



Llywodraeth Cymru
Welsh Government

Safer buildings in Wales

Consultation Response Form

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We are a cross party Senedd Committee, compromised of Members from across the political parties represented at the Senedd. Our consultation response has been unanimously agreed. Our Committee will cease to exist at the point of dissolution, but we are encouraging our successor committee to continue to take a close interest in these important matters.

We have taken a close interest in matters relating to fire safety since the horrific events at Grenfell. At times we have been frustrated by the slow progress in responding to some of these critical and urgent issues. But we welcome the comprehensive White Paper, and the recent improvements to building safety that will be brought forward via the Fire Safety Bill at Westminster.

To inform our consultation response, we took evidence from a range of key stakeholders in February 2021, including representatives from the three Fire and Rescue Services; NHBC, LABC, RICS, ARMA and Warwick Estates. More details are available on our [webpage](#). We also held focus groups with residents and leaseholders from across Wales. The summary note of these discussions is available [here](#).

Our response is also firmly rooted in the evidence we have collected over the last three and half years, and in particular the evidence we collected for our 2018 report into [fire safety in high rise buildings](#). We are particularly pleased to see that a number of the recommendations in this report are included as proposals in the White Paper. We continue to endorse the full implementation of these recommendations.

Where possible we have linked our responses directly to the consultation questions, however there are a number of other areas that we also wish to highlight. They are included at the end of the response.

Section 5: Setting out the Scope of the Building Safety Regime
<i>Q 1. Do you agree that the Building Safety Regime in Wales should apply to all multi-occupied residential buildings with two or more dwellings? Please support your view.</i>

Yes. All of the evidence we received was clear that all multi-occupied buildings should be covered. In fact, we heard evidence that suggests the scope should be widened. We reflect on that below. We are aware that the breadth of the scope may carry some resourcing issues which we highlight later in our response. However, we believe these are issues that can be managed, providing the relevant organisations, and particularly those in the public sector, are supported to manage their resource effectively (including providing further financial support where relevant.)

Q 2. Do you agree that there should be two 'Risk Categories' for the Building Safety Regime? Please your views.

While two categories makes sense, and ensures that the system is simple and easy to understand, we heard concerns that there was a potential for “gaming of the system”, where a property could be intentionally designed to be just below the height threshold that would make it a Category 1 building. We discuss this further in our response to Questions 3 and 4.

We also note that by having only two categories, buildings that may have tens of dwellings over, for example four floors, will have the same requirements placed upon them as a two storey building with two dwellings. There is possibly a need for more sophistication in the system which would acknowledge that the impact of a fire in the larger builder could be more complex and difficult to tackle than one in a two dwelling property. This was an issue that was raised by a number of stakeholders, but in particular by residents.

As a result, we believe it may be worth amending the scope of Category 1 buildings to also include the number of units as well as the height and number of storeys. This would still ensure a simple, and easy to understand system, but would ensure that buildings with potentially hundreds of residents are covered by the stricter requirements outlined in Category 1.

Q 3 .Do you agree with the proposed scope of Category 1 buildings? Please support your view.

Q 4. Do you agree with the proposed scope of Category 2 buildings? Please support your view.

As we set out in our responses to questions 2, 6 and 7, we believe there is evidence to support the expansion of both categories. We think this is particularly important in relation to the stricter regime placed upon category 1 buildings. We believe that the number of individual units within the building should be added as part of the scope for Category 1. We have not taken sufficient evidence to come to an informed view on how many units, but believe it should reflect the additional complexities and risk factors associated with a building with a high number of units and residents.

We would also like to see changes to the height requirement of Category 1 buildings. The Fire and Rescue Services (“FRS”) highlighted the possibility for developers to “game” the system, with a developer constructing a building that is 17.9m, to enable it to fall under category 2, with less stringent

conditions for design, construction and occupation. A FRS proposed changing the categorisation so that it was just “six floors and above” and removing the reference to 18m.¹

Both RICS and LABC agreed with the FRS. RICS told us that the 18m criteria was “becoming a bit of an indefensible position”, highlighting that risk happens at all levels. They wanted to see Category 1 to be “a much more general term”, and that broadening out the scope should not just be written off “because over 18m is the only thing we can deal with.”²

LABC also acknowledged the massive resource implication of broadening the categories. They felt a bigger opportunity would be missed if the scope was not broadened out further. [This also relates to some of the issues highlighted in Q6 below.] LABC highlighted that in terms of the current category 1 definition this would likely only amount to around five to six new buildings a year.³

We believe the scope of category 1 should be amended to remove the height requirement. We believe that the different level of scale to the issue in Wales, compared with England, provides an opportunity to make the system more robust, and broader than that in England.

Managing agents also suggested the need for changes to the scope, saying that in some places the proposed regime is “a little bit too much” but that in others it is not stringent enough. They highlighted the potential impact on smaller sites where you may only have two units, and the resourcing impact would be greater than a site with a significantly higher number of units.⁴ They suggested categories more akin to Option B as set out in paragraph 5.4 in the White Paper. They also suggested that increasing the number of dwellings from two to five (as proposed in Option B) had “a certain sense.”⁵

We also think this would meet the wishes of stakeholders to broaden out the scope more generally, but in a way that was manageable within the current capacity issues in the system.

Widening the scope of Category 1 buildings may address the concerns we heard from residents of the impact of living in block that is less than 18m in height or 6 storeys, but is still a tall building with multiple units and the increased risk of a significant impact on a large number of people if there were to be a fire that breaches compartmentation.

¹ ELGC Committee, 25 February 2021, RoP [11]

² ELGC Committee, 25 February 2021, RoP [133]

³ ELGC Committee, 25 February 2021, RoP [137]

⁴ ELGC Committee, 25 February 2021, RoP [241]

⁵ ELGC Committee, 25 February 2021, RoP [243]

Q 6. Do you agree with the exemptions as set out at Figure 6? Are there any other categories of building that should be included within the scope of the regime during occupation? Please support views

As we have highlighted above, stakeholders felt that an opportunity was potentially being missed to broaden out the scope to include other high-risk buildings. We wish to draw this evidence to the Government's attention:

- South Wales FRS said they would like to see "hospitals, care homes and premises that fall under the specialised housing guide" brought into scope.⁶
- RICS said they believed it should include care homes, and hospitals.⁷
- LABC agreed, and said it should capture "multistorey schools, hospitals....your sleeping-risk buildings, there are a multitude of buildings where we've got occupancy risks that we're not considering."⁸

Q 7. Do you think that any extra measures should be taken as regards single flats above high-risk premises like restaurants and takeaways? Please support your views.

Yes, we believe more measures should be taken for these types of properties. Each of the FRS highlighted that these types of premises formed "quite a bit of our work"⁹, that they are "a high risk area"¹⁰ and that they are a "key focus".¹¹ In light of this consistent evidence from the FRS, and the already very broad scope of the regime, we believe these types of properties should be brought into the regime.

Q 8. Do you have any other comments on the issues we have raised in this section?

We refer to our comments below about the resourcing and financial implications that have been highlighted by stakeholders in their evidence to us, in relation to the scope.

Section 6: The Building Safety Regime (Design and Construction Phase)

Q 9. Do you agree that a consistent approach with England to the information set out in the Golden Thread and Key dataset is appropriate? If no, please support your views

Yes, the evidence we heard highlighted the importance of consistency, especially because most developers work cross-border.

We very much welcome the proposals for the Golden Thread for all Category 1 buildings, which we know will be invaluable to regulators, managing agents, fire and rescue services, residents and leaseholders. It is also important that this information is readily available to those who need it, in particular residents and leaseholders. It was suggested to us that the Golden Thread

⁶ ELGC Committee, 25 February 2021, RoP [16]

⁷ ELGC Committee, 25 February 2021, RoP [135]

⁸ ELGC Committee, 25 February 2021, RoP [137]

⁹ ELGC Committee, 25 February 2021, RoP [18]

¹⁰ ELGC Committee, 25 February 2021, RoP 20]

¹¹ ELGC Committee, 25 February 2021, RoP [22]

information from the design and construction phase, along with that for the occupation phase, could be made available on a digital portal, enabling easy access.

Q 10. Do you agree that it is appropriate for all buildings within scope of the Building Safety Regime to provide information in relation to the key dataset? Please support your views.

Up-to-date, accurate information about a building is absolutely vital. As we highlighted in our [recent correspondence](#) to the Minister for Housing and Local Government on the on-going legacy issues, leaseholders are being quoted large sums of money just to obtain basic building information which is needed to make decisions about remedial work for fire safety.

South Wales FRS told us about the importance of how that information will be shared and made available. They highlighted the range of different platforms and formats used by local authorities and fire and rescue services, and the need for the most up to date information to be “put on platform” so that initial crews can access it.¹²

While welcoming the Golden Thread, we believe this could go even further, in particular to maximise accessibility to the information to residents and leaseholders. We note the recognition in paragraph 6.2.4 of the White Paper that “some basic information is helpful as a public record....” and that this will be defined with the Key Dataset. There should be certification at the end of the construction phase which states that a building complies with the building safety standards that applied at the date of construction. Such a credible completion of works certificate, could also state who is legally liable for what elements of the construction, and could be logged with the Land Registry, ensuring ease of access for anybody who wished to see it. This could also be provided to leaseholders on purchase of their property.

Section 7: The Building Safety Regime (Occupation phase)

Q 35. Do you agree that there should be a single and clearly identified Accountable Person for all premises covered by the Building Safety Regime?

Q 37. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an Accountable Person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.

Q 38. Do you agree that the default position should be that the Accountable Person is the freeholder?

In our evidence on 25 February 2021, and our previous work on this issue, we heard how important it is to know who is responsible for a building. The FRS said that historically under the Fire Safety Order, it has been “very difficult to pin down the responsible person...”. They also highlighted the complexities of building ownership and management for these types of buildings, and that

¹² ELGC Committee, 25 February 2021, RoP [44]

currently they can “spend an inordinate amount of time and legal involvement in trying to pin down responsible persons.”¹³

However, when we explored this issue in more detail, while all were supportive of the principle, some stakeholders had concerns about the detail within the White Paper. In particular, that in the absence of anyone being nominated, the freeholder will be the Accountable Person. ARMA pointed out that the freeholder may “just be the person who owns the land and has no influence on the building.”¹⁴ To add to this complexity, we heard from a leaseholder that across their single development, there are seven different freeholders.

ARMA also suggested that people or groups who could be in a position to undertake work, such as a residents management company, may not want the responsibility, and so will be happy for it to default to a freeholder who “has no means of recovering costs that are suddenly being put on” them.¹⁵ They suggested this area of the White Paper needs more careful thought, and we would support this.

Linked to this, we are also aware of certain types of properties that will fall under the new regime, where it may be difficult to identify an appropriate Accountable Person. In particular we are thinking about small multi-occupied buildings, of which there are many within the South Wales Valleys. These buildings are not managed by a management company, and it is unclear who would take on the role of AP, considering the additional legal responsibilities, and potential costs that may be incurred. In drawing up more detailed proposals we would ask the Government to consider the potential implications for the proposals on these types of properties.

Q 48. Do you agree with our proposed overall purpose of a fire risk assessment? Please support your views

Q 50. Do you agree that a fire risk assessments must be reviewed annually, and whenever premises are subject to major works or alterations for all buildings within scope?

Q 51. Do you agree that only a suitable qualified and experienced fire risk assessors should undertake fire risk assessments for buildings within scope? Please support your views.

Q 52. Do you agree that fire risk assessments must be permanently recorded?

We strongly support the strengthening of requirements for a Fire Risk Assessment in the White Paper. In our [2018 report](#), we recommended that legislation be brought forward urgently to replace the Fire Safety Order 2005. We called for the new legislation to place a requirement for annual fire risk

¹³ ELGC Committee, 25 February 2021, RoP [55]

¹⁴ ELGC Committee, 25 February 2021, RoP [223]

¹⁵ ELGC Committee, 25 February 2021, RoP [223]

assessments, and should set standards for people undertaking fire risk assessments.

On 25 February 2021 we explored with stakeholders their views on whether the person undertaking the assessments should be independent of the building owner, manager or residents. We heard different views. ARMA suggested that it should be someone independent “if only to give leaseholders reassurance that what’s been done is correct, because if you have a firm, even a subsidiary of a firm, certifying its own system, that can never feel right”¹⁶

Warwick Estates, who already do regular fire risk assessments in-house, said that the priority should be on the competency levels of the people undertaking them. They said that at the moment, the Health and Safety department “almost work as a separate department” within the company.¹⁷ This was a view supported by South Wales FRS who did not think it mattered who undertook the assessments “provided they’ve got the necessary skills and qualifications.”¹⁸

We believe that the fire risk assessments should be undertaken by those totally independent of the building owner, manager or residents. This will help instil confidence in the assessments.

In terms of qualification levels, Warwick Estates said they were working to get everyone to “level 4” which they told us is “very similar” to a Fire Risk Inspector within a fire service.¹⁹ A FRS representative suggested there could be national registration, along the lines of that for electricians or gas engineers (they also noted the Institution of Fire Engineers already have a voluntary fire risk assessment register).²⁰ North Wales FRS expressed surprise that there was not more detail on potential competency levels, highlighting that competency was one of the “key stones” of the Hackitt report.²¹

We also heard concerns about capacity within the system, and how experienced staff in the public sector may be attracted to the private sector as there’s “more money to be made providing risk assessments.”²² We explore the issue of capacity later in our response.

We also think it is important that further consideration is given to who will be liable for the costs of these annual fire risk assessments. If the policy intention is that residents / leaseholders should not be liable, this needs to be clearly

¹⁶ ELGC Committee, 25 February 2021, RoP [227]

¹⁷ ELGC Committee, 25 February 2021, RoP [229]

¹⁸ ELGC Committee, 25 February 2021, RoP [67]

¹⁹ ELGC Committee, 25 February 2021, RoP [231]

²⁰ ELGC Committee, 25 February 2021, RoP [69]

²¹ ELGC Committee, 25 February 2021, RoP [73]

²² ELGC Committee, 25 February 2021, RoP [73]

and explicitly set out either in the legislation or the guidance and documentation underpinning it.

Such assessments should be kept and made available to residents and leaseholders. We have repeatedly heard from residents and leaseholders about the difficulty in getting hold of basic building safety information. We therefore believe it is important that such information is made easily accessible for residents and leaseholders as well as for enforcement bodies.

Q 56. Do you agree with our proposal to create duties with regards to compartmentation on Accountable Persons? Please provide information to support your views.

Q 57. Do you agree with our proposal to create duties with regards to compartmentation on residents? Please provide information to support your views.

From the outset of our work, we have highlighted the importance of maintaining compartmentation in ensuring fire safety. Building owners, managing agents, leaseholders, contractors and residents all have their part to play. We therefore support the proposal to create a new general duty to maintain compartmentation in all buildings within scope of the Building Safety Regime. The residents and leaseholders in our focus groups supported the need for a legal duty to be placed upon residents to maintain compartmentation.

Our focus groups with residents and leaseholders also identified the complexities around knowing who is actually living in a property, with the only person knowing this information being the leaseholder. This view was supported by ARMA. They said that despite what might be written into a lease, people will make internal changes to their flat. However, they suggested ways this issue could be mitigated such as “if you’re renting out a flat, like an energy performance certificate every three or five years, you have to have a fire risk assessment done inside the flat, and when you sell your flat, for example.....you need a fire risk assessment done.”²³ We believe this idea has merit and should be explored further.

Q 67. Do you agree that there should be regulation of all residential property management? Please support your views.

We explored this issue in detail in our [2018 report](#), and recommended regulation of managing agents for high rise residential buildings. We felt that this was so critical, that we called for interim arrangements to be put in place, until the long term arrangements could be established. While there are currently voluntary schemes in place, including that run by ARMA, we do not believe that voluntary schemes are sufficient. These schemes are good, but are self-selecting, and only the better end of the market will participate in such schemes. It is imperative that all aspects of the market are brought up to the same high standard, and the best way of doing this is via a robust, compulsory regulatory scheme.

²³ ELGC Committee, 25 February 2021, RoP [235-236]

Tensions between residents / leaseholders and managing agents was a prevalent theme during our focus groups. We heard about the challenge of getting basic information from managing agents, on-going issues about service charges, and general poor customer service. For many buildings there is also a complex system of ownership / management which makes it even more difficult for residents and leaseholders to navigate. We also heard that it can be very challenging to change managing agent, and we believe this issue deserves further exploration by the Government.

Section 8: Residents: Roles and Responsibilities

As we highlighted in our response to Qs 56 and 57, a key challenge can be simply knowing who is currently living in any one property. The only person who knows exactly who is living in a flat at any given point is the leaseholder, who may not themselves live in the block, or necessarily in the same location or country. This can be problematic both for managing agents and other residents, and was raised by both in our evidence.

In our focus groups, the distinction between a resident and leaseholder was also highlighted. Some felt that the White Paper makes an assumption that this will always be one and the same person, and that it is important to make the distinction between resident leaseholders; leaseholders who do not live in the property; and non-leaseholder residents.

Q 71. Do you agree that this information should be provided in a way that is accessible and understandable, and should where relevant reflect the specific needs of residents? Please support your views.

Q 73. Is there any other information that an Accountable Person should be required to provide on request? Please provide information on the two different categories of building if relevant.

We would refer to our response to Q10. It is important that building safety information is readily available to residents and leaseholders in a way that is easily understandable. There should be no gatekeeping of this information.

We heard from residents and leaseholders about the anxiety that can be caused by having little or no information about basic issues relating to building safety. It is important that this information is available to both leaseholders and non-leaseholder residents. We believe the digital portal would help with this, but there are also basic, old fashioned ways of sharing information such as notice boards in communal areas, and maildrops that can be effective.

Q 77. Do you agree that there should be a new requirement on all residents of buildings within scope to co-operate with the Accountable Person (and their appointed representative) to allow them to fulfil their duties under the Building Safety Regime? Please support your views.

Q 78. Do you think there should be any specific requirements to facilitate this? Please support your views.

Q 80. Do you agree that there should be a new requirement on all residents of buildings within scope not to knowingly breach compartmentation? Please support your views.

There was clear support for these proposals from the residents and leaseholders we spoke to. They all acknowledged that residents have an important role to play in maintaining the safety of buildings. In terms of how this could be facilitated, this is more complex. It comes back to the issues about it not always being clear as to who is living within each individual flat. We would highlight the suggestions made by ARMA which we reference in our response to Q56 and 57.

Concerns were raised about how it could be enforced, for example currently if there is a leasehold breach, it can be incumbent on the other leaseholders to take action against an individual. Leaseholders suggested that this could cost of upwards of £10,000 to take action against one person.

Residents and leaseholders also highlighted the need for clear enforcement if duties are being breached by other residents. They suggested that local authorities needed to be empowered to enforce such rules fully.

The FRS welcomed the prescriptive nature of these duties; but also said they would be difficult to regulate. In particular they said residents may not have the “technical knowledge” to know if they have breached compartmentation. They said the onus should be on the accountable person to do “periodic compartmentation checks” to ensure overall compliance.²⁴ We can see the merit in this, and it links back to the suggestion made by ARMA for a regular Fire Safety Certificate for individual dwellings, as referenced in our response to Q56 and 57.

Q 83. What roles and responsibilities are appropriate for Accountable Persons with regards to people who cannot safely self-evacuate? Please support your views.

Q 84. Should Accountable Persons be required to collate details of all those who would require assistance?

Q 85. Should Accountable Persons be required to provide this information immediately to the FRS in the event that an evacuation was necessary?

In our [2018 report](#), we reflected on the evidence we collected about high rise residential buildings in the social housing sector on this issue. We heard that social housing providers tend to keep PEEPs, which were held within the

²⁴ ELGC Committee, 25 February 2021, RoP [61]

building in a location known to the FRS. We welcomed this approach. However, when we explored the feasibility of this within the private sector, we heard mixed evidence. While some felt they were useful, others highlighted the limitations, as they do not necessarily take account of temporary issues that may affect mobility or whether people are in the building at a given time. We heard this highlighted again in our evidence on the White Paper. One of the FRS said that the crux of the issue was ensuring buildings were built to standard.²⁵

In 2018, we were also told there were additional barriers because the relationship between a leaseholder and managing agent is different to that of a tenant and a social housing provider. Notwithstanding this, we wanted further exploration of how the concept of PEEPs could be encouraged and supported in the private sector. This is still our position. However, we would highlight the practical concerns raised by ARMA. As we have referred to repeatedly through our response, there are concerns that ultimately the only person who knows who is in an individual flat will be the leaseholder. ARMA believed that the responsibility to inform the fire brigade on these issues should be on the leaseholder.

OTHER ISSUES

As we note at the outset, there are a number of issues which do not necessarily fit with any of the individual questions, but we think are important and relate to the proposals within the White Paper.

Resourcing

One of the common themes we heard from all the respondents was the impact of the new regime on resources. This is a multi-faceted issue that would have different impacts on each of the main groups or organisations involved in the proposals.

Fire and rescue services

Clearly the introduction of such a regime, and the increased role for the FRS, both in the design and construction; and occupation phases, as well as the changes to the Fire Safety Order, will have a significant impact on each FRS. All of the services told us they were very supportive of the scope of the regime, and wanted to see it extended (see our responses to questions in Section 5.) But they all also highlighted the impact that it would have on their resources, including on other aspects of their work. It is clear that further consideration needs to be given as to how the FRS will be resourced to support this new work stream, and in particular the extension of scope of buildings in which they will be involved in regulating to some extent.

As well as the issue of having the resources to fund and support these additional workstreams, they highlighted that the expertise of their staff will be in higher demand, and that it is possible they will find it more difficult to both

²⁵ ELGC Committee, 25 February 2021, RoP [92]

recruit and retain staff – many of whom may be offered more attractive remuneration packages in the private sector.

They also highlighted that they may have to redirect their limited resources, citing as an example potentially having to scale back on “traditional community safety activities” where people, including residents and accountable persons, may seek advice on general fire safety.²⁶

They also cited concerns about the analysis in the Welsh Government’s economic impact assessment, which indicates that one to two FTE equivalent fire officers would be needed. They said that while it may be sufficient for the regulatory aspects of the regime, they felt that there is a whole host of resource implications arising from the proposals in the White Paper that are not captured.²⁷

Building Control

Much like the FRS, the representatives from the building control sector, both public and private, generally welcomed the new regime. (Although they had differing views on other aspects of the White Paper, which we highlight below.) However, they also highlighted the issue of capacity within the sector. In our report on [building safety in the private sector](#), we highlighted the evidence about capacity issues, particularly in the public sector. We heard that the impact of austerity has hit local authority regulatory services hard. We were told that there were not sufficient resources to undertake the sorts of regular site inspections that can often identify issues during the construction phase. We called for further consideration to be given to the resourcing of LABC to ensure they could undertake more regular and unannounced inspection visits. We also recommended that there should be changes to the regulation system which would provide for more regular on-site inspections during the construction stage by LABC.

We heard that one of the big issues within LABC will be the “upskilling, the training, the competency”, in addition to the need for additional resources.²⁸ While it is not envisaged that the number of Category 1 buildings, as currently defined will be significant, the regime will lead to more checks, consultation and liaison; all of which take time and resources. In particular, we heard that there is a need to focus on “succession planning” due to the demographic of the workforce, and because some staff have moved into the private sector.²⁹

In addition to the service areas outlined above, we would also anticipate additional demands on local authorities, over and above their building control

²⁶ ELGC Committee, 25 February 2021, RoP [30]

²⁷ ELGC Committee, 25 February 2021, RoP [31]

²⁸ ELGC Committee, 25 February 2021, RoP [103]

²⁹ ELGC Committee, 25 February 2021, RoP [103]

functions. For example, environmental health services will have significant involvement in the new regime.

Both NHBC and CICAIR raised concerns about the resourcing impact of prohibiting the use of Approved Inspectors (“AIs”) for Category 1 buildings. NHBC highlighted that they already have a major projects team which deals with such buildings on a “daily basis” and that they are “constantly being upskilled and also assessed.”³⁰

LABC confirmed that there are 30 officers within Wales who currently have “increased competency levels” - Level 6 fire safety validation. They felt that there was adequate resourcing for Category 1 buildings, but that as these are often the most senior members of a team and are the closest to leaving the profession, their concerns are around the training of newer or new members of the profession.³¹

We also heard from RICS that it can be more challenging for those working in the public sector to access training than it is in the private sector.³²

CICAIR stated that there will be a need for a “significant” increase in appropriately qualified surveyors to join the sector, as well as the need for continuing professional development to ensure professionals are kept abreast of the ongoing developments. They stated that AIs have played a significant role in this training and CPD, but that with a “local authority monopoly” on Category 1 buildings, there will be “no incentive” for the private sector to recruit or train surveyors with these skills or experience. They believe the “negative” message of restrictions on the use of AIs for Category 1 buildings will have a “serious negative impact on both capacity and competence.”³³

Managing Agents

We heard general concerns about the costs of the proposals and that ultimately they would fall on leaseholders.

We heard specific concerns about the Building Safety Manager role. Warwick Estates highlighted that the competencies for that role were “quite high level”; and that ultimately the costs would be borne by the leaseholders, suggesting that management fees “will go up...”³⁴ ARMA said that the estimates they have seen for the Building Safety Manager role were “optimistic”.³⁵

ARMA also highlighted the degree of prescription being proposed within the new regime might make the costs “untenable” for leaseholders.

³⁰ ELGC Committee, 25 February 2021, RoP [106]

³¹ ELGC Committee, 25 February 2021, RoP [110]

³² ELGC Committee, 25 February 2021, RoP [114]

³³ [FS WP 9, CICAIR written evidence](#)

³⁴ ELGC Committee, 25 February 2021, RoP [285]

³⁵ ELGC Committee, 25 February 2021, RoP [300]

Leaseholders and residents

The issue of resources for leaseholders and residents was primarily around the financial impact. Strong views were expressed in our focus groups, including that building safety issues had actually proved to generate profit for managing agents, contractors and others involved in the process, with leaseholders ultimately footing the ever-increasing and unfeasibly large bills. There was understandable anger that they are faced with, in some cases, insurmountable costs, for issues that were not their fault, and should not be their responsibility. We have [written to the Minister](#) about the on-going issues in existing buildings. In relation to the White Paper, we think it is important that it is clear who will be responsible for paying for each element of the proposals. Ultimately, if this is not expressly stated, we know it is likely to be the leaseholder who faces being charged. While this may be where the financial cost should sit for certain elements, it should not be automatically assumed, and an active decision should be made as to who should be financially liable.

During the focus groups, residents and leaseholders told us that the recent experiences of having to cover much of the financial costs of remedying defects post Grenfell could impact the implementation of the proposals. While the spirit and intention of the proposals were good, they said that residents and leaseholders may be very reluctant to identify further issues, if it will result in more and extensive financial cost to them.

RESTRICTION OF APPROVED INSPECTORS FOR CATEGORY 1 BUILDINGS.

In our [2018 report](#) we recommended that the Welsh Government “urgently” change the regulatory framework to only allow LABC to act as the regulator for high rise residential buildings. In making this recommendation, we stated that LABCs should be able to appoint AI’s to undertake the work on their behalf. This remains our position now, and we welcome the proposals in the White Paper. We continue to believe that it is not appropriate for a company to be in a position to choose their own regulator, with all the conflicts of interest that could then arise.

However, we would like to draw the Government’s attention to the evidence we received from representatives from the private sector, who believed that this restriction of AIs would reduce capacity and expertise within an already stretched system. Both NHBC ³⁶and CICAIR³⁷ highlighted concerns about this issue in their evidence to us.

ENGAGING WITH RESIDENTS AND LEASEHOLDERS

Throughout this Senedd session, and through our extensive work on housing both in terms of policy and legislative scrutiny, we have continued to encounter

³⁶ ELGC Committee, 25 February 2021, RoP [125]

³⁷ [FS WP 9, CICAIR written evidence](#)

significant challenges in engaging with tenants and residents in the private sector. There are reasonably robust tenant and resident engagement structures within the social housing sector, but there appears to be a lack of similar structures in the private sector. We are aware of work done by organisations such as TPAS Cymru and Tai Pawb to improve engagement with people living in the private rented sector. This issue was raised in our sessions with residents and leaseholders, and we believe that it is an important issue that needs further work by the Welsh Government.

MEDIATION STRUCTURES

During our focus groups with residents and leaseholders we were told of countless times where they have faced difficulties with those responsible for managing where they live. As we have highlighted in Q67, it can be very complex and difficult to change a managing agent. There are also few easy avenues for residents and leaseholders to seek redress. We were told of the need for a short, snappy, non-court mechanism to get issues related to building safety addressed and considered by an independent body. We believe there is merit in further investigation of approaches which could range from localised mediation to an Ombudsman style model to help deal with these cases.

MINISTERIAL ADVISORY GROUP

Residents and leaseholders suggested to us that a Resident and Leaseholder Ministerial Advisory Group could be established to provide a way of testing how the implementation of the finalised proposals is actually working. We believe this would have real merit, and would demonstrate that the Welsh Government was placing the concerns, views and experience of residents and leaseholders at the heart of the response to the on-going issues.