

Julie James AS
Y Gweinidog Newid Hinsawdd
Llywodraeth Cymru

25 Tachwedd 2022

Annwyl Julie

Diogelwch adeiladau

Yn ein cyfarfod ar 27 Hydref, gwnaethom drafod llythyrau a anfonwyd atoch gan y grŵp Cladiators Cymru mewn perthynas â diogelwch adeiladau, yn ogystal â datganiad i'r wasg gan y grŵp, sydd ynghlwm yn Atodiad A.

Byddwch yn ymwybodol bod y grŵp, yn yr ohebiaeth hon, yn mynegi ei bryderon ynghylch cyflymder a natur y camau a gymerwyd gan Lywodraeth Cymru i unioni'r sefyllfa ar gyfer lesddeiliaid adeiladau yr effeithir arnynt yng Nghymru, gan gynnwys y Cytundeb Datblygu a gwaith arolygu. Mae'r grŵp hefyd yn pwysleisio pwysigrwydd cyflwyno deddfwriaeth yng Nghymru i gynnig amddiffyniad cyfreithiol i lesddeiliaid, gan dynnu sylw at ei bryder nad oes dyddiad dangosol ar hyn o bryd ar gyfer cyflwyno deddfwriaeth ar y mater hwn yng Nghymru.

Fel Pwyllgor, rydym yn cydymdeimlo â phryderon y grŵp ac â'r sefyllfa sy'n wynebu holl lesddeiliaid yr adeiladau yr effeithir arnynt yng Nghymru. Rydym yn cytuno y dylai Llywodraeth Cymru fynd ati ar frys i gyflwyno deddfwriaeth yn y maes hwn.

Byddem yn ddiolchgar pe gallech ymateb i'r pryderon a amlinellwyd gan grŵp Cladiators Cymru, yn ogystal â rhoi'r wybodaeth ddiweddaraf am gynnydd y gwaith o weithredu Bil Diogelwch Adeiladau i Gymru.

Yn gywir

John

John Griffiths AS

Cadeirydd y Pwyllgor Llywodraeth Leol a Thai

Croesewir gohebiaeth yn Gymraeg neu Saesneg

We welcome correspondence in Welsh or English.





Welsh Cladiators Press Release: 7 October 2022 Response to Welsh Government Building Safety Pact Statement

1. It has taken WG just over 6 months to substantially reproduce the pledge signed in England on 5 April. The intent and effect are virtually identical.
2. Given that neither document is legally binding, minor differences in wording are irrelevant.
3. Both envisage further binding legal documentation. Absurd. We know this has run into difficulties in England.
4. WGs wider approach to defects and remediation is not reflected in the document – it covers the same “life-critical fire safety” defects only. Where has this gone?
5. The “Standard” of repair required expressly relies only on PAS9980 where applicable. English pledge refers to PAS9980 but also other applicable standards.
6. Conclusions: -
 - a. Working “at pace” needs to be interpreted by reference to the 6 months it has taken to produce this meaningless fluff – already negotiated by Gove
 - b. We are 6 months behind England and have learnt nothing from English experience e.g., developers’ failure to produce any meaningful proposals in the timescale in the last § of letter i.e.
 - i. “for any of our Buildings which have already been identified by us as falling within the scope of the Agreed Principles, within one month of the date of this Pact, we will deliver to you a proposal (including a proposed schedule listing the buildings identified) for contacting the relevant building owners/responsible parties and leaseholders to confirm that their building is covered by this Pact (and the Agreed Principles) and detailing the next steps that we will take to meet your objectives.
 - c. England has backed up the pledge by Legislation. Even in Wales legislation gives wider but very expensive and time-consuming remedies.
 - d. We need the new remedies in Wales, and we need authorities to use them.
 - e. Turning this into binding agreements is a time consuming and useless exercise.
 - f. On the positive side, this might encourage courts to give indemnity costs awards against developers who fail to comply and where leaseholders are forced to take action



14 October 2022

Dear Minister

On the evening of 12 October members of the Swansea and Cardiff Bay Cladiators, representing most major Welsh developments impacted by the Building Safety Crisis came together to discuss your statement of 7th October. **We were unanimous in our view that the Welsh Government needs to legislate to provide Welsh victims with the same legal rights and protections being enjoyed by our fellow English victims.** It should not be left to innocent citizens to have to take on the cost and stress of litigating against those responsible for the crisis.

We have also consistently stated that we are not looking for monies from taxpayers to redress this scandal. Developers and builders who built and sold defective homes should be made to pay.

Our attached letter sets out a detailed response to all aspects of your announcement.

We welcome the Welsh Government's undertaking to refund survey costs to leaseholders. **As Welsh developments submit requests for reimbursement in the coming weeks and months, we will monitor responses to make sure they are being paid in full and in a timely manner.** Reimbursing leaseholders for these costs will make a small contribution to easing some the enormous financial pressures being experienced by many hundreds of innocent victims in Swansea and Cardiff. With mortgage, insurance, service charges, and cost of living price increases we need urgent support.

Our respectful demand is that in Wales, you enact, the same legal remedies that exist within the English Building Safety Act. Remedies that mean regulatory authorities rather than individual victims, can legally force those responsible for building defects to remediate. **In the meantime we ask that where developments have already developed fully costed construction & remediation plans, and are ready to proceed, the Welsh Government releases funds from the £375m Welsh Building Fund.** This will ensure that after many years of waiting, developments can begin urgent fire safety and building remediation work. This action not only ensures that our homes are made safe but also that people can sell and buy and move on with their lives. All monies paid out from the fund by taxpayers can be subsequently recovered from responsible developers under new legal powers.

A series of recent and dangerous fire incidents in Cardiff Bay has highlighted the seriousness of the situation and a need for greater urgency & priority from the Welsh Government on this long running crisis. Please legislate to ensure developers remediate!

Yours sincerely,

Welsh Cladiators

Welsh Cladiators Response to Welsh Government Statement on Building Safety 7th October 2022

14 October 2022

Dear Minister

Re: Welsh Government – Building Safety

Thank you for your statement of 7 October on Welsh Building Safety. Having had time to review your statement in detail we are writing with a detailed response from the Welsh Cladiators.

At the outset, let us make clear that **we welcome the undertaking to reimburse survey costs** incurred by leaseholders at an earlier date. However, that is the only tangible step forward. We regret to say that **the Welsh Government’s approach to the issue of remediating existing buildings is, in our view, simply not fit for purpose** and this announcement only confirms that. We will comment more specifically on the announcement in the order of the letter and using the same sub-headings.

Welsh Government’s Development Pact

- 1 This is, in all material respects, **the same undertaking as was given to Michael Gove in the “Pledge” entered into by developers over six months ago** (5 April). It uses the same key terminology and suffers from the same defects. It is a document that could and should have been entered into 6 months ago simply by substituting references to England by references to Wales.

The fact that it has taken 6 months to reproduce the same document is a very sad reflection on Welsh Government. The implications for any resolution of the issue of remediating existing buildings in Wales within any reasonable timetable are horrendous. It simply will not happen.

- 2 The Pact itself is useless and (leaving aside the fact that it is not legally binding i.e. expressly “subject to contract”) commits the signatories to doing far less than they are already bound by law to do. When the English Pledge was signed, the Building Safety Act 2022 had not become law. The Pledge, therefore, potentially extended the intentions of the developers beyond simply complying with their legal obligations. That ceased to be the case between April and June this year.

It is inconceivable that any court would find that a “life-critical fire-safety defect” (which is all that the Pact refers to) would not also be a defect within the definition of the Defective Premises Act. Accordingly, since the limitation period under the Defective Premises Act was extended by the Building Safety Act to 30 years (it is no coincidence that the same time limit appears in the Pact) the Pact does nothing.

- 3 In addition, Welsh Government has apparently learned nothing from the subsequent English experience, which is that turning a non-binding letter of intent into several hundred legally binding commitments is a Herculean task. It is impractical and, in our view, impossible on any reasonable timescale. More importantly, it is inappropriate, unnecessary and a waste of taxpayers’ money.

Survey Work

- 4 The first thing to note is that, as predicted by leaseholders, **the survey work is nowhere near on schedule**. We do not anticipate an end point any time soon, nor do we expect the work to have any significant value opposite developers/builders

The first paragraph of this section seeks to suggest that Welsh Government 's approach is wider than that in Westminster. That is untrue, as the identical wording in the Pact and Pledge show. Westminster has long since abandoned its focus exclusively on cladding. Conversely, it appears Welsh Government is not focused on anything other than the same "life-critical fire related" defects.

- 5 Recent experience at Celestia – one of Wales's largest developments – shows that the "digital surveys" are valueless. The government appointed surveyors, PRP contacted Celestia in late August to arrange surveys of the seven buildings. At that point, PRP clearly had no knowledge of Celestia at all. If any digital survey had been done, PRP were clearly unaware of its contents. Only after further correspondence with Celestia did PRP then acknowledge that further survey work was unnecessary. It appears that the 7 Celestia buildings are still included in the 163 buildings requiring intrusive surveys.

Survey work that has been done by PRP at other large developments is of little value for a number of reasons.

- 5.1 First, the work is limited. It is not sufficiently intrusive and unlikely to discover latent issues within buildings. Either defects will be missed, or the initial work will conclude only that further work needs to be done. All the work does is identify these as "next steps" to Responsible Persons. Who pays for those next steps?

Second, there is no proper communication or preparation opposite "Responsible Persons". We note Welsh Government seeks to blame delays on Responsible Persons. This is not our experience, nor would any Responsible Person other than the developer/builder have any interest in causing delay. Again, with reference to Celestia, we were not contacted until 2 weeks before PRP intended to start work. At that time we were given no indication of what PRP intended to do and no opportunity to put in place necessary site (including safety) arrangements.

- 5.2 Third, the process does not contemplate the involvement of relevant developers and builders. It is axiomatic that, in order to obtain commitment from those likely to have to pay for repairs, they should, at the very least, be invited to attend. A more effective and efficient process would involve the developers and seek their approval of the methodology. At Celestia, both the developer, Redrow and builder, Laing O'Rourke wanted involvement in the process.

- 6 The reference to the provision of EWS1 certificates looks out of date and appears to be a reference back to the original perception that cladding is the only issue. What about the internal factors referred to in the first paragraph of the section?

A key question here: is the survey work being undertaken related only to fire defects? What about other significant life-threatening defects e.g. structural defects. Window falling out (Prospect Place) or render falling off a building (Celestia)?

Survey Work pre-dating the Welsh Building Safety Fund

- 7 As stated above, we welcome the undertaking to reimburse leaseholders. Some developments e.g. Celestia, have already undertaken significant survey work far in excess of what PRP is currently doing. However, we do not understand the logic behind the eligibility criteria.

Welsh Government's oft stated position is that leaseholders should not pay. Where leaseholders have paid it is invariably in amounts and for processes not within their immediate control. Why should the actions of a third party negate the right of leaseholders? That is one of the major scandals in this crisis: the maximising or overcharging of leaseholders by industry professionals. In any event, it is inappropriate to impose eligibility criteria after the event.

- 8 If Welsh Government is proposing to decide what is and is not an appropriate charge on leaseholders, is Welsh Government also going to recover the overcharged amount from e.g. building owners or managing agents? What about the proportion of the charge that is not excessive where surveys have materially contributed to the process?

Reforming the current system of building safety

- 9 This section focuses on legislative reform. It is the important section. **The role of government is to legislate. It is not the role of government to negotiate individual contracts with individual companies or to threaten individuals unlawfully.** You will recall that developers took advice from Lord Pannick on this issue earlier this year.

Further, Governments are singularly ill equipped to negotiate commercial contracts, having neither the resource not the experience and expertise. Our criticisms above are the inevitable consequence of Welsh Government losing sight of this basic fact.

- 10 We know from discussions with various politicians that there is no provision in the current legislative timetable for any effective legislation before 2026. Developers and builders will know this. That completely undermines Welsh Government's position.

It is correct that the Building Safety Act has amended the Defective Premises Act and provided leaseholders in Wales with potential causes of action and redress that exceed anything intended to be covered by the Pact. In reality, that is the only reason developers are "negotiating" with WG. Rather than continue those interminable negotiations, WG should legislate immediately to increase powers of enforcement.

- 11 Absent from this section is any reference to SS 116-125 of the Building Safety Act. These are key provisions already in force in England that provide a mechanism for authorities and others (including leaseholders) to require safety defects (not just "life-critical fire" defects) to be remedied by developers, builders, and freeholders. This circumvents the need to bring an expensive Defective Premises Act claim.

There are already court application forms available in England that effectively implement these remedies. Media are already reporting their use against developers.

- 12 It defies all logic that there are no plans to bring these provisions into force in Wales. They ought to be brought in via emergency legislation in Wales immediately. This should be a cross-party issue commanding support from all parties, as it did in Westminster.

Welsh Government finances would be better directed to supporting authorities and leaseholders to access legal remedies in the courts against developers either under the Defective Premises Act or ss 123-124. The mere existence of such remedies coupled with appropriate financial resources is likely to produce a step change in developers' attitudes. It has already done so in England.

Summary

We have no confidence in Welsh Government's current approach. We first spelt out the difficulties in March in a letter originally addressed to Linda Thorne of Cardiff City Council, which was subsequently widely shared in government and the Senedd. Events since then have only reinforced our view.

We are at a loss to understand why Welsh Government does not legislate as a matter of urgency to incorporate ss116-125 of the Building Safety Act into law in Wales. It would be simple, the sections have already been drafted, subject to wide parliamentary scrutiny and enacted.

The current approach is a waste of government time and public money. We do not think it will produce any effect remediation on a reasonable timescale and many, many leaseholders and residents will continue to suffer financial hardship, mental stress, and exposure to unnecessary danger. We need a change of direction.

Yours sincerely,

Welsh Cladiators

Ian Langley	Prospect Place, Cardiff
Sian Cope	Altamar, Swansea
Ruth Wainwright	Celestia, Cardiff Bay
Becky Ashwin	Victoria Wharf, Cardiff Bay
Lynda James	Altamar, Swansea
Lorna Wainwright	Celestia, Cardiff Bay
Karol Kalna	South Quay, Swansea
Geoff Spight	Altamar, Swansea
Linda Wellington	Altamar, Swansea
Gareth Wilson	Celestia, Cardiff Bay
Rebecca Francis	South Quay, Swansea
Phil Lake	Meridian Quay, Swansea
Nicola Roberts	Swansea Point
Mark Thomas	Celestia, Cardiff Bay
Sam Bennett	Marina Villas, Swansea



welshcladiators@gmail.com

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