



To
Building Safety Bill Team
Hackitt Report and Consultation
MHCLG
Marsham Street
SW1

29th July 2019

Dear Sir/Madam/Building Safety Bill Team

Re: Response to Hackitt report and consultation - supported/sheltered housing

Please see below a summary of SHiP's response to the Hackitt report. Please do not hesitate to contact us if you wish to discuss or expand on any area.

SHiP is an umbrella body (www.shiphousing.org.uk) that represents a number of Registered Social Housing providers who have a supported & sheltered housing portfolio.

We are submitting this separate written response to the consultation, alongside our survey response, because the issues we are raising do not fall neatly within the survey as it is currently constructed. Many of our responses relates to potential future aspects of Hackitt--namely 'complex buildings' and 'buildings that house people with vulnerabilities'. We understand that MHCLG is keen to have dialogue with the sector on these issues and SHiP has prepared a response that we hope will assist with this, and to offer that SHiP is also keen to offer to meet/help to inform future decisions as we can perhaps offer a level of detail/granularity on supported/sheltered housing that we understand MHCLG is seeking.

1 Introduction

1.1 Context of this reply

Our members are all Registered Social Housing providers who have a large supported housing portfolio and as such we have restricted our comments to those areas which we think must be considered when applying Hackitt to supported and sheltered housing. We have therefore not responded at all to issues re height etc. as these will be covered by the wider sector response.

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1.2 About supported housing – key ‘wider’ issues

In general, it was noted that the circumstances of supported & sheltered housing mean that it is effectively often a multi-agency service - with the landlord just one of those parties; often without absolute knowledge of each occupant’s support needs or special requirements or absolute influence over the way other parties deliver and direct their parts of the service.

Also, the complexity of partnership working in supported & sheltered housing usually means that the layers of accountability and clarifications about each partner’s roles are often more diverse/complex than in general needs housing. Risks are therefore generally perceived to be higher because of all these nuances.

As such any legislation/regulation/oversight needs to take this multi-party arrangement into account and make sure it is enabled to continue to function effectively.

Supported housing is an increasingly scarce resource and we are keen that new legislation/regulation does not further diminish either RPs ability or RPs appetite to provide.

Supported and sheltered housing partners include very typically

- The Landlord
- A managing agent (with specialist skills in relation to the client group)
- A local authority commissioner/funder, who typically will either agree or will make referrals – for example ASC or the Housing/Homelessness Team
- Health partners/mental health partners/Substance misuse teams
- Referral agencies
- Other support agencies who might work or support the resident

1.3 The role of the managing agent

The Managing Agent (MA) will typically be responsible for providing support to the residents – also called the support provider (usually but not always with funding from the LA, sometimes this will be funded through Housing Benefit, residents’ contributions and charitable funds)

Typically, the local authority (LA) has commissioned support which will be delivered via a contract between the LA and the Managing Agent. With changes in funding the Managing Agent will sometimes no longer receive that funding but has remained in the scheme delivering lower levels of support using a range of alternative funds.

As a result of their presence in the scheme to provide support, the Managing Agent will be appointed by the RP landlord to carry out the housing management role on the landlord’s behalf.

These arrangements will typically be via 2 contracts (support contract between the support provider & commissioner and a Housing Management Contract between the

Landlord and support provider (Managing Agent); this shows the multi-agency approach to supported housing, but please note there is no tri-partite contract.

In fulfilling its housing management duties the MA will be responsible for all lettings, for client assessment and for support planning and delivery. They will have responsibilities for managing some aspects of the building and this will include some fire safety duties. Typically, the Landlord will conduct the Fire Risk Assessment on the building (annually), although some RPs require the Managing Agent to 'employ a suitable qualified person' to conduct them. The Managing Agent will conduct routine fire safety tests-e.g. testing equipment, fire drills, assessment of personal safety plans and assessment of the supported housing scheme as a workplace (as their staff work there – this latter assessment may be done jointly with the Landlord.

1.4 Supported housing as a diminishing resource

Supported and sheltered housing is a diminishing resource. This is as a result of a range of issues, but mostly funding and investment issues. We are therefore keen to ensure that any new legislation or regulation does not place supported/sheltered housing in further jeopardy, precipitating further withdrawals of key players from this market as perceiving supported and sheltered housing as high cost and high risk.

2 Hackitt:

2.1 Supported Housing and Fire Safety

SHiP broadly welcomes the recommendations of Hackitt as resident safety for our vulnerable client groups is paramount; in this regard SHiP members have, over many years, developed a recognised sector standard-the SHiP Monitoring Toolkit – which sets out a range of standards that a supported housing scheme should achieve and which includes H&S and fire safety. The toolkit ensures that these standards are reported on and monitored regularly. It is used by many landlords, whether or not current members of SHiP, and as such is a recognised sector standard.

Supported housing already has some robust measures in place- in part as result of our strong relationship with the Fire Officer before the 2005 Regulatory Reform Order.

The sector is also using the “specialised housing guide” which may also help with the definition of complex buildings – and much of this is also built into the SHiP Toolkit so it may be that an industry standard exists that can be built on.

We hope therefore (without complacency) this means

- a) that supported housing is in a 'good place' with regard to fire safety and with clear processes to ensure high standards and levels of monitoring; however we also hope that perhaps
- b) the toolkit might be of wider interest in taking forward any procedures going forward that support good fire prevention – to avoid reinventing the wheel.

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We would welcome the opportunity to discuss and to set out what exists already as this might help identify what is needed and how it might work.

2.2 Scenario testing and costed examples

SHiP members propose that scenario testing, including costed examples, would be a positive way forward. Our members would be happy to identify schemes and numbers to test out scenarios and to do some costed examples ahead of any final recs.

3 SHiP's responses in summary

We have, on the whole, restricted our comments to those aspects of the Hackitt review and consultation that specifically relate to supported housing. There are some general issues, but there is also a set of wider issues which covers the need for a holistic approach to supported and sheltered housing because of the multi-party arrangements that underpin it.

We have started with the latter as this is key to ensuring that any decisions around supported housing are made 'in the round'. Supported housing is a collaborative arrangement with a number of agencies playing a key part in its ongoing success (and indeed viability) and these roles are bound by other legislation and regulation; it is therefore essential that any proposals arising from Hackitt are constructed with this in mind and that any new legislation is drawn up mindful of other key legislation and regulation as well as current work programmes (such as MHCLG oversight and scrutiny and the review of sheltered housing).

We would be delighted to discuss all/any of these with MHCLG and to work closely with NHF and Homeless Link, as well as other key players to ensure a sector-wide approach.

Section A: ensure an holistic approach to implementing Hackitt across supported housing

- **Supported housing is a collaborative arrangement**-with a range of partnerships underpinning this joint working – some backed up by a legal contract but others are 'working arrangements'-such as referral rights, but any new system must recognise the wider role of other agencies in helping to keep supported housing residents safe – we expand on this later

- **Shared responsibility-and special client needs**

There are some key issues in relation to shared responsibility which the current proposals do not address, but which are of greater significance in supported housing. Examples might include: people who either refuse to leave the building in an emergency (and hence risk injury/death), or who have a tendency to start fires and hence put others at risk. As the proposal stands currently, the onus appears to be wholly on the landlord. In such cases, there is almost certainly a raft of agencies who might be, should be,

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or could be, supporting that individual-it is therefore too onerous on the landlord to be solely responsible for all aspects of building safety and building management. Although it is not our role to find solutions we appreciate that this is always helpful and suggestions were:

- a) a **Duty to Cooperate** – many agencies contribute to the success of supported housing as a model; some of these have implications within Hackitt and, similar to other legislation such as the care Act 2014, there needs to be a 'Duty to Cooperate' on other statutory agencies-starting with the Fire Service and the Police but also including Health/Mental Health services/ASC; as it is not reasonable that landlord is held solely responsible
 - b) A duty similar to that in the Homelessness Reduction Act-where the **Duty to Refer** also brings with it a duty for the receiving authority to then take responsibility for that person/that referral
 - c) Landlords needs **greater enforcement powers** where access is an issue: The landlord DOES need right of access, or, as a minimum a quicker route to access than the current arrangements (e.g. those used for gas safety)
- **Role of Commissioners:** commissioners have an important role to play in the ongoing good management of supported and sheltered housing: commissioners must understand and be mindful of the whole service and play their part in ensuring stability and properly-resourced in supported and sheltered housing. The commissioning process has become increasingly detached from the overall provision, with some commissioners moving to a spot basis or floating support-so the scheme as an overall entity does not receive funding. These remove the holistic approach that underpins the supported and sheltered housing model (in managing the whole scheme and not just specific clients), leaving schemes under-resourced. This creates gaps in the holistic service that supported housing aims to provide and this includes how to manage fire prevention/fire safety where there is limited or no staff presence. The Hackitt proposals throw this into starker relief as the duties increase but resources continue to be reduced.
 - **The Landlord/Managing Agent arrangement:** this is likely to need review as a result of the proposals as they stand. Implications include
 - Re-defining who is responsible for what
 - How do the lines of responsibility cascade where there is a legally appointed housing management arrangement in place – will RPs need to take more back?
 - Issues of the ability/competence of Managing Agents to carry out their current duties to the required standard (overall, many are support and care specialists, with property management being secondary to that primary role) and whether these new regs will mean that these functions might not be deliverable under current arrangements and may need to be changed

- Costs likely to increase because Managing Agents will need to ensure specialist skills are held within their organisation
- **Funding, staffing levels, revenue cuts;** more certainty in funding arrangements would help, as 3 years is insufficient to ensure a stable, quality service – 5 years minimum term will help with ensuring high quality, experienced management of the supported housing, offering continuity and investment; this is, in one sense, a more general point about the length of /continued funding cuts within support contracts in the sector, but it is a very important issue as it impacts not only on current provision and arrangements but on the ability of providers to implement any further regulatory building safety requirements; there a significant risk of providers pulling out altogether if further regulation is seen to make schemes unviable
- **Think holistically:** Create something that makes sense for the Supported Housing sector as whole-that runs along the same lines as that in place for general needs stock (although we recognise that the extra complexity of the supported housing sector means any regulatory regime on building safety might need a few added criteria to be adaptable to our sector).

Section B: general issues

- **Ensure alignment with other initiatives/studies:** make sure all recommendations link back to other work of MHCLG and other departments, including the current Oversight and Scrutiny work and the study on Sheltered Housing to be sure everything aligns. This also applies to other legislation such as the DDA duty to make reasonable adjustment for someone with a disability and human rights legislation on the right to a home
- The **Regulator** must have a good understanding of the issues in relation to supported and sheltered housing if it is to thrive
- **Housing Benefit:** Housing Benefit departments must be advised that fire safety is a housing management function and as such eligible for HB. Otherwise, again, costs can't be covered and safety is compromised or landlords pull out.
- **Building Safety Regulations:** we need clarity on what the Building Safety Regulations cover before we can properly comment
- **Duty Holder/Responsible Person:** - We would welcome guidance on competencies for the designated responsible person
- **Definition of complex buildings**

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A difficulty in defining 'complex';

- Can perhaps the FRA be the tool that identifies a 'complex building', rather than tying the regulations in knots – with the completion of the FRA being the requirement, and that FRA defines whether the building falls into a 'complex' category
 - Could HMO be the starting point although this varies from council to council?
 - If possible, use the building type and overall use rather than specific 'vulnerable residents' status
 - Size should also be a factor - if 'complex buildings' does become a sub-section the size as well as building and/or resident type needs to be a consideration
 - Length of stay might be a more relevant criteria that client group in addressing risk.
- If 'complex buildings' become a category we suggest this needs to be a flowchart to identify what is 'in scope', as several considerations will need to be applied in reaching the conclusion that a building falls into a special category- this should be undertaken on a 'risk level' process.
 - Decisions should be **evidence and risk based**-not blanket categories
 - **Definition of supported housing:** this will likewise be complex; supported housing covers such a range of provision, building type and occupant – suggesting that the scope is going to be very wide. Length of stay and level of support need might be more relevant factors rather than client group. SHiP already has a robust monitoring approach so those that fall outside of any new scope could be picked up by the existing arrangements
 - **Don't 'over scope' it-** there is a risk this becomes too complex and hard to implement and to regulate, or will severely restrict residents' freedoms; there is a risk that if it is 'over-scoped' even more Landlords will pull out of supported housing
 - **Vulnerability:** Defining buildings by the vulnerability of who lives in them is challenging. If possible focus on the building type: include situations or buildings that increase the risk to any occupant – that way we keep the focus on the buildings & not blanket assumptions about the people in them, which risks limiting their freedoms and choices and their rights under legislation such as the DDA in the UK and under the UN invention the Rights of Persons with a Disability.
 - **Landlord right of access** must be strengthened-the current arrangements are not adequate if failure to enforce/implement Hackitt carries the suggested penalties for landlords-they must have some protections that enable them to implement. The risks are potentially greater in supported/sheltered housing and landlords need powers that equip them to do the job

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- **Risk to provision:** There is a high risk of losing significant numbers of units if this is not managed well-this will be a combination of cost of rehab/improvements if the regulations are very widely or retrospectively applied, but also because RPs will apply risk averse approaches that limit what supported housing they provide and who they house. This has implications not only in numbers of units available but also in customer choice (which is already limited for people with disabilities). This will be particularly true if onerous extra building safety regulatory demands are made on supported housing providers which are not fully costed and insufficiently resourced (e.g. from central government or via HB/grant funding)
- **Retrospective application of Hackitt:** There is a risk that retrospective application would render many supported housing schemes unviable and any plans to apply retrospective standards should proceed only with caution and be relevant to the sector.

Section C Additional issues

5.2.1 Vulnerable people

The report wished to consider whether 'buildings that house vulnerable people' should be added to the list.

This, as a definition, is hard to pin down. Obviously supported housing would fall within this scope; however would all supported housing? Some people are there short term because they have a particular support need- young people or teenage parents-this does not mean necessarily that they are vulnerable to the extent that they require special fire safety arrangements beyond any other HMO or shared house.

Equally there are many vulnerable people living within general needs stock -so again - rendering the linking of the building to the nature of occupant difficult to scope or enforce.

Learning Disability England suggests not using 'vulnerable residents' as a consideration at all - focus on the buildings and their inherent fire-safety. They add:

"We feel it is important to keep responses to Hackitt to *fire & building safety* and to be mindful that it must be proportionate – respecting people's rights to home and other mitigations being considered – not just that that person has to move, because of the fire safety issues, or the person themselves being seen as 'the problem'/ 'the issue'. There is a risk within landlords' responses to new regs/legislation that people's long term home is under threat as they are seen as too high-risk; LDE is already hearing examples of this - because the landlord won't change doors or put systems in that could reduce a new higher perceived risk – of night time evacuation for example. The duty to assess safety must also be noted alongside the duty to make 'reasonable adjustment' to accommodate the fact that this is needed.

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So we suggest that the regs don't include vulnerable people as a consideration, rather that you include situations or buildings that increase the risk to any occupant – that way we keep the focus on the buildings & not blanket assumptions about the people”.

5.2.2 Landlord Right of Access

Landlords will need greater powers and rights of access to inspect properties-greater than exists currently; the current arrangements are not adequate if a failure to enforce/implement Hackitt carries the suggested penalties for landlords. It is not reasonable to have these sanctions without first equipping them with the powers to implement -- so although it is recognised that residents need safeguards, landlords must have some protections that enable them to implement effectively,

5.2.3 Matrix of Responsibility

SHiP is suggesting perhaps a matrix of responsibility would create some clarity in the landlord/MA arrangement. And again a requirement to cooperate with the landlord-even where there is no legal arrangement (for example care workers coming into a scheme)

5.2.4 Risk to overall provision and retrospective application of Hackitt

The proposals as they stand risk placing a percentage of supported housing in jeopardy. Much supported housing is ageing; to make significant adaptations might not be cost effective or indeed affordable; if grants are available the grantee might have to accept that the scheme may never repay its grant as the total grant might exceed its value

Some schemes might be rendered unfit for purpose if the regs are over-scoped – they are unlikely to be replaced as little supported housing development is procured these days and so more provision would be lost.

There is a risk that retrospective application would render many supported housing schemes unviable

We hope this response is helpful and please do contact us if you wish to develop any of the areas covered.

Yours faithfully



Wendy Green

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