

FAO: Building Safety Bill Public Bill Committee

National Housing Federation evidence submission

September 2021

The National Housing Federation and housing associations

1. The National Housing Federation is the representative body for not-for-profit housing associations in England. Our members provide 2.7 million homes to around six million people and reinvest all surpluses back into building more affordable homes and supporting residents and their communities.

Submission overview

2. The National Housing Federation welcomes the opportunity to submit evidence to the Public Bill Committee scrutinising the Building Safety Bill.
3. Alongside our members, we welcome the Bill as an important milestone towards a new building safety regulatory regime that ensures the safety of people and their homes.
4. There are, however, several changes that we believe need to be made to the Bill, in order to ensure the regulatory system can be delivered as effectively as possible.

5. Summary of key changes needed

- We are calling for additional government funding for remedial works and changes to how existing funding is provided.
- We believe that the transition to the new regulatory system should be delivered on an evidence-basis, so that buildings presenting a greater risk come under the regulator's remit first.
- Housing associations will need an appropriate mechanism to gain limited and proportionate access to properties for essential safety works where this is not granted by a resident.

6. This submission also provides comment on specific areas of the Bill that we believe should be amended, together with the amendments that have been tabled to the Building Safety Bill at the point that this evidence was submitted.

Key issues with the Building Safety Bill

Remediation funding

7. We welcome the government's decision, through the Building Safety Bill, to extend the time leaseholders have to bring legal action against developers from six years to 15 years. However, while this has the potential to help some leaseholders, it is unlikely to provide the funding solution that the majority of leaseholders need. It is also unlikely to provide much additional funding for social landlords to recoup the costs of remediating properties in which tenants live.
8. Currently, housing associations cannot access the Building Safety Fund for properties where social housing tenants live. We anticipate that it will cost our sector in excess of £10bn to make safe all buildings that may have safety concerns. In order to prioritise safety, housing associations are diverting money away from providing services to the communities they work with. This will affect the sector's ability to carry out important improvements to the homes of people on some of the lowest incomes in the UK.
9. Remediation costs will also have an inevitable impact on the supply of new affordable homes. Last year, 40% of all new social homes built by housing associations were built without any government grant funding, using charitable funds that will now be used to cover building safety costs.
10. **We support the principle set out in the Bill that a building owner should seek all possible routes to recover costs for remedial works from third parties**, to lessen the financial burden on leaseholders. Housing associations are already working to this principle, but may have no choice but to charge leaseholders if they are not successful in pursuing responsible parties for costs. Housing associations do not believe that leaseholders should have to pay for remedial works to properties that they bought in good faith. But we also believe that housing associations and social housing tenants — through their rents — should not have to pay either. Our members will do everything possible to avoid charging leaseholders for remedial works, but if they aren't able to recoup costs from government funding or from responsible parties, they may have no choice but to charge leaseholders for works.

11. We are concerned about a potential but unintended impact of the requirement in the Bill that building owners claim any government funding for which a building is eligible. Given that the Building Safety Fund is only available to pay for leaseholders' costs, and a condition of funding is that work must start on site by a certain date, the Building Safety Fund inadvertently creates high demand for specialist contractors to work on leaseholders' buildings, consequentially limiting resources available for buildings in which social housing tenants live. **This means the Bill could create a building safety system that prioritises buildings for remedial works by tenure and not purely by risk. We suggest that future iterations of the Building Safety Fund ensure that limited resources are available to buildings on a risk basis.**
12. Overall, the only way to prevent leaseholders and social landlords having to pay to remediate buildings that they did not construct, is for the government to provide upfront funding to remediate all buildings with safety concerns, then claim it back from those responsible for the building's construction. This funding recommendation has strong cross-party support, with **three quarters (74%) of MPs** including two thirds (66%) of Conservative MPs **saying the government should pay the costs of all building safety work upfront¹.**

Transition to the new regulatory system

13. Housing associations are supportive of a new and thorough regulatory regime. The Bill sets out some significant changes, which housing associations have been working for some time to implement. However, the scale of change is great, including the establishment of a brand new regulator with considerable responsibilities for the entire built environment.
14. We recognise that there is a need to adopt a new regulatory regime that is fit for purpose as quickly as possible, but given the scale of change needed, **we are calling for the transition to take place on the basis of evidence, with buildings presenting the greatest risk coming under the scrutiny of the new regulator first.** We would be happy to work with the government and the new regulator to set out what this might look like. **This could include implementation timeframes and key milestones, which would be accompanied by supporting guidance.**

¹ YouGov poll commissioned by the National Housing Federation, April 2021

15. As housing associations prepare for the new regulatory regime, further clarity around the regulator's functions and approach will ensure that the limited time to prepare for implementing new regulations is used as effectively as possible.

Access to properties for essential safety work

16. The Building Safety Bill gives dutyholders clear responsibility for ensuring the safety of all residents in a building.

17. In order to fulfil their responsibilities, landlords might at times need limited and proportionate access to individual flats, to carry out safety inspections or work.

18. While it is welcome that the Bill makes it clear that owners or tenants of individual flats must provide the landlord with access for reasons of building safety, **we do not think the Bill provides an adequate mechanism for enforcing this requirement in the small minority of cases where residents do not comply.**

19. The Bill currently proposes landlords pursue a court process to gain an injunction, and we are concerned about the length of time this process takes, while safety risks to all residents need to be urgently addressed.

20. Where landlords already have statutory safety responsibilities – for example, to carry out annual gas safety checks – in most cases, the resident grants access through mutual agreement. In a small number of cases, access can be difficult to obtain, or the property is vacant and there is no forwarding address for the owner. This has implications for the new regulatory regime, and the safety of all residents of a building.

21. While the Bill sets out a duty for residents to cooperate, and a court process that a landlord can follow to enforce the duty where necessary, we anticipate several issues with the proposed process. As with other injunctions, an order would need to be served to the resident or owner of a property personally, however some properties are empty on a long-term basis — particularly if a leaseholder has been renting out the property — and the landlord or building owner has not provided a forwarding address or contact details. In addition, an injunction does not permit a landlord to gain access to a property, but instead can result in adverse consequences for a resident, such as being found in contempt of court, as a means to deter them from preventing access to their home.

22. We are calling for a workable system that would ensure landlords can quickly access properties on a proportionate and limited basis, in the small minority of cases where access is repeatedly not

granted by residents. This would need to be supported by safeguards for residents.

23. **We believe that the process for serving notice of an injunction should accurately reflect scenarios when a resident is difficult to contact, and a court order should enable the access needed to ensure safety, rather than criminalising the resident of the property.**

Additional areas of interest for the NHF

Expediting changes due in secondary legislation

24. Dutyholder competence

Clarity on the competence and skills expected of dutyholders as soon as possible, potentially as part of the Bill, would enable housing associations to plan for this new role and ensure that their staff have the right expertise when the legislation commences.

25. Building Safety Manager

Similarly, further detail in the Bill on the required competencies and permissible arrangements for the Building Safety Manager role would enable housing associations to continue rolling out training for in-house staff and procuring external expertise.

Building control levy on new higher-risk buildings

26. The Bill will make provision for a new levy on applications for building control approval of higher-risk buildings. As housing associations are not-for-profit organisations, any additional costs and charges in the planning and development process may impact on the supply of new affordable homes.
27. **We believe this levy should not be applied to buildings being developed as affordable housing, nor on buildings being developed by housing associations to cross-subsidise their not-for-profit work.**

Complex building-ownership arrangements

28. Housing associations sometimes own or lease properties in a building where they are not the managing agent or overall freeholder. As residents of these properties have a direct relationship with their housing association, they are likely to look to the housing association for safety information and reassurance.

29. However, housing associations that are part of these ownership structures do not always receive complete safety information from the managing agent or freeholder of a building.

30. We are calling for specific duties on accountable persons to work with other parties that are involved in a building's ownership or management but that are not classed as accountable persons under the Bill, or responsible people under the Fire Safety Act.

Building Safety Charge

31. We support the principle of a separate Building Safety Charge as a means to ensure maximum transparency in service charge billing. However, we believe that the administration required to process a separate charge will create additional costs for leaseholders. We also disagree that it is reasonable to expect such charges to be paid within 28 days. Housing associations typically charge for services on a monthly basis over a 12-month period, based on estimated costs. Any difference between the estimated costs and actual costs is then recouped over several months within the following financial year.

32. We are calling for the Building Safety Charge to be included as part of the existing service charge process, in an itemised form that provides full transparency for residents, and for the timeframe for repayment to be more reasonable.

33. By including charges relating to the new regulatory regime within the existing service charge process, residents appealing these charges in court will also be able to rely on service charge case law.

New Homes Ombudsman

34. Part 5 of the Bill will establish the New Homes Ombudsman, creating a means of redress for homeowners who have bought new-build homes with construction defects. This is an important step in ensuring consumers have adequate redress for defects to their homes.

35. Housing associations also regularly buy homes from developers, often through Section 106 arrangements in the planning system, then rent out these homes to tenants, or provide them as part of affordable homeownership schemes. As a result, we believe housing associations and tenants, both in our sector and the

private rented sector, should also benefit from the potential to gain adequate redress from the original developer.

- 36. We are calling for housing associations, as not-for-profit housing providers, as well as tenants in public and private sectors, to also have access to the New Homes Ombudsman, and to be able to make a claim for redress in line with the process the Bill proposes for homeowners.**

Our view on amendments tabled to the Building Safety Bill

37. Amendments 1-5 and New Clauses 1-7

Tabled by Stephen McPartland MP and Royston Smith MP

- a. Reduce VAT on remediation materials to zero, recover and refund all VAT paid by leaseholders for building safety remedial works since 14 June 2017**
- We support any measure that would lead to a reduction in overall costs to leaseholders and housing associations. However, we suggest that there would be greater financial benefit to both leaseholders and housing associations in government providing upfront funding for all remedial works.
- b. Extend the period within which to obtain the expert evidence required to claim under the Defective Premises Act 1972 and the Building Act 1984 to up to 1 year (instead of the 90 days in the Bill)**
- We support the government's intention – by extending limitations on the Defective Premises Act – to enable leaseholders and building owners to recoup remediation costs from those responsible.
 - However, we are doubtful about the extent to which building owners and leaseholders will benefit from this extension of limitations, due to the prohibitive costs of legal fees and the possibility of the original developer having ceased trading. A fairer option, and one that would expedite outstanding remedial works, and address some of the implications of the building safety crisis on the housing market, would be for the government to provide upfront funding for all remedial works.
- c. Empower the government and local authorities to designate dwellings with cladding and fire safety defects as defective and provide grant support for remediation funded by 'levies on developers, insurers, etc.'**

And:

- d. A comprehensive fund should be established to provide grants to remediate cladding and fire safety defects of all descriptions, paid for by levies on developers, building insurers and mortgage lenders**
- We support the principle of this amendment, in that the developers responsible should pay for remediation.
 - As charitable providers of affordable housing, housing associations also bought homes in good faith from developers, and should therefore have access to grant funding drawn from any levies.
- e. Require all new houses and flats to be built and renovated, to reasonable standards of quality and compliant with building regulations. Extend new build warranty limitation periods to 25 years**
- We support any measures that would ensure homes are built to a high quality and give greater powers of redress to people and housing associations who have purchased properties from developers.
- f. Make arrangements for mandatory buildings insurance on all properties**
- We agree that it is important for buildings to be insured against damage. Some building owners, including some housing associations, choose to self-insure their buildings against some forms of damage, in order to provide a cost-effective option for residents. Any change to buildings insurance requirements would need to take the practice of self-insurance in to account.
- g. Place a time-limited duty on the Secretary of State to consider providing funding for cladding and fire safety remediation and for Parliament to approve the plans for doing so**
- We support measures to prevent leaseholders having to pay for remediation costs. As charitable providers of affordable housing, housing associations should also be eligible for any remediation funding.

Contact us

We would welcome the opportunity to discuss these issues in more detail. To get in touch, please contact the NHF Public Affairs team at PublicAffairs@housing.org.uk or 020 7067 1051.