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Public Bill Committee

BUILDING SAFETY BILL

Third Sitting

Tuesday 14 September 2021

(Morning)

CONTENTS

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Saturday 18 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

Sarah Albon, Chief Executive, Health and Safety Executive

Peter Baker, Chief Inspector of Buildings, Health and Safety Executive

Graham Russell MBE, Chief Executive, Office for Product Safety and Standards

Richard Silva, Executive Director, Long Harbour

Kieran Walker, Technical Director, Home Builders Federation

Councillor Jayne McCoy, Deputy Leader of Sutton Council, and Chair of the Housing, Economy and Business Committee, London Councils

Andrew Bulmer, Chief Executive Officer, Institute of Residential Property Management

Public Bill Committee

Tuesday 14 September 2021

(Morning)

[Philip Davies *in the Chair*]

Building Safety Bill

9.25 am

The Committee deliberated in private.

Examination of witnesses

Sarah Albon, Peter Baker and Graham Russell MBE gave evidence.

9.27 am

The Chair: Before we begin, I have a couple of preliminary announcements. I encourage Members to wear masks when they are not speaking, in line with Government guidance and that of the House of Commons Commission, and to give each other and members of staff space when seated and when entering and leaving the room. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

We will now hear oral evidence from Sarah Albon, chief executive officer of the Health and Safety Executive; Peter Baker, chief inspector of buildings at the Health and Safety Executive; and Graham Russell, chief executive officer at the Office for Product Safety and Standards. Before I call the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill, and that we must stick to the timings in the programme motion that the Committee has agreed. For this session, we have until 10.15 am. May I start by asking the witnesses to introduce themselves for the record?

Peter Baker: Good morning, everyone. I am Peter Baker, chief inspector of buildings at the Health and Safety Executive.

Sarah Albon: Good morning, everyone. I am Sarah Albon, chief executive of the Health and Safety Executive.

Graham Russell: Good morning, everyone. I am Graham Russell, chief executive of the Office for Product Safety and Standards within the Department for Business, Energy and Industrial Strategy. I am responsible for building the construction products regulator.

Q80 Mike Amesbury (Weaver Vale) (Lab): Good morning, Sarah, Peter and Graham. Does the scope of the Bill give you sufficient resources—the toolbox—to change the landscape of building safety in this country?

Sarah Albon: That is a very broad question. I will bring Peter in on some of the technical aspects of scope. It gives us a real opportunity to take a holistic approach to the management of safety in buildings, from the very beginning of the design phase, through building and into occupation. It is important to recognise that although there is rightly a lot of focus on the taller buildings that are in scope for the special gateway process and the safety case process that will go on once buildings are in occupation, there are many other aspects in the Bill around improving the competence of those who work in the various aspects of the industry and in oversight of that, and around the wider built environment, that will apply to all buildings and all professionals working across the industry. It gives the foundation for a real sea change in the improvement of safety in the built environment in this country.

Peter Baker: To add to that, if you take a step back and look at the findings from Dame Judith Hackitt's review about poor culture, attitude and behaviour of the industry, the lack of accountability of individuals, the lack of resident engagement, and all the things that were found to be wrong with the system as it stands, the Bill covers off all those points and, in fact, goes further in a number of areas. I am fairly confident that the Bill, as currently structured, addresses all the key points that Dame Judith raised in her report.

Graham Russell: If I may add to that, the products that go into those buildings are the foundation, if you will, of the safety approach, culture and regulation that we have just heard described. It is our responsibility to make sure that those products are what they say they are and that they are properly labelled and traceable, and the Bill makes provision for that through the schedule and then through statutory instruments.

Q81 Ms Marie Rimmer (St Helens South and Whiston) (Lab): Good morning to each of you. The Government have chosen not to legislate for a register of competent building safety managers, and said that any register should be industry-led. Are the Government right to leave it to industry?

Sarah Albon: I think there is always a balance between what industry needs to do and what the overarching regulatory regime seeks to do. From my perspective, it is important, in addressing the cultural issues, that we recognise that, ultimately, it is not the regulator or Government who will lead to a sea change in behaviour, but industry. It is therefore important that the responsibility for driving improvements, and for ensuring that people have the right kind of competence and do the right thing, rests squarely with industry, as well as the ownership of safety within individual buildings resting squarely with the owners of the buildings who are responsible for safety within them. They are the only people on the ground who can, day in, day out, ensure that things are being managed properly and that people are competent and are appropriately fulfilling their duties and obligations under the law.

Peter Baker: I would add that it will be set out in the legislation that a building safety manager is required. As Sarah said, the key thing for me—we have seen this with other workplace health and safety requirements—is that, although the building safety manager will have an important role on a day-to-day basis in effecting the safety, engaging with residents and so on, the accountability for the accountable person who is ultimately responsible for that building is not inadvertently delegated to the building safety manager, so that the BSM effectively takes on the ownership of the risk. That should be firmly with the accountable person, because they are the individual or the company that has the resources and the capability to really manage the risk.

Graham Russell: This is not an area for me.

Q82 Ms Rimmer: The Government have not yet published the competency framework for the BSM. How important is the framework for recruiting and training people for the role?

Peter Baker: Having a competency framework is really quite important for a lot of the safety-critical roles in the regime, for a number of reasons. One is to make sure that there is a consistent level of competence, performance and behaviour among the individuals who undertake a lot of those important roles. That is not just the building safety manager but the client representative, the contractors and everyone involved in the lifecycle of a building.

A framework is key to ensure that the important things are part of a person's training and induction. You would never be able to set a series of requirements to cover every aspect of a job, so a framework is an important first step, but it also provides flexibility for duty holders to have a whole range of other roles associated with that building safety function.

Q83 Ms Rimmer: The success of the regime will depend largely on there being enough competent individuals to fill the role of the BSM, which in essence is an entirely a new profession, as we know. From the Healthy and Safety Executive perspective, do you foresee any problems with the necessary upskilling and training?

Sarah Albon: There are a number of new roles, as well as a requirement for increased competency and a range of other existing roles, that thread right the way through the Bill. It is inevitable that there will be a significant focus on the need to get new people to join various professions and to have training and experience available to people. It would be unrealistic to suggest that it will be without problem in terms of training and getting new people. Having said that, there has been a lot of notice that the new functions are coming, and there has been a lot of focus already in the industry on the need to improve the overall safety of buildings and the regime.

There is no reason why owners of buildings and senior people working in the industry need to wait for the Bill to be finished before they start driving up the skills and competence of the people working for them. Fundamentally, this piece of legislation will put in a new framework that requires people to meet certain standards, but they can be working on that already. Certainly, in the engagement that Peter and other colleagues from the HSE and the Department have had with the industry, we have encouraged and pushed them to get on with it and start ensuring that they have the right degree of skills available to them, and they are thinking now about who they need to train and how they need to support their staff with a view to the Bill coming in.

Peter Baker: One thing I would add is that a lot of organisations in the social and the private sectors already have individuals and companies that help them support the management of their buildings. I do not necessarily see the BSM role as something very new and necessarily too daunting. It can be part of a transition from what currently happens. If organisations are managing the risks in their buildings well through their existing arrangements, it could be quite an easy transition to the building safety manager role. I would stress, as I said, that it is key for the BSM not to be seen as the duty holder and to own the risk—that should firmly be with the accountable person to ensure the buildings are safe.

Q84 Ms Rimmer: You do not think there would be any problem tackling the cultures that have existed up to now. Cultural problems on building sites have been one of the main problems.

Peter Baker: Absolutely. Dame Judith recognised the need for cultural shift, particularly in the design, build and refurbishment of new builds. There are a number of provisions in the Bill around the gateways and the design and build, and there is a strong emphasis on improving competence right across the built environment. It is important to remember that the Building Safety Regulator will not just regulate high-rise buildings but will have other functions of stimulating and encouraging competence right across the built environment, which is one element of improving the culture of the construction industry and the landlord and housing provider industry.

Graham Russell: I think your point about culture goes right across the sector. What we have seen in evidence given to the public inquiry on Grenfell Tower and in other contexts reveals that a cultural shift is required. The points that colleagues have made about responsibility having to sit with the industry applies as much to the industry of creating the construction products as it does to the building industry—it is one system and one sector. It is clear to me that we must address those cultural issues. Regulation is important as it provides a framework and a set of expectations, but it is behaviours that have to change. In that sense, what we are embarking on through the Bill, and the work that we are doing with our colleagues, is addressing that culture.

Q85 Ian Byrne (Liverpool, West Derby) (Lab): Good morning, everybody. Are the Government right to establish the new Building Safety Regulator within the Health and Safety Executive? We know that the HSE has faced huge cuts since 2010 in resources and experienced officers. Does the HSE now have the right expertise and resource to carry out this huge task?

Sarah Albon: I will try to answer on those different aspects. The first question was whether HSE is the right home for the new regulator. Whenever the Government consider setting a new regulatory framework, they need to consider whether it would be appropriate to set up an entirely new body or if an existing body has the requisite skills and competence to deliver. When thinking about that, a number of different aspects will be in officials' and Ministers' heads: they will need to think about the landscape of the existing bodies, the work that the existing bodies have on and any impact of taking on new responsibilities. There is often an advantage to be had in terms of speed of set-up if an existing body is used, as well as efficiencies in some of basic support services, such as not needing a second HR function or finance team.

In the HSE, we have a lot of experience in dealing with hazards and helping duty holders to really think through and manage the risks that are present in their environment, always with the onus being on the owners of the risk to manage it. That will fit well with the ethos of this new legislation—the real ownership of risk needs to sit with the owners of the buildings and they

need to be held to account to ensure that they keep their buildings safe at all stages, from design all the way through to occupancy.

In the HSE, we have a lot of competence in dealing with that and with holding duty holders to account, as well as many years of working closely with the building industry through our role as a workplace regulator and thinking about the risky environment for people who work in the construction trades. We already have a lot of relationships, and the organisation has had success in significantly improving the safety of workers in the construction industry. For all of those reasons, it is entirely understandable that the Government look to HSE to set up this new regulatory function, and it is a decision that has the strong support of my board and senior executive team.

On resourcing, it is a new function and we will look for new resources. All public sector organisations are about to go through a spending round. We are aware that there may be real constraints, but my experience so far in working with the Ministry of Housing, Communities and Local Government has been that it has been able to prioritise this both in terms of the number of officials working on the Bill and directly. That is relevant to HSE in giving us the money that we need to establish the function and start working on it. It has been clear to me through the conversations that we have had with MHCLG officials about funding that this is a significant priority for Ministers and officials.

Do we have all of the competence that we need right now? We definitely need to build up more competence in fire risk assessment. We have started to do that: we have already recruited some people to assist us as gateway 1 went live, and we will continue to build on that level of expertise and recruit and train as the Bill goes through and we move into implementation.

Q86 Ian Byrne: Thanks, Sarah. Peter, do you want to add anything?

Peter Baker: No, I do not have anything to add to that.

Ian Byrne: Graham?

Graham Russell: It is not for me to comment on your question, apart from to say that I have worked with the HSE in various guises for 30 years and have the highest regard for its competency and abilities. Beyond that, I think the key question for me is the distinction between regulating products and regulating building safety. That was a decision that Dame Judith Hackitt gave advice on. She suggested separating that in the way that the Bill does, and that then leaves us with a responsibility. We are a product regulator—we regulate consumer products, machinery products and so on—so in that sense it brings our expertise to bear. We have the same challenges in building new competency in new areas, and we are working hard on that.

Q87 Brendan Clarke-Smith (Bassetlaw) (Con): Good morning, everybody. This question is more for Sarah and Peter. Do you feel that the enforcement tools being provided are sufficient, and how do you intend to use them?

Sarah Albon: I will probably bring Peter in to talk in a bit more detail. I think the broad answer is yes. I suppose that we intend to use the enforcement tools in the same way that we would want to use, and do use, the enforcement tools that we currently have. The best form of regulation is changing the behaviour of the duty holder so that they are doing the right thing in the first place. Clearly, it is important that you can and do take action when there has been a failure, but enforcement is necessarily always cleaning up after somebody has done something wrong. Our absolute focus and emphasis on workplace health and safety—it will be the same in this new regime—is to try to get duty holders to do the right thing in the first place so that residents and, currently, workers, are not put at risk awaiting enforcement requirements. Peter, do you want to say a bit more about the tools that will be available to you?

Peter Baker: We will have a mixture of both civil and criminal tools. We have been working very closely with MHCLG on the preparation of the Bill and the legislative package from our perspective, to make sure that a lot of the tools that we will have under the Bill reflect the sorts of enforcement tools that we have under the Health and Safety at Work etc. Act 1974, which are well tried and tested.

It is also important to remember that one of the step changes or real differences about the Bill in terms of regulation is the gateways. Unlike now, a duty holder will need to demonstrate at the pre-construction phase that they have all the wherewithal to build a safe building, and to demonstrate how they are going to comply with building regulations. The Building Safety Regulator will be able to say yes or no at that point and, potentially, prevent a development from going ahead unless all the necessary steps, safety management systems, and checks and balances are in place. It is not just a case of being able to serve enforcement notices, although they will be available to us; this is very much a permissioning regime similar to high hazard industries where the regulator can say yes or no at critical stages in the build and occupation of a building.

Q88 Brendan Clarke-Smith: You recently published some guidance on the safety case system. How do you see that system operating in practice?

Peter Baker: We clearly will not know for certain until the Bill emerges from the parliamentary process but, as I say, we see this as a key step change in the regulatory regime, particularly in the occupation phase. It applies very clear responsibilities to the accountable person to manage the risk, and it leans very heavily on other major hazard industries and safety case regimes. In principle, the responsibility will be on the accountable person—the landlord, the building owner—to demonstrate to the regulator and other stakeholders, as part of a licensing and certification process, that they have identified the critical fire spread and structural risks in a building, that they have all the management systems that they need to manage those risks, and that, where they have identified gaps, they have a plan to fill them.

I also stress that this process is not just to satisfy the regulator and then to be put on a shelf. The safety case is going to be quite a fundamental part of a duty holder's management system and of managing the risks associated with their building.

Q89 Shaun Bailey (West Bromwich West) (Con): This question is for Sarah Albon. Going back to Ian Byrne's question about the Building Safety Regulator, what is

the metric of success when it comes to embedding the BSR within the HSE? Given the aims of the Bill, how will the HSE ensure that, operationally, the transition is as smooth and effective as possible?

Sarah Albon: If I can come to the second of those questions first, I guess that ensuring that the transition is as smooth as possible is about planning, but it is also about recognising that there are various aspects to the Building Safety Regulator, and we can bring on board those different aspects at different stages. We are already ramping up the engagement that we have with industry, for example. We are starting to do some key work reaching out to residents and resident groups, so that we have greater engagement with them and really understand the range of issues and concerns that they have, and so that those relationships are well built before the Bill goes live. Of course, the planning gateway 1 process has already gone live, so we are able to create the team around that and learn from it.

We have done various structural things within HSE, leaning heavily on our existing construction team, which has years of experience of working with the construction industry, influencing the importance of change not just day to day on different building sites but at a senior key level across the industry, and engaging with key players to ensure that that happens.

I confess that I have completely forgotten the first part of your question, so could remind me what it was?

Q90 Shaun Bailey: What would be the measures of success for you?

Sarah Albon: As with anything else, there will obviously be some key measures of success on service delivery to those people who are trying to build and occupy buildings. You will be familiar with some of those from any other public service. That will be about the quality of the work we do and the speed at which we can turn things around, ensuring that we are not slowing things down, that people are still able to build high-quality buildings and to occupy them, and that we are giving the right kind of service.

Beyond those important day-to-day metrics, it will also be about looking back in a few years' time and seeing that culture of safety in buildings as being as integral and as important to HSE as the culture of workplace safety that we have built over the years. Together with the board, we have already started to think about how we can ensure that there is as much emphasis on that aspect of the work as there is and has been for the past many decades on workplace health and safety.

Shaun Bailey: Does anyone else have anything to add to that comprehensive response?

Peter Baker: On the softer side of things, a measure of success for me, having had experience of introducing and improving our workplace health and safety regimes, is that engagement with the duty holders is absolutely key. They need to feel as though this is not being done to them but that they are engaged in and part of how this system is going to operate from day one. That is important. It is also crucial that residents feel that they are part of how this system is being developed and that we have engagement strategies associated with residents. We really need to build the confidence of residents in this system, and we have to see signs of that from a very early stage.

Q91 Daisy Cooper (St Albans) (LD): Good morning. If I have understood correctly, you seem quite comfortable with the new framework. You have talked about a smooth transition from one scheme to another, but some of the evidence we have received points to what could be described as a spaghetti bowl of governance. One organisation has questioned specific clauses in the impact assessment whereby the lay board of a right to manage company or commonhold residence could be expected to be simultaneously both the building safety manager and the accountable person who appoints the building safety manager. Other groups have suggested that there could be confusion between the accountable person and the principal accountable person. How should we as a Committee square that circle?

Sarah Albon: I think that some of our comfortable nature is probably from the way we have worked so closely with the Department as the thinking on the Bill has developed. We in HSE have certainly had considerable input and worked very closely with officials in the Department to help to frame the legislation and meet some of the challenges. I guess that part of our comfort is therefore from having worked on it now for a considerable time.

Inevitably, there are various other stakeholders who will have read the legislation for the first time relatively recently and will still be working through how it works. One key thing that we want to do as the legislation goes through and as we ramp up towards taking this role on is working with the stakeholder groups out there and helping them to understand how the legislation is intended to work and will work, how we will work as a regulator and what they need to do to make sure that the various roles within their organisation are appropriately filled and appropriately managed.

As Peter said, we are very clear that the overall responsibility has to sit with the accountable person. There are some other key appointments within the system, and they will need to make sure that they have the right people working for them, working directly in buildings and within their organisation. For us, the key success factor is that the accountable person needs to be the person who genuinely feels accountability for ensuring that the people who live in the buildings for which they are responsible are safe. They need to be able to take action to do that.

Q92 Daisy Cooper: May I clarify one point, just to confirm something? Where any organisation believes that there is a vacuum of accountability, or confusion around accountability, in this new framework, do you believe that that is because they have not had enough time to look at the system, rather than because of a justified observation that there is confusion?

Peter Baker: As a regulator, having absolute clarity over who the duty holders are is key; clearly that is something that you have identified and need to explore through the parliamentary process. In terms of an outcome, it is right that the Bill needs to assign roles and responsibilities absolutely clearly. That is an outcome that I would expect, because at the end of the day I am going to be responsible for enforcing the legislative package.

Having said that, as this is starting to stray into all sorts of areas of building ownership and leasehold law, which is incredibly complex, I can understand—having

been involved with MHCLG in developing the package—how difficult the challenge must be for the Bill writers to get this absolutely right. All I can say from my interactions with MHCLG is that it really has wrestled with all the issues and tried to make the duties and responsibilities as clear as it possibly can, but clearly that is something that your Committee will need to explore.

Q93 Daisy Cooper: Our Committee is trying to explore it, but I am wondering what your view is. I am hearing mixed signals as to whether you think that the roles are clear and that other organisations are coming to it later than you because you have been working so closely with the Government, or whether you see that some clarity is still needed from the Government and officials on what the roles and responsibilities are. I was hoping that you might be able to give us your view to inform our consideration of that point.

Peter Baker: My view is that MHCLG has done what it can to make the roles absolutely clear, as the Bill stands. The challenge is making sure, through guidance, support and engagement with all the stakeholders who will be touched by the Bill, that they understand the intention behind it all and the outcomes that we are trying to achieve.

The Chair: I think Graham Russell wants to come in.

Graham Russell: I was going to return to the very first part of Ms Cooper's question, which was about the level of comfort we feel about the arrangements and the situation more generally. I do not think that "comfort" is a word that we have been using very much in either of our organisations about a situation in which, clearly, people have suffered enormously and the regulatory system has not protected people. That is why we are part of the mechanism that will deliver the Bill.

I think that it is incumbent on all of us to make significant change. We need a more robust regulatory system, better checks and a better testing environment, and we need to build the confidence that Peter has spoken about—confidence for residents, but also confidence for the industry that it is doing the right thing. We face a major challenge and the Bill is really important, but it is a framework.

In terms of the complexity of governance, obviously you have probed one particular part of that, but because this is a system that delivers safer outcomes, every part of that system must work. It is incumbent on us to make sure that it works, so we need to fit the different aspects together. From my point of view, that particularly includes local authorities and their ability to work closely on the ground with local suppliers, and the proof of that will be whether we can create and deliver a system and then give people confidence that that system is providing what has not been there in the past.

Q94 Ruth Cadbury (Brentford and Isleworth) (Lab): Good morning. I have two slightly different questions. One goes back to the issue we have touched on already, which is the competency of the two roles—the accountable person and the building safety manager. Is the current framework for skills and competency accreditation in the sector adequate to deal with what will be quite significant competency challenges in these two roles? Should it be left to just the private sector, presumably with HSE involved, or do the Government have some role in this as well through their skills and training policies, direction and possible kickstart funding, to ensure there is a standard level of competency in these two quite different—but very responsible—roles?

Peter Baker: The Building Safety Regulator will have an important role of encouraging competence right across the built environment, not just to do with high-rise residential buildings, although clearly the focus of the regulatory activity of the BSR will be on that area. We have already started work setting up an interim competence committee, ready for the statutory competence committee when the Bill receives Royal Assent and is implemented. We as the BSR will have an important role in holding the ring on all of the competence development work that the industry has been leading since Grenfell, and making sure that that is all absolutely proportionate—that it is targeted at the right activity and at the right people. We will have quite a key role in making sure that that whole system of competency across the built environment is appropriate.

When it comes to support, I can only talk from my own experience of competencies in other high hazard regimes. In the past, organisations such as the Construction Industry Training Board and sector skills councils have also played a really crucial role, both through supporting the regulator and supporting their industry sectors in developing the detail and the systems for ensuring those levels of competencies, as well as providing some suitable checks and balances so that the competence frameworks are absolutely targeted at the right thing and people do not waste time, effort and money improving competence in areas that are not necessary. It is a dual role for everybody associated with the built environment to really lean into improving the competence right across the sector, and that is not just for high-rise residential buildings: the same applies in the workplace, in terms of workplace safety and making sure that people are competent in that area.

Q95 Ruth Cadbury: My other question goes back to this issue of complexity. Not all buildings are straightforward, and most of us in urban areas are very glad that many of these buildings are mixed use. In buildings with complex uses and complex ownership structures, it may be that the accountable person and the responsible person under fire safety legislation are different people, and the Government have addressed that issue through the duty to co-operate. Do you think that will suffice, or do you see problems arising over this?

Sarah Albon: At the end of the day, as you say, we just have to accept the complexity in this country—and, I suppose, most developed countries. You could wish that everything was simple; for us as a regulator, and no doubt everybody else trying to regulate in that space, it would be so much easier to do that if the world were different, but the reality is that mixed use of buildings is probably more common than not, particularly in urban areas, and particularly in these larger buildings. It is not uncommon at all to see a mixture of commercial premises—some of which may be relatively hazardous in themselves, such as petrol stations—with residential and office premises. We must just accept that complexity,

accept the facts and ensure that those who are responsible in those buildings know that that changes the hazard present and the risk profile in the building. It becomes even more important that people who have responsibilities in that space take them seriously and ensure that what they are doing is bespoke to their circumstances.

One of the reasons HSE is so keen on the safety case regime, which, as Peter said, we have operated successfully in various other high-hazard environments, is that it drives people's responsibility for taking an approach that is not about saying, "Have I complied with a whole list of things I should comply with?", but rather saying, "Have I thought seriously about safety in my environment and the things I am responsible for? For sure, if there is a list of things I need to comply with, that might be part of it, but have I really thought about what could go wrong? What are the factors that could create some kind of additional hazard? How am I managing those things, and how do I ensure that, every day, I am properly and proactively thinking about and taking care of the people for whose lives and wellbeing I am responsible?".

Safety and safety management is not something you do once and then stick it in a file until you are reviewed; it is something you should be thinking about every day, all the time, because the hazards present and the behaviour of people in an environment are constantly changing. You need to manage safety in that environment of constant change, where different behaviours or threats could constantly come in.

Q96 Ruth Cadbury: Finally, do you think the Bill is too tightly defined, both as regards use—it does not address other residential uses, such as student accommodation, accommodation used for health and social care and so on—and as regards height being a key definer of risk? Do you think risk should have been defined in a different way? We are actually talking about building safety.

Sarah Albon: Judith Hackitt's report showed that height is a reasonable proxy for there being additional risks that people need to think about. At the end of the day, a regime such as this needs to start somewhere, and we as the regulator need a manageable and understandable pool of the riskiest buildings, where our work can start. Also, we have been talking about the importance of duty holders understanding what they are obliged to do, whether they are inside or outside a regime. For all those reasons, height is a well understood and clean starting point, but the Bill envisages that over time it may be appropriate for Parliament to return to the question of what is within scope of the higher risk regime, and to think about changing the boundaries if new evidence comes to light.

Peter Baker: Other legislative provisions will still apply to a number of those buildings, particularly workplaces such as hospitals and hotels. The Regulatory Reform (Fire Safety) Order 2005, which is about to be amended by the Fire Safety Act 2021, will still apply, so the fire risk issues will already be dealt with through that provision. The Government have also extended the new regulatory regime to hospitals and care homes during the design and construction phase, to ensure that the buildings that emerge from new build and large-scale refurbishment processes are built to standard and are safe.

Graham Russell: The provisions for the construction products apply across all buildings. For example, on cladding, in terms of safety, it would not matter which building it was going on to.

The Chair: We have six minutes to go, and I have two people I still want to get in. That is just to alert you.

Q97 Siobhan Baillie (Stroud) (Con): My question is to Mr Russell, because we have not heard so much from you. First, how does this Bill help to upgrade the UK product safety system, and what could be improved? Secondly, we heard evidence in a sitting last week about the need to get the definitions of construction products right in the regulatory guidance, and there was a suggestion that we should look to the medical devices sector for good practice. I am interested in your views on that. We understand there is an awful lot of work to be done in that area.

Graham Russell: Hitherto, the broad product safety regime has not applied to construction products unless those construction products are also sold to consumers. The Bill seeks to address that, and to apply to construction projects the same principles and approach that apply to product safety, which, although they are not without problems, are building a good rate of success. I think that is right.

On the second part of your question, there is good practice in areas such as medicines and healthcare products. The great thing we see there is a risk-based approach in which we recognise that different products create different levels of risk, and we therefore regulate them differently and put in place additional requirements. In the construction products area, there has not been an effective underpinning of that system. Although the designated standards approach has sought to deal with the highest-risk products, we have not had an essential safety requirement that means that every product must be safe. The Bill provides for that, which is really important.

When we try to diagnose what has gone wrong in the past, we can sometimes see a latticework through which things are thought to have fallen. Whether that is right or wrong, if you have an essential safety requirement approach, you give people that opportunity. By having that requirement, you ensure that people cannot run to that place—every product must be sound. There are additional provisions for high-hazard and high-risk products, but you have that underpinning, and that is what the Bill provides.

Q98 Kate Osborne (Jarrow) (Lab): Are the functions and the objectives of the new regulator appropriate? To learn the lessons from Grenfell, how will you hardwire the residents' voice into the regulator?

Sarah Albon: As Peter and I have both briefly said, we absolutely recognise the importance of residents' voices. We have already started working with a small panel that can help us engage appropriately with residents. We will be reaching out much more formally in the coming weeks and months to a much wider group of residents, to fully understand what they need from us as the new regulator, and to understand how they want to work with us, how they need us to behave and how we can design the new regulatory regime in a way that has residents and their voices and needs at its heart. We absolutely recognise that that has been one of the failings in the past.

For us, that starts with listening, and making sure that, in as many different formats and locations as possible, we go to residents and hear what they think. We recognise that means we need to think about the different languages that are spoken and the accessibility issues.

It is very easy these days to assume that everybody is online and wants to email you, but we know that is not true. We are planning events in community locations, and are going to the residents. We recognise that one size does not fit all, because the resident community is as diverse as the population of the United Kingdom. We need to respect that and not impose our preferred ways of working and engaging on that group, but should rather let them come to us and shape how we work and engage, so that we hear from as many different voices as possible.

We have tried to do that over the years with workers, with a degree of success. That would be the analogy. When HSE goes to any business premises, it of course wants to speak to the managers and those who have responsibility for ensuring safety, but we also always try to engage directly with the workforce, so that we hear from them at first hand what it is like to be part of that work environment and can triangulate—can see if what we are being told by the duty holder matches up with the experience of the workers. That will be really important.

There is not just the business-to-business relationship of us talking to duty holders. We need to listen to the needs of residents and be responsive to them. Crucially, we need to take on board their feedback on their day-to-day experience of their duty holders, the way that their buildings are managed, and how they are kept safe in their homes.

Kate Osborne: Thank you. That is really helpful.

Peter Baker: The residents will be hardwired into our governance. We will have a residents panel under the Bill.

The Chair: I am afraid that brings us to the end of the time allotted for the Committee to ask questions. I thank our witnesses on behalf of the Committee.

Examination of Witnesses

Richard Silva and Kieran Walker gave evidence.

10.17 am

The Chair: We will now hear oral evidence from Richard Silva, executive director of Long Harbour, and from Kieran Walker, technical director of the Home Builders Federation. We have until 10.45 am for this session. I ask the witnesses to introduce themselves for the record.

Kieran Walker: Good morning, I am Kieran Walker, technical director for the Home Builders Federation. I have worked in the house building industry, most notably for public limited company house builders, for the last 17 years. I joined the HBF in the last two and a half years.

Richard Silva: Good morning. I am Richard Silva, the executive director of Long Harbour and our associated company, Home Ground. We invest in and manage 190,000 leasehold interests across England and Wales.

Q99 Daisy Cooper: Good morning to both of you. This is a question for Richard. In paragraph 11 of your written evidence, you said:

> "We all know that these problems have been caused by historic regulatory failures, dating back decades. We need to be careful that the solution doesn't simply absolve the Government of its responsibilities and pass them on to consumers, whether that's existing or future residents."

If that is not the solution, then what do you think the solution should be?

Richard Silva: Thank you for the question. It goes to the heart of our role in this sector. As a freeholder, we do not develop, build, design or sign off on these buildings. We effectively, under the new regime, take ownership of them post gateway 3, when they are fit for occupation. The Bill, in many respects, is an excellent starting point and provides a good framework for looking forward. The problem is, what are we going to do about the existing stock that is in a mess? Our view is, simply, that there are three areas where this should be addressed.

The Government should be commended for trying to fix a problem that successive Governments have caused through a defective regulatory regime, whether that is from a construction perspective, or by signing off on materials and building systems. In that context, I think the Government should underwrite the process of fixing the existing stock.

That is not to say that taxpayers should foot the bill for everything. The Government should take responsibility —they are starting to do that through the presentation of this Bill—and then look at recourse from those who created the mess. The Government's culpability lies in the regulatory regime and the failure there, although there are bad actors in the construction industry and the product manufacturing industry, and the Government should go after them to recoup as much of the investment as needed to bring existing stock up to standard.

There is a final and third point that will be less popular from a leaseholder perspective, but it is important to articulate. When investigations are made into an unsafe cladding system in a defective building, and the cladding is taken off, other historical problems will be identified. Not all of those are caused by shoddy workmanship or defective materials; they may be due to a lack of investment in the life cycle and maintenance of those buildings. We advocate a mandatory reserve regime—a bit like in the States—in which a periodic assessment is carried out independently, not by the managing agent or building owner, which in this context could be a commonhold association, a residents' management company or right-to-manage company, or a freeholder, but by an independent assessor, who looks at short, medium and long-term requirements for reserve funding and regular life cycle maintenance for that building. The leaseholders then contribute to that over the super-long term, based on various apportionments under the service charge regime.

This is a long-winded answer, but it is an important point. For example, every 25 years, a block of flats will need a new roof; it is not a building safety issue, but a maintenance issue. If someone lives in that block for 20 years and then sells, but no provision has been made, is it fair for the buyer to be hit with a massive bill a few years later, when they have not enjoyed the life cycle of

living there? Anyone who owns a property should make that provision, and it should be mandated as opposed to voluntary.

Q100 Mike Amesbury: Does the Bill ensure that key stakeholders in your industry, rather than the leaseholders, are paying their fair share for a mess that was created over a series of decades?

Richard Silva: If you are referring to whether building owners should pay to fix the existing stock, a distinction should be drawn between the responsibility for maintaining the existing stock and the liability to pay; I covered the liability to pay in my previous answer. The responsibility should absolutely lie with the accountable person, under the new regime. Historically, the accountable person has been either the freeholder, where there is a two party lease, or, where the building is resident-controlled—as roughly two thirds of our portfolio is—the RMC or the RTM. In the future, when the Law Commission's proposals are brought into legislation, it could be the commonhold association. They are responsible, with emphasis on the word "responsibility", for the maintenance and repair of buildings. It is a complicated answer, but it does go to the Building Safety Bill, and the question of who will be accountable in the future.

It is an interesting debate. We have to ask ourselves whether members of an RMC or a commonhold association have time, expertise and willingness to do that work. Certainly, our research suggests that people do not want to do it, for a whole bunch of reasons. Forget criminal and civil liability—it is about having the time. People have other things to do. In the context of the Bill, among the wider Government reforms on leasehold, we need to focus on the fact that the role of the freeholder will become redundant. That is unambiguous from the leasehold reform agenda proposed. That means that the work done by my building safety team—it includes chartered fire engineers and surveyors—for the leaseholders and at no cost to them, save a modest ground rent, will become redundant. So this part of the Bill needs to be really carefully looked at. Who wants to do this role, absent the professional landlord?

Kieran Walker: I would be inclined to agree with Richard on the accountable persons piece, moving forward. If I understood the question correctly, you are really asking whether costs are fair and proportionate for historical issues and for historical defective buildings. It is very difficult to answer, if I am honest with you. As has been mentioned already this morning, you have some really good practice going on in the industry in terms of the developers and construction companies, and you have some culprits in there as well. We know that as a trade body and as an industry. Similarly, the manufacturing process and the manufacturing companies also have some culprits.

It is difficult, therefore, to nail down whether costs are fair and proportionate. Obviously, as of next year, our industry will feel the impact of the residential property developer tax, as well as the building safety levy. Time will tell whether that is fair and proportionate. Obviously, the building safety levy is subject to consultation at the moment. I think that closes in mid-October and we are busily compiling responses to it. Within that scenario, some companies, responsible persons and organisations will pay part of, some of or none of the building safety levy, while others will pay the full residential property developer tax as well.

Time will tell whether costs are fair and proportionate, but I certainly think that things are moving in the right direction in respect of the Bill itself and in terms of levying costs.

Q101 Ms Rimmer: I have listened to your comments, but are the Government right to introduce the building safety charge on residents, by which building owners can recover the cost of building safety measures? If not, could that be done through the existing service charge instead?

Richard Silva: It is a very good point. We engage with a lot of the managing agents who manage our blocks on a day-to-day basis and I think that there needs to be clarity on this point in the Bill. A separate regime for levying a charge to residents living in a block comes with cost and complexity; people need to understand what it is for.

It is a difficult one. There is service charge legislation in existence. There is a regime for it, with all of the reasonableness tests, information, budgeting, finalising of accounts and so on. I think that is probably quite a neat place for the building safety charge to become a specific sub-item within the overall service charge budget. Then, you are not really giving residents extra information—they are not understanding what the extra charge is really for—and it also helps to mask any chasm that might be in place between life-cycle maintenance and building safety maintenance, and where there is a crossover. It can become a bit ambiguous.

So long as the regime is clear, understood and, frankly, does not increase the financial burden on people living in their own homes, that is where the focus should be.

Q102 Ms Rimmer: The Government say that the purpose of the BSC is to cover the ongoing costs of the new regime, not historical costs. Is that explicit in the Bill as drafted, or could the Bill commit building owners to recover historical costs through the BSC?

Richard Silva: The way that I read the Bill, the historical costs are, to be frank, left firmly at the door of the leaseholders, so it does not protect them at all. Again, this goes back to my first answer to Daisy Cooper: there are probably more equitable ways of trying to get the existing stock up to scratch.

Once all of the stock is where it should be, with a full suite of goals and a set of further information, with a clear and unambiguous accountable person and a building safety manager appointed—let us assume that it will take 10 or 15 years to get all of that infrastructure in place for existing stock—I think that the regulator's role will cover all stock, whether existing or new build. But the transition period is really important—there is not enough clarity in the Bill, frankly.

Q103 Ms Rimmer: Does the Bill provide adequate means of redress for residents who want to challenge elements of the building safety charge?

Richard Silva: There is lack of detail at this stage. Clearly, the service charge legislation gives residents that means of redress and the ability to query and question stuff. If that is replicated in the building safety charge regime, wherever that sits ultimately, whether in this Bill or other existing legislation, hopefully that will be fit for purpose.

Q104 Ms Rimmer: A burning question: does the Bill protect leaseholders from unaffordable costs?

Richard Silva: For existing leaseholders, no, it does not.

Ms Rimmer: I do not know whether Mr Walker would like to comment on any of those questions.

Kieran Walker: It is not an area for the HBF. I will not comment further.

Q105 Theo Clarke (Stafford) (Con): My first question is to Richard. I am particularly interested in the reforms to the building control profession. Do you think that the problems identified by Dame Judith Hackitt have been addressed in the Bill? In particular, I am interested in the Government's right to retain the power of duty holders to choose their own building control body.

Richard Silva: The Bill is an excellent framework in lots of different areas, but it is a framework. As Justin Bates said in his evidence last week, it is a good and admirable starting point but there are lots of areas, lots of limbs within the Bill, that, quite understandably, because we cannot foresee every situation, will need to be dealt with as specific areas are developed and understood, consultations undertaken, experts work with MHCLG officials, and so on, to bring precise details of policy forward. I am not an expert in the certification and qualifications arena, but you have heard from the previous panel and you had fire experts last week.

What I do know is that, in our business, meaningfully and more explicitly post Grenfell, but for longer than that— in our resident engagements, we interact with 90,000 residents every year at some level—we have put in place a specific and dedicated fire life safety team in HomeGround. In that team, there are chartered fire surveyors, ex-London Fire Brigade officers, building surveyors and a small legal team. Their role, in collaboration with our estates management team, is to work closely together.

Our estates management team will basically audit all the managing agents who are responsible for the day-to-day running of our blocks around the country. Where there are clearly some deficiencies in, for example, fire risk assessments or, frankly, poor stewardship by the managing agent—that happens in all industries—our fire life safety team will go in and work with the managing agent to put special measures in place to get that building fit for purpose. That comes at a cost. Some of these things, by the way, are just bad life-cycle maintenance stuff—things that should have been replaced five years ago. That is a legitimate cost for the residents who live there.

That team has been inundated over the past 18 months. We have been trying to secure funding from the building safety fund and the ACM cladding remediation fund, which are very welcome funding pools, to get the bigger picture and to get the higher-risk buildings fixed. We have gone out and hired the best people we can find—by the way, it is a tough market out there, because not a lot of people are qualified to do a lot of this stuff—but until there are more specific guidelines from the regulator and the regulatory regime on what the qualifications need to be, I do not know whether they are fully qualified or not.

Kieran Walker: I would reinforce the point that Richard has just made. As we have seen with the communal wall service—the EWS1 form and the cladding external wall system—and its evolution since July 2019, it has been difficult to get hold not only of people but of people who can then be insured to carry out things like EWS1 surveys or fire assessments in the first place. There is a real shortage of people out there who are able to undertake that. Again, to reinforce Richard's point, it is quite ambiguous as to exactly what qualifications are needed/accepted if we are going to undertake the assessments.

Q106 Theo Clarke: What would be the one thing you would want to see improved in the Bill?

Kieran Walker: For me, our membership and our industry, it would be the gateway 2 side. The Bill proposes that all information for gateway 2—meaning, in effect, post-planning, post-reconstruction and moving to detailed design—be submitted early doors, at the initial stage. Historically, the industry works with a number of contractors, suppliers and designers, and tenders information on a live basis. In order to get all that information delivered up front as developers enter gateway 2, quite a bit of information will have to be designed and procured at risk during that transition between gateway 1 approval and going to gateway 2. Within that, given the subcontractor market and potential changes in materials due to imports, exports and price fluctuations, you could end up having to revisit change management and the gateway 2 process and to go almost in a circular manner back to the regulator to seek change and improvements.

We would like to see—as we currently see, to a certain extent—a number of approved inspectors in the industry where we have a staged planned submission and staged planned approval process based on your sub-structure, superstructure, finishing trades, mechanical, electrical, finishes and cladding.

Q107 Ian Byrne: I direct my question to Kieran. Will the Bill change the culture of profit over safety that has pervaded the industry for so long and caused the likes of the Grenfell disaster? The second part of my question is about the use of special purpose vehicles and accountability. Do you feel that the Bill tackles the way in which SPVs are used to close down an issue, resulting in the complete lack of accountability of the people involved? Should the Bill be amended to tackle that?

Kieran Walker: I will answer the first question first, if I may. I certainly think that the Bill will change the culture of the industry and make clearer the key stages—the milestones—for people in the process of building the buildings in scope or tall buildings. In the past, quite ambiguous information has been submitted and responded to in the planning stage, which does not necessarily regulate, mandate or cover key items such as vehicle access tracking or incumbent water pressures in the proximity of those buildings.

Within gateway 2, I think we will see a lot more stringent approaches to material information and detail design being submitted to the regulator. That is a positive thing. In terms of duty holders and clear lines of responsibility, I definitely think that that is positive. As an industry, we support that clarity and those clear and mandated lines of responsibility and communication. I think we will see an improvement in the industry as a whole, and the key to that is the fact that we have this clear framework.

It is difficult to answer your question about special purpose vehicles, to be honest. I am not trying to avoid an answer, but we do not necessarily have much information on special purpose vehicles. How they are regulated and administered is quite varied. We have worked with a number of special purpose vehicles in the past, but going back to my first point, I think that the Bill will make lines of responsibility and regulation a lot clearer for them, to avoid the potential and opportunity for them to disappear as soon as the keys are handed over to the final property in the block.

Q108 Ian Byrne: Thanks, Kieran. Richard, do you want to add anything?

Richard Silva: On the second point about the special purpose vehicles, whoever incorporates an SPV to develop a higher-risk project that the Bill is aimed at, ultimately the regulator will say yes or no. It is the regulator and the regulatory regimes for gateways 1, 2 and probably 3 —fit for occupation—that will ultimately say, "Yes, this process has worked. That SPV is fit for purpose and will deliver a solid product."

The problem is what happens in the future if, God forbid, something slips through the net of the regulatory regime or fails. When these things do fail, you know about it only over time. The Bill extends the provisions of the Defective Premises Act 1972 so that you have 15 years to go after developers, as opposed to six. That is all well and good, but in the real world it will have limited or minimal impact—it will be the same—for anybody who needs to take advantage of that new provision.

The Bill's proposed regulatory regime is robust—details will follow, obviously—but ultimately, the regulator can have sanctions on it. If a large plc housebuilder that has, historically, built mixed-used, large-scale developments—high-risk buildings, in the context of the Bill—through a series of SPVs, the regulator will have to have an opinion on that, I am afraid.

Q109 Selaine Saxby (North Devon) (Con): Mr Walker, what key lessons have your members taken away from this process about how Government works with the sector, and what can we collectively do better in future?

Kieran Walker: I think the key lessons are really about getting information and clear lines of communication as quickly as possible. The introduction of the Bill is, as I have mentioned, welcomed by our members and the industry as a whole, because it gives clear a framework and responsibility for duty holders, as well as a process that I do not think we have had in the past. I do not think that is necessarily the fault of industry. In the past, it has almost been an assumption that A will follow B will follow C—that is part of the lessons learned. Mistakes have been made in the past, not just in the house building industry but across the piece, to be honest. The main lesson learned is that we should perhaps have had that framework sooner, but hindsight is a wonderful thing—we are where we are in that respect. Would you mind repeating the second part of the question, please?

Q110 Selaine Saxby: What else can we do better collectively in future?

Kieran Walker: I think resource and expertise are a big part of this, as is generally having clear and defined methods and processes in perpetuity for the handover of buildings. In the past, we have seen quite loose arrangements in that respect, from developers to management agents. I also think that expertise and training the skills in the sector are important, not just in the latter ends of the building management side, but within local planning authorities, so that planning officers and planning departments understand better the implications of tall buildings, whether from an access perspective, an evacuation perspective or any other matter.

In the detailed design phase, as we will see moving forward, we will need to upskill very rapidly the expertise and resource within the regulator itself, because it is a very complex niche of the market—tall buildings, fire and structure are not just a black-and-white area; it can be quite grey. The upskilling of the workforce, from professionals right down to skilled trades, is one lesson that I think we can all learn.

Q111 Kate Osborne: This question is to Kieran Walker. You mentioned that you would have liked to have seen the framework sooner. Have the Government published enough detail about the new regime, on the roles and responsibilities of duty holders, the golden thread and the gateway process, for example?

Kieran Walker: There could be more—I would be keen to see more and our industry would be keen to see more. There is probably more to come through secondary legislation on the duties of key roles and responsibilities, as well as on the golden thread. I agree that we could see more there.

Q112 Kate Osborne: Do you think the industry is ready for the new regime?

Kieran Walker: Subject to resource and expertise being there from the regulator's perspective, I think the industry is ready. Gateway 1—the planning stage gateway—was introduced on 1 August. Developers that are now constructing or going through planning submissions, or that are in the planning process, will be complying with gateway 1 as we understand it. I am not seeing that developers are suddenly baulking at the issues. A lot of the information in gateway 1—

The Chair: Order. Kieran, I am sorry to cut across you, but I am afraid that that brings us to the end of the time allocated for the Committee to ask questions. I thank our witnesses on behalf of the Committee.

Examination of Witnesses

Councillor Jayne McCoy and Andrew Bulmer gave evidence.

10.45 am

The Chair: We will now hear oral evidence from Councillor Jayne McCoy, deputy leader of Sutton Council and chair of the Housing, Economy and Business Committee of London Councils, and from Andrew Bulmer, chief executive of the Institute of Residential Property Management. For this session, we have until 11.25 am. Please will the witnesses introduce themselves for the record, starting with Andrew, remotely?

Andrew Bulmer: Andrew Bulmer, chief executive of the Institute of Residential Property Management. The IRPM is a professional body of 5,000 members who are qualified to various levels from level 2 to level 4. They

manage big scary residential buildings, both leasehold and in the build-to-rent sector. We do not have firms as members. Our membership is confined to individual professionals.

Councillor McCoy: Good morning, I am Jayne McCoy. I am here representing London Councils.

Q113 Daisy Cooper: Good morning and thank you for joining us. In the light of what you may have heard from leaseholders and other people who are affected by this crisis, do you believe that the scope of the Bill is sufficient?

The Chair: Who do you want to go first?

Daisy Cooper: Jayne first, please.

Councillor McCoy: London Councils feels that the scope of the Bill needs to be expanded. We think that the focus on height is a rather rough approximation of risk. As we know from experiences in Bolton, in Samuel Garside House in Barking and Dagenham, and in my ward, Worcester Park, we have had fires in buildings under 18 metres that would have resulted in loss of life if it had not been for luck—it was a matter of minutes. We know that there are fire safety risks in buildings under 18 metres. We think that height should not be the only approximation for risk.

We think all new buildings—so all heights—should be covered by the Bill. For remediation purposes, we think a risk assessment tool should be applied to look at the holistic assessment of a building. I think a tool is being developed in response to the Fire Safety Act that could be adapted and used for this measure.

Andrew Bulmer: In conjunction with the Fire Safety Act and noting that this Bill now extends its tentacles to below 18 metres for some limited functions—fire risk assessments and identification of a responsible person—the scope of the Bill is wider than it was and I feel it is a good place to start.

Q114 Mike Amesbury: What is missing from the Bill? This question is for both of you.

Councillor McCoy: A lot of additional clarification is needed regarding the accountable person, the building safety manager and their responsibilities. A lot of detail is required. We need that detail and clarification because the industry, including councils in particular, needs to gear up to meet those responsibilities. Until they know what those responsibilities are, they cannot effectively gear up and commit the resources.

In particular, I would talk about the skills within building safety management. There is a lack of skills out there at the moment. There is a lack of resource out there at the moment. We cannot recruit as a council. My council cannot recruit to building control at the moment because people are not out there. Until we have clarification about what the skills are, and a framework for that, we cannot build up the capacity and skills needed. I would also flag that councils need the resources to be able to do that, because an awful lot of burdens are falling on councils.

Andrew Bulmer: I concur with the councillor. There is a lot of detail in the regulations, especially when it comes to the role of the building safety manager. We would like to see the regulations brought forward. They can either go in the Bill or be introduced promptly. Until then, we are operating a little one-handed. We are anxious to prepare and gear up for this, but without that information we are struggling.

That is one thing that is missing from the Bill; the other is protection for leaseholders from historical building safety defect costs. We understand that the Bill has to be written in a way that allows the reasonable costs of safety maintenance going forward to be recovered. That is fair and reasonable, but at the moment there is no protection for leaseholders from existing building safety failures that they did not cause.

Q115 Ms Rimmer: The draft Bill is largely a framework Bill, sometimes referred to as an enabling Bill, which provides for key parts of the new regulatory regime to be established by delegated legislation and building regulations. Do you find that acceptable? Is enough tied down to get the secondary legislation done quickly enough? There is no timescale—just what is "reasonable". Is that acceptable, or do you have any concerns?

Councillor McCoy: We have some concerns. You are right that timeliness is key. It reflects the points that I made earlier about having time for industry to gear up. There needs to be a proper, informed transition period. That is London Councils' view. There needs to be a transition period that allows time for the capacity to be built. It needs to be fully funded, and there needs to be prioritisation within it. Obviously, we are very keen to see the safety measures implemented as soon as possible, but there needs to be a prioritisation of high-risk buildings in the meantime. That goes back to a holistic assessment of those buildings. We think that we need a transition period of about five years, and we need that clarity as soon as possible.

Andrew Bulmer: I am relatively unexercised about whether it is done through enabling legislation or written in from day one; what I am exercised about is getting the regulations delivered quickly. We are trying to prepare for the future regime. Dame Judith Hackitt called for a culture change and we, as an organisation, are driving that hard into our membership. They are receptive, and wish to adapt and move to the new regime as quickly as they can. It is difficult to prepare without the information, so I am less concerned about the mechanism; I am just concerned that we need to see the rules.

Q116 Ruth Cadbury: The previous panel had a representative who owns the freehold of a lot of blocks. Andrew, you represent the property management sector. Both of you have painted a picture of the Bill causing investors to leave freehold ownership. In your submission, you said that the legislation as drafted could mean that there is nobody willing and able, particularly within residential management organisations, to take on the responsibility of residential management. I think you said that the freehold interest could revert to the Crown. What should be in the Bill to prevent that from happening?

Andrew Bulmer: I will lead with that one, Chair. I think that question was directed at me. I will come back to what needs to be in the Bill. The commentary behind this is that there is a clear and understandable push through the Law Commission and through the work being done by Government to vest the freehold or

commonhold interest or the management of the development in the hands of the residents themselves, who thereby have democratic control over their development, and we find the logic of that compelling. The challenge is that it means those residents will be in charge of their own affairs. We can see in the example of Miami—the building that collapsed there—that the residents association was challenged in terms of its competence to manage the building safely. That does not mean that we abandon the adventure. I think we progress with it, but we progress with our eyes open and that means we have to support those directors.

I would like to see a support mechanism for directors who wish to actively manage their own affairs, so they can feel supported and get guidance where they need it. There would also need to be support for those directors in terms of quality assurance of their suppliers. For building safety managers, for example, it is important there is some form of a register of quality assurance. We would like to see the managing agents they will depend on being regulated as per Lord Best's RoPA report.

In the Bill, there would need to be the option for directors to decide if they choose—purely optional—to appoint an external director to take on the role of the AP or principal accountable person. The danger is that lay directors will look at the risks involved, and they will all step back and not take up directorships. That is already happening and is already a significant problem.

Every property manager will tell you that it is difficult to get directors to come forward these days as the responsibilities become clear. When the responsibilities of the Building Safety Bill are made clear to those directors, we expect it will be difficult to get people to take up those responsibilities voluntarily, unpaid and without the necessary expertise or competence to fulfil them. The ability to appoint an external director would be likely to mean overriding the articles of association of the development and implying covenants into the leases to enable the external director to be paid for. It would require protections for leaseholders from a director who went rogue. These provisions would need to be in the Bill to enable leaseholders to outsource their responsibilities to a professional if they chose to do so.

Q117 Daisy Cooper: We received evidence this morning from witnesses from the Health and Safety Executive. They described how they had been working closely with Government officials in developing this new framework. They said they had received assurances from the Government that they will get the resources and staff they need and they seemed to think that, on the whole, most of the new roles created under this framework were reasonably clear. That seems to me to be in reasonably stark contrast to some of the evidence we are hearing now. I am interested to hear from Jayne in particular on behalf of London Councils whether you have also enjoyed a close working relationship with Government officials in developing this framework, and whether London Councils have been given any assurances that they will receive the staff and resources they need to implement this new system.

Councillor McCoy: Yes, London Councils and the Local Government Association have worked with MHCLG all through the process since the Grenfell Tower tragedy to help shape the legislation. Obviously, a lot of the time we are responding to things, but we are trying to feed in and push. I would flag up at this point that London Councils would like to see a wholesale review of the building regulation framework.

At the moment, the Bill addresses and improves the existing regulation. We have been pushing quite hard for a wholesale review across all the legislation, which is a bit more in line with the Dame Judith Hackitt report. However, we have been working closely throughout to assist and get the best out of this, and, yes, we have been working with the Health and Safety Executive. We are quite pleased with our progress so far and the way it has been coming across to the HSE.

We would like to see a requirement that the HSE works with the local authority's building control regulator, local councils and the fire authority in the first instance—that they call on their expertise—because that helps us as London Councils to build our capacity and resources. That is important, as are the resources to go with it, and I do not think we have had any firm commitments to those resources. We keep making the case that we are going to need to bring those resources forward. I would just emphasise that making this Bill deliverable and achieving its aims of improving building safety cannot be done without the staff and skills required, and we cannot upskill without the funding to do that. To make it practically deliverable, it needs to be fully funded.

Q118 Ruth Cadbury: You may have already covered this in your submission, Andrew Bulmer. We have covered the knowledge required for the responsible person, but is there a risk of duty holders struggling to access professional indemnity insurance?

Andrew Bulmer: The wider comment on the PI insurance market is that it is in serious difficulty, and has been for some time. Any professional who is giving advice on building safety, especially fire safety matters, is having their premiums either severely increased, cover withdrawn entirely, or significant restrictions placed upon them, so accessing any professional on a fire safety matter at the moment is problematic. You used the phrase "duty holder": if that were to refer to an RMC, for example, I cannot comment on PI insurance for RMCs. I think that is something that requires further investigation.

Q119 Ruth Cadbury: I asked a previous witness a question about the duty to co-operate in mixed use buildings with complex ownership structures. The Government have incorporated a duty to co-operate between the different accountable people and responsible people under fire safety legislation, who can be different people in a mixed-use building. Will this suffice, or do you see problems arising?

Andrew Bulmer: I see problems arising in so far as it is complex, and I can see litigation taking place as to who is the principal accountable person. That said, I am struggling to see what a better model could be. We may have to live with the complexity.

Q120 Mike Amesbury: Councillor McCoy, in relation to building control and buildings below 18 metres, are there any changes you would like to see in the Bill?

Councillor McCoy: Yes, particularly in relation to the scope of buildings within the gateway scheme. At the moment, buildings that followed a permitted development are not covered by that, so we particularly want to make

sure that all buildings are covered by the gateway process, otherwise a raft of buildings are out of that scope. It also needs to align with any future legislation: the planning reform White Paper contains some serious concerns for us, because it effectively puts swathes of large areas into permitted development and takes them out of the regime. The gateways have to apply to all buildings, or all new buildings.

Q121 Rachel Hopkins (Luton South) (Lab): This question is directed more to Andrew, and it is about residents having the ability to challenge the building safety charge. Is the Bill adequate if they want to make such a challenge?

Andrew Bulmer: The building safety charge is problematic. The fact that payment can be demanded within only 28 days will make it difficult for a leaseholder to investigate and mount a challenge. You should not challenge until you have sought further understanding. Then, if you are not happy with the information that you have, you need to mount a challenge, but 28 days is not long, so there is a problem with that.

The building safety charge itself is a flawed concept and we would like to see it gone. Running a separate service charge regime means that there will be additional tasks, which means additional costs, and it will be the leaseholders that end up paying for that. Introducing a new regime also introduces a lawyers' charter. The existing service charge regime is decades old. For many decades we have found ourselves testing the meaning of words in different circumstances, and much of service charge law is case law. If we introduce a new regime, we restart the clock.

Also, we have an existing service charge regime, which I know is not perfect—far from it—but health and safety matters will be included in that, so we will be in a situation where the resident will receive two different bills: the building safety charge for health and safety, fire safety and structural, and then another bill for a whole service charge, which will include other health and safety works, as well as any remediation that the building safety charge regime has brought up. The consumer will be nothing but confused while paying for a more expansive and complex regime. What I would prefer to see in the Bill is the existing service charge regime finessed in a way that brings more standardisation and clarity to the consumer about what the Bill includes.

Q122 Ian Byrne: I will direct my question to Andrew first and then Councillor Jayne McCoy. What do you think of the responsibilities placed on the accountable persons? Is it reasonable to expect all accountable persons to be sufficiently knowledgeable to assume the responsibilities in the Bill?

Andrew Bulmer: If you have a professional third-party landlord, it would be reasonable; that is their job. If you are a lay director of an RMC and you are the principal accountable person, you may be a highly intelligent and thoughtful individual—perhaps a surgeon or the lead violinist at the London Philharmonic Orchestra—but you are not a property expert. It takes two to three years to qualify as an IRPM member just to level 4, and it is a complex thing. I do not see how the majority of lay directors will truly have the knowledge and competence to be able to discharge their responsibilities. They will be heavily dependent on advisers. If we are going to be democratic and empower our people to be masters of their own destiny, which I support, we need to make sure that they are protected. I would like to see a quality assurance regime for the building safety manager and for property managing agents, who will be the go-to people for recommendations and for all matters property. I would like to see them regulated.

Q123 Ian Byrne: Jayne, would you like to add anything to that?

Councillor McCoy: It is essential that there is an accountable person. Trying to find somebody to hold to account for some of the failings that have gone on has been problematic. There needs to be clarification about whether that will be an individual person. It can be an organisation or a representative of the organisation, particularly where councils are landlords, but we need to know who that person will be. Will it be the chief executive or the housing portfolio holder? We need clarification about who that should be. Obviously, they will need to be supported with expertise and skills, and I would expect them to rely on external sources for that expertise; it is important. There are also issues with special purpose vehicles, which have quite complex ownership. To ensure that the work is done and someone is held responsible for getting it done and for ensuring the building is safe, there needs to be a clear line of accountability.

Q124 Kate Osborne: Staying on the subject of accountable persons, they will need access to residents' premises to fully discharge their responsibilities. How big a problem do you think that could be, and do you think the provisions on that point are appropriate?

Councillor McCoy: That is a key concern of London Councils. We welcome the additional powers that have been put in here, but we do not think they go far enough, especially given that, when you are trying to deal with safety issues, you want to deal with them quickly. At the moment, if people are not co-operative, you have to take people to court and get the access that way. It places some responsibilities on residents, but for an accountable person to be fully accountable for the safety of the building, it has to cover all areas.

We have a problem currently. A leaseholder of a flat in a large building could have all sorts of problems within the flat that, in theory, compromise the safety of the whole building. No one can be accountable for that if they cannot even access the property, so we think that needs to be looked at and worked on with the industry in order to figure out how to address that problem. Without those powers, a person cannot really be held accountable.

Andrew Bulmer: We take a similar view. Ultimately, you are balancing safety against somebody's right to deny access to their home, and Ministers must decide whether you have to have a court order to go in. That is how it is written now. Getting a court order can be slow, expensive and obstructive, but perhaps that is the right approach if we are to respect people's rights to the privacy of their own home. From a property manager's point of view, being purely selfish, it would be much easier if the Bill were written so that we could just go in, but we must recognise that that is potentially an infringement of liberty, and that is for Ministers to decide.

Q125 Shaun Bailey: Engagement with residents will be a key part of this, particularly for the accountable persons. I have at times seen some very good engagement models, where residents feel they are in a partnership with property management, but I have also seen some pretty horrendous ones where that engagement is not representative of residents. Given your different perspectives and the different way you come in on this, how do you both feel we can maximise the resident engagement model? What interventions do you think Government can bring in to try to do so, to ensure an effective partnership between residents, property managers and freeholders?

Councillor McCoy: Embedding a culture of the tenant's or resident's voice being heard is important. That is the key thing, and it is probably not addressed sufficiently in the Bill. We have heard feedback about ensuring that the tenant's voice is there. The Government giving a strong line that the tenant's voice should be heard is what the industry needs in order to listen. We think councils are reasonably good at doing that, although not all are perfect, but we want to protect and talk to our residents and tenants, and engagement is a key part of that. My view is that there should be a clear ambition and steer in the Bill that the tenant's voice should be heard, so that any issues of fire safety raised are taken seriously, maybe with a formal process involved.

Q126 Shaun Bailey: Mr Bulmer, how do you feel we should enhance tenants' representation?

Andrew Bulmer: You use the word maximise; I would use the word optimise. We are working with HSE on the customer engagement piece, and it is quite interesting. We have voices that say, "We want as much communication as possible," and others that say, "Actually, we don't want to be communicated with all the time. Just go and do your job." Different audiences and different individuals will want communicating with in different ways, so I think the challenge for the industry is how we communicate in a way that meets the various needs of our customers.

If you look back at property management through the ages—I am going back many decades—a property manager was a servant of the landlord. The culture shift towards consumerism within the leasehold sector is now all but complete. Long since now, property managers very much understand that it is service charge payers who are paying for the service, and that they are the customers. That is a culture that is well embedded now in the majority of the industry. While we have seen examples of poor practice—like you, I have seen them myself—the direction of travel toward good practice is encouraging. I can certainly say that our members will be keen to understand the outcomes of the HSE project on customer engagement.

The Chair: If there are no further questions, I thank the witnesses for their evidence. The Committee will meet again at 2pm this afternoon, back in the Boothroyd Room, to continue taking oral evidence.

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

11.16 pm

Adjourned till this day at Two o'clock.