

Written evidence submitted by Alison Hills (BSB11)

Written submissions for the Building Safety Bill evidence session 14th September 2021

A. Introduction

I am a Solicitor and personally affected by the Building Safety crisis.

B. Executive Summary

1. The Building Safety Bill as drafted offers completely inadequate legal protection for Leaseholders. Leaseholders across the country are extremely disappointed with this, given that they were repeatedly informed by the Government that the reason they were voting against Leaseholder protection in the Fire Safety Act was because it was not the right place, and that protection would be forthcoming in this Bill. However, it is clear that this is not the case.
2. The Building Safety Bill as drafted makes it easier for Freeholders to pass costs onto Leaseholders as it increases the likelihood that remediation costs can fall under the scope of the service charge. It also imposes yet more costs upon Leaseholders by the implementation of the Building Safety Charge.
3. Leaseholders are the only innocent party in this crisis, yet they are the only party who are being forced to pay.
4. This is a complex issue with liability against a number of parties; developers, manufacturers, insurers, Buildmark Warranty providers and the Government as a result of decades of inadequate regulation. However, the Building Safety Bill as drafted appears to give complete legal amnesty to those responsible for this crisis, allowing them to walk away without any repercussions whilst at the very same time, legally holding the victims to account.
5. Leaseholders have very little in the way of consumer protection and even those leaseholders who do have the right to pursue legal action, this is not a solution as it would be incredibly costly and complex and unlikely to result in a favourable outcome¹.
6. The Government is actually profiting from this crisis by their failure to NIL-rate VAT on interim fire safety measures or remediation works
7. The size and scope of the Building Safety Fund is completely inadequate and there are serious problems in accessing the fund even for eligible buildings
8. A whole new crisis has been created by the implementation of the “waking watch” with Leaseholders having to pay extortionate sums for a completely ineffective “service” which has placed Leaseholders at unacceptable levels of financial burden.
9. Some extremely helpful amendments which will protect Leaseholders to some degree have been put forward in the McPartland Smith amendments but I believe that it is only a combination of this and the “Polluter Pays” bill which will truly afford the protection that Leaseholders need.
10. It has now been over 4 years since Grenfell, and there are hundreds of thousands of Leaseholders across the Country who have been forced to live in unsafe homes, during a Pandemic, facing life ruining bills through no fault of their own. This has had devastating repercussions, including breakdowns of relationships, pensioners being forced back into work, deteriorating mental health and reported bankruptcies and suicides as a direct result of this crisis.

¹ [Contractor sees off £4.5m cladding legal claim | Construction News](#)

C. Building Safety Bill

A helpful summary of all the defects in the legislation can be found in an article dated 6th July 2021 written by Liam Spender² of the Leasehold Knowledge Partnership.

Some of the key concerns are as follows:

- (a) The bill does not protect leaseholders from remediation costs and in fact creates whole new categories of costs which can be forced onto Leaseholders through their service charge such as the Building Safety Charge (outlined in Clause 120 and Schedule 7).
- (b) The payment terms under the bill state that Leaseholders must pay Building Owners within 28 days of their bills being issued. There is no cap on costs, and we have already seen bills landing on the doorsteps of Leaseholders of 6 figures each, with threats of litigation against them if they fail to pay³.
- (c) There is nothing contained within the bill to hold polluters to account
- (d) Whilst the extension to limitation periods under the Defective Premises Act appear to protect Leaseholders in theory, the reality is quite different. Even for those Leaseholders who fall within the limitation periods and whose developers still exist, litigation is extremely complex and costly and unlikely to be successful, particularly when Leaseholders have no *locus standi* as they do not own any single part of their buildings. If the Freeholders decide to pursue action against the Developers, then they can recharge their legal fees to Leaseholders which could run into tens (or even hundreds) of thousands of pounds
- (e) There is no protection in the bill for Leaseholders in buildings under 18 metres
- (f) There is no guidance or suggestion around what the Government proposes to do about the ruinous costs being faced by Leaseholders now for defective cladding and other fire safety issues
- (g) There is no guidance about how further funds could be raised.
- (h) There is nothing in the bill to protect shared owners from disproportionate costs

D. Interim Fire Safety Measures & Insurance

Interim Fire Safety Measures do not form part of the Building Safety bill, but these are highly relevant as protection for Leaseholders from these costs should be included in the bill, as a whole new crisis has been created following the introduction of the EWS1 process⁴ in December 2019 and the Government's advice note of January 2020⁵

Following the intrusive survey which took place on our building, a "waking watch" was imposed upon us at a cost of £400.00 per month each. This was a completely ineffective service, which in fact caused extra fire hazards by the marshals undertaking activities such as smoking underneath flammable cladding, overloading power cables and blocking fire exits. This situation has been repeated across the country and widely reported in the media, including most concerningly, reports of harassment of single females⁶.

² [Building Safety Bill is a device for which the batteries aren't included. It could be improved, if only officials would listen ... - Leasehold Knowledge Partnership](#)

³ [Victims of combustible cladding scandal are shocked to receive bills for £100,000 | Daily Mail Online](#)

³ [The Cladding External Wall System \(EWS\) \(parliament.uk\)](#)

⁵ [Building safety advice for building owners including fire doors January 2020.pdf \(publishing.service.gov.uk\)](#)

⁶ [Flat owners trapped in cladding scandal furious as fire marshals nap and smoke on job - Mirror Online](#)

I have heard of stories of Leaseholders across the country, who have had to pay for “waking watch” for years; the worst example being Victoria Wharf in Bethnal Green who have had this in place for 3.5 years despite an alarm system being in place.

Analysis from the London Assembly which was published on 12th February 2021 found that Londoners alone were paying £16,000 per hour for this service. An article published on their website outlines that this means a cost of £145m per year which is the equivalent of more than a third of the entire London Fire Brigade annual budget! ⁷

I am pleased to see that the Government have finally recognised that “waking watch” fees are outrageous and that the waking watch relief fund⁸ was set up in December 2020. However, an article by Inside Housing on 15th July 2021⁹ demonstrated that less than 50% of the applications to the fund had been approved more than 6 months after the scheme was launched and the scheme does not help Leaseholders across the country who have already had to fork out thousands of pounds. It also doesn't actually pay a penny towards waking watch fees (only the alarm systems despite the name of the fund) and it doesn't help people like Hayley Tillotson¹⁰ who bought her flat in Leeds through an affordable housing scheme and has already been made bankrupt as a result of these extortionate costs.

Furthermore, “waking watch” has been proven to be completely ineffective; following reports from the 7th May 2021 fire at New Providence Wharf that residents alerted each other to the fire via *What's App*¹¹. This is a completely unregulated industry which is only having the result of adding financial and emotional pressure onto Leaseholders.

In addition to having to pay for “waking watch” and other interim safety measures such as alarm systems, Leaseholders are also now finding themselves subjected to extortionate insurance hikes. “The Decks” in Runcorn for example has had a 1,400% increase from £34,000 to £505,000 split between 288 apartments (so this is an increase from £118 to £1,753 per Leaseholder! There is no protection for these costs in the bill.

E. Regulatory & Industry Failures

It is clear that there have been decades of Regulatory Failures which has contributed to this crisis. However, there have also been industry failures which is why it is so vital that repercussions for those who hold liability is enshrined into legislation.

Manufacturers such as Kingspan seem to have been given a complete legal amnesty against any liability in the bill. The Grenfell enquiry highlighted that they withdrew their fire safety tests, following admissions that they didn't represent the product that they had been selling for the past 15 years. Adam Williamson, QC stated that the evidence revealed *“an industry in which Arconic, Celotex and Kingspan were content to push hazardous products onto the marketplace and sought to market them dishonestly”*¹²

In addition to this, we have seen on many occasions in the media of situations where developers and building owners have refused to pay to remediate buildings whereby they had breached regulations at the time of development. We saw at New Providence Wharf that Leaseholders had been pushing their developers, Ballymore, for 4 years prior to the fire in May 2021, to remove the ACM cladding on their building and even the Government had to push them for “months” despite the fact that Ballymore had sufficient funds to carry out the remediation works¹³

⁷ <https://www.london.gov.uk/press-releases/assembly/waking-watches-costing-londoners-16000-an-hour>

⁸ [Waking Watch Relief Fund - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/waking-watch-relief-fund)

⁹ [Inside Housing - News - Less than half of Waking Watch Relief Fund applications approved](https://www.insidehousing.co.uk/news/less-than-half-of-waking-watch-relief-fund-applications-approved)

¹⁰ <https://www.bbc.co.uk/news/av/business-55847260>

¹¹ [‘They knew about this’: Residents’ fury at New Providence Wharf fire findings | The Big Issue](https://www.theguardian.com/uk-news/2021/may/08/new-providence-wharf-fire-findings)

¹² [‘A raging inferno’: testimony reveals how deadly cladding ended up on Grenfell Tower | Grenfell Tower inquiry | The Guardian](https://www.theguardian.com/uk-news/2021/may/08/new-providence-wharf-fire-findings)

¹³ [Poplar fire: Govt pushed developer for ‘months’ to remove cladding | Evening Standard](https://www.eveningstandard.com/news/uk-news/poplar-fire-govt-pushed-developer-for-months-to-remove-cladding)

F. The Building Safety Fund

It is clear that the size and scope of the fund is wholly inadequate. A summary of the problems with the fund are as follows:

- (a) This does not cover buildings under 18m in height
- (b) This does not cover defects such as insulation or missing fire breaks where they are not considered to be part of the "cladding system"
- (c) The size of the fund is completely inadequate. It was previously suggested by the Parliamentary committee that costs would be a minimum of £15bn, yet only £5bn has been allocated to the fund
- (d) Leaseholders are therefore left to foot the outstanding £10bn because they were advised that no more funds were available, and they then discover that a further £8.6bn has recently been allocated to build new homes!¹⁴

The most recent data from 31st July 2021 has shown that only £380 million has been approved out of the £5bn fund for non-ACM cladding)¹⁵ and even for those buildings which are deemed to be eligible, there are significant problems in accessing the fund. This is due to a variety of issues, including significant delays in applications being reviewed and funds being allocated, eligible buildings getting rejected and onerous funding contract terms¹⁶.

G. Remediation costs & potential repercussions for Leaseholders

Whilst no formal, detailed quotations have been provided for our block, we have been informed that the potential costs could be in the region of £7m. This would be split across 44 leaseholders, equating to between £150,000 - £200,000 per flat.

If we do not obtain sufficient funding from the BSF, these costs will fall upon us which will have the result of mass bankruptcy, and for some like myself in professional careers, we would also lose our jobs because our professional qualifications would be automatically revoked.

We have no rights to pursue legal action against our Developer as we are outside of the 6 year limitation period under the Defective Premises Act and although the Government have proposed extending this period to 15 years under Clause 126 of the Bill, this does not help us because:

- (a) Our developer Linden Homes sold part of their entity to Vistry and neither party are accepting responsibility for the fact that our building was built in breach of regulations
- (b) Our developer will not accept liability for the cladding because this complied with regulations at the time of build and only now does not comply due to the Government's change in regulation and retrospective application of this
- (c) Our developer also will not accept liability for the Insulation because this was sold to them as safe by Kingspan
- (d) NHBC also hold liability in terms of the missing firebreaks because our building was signed off by them as safe and in breach of regulations and our Developer may well just point us to pursue a claim against them (which we did- over a year ago, and have received no response)
- (e) Even if we were able to pursue legal action against our Developer, which is looking to be quite impossible given the problems outlined above, we simply cannot afford this given that our savings have already been wiped out due to having to pay for interim fire safety measures, increased service charges, increased insurance etc.
- (f) Litigation would be extremely complex given that this is a multi-party liability, and as a result of this, also extremely costly and unlikely to succeed

¹⁴ <https://t.co/8sTnzfh9Vp> <https://t.co/Txr7XkfMm9> / Twitter
<https://t.co/8sTnzfh9Vp> <https://t.co/Txr7XkfMm9> / Twitter

¹⁵ [Remediation of non-ACM buildings - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

¹⁶ [Delay removing dangerous cladding 'soul destroying' - BBC News](#)

The suggested amendments to limitation under the Defective Premises Act are also subject to a number of other difficulties, including the fact that there is no recourse for leaseholders whose developers have become insolvent, or for buildings over 15 years old. The Government's timeline¹⁷ also suggests that the earliest time that the amendment to the limitation period will come into force would be 2023 which is simply too late!

Legal protection is needed now as we have already seen that some leaseholders are already receiving bills of 6 figures each. For example, Sophie Bichener, of Vista House in Stevenage, was issued with a HALF yearly service charge of over £104,000.

Statement of Anticipated Service Charge Expenditure

Service Charge period:		1 Jul 2021 - 30 Jun 2022		
Expenditure heading	Anticipated expenditure	Percentage	Anticipated share due	
SCHEDULE B				
Cladding Remediation	14,751,653.00			
Professional Fees	43,000.00			
	<u>14,794,653.00</u>	1.4088%	<u>208,430.03</u>	
Total anticipated expenditure	<u>14,794,653.00</u>			
Total on account payable			<u>208,430.03</u>	
Charge details				
Half Yearly Service Charge in advance Due on 1st July 2021			<u>104,215.02</u>	

H. Potential Solutions

Two potential solutions to this crisis have been suggested; the McPartland Smith amendments and the "Polluter Pays" bill.

(a) The McPartland Smith amendments

The McPartland Smith Amendments¹⁸ do offer some protection for Leaseholders. A summary of these can be found in another article which was drafted by Liam Spender and was published on the "End our Cladding Scandal Campaign" website on 28th July 2021.¹⁹

Some of the amendments which have been suggested include:

1. The assurance that future cladding and fire safety remediation works are taxed at 0%
2. Grants will be provided to Leaseholders of up to 90% of the cost of the remediation work
3. The creation of a Building Safety Indemnity Scheme
4. The extension of limitation periods under the Defective Premises Act to 25 years instead of 15 years
5. The imposition of implied terms in residential building contracts to ensure that all buildings are of adequate design, fit for occupation, comply with building safety regulations and use materials of satisfactory quality.

¹⁷ [Outline Transition Plan for the Building Safety Bill - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/outline-transition-plan-for-the-building-safety-bill)

¹⁸ [building_rm_pbc_0723.fm \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/building-repairs-and-pbc/building-rm-pbc-0723-fm)

¹⁹ [Building Safety Bill: McPartland-Smith Amendments - End Our Cladding Scandal](https://www.endourcladdingscandal.com/building-safety-bill-mcpartland-smith-amendments)

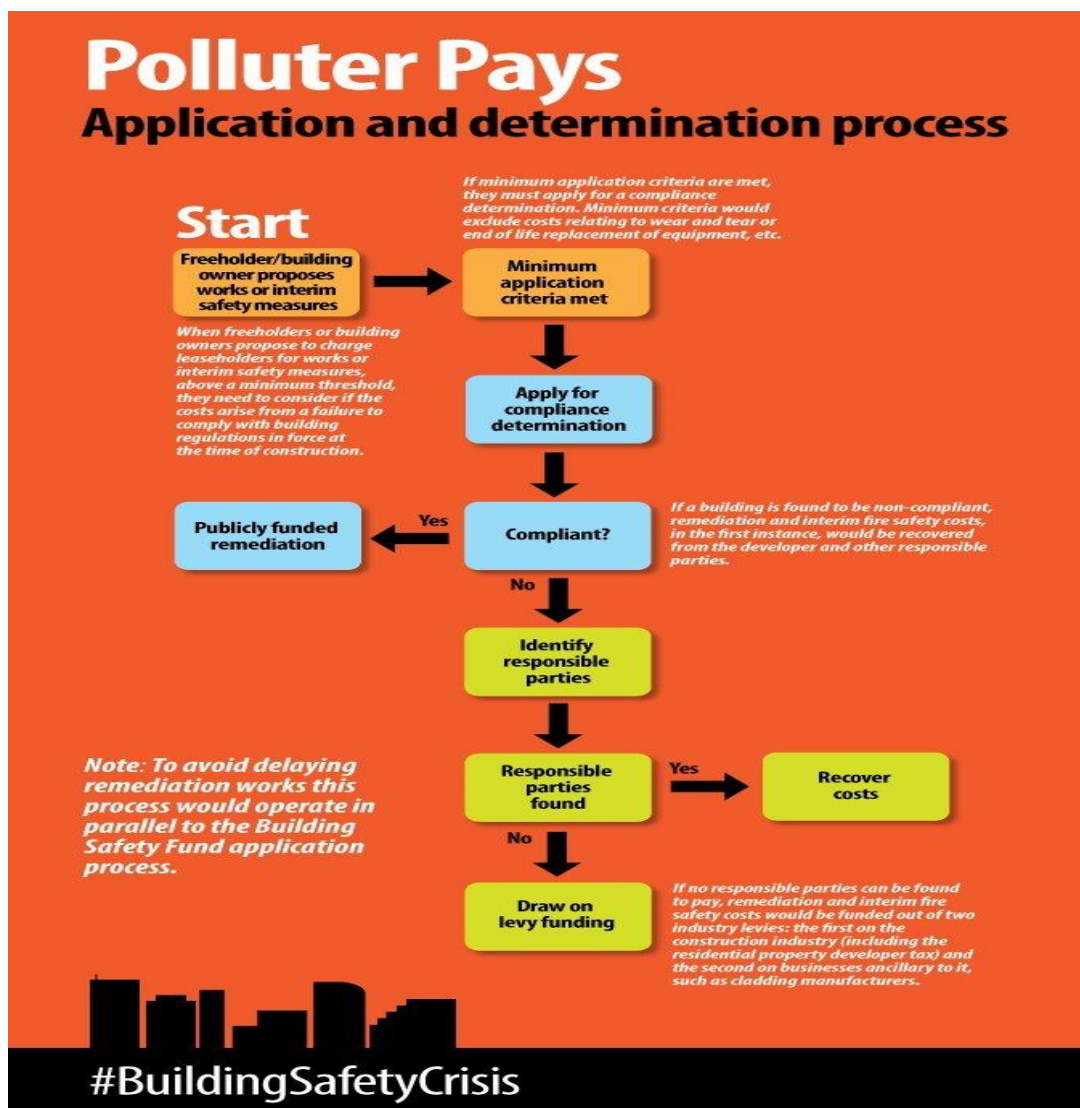
(b) The “Polluter Pays” bill

An alternative solution has been put forward which is based upon existing legislation under the Environmental Protection Act 1990. This establishes a statutory framework for the recovery of remediation costs from responsible parties where a building is found not to have been constructed in accordance with building regulations at the time of construction.

This bill is in my view the fairest way to apportion liability for those responsible for the crisis. It reduces burden on the taxpayer, makes sure that those responsible are held to account, ensures that there is full financial redress for leaseholders (including for interim safety measures) and adds more money to the £5bn pot for remediation.

Campaigners have worked with parliamentary counsel Daniel Greenberg to draw up the Polluter Pays bill, which already has attracted a lot of industry support. Lord Greenhalgh also recently stated that he was very aware of this bill, and was “*looking at it very carefully*”.

The diagram below demonstrates how this works in practice:



I. Conclusion

It is crucial that those at fault pay their dues and liability is completely removed from Leaseholders who are the only innocent party (which includes the payment of other ancillary costs), and it is vital to ensure that building safety standards are adhered to in the future to avoid tragic situations like Grenfell from ever happening again.

The Pre-legislative scrutiny of the draft Building Safety Bill which was published on 19th November 2020²⁰ stated in its conclusions:

“We continue to believe that residents should not bear any of the costs of remediating historical building safety defects and are deeply concerned by the Government’s failure to protect them from these costs. We are especially disturbed by its commitment to protecting them only from “unaffordable costs”. It would be unacceptable and an abdication of responsibility to make them contribute a single penny towards the cost of remediating defects for which they were not responsible”.

This Government has an opportunity now to enshrine leaseholder protection into law, and this must be implemented urgently, otherwise the repercussions will be simply catastrophic.

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²⁰ [Pre-legislative scrutiny of the Building Safety Bill - Housing, Communities and Local Government Committee - House of Commons \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/inquiries-and-publications/pre-legislative-scrutiny-of-the-building-safety-bill/)