

## Minister for Local Government and Housing

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Education and Skills Committee

The Scottish Parliament

Edinburgh

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Dear James

### **Response to the Education Committee's report on School Infrastructure.**

Thank you for your letter dated 3 October 2017, on behalf of the Education and Skills Committee, informing me of the publishing of their report, following their inquiry into School Infrastructure. The Scottish Government is thankful the work of the Committee and welcomes the recommendations of the Report.

In responding to the Report, I would draw your attention to the specific actions being taken, in regards to;

#### **The Oxfangs Incident:**

*Recommendation: The Committee recommends that Scottish Government ensures that every devolved public body in Scotland studies the Cole Report in detail and reviews their own estates in light of its findings.*

Following publication of the Cole Report, Scottish Futures Trust wrote to the Chief Executives of public bodies across Scotland highlighting its findings and drawing attention to the need to consider approaches to assurance in light of the report, to ensure asset management and inspection practices are robust, and to review construction phase activities and independent supervision in particular.

*Recommendation: Specifically in the post-16 education sector, the Committee seeks confirmation from the Scottish Funding Council (SFC), along with Colleges Scotland and Universities Scotland, that their sectors are fully aware of the findings of the Cole Report and that they have taken appropriate actions to ensure that the college and university estates across Scotland are safe, including halls of residence.*

The Scottish Funding Council assures the Government that they are currently working with Universities Scotland and Colleges Scotland to communicate with both sectors on the action being taken in response to the Cole Report.

*Recommendation: The Committee draws the attention of the Scottish Council of Independent Schools (SCIS) to the findings of the Cole Report. The Committee asks that SCIS supports its members to understand any potential risks for the estates of independent schools and the appropriate actions to take.*

Noted. The Government has ensured that a copy of the Cole report has been sent to the Scottish Council of Independent Schools

*Recommendation: The Committee requests an update on this work from the SFC, Colleges Scotland, Universities Scotland and SCIS by the end of 2017 to confirm they have studied the Cole Report and are implementing its recommendations.*

The Scottish Funding Council has assured the Government that they will make contact with both sectors in November and will respond to the Committee by the end of the year.

*Recommendation: The Committee considers the Cole Report may have relevance across the UK. The Committee therefore recommends that the Scottish Government liaises with the UK Government and the other devolved administrations to share information and the developing best practice in light of the Cole Report.*

The Scottish Government understands the wider significance of the Cole Report and is currently engaging with UK Government and other devolved administrations through the review panel on building standards (Compliance and Enforcement).

## **Quality Assurance:**

### ***Construction Industry-***

*Recommendation: The Committee asks the Scottish Government to keep the Committee informed of the work that it and Construction Scotland are undertaking on the industry's response to those findings.*

Officials are currently engaged with Construction Scotland in taking forward the recommendations of the Cole Report. Construction Scotland have formed a working group to address the key issues identified in the report and officials will continue to monitor progress and can provide updates, as required to the committee.

*Recommendation: The evidence the Committee received raises serious questions about the practices of contractors and sub-contractors that cut corners resulting in an unacceptable risk to children and the public in general. The Committee recommends that the Scottish Government's Construction Procurement Manual fully reflects the*

*lessons learned in the Cole Report and ensures that public bodies' procurement practice provides sufficient assurance that contractors do not compromise safety for the sake of speed or reducing costs.*

The Construction Manual is currently being updated to include, amongst other developments, the lessons learned from the Cole Report. This will take the form of specific guidance relating to the procurement process. As an interim measure the Scottish Government has already released guidance in the form of a Construction Policy Note on the topic of site inspection and assurance.

### **Contracts, the funding method and the role of the client –**

*Recommendation: The Committee recommends that the Scottish Government ensures that the updated Construction Procurement Manual reflects the need for public bodies to act as "intelligent customers" and not seek to minimise their role in ensuring that their estates are safe.*

The Scottish Government welcomes this recommendation and confirm that guidance to this effect will appear in the updated Manual.

### **Design and oversight of construction-**

*Recommendation: Public bodies must maintain a strong interest in the quality and safety of their estates regardless of whether or not they directly own the buildings.*

The Scottish Government recognises that this recommendation is consistent with the assurance work of the SFT taken immediately after the Cole report was published.

*Recommendation: Public bodies' quality assurance should be risk-based and have a focus on potential faults that would not be seen once the building has been completed. The Scottish Government should identify these high-risk aspects of construction. The Committee also recommends that the Scottish Government produce guidance on a risk-based approach to quality assurance and regularly update the guidance to ensure that it keeps pace with contemporary construction techniques and incidents which uncover problems.*

In developing guidance, officials will provide advice that considers the appropriate quality assurance methods based on risk aspects of projects.

In relation to technical requirements, appropriate guidance will be considered through the review panel on Building Standards (Compliance and Enforcement), which is chaired by Professor Cole.

*Recommendation: Public bodies must have access to the expertise of the design team to ensure that the design team can freely flag up any concerns about construction. The Committee recommends that the Scottish Government clearly identifies the risk factors that public bodies must take into account when deciding their particular contractual arrangements with design professionals.*

Guidance to this effect will be provided to public bodies in the updated Construction Manual and through a Construction Policy Note.

*Recommendation: The Committee recommends that, unless there are clear reasons why another method of quality assurance would be more suitable, the employment of a Clerk of Works reporting to the client should be part of every capital project in the public sector.*

Following consultation with industry and construction professionals, it is clear that there are a range of methods that can quality assurance methods that suit different projects at different stages. In fulfilling the role of intelligent customer, it is vital that contracting authorities are mindful of this. Guidance will identify the critical value that a Clerk of Works role can bring to a project, but will also identify the conditions where a Clerk of Works may not be the optimal approach.

Local authorities must undertake 'reasonable inquiry' checking before they accept a completion certificate for building work. This in effect starts from when they grant the building warrant

Building Standards will undertake research to underpin a review of the current method of undertaking 'reasonable inquiry' by Local Authorities. This will clarify the intent and planning of site inspections by building standards surveyors and build on the risk assessed approach currently adopted.

*Recommendation: The Committee recommends that the Scottish Government take account of the Committee's comments in this section and reflect them in the updated Construction Procurement Manual.*

The Scottish Government notes the Committee's comments and will ensure they are reflected by guidance in the updated Construction Manual.

*Recommendation: The Grenfell Tower tragedy occurred just as the Committee began taking oral evidence on this inquiry. The Committee has not taken evidence on cladding specifically. Nonetheless, the Committee requests updates from the Scottish Government on inspections to ensure that the cladding on the school estates and post-16 education sector does not present a fire risk.*

The Deputy First Minister wrote to all local authorities in August seeking reassurance of fire safety across the school estate. From the detailed responses received, the Government is reassured that local authorities have taken all steps necessary to ensure the fire safety of their schools.

The Scottish Funding Council (SFC) wrote to all universities and colleges following the Grenfell incident. The question asked at that time was if the institutions had the same cladding material as Grenfell, SFC received a complete response across both sectors. Two universities, Napier and Abertay identified issues with cladding and they have taken steps to address those issues. No other issues have been identified in the university sector.

Some college responses indicated that further investigations were required at the time, SFC have written to all colleges to ask for an update on those investigations and we are in the process of collating those responses. One College, Glasgow Clyde (Langside Campus) have recently identified that a two storey teaching building may have the same type of cladding, however there are adequate fire safety measures in place at this building. The current measures used by Scottish Government building safety team for highest risk relate to building over 5 storeys high that people sleep in.

There is no evidence to suggest there are further issues outstanding in the college sector however SFC will continue to pursue any outstanding responses until they are fully content.

### **Handover of Buildings –**

*Recommendation: The Committee considers that this is indicative of a lack of focus on quality by the local authority. The Scottish Government may wish to review whether there are any other examples of public buildings currently in use that have not had the required completion certificates.*

I wrote to all Local Authority Chief Executives on 9 February 2017 expressing my concern with the findings of the report. I made it clear that any instances of non-compliance with building regulations are completely unacceptable.

When Scottish Ministers re-appointed local authorities as verifiers from May 2017 it was made on the condition that they must meet the newly introduced Operating Framework 2017 which sets out their key functions. As part of this verifiers must adhere to legislative procedures and deadlines, set out in Annex B of the framework document, which includes the verifier ensuring that after completion of the work or conversion in respect of which a building warrant has been granted, the relevant person submits a completion certificate to the verifier.

I again wrote to local authorities on 29 September, following the Local Government and Communities Committee on 27 September, to reinforce the range of enforcement powers available to them, and to ask them to consider carefully what actions they take regarding the safety of people in and around buildings.

### **Building Standards:**

*Recommendation: The Committee recommends that the Scottish Government considers how the role of a building standards verifier may be better communicated to procuring bodies and the wider public.*

Building Standards Division will write to local authority verifiers to ask them to promote their role as verifiers of the building standards system to the public and ask them to promote the Scottish Government guidance “The Customer Journey” see <http://www.gov.scot/Topics/Built-Environment/Building/Building->

[standards/bscj](#), that explains the roles and responsibilities of the home owner in relation to the building standards process. This gives helpful guidance to those who intend to carry out building work and where to seek help.

*Recommendation: The Committee recommends that the Scottish Government provides more detailed guidance to building standards verifiers on taking a risk-based approach to inspecting sites.*

The consideration of appropriate guidance will be considered through the review panel on building standards (Compliance and Enforcement).

*Recommendation: The Committee recommends that the Scottish Government explores how it can ensure that the construction industry can support building standards verifiers by supplying evidence to verifiers that key elements of buildings have been built to specification.*

As above, the consideration of appropriate guidance will be considered through the review panel on building standards (Compliance and Enforcement).

### **Inspections of the school estate:**

*Recommendation: The Committee recommends that the Scottish Government works with local authorities to set out a standard risk-based approach to inspection of buildings of a similar type to Oxfangs Primary School and confirm in writing to the Committee that the approach taken by all local authorities meets this standard.*

Over the past year the Government and its agencies have worked collaboratively with the Scottish Heads of Property Services, a local authority based forum, and others to undertake a comprehensive review of the guidance on assessing the condition and suitability of schools. This should ensure a more robust, risk based and consistent approach in how local authorities undertake these.

*Recommendation: The Committee would encourage, parents, teachers and local councillors to read how their local authority has responded to the Oxfangs incident and the Cole Report in their respective written submissions to this Committee.*

The Scottish Government notes the recommendation.

### **Previous incidents:**

*Recommendation: The Committee recommends that the Scottish Government create a duty for public bodies to share information about building faults that create significant risk to building users.*

The Scottish Government will examine the practicality of creating a duty for public bodies to share information about building faults that create a

significant risk to building users at the review panel on building standards (Compliance and Enforcement).

*Recommendation: The Committee recommends that, if any fault identified in the future poses a potential threat to life, the Scottish Government and the Scottish Futures Trust should support public bodies' responses to the incident and develop an appropriate risk-based approach to inspection and remediation by those bodies.*

I can confirm that if any such potentially systemic issues arise in the future, Scottish Government and Scottish Futures Trust will mobilise appropriate resources rapidly in response, to support dissemination of information and development of appropriate risk-based assurance responses as they did in response to the Edinburgh Schools incident.

### **Training and qualifications:**

*Recommendation: The Committee recommends that the Scottish Government continues to support the CITB and the SQA to update training courses and qualifications in response to the Cole Report process and reports back to the Committee once it is complete.*

The work to update all craft apprenticeships including bricklaying has been completed. A revised framework has been approved by the Modern Apprenticeship Approval Group and the industry skills test will now be administered and quality assured by accredited awarding bodies. The assessment strategy of the Scottish Vocational Qualification (SVQ) has been updated to reflect this. The skills test will now be delivered under the quality control and assurance of the SQA Regulator and Awarding Bodies, as part of a regulated framework which was not the case previously.

In line with the assessment strategy, Awarding Organisations must ensure that assessors meet the occupational expertise which is the same criteria used for all other SVQs across the construction sector.

The assessor role is to uphold the integrity and standards during the skills test and to make judgement and final assessment decisions after the test. Final assessment decisions should be accurately recorded for evidence. Skills test industry expert witnesses will also be used by awarding bodies to assist the assessor, and the assessment strategy sets out certain requirements that these expert witnesses must meet.

*Recommendation: The Committee recommends that as part of its response the Cole Report, the Scottish Government explore with representatives of the industry, trade unions and Skills Development Scotland how to retain experienced bricklayers in the industry and attract more young people into the trade. In this light, the Committee recommends that the Scottish Government work with stakeholders and Scotland's skills agencies to ensure that training is available to meet demand in the coming years.*

As part of its annual and on-going review of skills, each year Skills Development Scotland (SDS) works with the Construction Industry Training Board (CITB), Colleges and the construction sector to identify how it can promote and meet the demands for apprentices in the sector.

*Recommendation: The Committee recommends that the SQA and CITB meet with the SBF to discuss the new SVQ qualifications and take on board any remaining concerns the SBF may have.*

Discussions between SBF, SQA and CITB continued throughout the summer. CITB and SQA have assured SBF and the construction sector that the revised frameworks will increase the quality and standards of all craft apprenticeships. We will review and monitor the impact of the changes resulting from the revised frameworks.

### **Role of schools in the building process:**

*Recommendation: The Committee recommends that the Scottish Government identifies this involvement as best practice in its updated Construction Procurement Manual.*

The Scottish Government notes the Committee's comments and will incorporate this into guidance in the updated Construction Manual.

I trust that the Education and Skills Committee will find these responses demonstrate the Scottish Government's commitment to addressing the recommendations of their Report. Please do not hesitate to contact myself if you require anything further.

Kind regards

**KEVIN STEWART**