

Weighing up the law

Sailesh Mehta gives his advice to the new government on some required fire safety actions

WITH A new government taking the reins in Downing Street, this month's legal column sees Sailesh Mehta of Red Lion Chambers Fire Law team highlight a number of key actions the new government needs to address in relation to fire safety.

Stop the revolving ministerial door

We have yet another Secretary of State in the Department for Levelling Up, Housing, and Communities, the sixth to be appointed in four years. Michael Gove had only just got his feet under the desk before he was sacked. Greg Clark hadn't even found his desk before he was replaced by the new incumbent, Simon Clarke, who was appointed in September 2022.

This is a time of great change within the fire safety industry. We need a minister who is able to give unlimited time and put in the effort to guide fire safety through some major changes. If it is done half-heartedly, a great opportunity will have been lost.

Stop deregulating and start regulating

The deregulation rot started in the 1980s — it became the mantra of every minister and was inevitably accompanied by the slashing of funding. Underfunded regulators had to play by rules designed to favour the regulated.

Deregulation led to structural and systemic failures, some of which have been highlighted in the Grenfell Inquiry and in the Independent Review of Building Regulations and Fire Safety. One of the key issues that Dame Judith Hackitt highlighted was inadequate regulatory oversight, which *"helped to create a cultural issue across the sector, which can be described as a 'race to the bottom' caused either through ignorance, indifference, or because the system does not facilitate good practice"*.

Sort out the cladding scandal

Leasehold owners of flats in dangerous buildings have been required to pay for works to remove cladding and make safe years of cutting corners or unlawful practices of builders and developers. This is a scandal that requires firm legislative intervention, rather than



vacuous and warm words. It is scandalous that those responsible for creating life-threatening problems had conspired to make the victims pay for their greed. The new Secretary of State has issued a press statement which acknowledges the problem — but he must act with urgency to solve it.

Risk Assessments and Risk Assessors

A new report on fire safety in a block of flats next door to Lakanal House has accused Southwark Council of allowing *"inadequate"* fire risk assessments to be carried out by unqualified contractors.

The report said: *"There appears to be limited oversight on the level of knowledge of contractors providing such advice and the qualifications required in order to be deemed competent are in some cases inadequate for the tasks they undertake."*

This is not an isolated problem. The question arises: who can carry out fire risk assessments, which are central to the safety of residents?

There is no qualification requirement, no minimal knowledge requirement, and no need for any experience at all. The Fire Safety Order (or any other legislation) does not impose any conditions or restrictions upon the author of a fire risk assessment. This is an area in urgent need of regulation to force the 'cowboys' out of the industry. The worst ones must be prosecuted to deter others.

Grenfell Report and prosecutions

Some of the recommendations of the Inquiry have already been acted upon or ministerial pledges have been made to do so on others.

There is little doubt that the wheels are in motion, legislatively and practically, and with sufficient transparency. This momentum must continue.

The Fire Safety Act 2021 is now in force. The Building Safety Act was granted Royal Assent in April 2022. Much of it is yet to be implemented. The Building Safety Regulator must be given wide powers and ought to be well funded to carry out an enormous task over the next 10 years and more. The families of the victims of Grenfell have waited too long to see justice for their loved ones. The decisions about whether there is evidence to prosecute and who should be prosecuted must be taken soon. The first tranche of defendants should be prosecuted shortly even though the task is complex.

A unified approach to regulation by Fire and Rescue Services

Fire services need to be properly funded. Prosecutions are rare and far lower than they should be. There appears to be an institutional fear of prosecuting offenders. Fire and Rescue Services are too risk averse about pursuing defendants to Court.

This is partly because there are too few in-house lawyers and where local authority lawyers advise the brigade, they sometimes

do not have the experience to do so. Officers receive sketchy and sparse training about the relevant law of evidence gathering. And when they are trained, they become too frightened of getting it wrong. Different brigades have varying levels of expertise in law and commitment to prosecution.

A central approach should be taken to bringing every Fire and Rescue Service to the same high standard. This should include high quality legal training from those who are in Court every day, standardisation of investigation manuals, setting up a central database of knowledge, and a central database of those who have been convicted of fire offences.

For major incidents, there should be an expert team of lawyers and investigators who can attend the incident immediately and ensure evidence is gathered and protected quickly. Such a team would ensure the high standard of investigation and prosecution that is needed ■

Sailesh Mehta is a barrister who practices in regulatory law. He leads the Red Lion Chambers' Fire Law Team. For more information, see page 6.

