

Agenda – Equality, Local Government and Communities Committee

Meeting Venue:

Committee Room 3

Meeting date: 27 September 2018

Meeting time: 08.50

For further information contact:

Naomi Stocks

Committee Clerk

0300 200 6565

SeneddCommunities@assembly.wales

Pre-meeting (08.50 – 09.00)

- 1 Introductions, apologies, substitutions and declarations of interest**

- 2 Inquiry into fire safety in high rise blocks in Wales (private sector): evidence session 1**
(09.00 – 10.00) (Pages 1 – 33)
David Hancock, Group Manager, Head of Business Fire Safety, Mid and West Wales Fire and Rescue Service
Kevin Roberts, Senior Fire Safety Manager, North Wales Fire and Rescue Service
Christian Hadfield, GM – Operations Department, Vale of Glamorgan and Bridgend, South Wales Fire and Rescue Service
Owen Jayne, Group Manager, South Wales Fire and Rescue Service

- 3 Inquiry into fire safety in high rise blocks in Wales (private sector): evidence session 2**
(10.00 – 11.00) (Pages 34 – 42)
Nigel Glen, Chief Executive Officer, Association of Residential Managing Agents
Jason Clarke, Head of Risk Management, Warwick Estates
Rachel Dobson, Head of Health and Safety, Mainstay Group Limited



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Julie Griffiths, Property Manager for managed properties in Wales, Mainstay Group Limited

David Clark, Chairman, Mainstay Group Limited

4 Inquiry into fire safety in high rise blocks in Wales (private sector): evidence session 3

(11.00 – 12.00)

(Pages 43 – 50)

Cassandra Zanelli, honorary consultant to the Federation of Private Residents Association

5 Inquiry into fire safety in high rise blocks in Wales (private sector): evidence session 4

(12.00 – 13.00)

Jim McKirdle, Housing Policy Officer, Welsh Local Government Association

Graham Bond, Acting Building Control Manager, Planning, Transport and Environment, Cardiff Council

Dave Holland, Head of Shared Regulatory Services, Shared Regulatory Services, Bridgend, Cardiff and the Vale of Glamorgan

6 Papers to note

(Page 51)

6.1 Written submission from CRM

(Pages 52 – 53)

6.2 Written submission from Home Builders Federation

(Page 54)

6.3 Written submission from RICS

(Pages 55 – 57)

7 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting and from the meeting on 3 October 2018 and from item 1 of the meeting on 11 October 2018

- 8 Inquiry into fire safety in high rise blocks in Wales (private sector):
discussion of the evidence received under items 2, 3, 4 and 5**

(13.00 – 13.20)

- 9 Consideration of the letter received from the Llywydd in relation
to voting rights for prisoners**

(13.20 – 13.25)

(Pages 58 – 65)

Document is Restricted

Mid and West Wales Fire and Rescue Service Response



Introduction.

This submission will provide the Mid and West Wales Fire and Rescue Service response to the terms of reference provided in continuance of the inquiry that will inform the evidence session on fire safety in the private high rise residential sector.

In the aftermath of the Grenfell Tower disaster the Mid and West Wales Fire and Rescue Service suspended all programmed business fire safety audit work to focus on the high rise residential sector. All high rise residential buildings of 6 floors or above, in both the private and public-sector, were subject to a Business Fire Safety audit. Of the 81 premises audited between 19/06/2018 and the 26/07/2018 a total of 69 are private high rise residential properties.

The committee request that the following terms of reference are considered in the response:

- How has the private sector responded to concerns about fire safety in high rise residential blocks?
- What is the extent of remedial work that needs to be done to meet fire safety standards in Wales and what arrangements are in place to cover the costs?
- How are leaseholders / residents in Wales being informed about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed?
- What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe?

Mid and West Wales Fire and Rescue Service Response

How has the private sector responded to concerns about fire safety in high rise residential blocks?

The majority of high rise residential private sector buildings within the Mid and West Wales Fire and Rescue Service area did not present the same risks as those immediately evident at the Grenfell Tower disaster. There are no properties within the height bracket specified that have a clad external façade. Of the 69 premises only two



identified themselves as having deficiencies above those that could be categorised as minor; the remainder were found, when audited, to be displaying a satisfactory level of fire safety compliance with the Regulatory Reform (Fire Safety) Order 2005.

The two premises that have given greatest cause for concern appear to have issues regarding compartmentation, predominantly within the interior of the blocks. One of these premises had been receiving the attention of the Fire and Rescue Service for some time prior to June 2017. Both the blocks of interest implemented interim measures in accordance with National Fire Chiefs Council (NFCC) guidance including a waking watch, an extension to the scope of the existing fire alarm system and following risk assessment applied the principles of simultaneous evacuation.

What is the extent of remedial work that needs to be done to meet fire safety standards in Wales and what arrangements are in place to cover costs?

In the majority of blocks the required works are minor in nature and cost, requiring work to fire doors, signage, improvements to testing regimes and management of escape routes.

The combined remedial works in both blocks of specific interest appear to be related to issues involving the fire resisting compartmentation within the interior, the protection of structural steelwork and the fire-stopping measures in the external façade. In both blocks these issues extend into the residential as well as the common parts of the premises. It should be noted that both blocks do not have the same or same combination of issues. These works can be considered to be a major undertaking to resolve.

This involvement of two distinct areas, common and residential, of these blocks attracts the requirements of the Regulatory Reform (Fire Safety) Order 2005 to be applied to the common parts and those contained within the Housing Act 2014 to be applied to the interior of the apartments and the external façade. In accordance with directions given by both the National Fire Chiefs Council and Welsh Government, the responsibility for regulation of the residential parts and the external façade has been placed with the relevant Local Authority.



In relation to the arrangements to cover the costs of the works required, the Fire and Rescue Service is not privy to any specific definitive information on those incurred to address the minor issues. Where more extensive works are required some information on quoted costs has been seen though in other areas only anecdotal information has been received. For the major remedial works estimates run into the £millions.

How are leaseholders / residents in Wales being informed about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed?

The Mid and West Wales Fire and Rescue Service has complemented the information published by both Welsh and UK Governments through the provision of information to residents on the Service's external website and by engagement with residents' groups and individual leaseholders / residents through the offer of free Home Fire Safety Checks.

All Fire and Rescue Service personnel who visited these high rise residential buildings, following 14th June 2017, whether in a community safety or business fire safety capacity, were encouraged to engage with occupants to discuss fire safety matters and provide appropriate advice.

A portal exists on the Service's external website for members of the public to lodge complaints or concerns. An analysis of the complaint register held on our database does not reveal any that may have emanated from the private high rise residential buildings sector.

What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe?

The Mid and West Wales Fire and Rescue Service welcomes the recommendations contained within Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety: Final Report. The Service also looks forward to the outcomes of the Sir Martin Moore-Bick Public Enquiry. The Service is further encouraged by both the Welsh and UK Governments various reviews of Building Regulations and consultations on the use of combustible cladding. A continued dialogue with all parties,



such as this inquiry, is necessary to gain the broadest perspective on the issues, identify solutions and ensure the on-going engagement with all stakeholders.

In relation to the financial aspects of funding remedial works, I am not aware of any that require assistance to address cladding matters. I am however, as previously indicated, aware of building owners / managers / leaseholders who may be required to find monies to address major deficiencies in their respective premises. There may be recourse to the Leasehold Valuation Tribunal system or Building Maintenance Warranty Liability insurance to raise sufficient funds.

The Mid and West Wales Fire and Rescue Service, whilst always seeking to expand the scope of its work within the Prevention, Protection and Response arenas, is mindful of the limited financial assistance available to facilitate this and will continue to provide the current range of services through existing budgets.

North Wales Fire and Rescue Service

Contents

Aim	2
NWFRS Response	2



Gwasanaeth Tân ac Achub
Fire and Rescue Service

Aim

This briefing note provides an initial written response to the terms of reference set by the Equality, Local Government and Communities Committee's inquiry on fire safety in high rise blocks.

To report aims to answer the questions set in the terms of reference by the committee as follows:

- How has the private sector responded to concerns about fire safety in high rise residential blocks?
- What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?
- How are leaseholders/residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed?
- What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe?

NWFRS Response

How has the private sector responded to concerns about fire safety in high rise residential blocks?

The private sector buildings in our area did not immediately identify themselves with the risks posed by the Grenfell tower incident. The properties, in our area, are all significantly lower (less than 10 stories) or, with the exception of one known property, are not clad in any form of cladding or were using a simultaneous evacuation strategy.

As NWFRS has identified and audited premises of 5 or more floors they have found a good level of compliance, level 1 and 2. This level of compliance suggests premises that are managing their fire risk and ensuring fire safety measures are maintained and appropriate for the risk.

What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?

We have 16 premises that fall into the category of 5 or more stories private residential properties with only one premises, in this category, which has been identified as containing combustible cladding (not ACM).

The premise, which has been identified as requiring remedial work, was identified as being built to a greater height than the original building regulation plans. This meant that 2 areas of the building were now, greater than 18 m in height , (total height measured as less than 19m). Had this information been provided originally then different fire safety measures and standards would have been asked for, via a building regulation submission. Additionally the management company identified that the cladding used, on parts of the building, was classified as flammable. This cladding was not ACM cladding, but did not conform to class A2 of the European standard. Both of these issues are still to be resolved due to a change in management at the site.

The remainder of premises, in this category, are built using traditional methods and most are less than 7 storeys. In some cases an element of remedial work is required to enhance fire safety measures though this is mainly limited to replacing doors or enhancing an alarm system. The age and construction methods in the remaining properties, in this category, are such that any remedial work required would be at a cost that would not be prohibitive. We would expect this remedial work to take the form of replacement front doors (at approximately £500 per unit), fire stopping and extensions of existing fire alarm systems.

How are leaseholders / residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed.

Over and above WG and UK Government information, we have included an area on our website to provide fire safety advice to residents. We continue to provide Safe and Well checks where requested by occupants and fire safety advice to leaseholders/ responsible persons following fire safety audits.

Our Arson Team are visiting known risks around high rise premises. The Arson team have been working with property owners and the local councils to remove arson risks. They also give advice to property owners to reduce the risk of arson and improve site security. We record and address any complaints received as soon as possible with all required outcomes being proportional to any deficiencies found.

Following the Grenfell Tower fire NWFRS contacted and engaged with owners/ RP's for sleeping accommodation over 5 storeys to provide both legislative and community safety advice. None of these premises were identified as having ACM cladding. In many cases the Community Safety department worked jointly with BFS at these premises and offered Safe and well Checks to residents.

What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe?

NWFRS would welcome any additional support to enable the Business Fire Safety team to continue to engage with residents and monitor the fire safety within high rise residential premises. NWFRS also believe that this level of engagement should be widened to include all premise types greater than 5 storeys. Currently activity is targeted at high risk premises due to defined resources.

NWFRS are not aware of any building owners who require substantial financial investment to improve the fire safety in their buildings due to the presence of combustible cladding.

Gwasanaeth Tân ac Achub
De Cymru



South Wales
Fire and Rescue Service

How has the private sector responded to concerns about fire safety in high rise residential blocks?

South Wales Fire and Rescue Service has been working in collaboration with the management of all privately owned high rise buildings across the Service area. Throughout this work the Service has provided all the necessary support ensuring the management of such buildings work efficiently in providing a solution to any fire safety deficiencies that have been identified.

The Service has identified several privately owned residential high rise buildings across the Service area which include student accommodation, private flats and hotels. Since the Grenfell tragedy, the high rise buildings identified across South Wales have all been subject to a Fire Safety Audit and during these audits, a number of fire safety deficiencies have been recorded. The range of deficiencies are varied and include compromised compartmentation and cladding systems, which do not meet the limited combustibility requirements of the Building Regulations. In an effort to deal with the issues, the Service has been provided with funding from Welsh Government to establish a dedicated High Rise Team to ensure that the people who occupy high rise buildings are safe and as important they feel safe occupying these buildings.

It is pleasing to report that both the owners and management of these buildings have been extremely receptive to our involvement, particularly to the recommendations that the High Rise Team have made. There has been very little, if any, resistance to address the fire safety issues that have been identified. The collaborative working between South Wales Fire and Rescue Service and the privately owned high rise premises will continue until such time as the fire safety and cladding issues have been resolved and the buildings are fully compliant with all the necessary fire safety standards.

What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?

As stated above, the fire safety deficiencies identified in high rise buildings range from compromised compartmentation to cladding systems which do not meet the limited combustibility requirements of the Building Regulations. Recommendations have been made to the management of high rise buildings, with failed cladding systems, to carry out a Type 4 Fire Risk Assessment with the significant findings of the risk assessment subsequently being complied with.

As far as the Service is aware, as yet, no high rise buildings which are privately owned with failed cladding systems have been subject to remedial action. However, a number of building owners are still attempting to identify who exactly is responsible for the cost of replacing the cladding and this has resulted in significant delays in relation to the works being completed.

With regards to these privately owned buildings, from the owners' perspective, it is understood it has been difficult in many cases to establish exactly who is responsible for the cost of replacing the cladding. The High Rise Team will continue to work closely with the building owners/managers/responsible persons to ensure that fire safety measures are in place to ensure that the fire safety standards in such buildings remain at an acceptable level. Further details regarding remedial work on individual buildings can be provided if required.

How are leaseholders/residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed.

South Wales Fire and Rescue Service have supported and continues to support building owners and residents in various ways to ensure they are reassured about their safety when occupying high rise buildings. The support and reassurance that has been provided is detailed below:-

- It is understood that some residents' meetings have already been arranged by the Responsible Person for the respective buildings, and these meetings are currently ongoing. In such meetings members of the High Rise Team have attended with a view to explain the ongoing issues and at the same time giving the residents an opportunity to express their views and concerns.
- A number of newsletters and information packages on fire safety measures in high rise buildings have been compiled and made available for residents.
- A specific note in relation to fire safety in high rise buildings has been developed and posted on the Service's website and is also available from the Community Fire Safety Department.
- Members of the High Rise Team will continue with its engagement activity with all owners/managers of such buildings.

- In such meetings, residents' have been advised and reassured in relation to the operational changes which have taken place within the Service to deal with fires in high rise buildings.

What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe.

At the time of writing this response, the national inquiry into the Grenfell Tower tragedy is ongoing. This inquiry in time will present its findings, conclusions and recommendations which will go a long way to answering this question.

In the meantime it is the belief of the South Wales Fire and Rescue Service that consideration should be given to the following:-

- Regulation within the industry in relation to the competency of those individuals or companies who carry out fire risk assessment inspection and reports on those buildings which come under the scope of the Regulatory Reform (Fire Safety) Order 2005.
- Additional resources to be made available to Local Authority Planning and Building Control Departments to enable them to deal more efficiently and effectively with the ever increasing number of complex properties being constructed. As a statutory bar (FRS can retrospectively insist on changes to the fire safety features within a building irrespective of what has been agreed previously) no longer exists in relation to the implementation of the Fire Safety Order, such additional resources would facilitate closer collaboration at both planning and build stage with other relevant agencies, to ensure that, as far as possible, when all building works have been completed, fire safety standards will not have been compromised.
- Due to the considerable amount of money involved to remedy the problem of cladding system failure along with the costs of litigation, many building owners, particularly those in the private sector, are experiencing difficulty in resolving their problems. In such circumstances and with a view to resolving issues without delay, it is considered that a formal scheme of arbitration be set up to expedite matters.
- Following the recent publication of the findings of the Dame Hackitt Final Report, early guidance be given by Welsh Government to the Fire and Rescue Services in Wales, in relation to their future direction in this matter e.g. setting up a 'Joint Competent Authority'.

Agenda Item 3

ELGC(5)–25–18

Paper 4

ARMA response:

Phase 2: private sector - areas for consideration:

1. How has the private sector responded to concerns about fire safety in high rise residential blocks?

As the leading trade association for residential block managing agents, ARMA has been very active in its response. It raised the matter of the practical difficulties in the private leaseholder sector with respect to payment for remedial works direct with the Secretary of State within two weeks after Grenfell. The UK Government's stance that landlords were responsible for the safety of their leaseholders is correct, but the Government did not understand at the time that the responsibility to pay would most likely legally fall upon leaseholders and that the latter would therefore be liable for considerable sums. ARMA conducted a high-profile media campaign on National TV and Radio to raise awareness of the matter.

ARMA also founded the high-rise fire risk group and invited all managing agents, whether ARMA members or not to take part. The group is chaired by ARMA and meets monthly, sharing best practice, acting as a conduit between firms and the Government re concerns, ideas and communication. The group also provided ARMA with details of affected blocks, waking watch and remediation costs and number of leaseholders (5,700 in the UK). ARMA has provided this information on a confidential basis to MHCLG to allow a more accurate picture of the scale of the issue to be made.

ARMA is still active with the MHCLG and Secretary of State and is a member of the ongoing team trying to find ways to relieve leaseholders of the burden of remediation costs.

2. What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?

In Wales ARMA members only have two sites, Quayside (73 units) and Prospect Place (983 units) in Cardiff. Latest estimates for remediation are £125,000 and £1,500,000 respectively. In addition to remedial works for Prospect place the waking watch costs are £1,600 per week which

was not removed until the fire alarm upgrade was completed. Bellway, the developer, paid for the waking watch to the end of April, until the enhanced alarm system went live. The enhanced fire alarm system works was also paid by Bellway. The upgrade comprised of individual sounder/heat detectors installed in each individual apartment, that operate on an interlinked fire alarm system. A simultaneous evacuation is now in place.

3. How are leaseholders / residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed.

Leaseholders have been kept informed by letters and residents' meetings. The MCL have regular meetings with the Property Manager, and Bellway have recently started to attend these meetings with their updates on the NHBC investigations and design of an alternative cladding system.

4. What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe.

The whole question of leaseholder funding needs addressing as this is causing uncertainty and distress (both financial and emotional) to leaseholders and people are having to live in potentially unsafe buildings with their families. The role of Building Control in approving the materials placed upon the blocks needs to be taken into consideration as leaseholders are being asked to pay for major works that are not their fault. So far there have only been a handful of cases where the liability has been determined through the courts and in each case the leaseholders have been found to be liable. There is some push for the landlords to assume the liability as a goodwill gesture but in many cases the landlords were not responsible for the original construction and only have a minor interest in the building. Each building will have a different lease and hence each building will have to go through the courts for its own determination as to who pays.

The key issue here is time, as leaving the leaseholders to spend time and money going through tribunals, appeal and courts for a verdict they are likely to lose is not reasonable. The Welsh Government should step in to provide the financing for the cladding works and, if it wishes, to recover these from responsible parties in due course. By so doing at least the buildings will be rendered safe for the leaseholders in the shorter term.

It would also be helpful for the private sector to know the scope of the Welsh governments proposed inquiry. Is compartmentalisation to be considered? What other building materials other than ACM are under scrutiny. How will the issue of flat front fire doors leading onto communal areas be addressed?

Submission made by Rachel Dobson, Head of Health & Safety and Fire Safety for Mainstay Group Limited - racheldobson@mainstaygroup.co.uk - 07875 702607

Evidence is submitted on behalf of Mainstay Group Limited

Overview of Mainstay Group Limited

Mainstay are a successful, independent and privately-owned company wholly dedicated to residential, facilities and mixed-use management.

Within the Mainstay Group Ltd umbrella are:

- Mainstay Commercial Ltd - Management of Commercial property nationally accredited by the RICS
- Mainstay Residential Ltd - Management of Residential property nationally accredited by the ARMA - ARMA-Q
- Mainstay Facilities Management Ltd - Provider of soft services nationally

Mainstay currently manages in excess of 35,500 units across 495 schemes in England and Wales. A further 5,000 are portfolio management ground rent only and commercial property instructions.

Health, Safety and Compliance is always considered a priority at Mainstay to ensure the protection of all stakeholders. It is important to us through the services we deliver to be able to demonstrate that the landlord's obligations are being met or that all reasonable steps have been taken to ensure safety on a development.

Within Wales, Mainstay manage 20 developments which range from small apartment blocks of 10 units up to large developments in excess of 500 units.

Within the past 12 months there have been 4 fire safety audits on 4 of our managed developments. 3 of which resulted in Actions Plans and 1 resulted in an Enforcement Notice which expires on 7th September 2019.

How has the private sector responded to concerns about fire safety in high rise residential blocks?

Over the past 3 years Mainstay have formed a close relationship with our Primary Authority Partner, Hereford and Worcester Fire and Rescue Service, who provides assured and tailored advice on compliance with fire safety legislation and codes of practice.

Mainstay work proactively with resident management companies, resident groups, individual leaseholders, freeholders and registered providers.

We also work with Enforcing Authorities with challenges our business faces and how we aim to comply.

National Assembly for Wales' inquiry - fire safety in high rise blocks

Amid complex statutory and regulatory frameworks, in which residential block management operates, we pride ourselves on delivering regulated, accredited and paramount technical service, combined with an original approach to client and customer engagement.

- We are Corporate Members of the British Property Federation ('BPF').
- Mainstay are a regulated corporate member of the Royal Institution of Chartered Surveyors ('RICS').
- OHSAS18001 - We hold the internationally recognised standard for occupational health and safety management systems.
- ISO 9001 - We hold the world's most established quality framework for quality management systems.
- Corporate member of Association of Residential Managing Agents ('ARMA'),
- Many of our staff / property managers are members of the Institute of Residential Property Management ('IRPM') and qualified at Associate to Fellow level.
- Corporate Member of Association of Retirement Housing Managers ('ARHM'),
- Mainstay has accreditations with both SafeContractor & CHAS Safety Scheme's in Procurement.
- We are Corporate Members of BIFM
- Mainstay is authorised and regulated by the FCA (Reg No: 479886).

Mainstay appointments of qualified/competent risk assessors to undertake Fire Risk Assessments at all of our managed properties. As part of the rigorous interview, assessment, and induction of new staff, we assess competency, knowledge, and experience relevant and deploy work shadowing and group sampling of risk assessments as part of an extended induction and well as CPD.

What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?

Fire Safety Audits conducted by Enforcing Authorities have been centred around passive fire safety, in particular compartmentation and fire doors. These areas are identified through fire risk assessments.

At 3 of our developments where actions plans were devised in conjunction with the Enforcing Authority, the deficiencies identified were predominately issues with compartmentation and fire doors.

Property 1 - an independent survey was conducted on all passive fire safety throughout the building following on from an inspection by South Wales Fire and Rescue Service Costs for the compartmentation issues was recharged through service charge at a cost of £3,639.60

Property 2 - All works completed were in-line with the deficiencies outlined on the action plan by Mid and West Wales Fire and Rescue Service and the fire risk

National Assembly for Wales' inquiry - fire safety in high rise blocks

assessment. Costs for the fire door deficiencies was £7,034.40 and was recharged through service charge. Compartmentation issues were after negotiation by Mainstay rectified by the developer, resulting in no cost to the Leaseholders.

Property 3 - All works completed were in-line with the deficiencies outlined on the action plan by South Wales Fire and Rescue Service. Costs for the deficiencies was £1,562.94 and was recharged through service charge.

Property 4 - Enforcement Notice was served in June 2017 by Mid and West Wales Fire and Rescue Service. Deficiencies identified related to passive fire safety. After negotiation, the Developer took responsibility for the deficiencies, however Mainstay having further concerns of the quality of workmanship throughout the building instructed a Passive and Structural Fire Protection Survey.

The conclusion of the report was that the building is of a sub-standard build and there are various major issues of non-conformance with a large risk to life. The cost to remediate the deficiencies is £3.7 million. On the 27th June 2018 Mainstay received a second enforcement notice pertaining to the further issues identified.

Mainstay have contacted the developer and presented the report and asked that they take accountability for these defects in the same way they took accountability for the first EN deficiencies. At present the developer has not accepted responsibility and a Section 20 consultation is taking place with the residents to make them aware of the issues and potential costs they may incur.

How are leaseholders / residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed.

With significant deficiencies that are identified either through enforcing authority inspections and/or fire risk assessments which have a significant cost attached to the remedial works, the Property Manager will engage with Leaseholders to provide full details of the deficiencies and remedial costs.

This will be through Leaseholder meetings, letters, via telephone discussions or email. This gives Leaseholders and Mainstay the opportunity to openly discuss the deficiencies present, timeframes for remedial work to be undertaken and ramifications. It also gives Mainstay the opportunity to offer reassurance to Leaseholders that everything is being done to maintain the safety of the building.

During Leaseholder meetings Health and Safety is always an agenda item with prevalent issues highlighted to Leaseholders providing them with an opportunity to discuss collectively.

National Assembly for Wales' inquiry - fire safety in high rise blocks

Following on from the events of 14th June 2017, Mainstay took all measures possible to reassure all of our Leaseholders & residents where there are sub tenants within all our apartment block developments on fire safety measures in place within their building. This included letters being sent out to all Leaseholders & residents on the following (an example template is attached):

- Reiteration on whether the building operates a Stay Put policy or Simultaneous Evacuation policy and measures to take in the event of a fire.
- What, if any, communal fire alarm/detection systems are in place
- Fire safety in their own home
- Communal areas safety

A full statement was posted on our website and Property Managers engaged with Leaseholders & residents throughout this period of uncertainty and gave reassurances on the safety of their buildings.

What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe?

More recourse is required and the power to take action against developers where there is clear evidence that fire safety deficiencies identified are items that existed from build stage.

Greater controls are required by the Government & its Local Authorities at the handover/completion stage of apartment block builds to ensure that the building is in fact completed correctly & fit for use. Therefore avoiding the situation in the future whereby a completed building can be handed over which is of a sub-standard build with various major issues of non-conformance with a large risk to life.

Developers need to be held accountable and take responsibility where this has been identified to rectify the issues at no cost to the leaseholder.

Approved inspectors and local authority building control also need to take responsibility and accountability for deeming a building safe and compliant when it has been proven the building is of a sub-standard build which was present at handover and sign off.

Customer Reference: «TenantRef»

«Date»

«TenantName»

«TenAdd1»

«TenAdd2»

«TenAdd3»

«TenAdd4»

«TenPC»

Important Reminder Distributed to «Distributed_to»

Dear «TenantDear»

Re: Fire policy and systems

We are writing following the tragic incident at Grenfell Tower last week. First and foremost, we would like to extend our sympathies to all those affected by the incident.

We have received numerous queries from residents of buildings we manage, therefore we are writing to clarify the policies and systems in place at your property.

This is not intended to raise any cause for immediate concern, we are writing to all leaseholders and residents at the buildings we manage to provide this clarification.

This building operates a 'Stay Put' policy

Modern construction materials have been used throughout the block, which provide protection from the spread of smoke and flame by compartmentation. As such, each apartment is designed to give adequate protection for no less than 30 minutes, should a fire occur.

If A Fire Breaks Out In Your Home:

- Leave the room where the fire is straight away, then close the door.
- Tell everyone in your home and get them to leave.
- Close windows, doors and the front door of your flat behind you.
- Do not stay behind to put the fire out.
- Raise the alarm by using a 'break glass' call point (if installed as part of the alarm system)
- Call the fire service.
- Wait outside, away from the building.

If You See Or Hear Of A Fire In Another Part Of The Building:

- The building is designed to contain a fire in the flat where it starts. This means it will usually be safe for you to stay in your own flat if the fire is elsewhere.
- You must leave IMMEDIATELY if smoke or heat affects your home, or if you are told to by the fire service.
- If you are in any doubt, get out of the building.

To Call The Fire Service:

- Dial 999 or 112.
- When the operator answers, give your telephone number and ask for FIRE.
- When the fire service reply give the address where the fire is.
- Do not end the call until the fire service has repeated the address correctly.

Communal Fire Alarm Systems

- The communal areas of this building are installed with smoke detectors to operate automatically opening vents, which keep the common parts, particularly stairways, free from smoke. **This is an AUDIBLE system and alarms will sound.**
-

In addition to the clarification on the policy and systems in place, we would also like to re-iterate the following advice:

Fire safety in your own home

- You must have one or more working smoke alarms in your flat and these must be tested on a regular basis to ensure they will function in the event of an emergency.
- Your front door forms part of the means of escape and it must therefore be a correctly fitted 30 minute fire door that meets current standards

Communal areas safety

- It is important that all communal fire doors and pedestrian fire doors are kept closed at all times to prevent the spread of smoke and fire, unless on an automatic door closing system, and to ensure that the fire systems operate correctly. **Please report any defects to fire doors to your Property Manager.**
- Please ensure all communal corridors and means of escape are kept free and clear at all times.

If you have any queries, please do not hesitate to contact our Regional Customer Support Team on «Regional_No», who are available between the hours of 8.00 am and 7.00 pm Monday to Friday. Alternatively, you can contact our Regional Customer Support Team via email using «SiteEmail».

Yours «TenantYours»

«PMName»
«PMRef»

1) How has the private sector responded to concerns about fire safety in high rise residential blocks? UK ONLY

Those in the private sector consist of very different groups

A – The small blocks of 2–10 often conversions

B– Small purpose built blocks up to 20

C– Larger up to 50 flats

D– Largest up to 100

E– Estates and very large blocks of several 100

These are managed differently and so are receiving different treatment

A – The small blocks of 2–10 often conversions

A(i) Self Managed

Where these are self managed then it is up to the lessees what precautions they install unless the block has been designated an HMO – House in multiple occupation – In this case an environmental health officer would have assessed it according to HHSRS – Housing Health and Safety Rating Standards and required a zoned fire alarm within the flats not just the communal areas.

If it is not designated an HMO then the lessees are bound by 2005 Regulatory Reform Fire Order and any successor which makes them responsible for installing fire precautions. They would not necessarily either

know about it or abide by it. However when a flat is sold then the vendor would be asked about the fire precautions as part of the enquiries before contract. In this circumstance a Risk Assessment from a professional would be needed and the necessity to conform to its suggestions explained.

A(ii) Agent Managed

The agent may be appointed by either a self managed block or by the freeholder. They vary in quality

as there is no obligation to appoint any body qualified. Nor is there any guarantee that a qualified agent is competent. The greatest problem in the very small blocks is that the Agent may be seen as or does in fact go 'over the top' for example a block of two having a common hallway of one square meter

being obliged to spend more than £1500.00 on a fire alarm system for the common ways.

In this case the lessees obtained RTM and installed a simpler system.

In other cases the agent has a risk assessment but the lessees either cannot or do not wish to pay for

the suggested precautions which can be particularly expensive in conversions.

In a purpose built block there is as far as I am aware no legal obligation to retro fit a communal fire alarm system.

As I advise leaseholders at a weekly drop in I hold in Brighton I am attaching some correspondence I had earlier this year with the leaseholders in a purpose built block of flats which demonstrates that

official advice can be at variance with the managing agents advice. The lessees in this case were correct.

B- Small purpose built blocks up to 20

These are unlikely to be conversions unless they are from rest homes or listed buildings once used for a different purpose. If purpose built there is no legal requirement to retro fit a system. A risk assessment which a managing agent will do as a rule or in response to enquiries before contract will generally bring up issues which the agent is professionally obliged to deal with – for example fire hazards in corridors.

C- Larger up to 50 flats

Modern purpose built blocks will already conform to the building regulations and the agents will be required to keep the system tested and in repair.

If the block is older a Risk assessment will show up what needs to be done. If the agent or lessees do not conform there is a danger of either party being to blame for corporate manslaughter in the event of a recommendation being ignored.

D- Largest up to 100

As above – there may be fewer issues with finance for recommended precautions as the costs are shared among more lessees

E– Estates and very large blocks of several 100

The issue of balconies can arise more often here and as with all blocks now there is a debate over the stay put policy. Fire Officers are available to give guidance and in Sussex are calling on each flat in larger blocks to explain recommended procedures to every occupant.

(2) – What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs? UK ONLY

At present I would describe things as being in a state of fear and flux.

In the private sector the main driver is the risk assessment to encourage greater attention to precautions. Against this is the lease which generally designates the lessees door for example as their own. For large scale remedial work two recent cases have put this down to the lessees – no grants are available. In the public sector for lessees in financial difficulty there will be grants for the bills for example for cladding removal or fire watches.

(3) – How are leaseholders / residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed. UK ONLY

In the private sector The reply to this query depends on

- who is managing the block– agent or leaseholders

- who owns the block – lessees or an outside freeholder
- and the skills and opinions of the above.

Lessees can panic unnecessarily as it may not be clear to them what a high rise block is.

Lessees can also be very concerned about a risk and find no body prepared to listen.

In fact there is nobody able to act or listen when one leaseholder is thought to represent a danger to the block in terms of setting off the fire alarm or hoarding papers in a flat. If Environmental Health had any power to address these concerns it would be a relief to occupants

In the Social Sector – accusations of poor workmanship re fire alarm installation are still brushed off

by some Councils. Councils are awaiting guidance on Fire Door quality. Sprinklers are being retro fitted

at the cost of leaseholders in Council blocks in Brighton.

(4) – What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe.

It would be excellent if Govt could allocate some funds so that there can be a cap on the service charges

demand of leaseholders. The rationale for this is that as building regs were a legal requirement and in cases of cladding were installed according to requirements, it is not the leaseholders 'fault' if the regulation and testing

are now found to be wrong. If the equivalent of Florries Law were to apply in public and private sectors this would be a relief to all concerned.

This series of emails comes from a query at the Leasehold Drop in run by FPRA representative Shula Rich. Guidance and requirements from Managing Agents is not always correct in spite of their qualifications. E mails in reverse order. Read from the bottom upwards.

Reply from Shula Rich 29/5/2018 to a query from an agent questioning her information given at her drop in to one of their clients.

Hi Rula
Thanks for your email.
The email I sent our member is a quote
from the LACORS guidance.
I hope this helps
All best wishes
Shula

On 29 May 2018, at 14:11, Rula Kronda wrote:

Dear Shula,

I have been forwarded the advice given by you to the freeholders in a property I manage.

I wanted to check again what your advice is regarding works required following a fire risk assessment; it really does seem to contradict the way we have been working.

I am under the impression that although a building may comply to building regulations at the time of being built, fire regulations may change and these supersede building regs?

I look forward to your further comments.

**Kind regards Rula Kronda BA (Hons) AIRPM
Property Manager Austin Rees**

To:
Subject: Re: Kipling Court

Reply-To: Shula Rich
Hi Nick

Thank you I have re read this attachment and now agree that it supports your stance – see quote below from the guidance you sent me

23.3 It is wholly inappropriate to impose the current guidance for new blocks of flats retrospectively to existing buildings. Nevertheless, current guidance can be considered when setting benchmarks against which to assess the adequacy of fire protection within existing blocks of flats.

23.4 However, it should be recognised that benchmarks are intended simply to make comparisons. Judgement is needed by fire risk assessors and others when reviewing fire safety in a particular block.

23.5 It will often need to be accepted that it is neither realistic to meet current benchmark standards, nor risk proportionate to impose many of the solutions available today to the situations found in the designs of existing buildings.

23.6 There have been many variations in the design of blocks of flats over the years. As a result, older blocks will not comply with current benchmark standards. Fire safety professionals may not be familiar with older designs that are not consistent with the standards of today.

I think you have to make intelligent decisions based on the risk assessors assessment of 'risk' The guidance says that not all of them know (23.6)

Kingsway Court my own block has upgraded its common parts doors but not the flats

Hope this info is useful

All the best
Shula

From n.dunge

To: Shula Rich

Sent: Friday, 27 April 2018, 9:57

Subject: Re: Kipling Court fire precautions

Dear Shula

Thank you for your time yesterday at your drop in

Attached for your information is the "fire safety for purpose-built blocks of flats" which was produced by the Local Government Association in May 2012.

Regards
Nick

https://www.cieh.org/library/Knowledge/Housing/National_fire_safety_guidance_08.pdf

Agenda Item 6

Equality, Local Government and Communities Committee

27 September 2018 – papers to note cover sheet

Paper no.	Issue	From	Action point
ELGC(5)-25-18 Paper 8	Fire safety in high rise blocks in Wales	CRM	Written submission from CRM residential
ELGC(5)-25-18 Paper 9	Fire safety in high rise blocks in Wales	Home Builders Federation	Written submission from Home Builders Federation
ELGC(5)-25-18 Paper 10	Fire safety in high rise blocks in Wales	RICS	Written submission from RICS

Agenda Item 6.1

Ymchwiliad i ddiogelwch tân mewn tyrau
o fflatiau yng Nghymru (sector preifat)
Inquiry into fire safety in high rise blocks
in Wales (private sector)
Ymateb gan: CRM preswyl
Response from: CRM residential

How has the private Sector responded to concerns about fire safety in high rise residential blocks?.

A review of the external construction of all buildings under management was undertaken, with reference to the Operating Manual applicable for each building. More generally a review of the fire safety measures within each building also took place. Occupiers and owners were written to, to provide re-assurance and to re-iterate the relevant fire strategy applicable to the buildings.

1. What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?

In our experience the general management of the fire safety equipment and fire safety regimes within buildings is a good standard. This is because managing agents will arrange for risk assessments to be carried out and for all fire safety equipment present to be serviced and maintained to the required standard.

More substantive issues are likely to arise from the design and construction phase of a building where either design or poor workmanship may lead to fire safety deficiencies.

Our current understanding is that there are no formal arrangements in place to cover costs. Leaseholders are dependent upon the developer and or construction company taking responsibility and having the means to rectify fire safety deficiencies arising from the original construction, or that a Build Warranty may encompass the necessary repairs that may be required.

Failing the above, the costs of any repair works will fall to Leaseholders and there are currently no provisions in place for grants or loans to be issued to them. The nature of the repairs required will of course dictate the quantum of the repair bill and as has been reported in the National press, this could involve vast sums of money being required to affect a repair. The average Leasehold owner is unlikely to have this level of disposable income to contribute towards the repair bill. A grant or loan system may therefore be necessary in order to ensure that there is a safe housing stock.

2. How are Leaseholders/ residents in Wales being informed about recent developments and reassured about fire safety measures in their block?

Leaseholders and residents are reliant upon their Managing Agents and or Landlords to update them and re-assure them in respect of fire safety measures.

Updates are posted onto the building website and notification and update letters are issued when there is anything relevant to report.

We have also notified Leaseholders and occupiers that the Fire Authority can carry out free home safety checks of properties.

3. More broadly , to what extent are residents' views about fire safety being listened to and addressed

Leaseholders and residents expect to be able to rely upon the expertise of the designers, constructors and inspectors of residential premises in order that their residential homes comply with relevant Approved Codes of Practice. They expect that the Codes of Practice will provide solid guidelines to ensure that fire safety standards remain high and that rigorous inspections will ensure that these safety standards are being followed.

Private sector Leaseholders are less likely to be publicly forthcoming about fire safety issues because they do not want their investments and homes to be blighted.

4. What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe.

We know from the Cityscape Croydon tribunal that the costs of the repair work to replace the cladding, under the terms of the lease, would have fallen to the Leaseholders via the service charge. It is very likely that the majority of other Leasehold properties across the country would also be in a similar position if major works were required. Fortunately for Cityscape residents the original construction company has stepped in to carry out the repair work required. Government and Local Authorities could actively reward responsible developers and builders who act in this way by having an approved list of developers and builders who would be eligible to receive planning permission for future developments and penalise others who do not by excluding them from this list. Hopefully this will also result in more due care and diligence in future builds.

In the eventuality that Leaseholders are faced with a large repair bill, it may not be possible for them to obtain additional funding via loans or a mortgage. If the development is in a position where there is likely to be a large repair bill, the property may not be mortgageable and therefore unsellable. Meanwhile the repairs cannot be undertaken because there is no financial means to pay for it. UK Government have already expressed their view that Leaseholders should not have to pay for the mistakes made in the construction, in respect of the ACM panelling, but have not provided any practical support for the private sector. A loan or a grant option could greatly alleviate the situation and advance any necessary remedial work.

Reliance upon inspections by third parties unconnected with the construction company play a significant role in satisfying Leaseholders and managers of buildings, that the construction has indeed been completed to the relevant British safety standards. This vital and important role cannot be underestimated and many Leaseholders and managers feel that there needs to be more accountability arising from the inspections and that a more rigorous inspection regime needs to be implemented.

With high rise buildings and for larger scale residential construction, perhaps a more centralised form of Building Control via the Welsh Assembly could be considered.

Finally there should be a more joined up approach to the implementation and inspection of issues affecting Fire safety in residential developments. The Fire authorities do not currently have the authority to encompass the external façade within their inspections and reviews and this position should change.

Agenda Item 6.2

Ymchwiliad i ddiogelwch tân mewn tyrau
o fflatiau yng Nghymru (sector preifat)
Inquiry into fire safety in high rise blocks
in Wales (private sector)

Ymateb gan: Ffederasiwn Adeiladwyr Cartrefi
Response from: Home Builders Federation

HBF has been closely engaged with the Westminster Government on the remediation and fire safety of private buildings in England. HBF members that have made us aware of possible issues with cladding systems have taken a responsible approach even though, in most cases, ownership of the building now rests with leaseholders, and overseen by management companies appointed by third party freeholders. A variety of remediation solutions have been adopted for private blocks in England, ranging from those involving warranty providers to individual developers coming to specific arrangements with building owners and leaseholders to voluntarily provide funding to complete remedial works as swiftly as possible.

It is important to stress that engagement from builders and the HBF in England has been on the basis that buildings designed, built and sold with relevant cladding systems achieved building regulations approval, but recognising the importance of the issue for homeowners and for government, we have worked constructively with ministers and officials to share information and help develop possible solutions.

Meanwhile, on the technical side, we are working with some members and the Ministry for Housing, Communities and Local Government (MHCLG) to explore options for the replacement of cladding systems, looking at respective building regulations compliance and U Values of materials combinations.

We continue to be available and keen to work with MHCLG and Welsh Government to gather information, convene relevant members and support efforts to remediate private buildings.

Re: Committee Inquiry into fire safety in high rise blocks in Wales

RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals worldwide and represent 4,000 professionals locally. Any individual or firm registered with RICS is subject to our quality assurance. As part of its Royal Charter, RICS has a commitment to provide impartial advice to the Government of the day and has an obligation to bear in mind the public interest as well as the interests of its professionals. RICS is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to key sectors.

RICS welcomes the opportunity to respond to the Committee Inquiry into fire safety in high rise blocks in Wales. The Grenfell tower tragedy focused global attention on the threat posed by failing fire safety standards. As the need for more high-rise structures increases, across residential and commercial use, the need for a harmonised approach to setting domestic and international standards in fire safety has never been greater.

RICS has engaged with local and international professional bodies and standards setting organisations committed to developing and supporting a shared set of standards for fire safety in buildings. The International Fire Safety Standards Coalition (IFSS) was launched at the United Nations earlier this year and has set about the work of developing high level principles in this area. The collaborative work undertaken by the coalition is expected to continue into 2019 and will be valuable for the Welsh Government upon publication.

Our response to the initial committee inquiry is as follows:

1. How has the private sector responded to concerns about fire safety in high rise residential blocks?

Following the tragedy at Grenfell tower in June 2017, private sector professionals have been engaged in a robust programme of work to assess the safety of individual blocks under their maintenance. This has involved engagement with tenants and statutory authorities to secure high-rise residential blocks, test a range of building materials, implement improvement works where necessary and reassure occupants about the safety of their homes.

Following initial assessments, where Aluminium Composite Material (ACM) cladding or combustible insulation is believed to be present, building owners and managers have submitted samples for testing to BRE in line with guidance from the Ministry for Housing, Communities and Local Government MHCLG. Where submitted materials have failed testing or raised concerns, owners, managers and landlords have sought professional advice on remediation work under the recommended interim fire safety measures developed by the UK Government.

RICS remains concerned that there is anecdotal evidence to suggest that over 14 months after Grenfell, there may still be high-rise buildings which have not yet been assessed. Generally, however, local authorities and Fire and Rescue Services have been thorough in identifying buildings with higher risk profiles.

In all high-rise buildings, regardless of testing results, owners and managers have been reassessing Fire Risk Assessments, ensuring that no recommendations have been overlooked and that sites are fully secure. This has been a significant body of work, however the timescale for full remediation remains a concern.

2. What is the extent of remedial work that needs to be done to meet fire safety standards in Wales, and what arrangements are in place to cover the costs?

Remedial works necessary to meet interim fire safety standards will vary building by building. In some cases, the improvement works will be significant and may include entirely stripping ACM cladding in addition to combustible insulation. This will come alongside other works such as installing new sprinkler systems, replacing fire doors etc.

In the public sector, the UK government has committed £400m for remedial works undertaken in England. An initial assessment of high-rise buildings in Wales found that fifteen used ACM cladding – three public sector and twelve private sector blocks. The Welsh Government has committed £3m to remove ACM cladding from those social housing blocks discovered in Newport which have also been refitted with sprinkler systems and fire alarms.

Establishing liability in the private sector has been a more difficult challenge. Given variation in tenancy arrangements, management contracts and disputes over communal areas, the situation has been complex. In a number of cases already heard by the First Tier Tribunal, the pattern of decisions has been to hold leaseholders responsible for costs. These costs can escalate up to £35K for an individual apartment and have become a significant barrier to advancing remedial works for landlords and owner occupiers.

3. How are leaseholders / residents in Wales being informed about recent developments and reassured about fire safety measures in their block? More broadly, to what extent are residents' views about fire safety being listened to and addressed.

Leaseholders and residents are likely to be informed about developments on a case by case basis, based on the information available to management agents.

There are concerns about the consistency of information and communication available to leaseholders and residents in high-rise blocks about testing, ongoing works and security of the site. Many management agents have taken a strong proactive position on communication but this has not been universal.

4. What, if any, additional practical or financial support is needed from the Welsh or UK Governments to help ensure high rise blocks are safe.

Funding from the Welsh Government to support the removal of ACM cladding and combustible insulation from social housing high-rise buildings in Newport has been a welcome resource. Similarly, the allocation of £400m from the UK Government for public sector work in England has allowed work to commence in earnest.

The primary challenge remains supporting remedial work in the private sector where leaseholders are struggling to raise the necessary finance to make units fire safe.

Consideration may be given to the introduction of a loan scheme to progress private sector work. The Australian state of Victoria announced plans for a Cladding Rectification Agreement Scheme last month which would make low-interest loans available to leaseholders to carry out remedial work. These loans are to be repaid through council rates over a minimum period of ten years and are transferrable to new owners if a property is sold in the interim period.

Any loan scheme will present its own challenges, particularly for those leaseholders on low incomes or with already high rates bills. If attached to the property for a significant period, there may be further issues with devaluation at the point of resale. Such a scheme would, however, allow work to be advanced more quickly without an immediate additional burden on leaseholders.

RICS remains engaged with the International Fire Safety Standards Coalition to develop high level principles to address these issues. That work will continue into 2019.

We would be happy to offer further assistance or clarification on any of the points raised in this submission. If you have any queries, please do not hesitate to contact me directly.



John Griffiths AM
 Chair
 Equality, Local Government and Communities Committee
 National Assembly for Wales
 Cardiff Bay
 CF99 1NA

Your ref:
 Our ref: EJ/HF

6 September 2018

Dear John,

Voting rights for prisoners

The Wales Act 2017 gave the National Assembly the power to make decisions in relation to the institution's electoral and organisational arrangements. As you know, the Assembly Commission is leading work to explore how these powers might be used to make our legislature a more effective, accessible and diverse legislature.

As part of this work, the Commission is considering potential reforms to the franchise for Assembly elections, and as I announced in July 2018, we intend to lower the minimum voting age for Assembly elections to 16 with effect from the 2021 election. By doing so we hope to raise political awareness, participation and understanding of their national parliament among young people.

My Written Statement to the Assembly also addressed prisoner voting and my intention to write to you to invite the Equality, Local Government and Communities Committee to consider undertaking an inquiry into this issue.

I am mindful of the Assembly's human rights obligations under international law in relation to prisoners' voting rights. At present, most prisoners in the UK are prohibited from voting in all elections, although prisoners on remand may vote.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



However, successive judgments of the European Court of Human Rights have found the UK to be in breach of Article 3 of Protocol 1 of the European Convention on Human Rights. The judgments, all of which predate the coming into force of the Assembly's competence on electoral matters under the Wales Act 2017, make clear that compliance with the Convention does not require all prisoners to be able to vote, rather that considered decisions should be taken about the voting rights of prisoners in elections to legislatures.

While the UK Government has taken some steps to address this ruling, the Wales Act 2017 now enables the Assembly and Welsh Government to be in a position to remedy any breach of international human rights obligations relating to prisoner voting in relation to Assembly and local government elections.

As a Commission, our approach is to take steps to legislate in areas where there is cross-party support and where mandated by the Assembly. The issue of prisoners' voting rights is not one which has been considered by the Assembly as yet.

The legal, ethical, democratic, practical and human rights issues relating to prisoner voting are significant, requiring thorough consideration and judgement.

During the consultation period, the *Creating a Parliament for Wales* consultation was brought to the attention of a range of justice, prison, and victim support stakeholders. However, only 12 organisations responded to the questions on prisoner voting, none of which represent prisoners, prisons or victims of crime. This points to the need for thorough, focused stakeholder engagement work and evidence gathering before any conclusions are reached on whether, and, if so, how and when, prisoners should be enfranchised in Wales.

For that reason, I would strongly welcome the Equality, Local Government and Communities Committee holding an inquiry to examine the principle of whether prisoners should be allowed to vote in Assembly elections.

To assist you in your consideration of this request, I enclose a brief note on the current UK Government position, developments in Scotland as a result of the recent devolution of electoral law to the Scottish Parliament, the outcome of the Commission consultation and an overview of legal issues in this area.



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

I realise that your Committee's workload is significant, but I hope that your Committee will consider that this is an interesting and important area of work and that time can be found at some point to undertake this work on behalf of the Assembly.

I look forward to your response. I am copying this letter to Alun Davies AM, Cabinet Secretary for Public Services and Local Government.

Yours sincerely,

Elin Jones AM

Llywydd

cc Alun Davies AM, Cabinet Secretary for Public Services and Local Government



Annex: Prisoners and voting rights

Most prisoners in the UK are prohibited from voting in all elections, although prisoners on remand may vote. However, successive judgments of the European Court of Human Rights have found the UK to be in breach of Article 3 of Protocol 1 of the European Convention on Human Rights. The judgments, all of which predate the coming into force of the Assembly's competence on electoral matters under the Wales Act 2017, make clear that compliance with the Convention does not require all prisoners to be able to vote, rather that considered decisions should be taken about the voting rights of prisoners in elections to legislatures.

UK Government approach

In response to these rulings, in November 2017 the UK Government announced its intention to give prisoners released on temporary licence or on home detention curfew the right to vote in elections in the UK. It will also, in future, be made clearer on sentencing that imprisonment involves losing the right to vote. These changes will be achieved through the introduction and clarification of administrative arrangements and guidance; no legislation is required. The UK Government estimates that these changes will affect up to 100 offenders across the UK at any time; it is not known how many people it would affect in Wales.

The UK Government's approach has been endorsed as a proportionate response by the Council of Europe, which is responsible for overseeing the implementation of judgments from the European Court of Human Rights. The endorsement does not bind the Court, which will not express a legal view on the adequacy of the arrangements unless and until a further case on prisoner voting in the UK is referred to it.

Welsh Government proposals

In 2017, before the UK Government announced its intentions, the Welsh Government consulted on the local government franchise in Wales, including the issue of prisoner voting. Responses to the consultation were finely balanced on the principle of prisoner voting.

In January 2018, as part of its preparation for the Local Government Bill due for introduction during the course of this legislative year, the Welsh Government



announced that it was exploring proposals to allow prisoners who were due for release within the term of the council to be elected to be able to vote in local government elections in Wales.

Scotland

The Scottish Parliament's Equalities and Human Rights Committee published a report in May 2018 on its twelve-month inquiry into prisoners and the franchise in Scotland. It recommended by a majority that: "the Scottish Government [...] legislate to remove the ban on prisoner voting in its entirety". The report also highlighted a need for the Scottish Government to consider the practicalities and how the principle should be given effect, and for wide and detailed consultation with stakeholders, victims of crime and the general public.

The Scottish Government desisted from taking action, including consulting on its own proposals for prisoner voting, while the Scottish Committee undertook its inquiry. Responding to the Committee's report in July 2018, the Scottish Government stated:

"We will bring forward a consultation, setting out options for ensuring compliance with the ECHR. You noted that the Scottish Government should consider a plurality of views when options are under consideration and this should include victims of crime. During the consultation period we will liaise with victim support organisations and members of the public to ensure their views are heard as part of the consultation. We will aim to issue this consultation later in 2018.

It is our view that the Scottish Parliament should not give the vote to all prisoners. We are not persuaded of the case for enfranchising all prisoners and we do not think that that is required in order for us to comply with the European convention on human rights."

Legislative competence

As noted above, the European Court of Human Rights has ruled on several occasions that the UK is in breach of its international obligations as a result of the blanket ban on prisoner voting. The Assembly and Welsh Government are bound by the UK's international obligations insofar as those obligations are within the



scope of their powers. In particular, section 108A(2)(e) of GoWA 2006 provides that legislating in a manner that is incompatible with Convention rights is outside the Assembly's legislative competence.

The reserved powers model of devolution instituted by the Wales Act 2017 devolved legislative competence over who is able to vote in Assembly elections and local elections in Wales. The result is that the Assembly and Welsh Government may now be in a position to remedy any breach of international human rights obligations relating to prisoner voting, should another case brought before the European Court of Human Rights find that the administrative changes being made by the UK Government were not considered sufficient.

However, the Act also includes some constraints of relevance to whether prisoners should be entitled to vote in Assembly elections. These include reservations relating to: criminal proceedings, including sentencing; and modifications to the law about sentences, including the effect and operation of sentences. In addition, implementing an extension of the franchise to some or all prisoners would require the involvement of the criminal justice system, including the police, court service and the prison service. These bodies are reserved authorities under the Act.

Creating a Parliament for Wales consultation

The Assembly Commission's *Creating a Parliament for Wales* consultation took place between February and April 2018, and included questions on the UK and Welsh Governments' proposals in relation to prisoner voting:

- Of 1,450 responses to a question about the extent to which respondents agreed with the UK Government's proposals, **54 per cent (780) either strongly agreed or agreed** that prisoners released on home detention or temporary licence should be allowed to vote in Assembly elections, and **34 per cent (490) either strongly disagreed or disagreed**.
- Of 1,440 responses to a question about the extent to which respondents agreed with the Welsh Government's proposals, **49 per cent (700) either strongly agreed or agreed** that prisoners should be able to vote in Assembly elections if they were due for release during the period for which Members were being elected to serve, and **36 per cent either strongly disagreed or disagreed**.



The consultation also invited respondents to identify any issues, risks or benefits which should be considered in relation to prisoners' voting rights in Assembly elections. 510 responses were received to this question, of which:

- 28 per cent (140) were of the view that prisoners should not be allowed to vote. Reasons given included: the loss of rights, including voting rights, being part of prisoners' punishments; and that prisoners should not have a say in who governs the country and makes laws.
- 18 per cent (90) said all prisoners should be allowed to vote. Reasons given included: prisoners being enfranchised in other countries; prisoners being affected by decisions made by the Assembly; and prisoners feeling more a part of society if they were allowed to vote.
- 12 per cent (60) referred to prisoner rehabilitation, arguing that entitlement to vote would help prisoner reintegration into society.

Conclusion

The Commission considered the consultation responses in July 2018 and the Llywydd subsequently issued a Written Statement to the Assembly on this matter stating the Commission's conclusion:

"There is the question of our human rights obligations under international law in relation to votes for prisoners. The legal, ethical, democratic, practical and human rights issues relating to prisoner voting require thorough political consideration and judgement. We believe that further work is needed in this area to consider further evidence and this requires more time than we have to be able to properly consider it for inclusion in the Commission's legislation. As a legislature, we must take our obligations seriously. As such, the Commission believes that the right approach in the first instance is to invite the Equality, Local Government and Communities Committee to consider holding an inquiry to examine the issue of whether prisoners from Wales should be allowed to vote in elections to the National Assembly."

Issues of relevance to such an inquiry might include:



- Arguments for and against some or all prisoners being enfranchised, for example whether distinctions might be drawn between different categories of prisoner on the basis of sentence length or types of offence;
- Human rights issues to which enfranchising some, all or no prisoners might give rise;
- Practical issues, for example those relating to electoral registration, voting, prisoner engagement with the political process, and the provision of political and citizenship information and education;
- Cross-border issues arising from prisoners from Wales being imprisoned in England, and vice versa.