

**IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case ref: LON/00BJ/LSC/0286

In the Matter of: The Landlord and Tenant Act 1985; Section 27A

B E T W E E N:

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF WANDSWORTH**

Applicant/ Landlord

and

**VARIOUS LEASEHOLDERS OF
100 HIGH-RISE RESIDENTIAL BLOCKS
IN THE LONDON BOROUGH OF WANDSWORTH**

Respondents/ Leaseholders

**APPENDIX [24 – Independent review of building regulations and
fire safety: next steps MHCLG]**

**TO THE STATEMENT OF CASE
ON BEHALF OF
THE LONDON BROUGH OF WANDSWORTH**



House of Commons

Housing, Communities and
Local Government Committee

Independent review of building regulations and fire safety: next steps

Ninth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Housing, Communities and Local Government Committee

The Housing, Communities and Local Government Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Housing, Communities and Local Government.

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Committee staff

The current staff of the Committee are Edward Beale (Clerk), Jenny Burch (Second Clerk), Tamsin Maddock (Senior Committee Specialist), Nick Taylor (Committee Specialist), Tony Catinella (Senior Committee Assistant), Eldon Gallagher (Committee Support Assistant), Gary Calder and Oliver Florence (Media Officers).

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Summary

The catastrophic fire at Grenfell Tower in June 2017 demonstrated the clear need for an urgent and comprehensive review of our building regulations.

When the subsequent Independent Review of Building Regulations and Fire Safety, chaired by Dame Judith Hackitt, published its Final Report in May 2018, much of the media and stakeholder reaction focused on what it had not recommended: a ban on the use of materials of limited combustibility in the cladding of high-rise residential buildings.

This absence reflected an outcomes-based, non-prescriptive approach, and was the subject of much criticism, including from this Committee.

We therefore decided to hold a very short inquiry, to hear from industry representatives, fire safety experts and building owners and insurers. We wanted to discuss the conclusions and recommendations of the Independent Review, and consider the specific immediate changes needed to improve the safety of residential tower blocks, as well as how improvements could be applied more widely in the construction industry.

Following this short inquiry, our main conclusions and recommendations are as follows:

- **Dame Judith was right to highlight the need for significant cultural change in the industry. We agree that the building regulations require simplification, that fire safety should be addressed throughout the life-cycle of a building, and that residents require a more meaningful voice to challenge fire-safety processes in their homes.**
- **While the Independent Review focused on high-risk residential buildings of 10-storeys or more, many of these recommendations could and should be applied to a wider range of buildings and to the construction industry as a whole.**
- **We want to see a system with a robust system of oversight and meaningful sanctions, but underpinned by a strong, prescriptive approach to ensure minimum standards that guarantee the safety of residents.**

It is not a binary choice between having an outcomes-based system with greater accountability, robust regulatory oversight and strengthened sanctions on the one hand, and prescription on the other hand. The two are not mutually exclusive.

- **If the Government is to restore public confidence in the construction industry, then it must—as a matter of urgency—tackle the conflicts of interest that exist throughout the system.**

From builders choosing their own inspection services, manufacturers selecting product testers for their perceived leniency, Fire Rescue Authorities inspecting the work of their own commercial trading arms, to private sector companies' influence over the fire safety guidance in which they have a commercial interest. Conflicts of interest are pervasive within the industry.

- **The Government was right to signal its intention to ban the use of materials which are not of limited combustibility in the cladding of high-rise buildings.**
- **However, the ban should apply not only to new high-rise residential buildings, but also to existing buildings and those currently under construction. The ban should also apply to non-residential buildings where there is a particular and significant risk to life, such as residential homes, hospitals, student accommodation and hotels.**
- **We do not believe it is sufficient to solely require the use of materials of limited combustibility in cladding systems; these systems should additionally be subject to full-scale fire tests to ensure their safety.**

It cannot be right for dangerous cladding to be banned from new buildings, but for it to continue to be permitted on existing buildings. The Government should fully fund the replacement of any cladding on existing buildings which had been permitted, but is subsequently banned as a consequence of the consultation.

- **We need a new testing regime that has much wider industry support and can be fully trusted. The system must better reflect real-world conditions, reach near-incontestable conclusions, and be more transparent, with details of test failures and re-run tests made publicly available.**

The Independent Review was right to call for a more effective testing regime. While the BS 8414 full-scale fire test has advocates, it does not command the full support of the entire industry.

- **Where structurally feasible, sprinklers should be retro-fitted to existing high-rise residential buildings to provide an extra layer of safety for residents.**

The Government should make funding available to fit sprinklers into council and housing association-owned residential buildings above 18 metres, and issue guidance to that effect to building owners in the private sector.

- **It is clear that the ownership and responsibility of privately owned buildings is often complex. We recommend that the Government conduct an urgent review into responsibility and liability of such buildings to ensure the necessary work can be carried out for the safety of residents, which is paramount. The Government should then produce further subsequent guidance for building owners.**
- **The Government should also introduce a low-interest loan scheme for private sector building owners, to ensure that remedial work is carried out as quickly as possible and that costs are not passed on to leaseholders.**

More than a year has passed since the Grenfell Tower fire and it is unacceptable that so many private buildings continue to have unsafe cladding. This is a difficult and complex legal situation and, while the Government says it will rule out no options, it is unclear what more they can do to compel private building owners to act.

Introduction

1. The tragic fire at Grenfell Tower in June 2017 demonstrated the clear need for an urgent and comprehensive review of our building regulations. It was therefore welcome that the Government commissioned an Independent Review of Building Regulations and Fire Safety in July 2017, chaired by Dame Judith Hackitt, to:

[...] urgently assess the effectiveness of current building and fire safety regulations and related compliance and enforcement issues, with a focus on multi occupancy high rise residential buildings.¹

2. We have closely followed the progress of the Independent Review since its establishment. On the publication of the Interim Report, the Committee held an evidence session with Dame Judith to discuss her initial findings. While welcoming many of the Independent Review's interim conclusions, the Committee repeatedly raised concerns regarding the direction of travel, both during this session and in subsequent correspondence. Of particular concern was the Independent Review's apparent approach to the role of prescription in the future Building Regulations.²

3. When the Review's Final Report was published in May, we held a further evidence session with Dame Judith. While we welcomed many aspects of the report, it was clear that some of the specific and significant concerns that we had raised had not been heeded.³ These concerns—in particular relating to the Review's failure to address the issue of whether combustible materials should be banned from use in the cladding on high-rise buildings—were the focus of much of the public and media reaction to the Independent Review. It is unfortunate that this overshadowed many of the important recommendations in the Final Report with which the Committee and many others agreed, not least around the need for culture change, that fire safety be considered throughout the life-cycle of buildings, and that residents should have a much greater voice.

4. Upon the conclusion of the Independent Review, the Government stated that it would:

- launch a consultation on banning the use of combustible materials in cladding systems on high-rise residential buildings;
- ban desktop studies if its consultation did not demonstrate that they can be safely used;
- ensure residents have a better mechanism for blowing the whistle on landlords who do not maintain safe buildings;
- change the law to achieve meaningful and lasting reform of the building regulatory system, with strong sanctions for those who fail to comply;

1 [Independent Review of Building Regulations and Fire Safety: publication of terms of reference](#), Press Release, Ministry of Housing, Communities and Local Government, 30 August 2017

2 [Independent Review of Building Regulations and Fire Safety: interim report](#), 18 December 2017
[Letter from the Chair to Dame Judith Hackitt relating to Independent Review](#), 9 January 2018
[Letter from Dame Judith Hackitt to the Chair relating to Independent Review](#), 11 January 2018
[Letter from the Chair to Dame Judith Hackitt relating to Independent Review](#), 30 January 2018
[Letter from Dame Judith Hackitt to the Chair regarding the Independent Review](#), 5 March 2018
[Letter from the Chair to Dame Judith Hackitt relating to Independent Review](#), 23 April 2018

3 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018

- invite views to inform how the government could implement major reform of the regulatory system; and
- restructure building regulations fire safety guidance to ensure it is clear.⁴

5. The Committee wanted to contribute to this important follow-up work. We therefore decided to hold two evidence sessions with industry representatives, fire safety experts and testers, building owners and insurers, to consider:

- whether the outcomes-based approach proposed by the Independent Review has the support of stakeholders;
- how the recommendations should be implemented in practice and, where appropriate, extended to other buildings and to the wider construction industry;
- whether there is a need for further, specific, immediate changes to the Building Regulations, and in particular:
 - whether the use of combustible materials in the cladding of high-rise buildings should be prohibited, and how far such a ban should apply;
 - whether ‘desktop studies’ should be prohibited;
- the support given to local authorities and private building owners to identify and remedy safety failures in high-rise buildings.

6. Due to the need to feed into the Government’s considerations quickly, we have focused our work around specific conclusions and recommendations, reflecting the public statements we made during the course of the Independent Review and drawing on our public evidence sessions and the correspondence subsequently received. All such correspondence have been reported to the House and published and are listed in the back of this report. Our expectation is that this Report—which, for clarity, is entirely independent from Dame Judith’s Review—will directly inform the Government’s various consultations and considerations before its announcement on the future of building regulations later in the year.

4 [Government commits to major building safety reforms](#), Press Release, Ministry of Housing, Communities and Local Government, 17 May 2018

1 Reaction to the Review

7. The Final Report of the Independent Review of Building Regulations and Fire Safety was published on 17 May 2018.⁵ The Independent Review had concluded in its Interim Report that the current system had failed due to a culture of ignorance of building regulations and associated guidance, indifference and a motivation to do things as quickly and cheaply as possible, a lack of clarity on roles and responsibilities, and inadequate regulatory oversight and enforcement.⁶ The Final Report therefore recommended a new regulatory framework, focused initially on higher risk residential buildings of 10 storeys or more in height, which would be outcomes-based, as opposed to prescriptive, with a greater sense of personal responsibility and ownership of risk, underpinned by a stronger enforcement and sanctions regime.⁷

8. On the day the Final Report was published, Dame Judith gave evidence to the Committee, telling us:

At the heart of the new framework is the need for risk ownership. Those who create the risk will be required to account for managing that risk. The framework will also create a much stronger regulator to oversee these new duty holders, with positive incentives for those who undertake detailed design planning upfront. It will have rigorous processes to manage building work and to keep the buildings safe. There needs to be effective and meaningful sanctioning tools for those who do not step up to meet those responsibilities, and those sanctions need to recognise that lives are being put at risk and they need to do so before another tragedy happens. We need a preventive system, not one that reacts to tragic events.⁸

Support for the Independent Review

9. We heard considerable support for many of the Independent Review’s conclusions and recommendations. For example, the Local Government Association (LGA) told us there were “a range of good recommendations within the Hackitt Review; there is much there that we agree with”, while the Association of British Insurers (ABI) said they welcomed “Dame Judith’s call for a radical rethink of the whole system”.⁹

10. There was near unanimous agreement with Dame Judith’s diagnosis of the deep-rooted cultural problems in the industry, and the need to raise the competence of professionals, introduce greater accountability and improve the clarity of roles and responsibilities.¹⁰ Claire Curtis-Thomas, CEO of the British Board of Agrément (BBA), told us she was particularly pleased with the Independent Review’s recommendations for better incident reporting and whistleblowing, which she described as “extremely important”.¹¹ The Independent Review’s call for fire safety to be considered throughout

5 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018

6 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, page 5

7 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, page 6

8 [Q81](#) (Dame Judith Hackitt)

9 [Q316](#) (Huw Evans, Association of British Insurers, and Mark Norris, Local Government Association).

10 For example, [Q201](#) (Peter Caplehorn, Construction Products Association), [Q201](#) (Richard Burnley, Kingspan Insulation), [Q248](#) (Mark Hardingham, National Fire Chiefs Council), [Q316](#) (Huw Evans, Association of British Insurers) and [Q318](#) (Mark Norris, Local Government Association).

11 [Q313](#) (Claire Curtis-Thomas, British Board of Agrément)

the life-cycle of a building was also widely welcomed, in particular the recommendation to have a competent person responsible for fire safety across a building once it is occupied, as well as new mechanisms to provide residents with a more powerful voice in the fire safety processes in their buildings.¹²

11. Several witnesses called for many of the Independent Review's recommendations to be extended beyond the buildings covered within the narrow scope of the inquiry. Indeed, the Final Report itself says this, while Dame Judith told the Committee in evidence:

There are a number of areas in this report where I have made it clear that my scope was limited to looking at high-rise buildings, but a number of these recommendations have broader application. I have commended the Government to look at making those principles more widely applicable.¹³

12. **The Independent Review was right to highlight the need for significant cultural change in the industry, with greater accountability and clear sanctions that act as a real deterrent to those that break the rules. We agree that the building regulations require simplification, that fire safety should be addressed throughout the life-cycle of a building, and that residents require a more meaningful voice to challenge fire-safety processes in their homes. We also support Dame Judith's proposed model for a more robust whistleblowing process.**

13. *While the Independent Review focused on high-risk residential buildings of 10-storeys or more, many of these recommendations could and should be applied to a wider range of buildings and to the construction industry as a whole. The Government must therefore take as wide an approach as possible to the applicability and implementation of the recommendations in the Final Report.*

Joint Competent Authority and Building Control

14. The Independent Review called for the establishment of a Joint Competent Authority (JCA) to oversee safety risks in high-rise buildings throughout their life cycle, comprised of Local Authority Building Standards, fire and rescue authorities and the Health and Safety Executive.¹⁴ The Final Report explained that more detailed work was still needed on potential JCA models, including governance, infrastructure and accountability arrangements.¹⁵

15. Several organisations welcomed this proposal, including the LGA, ABI and the Royal Institute of British Architects (RIBA).¹⁶ Others, however, highlighted some concerns, including the Residential Landlords Association (RLA), who told us:

First, it does seem to be introducing a third layer into an already complex area of regulation... We also have concerns about the inclusion of local authorities within the authority. Local authorities cannot take enforcement

12 For example, [Q247](#) (Sir Ken Knight) and [Q348](#) (John Stewart, Residential Landlords Association)

13 [Q166](#) (Dame Judith Hackitt) and, for example, [RIBA response to the final report of the Independent Review of Building Regulations and Fire Safety – Building a Safer Future](#), RIBA, 27 June 2018, page 3

14 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, page 12

15 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, para 1.16

16 [Q345](#) (Huw Evans, Association of British Insurers, and Mark Norris, Local Government Association) and [RIBA response to the final report of the Independent Review of Building Regulations and Fire Safety – Building a Safer Future](#), RIBA, 27 June 2018, page 1

action against themselves, so those properties that are still managed directly would almost be out of scope of the Joint Competent Authority, and our experience is that local authorities are generally somewhat reluctant to enforce against housing associations and ALMOs as well... The other concern we have is if these are local or regional boards, you are going to get inconsistency, potentially, in the approach.¹⁷

In correspondence, the RLA further expressed concerns around the potential for responsibilities being shifted from one agency to another, with residents in affected buildings left without a clear sense of which single agency is responsible, overall, for the safety of their buildings.¹⁸ They called for the Fire Service to be given a role as a Primary Authority for such matters.

16. The Independent Review’s proposal for a Joint Competent Authority has the support of a range of stakeholders. However, care must be taken to avoid the duplication of responsibilities and a lack of clarity over lines of accountability, while ensuring that JCAs will be sufficiently independent to ensure they are able to take enforcement action against their own local authorities.

Building inspection services

17. The Independent Review noted several weaknesses in the current structure of building control. The part-privatisation of the regulatory function—with developers able to choose between Local Authority Building Control and private sector Approved Inspectors—has raised many serious concerns, including disincentives for building control bodies to use enforcement methods for fear of losing long-term business.¹⁹ The Review concluded that, “the ability for dutyholders to choose their own regulator must stop and regulators must be able to enforce as regulators”, envisaging a model with a “clear, single regulatory route for oversight” for high-risk residential buildings.²⁰

18. In the context of building inspection services, we particularly welcome Dame Judith’s proposal that the industry should no longer be able to choose their own regulator and that there should be a single regulatory route for oversight of high-rise residential buildings through Local Authority Building Control. Indeed, we believe this principle should apply to a much wider range of buildings.

Prescription

19. On the day of publication of the Final Report, much of the media and stakeholder reaction focused on what the Independent Review had not recommended: a ban on the use of materials of limited combustibility in the cladding of high-rise residential buildings.²¹ The absence of such a recommendation reflected the outcomes-based, non-prescriptive approach that Dame Judith advocated in her Report:

17 [Q345](#) (John Stewart, Residential Landlords Association)

18 [Residential Landlords Association response to final Hackitt Review report](#), 10 July 2018

19 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, paras 2.41–2.43

20 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, paras 2.41–2.43

21 For example, [Grenfell Tower report that fails to ban combustible cladding is a ‘betrayal and a whitewash’, says David Lammy](#), Independent, 17 May 2018

The new regulatory framework... must be truly outcomes-based (rather than based on prescriptive rules and complex guidance)... This approach also acknowledges that prescriptive regulation and guidance are not helpful in designing and building complex buildings... An outcomes-based framework requires people who are part of the system to be competent, to think for themselves rather than blindly following guidance ...²²

In the Final Report, Dame Judith described those who called for greater prescription, and specifically a ban on combustible cladding, as “part of the problem”:

Some of the social media chatter and correspondence I have read whilst I have been engaged in this review shows how far we need to move in this respect. The debate continues to run about whether or not aluminium cladding is used for thermal insulation, weather proofing, or as an integral part of the fabric, fire safety and integrity of the building. This illustrates the siloed thinking that is part of the problem we must address. It is clear that in this type of debate the basic intent of fire safety has been lost.²³

20. Many stakeholders strongly disagreed with the Independent Review’s approach to prescription, particularly in light of what Dame Judith had concluded about the deep-rooted cultural problems in the industry. Claire Curtis-Thomas told us that, “changing the culture of the companies who are actively involved in this market is going to be incredibly difficult without prescription”, while Mark Hardingham from the National Fire Chiefs Council (NFCC) told us that culture change and prescription, “have to go hand in hand”.²⁴ The RIBA told us they were:

...concerned by the absence of the simple, clear baseline prescriptive standards that we have consistently maintained would deliver much needed clarity for the construction industry and, most importantly, provide protection for the public²⁵

21. However, as Dame Judith herself highlighted in correspondence with the Committee, it was not the case that a choice had to be made between either an outcomes-based approach or a prescriptive approach; it was possible to strike a balance and achieve the best of both worlds:

I believe that only an outcomes-based system can deliver this, as opposed to a system that ‘tells people what to do’, however that does not mean an absence of clear standards which must be achieved. I do agree that there is a need for some prescription within regulations and guidance, but it is a system with clear roles and responsibilities, clear permission points and strong enforcement and sanctions that will drive the culture change towards intelligent thinking that will in turn deliver safe building outcomes.²⁶

22 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, page 6

23 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, page 6

24 [Q245](#) (Claire Curtis-Thomas, British Board of Agrément) and [Q248](#) (Mark Hardingham, National Fire Chiefs Council)

25 [RIBA response to the final report of the Independent Review of Building Regulations and Fire Safety – Building a Safer Future](#), RIBA, 27 June 2018, page 1

26 [Letter from Dame Judith Hackitt to the Chair regarding the Independent Review](#), 5 March 2018

22. There is no binary choice between having an outcomes-based system with greater accountability, robust regulatory oversight and strengthened sanctions on the one hand, and prescription on the other hand. The two are not mutually exclusive; as Dame Judith herself acknowledged, it is possible to do both. We want to see a system in which a reformed industry can be trusted to put fire safety first, with a robust system of oversight and meaningful sanctions, but underpinned by a strong, prescriptive approach to ensure minimum standards and guarantee the safety of residents.

2 Updating and improving the current guidance

23. In the Terms of Reference for the Independent Review, the Government cited the twofold purpose of the process:

[...] to make recommendations that will ensure we have a sufficiently robust regulatory system for the future and to provide further assurance to residents that the complete system is working to ensure the buildings they live in are safe and remain so.²⁷

24. Many stakeholders expected that—in order to fulfil these terms of reference and, specifically, to reassure residents—the Independent Review would need to undertake a detailed review of the current building regulations and make specific recommendations for how Approved Document B should be amended. However, Dame Judith told us:

I was asked to carry out this review of the regulatory system. I made it clear at the outset, back in July/August, that this review would not get into the detail of editing specific guidance or regulations, but that I would provide a better framework for that to be done in the future.²⁸

25. It was noted by RIBA, for example, that, despite this year-long review into the building regulations, there is no clear set of guidance for the industry:

We are in a slightly strange situation that we have had a review of building regulations but we have not looked at the core guidance document, Approved Document B, so even a year on from the Grenfell Tower fire, we are about to have some form of clarification of that document but not the kind of wholesale review. It is very difficult, in a situation where you have very ambiguous guidance. We need clarity around that initially.²⁹

26. Following the publication of the Final Report, Dame Judith called for an immediate review of the Building Regulations, urging the Government not to wait for industry.³⁰ The then Minister of State for Housing, Dominic Raab MP, told us that this work was now being undertaken: “We are already clarifying the fire safety guidance and Approved Document B, and, indeed, we are looking at the wider suite of approved documents to make them more user-friendly”.³¹

27. It is disappointing that the Independent Review did not address the specific, short-term changes that need to be made to the Building Regulations. In this specific respect, we believe the Independent Review did not fully meet the requirement in its terms of reference to reassure residents that their homes are, or will be made, safe. However, we note that Dame Judith has subsequently called for an immediate review of the Building

27 [Independent Review of Building Regulations and Fire Safety: terms of reference](#), Ministry of Housing, Communities and Local Government, 30 August 2017

28 [Q81](#) (Dame Judith Hackitt)

29 [Q206](#) (Adrian Dobson, RIBA)

30 Presentation by Dame Judith Hackitt, Fire Safety Conference, Royal Institute of British Architects, 12 June 2018

31 [Q356](#) (Dominic Raab MP, Minister of State for Housing and Planning)

Regulations. *The Government must immediately take forward its review of the current guidance as a matter of urgency, with the intention of publishing an updated version of Approved Document B before the end of the year.*

Combustible cladding

28. It first became clear that Dame Judith favoured an outcomes-based approach for a future regulatory framework, with limited prescription, when her Interim Report was published in December 2017, and that the Review was therefore unlikely to recommend a ban on the use of materials which are not of limited combustibility in the cladding of high-rise buildings.³² In the period between the publication of the Interim and Final Reports, we repeatedly called on the Independent Review to recommend a ban on the use of these materials, arguing in a letter from our Chair to Dame Judith that a failure to do so would be a “serious mistake”:

... I want to emphasise again [our] view that it cannot be right to continue to permit the use of combustible materials on the external cladding of high-rise buildings, and that therefore some elements of prescription would seem absolutely necessary in any future regulatory system.³³

29. Although Dame Judith’s report did conclude that, “Using products which are non-combustible or of limited combustibility is undoubtedly the lower risk option”, it did not go as far as recommending a ban.³⁴ As we have already noted, this was disappointing and this absence overshadowed many of the good recommendations that were made in the Final Report.

30. However, the Government did subsequently announce a consultation into the use of materials which are not of limited combustibility, signalling its intention to implement a ban.³⁵ The Government has proposed that the ban apply only to high-rise residential buildings taller than 18 metres, to require the use of Class A2 materials or better in the cladding of high-rise buildings—bringing England into line with EU Members States and Scotland—and to not apply the ban to existing buildings or those currently under construction. The then-Minister of State for Housing told us:

The reason we have limited it to residential is because the evidence is that the risk to life from fire is the greatest in residential buildings. The 18-metre threshold aligns with existing building regulations guidance and extends beyond the Hackitt definition of high-risk residential buildings, which included buildings of 10 storeys or more, which is around 30 metres in height. Equally it is a consultation. We have asked for views. We have tried to make sure it is a focused risk-based and evidence-based consultation, but we will listen to views on whether we have that balance right.³⁶

32 [Independent Review of Building Regulations and Fire Safety: interim report](#), 18 December 2017

33 [Letter from the Chair to Dame Judith Hackitt relating to Independent Review](#), 30 January 2018, and [Letter from the Chair to Dame Judith Hackitt relating to Independent Review](#), 23 April 2018

34 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, para 7.10

35 [Banning the use of combustible materials in the external walls of high-rise residential buildings](#), Ministry of Housing, Communities and Local Government, 18 June 2018

36 [Q399](#) (Dominic Raab MP, Minister of State for Housing and Planning)

31. We heard mixed evidence from stakeholders as to whether a ban on the use of materials which are not of limited combustibility was appropriate. Several organisations were fully supportive of the proposed ban, including the LGA, ABI, Rockwool, RIBA and the NFCC, with some advocating that the ban be extended beyond the parameters outlined in the consultation.³⁷ For example, Peter Caplehorn, Deputy Chief Executive and Policy Director, Construction Products Association, told us that any ban on cladding systems not of limited combustibility should apply to existing buildings as well as newbuilds.³⁸

32. The then Minister of State for Housing, Dominic Raab MP, told us that changes to Building Regulations would not impose requirements on existing buildings, unless the owner chose to do building work that would trigger the Regulations.³⁹ However, given calls from many organisations for the ban to be extended to existing buildings, consideration should be given to how this should be paid for, especially in circumstances where previously permitted cladding systems are subsequently prohibited. Several witnesses acknowledged the financial challenges arising from a retroactive ban—with Mark Norris, Principal Policy Adviser at the LGA, suggesting a “phased approach”—although, of course, financial considerations should be secondary to the safety of residents in these buildings.⁴⁰

33. Others were less supportive. Sir Ken Knight told us that he was, “much more comfortable to leave it with an outcome-based robust test than I am about banning” and that the culture of the industry was also very important: “Just banning stuff does not mean to say people will do it if the culture is wrong”.⁴¹ Richard Burnley, Managing Director, Kingspan Insulation, expressed his view that the lowest-risk option was for cladding to have passed the BS 8414 large-scale fire safety test.⁴²

34. Representatives of the victims and survivors of the Grenfell Tower fire were very clear about whether materials which are not of limited combustibility should be banned. Natasha Elcock from Grenfell United told us:

It’s quite simple: it should be banned... no one should go through what we have gone through—absolutely not—but also no one should go to sleep at night knowing they have got combustible cladding wrapped round their building... It should be banned, and it should be banned now. We shouldn’t wait.⁴³

Edward Daffarn, also from Grenfell United, warned that, “Grenfell 2 is in the post unless you act, and quickly”.⁴⁴

35. Following our evidence sessions, as part of the range of correspondence that we received, both Kingspan and Rockwool sent us test reports relating to how materials classified as being of limited combustibility performed under BS 8414, or equivalent, tests.⁴⁵

37 [Q335](#) (Huw Evans, Association of British Insurers, and Mark Norris, Local Government Association), [Q248](#) (Mark Hardingham, National Fire Chiefs Council), [Q211](#) (Mirella Vitale, Rockwool) and [Q212](#) (Adrian Dobson, RIBA)

38 [Q214](#) (Peter Caplehorn, Construction Products Association)

39 [Q400](#) (Dominic Raab MP, Minister of State for Housing and Planning)

40 [Q335](#) (Mark Norris, Local Government Association). Other witnesses to note the financial challenges of applying a ban to existing buildings include: [Q335](#) (Huw Evans, Association of British Insurers) and [Q222](#) (Peter Caplehorn, Construction Products Association)

41 [Q290 and Q295](#) (Sir Ken Knight)

42 [Q213](#) (Richard Burnley, Kingspan Insulation)

43 [Q23](#) (Natasha Elcock, Grenfell United), LA Support for Grenfell Tower Survivors, 20 June 2018

44 [Q25](#) (Edward Daffarn, Grenfell United), LA Support for Grenfell Tower Survivors, 20 June 2018

45 [Letter from Rockwool Group](#), 29 June 2018, and [Letter from Kingspan](#), 6 July 2018

It is not for the Committee to assess the findings and technical detail of individual tests. Where specific products have been mentioned, we have shared these with the companies concerned, and have published and reported the related correspondence alongside this Report. We have also sent all the information received related to these specific tests to the Government and the Independent Expert panel to feed into their considerations. On 9 July, the Secretary of State told us that he had not yet seen the full test reports referred to by Kingspan, but he that had commissioned further research into these claims.⁴⁶

36. We are pleased that the Government has signalled its intention to ban the use of materials which are not of limited combustibility in the cladding of high-rise buildings, despite the failure of the Independent Review to make such a recommendation. We support the Government’s proposal to adopt the European classification system for combustible materials and require the use of Class A1 or A2 materials, bringing England into line with other EU Members States and Scotland.

37. We believe such a ban should apply not only to new high-rise buildings, but also to existing buildings over 18 metres, as well as those currently under construction. People in all high-rise residential buildings need to have certainty that their homes are safe. Further, the ban should apply to non-residential buildings where there is a particular and significant risk to life, such as residential homes, hospitals, student accommodation and hotels. Upon the completion of the consultation, the Government must, as a matter of the greatest urgency, bring forward the ban on the use of combustible materials in the cladding of these buildings.

38. The Government should fully fund the replacement of any cladding on existing buildings which had been permitted, but is subsequently banned as a consequence of the consultation. In those circumstances, this funding should be made available to both public and private sector landlords.

39. As part of this inquiry, we received various test reports relating to how cladding systems using materials classified as being of limited combustibility performed under large-scale tests, a number of which were performed outside of the UK. Given the necessary technical expertise required, the Committee does not see its role as interpreting the results of such tests, or determining or their implications. The Secretary of State was right to call for further research into these claims.

40. We do not believe it is sufficient to solely require the use of materials of limited combustibility in cladding systems; these systems should additionally be subject to full-scale fire tests to ensure their safety. In this context, the Government should also take due regard to our conclusions and recommendations on BS 8414 large-scale tests made later in this Report.

Clarity of the current guidance

41. During the course of this inquiry, it became very clear that there was a lack of clarity as to whether Sections 12.5 to 12.7 of Approved Document B permitted the use of materials of limited combustibility in the cladding of high-rise buildings. We questioned Ministers on this both in person and in writing, and also sought independent professional advice.

⁴⁶ [Q22](#) (James Brokenshire MP, Secretary of State for Housing, Communities and Local Government), MHCLG priorities for the Secretary of State, HC 1036

This process demonstrated the lack of consensus on the clarity of the guidance in this respect.⁴⁷ Indeed, Dame Judith noted in correspondence with us that “current views vary on whether or not the guidance is clear”⁴⁸

42. It was the case that some of the representations we received stated that they did not consider paragraphs 12.6 and 12.7 of Approved Document B lacked clarity.⁴⁹ However, this has not been the consistent view of the witnesses the Committee has heard from during our inquiry. The Centre for Window and Cladding Technology (CWCT) told us:

It is our view that paragraph 12.6 of Approved Document B Volume 2 (ADB2), cross-referenced with Diagram 40, allows for materials that are not of limited combustibility to be used on the external surface of a building with a storey 18m or more above ground. The uncertainty is whether this applies only to decorative finishes such as paint or the full thickness of a cladding panel.⁵⁰

43. Dr Jonathan Evans, Director of the Metal Cladding and Roofing Manufacturers Association (MRCMA), also told us that Approved Document B did not prohibit the use of materials of limited combustibility in external cladding, noting the clear physical evidence for this: the estimated 600 buildings with ACM cladding potentially incorporating combustible materials.⁵¹ He argued that, with thousands of people—from contractors to building control officers—involved in these projects over two decades, it was clear that the entire industry was of the view that these materials were permitted to be used. We further note that the then Minister of State for Housing, Dominic Raab MP, told us in correspondence that:

[...] the guidance does allow that the surface of external walls at a height of more than 18 metres may meet a less onerous requirement than that which would meet the definition of “limited combustibility”⁵²

44. We also note the expert advice provided by Dr Barbara Lane to the Grenfell Tower Public Inquiry, which said:

I do not consider the ACP [Aluminium Composite Panels] to be insulation nor their core to be categorised as *filler material* either. I do not agree therefore the core is subject to the provisions of Section 12.7 for insulation in ADB [Approved Document B] 2013 [...]⁵³

I consider that an urgent change to Section 12 of ADB 2013 is required and specifically with reference to Diagram 40. I suggest that the performance standard for an external surface, should be European performance

47 [Letter to the Chair from David Metcalfe, Director, and Dr Stephen Ledbetter, Consultant, Centre for Window and Cladding Technology, regarding combustible building materials, 10 May 2018](#)
[Letter to the Chair from Dr David Rush, Lecturer in Structural Engineering, University of Edinburgh, regarding combustible building materials, 14 May 2018](#)

48 [Letter from Dame Judith Hackitt to the Chair regarding the Independent Review, 5 March 2018](#)

49 See, for example, written correspondence from [Sir Ken Knight \(2 July 2018\)](#) and [C.S. Todd & Associates Ltd](#)

50 [Letter to the Chair from David Metcalfe, Director, and Dr Stephen Ledbetter, Consultant, Centre for Window and Cladding Technology, regarding combustible building materials, 10 May 2018](#)

51 [Letter from Dr Jonathan Evans, MRCMA, regarding combustible building materials, 2 July 2018](#)

52 [Letter from the Minister of State for Housing regarding combustible materials, 1 May 2018](#)

53 [Dr Barbara Lane's Expert Report, Grenfell Tower Inquiry, June 2018, Para 11.10.7](#)

classification A2 (in this context of high rise residential buildings). For the European testing regime, the composite system must be tested, and this would remove any room for doubt on this subject.⁵⁴

45. We are unconvinced that Approved Document B bans the use of combustible materials as an external surface. Notwithstanding steps to ban the use of combustible materials on high-rise buildings, and its wider plans for the revision of Approved Document B, the Government must urgently revise Sections 12.5 to 12.7 of Approved Document B to provide much-needed clarity to the guidance as to what is, and what is not, acceptable.

Product testing and desktop studies

46. Several witnesses raised concerns with us around the regime for testing the safety of construction products. Indeed, the Independent Review concluded that, “the product testing, labelling and marketing regime is opaque and insufficient” and called for a “more effective testing regime”.⁵⁵ In evidence to us, Dame Judith reiterated this, saying:

In some of the ways in which products are specified and the ways in which products are tested, there is a great deal of confusion about the different classifications. The testing regimes are inadequate. That whole system of product testing needs to be looked at again if we are going to create a clear and unambiguous system for people to use.⁵⁶

BS8414 tests

47. In particular, concerns were raised around the BS 8414 large-scale fire safety test, which examines the fire performance of external cladding systems. Mirella Vitale, Senior Vice President at Rockwool, described the test as “deeply flawed”, arguing that it did not “reflect real life conditions”, failed to assess “the extreme, the worst possible scenario”, and did not reach “incontestable conclusions”.⁵⁷ She criticised the BS 8414 test for a lack of transparency and highlighted that details of test failures, or the number of times tests are rerun, were not routinely published. We heard that experts working on behalf of the ABI found that “the testing regime was not fit for purpose”, while the LGA described it as a “flawed test”.⁵⁸

48. However, the BS 8414 test was supported by other witnesses, including Sir Ken Knight, who said it was a “very high-bar test”, and Kingspan, who told us there was no evidence that a cladding system that has passed BS 8414 has ever been involved in an uncontrollable fire, and that it was a “gold standard” test:

There is an independent report being done by Tenos, who are fire engineering consultants. They have compared BS 8414 with tests from around the

54 [Dr Barbara Lane’s Expert Report](#), Grenfell Tower Inquiry, June 2018, Para 2.29.12

55 [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, page 11

56 [Q86](#) (Dame Judith Hackitt)

57 [Q220](#), [Q233](#), [Q235](#) (Mirella Vitale, Rockwool) and [Letter from Rockwool Group](#), 29 June 2018

58 [Q338](#) (Huw Evans, Association of British Insurers, and Mark Norris, Local Government Association)

world, from other regulatory regimes, and indeed found that BS 8414 was the harshest test and essentially can be seen as the gold standard for those tests.⁵⁹

49. **The Independent Review was right to call for a more effective testing regime. It is clear that, while the BS 8414 test has many advocates, it does not have the full support of the entire industry. *The Government should work with fire safety experts and the industry to agree a new testing regime that has much wider industry support and can be fully trusted. A new system should better reflect real-world conditions, reach near-incontestable conclusions, and be more transparent, with details of test failures and re-run tests made publicly available.***

Fire Rescue Authorities: conflicts of interest

50. We heard that 15 Fire Rescue Authorities had set up commercial trading arms to provide fire safety advice, while at the same time being responsible for enforcing those standards, and several witnesses raised concerns around the potential conflict of interest. Indeed, the Independent Review referred to this in its Final Report:

This avoidance of conflict of interest should apply to all actors in the regulatory system—so no fire and rescue authority should be able to support the JCA in its oversight of a particular building if it (i.e. the individual or the company) has provided professional design services in respect of that building through its commercial arm.⁶⁰

51. Mark Hardingham, Chair of the Protection and Business Safety Committee at the National Fire Chiefs Council, agreed that this practice was a concern, telling us:

It is not something that we endorse, as the National Fire Chiefs Council. We are in discussions with our membership across the country, if this is happening, to identify it and to put the NFCC's view across quite clearly that there is a potential conflict of interest in there, depending on the circumstances in which it is happening.⁶¹

This was supported by Sir Ken Knight, who told us he did not agree that the fire authority should be doing risk assessments from its wholly owned company in an area where it is also the enforcing authority, and that he thought it offered an opportunity for potential conflict.⁶²

52. However, the then-Minister of State for Housing, Dominic Raab MP, told the Committee that he was satisfied that sufficient legislative safeguards were in place to avoid conflicts of interest, as well as the revised Fire and Rescue National Framework for England, which was published in May 2018.⁶³

59 [Q212–3](#) (Richard Burnley, Kingspan Insulation) and [Q259](#) (Sir Ken Knight)

60 [Independent Review of Building Regulations and Fire Safety: final report](#), Recommendation 2.11e

61 [Q267](#) (Mark Hardingham, NFCC)

62 [Q267](#) (Sir Ken Knight)

63 [Q356](#) (Dominic Raab MP, Minister of State for Housing and Planning) and [Fire and Rescue National Framework for England](#), Home Office, May 2018

53. **Where Fire Rescue Authorities have established commercial trading arms to provide fire safety advice, there is a clear conflict of interest when they are also the enforcement authority. In any industry, it is clearly dangerous to allow an organisation to approve its own work. The Government should immediately prohibit this practice.**

Variable standards of testing

54. We heard that some manufacturers select testing bodies on the basis of their pass-rates and perceived leniency. Claire Curtis-Thomas (BBA) told us that, “it is fair to say that some organisations are known for being pretty tough and other organisations are known for being less tough”, and that while her organisation was “positively draconian”, it was open to manufacturers to decide, “If you do not want a tough time you might go to other companies”.⁶⁴ Sir Ken Knight highlighted that the United Kingdom Accreditation Service (UKAS) was important in ensuring high standards in testing bodies.⁶⁵

55. **It is concerning that some manufacturers are known to shop-around for the most lenient product testing bodies in the expectation of an easier certification process. As highlighted earlier in the context of building inspection services, there is a clear conflict of interest where manufacturers and builders are able to choose who marks their homework.**

56. *The Government and the United Kingdom Accreditation Service (UKAS) should do more to ensure that all product testing bodies operate to the same high standards. The Government must take steps to ensure manufacturers are not incentivised to choose the most lenient testing bodies. It is vital that we create a system in which all approved testing bodies operating in the industry are fully-independent from the companies and products they are testing. Testing bodies should also publish their test failure rates, so there can be greater transparency and benchmarking within the industry.*

The role of private sector organisations in the drafting of guidance

57. Some groups have raised concerns around the level of input that commercial fire testing organisations, such as the Building Research Establishment (BRE), are given by the Government into the drafting of Building Regulations and questioned their role in the Independent Review, to which Dr Debbie Smith, Managing Director of BRE, was appointed Chair of Working Group 6: Quality Assurance and Products.⁶⁶ Many argue that these organisations have a direct financial interest in whether certain materials are permitted within the Building Regulations and/or require commercial testing, and it was inappropriate to allow them any influence in the drafting of guidance.

58. The BRE’s website highlights that they “advise the Government on wide ranging built environment issues”.⁶⁷ However, Dr Smith told us that her organisation had “no more [input] than any other organisation that advises the Government”. She explained:

We carry out the research and then we provide the technical evidence in the form of reports, which are then used and considered by the Building

64 [Q264](#) (Claire Curtis-Thomas, British Board of Agrément)

65 [Q266](#) (Sir Ken Knight)

66 For example, [Fire safety review prompted by Grenfell Tower blaze ‘lacks transparency’](#), Sky News, 22 February 2018

67 [‘Government’](#), Building Research Establishment (BRE) website, accessed 12 July 2018

Regulations Advisory Committee in preparing their versions of the approved documents that are then sent out and consulted on publicly. BRE does not write Approved Document B.⁶⁸

59. The Government must be careful to ensure that there are no conflicts of interest when working with private sector companies on the content or application of the Building Regulations, particularly where such companies may have a direct financial interest in the provision of services required under those regulations.

Desktop studies

60. The Independent Review concluded that the widespread use of desktop studies—assessments undertaken *in lieu* of full-scale fire tests, using data from previous tests to make assumptions about how a system would perform in a real test—was not “properly managed or controlled”, and recommended that the Government should “significantly restrict” their use to approve changes to cladding and other systems.⁶⁹ The Government subsequently launched a consultation into the use of desktop studies, indicating that it would ban them “if the current consultation... does not demonstrate that they can be safely used”.⁷⁰ At the time of writing, the Government is analysing the feedback to this consultation.

61. During our inquiry, evidence from stakeholders was mixed, with some calling for a complete ban on the use of desktop studies. Mirella Vitale (Rockwool) recommended, “An absolute complete ban. There is no other country that I am aware of that allows the use of desktop studies”.⁷¹ Adrian Dobson (RIBA) told us that desktop studies “don’t have a place in this particular element of fire safety”.⁷²

62. However, Mark Hardingham (NFCC) told the Committee that there was a place for desktop studies, provided “it is applied in a practical and proportionate way” and “it is based on primary test evidence”.⁷³ Sir Ken Knight agreed, telling us that desktop studies can be appropriate, “providing they are rooted in primary test evidence”.⁷⁴ He gave an example of a manufacturer changing the letterbox on a door, under which circumstance it would be more appropriate to have a desktop study, than a full-scale fire test. Similarly, Claire Curtis-Thomas told us that BBA routinely use desktop studies when, for example, there is a need to use a different colour emulsion paint on a product.⁷⁵

63. In April, we wrote to the Secretary of State expressing our views on the use of desktop studies, and asking that they be taken into consideration as part of the consultation process:

We are concerned that the over-use of desktop studies may be a contributory factor to a weaker, less stringent regulatory regime and increases the

68 [Q251](#) (Dr Debbie Smith, Building Research Establishment)

69 [Independent Review of Building Regulations and Fire Safety: interim report](#), para 1.94

70 [Approved Document B \(fire safety\): amendments to statutory guidance on assessments in lieu of tests](#), Ministry of Housing, Communities and Local Government, 11 April 2018, and [Government commits to major building safety reforms](#), Ministry of Housing, Communities and Local Government, 17 May 2018

71 [Q238](#) (Mirella Vitale, Rockwool)

72 [Q238](#) (Adrian Dobson, Royal Institute of British Architects)

73 [Q261](#) (Mark Hardingham, National Fire Chiefs Council)

74 [Q261](#) (Sir Ken Knight)

75 [Q261](#) (Claire Curtis-Thomas, British Board of Agrément)

likelihood of dangerous materials being used on high-rise residential buildings. This is clearly dangerous. We therefore believe that, for as long as it is permitted to use combustible materials in the cladding of high-rise buildings, the use of desktop studies should be prohibited.⁷⁶

64. We reiterate our view that the over-use of desktop studies is a contributory factor to a weaker, less stringent regulatory regime and increases the likelihood of dangerous materials being used on high-rise buildings. However, providing that materials which are not of limited combustibility will be banned from the cladding of high-rise buildings following the Government’s consultation, there are some circumstances in which a full-scale fire test may not be necessary. Nevertheless, desktop studies should always be based on primary test evidence. *The Government should publish clear guidance outlining the specific circumstances in which desktop studies may be permitted to be used.*

Sprinklers

65. As with the Independent Review’s failure to recommend a ban on the use of materials which are not of limited combustibility in cladding, there was much criticism of its failure to recommend the mandatory fitting of sprinklers to residential buildings. Despite this omission, Dame Judith told us that she saw sprinklers as an important fire-safety system:

I would be the first to agree with you that sprinklers are one of the most important layers of protection that you can put in any building, but they are not the only ones. They will work for some, but not for others... For any new building that will be subject to this process, a proposal that includes a fully sprinklered building is bound to find itself an easier passage to approval than if someone tries to justify not doing that.⁷⁷

Sir Ken Knight echoed Dame Judith’s advice, telling us that sprinklers do have a valuable part to play as part of a package of fire safety measures, but should not be seen “as the panacea”.⁷⁸

66. However, in June, the Chair of the All-Party Parliamentary Fire Safety and Rescue Group, Sir David Amess MP, wrote to the Committee, expressing his disappointment that the Independent Review had not called for the retro-fitting of sprinklers:

[...] it was pleasing to note during the Select Committee’s recent meeting with Dame Judith [...] that she did support a degree of prescription, and saw automatic fire sprinkler protection as one of the most important fire safety measures to take (something which the APPG, the National Fire Chiefs Council, the Royal Institute of British Architects, the Fire Brigades Union, the Association of British Insurers, the Fire Protection Association, London Fire Brigade and the Fire Sector Federation also support). It is a pity that Dame Judith didn’t say this too in her Final Report.⁷⁹

76 [Letter from the Chair to the Secretary of State](#), 30 April 2018

77 [Q163](#) (Dame Judith Hackitt)

78 [Q311](#) (Sir Ken Knight)

79 Letter to the Chair from [Sir David Amess MP](#), Chair of the All-Party Parliamentary Fire Safety and Rescue Group, 15 June 2018

67. As highlighted by Sir David, several stakeholders have called for the retro-fitting of sprinkler systems. For example, the NFCC told us that “sprinklers are the most effective way to ensure that fires are suppressed or even extinguished before the fire service can arrive”.⁸⁰ RIBA told us they wanted to see, “retro-fitting of sprinklers / automatic fire suppression systems... to existing residential buildings above 18 metres from ground level”.⁸¹ Huw Evans, Director General at the ABI, called for this to be extended to other buildings, including commercial warehouses.⁸²

68. *Where structurally feasible, sprinklers should be retro-fitted to existing high-rise residential buildings to provide an extra layer of safety for residents. The Government should make funding available to fit sprinklers into council and housing association-owned residential buildings above 18 metres, and issue guidance to that effect to building owners in the private sector.*

69. *We heard strong evidence recommending the Government require sprinkler systems be installed in a wider range of buildings, including student accommodation, hospitals and large commercial warehouses. The Government should undertake a consultation into whether it would be appropriate to require the installation of sprinkler systems in these buildings too.*

Further measures for consideration

70. We asked witnesses to write to us with proposals for changes to the current Building Regulations that they felt the Independent Review had failed to address in sufficient detail. We received several responses, which have been published alongside this report. Proposals included:

- A requirement for at least two staircases offering alternative means of escape in all new multiple occupancy residential buildings, where the top floor is more than 11 metres above ground level or the top floor is more than three storeys above the ground level storey (RIBA)⁸³
- Addressable central fire alarms in all new and converted residential buildings, to aid communication with residents (RIBA)⁸⁴
- Building Control to identify a taskforce for a group of people in each high-risk building to receive accelerated and advanced fire-safety training (Kingspan)⁸⁵

71. *Our panels of industry representatives and fire safety experts have suggested a number of further sensible measures to improve the regulatory framework. We call on the Government to consider each of these proposals carefully prior to its planned statement later in the year on next steps and reflect on them in its response to this Report.*

80 [Letter from National Fire Chiefs Council, 29 June 2018](#)

81 [RIBA response to the final report of the Independent Review of Building Regulations and Fire Safety – Building a Safer Future, RIBA, 27 June 2018, page 2](#)

82 [Q332 \(Huw Evans, Association of British Insurers\)](#)

83 [RIBA response to the final report of the Independent Review of Building Regulations and Fire Safety – Building a Safer Future, RIBA, 27 June 2018, page 2](#)

84 [RIBA response to the final report of the Independent Review of Building Regulations and Fire Safety – Building a Safer Future, RIBA, 27 June 2018, page 2](#)

85 [Q241 \(Richard Burnley, Kingspan Insulation\)](#)

The need to urgently address conflicts of interest throughout the industry

72. As we have reflected throughout this Report, there are many areas in which witnesses have identified potential conflicts of interest in the system. We have been particularly concerned by how building inspection services operate, with builders able to appoint their own inspectors, who may have a commercial interest in not reporting bad practice to the local authority. It was similarly worrying to hear that some manufacturers are known to choose product testing bodies on the basis of their perceived leniency.⁸⁶

73. **We are concerned that conflicts of interest are pervasive within the industry. From builders choosing their own inspection services, manufacturers selecting product testers for their perceived leniency, Fire Rescue Authorities inspecting the work of their own commercial trading arms, to private sector companies' influence over the fire safety guidance in which they have a commercial interest. *If the Government is to restore public confidence in the construction industry, then it must—as a matter of urgency—tackle the conflicts of interest that exist throughout the system.***

86 [Q264](#) (Claire Curtis-Thomas, British Board of Agrément)

3 Government support for building owners and leaseholders

Government support to local authorities and housing associations

74. In the months following the Grenfell Tower fire, several local authorities wrote to the Government seeking financial support to carry out urgent fire safety works on council-owned buildings.⁸⁷ In our public evidence sessions, we repeatedly questioned Ministers and Officials about the support that would be offered to local authorities for remedial work.⁸⁸ However, details remained largely unclear until shortly before the publication of the Final Report of the Independent Review, when the Government announced that it would fully fund the removal and replacement of unsafe cladding by councils and housing associations, providing £400 million for this work.⁸⁹ The additional funding was welcomed by the Local Government Association:

It is great that the Government has honoured its commitment from last summer to meet the unexpected exceptional costs for councils arising from major remedial fire safety work on high-rise buildings.⁹⁰

75. However, it subsequently emerged that this money would be taken from the budget for the Affordable Homes Programme, to be replaced in 2020–21.⁹¹ The then Minister of State for Housing, Dominic Raab MP, explained that, consequently, while the programme will ultimately still deliver the same number of homes, “fewer homes will be delivered in the short term”.

76. Concerns have also been raised that this funding has not been distributed quickly enough. In evidence to the Committee, the then Minister of State for Housing told us he did “not have a specific date on the criteria and the administrative process, but we are looking to put it out soon, shortly”.⁹²

77. It is right that the Government has committed to supporting local authorities and housing associations to fully fund the removal and replacement of unsafe cladding. It is disappointing that this has been funded from the budget for the Affordable Homes Programme and we strongly urge the Government to find a new source for this funding. We are also concerned about the length of time it is taking to distribute funding to local authorities and housing associations, and call on the Government to set out a clear timetable for this.

Ongoing concerns after the removal of dangerous cladding

78. While it is vital that dangerous cladding is removed as quickly as possible from affected buildings, it is even more important that replacement systems are fully safe. We

87 For example, [Ministers ‘refusing to pay for fire safety measures’ after Grenfell](#), The Guardian, 6 October 2017

88 For example, [Q65](#) (Andrew Lewer to then-Housing Minister, Dominic Raab MP), MHCLG Housing Prices, HC 830, 12 March 2018

89 [Government announces it will fully fund unsafe cladding removal in social housing](#), Press Release, Ministry of Housing, Communities and Local Government, 16 May 2018

90 [LGA responds to PM’s cladding funding pledge](#), Local Government Association, 16 May 2018

91 Dominic Raab MP, Minister of State for Housing, [Written Ministerial Statement, 145527](#), 23 May 2018

92 [Q370](#) (Dominic Raab MP, Minister for Housing)

were, therefore, highly concerned by evidence from Claire-Curtis Thomas that the British Board of Agrément was aware of 30 buildings that did not now comply with fire safety regulations *after* the removal of ACM panels, following refurbishments carried out on the basis of guidance issued to building owners by the Government.⁹³ She said this could potentially be indicative of a much wider problem. Sir Ken Knight, who is the Chair of the Independent Expert Advisory Panel responsible for the Government’s advice in this area, told us this evidence caused him “real concern”.⁹⁴

79. In subsequent correspondence, Mrs Curtis-Thomas told us that she was not aware of the addresses of the 30 buildings she referred to, and that the whistle-blower who raised these concerns with the British Board of Agrément wished to remain anonymous, for fear that their business would suffer detriment as a result of making a detailed disclosure.⁹⁵ She confirmed that these buildings “have received, or are receiving, remediation to make them safe”, but again expressed concerns that this problem was more widespread:

In a small but significant number of cases where the cladding had been removed, we saw evidence of the absence of fire breaks or missing fire breaks; fire breaks installed incorrectly; the absence of fixing brackets for the rail systems or for securing the insulation to the façade. In some instances, different insulation products were seen on the same building and we were concerned about how well the implications of such changes had been considered.⁹⁶

80. It is deeply concerning to hear that steps being taken to remove dangerous combustible cladding from buildings, far from making tower blocks safer, could be putting residents’ lives at further risk. As we have already done in correspondence, we again call on the Government to urgently identify all affected buildings and take immediate action to address the problem.

Government support for privately-owned buildings and leaseholders

81. The Government recently published figures showing that there are 297 private sector high-rise residential buildings identified as having ACM cladding that is unlikely to meet current Building Regulations guidance, with a further 170 requiring additional testing.⁹⁷ The Committee has long-been concerned by reports of the slow progress in removing dangerous cladding from private-sector buildings, and in particular that very significant costs have been passed on to leaseholders for remedial work and interim safety measures, such as 24-hour fire wardens.⁹⁸

82. In June, the Government appointed a Ministerial taskforce to oversee a programme of remediation in the private sector, and said it would “rule out no options” if industry and individual building owners or developers do not come forward with their own solutions to

93 [Q302](#) (Claire Curtis-Thomas, British Board of Agrément)

94 [Q303](#) (Sir Ken Knight)

95 [Letter from British Board of Agrément](#), 29 June 2018

96 [Letter from British Board of Agrément](#), 29 June 2018

97 [Written Ministerial Statement, HCWS811](#), 28 June 2018

98 For example, [Tenants face £40m bill for new cladding](#), The Times, 14 February 2018

remedy their buildings and protect leaseholders from additional costs.⁹⁹ However, during our public evidence session with the then Minister of State for Housing, it was not clear what additional options were available to the Government to intervene:

We have ruled nothing out. I am not going to fly kites for the different policy options that are being considered. You have probably had evidence about what we can and cannot do yourselves as a Committee. We welcome the thoughts and the views of the Committee on that, but we are looking into all options. At this stage that is what I would limit myself to.¹⁰⁰

83. Some residents have accused private sector building owners of delaying remedial work in the hope that the Government will eventually step in and cover the costs.¹⁰¹ However, with the safety of thousands of residents at stake, more must be done to ensure remedial work is carried out without delay. John Stewart, Policy Manager at the Residential Landlords Association, recommended short-term loans be made available to private sector building owners by the Government, to replace cladding where it is known to be unsafe:

We need a quick solution that allows these properties to be made safe in the short term, while the longer-term legal wrangling takes place. The way we see that happening would be short-term government loans that would be eventually repaid.¹⁰²

We asked the Secretary of State whether he had considered offering short-term loans to private sector building owners to speed up remedial work. However, he told us he could not confirm this and explained that he wanted to see the proposals that were forthcoming from private sector building owners, at which point he would consider appropriate steps.¹⁰³ The Secretary of State highlighted that an insurance company, NHBC, had now accepted a claim to pay for remedial work on New Capital Quay, a 1,000-flat development built and owned by the property company Galliard Homes in Greenwich, raising the prospect that further private building owners may also be able to make claims for remedial work against their insurance policies.

84. More than a year has passed since the Grenfell Tower fire and it is unacceptable that so many private buildings continue to have unsafe cladding. This is a difficult and complex legal situation and, while the Government says it will rule out no options, it is unclear what more they can do to compel private building owners to act or whether they should be liable for this work in the context of the ambiguity of the current guidance for external surfaces. These delays are unfair on leaseholders and cannot continue.

85. Furthermore, it is clear that the ownership and responsibility of privately owned buildings is often complex. For example, some of these blocks do not have a single 'building owner', rather an owner of the modest freehold ground rent and the constituent long-leaseholders, the latter often being the only parties with a contractual obligation to carry out remedial works. We therefore recommend that the Government

99 [Written Ministerial Statement, HCWS811](#), 28 June 2018

100 [Q369](#) (Dominic Raab MP, Minister for Housing and Planning)

101 [Tenants face £40m bill for new cladding](#), The Times, 14 February 2018

102 [Q320](#) (John Stewart, Residential Landlords Association)

103 [Q26](#) (James Brokenshire MP, Secretary of State for Housing, Communities and Local Government), MHCLG priorities for the Secretary of State, HC 1036

conduct an urgent review into responsibility and liability of such buildings to ensure the necessary work can be carried out for the safety of residents, which is paramount. The Government should then produce further subsequent guidance for building owners.

86. While it is encouraging that an insurance company has recently accepted a claim to pay for remedial work on a private sector development in Greenwich, nevertheless, more needs to be done now to ensure that unsafe cladding is removed urgently. *To avoid any further delay, we propose that the Government introduces a low-interest loan scheme for private sector building owners, to ensure that remedial work is carried out as quickly as possible and that costs need not immediately be passed on to leaseholders.*

87. As we indicated earlier, we believe it would be unfair for private sector building owners or long leaseholders to be made liable for the costs of remedial work if the building fully complied with the building regulations at the time of construction or if the work was signed-off by Local Authority Building Control. In such circumstances, the cost of remedial work should fall to the Government.

Conclusions and recommendations

Reaction to the Review

1. The Independent Review was right to highlight the need for significant cultural change in the industry, with greater accountability and clear sanctions that act as a real deterrent to those that break the rules. We agree that the building regulations require simplification, that fire safety should be addressed throughout the life-cycle of a building, and that residents require a more meaningful voice to challenge fire-safety processes in their homes. We also support Dame Judith's proposed model for a more robust whistleblowing process. (Paragraph 12)
2. *While the Independent Review focused on high-risk residential buildings of 10-storeys or more, many of these recommendations could and should be applied to a wider range of buildings and to the construction industry as a whole. The Government must therefore take as wide an approach as possible to the applicability and implementation of the recommendations in the Final Report.* (Paragraph 13)
3. The Independent Review's proposal for a Joint Competent Authority has the support of a range of stakeholders. However, care must be taken to avoid the duplication of responsibilities and a lack of clarity over lines of accountability, while ensuring that JCAs will be sufficiently independent to ensure they are able to take enforcement action against their own local authorities. (Paragraph 16)
4. In the context of building inspection services, we particularly welcome Dame Judith's proposal that the industry should no longer be able to choose their own regulator and that there should be a single regulatory route for oversight of high-rise residential buildings through Local Authority Building Control. Indeed, we believe this principle should apply to a much wider range of buildings. (Paragraph 18)
5. There is no binary choice between having an outcomes-based system with greater accountability, robust regulatory oversight and strengthened sanctions on the one hand, and prescription on the other hand. The two are not mutually exclusive; as Dame Judith herself acknowledged, it is possible to do both. We want to see a system in which a reformed industry can be trusted to put fire safety first, with a robust system of oversight and meaningful sanctions, but underpinned by a strong, prescriptive approach to ensure minimum standards and guarantee the safety of residents. (Paragraph 22)

Updating and improving the current guidance

6. It is disappointing that the Independent Review did not address the specific, short-term changes that need to be made to the Building Regulations. In this specific respect, we believe the Independent Review did not fully meet the requirement in its terms of reference to reassure residents that their homes are, or will be made, safe. However, we note that Dame Judith has subsequently called for an immediate review of the Building Regulations. *The Government must immediately take forward*

its review of the current guidance as a matter of urgency, with the intention of publishing an updated version of Approved Document B before the end of the year. (Paragraph 27)

7. We are pleased that the Government has signalled its intention to ban the use of materials which are not of limited combustibility in the cladding of high-rise buildings, despite the failure of the Independent Review to make such a recommendation. We support the Government's proposal to adopt the European classification system for combustible materials and require the use of Class A1 or A2 materials, bringing England into line with other EU Members States and Scotland. (Paragraph 36)
8. *We believe such a ban should apply not only to new high-rise buildings, but also to existing buildings over 18 metres, as well as those currently under construction. People in all high-rise residential buildings need to have certainty that their homes are safe. Further, the ban should apply to non-residential buildings where there is a particular and significant risk to life, such as residential homes, hospitals, student accommodation and hotels. Upon the completion of the consultation, the Government must, as a matter of the greatest urgency, bring forward the ban on the use of combustible materials in the cladding of these buildings.* (Paragraph 37)
9. *The Government should fully fund the replacement of any cladding on existing buildings which had been permitted, but is subsequently banned as a consequence of the consultation. In those circumstances, this funding should be made available to both public and private sector landlords.* (Paragraph 38)
10. As part of this inquiry, we received various test reports relating to how cladding systems using materials classified as being of limited combustibility performed under large-scale tests, a number of which were performed outside of the UK. Given the necessary technical expertise required, the Committee does not see its role as interpreting the results of such tests, or determining or their implications. The Secretary of State was right to call for further research into these claims. (Paragraph 39)
11. We do not believe it is sufficient to solely require the use of materials of limited combustibility in cladding systems; these systems should additionally be subject to full-scale fire tests to ensure their safety. In this context, the Government should also take due regard to our conclusions and recommendations on BS 8414 large-scale tests made later in this Report. (Paragraph 40)
12. *We are unconvinced that Approved Document B bans the use of combustible materials as an external surface. Notwithstanding steps to ban the use of combustible materials on high-rise buildings, and its wider plans for the revision of Approved Document B, the Government must urgently revise Sections 12.5 to 12.7 of Approved Document B to provide much-needed clarity to the guidance as to what is, and what is not, acceptable.* (Paragraph 45)
13. The Independent Review was right to call for a more effective testing regime. It is clear that, while the BS 8414 test has many advocates, it does not have the full support of the entire industry. *The Government should work with fire safety experts and the industry to agree a new testing regime that has much wider industry support*

and can be fully trusted. A new system should better reflect real-world conditions, reach near-incontestable conclusions, and be more transparent, with details of test failures and re-run tests made publicly available. (Paragraph 49)

14. Where Fire Rescue Authorities have established commercial trading arms to provide fire safety advice, there is a clear conflict of interest when they are also the enforcement authority. In any industry, it is clearly dangerous to allow an organisation to approve its own work. The Government should immediately prohibit this practice. (Paragraph 53)
15. It is concerning that some manufacturers are known to shop-around for the most lenient product testing bodies in the expectation of an easier certification process. As highlighted earlier in the context of building inspection services, there is a clear conflict of interest where manufacturers and builders are able to choose who marks their homework. (Paragraph 55)
16. *The Government and the United Kingdom Accreditation Service (UKAS) should do more to ensure that all product testing bodies operate to the same high standards. The Government must take steps to ensure manufacturers are not incentivised to choose the most lenient testing bodies. It is vital that we create a system in which all approved testing bodies operating in the industry are fully-independent from the companies and products they are testing. Testing bodies should also publish their test failure rates, so there can be greater transparency and benchmarking within the industry. (Paragraph 56)*
17. The Government must be careful to ensure that there are no conflicts of interest when working with private sector companies on the content or application of the Building Regulations, particularly where such companies may have a direct financial interest in the provision of services required under those regulations. (Paragraph 59)
18. We reiterate our view that the over-use of desktop studies is a contributory factor to a weaker, less stringent regulatory regime and increases the likelihood of dangerous materials being used on high-rise buildings. However, providing that materials which are not of limited combustibility will be banned from the cladding of high-rise buildings following the Government's consultation, there are some circumstances in which a full-scale fire test may not be necessary. Nevertheless, desktop studies should always be based on primary test evidence. *The Government should publish clear guidance outlining the specific circumstances in which desktop studies may be permitted to be used. (Paragraph 64)*
19. *Where structurally feasible, sprinklers should be retro-fitted to existing high-rise residential buildings to provide an extra layer of safety for residents. The Government should make funding available to fit sprinklers into council and housing association-owned residential buildings above 18 metres, and issue guidance to that affect to building owners in the private sector. (Paragraph 68)*
20. *We heard strong evidence recommending the Government require sprinkler systems be installed in a wider range of buildings, including student accommodation, hospitals and large commercial warehouses. The Government should undertake a consultation into whether it would be appropriate to require the installation of sprinkler systems in these buildings too. (Paragraph 69)*

21. *Our panels of industry representatives and fire safety experts have suggested a number of further sensible measures to improve the regulatory framework. We call on the Government to consider each of these proposals carefully prior to its planned statement later in the year on next steps and reflect on them in its response to this Report.* (Paragraph 71)
22. We are concerned that conflicts of interest are pervasive within the industry. From builders choosing their own inspection services, manufacturers selecting product testers for their perceived leniency, Fire Rescue Authorities inspecting the work of their own commercial trading arms, to private sector companies' influence over the fire safety guidance in which they have a commercial interest. *If the Government is to restore public confidence in the construction industry, then it must—as a matter of urgency—tackle the conflicts of interest that exist throughout the system.* (Paragraph 73)

Government support for building owners and leaseholders

23. It is right that the Government has committed to supporting local authorities and housing associations to fully fund the removal and replacement of unsafe cladding. It is disappointing that this has been funded from the budget for the Affordable Homes Programme and we strongly urge the Government to find a new source for this funding. We are also concerned about the length of time it is taking to distribute funding to local authorities and housing associations, and call on the Government to set out a clear timetable for this. (Paragraph 77)
24. It is deeply concerning to hear that steps being taken to remove dangerous combustible cladding from buildings, far from making tower blocks safer, could be putting residents' lives at further risk. As we have already done in correspondence, we again call on the Government to urgently identify all affected buildings and take immediate action to address the problem. (Paragraph 80)
25. More than a year has passed since the Grenfell Tower fire and it is unacceptable that so many private buildings continue to have unsafe cladding. This is a difficult and complex legal situation and, while the Government says it will rule out no options, it is unclear what more they can do to compel private building owners to act or whether they should be liable for this work in the context of the ambiguity of the current guidance for external surfaces. These delays are unfair on leaseholders and cannot continue. (Paragraph 84)
26. Furthermore, it is clear that the ownership and responsibility of privately owned buildings is often complex. For example, some of these blocks do not have a single 'building owner', rather an owner of the modest freehold ground rent and the constituent long-leaseholders, the latter often being the only parties with a contractual obligation to carry out remedial works. *We therefore recommend that the Government conduct an urgent review into responsibility and liability of such buildings to ensure the necessary work can be carried out for the safety of residents, which is paramount. The Government should then produce further subsequent guidance for building owners.* (Paragraph 85)

27. While it is encouraging that an insurance company has recently accepted a claim to pay for remedial work on a private sector development in Greenwich, nevertheless, more needs to be done now to ensure that unsafe cladding is removed urgently. *To avoid any further delay, we propose that the Government introduces a low-interest loan scheme for private sector building owners, to ensure that remedial work is carried out as quickly as possible and that costs need not immediately be passed on to leaseholders.* (Paragraph 86)
28. As we indicated earlier, we believe it would be unfair for private sector building owners or long leaseholders to be made liable for the costs of remedial work if the building fully complied with the building regulations at the time of construction or if the work was signed-off by Local Authority Building Control. In such circumstances, the cost of remedial work should fall to the Government. (Paragraph 87)

Formal minutes

Monday 16 July 2018

Members present:

Mr Clive Betts, in the Chair

Bob Blackman	Mary Robinson
Helen Hayes	Liz Twist
Kevin Hollinrake	Matt Western
Andrew Lewer	

Draft Report (*Independent review of building regulations and fire safety: next steps*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 87 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Wednesday 18 July at 9.15 a.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Monday 18 December 2017

Dame Judith Hackitt, Chair of the independent review of building regulations and fire safety [Q1–79](#)

Thursday 17 May 2018

Dame Judith Hackitt, Chair of the independent review of building regulations and fire safety [Q80–199](#)

Wednesday 27 June 2018

Peter Caplehorn, Deputy Chief Executive and Policy Director, Construction Products Association, **Mirella Vitale**, Senior Vice President (Group Marketing, Communications and Public Affairs), Rockwool, **Richard Burnley**, Managing Director (Britain and Ireland), Kingspan Insulation, and **Adrian Dobson**, Executive Director, Royal Institute of British Architects [Q200–243](#)

Dr Debbie Smith, Managing Director, BRE Global, **Claire Curtis-Thomas**, Chief Executive Officer, British Board of Agrément, **Mark Hardingham**, Chair (Protection and Business Safety Committee), National Fire Chiefs Council, and **Sir Ken Knight**, Chair of the Independent Expert Advisory Panel [Q244–314](#)

Monday 2 July 2018

Mark Norris, Principal Policy Adviser, Local Government Association, **John Stewart**, Policy Manager, Residential Landlords Association, **Huw Evans**, Director General, Association of British Insurers [Q315–352](#)

Dominic Raab MP, Minister of State for Housing and Planning, Ministry of Housing, Communities and Local Government, **Andrew Pattison**, Director, Independent Review of Building Regulations and Fire Safety, Ministry of Housing, Communities and Local Government [Q353–412](#)

Published correspondence

The following correspondence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

General correspondence

- 1 [Sir David Amess MP](#)
- 2 [Aspire](#)
- 3 [British Board of Agrément](#)
- 4 [Building Engineering Services Association](#)
- 5 [Business Sprinkler Alliance](#)
- 6 [C S Todd & Associates Ltd](#)
- 7 [Centre for Window and Cladding Technology](#)
- 8 [Construction Products Association](#)
- 9 [Dr Jonathan Evans, MCRMA](#)
- 10 [Grundfos Pumps Ltd](#)
- 11 [Barry Hembling](#)
- 12 [Kingspan](#)
- 13 [Sir Ken Knight](#)
- 14 [Local Government Association](#)
- 15 [NHBC](#)
- 16 [NAPIT: Part P](#)
- 17 [National Fire Chiefs Council](#)
- 18 [Residential Landlords Association](#)
- 19 [Rockwool Group](#)
- 20 [Rockwool Group](#)
- 21 [Royal Institute of British Architects](#)
- 22 [Phillip Sacre](#)
- 23 [Safer Structures Campaign](#)
- 24 [School of Engineering, University of Edinburgh](#)
- 25 [Valcan Ltd](#)

Correspondence with Dame Judith Hackitt

- 26 [Chair to Dame Judith Hackitt, 9 January 2018](#)
- 27 [Dame Judith Hackitt to Chair, 11 January 2018](#)
- 28 [Chair to Dame Judith Hackitt, 30 January 2018](#)
- 29 [Dame Judith Hackitt to Chair](#)
- 30 [Chair to Dame Judith Hackitt, 23 April 2018](#)

Correspondence with Ministers

- 31 [Chair to Minister of State, 15 March 2018](#)
- 32 [Chair to the Secretary of State, 30 April 2018](#)
- 33 [Minister of State to Chair, 1 May 2018](#)
- 34 [Chair to Secretary of State, 17 May 2018](#)
- 35 [Secretary of State to Chair, 31 May 2018](#)
- 36 [Secretary of State to Chair, 11 June 2018](#)
- 37 [Chair to Secretary of State, 28 June 2018](#)
- 38 [Secretary of State to Chair, 6 July 2018](#)
- 39 [Minister of State to Chair, 16 July 2018](#)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Effectiveness of local authority overview and scrutiny committees	HC 369 (Cm 9569)
Second Report	Housing for older people	HC 370
Third Report	Pre-legislative scrutiny of the draft Tenant Fees Bill	HC 583 (Cm 9610)
Fourth Report	Private rented sector	HC 440 Cm 9639
Fifth Report	Business rates retention	HC 552
Sixth Report	Pre-legislative scrutiny of the draft Non-Domestic Rating (Property in Common Occupation Bill)	HC 943 CM 9633
Seventh Report	Long-term funding of adult social care	HC 768
Eighth Report	Planning guidance on fracking	HC 767