution that has not materialised in the Bill. In many ways, the Bill makes things worse. The key way it makes things worse is that it removes any legal doubt that leaseholders and residents of those buildings, who had no part in their design, regulation or construction, will be held responsible for past, present and future costs when things go wrong. That is an appalling failure of public policy.

The panel before ours touched on all the difficulties with the complicated machine that is being set in motion, with building safety charges, accountable persons and building safety managers. I fear that we are heading for a situation where the Building Safety Bill will become a jobsworths charter, and leaseholders will be seen as one giant blank cheque.

Giles Grover: I will not take too long, because a lot of this is about the history since the catastrophic events at Grenfell, after which we had many years of Government—Prime Ministers and Ministers—saying that we must be protected from all those costs, which we played no part in creating, as Liam said. Those promises carried on for a couple of years, but it is kind of clear that as the scale of the issue has widened and more buildings have become trapped in it because they have been built so unsafely, the Government have rowed back on that.

In 2020, that promise was changed to "unaffordable costs". Before a Select Committee in November of last year, Lord Greenhalgh, the building safety Minister, could not really give an answer on what affordability meant; it was a case of, "Hopefully, people won't go bankrupt." Sadly, that has already happened to a number of people, who have lost their homes or had to sell at a massive discount. The really frustrating thing, and what has really shocked us—perhaps we should not be so surprised—is the number of promises that were made during the Fire Safety Act ping-pong process. A number of Ministers—including Lord Greenhalgh again, and Kit Malthouse in February—kept saying that leaseholders should be protected, but that the Fire Safety Bill was not the correct legislation and that the Building Safety Bill would address that.

Despite many months of promises and many months of Ministers telling potential rebel Conservative MPs that they would address the problem of historical costs in the Building Safety Bill, the Bill is here and does nothing to address that problem. There is a little bit of tinkering, and something positive for the future of the Defective Premises Act 1972, but we will still have to pay tens of thousands of pounds in costs—sometimes hundreds of thousands—for issues that go far beyond cladding, as the Government and the Secretary of State have known for a couple of years, if not longer. I could go on, but I will leave it there for now.

The Chair: Rachel has a supplementary. I commend Rachel for the way that she phrased her question so that it was entirely in order, because she was referring not to the building safety fund but to the affordability of repayments. That is entirely in order.

Q54 Rachel Hopkins: Thank you, Chair. Following on from that, I will ask an open question, as we have limited time with you. If there were one thing you would improve in the Bill, what would it be?

Giles Grover: The one thing is for the Government to hold true to their word over the years and legislate to ensure that we are protected from historical remediation costs. The intention to protect us was in the draft Bill and in the impact assessment, but it has now been taken out, with the aim of transparency for the building safety charge, and there is still nothing to help people across the country who are being forced to pay bills for tens of thousands of pounds that are landing on our doorsteps daily. We need legislation that finally protects us. I am sure Liam can go into the McPartland-Smith amendments that will do just that.

Liam Spender: I think what is missing from the Bill is everything that is set out in the McPartland-Smith amendments. In particular, the Bill makes it very clear what the legal responsibilities of leaseholders are—the people living in these buildings—but does nothing to make clear what the responsibilities are of the people who put these buildings up and designed them. A critical part of what McPartland-Smith does, as well as providing money for current faults, is to provide a clear legal remedy if buildings are not built properly in the future. I think that is something that stands out like a sore thumb in the current draft of the Bill. That is what is missing, and that is what I would like to see added.

The Chair: That is really helpful.

Q55 Daisy Cooper: In my constituency of St Albans, I have a number of constituents who have been affected by this issue and are facing crippling costs to do with fire safety remediation. They have told me about the impact it is having on the decisions they make about their lives, such as not being able to start families because they cannot move house, and about people who are suffering from severe mental ill health. Liam, you mentioned that this Bill makes things worse in some respects. Can you expand on that particular point and talk to us about the real-life impact it is having on people who are affected?

Liam Spender: You are quite right that the situation is worsening by the day. People are facing existential questions—do they carry on with their property or not? They are facing unpalatable choices. I think one of the ways that the Bill makes things worse is in relation to works that are required to remove building safety risks, an example of which could be cladding. The Bill makes clear that they are all recoverable through the ordinary service charge mechanism, so it removes any doubt that leaseholders have to pay for other people's misdeeds and mistakes.

We are already seeing the consequences with cladding, so imagine what it will be like with the next thing that comes down the road. You have seen the stories in the newspaper and on "Newsnight" last week that people are already facing six-figure bills, some people have committed suicide and others are declaring bankruptcy. There is a pall hanging over these people and it is a blight on the housing market, which the Bill does nothing to address. I will let Giles add more colour to that answer.

Giles Grover: Again, everything is a long story. A lot of us have been trapped since very soon after the events at Grenfell when buildings were assessed for ACM, and everything has just snowballed and got a lot worse. Every so often, there are incremental positive steps in terms of funding, but you have to fight tooth and nail for those. As Liam said, and as you said in your question, Daisy, it is families, first-time buyers, pensioners—people from all walks of life who just wanted to fulfil that very British dream of being a homeowner or a flat leaseholder; a leaseholder is not necessarily a homeowner. Just the other day, someone told me that because she is so worried and because there is no detail about the loan scheme, she has accepted an offer that is £35,000—it will not pay off the mortgage—on an under-18m building just to be able to move out. She has a little child as well. That is just in Manchester, but it is happening across the country.

As Liam said, there have been suicides, for a mixture of reasons as well, but people just feel helpless. We are currently trapped. You start off being financially trapped, and everyone focuses on the finances. But then, especially during the pandemic, for a year and a half you are sat in your flat looking at the walls and not able to sleep at night from thinking, "What happens if there is a fire?"

This is people in buildings of all heights and all tenures, with defects of all types. As much as it started as a cladding scandal—we are called End Our Cladding Scandal—it has become a building safety crisis. It is not just cladding; it may be balconies, internal compartmentation or lack of fire protection for steelwork. With all these issues, once they are identified and once you have a proper fire risk assessment—a type 4 intrusive one—you start uncovering the lack of regulations, the lack of oversight and the poor development practice, but we are still being made to pay for it. We are still the ones on the hook for it, despite it being none of our fault. It is an absolute disgrace, and it is unfathomable that it is still happening. Government have done something, but not enough to solve this issue once and for all, to provide that certainty to leaseholders and the housing market, and to help us move on with our lives.

Q56 Mike Amesbury: It is good to see you both, from afar. I have a question for you both: does the Bill ensure that the polluter pays? They are still receiving billions of pounds of Government subsidies. Is that clearly outlined in any provision in the Bill to ensure that leaseholders are protected and the polluter pays?

Liam Spender: No. The same builders that have put up buildings with the horrific array of defects that we are seeing are still perfectly entitled to draw on the Help to Buy scheme and the recently announced subsidies for affordable housing. There has been no accountability or payment from the polluter. All that has been offered, which is not in the Bill, is the residential property developer tax, which we do not know the details of. But it is wholly inadequate that it will recover only 13% of the estimated £15 billion cost. The bulk of the cost of the current crisis and/or future crises is being dumped on leaseholders, which is what this Bill does.

Giles Grover: I agree with Liam. It is not holding them to account at all. The latest figures are approaching £15 billion, and developments have made £2 billion since the catastrophic events at Grenfell. Government have supported them through the Help to Buy scheme and through instantly having a stamp duty land tax relief, and there is a mortgage guarantee scheme for first-time buyers that is open to everyone. The figure

that always bothers me more than anything is the amount of money that the Exchequer loses every year—billions of pounds—to the zero rating of VAT on construction.

A lot of those things have laudable aims, but do they actually help the supply side? They do not; they are all about demand. Government are happy to praise the economic effects—the jobs, the flow of taxpayer money—and it certainly pans out to support the construction industry. The collective state of industry failure is affecting hundreds of thousands, if not millions, of people. It has taken two and a half years of kicking and screaming to get a bit of money out the Government every so often. Every year there is a little bit more. They keep telling us, "We're not going to give you any more; we aren't going to help you out", but then we get further. There will be a point next year, hopefully, when the Government will say, "Here's a little bit more", but everything is a little bit here and little bit there. We are not being helped.

Why are we being forced into a planning tax loan scheme? Why are the Government not forcing the developers to pay that? The simple point goes back to: it was never our fault, it was never anything we did. The regulations are terrible, weak and inadequate. A lot of people knew that for years; the Government were advised of that for years. Builders were allowed to do whatever they wanted and to cut corners. Dame Judith Hackitt says there is a race to the bottom, focusing on profits over safety. But now, we are the ones on the hook to make that right. I do not get how that is at all fair. We need more funding from Government, we probably need more funding from the developers, and we need more funding from the product manufacturers as well. Leaseholders should finally be protected.

Q57 Kate Osborne (Jarrow) (Lab): Good afternoon. Broadly, what are your views on the responsible person or persons? What do you think of the responsibilities placed on them? More specifically, is it reasonable to expect all accountable persons to be sufficiently knowledgeable to assume the responsibilities in the Bill?

Liam Spender: I think the whole responsible person regime has not been properly thought out. You cannot see, as parliamentarians, the full detail—that is being developed behind closed doors with industry. You are being asked to put this through without seeing how that very important relationship will work. The fundamental issue with the accountable person and building safety manager is that you would expect to find that regime in a petrochemical refinery, not in a residential building. It is totally unsuited to what needs to be done, massively over engineered, and the cost of it will fall on residents. The Government need to go back to the drawing board and come up with a much more tightly defined set of duties for these people, in order to avoid a situation where we end up with the advice notes, on steroids—which is a real risk.

Giles Grover: I would echo those comments. The difficulty is, again, that the legislation and the guidance are still not really there to help us understand how it will work. There are potentially moral hazards between the roles of those accountable persons—the building safety managers—in terms of how they will coalesce. There might be different accountable persons, or responsible persons, depending on the building. It still feels like there is no effective control. I do not think anybody wants to be an accountable person right now; the competencies required are a pretty wide skill set, and I fear that they will not be able to get insurance. I think we need a lot more work on how the accountable person will interact with the responsible person.

Q58 Shaun Bailey: Thank you so much for coming today, Giles, and for your candour. I want to talk about how the Bill addresses some of the inherent power and structural inequalities that we see, particularly when it comes to the industry. Broadly speaking, we have heard some positive overtures about how we change behaviours and the possibilities that are there. How do you think this Bill should go further to do that? From a personal perspective, I have seen what those inherent inequalities do day to day; I have lived through that. What it sounds like from your responses is that there is a system that needs to be ripped apart. How do you think, within this Bill and subsequent legislation, that can be done?

Liam Spender: Thank you for that excellent question. There are three critical things to address. First, there need to be leaseholder resident representatives on the rule-making bodies. This avoids a situation where industry and Government make rules that suit them, and pass the bill on to leaseholders who are left with the inadequate tool of challenges to the building safety charge and service charge, to contest bills that have already been paid. Secondly, the Government are trying to perform some sort of Frankenstein operation, with the Building Safety Bill, on a system that has had its day—namely, leasehold. There is a fundamental imbalance of power in the leasehold system in favour of landlords. Until you address that, you will not solve the problem of rules being made to suit landlords and bills being passed on to residents with no oversight, and no control. Thirdly, Dame Judith Hackitt identified in her report the culture of box ticking in the industry, the race to the bottom and value engineering—all that sort of stuff. Until that changes, nothing changes; buildings will continue to be built that are not fit for occupation and we will end up repeating the cycle at some point in the future. Those are the three things that need to be changed. I think that the McPartland-Smith amendments go a long way towards changing them, by introducing clear, legal routes to recovery against builders if they do not do their jobs properly.

Giles Grover: I will just echo the comments on the fact that the whole leaseholder structure means that you are still at the bottom of the food chain. There is all this talk about the building safety charge, but, as Liam said, ultimately it is about leasehold law—despite the Government thinking there might be protections in landlord and tenant law, we have seen that there are not the supposed protections there should be, because all the cases are based on the terms of the lease, which are always written against us. There needs to be an overarching look at the fact that it is not just the building safety charge, it is about service charges and how they are levied. There needs to be a bit more control over that, so that there is the actual ability to challenge it, rather than saying, "You can potentially go to the tribunal." Ultimately, the cases we have seen do that just end up being rebuffed.

I am still concerned about the insurance issues we are facing now. There does not seem to be enough control. We have seen buildings insurance soaring by hundreds of per cent. I am not sure what protections there are

against that happening. We have tried to report it to the FCA and the CMA, but are simply told that the responses are not as constructive or helpful as they could be.

Everything needs to be looked at again—even the building safety charge itself. When it was first drafted, I remember a meeting with one of the deputy directors of MHCLG where they said they did not really know much it was going to be. It was an academic exercise. Even the numbers in the current impact assessment say it will be £16 a month. It might be £42 or £26 a month. For existing buildings it should be more. No one really knows. As some industry figures have started to look at it, it might well be hundreds of pounds a month. There needs to be an overarching, holistic look at service charges and building safety charges. That would be the first thing.

To go back to Liam's point about the McPartland-Smith amendment, that is what we are hoping the Conservatives will look at and realise that, yes, residents must be protected now, because they are the innocent people.

Q59 Ian Byrne: Thank you, Liam and Giles, for the extremely powerful evidence. I really hope you are listened to when we come to the amendment stage of this process. I want to touch on the voice of residents, which we have not really talked about. How important is the engagement of residents to the operation of the occupation phase of the new building regime? Does the engagement process outlined in the Bill do what is required?

Giles Grover: Thank you for the question, Ian. Resident engagement is key. As we saw last night—those of you who watched "Grenfell: The Untold Story"—if there had been sufficient resident engagement in 2015 and 2016, would the events of June 2017 have happened? I do not think they would have. It is important to have resident engagement, but, as we have seen, as lot of these things are very much tick-box exercises. Recently—or not so recently—the National Fire Chiefs' Council updated its guidance on simultaneous evacuation and interim measures such as waking watch to say that residents should be consulted and cost-benefit options should be explored. That never happens in practice.

What is there actually to make it happen? The Government do not want to legislate for a resident group in each building. I can understand the reasons for that, but what is to stop the responsible person, the council entities, from just saying, "We have tried to engage residents. We put a few flyers up and gave a form out." There needs to be a more positive obligation on them to actually engage residents than there seems to be now.

Liam Spender: I wholeheartedly endorse all of that. The answer to Ian's question is that the residents engagement strategy in the Bill is not up to scratch. The problem is that the rules are being made now by statutory instruments in close consultation with industry. There is no amount of resident engagement strategy or vision that can overcome that issue. Once the regulations are made, there will be limited room for manoeuvre. I think there needs to be resident representation on the rule-making bodies to ensure we actually have a genuine residents' voice, rather than a couple of cul-de-sacs that freeholders, managing agents, responsible persons—whatever title they are being given in the Bill—can lead residents down without there being any meaningful input.

The Chair: Are there any other questions from colleagues?

Q60 Ruth Cadbury: I have a couple. Like many Members, I have a lot of affected leaseholders. The McPartland new clause 4 proposes a building safety indemnity scheme, equivalent to the Motor Insurers' Bureau. Will that address some of the challenges about who ultimately pays for the historic defects in buildings that leaseholders are living in? Do you feel that will be suitable to apply to leaseholders, whether they are leaseholders of private owners, housing associations, councils or other providers?

Liam Spender: Yes, is the simple answer. The building safety indemnity scheme would be one way of creating a pot of money into which all stakeholders would pay to ensure there was money available to fix buildings with issues, in whichever sector they are in—private, public—and whatever tenure they are in, whether they are rented or held on long leases. That would seem to be an equitable way of doing it. It is one implementation of the idea that the polluter should pay and that there should be a social insurance scheme in the same way that there is for uninsured drivers. I will let Giles add to that answer.

Giles Grover: I have nothing to add to the specific point on that amendment. I have tried to read the Building Safety Bill, the impact assessment and the explanatory notes many times, but I have not managed to make it right through to the end. Having read the amendments and interrogated those, the McPartland-Smith amendment is one that helps us. The simple point is about better protection for current and future leaseholders by ensuring that the limitation periods are extended, by using legislation such as the Housing Act 1985. That would help us.

The simple amendment, the one that I really want to see, and which I think should be a no-brainer, is the one about VAT. I cannot remember which one it was—I am sure Liam will—but it says that the VAT that we have been forced to pay on works and on fire safety interim measures, for the last five years, should be refunded. It should mean that we are treated the same as the developers and the building owners that can apply for zero-rating. They have been told that exceptional health and safety reasons apply, so they can be classed as "person constructing" status.

Would it not be a good start to put us on that same deal and to say, "Actually, here you go—the money you have spent already, that 20% that has been added on, you can have that back"? For future cases—in instances where future remediations are funded—at the very least, that should be taxed at 0%. The Treasury has profited from VAT and from insurance premium tax. Agreeing to that amendment would be one way of showing they want to help the leaseholders who have been forced to pay these costs with the additional costs added on.

The Chair: Thank you, Giles. I think you were referring to new clause 1. Ruth, did you have a second question?

Q61 Ruth Cadbury: Yes. I do not know whether you heard the evidence from the National Housing Federation. One of the issues it raised was seeking an appropriate mechanism to gain limited and proportionate access to properties for essential safety works, where that is not granted by a resident. That presumably also goes for private landlords of leasehold properties, as well as housing associations.

That clearly raises a challenge for your members, whether the building manager or owner is a resident management organisation or housing association or private sector freeholder or leaseholder. How do you respond to what the federation says, and presumably other building owners and managers say as well?

Liam Spender: Yes, I did hear that evidence. From a residents' point of view, we would have concerns about making it too easy to gain access into people's homes, potentially for spurious reasons. You may have seen in the written evidence that we have submitted that we suggest there needs to be a very tough statutory code of practice, to make it clear when powers of entry should be used, whether or not that is accompanied with tweaks to the drafting of those clauses; that is a possibility. However, the key point is that we have a very clear set of rules saying when people can enter private property for safety issues.

After we have finished with this panel, you will hear from two eminent housing lawyers, who will probably have much more to say on this topic and will probably say it far more eloquently than I can.

I will let Giles chip in with anything he wants to add.

Giles Grover: I am not sure that I can be more eloquent than you, Liam, but I will do my best.

Having been a property manager for a year and a half—for my sins—I understand the actual difficulty of entering a property. I think that the point is that, as Liam said in our submission, there is a lease generally of quiet enjoyment. However, leases also say that for good estate management generally you can enter a building within 48 hours.

It does not feel like there are enough protections essentially to stop accountable persons who want to mitigate their own liability from abusing these powers. I do not know how every single electrical point in every single flat will be checked, as well; I defer to Liam and the lawyers you will have before you later.

Ruth Cadbury: Thank you.

The Chair: Shaun Bailey.

Q62 Shaun Bailey: I just want to come back on the really good question that was asked about resident and tenant representation, because we know that when that is done well, it ensures that people can live in safe communities and make the representations that they need to. We also know what it looks like when it is done horrendously wrongly and the power of a few is collated around a small minority, who seem to dictate what happens for everyone else in a community.

May I just ask you both: where should the driver be to ensure that tenant representation is effective? Should it be prescribed from national Government, in the context of this Bill? Should there be a mix? We have so many different types of ownership and of tenant model; I have three that are utilised in my own local authority alone. How do we ensure that every single person who needs that representation actually gets it, and where should the prescription for that come from—from national Government downwards, or from local government upwards? How do we do that? As you said in response to me before, the core of this is the importance of ensuring that those communities are accurately represented. So I am interested to hear from you both your thoughts on that.

Liam Spender: Thank you for the question and for engaging with the detail on this; as you say, it is vital. There is no one better placed than the people living in buildings to have a view on what is safe and what they think needs to be done to make those buildings safe.

I think there needs to be clearer language in the Bill about taking into account the resident's voice, because at the moment a lot of the language in the Bill is passive; it is about residents being given information and not particularly good rights of consultation. There needs to be something in the Bill that creates a genuine partnership between the managers and the people living in the buildings.

To reiterate the point that I made in previous responses, residents need a voice on the groups and committees that make the rules, so that from the ground up and from the get-go the rules are shaped by that voice as they are being made, rather than just presented at the other end.

The last point I will make is that there needs to be better and more readily accessible advice for leaseholders and tenants. Perhaps specific programmes can be set up to provide that advice, so that people know where to go to get help when things are not working, and we do not end up with relationships breaking down, and so that we can have a genuine partnership. I think that would be a helpful addition.

I will let Giles add anything that he wants to add.

Giles Grover: I echo all those comments. Again, I have seen for myself the difficulty of engaging all residents; there is the turnover of residents as well, and you might have absent leaseholders. I appreciate that it might be difficult to do it on a statutory basis, but a lot more guidance and help could be provided to those responsible persons. In general, whether at this point there is that engagement with residents, or whether it is about tackling the issues that we are still facing, in terms of fire safety in our buildings, there probably needs to be a lot more partnership with local government and central Government. Local government—local authorities—and the fire service are able to be more reactive. They are on the ground and already have that relationship with the responsible persons and the managing agencies. That whole approach of saying, "Okay, this is what central Government are doing and this is what local government is doing, supported by the fire services," could actually help drive a lot of it forward. Councillors have that local knowledge, as they are the ones residents turn to directly, as well as their MPs. Engagement with all stakeholders could be a lot better than it seems currently designed to be.

Q63 Kate Osborne: Have you considered or anticipated any possible increases to service charges or rent as a result of the Bill? If so, do you have any idea what that impact might look like to you as leaseholders or tenants?

Liam Spender: I think the simplest answer to the question is that we can expect the cost of living in higher-risk buildings, however defined, to be significantly higher in the future than it is today. We cannot really give any credence to the Government's estimates that it will be between £9 and £26 a month. If you read the press articles, some of which quote industry figures you

will be talking to next week, they are already talking about £500 a year extra just to pay the administrative costs of the new regime. That might not sound like a lot of money, but for some people—particularly shared owners who struggle to get on the ladder—it is make-or-break money. It is a lot of money if you have not got it—that is one way of describing it.

If that sort of burden were being imposed on a company, there would be uproar about it and there would be a great deal more scrutiny of it, but billions of pounds of costs are being loaded on to leaseholders as a result of the new regulatory regime, and the question that needs to be asked is whether we really need to spend that money. Do we really need to spend other people's money—people who may struggle to pay—on this particular issue? I will hand over to Giles and let him add anything he wants to add.

Giles Grover: It is difficult to consider it, because last year it slightly changed. Last year, it included the historical remediation costs, and there were some vague, wide-ranging, heavily caveated figures about what it might be. Those figures are still heavily caveated. I suppose the difficulty I have is thinking about the future building safety charge when I have to pay a lot more already. A lot of people are already paying hundreds of pounds, so it is hard to have this conceptual thought about what may be put in place when they are already facing hundreds of pounds a month. Until there is more clarity about what it actually is, until there is more control over the building safety charge, and until the problems I am facing right now and the thousands of pounds I have to pay right now are resolved, I will not really consider it fully.

Q64 The Chair: Thank you. Unless there are any other questions, we have a couple of minutes left at the end. Giles and Liam, is there anything else you want to add that we have not yet covered? You have just a couple of minutes each to do that. That would be really helpful to us. Is there anything you feel we should have questioned you on but have not covered yet? Over to you, Liam.

Liam Spender: The one thing we would like to have spoken about, but we have not had the questions to do it, is how the Bill affects the housing market. In addition to the cost that is being loaded on to leaseholders, does it affect the functioning of the market? We already know—we made references to this in our written evidence—that banks are starting to make extra provision in their books because they think mortgages are worth less as a result of their exposure to cladding. If you ask me, that is shades of 2008, when we had an enormous banking crash. I suppose the issue for Parliament to consider, when considering this legislation, is what the effect on the economy of not putting up enough money—not by a long shot—to fix the current cladding issues and then creating this enormously complex machine, which may not be suited to the task. I do not think it is and I do not think many people think it is. What is the effect of that on the housing market and, in turn, what is the effect of that on the wider economy? And does Parliament really want to make that choice without knowing and considering that impact? I will hand over to Giles to add anything he wants to add.

Giles Grover: Thank you, Liam. On that point, I think it was in November 2020, before the Chancellor's spending review, when we wrote to make exactly that point. The shades of the 2007-08 financial crisis were starting to become clear: the impact on regulatory capital of the banks with mortgages being valued at zero, and the increasing number of forfeitures. We saw reporting earlier this year about the impact on flat sales transactions. I think they were halved in September 2020. So, as Liam says, there is the effect on property prices, especially in the north—I am from Manchester. The property prices would be lower, but that means that the actual remediation costs are much larger. I think that has not really been considered.

There is the loan scheme as well. It might not be part of the Building Safety Bill, but we still have no idea how it is going to work and how it will not materially impact property prices.

The other thing I will just pick up on, which is in the Building Safety Bill, is the measurement of height and height being the determinant of risk. I think it was Sir Ken Knight who said earlier that height was a crude threshold. Robert Jenrick also said on 20 January 2020 that it was an arbitrary threshold; it might be important, but there are other factors. There is talk of PAS 9980, which will help with that, but, as was mentioned earlier today, the fire at Richmond House, Worcester Park, was in a building that was under 11 metres and it was completely destroyed in 10 minutes. Okay, there is the issue of higher buildings; I understand you might have to phase the scheme in, but we need a solution for all buildings. We need proper risk matrices that actually look at building risk holistically—that look at occupancy and means of escape and do not just say, "Okay, you've got cladding here." What about the internal issues? What about the cavity barriers? What about the lack of sprinklers? One example of what could be done, which we have suggested before, is this. Rather than forcing people in buildings under 18 metres or between 11 and 18 metres to pay a cladding tax, why not ensure that you have sprinklers in those buildings? That is now part of Approved Document B, because Government have realised the clear safety principles of it. That would actually go a long way towards helping many of the people in the under 18-metre or 11 to 18-metre buildings. One final point is that we need to ensure that all buildings, not just those over 18 metres and from 11 to 18 metres, are safe, because those under 11 metres are still potentially very unsafe.

The Chair: If there are no further questions from members, let me, on behalf of the whole Committee, thank you, Liam and Giles, both for taking the time to join us this afternoon and for your incredibly comprehensive and thorough answers to the questions posed. We are very grateful for your first-hand insight. I will let you get on with the rest of your afternoon. Thank you for joining us. That brings to a close the fifth panel of witnesses, and we will now turn to our final panel of witnesses, who have just been referred to by Liam and Giles.

Examination of Witnesses

Justin Bates and Giles Peaker gave evidence.

4.15 pm

The Chair: This is the sixth panel of witnesses before us today. We will now hear from Justin Bates and Giles Peaker. Before we start the questioning, could I ask you to introduce yourselves and the organisations that you are representing?

Giles Peaker: I am Giles Peaker. I am a partner in the property disputes team at Anthony Gold Solicitors.

Justin Bates: I am Justin Bates. I am a barrister at Landmark Chambers and I am the editor of the "Encyclopedia of Housing Law and Practice".

The Chair: Thank you. Our first question is from Ian Byrne.

Q65 Ian Byrne: Thank you, Chair, and welcome to our witnesses. I have an easy question for you. Will the Bill fundamentally improve the building safety regime in this country and change the culture of profit over safety that we have witnessed over the last 30 years? If not, what will?

The Chair: So just a small question to start with.

Giles Peaker: The immediate impact on building practices is not clear. One would hope that, under the new regime, buildings might become, and be kept, safer. The immediate impact on building premises that we know have not been great is hard to see. Frankly, without stronger liability for the building sector, that is unlikely to change.

The Chair: Giles, could I ask for a favour? Please move your iPad slightly. The microphones are a tiny bit directional, so that helps pick up the sound. Justin?

Justin Bates: Not immediately is the answer, for two reasons. One is that there is so much to be fleshed out in SIs that it is pretty hard to know where this will ultimately go. Until you see the SIs and, in some cases, the guidance, it is quite a nice framework, but it does not matter until you get the secondary legislation.

The other reason why things are unlikely to change immediately is that the focus of the new regime is primarily tall buildings—18 metres-plus—and, as you can all appreciate, there are lots of buildings, both new and existing, that are under 18 metres. While I anticipate that, over time, they will be brought within scope of the regime, that is not the starting point, so nothing much will change for them immediately.

To be frank, I am not sure that legislation can change culture. You can legislate for all the things you want, but if people build on the cheap because there is no real comeback on them, that is the position. For example, you cannot sue building control, regardless of whether it is local authority or private, if they sign off rubbish buildings. If you want to make building control a lot more effective, let people sue them when they get things wrong. We will talk about this later, but one of the flagships in the Bill is extending the limitation period in the Defective Premises Act 1972. You can have the longest limitation period you want, but if all the building is done by SPVs—special purpose vehicles—worth £1, which are wound up the minute they are built, the law does not help you at all. There is a limit to what you can do via legislation, and the Bill is a pretty modest start, even at that.

Q66 Daisy Cooper: I have a question about statutory instruments. One of the issues that many of us are trying to grapple with is what should be in primary legislation and what should be in secondary legislation. We have heard from representatives of the Cladding Action Group and other leaseholders that they want to have a voice when it comes to fleshing out the statutory instruments. At the moment, they see it as a stitch-up between the Government and the industry. On the other hand, we have received evidence from industry bodies that this is a necessary evil, because they think they will have to flesh out some of these things as they go, and the critical thing for them is to ensure that there is sufficient scrutiny of statutory instruments. I would welcome your view on where you are on that spectrum. Do you see the process moving forward by giving residents a voice or having further scrutiny?

Justin Bates: There is probably no way of doing this without significant SIs, because to legislate at the level of detail that you probably need, you would have a 10,000-page Bill—you guys would still be in Committee at Christmas. There is also a value to doing it by SI for an element of future-proofing, because it will be easier to update it as things change. I do not see why you could not have at least a draft of the SIs to accompany the Bill, to be considered as part of the scrutiny. One assumes that the thinking as to what will be in the SIs must be reasonably advanced. The moment you have them, this Committee or some other Committee is as well placed as anyone else to do that kind of scrutiny and to bring in the leaseholder and external voices. At the risk of sounding like a typical lawyer, I suspect I am sitting somewhere in the middle.

Giles Peaker: I think I would agree. There are very significant operational elements of this Bill that will be done by statutory instrument, so we are largely in the dark about the way in which it will play out and operate, inasmuch as we have no idea what will be in the SIs. The difficulty with scrutiny of SIs is, I suppose, a parliamentary problem rather than a legal one, but I support Justin's suggestion that at least drafts, indications or outlines of where the SIs will be going would be significant at this point.

Q67 Shaun Bailey: I am slightly repeating what I asked earlier, but on clause 84 of the Bill and reasonable steps, from your perspective as lawyers, is there a way to scope the drafting of this legislation, either through primary or secondary legislation, so that we limit the need for judicial intervention later on? The phrase "reasonable steps" always strikes fear into me, and we could end up just going round and round. Is there scope there to try to define that, either in the body of existing precedent or from what we know from a policy perspective, to try to scope that definition of reasonable steps in respect of this legislation?

Giles Peaker: I suspect that would be a matter for guidance; guidance would not necessarily avoid the risk of litigation on the issue, but it would mitigate it. The risk for all involved, particularly those who will end up paying for it, is that "reasonable steps" will be seen to be taken as doing every single thing possible to avoid any prospect of being sued or losing one's insurance, and with that sort of risk avoidance there is a clear risk, particularly when you are looking at potential criminal liability in some aspects. We need some sort of clear guidance on the extent of "reasonable steps". The difficulty is, of course, that you are looking at a wide range of potential safety issues, and I do not think you could draw a bright line under every single one. Inevitably,

without something beyond clause 84, the accountable person will be running scared of what the potential consequences for them will be, if they do not do literally everything.

Justin Bates: The phrase "reasonable steps" is one that the draftsman of this Bill really likes, because it crops up in quite a few places. Contrast clause 84 with clause 124, inserting proposed new section 20D(9) into the Landlord and Tenant Act 1985. That is the one about how you regulate service charges, and in that one the Secretary of State is giving himself a power expressly to issue guidance about what will be reasonable steps. I cannot see that he has done the same in clause 84. He is making the accountable person go back to the prescribed principles, but prescribed principles are not the same thing as guidance. I do not see why you could not add a new subsection (6) to clause 84, stating that the Secretary of State may issue guidance from time to time about what constitutes a reasonable step for these purposes. That would be quite useful—and if you wanted to make him lay it before the House before it takes effect, you could even scrutinise it.

The Chair: Practical solutions.

Q68 Brendan Clarke-Smith (Bassetlaw) (Con): Good afternoon, gentlemen. Which parts of the Bill do you feel will be the key areas of interest for the legal profession? Following on from that, which do you think will take the most time to understand and prepare for?

Giles Peaker: It will partly depend on who you act for.

Justin Bates: It will depend on who you act for and what you do. For both of us, our primary focus is on residential property law—leasehold, freehold, tenants and so on—so I am really interested in from about clause 120 onwards, the service charge and the building safety charges. Those are all my Christmases come at once, in terms of the amount of litigation you are creating for me, which is probably not what you intended. I want to come back to who you act for. If you act for a developer, one of the things that will worry you is the extension of limitation periods under the Defective Premises Act 1972. At the moment, it is six years from building control sign-off and, in practice, very few people know enough about the problem within that timeframe. 15 years is obviously better than six. If you have developer clients, you will advise them to do as much building as possible through SPVs and then wind them up, once finished, because your exposure after the Bill will be much more significant. That is even more true for refurbs, because you are extending the Defective Premises Act to include refurbishments, not just new builds. That is an aspect that will very much interest the legal profession.

I think there is a lot here that will end up in litigation, and there is not a lot you can be done about that because this is a pretty significant change to the structure of how buildings are regulated, and to the structure of the landlord-tenant relationship. You cannot lawyer-proof this, but you might not need to be quite as generous to lawyers as you are being. In a moment, we will come on to where you could be more exacting with your wording, to be clearer about what you want.

The Chair: Giles, do you want to add anything to that?

Giles Peaker: I think that is right. In some ways, the Bill is actually inviting more litigation through the extension of limitation. To be honest, that is probably the one thing that will not happen, for reasons we will probably get on to—or it might happen, but to a very small degree. I have no doubt that there will be considerable tribunal activity over the new requirements in clause 124, from a leaseholder perspective. The advice to developers might be quite expensive, but it will be very short and sweet: "Limit your liability in any way you can". SPVs will be the way they do that.

Q69 Mike Amesbury: What more could be done to protect leaseholders from historical remediation costs and ensure that those responsible for this mess are pursued and pay? You have referred to suing them. How would you strengthen the role?

Giles Peaker: The extension of limitation is a start. The problem with suing developers and builders has always been twofold; limitation is one, because problems usually do not manifest themselves within the first six years. The other problem is finding somebody worth suing, and that is the big problem. I get a lot of inquiries about potential new build cases. Most of them are out of time, but most of them also do not have anybody they can actually sue, because developers have liquidated or wound up. One thing that could be considered—although it is difficult and goes against some fundamental tenets of English company law—is to allow tracing profits, to make parent companies liable for special purpose vehicles. That would be one way to cut out the simple "take the profits and run" approach. Justin suggested properly enabling the suing of building control; that is currently off the table, but it might improve the attention to detail, although the professional insurers are already going bust.

Justin Bates: Again, if you are feeling adventurous, you could make directors liable for the acts of their companies—make them personally liable for any building defects. That is not as radical as it sounds—you did that to directors of rogue landlord companies in the Housing Act 2004 and the Housing and Planning Act 2016. I appreciate that every company director hearing this is having a wince and every company lawyer is pulling their hair out, but you have done it twice in relation to rogue landlords, so it is not that big a stretch to go to rogue developers.

There is a danger in asking litigation lawyers for policy advice because every problem that I see involves suing people. That is what I do for a living, so take everything I am about to say with a large pinch of salt. Fundamentally, Parliament has to decide what is the nature of the current building safety crisis that it is dealing with. Is it one that requires a collective response or an individual response in individual buildings? The Bill is about individual buildings. If you are lucky enough to be a leaseholder or freeholder who benefits from the Defective Premises Act 1972 extension and you can find someone worth suing, there is some good stuff for you in here. I personally think that would be, at most, 15% of affected buildings at the moment, and you have got the June 2020 National Audit Office report if you want to see MHCLG's response to that. It thinks that even that would be a higher figure.

Likewise in clause 120 and the restrictions on when you can pass service charges on. There will be some buildings that benefit from that, but it is all happenstance.

You are not solving the collective problem. You are creating some remedies for some buildings. If you think this is a collective problem, the only way is for some collective body to take control of it, such as central Government, to fund works, at least up-front—that would be one solution—and then recoup.

You could have a scheme, which I understand is a variant of what is in Australia, whereby central Government fund works on affected properties but a condition of the funding is that it requires all affected parties to assign their rights to central Government, who then get round to suing when they feel like it, because central Government do not really care if their litigation takes five years to work through. Central Government will still be here in five years' time, whereas individual leaseholders do not have five years to wait for cases to pan out. There is lots you could do if you want to adopt a more collective approach, but you need to be clear that this is a very individualistic response here. That will help some people, but probably not many.

Q70 Selaine Saxby (North Devon) (Con): Could you expand on how, or even if, clearer accountability for a building across its design, construction and occupation will help improve safety?

Justin Bates: If the Bill works in the way it is envisaged, you should at the end of the construction stage of the building be able to go to one place and have all the documents relevant to that building. You should have the plans, the design and so on. One problem that you have seen coming out of the Grenfell inquiry, for example, is that no one had all of the plans for the building. Firefighters went in and discovered there were two floors that did not exist on the plan that they had. If this works, this will be better for pulling together a centralised and collective set of records, which will help. That is the obvious one that I can think of, comparing it with a problem that we know exists. Can you think of any others?

Giles Peaker: There will be more accountability via the accountable person, certainly from the point at which the building is occupied. I am not clear how far that accountability will transfer back to the people actually responsible for the problems, if there are problems. The basic idea of having a person accountable for the building's safety is in itself a good idea, but the complexities that follow on are immense. I am not sure that the issue of establishing who is the accountable person, particularly in properties where there might be multiple people who would be candidates or would fall under the list of who would be an accountable person, has been adequately solved.

How can I put it? I am fine on the principle; I am less certain about the practice, particularly as we are still waiting for statutory instruments—quite a lot of them—on how the accountability will be seen through. A lot of it will be down to the approach taken by the regulator. As we have seen with the regulator of social housing and so on, that can be quite a variable approach.

Q71 Selaine Saxby: You said, "if this works". Could you expand on the risks around that?

Justin Bates: Until we see all the secondary legislation, you cannot start to work out where all the problems will be. You have Dame Judith Hackitt's report in the background. Dame Judith effectively concludes in her interim report that we have a building industry that cuts corners and throws up the cheapest buildings it can, to sell for the most profit as quickly as it can. That is the cultural problem. If you have still got that culture, people are going to find a way to get around the law. That is what they do. If you are really worried about building standards, you have to address that cultural bit first.

I am not saying that I have any answers to that, which was one of the earlier questions. Legislation by itself cannot make people be morally good, but you can impose enormous and painful penalties on people who do bad things. For example, building control is liable to pay damages if it turns out it was negligent in some respect. That will focus a lot of minds. It will end the practice that is rumoured to exist of some building control being very keen to say yes, because it does not want to get the reputation of being the person who says no, because then they do not get any other work.

Giles Peaker: There is indeed case law on building control signing off on non-existent flats without having seen them. Despite being clearly negligent, and potentially fraudulent, no liability was found. Yes, there is certainly a case for focusing building control's minds on what it is they are doing.

Q72 Daisy Cooper: The Bill as drafted would to my mind enshrine a legal principle that leaseholders who are not at fault have to pay for defects not of their making. Could you talk us through the legal implications of that in terms of what leaseholders may choose to do if the Bill goes ahead unamended, and for housing and building law in general?

Giles Peaker: The current position on leaseholders potentially having to pay for building defects is somewhat hotch-potch. By and large, for the huge majority of leases, they will have to, because it will be under the lease. There will be some leases where that is less than clear and some where they may not have to. So far, there have been no such successful cases at the first-tier tribunal or the upper tribunal, but it is theoretically possible—I am not ruling it out.

The Bill certainly takes as read that the cost of remedial works will pass under the service charge. There is no envisaging otherwise; it is simply the case, as far as the Bill goes. In terms of inserting, for instance, a direction by the regulator, it makes it 99.9% certain that the costs will indeed pass under the service charge. Not so much by specifying but by presenting the framework by which the remedial works will be assessed under the serviced charge, yes, it does enshrine that principle.

Justin Bates: Clause 124 is the critical one for this. Clause 124 assumes that the leaseholder is going to have a contractual liability under the lease, and it is right to make that assumption. In 99.9% of leases the starting point position will be that the leaseholder pays. By one route or another, there will be a clause in the lease that could be used. I agree it is theoretically possible that you have a lease that does not allow for that. I do not think it is very likely.

Clause 124 does not actually do anything to stop that. It takes the contractual position—that the leaseholder pays—and says, "We are going to ameliorate that in a relatively limited way." First off, it only applies to a

particular type of work, which is going to be specified by the Secretary of State in regulations. We do not actually know what kind of work it will apply to yet. I know it is not just cladding we are talking about here, but for simplicity's sake let us say the Secretary of State passes an SI that says it applies to cladding replacement. In those circumstances, the Bill puts the freeholder under an obligation to look at alternative sources of funding. He has to go and look at granting funding—building safety fund money would be an obvious example. He has to look at insurance funding that might be available. He has to look at any other third parties that might have to pay because the developer could sue them, and he has to look at anything else the Secretary of State specifies, which is why it would be useful to know what the Secretary of State intends to specify. But it is only a duty to take reasonable steps to see whether any of those parties can pay up. What will reasonable steps mean in these circumstances? Once the building safety fund is exhausted, there is no publicly announced plan for any further grant funding. You know the building safety fund will get exhausted, because the Select Committee has done the work on that.

On insurance, it is good to have it enshrined in law that you should be looking to your insurers to pay up—frankly, case law has got there already, so it is not much of a development but it is always useful to have it confirmed in one place. The one that troubles me is the idea that the freeholder has to take reasonable steps possibly to sue third parties. What will reasonable steps mean here? Presumably, the freeholder will go and get legal advice from someone, and lawyers being what they are, they will say the prospects of success are somewhere between x and y. If he says there is a 51% chance of success, does the freeholder have to do it? Bear in mind that the legal costs of a failed claim will almost be certainly be a service chargeable cost. If he says it is 70%, does the freeholder have to do it?

If he does have to bring litigation, in the meantime, what will you do about the actual work on the building, because suing someone does not get a building made safe? In the meantime, all the leaseholders—your constituents who write to you about waking watches and higher insurance premiums—will keep paying that while the freeholder and the developers have a fight about who should pay the ultimate work.

I understand what it is trying to do: it is trying to give freeholders a meaningful kick to make sure they exhaust other sources of funding before they go to leaseholders. I just see this generating a lot of litigation to achieve very little.

Giles Peaker: To follow that through, clause 124 appears to make it an obligation for the accountable person to actually carry out works in the meantime while searching for the other sources of funding. Where is that money coming from? It is not going to happen. There will be no money, unless they charge the leaseholders in the meantime and then refund them, but they cannot do that.

If you are looking at potential litigation by the freeholder, I do that kind of work—you are looking at two or three years before there is an outcome, whether successful or not. Costs of failed litigation could be immense and will go through the service charge—that is entirely right under this Bill. But if the accountable person does not bring litigation, you are looking at the leaseholders prospectively bringing a challenge in the tribunal that they do not have to pay the remedial costs, whatever they are, as specified in the statutory instrument, because the accountable person has not complied with the relevant section of 20D. You are then asking the first-tier tribunal to reach a finding on what the landlord's reasonable prospects of success would have been had they pursued a claim against the developer, as a condition of whether the charge has to be paid. That is a huge stretch for the FTT. How do you evidence that? The leaseholders bring along someone like me who says, "I put it at 70%." The freeholder brings along their solicitor who advised them and said, "It's a 40% chance." What is the FTT to do? I cannot see that working. It is years and years of litigation one way or another.

Q73 Daisy Cooper: To ensure that this is absolutely right for the parliamentary record, am I right in saying that, if the leaseholders want their freeholder to take reasonable steps and the freeholder refuses, they might end up having to pay for litigation to prove that the freeholder has or has not taken reasonable steps? If the freeholder then does take some reasonable steps and gets some legal advice, they then may choose to take action or not, and if they take a decision that the leaseholder disagrees with, that may also end up in litigation. If the freeholder decides to try and take legal action against those who they deem responsible, and that fails, the leaseholder may have already gone through one or two stages of the investigation, and if that fails, they are then facing the costs, as you said. I do not know whether you said "epic" or "massive," but there was a word you used—

Giles Peaker: Immense.

Daisy Cooper: Immense—there you go. I was almost there. They are facing immense costs on top of that. Am I right in saying that those are the choices you have just outlined facing leaseholders under this Bill?

Justin Bates: All of those scenarios are plausible on clause 124 as drafted, yes.

Daisy Cooper: Thank you.

Q74 Ruth Cadbury: My first question is whether there is added complication if, in between the leaseholder and the freeholder, there is a head leaseholder such as a housing association or another property owner.

Justin Bates: Oh, yes.

Q75 Ruth Cadbury: My question is about the concern raised in the joint evidence we were sent by the UK Cladding Action Group and End Our Cladding Scandal. They use the term

"moral hazard between the roles of the accountable person and the building safety manager",

particularly the use and misuse of concerns about fire safety to do works that are not about fire safety, and may not even be necessary. I think I was reading that they feel this legislation could be used for work that is not the intention of this Bill. Do you recognise that, and is that an issue?

Giles Peaker: I am not entirely sure that is a different position to the current one. There is the eternal struggle between freeholders and leaseholders as to what works are necessary and what works are recoverable under the lease. Again, we are not sure what would count as

remedial work, so that would be specified, but undoubtedly, yes, there will be attempts to smuggle in other kinds of works that could not otherwise be charged for. I am not saying that this is right: this is just what happens, and there will doubtless be tribunal disputes as to whether that is correct. That would require leaseholders to take it to the tribunal, so I am not sure there is a great difference with the current situation on that, but the current situation is hardly great.

Q76 Ruth Cadbury: So it does not address the existing mess.

Giles Peaker: No, I would not say so.

Justin Bates: It is important to remember that this Bill is not only about fire safety. We are all talking about that because that is the current crisis, but clause 59 says that a building safety risk is:

"(a) the spread of fire;

(b) structural failure;

(c) any other prescribed matter."

That is what this Bill is concerned about. It is not limited to fire safety. Suppose you had this Bill 60 years ago: it might have been the vehicle you used to deal with asbestos, for example. You could have prescribed asbestos as one of the other matters there. As I understand it—this is where the SIs would be a legitimate tool—this is intended to be a structure that you do not have to come back to for 50 years. That is why having it beyond fire makes sense, because there will inevitably be another problem that we discover in years to come. Yes, focus on fire at the moment because that is your immediate concern, but this is not a Bill limited to fire safety.

The Chair: Are there any other questions from colleagues?

Q77 Rachel Hopkins: I just want to follow on about the interaction between the Fire Safety Act and the Building Safety Bill. When you have those complex structures, the accountable person and the responsible person under the fire safety legislation could be different, and the Government are suggesting that this is addressed with the duty to co-operate. As someone who has been a councillor for a long time and is no fan of the duty to co-operate—it does not work, and I am pleased to see it being ditched in the planning White Paper—I am surprised to see this duty to co-operate appearing here. Do you think this will work? Could it be problematic?

Giles Peaker: I suppose that it would be straightforward in a number of situations, because the building safety manager would, in effect, be appointing the person to carry out the fire risk assessments and would effectively work as the responsible person. However, there is obviously the potential for adding yet more people with yet more responsibilities in relation to the building.

Justin Bates: I am not sure that is a question for a lawyer, because a lot of it depends on the personalities involved. Joint working can work: think of the GLA's taskforce, for example, which is doing good work on fire safety at the moment. They have local authorities and the fire brigade working together. There is no inherent, logical reason why joint working is bad. Much of it depends on the personalities involved and the political will behind each organisation to make it work. I am afraid that I am probably not the person to help you with that question.

Q78 Mike Amesbury: Could a developer facing potential litigation utilise human rights legislation?

Giles Peaker: We have been wracking our brains about this one. I know the clause that you are referring to. We are not entirely sure why it is there. I think it is probably just to avoid there actually then being a human rights challenge to BSA on whatever relatively spurious basis. I cannot see a valid human rights challenge, and certainly not in terms of the removal of the six-year limitation. A limitation defence is not a property for the purposes of article 1 of protocol 1; they could not pull an article 1 complaint.

I do not think that there are any article 6 issues, because limitation does not stop you being liable; it just stops you being sued. You are still responsible for the problems. If the period for which you can be sued is extended, where is the article 6 problem? You will still get your fair trial in court. After wrestling with it, I cannot see one.

Justin Bates: What has almost certainly happened is that because we are designing for legislation with retrospective effect, the draftsman of this has realised that retrospective law is something that does flag up human rights concerns. You can do it—your Parliament is sovereign; you can do whatever you want—but it does flag up human rights concerns. Rather than having a fight about whether there is a human rights defence or not, the draftsman has said, "If anyone ever manages to succeed in one, this will be the outcome".

These words could be hostage to fortune, but I suspect that it is a clause that will not go very far because you would see more litigation about whether the defence was available at all. This assumes that the defence is available, and it has decided what the outcome will be. I can understand why it has been put in there, because if it is not in there and a developer brings a human rights defence and wins, what happens is that the developer is still liable in damages, but a declaration of incompatibility is made, and you then have to deal with your incompatible legislation. I can see why the possibility of that has been headed off at the beginning, but I do not think it will go anywhere. I know that Giles takes a slightly different view.

Giles Peaker: I do take a slightly different view. I have a horrible feeling that that clause will invite people to try, which would inevitably mean at least three to five years of litigation on that issue, but we will see.

Q79 Daisy Cooper: I want to return to Rachel's question on the duty to co-operate. Just to push back a little bit, it is not really about joint working; it is about a legal obligation to work with another party. The reason why it is such a headache in planning law, as I am sure you know, is that you often have two authorities that are diametrically opposed in terms of what they are legally obliged to do. Both are legally obliged to build more houses, and they both want to offload onto each other. It is possible that they might both fail their duty to co-operate.

My question, to follow up on Rachel's point, is this. Based on what is currently published in this Bill, are you able to ascertain whether or not there is a situation in which the two roles that Rachel mentioned—the responsible and accountable people—might be diametrically opposed

[Daisy Cooper]

in what they are legally obliged to do, or are you simply of the view that not enough has been published to ascertain that?

Justin Bates: At the moment, I would lean towards the latter. I do not think the planning analogy is a good one, because this is not like two elected bodies, each with their own political concerns, fighting over where the houses should be; it is between two supposedly neutral public authorities. I see the co-operation duty as closer to the duties that exist under the Housing Act 2004, whereby local authorities and fire brigades have to work together when they are doing certain kinds of inspection.

I am not for a second pretending that you do not get areas of conflict. In pure housing law disputes between district councils and county councils about homeless children, you get enormous fights—a very common fight is about whether it concerns housing or social services—so I am not saying that there are no fights to be had. As far as I am aware, that problem does not come up under the Housing Act. That is probably the closest analogy. Can I think about it and send something in afterwards if I think of any particular problems?

Daisy Cooper: Please do. Thank you very much.

The Chair: If there are no further questions, I will draw this evidence session to a close. I thank our witnesses for their time. We are really grateful to them for bringing their expertise to the Committee.

Ordered, That further consideration be now adjourned. —(*Scott Mann*.)

4.56 pm

Adjourned till Tuesday 14 September at Twenty-five minutes past Nine o'clock.

Written evidence reported to the House

BSB01 Elizabeth Mollatt

BSB02 Paul Bullock

BSB03 Josh Botfield

BSB04 Amanda Gourlay

BSB05 Local Authority Building Control

BSB06 Albanwise Wallace Estates Limited, Wallace Partnership Group Limited

BSB07 Gerald Kennedy

BSB08 Architects Registration Board

BSB09 Electrical Safety First

BSB10 The Association of Residential Managing Agents Ltd (ARMA)

BSB11 Alison Hills

BSB12 L&Q

BSB13 Town & Country Planning Association

BSB14 British Property Federation

BSB15 U.K. Cladding Action Group and End Our Cladding Scandal (joint submission)

BSB16 Business Sprinkler Alliance

BSB17 Peter L Caplehorn, Chief Executive, Construction Products Association

BSB18 NHBC

BSB19 National Fire Chiefs Council (NFCC)

BSB20 National Housing Federation