

Building safety - Summary note of engagement

4 March 2021

Background

As part of the Equality, Local Government and Communities Committee's scrutiny of the Welsh Government's Building Safety White Paper, the Committee facilitated a series of online focus groups with owner-occupiers, tenants and landlords across Wales.

Methodology

The Citizen Engagement Team proposed a qualitative approach to the engagement, comprising a series of online focus groups to explore the experiences and views of participants.

4 online focus groups were arranged involving **22 participants** from **all five Senedd regions**.

Participants were sourced through a number of relevant organisations including, but not exclusively, the Chartered Institute for Housing, TPAS Cymru, the National Residential Landlords Association and a number of residents' associations across Wales.

Format

The online focus groups took place on Microsoft Teams on 4 March 2021. Each session was chaired by a Member of the Senedd and involved between 4 – 6 participants..



Summary of key themes

Financial impact

A theme which permeated discussion across all focus groups was the financial impact on residents, of addressing building defects. Costs cited were not merely confined to rectifying tangible building defects, but other associated costs such as increased insurance premiums and legal costs. Leaseholders participating in the sessions explained that some costs have been met by developers.

“We’ve spent a million on legal fees to be told we have no legal claim. So we can’t pursue developers or contractors. We’re constantly handing over cash and getting nowhere. Where does the freeholder and managing agent fit in?”

Focus group participant, Cardiff.

“We’ve seen an increase in service charges, insurance and health and safety costs. The leaseholders who bought their property in good faith are suffering and expected to foot the bill.”

Focus group participant, Swansea.

“We’re living in potentially dangerous buildings and four years after Grenfell, we should be putting these buildings right. But until funding is in place so that the freeholder won’t just pass on huge bills to leaseholders, this won’t get resolved.”

Focus group participant, Cardiff.

“Our developer hadn’t complied with regulations at the time of the build so we’re missing fire breaks and have flammable insulation – the part behind the cladding is causing the issue. It’s been going on for 18 months and I’ve personally paid in the region of £3,000 in relation to waking watch, installation of new alarms and our ten-fold increase in insurance.”

Focus group participant, Cardiff.

Issues posed by the EWS1 (External Wall System) process and the ramifications for leaseholders in buildings not awarded certification, were discussed at length by participants. There was a reluctance to navigate the EWS1 process amongst some participants, due to the perceived inevitability of increased costs likely to be borne by leaseholders.

“We’ve still not done an EWS1 survey. Four years after Grenfell, why has this not been done? It’s because of the dire consequences. From the day you do it, you are at risk of the cost of waking watch, increased insurance premiums and remedial costs. We know our building will fail, so you’re opening up leaseholders to such enormous costs, that people are avoiding pressing the button on that.”

Focus group participant, Cardiff.

“As a leaseholder and voluntary director, you have your full obligations and duty to all residents on site, but also carrying all legal responsibility for any action you take when it comes to incurring costs for residents. So you’re very aware of the response if you do get an EWS1 and get a fail because you’re subjecting residents to extensive remedial bills, and costs due to waking watch and fire alarms.”

Focus group participant, Cardiff.

“Residents have got to pay for re-certification. Why? We’re looking at £120,000 to conduct an EWS1 every five years when there’s been no material change in the building. Surely it should only happen if something happens to make it necessary? EWS1 is being driven by the mortgage market, and therefore it carries a premium with it because it’s a commercial product.”

Focus group participant, Cardiff.

The continuing and significant cost implications associated with rectifying building defects is having a serious and damaging effect on the mental health and wellbeing of residents and leaseholders.

“There’s a considerable amount of stress amongst people who live here because of the conditions we live under and the uncertainty of what it will cost us and when it will get remedied.”

Focus group participant, Swansea.

“Whether you’re a leaseholder or otherwise, you’re trying to prioritise so many things. Do you sort out a slight discrepancy with a fire door or do you have a look at the whole fabric of the building? For people who have bought flats, they don’t have the money to do all of this.”

Focus group participant, Cardiff

“We hear horror stories of people suffering with their mental health, people desperate to move but can’t sell.”

Focus group participant, Swansea.

Accountability

Accountability, or lack thereof, was a theme which emerged during discussion across all focus groups. Participants conveyed feelings of frustration and helplessness, that parties involved with the construction, maintenance, management and safety of buildings, eschewed responsibility for building safety issues.

“Accountability is key. We have sign-off from the various organisations involved with the building, from insurers to the council, but no one is accepting responsibility.”

Focus group participant, Swansea.

“There’s been no advice from anyone about how this is managed. We’re left with a management company that will make a lot of money from these issues. So although people will say the builder is responsible, there’s no way to push it.”

Focus group participant, Cardiff.

“I’m concerned that the proposals create red tape with no accountability. Obviously, the council can’t go into every apartment and validate it, but that’s sort of what we need. What happens when things do go wrong?”

Focus group participant, Swansea.

“I want builders held responsible for putting right what they’ve done. It shouldn’t be down to individuals who bought in good faith. Funding needs to be available.”

Focus group participant, Swansea

Some participants shared the view that certain mechanisms already exist, which should be sufficient to hold the relevant parties accountable. However, a lack of enforceability was raised as a reason why such mechanisms are ultimately, ineffective.

“You don’t need to do anything radical when the build warranty is already in existence. The build warranty describes eight stages of checking during the build process. The problem was that the builder didn’t follow that process. Twelve years down the line, they just shrug it off. The build warranty is perfectly fine, you just need to make it legally enforceable.”

Focus group participant, Swansea.

“To a large extent, most long residential leases are standardised. One of the clauses is that you have to comply with all appropriate legislation, so if any additional legislation comes forward during the lifecycle of the lease, you should be achieving compliance anyway. From my level of knowledge of assured shorthold tenancies, there are similar provisions in reasonably well-drafted assured shorthold tenancies, so I think that sort of situation is covered in existing contractual documents.”

Focus group participant, Cardiff

“We were told there’s no legislative power to stop these developers from continuing to build because we don’t have the legal framework. Secondly, we still haven’t learnt our lesson. They’re still building the same way as before which ultimately means we are perpetuating that situation as we’re continuing to operate as we always have, but expecting to get a different result.”

Focus group participant, Cardiff

Funding

The creation of an indemnification fund, or similar, by the Welsh Government to remedy building safety defects was raised as solution to alleviate the financial impact on leaseholders. Comparisons were made between the UK Government’s approach and the approach of the Welsh Government.

“Until the Welsh Government puts together a building safety fund in the same way the UK Government has, we won’t make headway. The Welsh Government has made a lot of noises but there’s no money on the table four years on from Grenfell.”

Focus group participant, Cardiff.

“Another aspect is this fund that’s coming in to Wales, and I know the Housing Minister has been chasing what it means for Wales. Making sure it’s used to remediate issues of fire protection and historical legacy build defects should be a priority in the first place. If a pot was created through all interested parties and these companies had to contribute to that at an early stage then they couldn’t abdicate responsibility later on.”

Focus group participant, Swansea.

“The Leasehold Knowledge Partnership have put forward proposals on how a fund should be handled. The Government should provide the funding up front and then recover costs from developers. The top five developers have made a ten billion pound

profit since Grenfell. So I think the Government should fund the work up front and put a levy on developers.”

Focus group participant, Cardiff

“If the money comes through from the Welsh Government as promised, why not use part of that to create an indemnification pot so that the large insurance bills we’re facing could be covered. Insurance costs have gone up 600% and we’ve paid a million pounds in additional insurance in the past five years.”

Focus group participant, Swansea

Transparency

Participants explained that they have encountered barriers in accessing information regarding their homes, which hindered their ability to take the requisite steps to ensure building safety. In addition to the significant cost implications of accessing records in some instances, participants emphasised the lack of clarity regarding the location of relevant documentation.

“We have a problem in that we don’t have complete site records. We have the National House Building Council that want to charge us £52,000 plus VAT for copy records before we even start to determine what we have on site. The view from us as a board is that there’s little point entering into EWS1 where we potentially feel we’re going to fail without having a base line starting point of not knowing what materials should have been used in the construction to see whether they even complied with regulations at the time.”

Focus group participant, Cardiff.

“When you develop developments like this, the way you carve it up, makes it hard to chase up who owns and is responsible for what. So in our building the freehold is owned by one organisation, the car park freehold is held by someone else and the ground rent by an agency elsewhere. So trying to chase and follow the money is hard. Loads of people are making loads of money off this.”

Focus group participant, Cardiff.

“As a landlord, trying to get hold of details of the original construction material, suppliers and other information can be very difficult. The managing agents said they never got it from the builders, the builders said they passed it over to the managing agents. The information just doesn’t seem to exist which is a concern.”

Focus group participant, Swansea

In sharing their views on the roles and responsibilities of residents, including the proposals outlined in the Welsh Government's White Paper on Building Safety, participants expressed concern regarding the ability of residents to fulfil their obligations if full transparency is not forthcoming.

"We had a meeting with the council, and were told that plans for our block had been found but it would cost £50,000 to view them. If there are to be responsibilities on residents, there needs to be transparency so that we have access to information."

Focus group participant, Cardiff.

"As a resident, I want full access to all information. I want to know the materials and the suppliers used in the build. My experience is that as you move from ownership to managing agents, the council struggle to find information on our development. Why not log that information with the Land Registry records, along with your covenants and leases? For example, if I need to replace my wooden balcony, I need to know what was there in the first instance so I can replicate it. As it happens, we probably need an upgrade to make it fire proof."

Focus group participant, Swansea.

Participants discussed the challenges posed by developing a resident engagement strategy which would allow for meaningful engagement by all residents.

"In every single common area, put a big notice board up. It might be old fashioned but everyone goes in the lift and everyone goes past the main areas. It's a low tech approach, but it would mean people couldn't put their heads in the sand."

Focus group participant, Swansea.

"On site, we do a monthly briefing to all leaseholders. On top of that, we do fire safety notifications, where we're trying to share what we're finding out as we're going along. We would like someone to spell out what is required and what our duties are, what a leaseholder duty is and what a freeholder duty is. There are blurred lines and the cost and responsibility can be passed from freeholder to leaseholder."

Focus group participant, Cardiff.

"Our association was borne out of managing agents not listening and residents needing to have a collective voice. It's difficult to reach every resident and can't be

entirely inclusive because we don't have everyone's details and there are data protection issues."

Focus group participant, Swansea.

The saleability of properties

Participants discussed the difficulties in selling their property due to building safety issues which are long-standing and show no sign of being resolved.

"Our flats became unsaleable; people can't get a mortgage. We're lucky we've got insurance at a reasonable price, but three companies did decline to quote for us."

Focus group participant, Cardiff.

"Building societies are not granting mortgages to buyers. They're asking questions to managing agents, but because the EWS1 survey hasn't been done, they can't answer and so mortgages are not being granted."

Focus group participant, Swansea.

"The bit that's causing an issue for us in re-selling the flat is with the design of the building. The bedrooms are off-set from the open plan living and dining areas, and so don't have windows to the exterior. We're finding lenders reluctant to lend, partly because of safety issues around not having a fire escape from the bedrooms. The managing agents are appalling and it's difficult to appoint replacements because you have to collate enough leaseholders together, which is difficult as some are buy-to-let owners. I have written to my MS, and the routes to relief for leaseholders are difficult. We're expected to pay upfront costs to change people managing the building we partly own."

Focus group participant, Cardiff.

The innumerable deficiencies in build design and an inconsistent approach to building safety by parties involved or tasked with ensuring building safety, were discussed by some of the focus groups.

"I am on the top floor of an apartment building with a wooden balcony and combustible insulation. I moved to my current apartment block from another complex, where I still own a property but can't sell it. That complex has issues other than just cladding. The fire department can't access the largest block."

Focus group participant, Cardiff

“When it comes to the fire service, the approaches are inconsistent. I have been told to put in a sprinkler in one complex where I own an apartment, but not in another complex where I own an apartment, even though internal compartmentation is significantly worse in the latter.”

Focus group participant, Cardiff

Proposals in the White Paper

Participants discussed more broadly, the proposals outlined in the Welsh Government's White Paper and made recommendations about what it would like to see the Welsh Government do to alleviate pressure on leaseholders.

“I would like to see the Welsh Government lead, and set out rules and regulations and if necessary, grant licences to management companies to ensure compliance. Until there's fierce action, there'll always be a loophole. The proposals need to be water-tight and penalties for not adhering to service level agreements and accountability are key.”

Focus group participant, Swansea.

“I do welcome the new proposals, because I think that with future building projects, the regime which is contemplated will help us get safer buildings and maintain them safely. My concern is that these proposals are also being applied to existing buildings – we have 10,000 Category 1 apartments that these proposals will be applied to and I'm concerned the consequences of these proposals have not been thought through and maybe not enough input from leaseholders about what this means.”

Focus group participant, Cardiff.

“I'd like to see the Welsh Government remove the requirement for an ESW1 by mortgage companies as it's having a huge impact on buyers and sellers.”

Focus group participant, Swansea.

“The UK Government have put money towards paying for replacement cladding, but only for buildings greater than 18m, however those who live in lower buildings need a loan. Whatever the Welsh Government do, I ask for parity. You either pay for everyone or nobody. Why am I being discriminated against?”

Focus group participant, Swansea.

“Welsh Government need to get a grip on developers and impose a windfall tax. There should be no discrimination between buildings over 18m and those under. We are between 11 – 15m. We as owners are looking at a mess and it’s affecting our lives.”

Focus group participant, Swansea.

Escalating issues

With regard to a mechanism for escalating issues, some participants suggested an arbitrator tasked with delivering quick and fair decisions, without need for redress by the courts.

“We need an independent Ombudsman facility that’ll force managing agents to act quickly. We’ve ben in this situation for 7 years and it’s no really moving forward.”

Focus group participant, Swansea

“We need to look at it in the round. There are situations where leaseholders have complaints and I think we need an ombudsman service. The only remedy at the moment is court. We need a quick way of resolving disputes without going through the legal system”

Focus group participant, Cardiff