

# Fourth annual mini-conference on building safety

Day one

11 October 2023

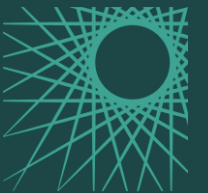
# Trowers & Hamlins fourth mini-conference on building safety

## Competence

Note: Every effort has been made to ensure the accuracy of the information in this presentation but CABA accepts no liability for its application in practice..

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12<sup>th</sup> September 2023



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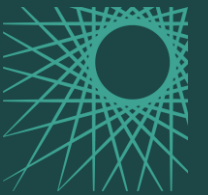
- **Richard Harral FCABE**

- CABE Technical Director
- Author of CABE BICoF and lead on developing the CBICAS
- Member of BSR Industry Competence Committee (ICC)
- Chair CPB-1 British Standards committee on Built Environment Competence
- Author Flex 8670 – Core requirements for building safety
- Member Competence Steering Group (CSG)
- Member Engineering Council Contextualised Registration Steering Group (CRSG)
- Ex-head of Technical Policy, Building Regulations in England



# Overview

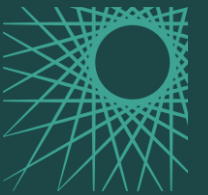
- Background – industry issues
- Refresh on what competence means
- Fundamental building blocks for industry competence
- Summary - why competence is key



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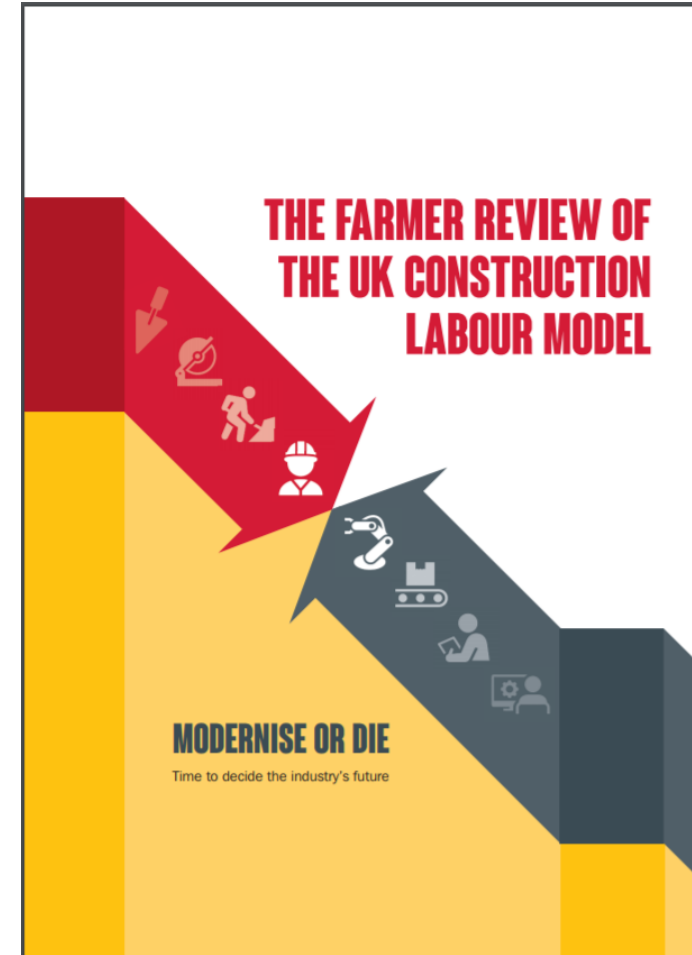
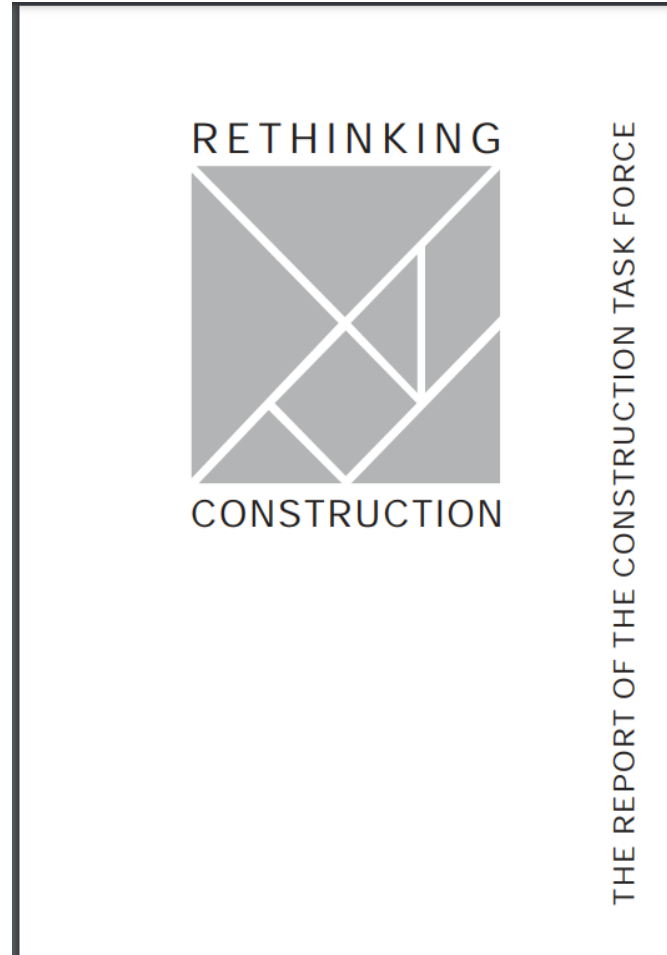
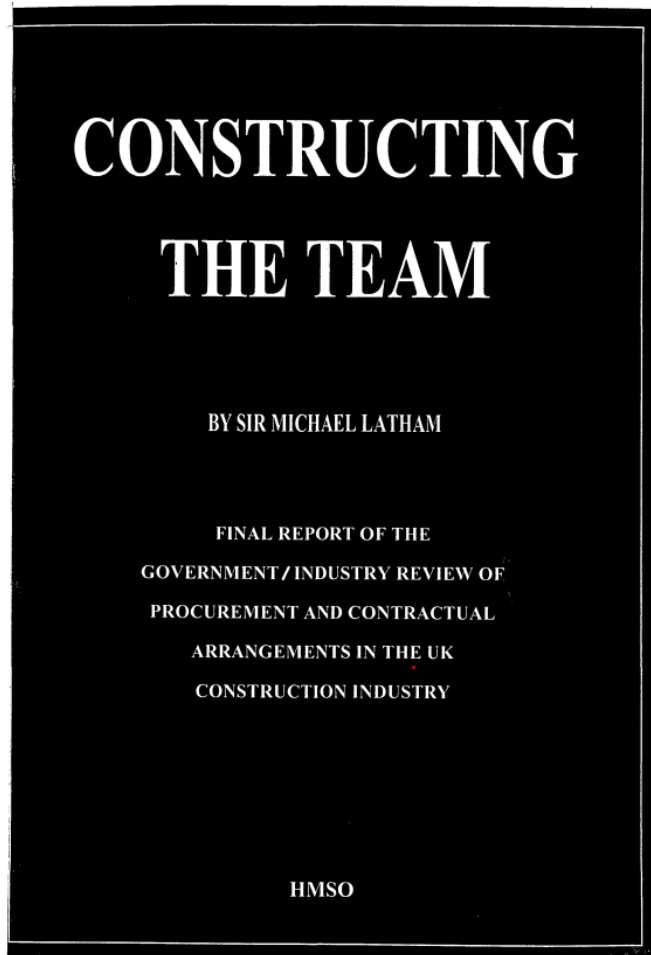
# Industry issues



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# Latham / Egan / Farmer



# Latham / Egan / Farmer

## SYMPTOMS

The critical symptoms of failure and poor performance have been identified in this review as:

### Problems:

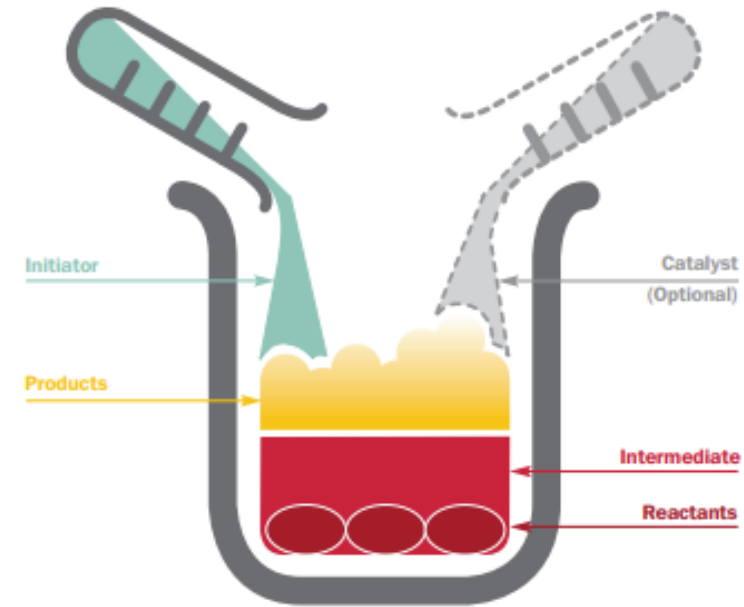
- Industry under achieving
- Wasteful
- Poor quality resulting from industry structure and working practices
- Failure to deliver value for money
- Ineffective
- Adversarial and Fragmented
- Client and industry aims unaligned
- Deep seated resistance to change
- Likely 20-25% reduction in workforce by 2026



# Latham / Egan / Farmer

## Recommendations:

- Committed Leadership
- Focus on the customer
- Integrated process and teams
- Quality driven agenda
- Commitment to people
- Client leadership as best practice procurers
- Better briefing
- Use of coordinated project information
- Design responsibilities clearly identified
- Adopt standardised non-adversarial contracts
- Register of competent consultants with selection based on quality and price
- Project managers need to be competent
- Contractors should be rated on quality of outcome
- Tenders should be evaluated on quality as well as price
- Shift to collaboration and partnering in the supply chain



- Reactants** – the key elements necessary to be part of the reaction -  
**Integrated Tripartite Leadership across Clients, Government and Industry**
- Intermediate** – the enabler of a reaction -  
**A Reformed CITB**
- Products** – the desired outcomes that arise from the reaction and which also self-perpetuate the reaction -  
**Client & Industry Process Integration, R&D & Innovation, Skills & Training, Industry Image**
- Initiator** – the means by which a reaction is commenced -  
**The Role of Government in Pump Priming Change**
- Catalyst** – a mechanism to accelerate or speed up a reaction -  
**An Option for Accelerating Behavioural Change**



# Hackitt 2017/18

## Key Issues

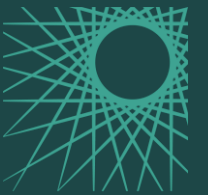
- Lack of clarity on roles and responsibilities
- Lack of robust competence assessment
- Lack of competence management to ensure ongoing competence
- Compliance, enforcement and sanctions too weak

## Priorities for change

- A new building safety regulator to provide oversight
- New Duty-holding roles and responsibilities to ensure accountability
- Need to raise levels of competence and establish formal accreditation processes
- Robust gateways for safety including competence checks
- Enhanced sanctions and enforcement powers including on duty-holding requirements which are now formally included as building regulations



# What is competence?



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# Competence as a building regulation requirement

## Industry competence key points

1. Relates to all work or any other matter to which the Building Regulation apply.

2. Applies to both individuals and organisations.

For individuals:

- Competence means demonstrating the necessary **skills, knowledge, experience and behaviours**

For organisations:

- Organisational capability meaning the ability to plan, manage, monitor and review delivery to comply with relevant requirements

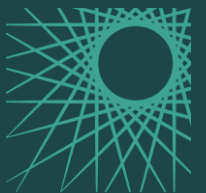
4. Additional duties specific to each dutyholder

5. Additional duties in Higher Risk Buildings

## Dutyholders and General Duties

New **general duty** that applies to all dutyholders during design and construction – relevant to all building work:

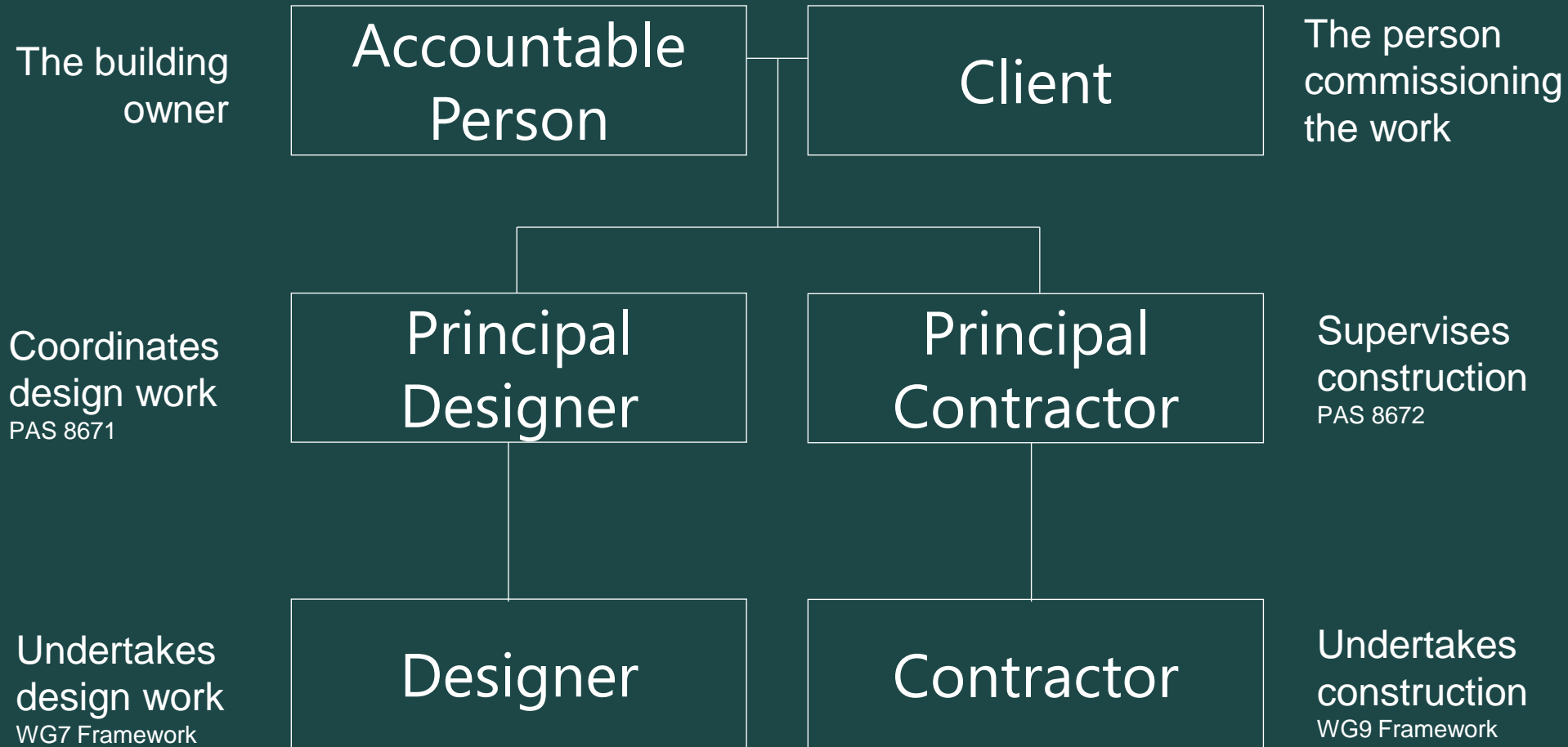
- Cooperate and share information with other relevant dutyholders and the building safety regulator;
- Plan , manage and monitor work to ensure compliance with building regulations;
- Comply with specific requirements imposed by the new regime (e.g. gateway points, mandatory occurrence reporting);
- Ensure they and the people they appoint are competent (have the necessary skills, knowledge, experience and behaviours) to carry out design work and building work they are engaged to do; and
- only undertake work within the limits of their competence.



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# Dutyholders – competence in the wider industry



# Building Safety Regulator – Duties

## Duty to Facilitate Improvement in competence of industry and building inspectors

- BSR must provide assistance and encouragement to industry and building inspectors including individuals and organisations
- Establish Committee on Industry Competence
- Undertake research, analysis, workshops, engagement
- Work to improve competence of registered building inspectors

## Industry Competence Committee

- Monitoring industry competence
- Advising regulator on industry competence
- Advising persons in built environment industry in relation to industry competence
- Facilitating persons in built environment industry to improve competence
- Providing guidance to the public on how to assess competence of persons in the built environment industry
- Undertaking research and analysis to support these other functions

# Building Safety Regulator – In operation

## Operational Characteristics;

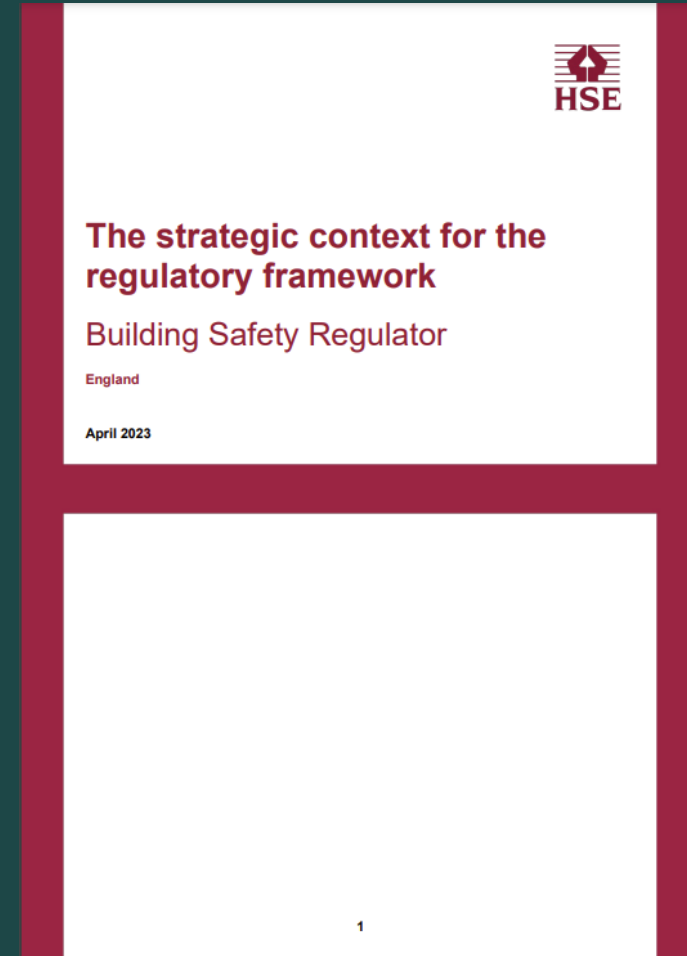
- Enforcement seen as normal and vital part of every day functions
- Industry responsibility core to expectations
- Joined up and intelligence led enforcement
- Will seek to 'hold industry at risk' for compliance
- Higher levels of information flow – higher expectations
- Extensive investigatory powers
- 'Polluter pays' cost recovery fees and charges

## As regulator of building control bodies

- Tighter operational requirements
- Audit of building control
- Intent to act as more assertive regulators

## As regulator in higher risk buildings;

- ALARP based principles on top of compliance based system
- Minimum not enough
- Focus on ability to assure outcomes



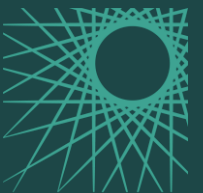
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# Building Safety Regulator – In operation

## Dutyholders

- 3.5 Dutyholders are those that commission and carry out building works. They are responsible for complying with the Act and Building Regulations made under it.
- 3.6 Dutyholders are responsible for preventing, managing, and controlling their building risks from design to demolition on any building project.
- 3.7 Building control should expect dutyholders to proactively demonstrate how their project will comply with Building Regulations. This should include an explanation of how their project meets the functional requirements of the Building Regulations from design into occupation. This should include:
- i) identified risks and their management arrangements
  - ii) evidence on which guidance informed design and construction
  - iii) evidence on how dutyholders have assessed the appropriateness of the guidance used to demonstrate specific elements of compliance.
- 3.8 Dutyholders should engage with occupiers, for example for refurbishment works. This will help them check, improve and maintain the standard of their buildings in compliance with the law.



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# Competence requirements will be enforced

## “Track Back” approach to enforcement

### Traditionally:

- Building control bodies identify potential non-compliance
- Undertake informal intervention and enforcement
- Step away once compliance achieved

### BSR in HRB likely to take a different approach :

- Non-compliance identified and flagged.
- Specific compliance rectified.
- Cause of non compliance interrogated and traced back to root cause including issues of competence and compliance with DH regs
- Primary responsibility will be with Client, PD and PC

***NOTE: BSR is expecting Building Control Bodies to adopt this approach to non HRB building work as well.***



**“The BSR is likely to utilise a ‘track back’ approach to investigate compliance.”**



# Enforcement – new and strengthened sanctions

## New sanctions / offences (e.g.)

### Compliance notice

- Served on person who is, or is likely to contravene building regulations
- Notice to remedy or take specified steps within time limited period
- Failure to comply may lead to criminal prosecution

NOTE: Cannot be issued where work was approved by a building control body on non HRB unless serious risk of harm identified

### Stop notice

- Where non-compliance identified or compliance notice not complied with.
- Requires person to stop all work.
- To be used where Gateway requirements have been breached.
- Failure to comply may lead to criminal prosecution.

### Liability of Officers of Body corporate

- Enables prosecution of any director, manager, secretary or other officer .
- Applies where corporate body commits criminal offence.
- Consent / connive / neglect all grounds for prosecution

### Building Liability Orders

- Extends actions under DPA or Section 38 to parent or sister entities making them jointly liable.
- Can apply to dissolved body corporate and bodies behind special purpose vehicles.
- Disclosure clauses empower courts

## Strengthened powers

### Section 35 – Breach of Building Regulations

- Relates to all building work
- Time period for enforcement extended to be unlimited.
- Unlimited fine on conviction
- Possible conviction up to two years
- £200 per day until default corrected

### Section 36 – Notice requiring rectification

- Relates to all building work
- Applies to any non-compliant work
- Time period for enforcement extended from 1 year to 10 years.
- Unlimited fine on conviction
- £200 per day until default corrected

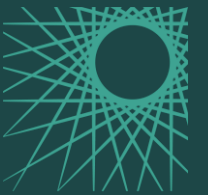
### Section 36 – Defective Premises Act

- 30 years Retrospective from April 28 2022
- 15 years Prospective from April 28 2022

### Section 38 – Civil sanctions

- Civil claims for damages (injury or loss) caused by breach of building regulations.
- 15 years Prospective
- Not yet in force

# Key Principles for industry action



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# 5 Building blocks of competence

## Develop a roadmap

- Everyone is at different stages in developing their sectoral approach to competence
- Critical issue is that everyone is on the journey
- Depending on what is already available, approaches may take a number of years to implement – marathon, not sprint
- Continuous improvement means process is ongoing.

## Ensure consensus

- Make every effort to develop approaches which are open, transparent and built on genuine industry consensus of good practice
- Don't re-invent the wheel – and engage with others to share learning

### 1. Robust competence Frameworks and Standards

- Tailored to specific roles, functions and activities
- Spanning levels of competence required
- Developed through industry consensus
- Subject to review and update
- Freely available

### 2. Effective systems of assessment

- Appropriate forms of assessment relative to roles, functions activities or tasks
- Competence assessment not purely qualification or training
- Suitably independent
- Reviewed and updated periodically

### 3. Ongoing competence management and revalidation

- Undertake relevant CPD
- Record professional development activities
- Personal Development Plans based on review of work undertaken and future needs
- Periodic revalidation in a proportionate manner

### 4. Management systems to allocate tasks

- Critical that individuals and organisations work within limits of competence.
- Managers and organisations need to be mindful of how decisions are made
- Need to record how suitable competence decided on

### Third Party Oversight

- Independent assurance of compliance with policies and procedures
- Avoid optimism bias and 'marking own homework'
- Maintain credibility and standards

# Progress - ICC and CSG

## BSR's new Industry Competence Committee



### Industry Competence Is Crucial

Industry members and a Chair have been appointed to the new Industry Competence Committee (ICC). Its first meeting will be in September.

The ICC members are:

- Jon Vanstone (Chair) – Tech Influence
- Sandra Ashcroft (Vice-Chair) – Health and Safety Executive
- Jay Parmar – Joint Industry Board and CSCS Alliance
- Lorraine Turner – UKAS
- Steve Evans – National House Building Council
- Lorna Stimpson – Local Authority Building Control
- Wendy Belfield – InTandem Systems
- Pete Dawber – Solvere Ltd
- Ruth Devine – SJD Associates Ltd
- Richard Harral – Chartered Association of Building Engineers
- Nick Coombe – National Fire Chiefs Council
- Dennis Davis – Fire Sector Federation
- Alasdair Perry – British Automatic Fire Sprinkler Association
- Andrew Bulmer – The Property Institute
- Anthony Taylor – Building Safety Alliance
- James McNay – Hydrock
- Kate Milford – Milford and Marah Ltd



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Home / Policy & Public Affairs / Building Safety / Competence Steering Group (CSG)

## Competence Steering Group (CSG)

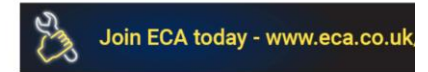
The Competence Steering Group (CSG) was set up under the auspices of the Industry Response Group, established in the immediate aftermath of the Grenfell fire in June 2017 jointly by the Ministry of Housing, Communities and Local Government and Build UK, Construction Industry Council and Construction Products Association and the National Fire Chiefs' Council. The CSG is chaired by CIC Chief Executive Graham Watts and CPA Chief Executive Peter Caplehorn.

- Engineers (WG1)
- Installers (WG2)
- Fire engineers (WG3)
- Fire risk assessors (WG4)
- Fire safety enforcing officers (WG5)
- Building standards professionals (WG6)
- Building designers, including architects (WG7)
- Building safety managers (WG8)
- Site supervisors (WG9)
- Project managers (WG10)
- Procurement (WG11)
- Products (WG12)



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Home > Fire > Legislation > Industry Competence Committee appointed by Health and Safety Exe



### ARTICLE



### Industry Competence Committee appointed by Health and Safety Executive

15 August 2023

THE HEALTH and Safety Executive (HSE) has set up and appointed industry members and a chair for the all-new Industry Competence Committee (ICC), which will run its first meeting next month. The ICC will have a key role to play in advising both the built environment industry and the Building Safety Regulator within the HSE on matters of competence.





# Progress- British Standards and CPB-1

**bsi.** Standards Development

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Home Categories About Help

CPB/1 - Competence in the Built Environment

**Sector:** Construction

**Categories:**

**Overview:** Responsible to the Standards Policy and Strategy Committee (SPSC) for standardization needs for competence in the built environment. Responsible for defining, developing and delivering standardization outputs for the competence of those involved in the procurement, design, construction, management and maintenance of buildings, including higher risk buildings as defined under the Building Safety Act.

**Committee standards activity**


In Progress (1) Published (0) Withdrawn (0)

Download List Show 10 entries

Reference Standards description Status

**PAS 8673:2022**

Built environment – Competence requirements for the management of safety in residential buildings – Specification




bsi.

Department for Levelling Up, Housing & Communities


**Fire Sector Federation**

**Approved Code of Practice**  
A National Framework for Fire Risk Assessor Competency



bsi.

**BUILDING SAFETY ALLIANCE**



**Driving competence**

**Built environment – Core criteria for building safety in competence frameworks – Code of practice**

April 2021 Version 3



BSI Flex 8670: v3.0 2021-04

Ministry of Housing, Communities & Local Government

bsi.

**PAS 8671:2022**

Built environment – Framework for competence of individual Principal Designers – Specification



bsi.

Department for Levelling Up, Housing & Communities

**PAS 8672:2022**

Built environment – Framework for competence of individual Principal Contractors – Specification



bsi.

Department for Levelling Up, Housing & Communities

**BUILT ENVIRONMENT – PROPOSED CONSTRUCTION PRODUCT COMPETENCE STANDARD**

WHITE PAPER



Competence Steering Group  
Working Group 12:  
Construction Product Competence

cpa construction products association

cabe

# Progress - BS 99001

## Adapted from ISO 9001

- Quality management system designed specifically for the construction sector
- Works for micro businesses up to Biggest design and contracting bodies
- Applicable to systems relating to both the organisation and the entire life cycle of projects under its control, including services, temporary works and built environment deliverables.

## Organisational capability

Provides a framework for quality management.

- Leadership
- Planning
- Support
- Operation
- Performance evaluation
- Improvement

**Third party certification could provide good evidence of organisational compliance with Dutyholding requirements**

BS 99001:2022



**Quality management systems —  
Specification for the application of  
BS EN ISO 9001:2015 in the built  
environment sector**

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## Benefits of BS 99001



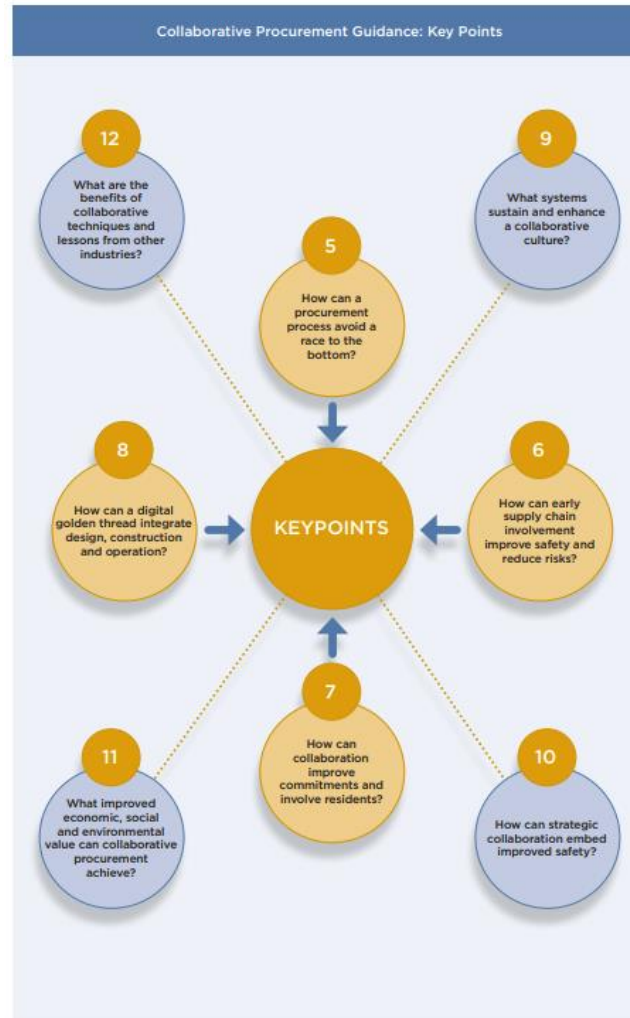
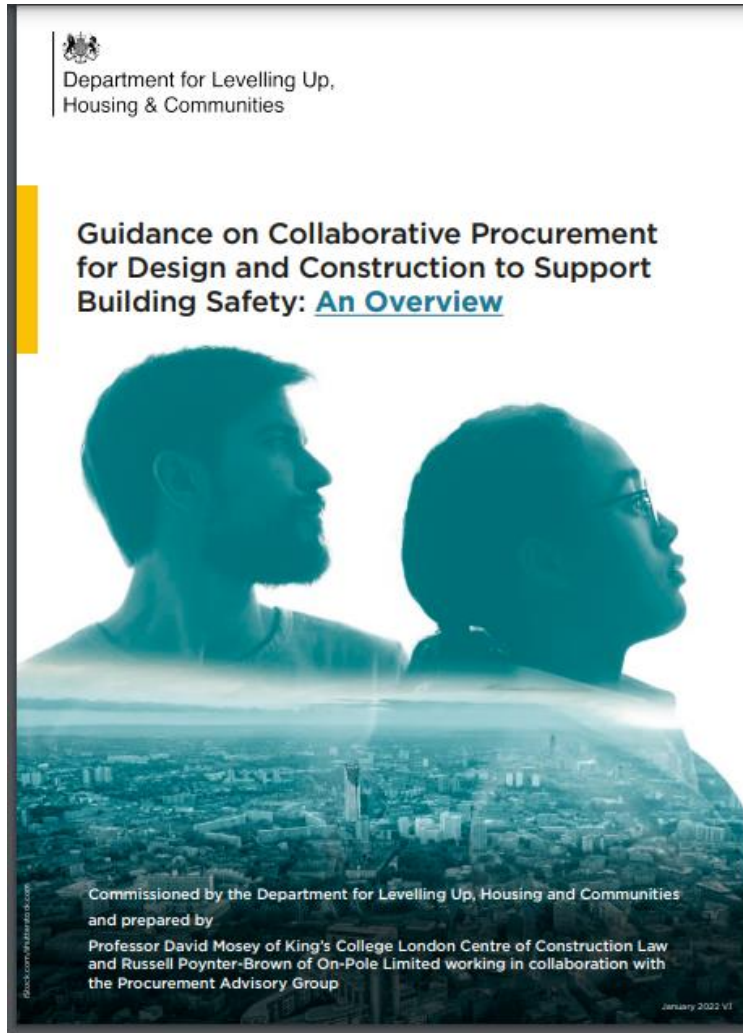
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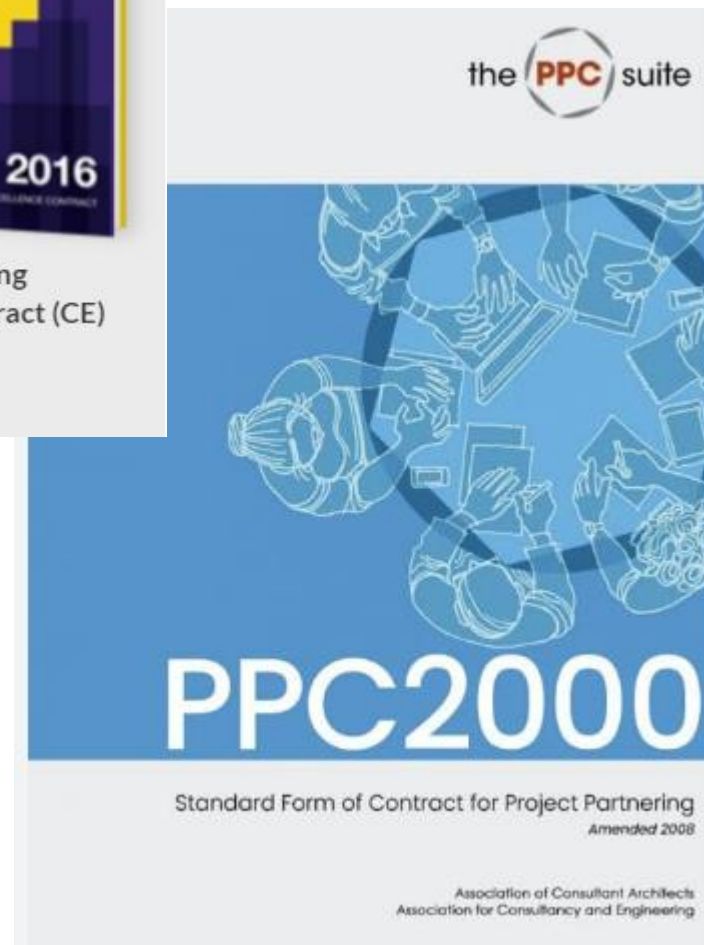


# Progress - Collaboration



## NEC3: Engineering and Construction Contract (ECC)

The NEC3 Engineering and Construction Contract is the core document from which the options A-F are extracted. It contains all core clauses and secondary option clauses, together with the schedules of cost components and forms for contract data.



# Progress – Building Inspector Registration



The screenshot shows the HSE website's 'Building control registers' page. The header includes the HSE logo, 'Health and Safety Executive', and a search bar. The navigation menu has links for Home, News, Guidance (selected), About HSE, Books, Free updates, and Contact. The breadcrumb trail reads: HSE > Guidance > Building safety > Building control > Building control registers.

**Building control**

- Overview
- Building control registers**
- Monitoring, assurance and enforcement
- Professional codes and standards

## Building control registers

The Building Safety Regulator (BSR) will establish:

- a register of building inspectors, across both public and private sectors
- a register of building control approvers

with corresponding registration criteria.

### Registration criteria

The registration criteria and processes are being developed and include:

- commitment to a code of conduct for registered building inspectors (RBIs)
- a competence framework for RBIs
- professional conduct rules against which registered building control approvers (RBCAs) will be held to account







# Regulation of Building Control Key docs

- **Building Inspector Code of Conduct** applies to all Registered Building Inspectors
- **Building Inspector Competence Framework** applies to all persons working as Building Inspectors
- **Professional Conduct Rules** apply to Building Control Approvers
- **Local Authority Code of Conduct** applies to LA's
- **Operational Standards Rules** apply to both Building Control Approvers and Local Authorities
- Building Safety Regulator acting as Building Control Authority in HRB governed by **Regulators Code / DLUHC oversight** and appeals mechanisms

Registered Building Inspector	Code of Conduct	BICoF
Registered Building Control Approver	Professional Conduct Rules	Operational Standards Rules
Local Authority	LA Code of Conduct	Operational Standards Rules
Building Safety Regulator in HRB	Regulators Code	DLUHC

# Progress – Building Inspectors



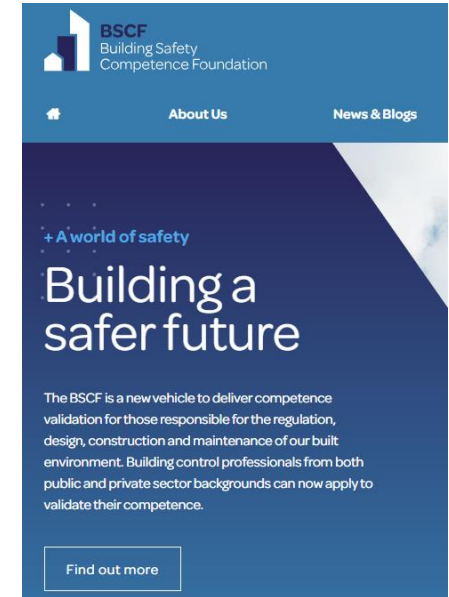
The cover features a dark teal background with several light teal diagonal lines radiating from the center. In the top right corner is the CABE logo, which consists of a stylized sunburst icon above the text "cabe" and "chartered association of building engineers".

## Building Inspector

### Competence Frameworks (England)

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cbuilde.com v2 September 2023



The banner has a blue header with the BSCF logo and navigation links. The main content area has a dark blue background with a white diagonal stripe.

**BSCF**  
Building Safety  
Competence Foundation

[About Us](#) [News & Blogs](#)

+ A world of safety

## Building a safer future

The BSCF is a new vehicle to deliver competence validation for those responsible for the regulation, design, construction and maintenance of our built environment. Building control professionals from both public and private sector backgrounds can now apply to validate their competence.

[Find out more](#)

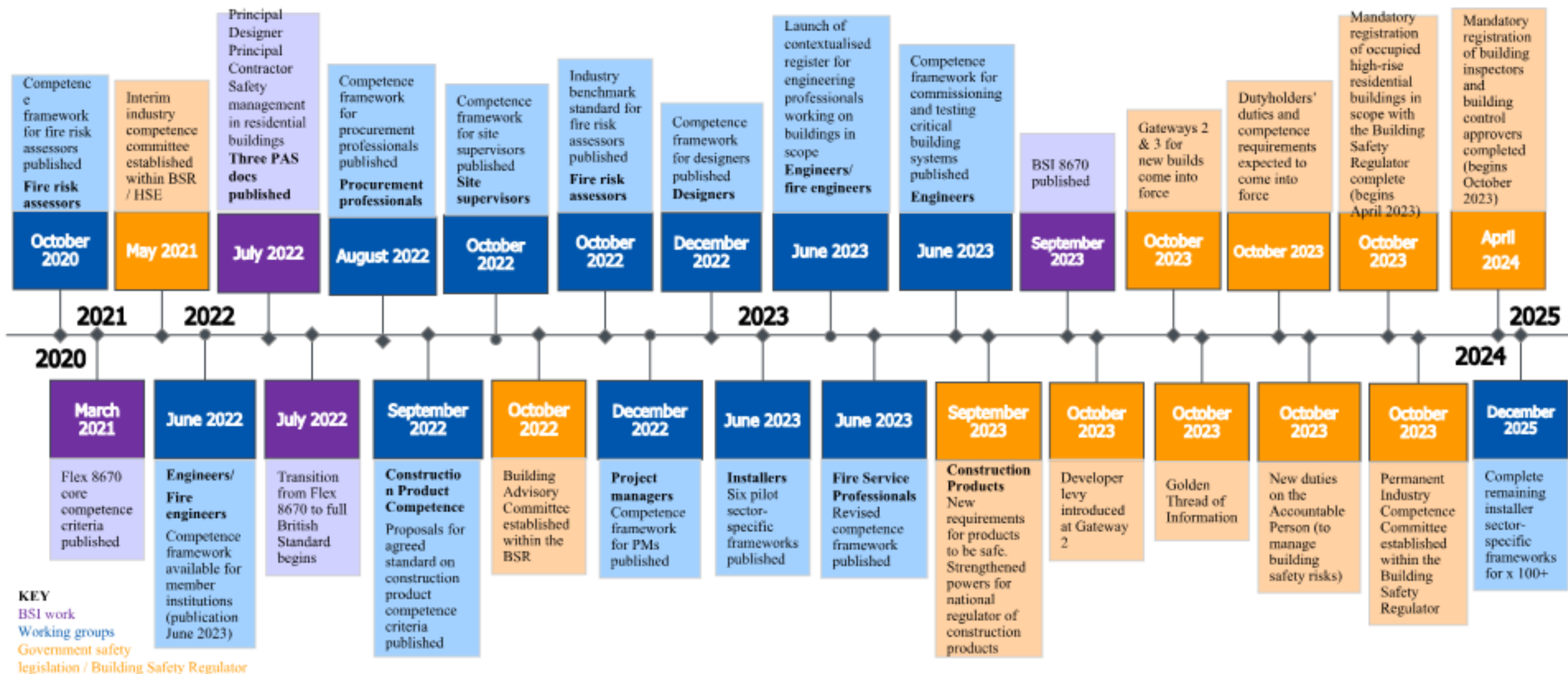


The logo features a green circle with a white stylized 'T' inside, followed by the text "TOTAL" in large green letters, and "TRAINING AND DEVELOPMENT LTD" in smaller green letters below it.

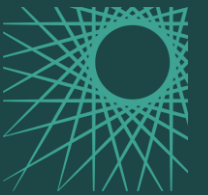
**TOTAL**  
TRAINING AND  
DEVELOPMENT LTD



# Timeline for competence activity



# Summary – why competence is key



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# Latham / Egan / Farmer/ Hackitt

## Problems:

- Industry under achieving
- Wasteful
- Poor quality resulting from industry structure and working practices
- Failure to deliver value for money
- Ineffective
- Adversarial and Fragmented
- Client and industry aims unaligned
- Survivalist business model – inadequate money and time
- Deep seated resistance to change
- Likely 20-25% reduction in workforce by 2026
- Lack of clarity on roles and responsibilities
- Lack of robust competence assessment
- Lack of competence management to ensure ongoing competence
- Compliance, enforcement and sanctions too weak

## Recommendations:

- Committed Leadership
- Focus on the customer
- Integrated process and teams
- Quality driven agenda
- Commitment to people
- Client leadership as best practice procurers
- Better briefing
- Use of coordinated project information
- Design responsibilities clearly identified
- Adopt standardised non-adversarial contracts
- Register of competent consultants with selection based on quality and price
- Project managers need to be competent
- Contractors should be rated on quality of outcome
- Tenders should be evaluated on quality as well as price
- Shift to collaboration and partnering in the supply chain

## Dutyholding requirements:

- Plan
- Manage
- Monitor
- Review
- Coordinate
- Cooperate / collaborate
- Share information
- Ensure competence
- Ensure compliance with Building Regulations functional requirements
- Adequate time and resource to deliver compliance
- Work within limits of competence
- Competence requirement written into building regs

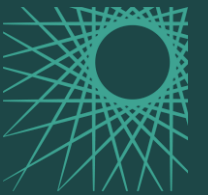


# Competence is key.....

	Dutyholding roles and responsibilities clearly defined	Plan	Manage	Monitor	Review	Coordinate	Cooperate and collaborate	Share information	Ensure competence of individuals (including behaviours)	Ensure competence of organisations (ability to plan, manage and monitor work)	Ensure compliance with Building Regulations	Provide adequate time and resource to support compliance	Provide adequate supervision and oversight	Work within limits of competence	Competence Requirements written into building regulations
Industry underachieving		●	●	●	●	●		●	●	●					
Wasteful		●	●	●	●	●		●				●	●	●	
Poor quality		●	●	●	●	●		●	●	●	●	●	●	●	
Failure to deliver value for money		●	●	●	●	●		●	●	●	●				
Ineffective		●	●	●	●	●		●	●	●	●	●	●	●	
Adversarial and fragmented		●	●	●	●	●		●				●			
Aims unaligned	●					●		●	●	●		●			
Inadequate time and money												●			
Resistance to change	●														●
Reduction in workforce capacity		●	●	●	●	●		●	●	●		●	●		
Lack of clarity on roles and responsibilities	●	●	●	●	●	●		●	●	●			●	●	●
Lack of robust competence assessment	●								●	●					●
Lack of ongoing competence management	●								●	●					●
Compliance, enforcement and sanctions too weak	●														●



# Q&A



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# The Practicalities of Gateway 2 to Gateway 3

Andrew Mellor, PRP

Assad Maqbool, Trowers & Hamlins

11 October 2023





## **Building Safety Act**

### **Gateway 2 – Building Control Approval Application**

October 2023

# ‘The HRB Gateways’

The Building (Higher-Risk Buildings Procedures) Regulations 2023

- **Building Control Approval application** - replaces Full Plans Application (all projects)
- For HRBs, typically one application expected with full design
- BSR 12 week determination period for new HRB's; 8 weeks determination period for existing HRB's
- **Completion Certification application** – 8 weeks determination period

# HRB Application Documents

The Building (Higher-Risk Buildings Procedures) Regulations 2023

## Building Control Approval Application

- Description of the building and proposed work
  - Location plan
  - Design drawings properly labelled and a reference file
- 
- Competency Statement
  - Building Regulations Compliance Statement (referenced to the design drawings)
  - Construction Control Plan
  - Change Control Plan
  - Mandatory Occurrence Reporting Plan
  - Fire and Emergency File
  - Partial Completion Strategy
  - Client signs application or provides authorisation statement

# Staged Applications

- These are possible but only for the stages of a building and not for multiple buildings
- Staged applications only acceptable where it is not viable to provide detailed plans for the whole building

## **Building Regulations Compliance Statement**

Sets out the approach to designing the building and references the building standards and guidance which have applied

Includes all elements of the building and sets out why and how those elements are compliant with the Building Regulations



## **Application Fees**

£180 for application

£144 per hour for the Regulator to assess the application

*Seems that the better the quality of the submission the less the fee will be .....*



# HRB Golden Thread

## The Building (Higher-Risk Buildings Procedures) Regulations 2023

- Client must provide an electronic Golden Thread facility
- Information must be accurate, transferrable, secure and readily available
- BCA application & approved documentation must be uploaded to the Golden Thread facility prior to construction work starting



# HRB Commencement Notification

The Building (Higher-Risk Buildings Procedures) Regulations 2023

- Client must notify the BS Regulator 5 days before work starts on site
- For new buildings, Client must give notice to the Regulator of commencement within 5 days of that date
- For existing buildings, Client must give notice to the Regulator when commencement point is reached (commencement is 15% of the new works are complete)





# HRB Change Notification

The Building (Higher-Risk Buildings Procedures) Regulations 2023

- Major Change Application, cannot start work until approved – 6 weeks determination period
- Notifiable Change, can start work once BSR is formally notified
- Recordable Change – not notifiable but added to the change control log

Principal Dutyholders determine the type of change

BSR has power to change the category of the application



## **Building Control: An overview of the new regime**

Gateways 2 and 3 – application to completion  
certificate



# Gateway 3

# Agenda

1. Completion Certificate Applications
2. Practical Completion
3. Partial Completion Certificates

# Completion Certificate Applications

# Completion Certificate Applications

- Regulation 40
  - Description of the work
  - Client statement
  - As-builts
  - Change control log
  - PC/PD compliance declaration

# Completion Certificate Applications

- A "compliance declaration" signed by each principal contractor and each principal designer
- Alternatively, a statement from the client stating the reasons why such compliance declaration cannot be provided
- Compliance declarations are statements that the relevant person has fulfilled its duties pursuant to Part 2A (dutyholders and competence) of the 2010 Regulations



# Practical Completion

# Practical Completion

- 8 weeks for the Regulator to respond
- Has to include a statement of the date on which the work was completed
- What happens during those 8 weeks?
- What happens if the 8 week period extends?
- "remember sections 76 and 77 of the Building Safety Act 2022"

# Partial Completion

# Partial Completion

- Strategy required at Gateway 2
- Changes to the partial completion strategy are notifiable changes
- Partial completion certificate is a completion certificate for the purposes of section 76(5) of the Act
- Strategy must not be at the expense of occupant safety

# Contact

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# Building Safety Defects Claims

Tim Hillier & Helen Stuart

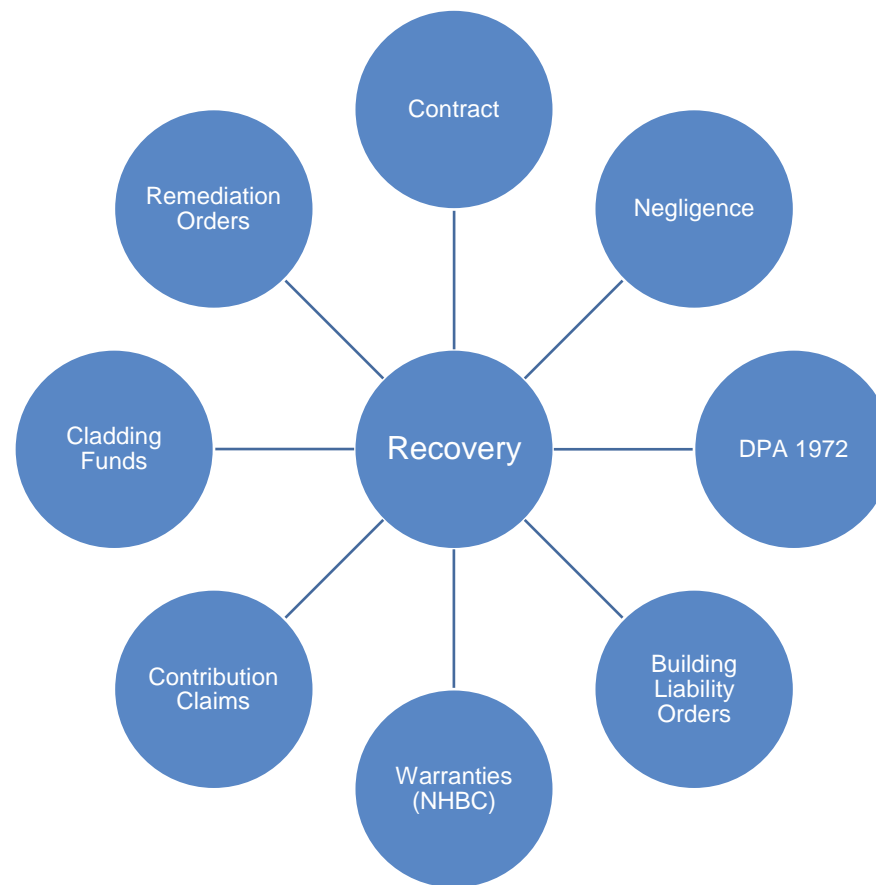
11 October 2023

# Agenda

1. Routes to Recovery
2. Guidance from Caselaw
3. Practical Issues



# Routes to Recovery



# Building Safety Claims

Type	Requirement	Defendant	Limitation	Recovery
Contract	breach of contract	Contracting Party	6 years or 12 years (Deed) from breach	Back in position as if contract properly carried out subject to remoteness
Negligence	breach of duty	Contracting party/ advisor	6 years from cause of action or 3 years for latent defects from when discovery ought to have been made up to 15 year long stop - s14a Limitation Act 1980	Back in position as if negligence hadn't occurred Cannot claim economic loss unless 'special relationship'
Defective Premises Act 1972	breach of s1 or s2A Defective workmanship/ design renders dwelling not fit for habitation	Developer/ contractors/ designers	s1 – 30 years from completion - retrospective	Not specified in Act Natural consequence of breach
			s1 – 15 years from June 22	
			s2A - 15 years from June 22	
Building Liability Orders – s130 BSA	Relevant liability 'just & equitable'	Associate co.s	Same as relevant liability	Same as relevant liability
Warranty (NHBC/ Premier)	'Damage' 'Defect' 'Imminent Danger'	Warranty provider	Period of cover - previously 10 -12 years now mandatory 15 years – s144&145 BSA. Limitation 6 years from cause of action	Remedial scheme Some losses excluded
Contribution Claims	S1 The Civil Liability (Contribution) Act 1978	Any other person liable for the same damage	2 years from judgment/ arbitral award/ settlement	<i>'just and equitable having regard to the extent of that person's responsibility for the damage in question'</i>
Remediation Orders s 123 BSA Remediation Contribution Orders s124 BSA	'Relevant Building' 'Relevant Tenant' 'Relevant Defect' 'Qualifying Lease'	Landlord Developer Associate co.	No limitation period per se but restrictions on 'Qualifying Lease' and 'Relevant Tenant'	The remedial works or payment of a reasonable amount for remediation of relevant defects

# Initial Cases- Difficulties

- **Limitation:**
  - RG Securities (No.2) Ltd v Allianz Global and others [2020] – concealment
- **Cause of Action & Limitation:**
  - Sportcity 4 Management and others v Countryside Properties (UK) Ltd [2020]
- **Issues with particularising claims:**
  - Naylor and others v Roamquest Ltd and others [2021]
- **Limitation and proper particulars :** Crest Nicholson Operations Ltd and others v Grafik Architects Ltd and NHBC [2021]
- **Going forward:**
  - Court's guidance – issue Request for Information and then apply for order to respond
  - Building Safety Act extended time limits to DPA claims – s130
  - Possible route under s38?

**" Like most other similar cases this case turns very much on the specific contractual provisions and specific fire safety standards applicable to the particular product. "**

**HHJ Stephen Davies in Martlet Homes**

## Guidance from caselaw (1)

- **Martlett Homes v Mullaley [2022]**

- Court will interpret Building Regs and industry guidance using the words used
- ERs – compliance with recommendation in BRE 135 (2003)
- Breach of B4 (1) of Sch 1 of Building Regulations 2010
- 'everyone else was doing it' not a defence to reasonable skill and care
- Onus on D to show remedial scheme unreasonable – difficult if C taken expert advice
- Court will not be too critical of C's choices if made as a matter of urgency or on incomplete information
- Waking watch costs recoverable but reduced – caused by the breach and foreseeable

- **LDC (Portfolio One) Ltd v George Downing Construction Ltd and others [2022]**

- claim between C and 1<sup>st</sup> D settled, 2<sup>nd</sup> D in CVL and did not consent to judgment
- strict obligation to comply with Building Regulations and back to back with Main Contract – breach
- Costs incurred are the starting point as to what is reasonable
- Any upgrade to comply with BRs not betterment

## Guidance from caselaw (2)

- **St James' Oncology SPC Ltd v Lendlease Construction Europe Ltd & others [2022]**
  - PFI dispute on fire safety issues in hospital
  - Not sufficient to show defects could have been rectified through an alternative scheme – D must show C's remedial scheme unreasonable
- **URS Corporation Limited v BDW Trading Limited [2023]**
  - BDW remedied the defects when no longer had an interest in the properties
  - Scope of duty of care from designer to developer covers risk of economic loss caused by defects
  - Where there is no physical damage cause of action in negligence accrues at PC (latest)
  - Developers owe and are owed a duty under the DPA
  - BDW could rely on the extended time limits for the DPA claim under BSA 2022
  - Not necessary for 3<sup>rd</sup> party to make a claim against BDW before it could bring a claim for contribution

# Practical issues

External walls should either meet the guidance given in paragraphs 12.6 to 12.9 or meet the performance criteria given in the BRE Report *Fire performance of external thermal insulation for walls of multi storey buildings* (BR 135) for cladding systems using full scale test data from BS 8414-1:2002 or BS 8414-2:2005.

The **Underwriter** will indemnify the **Policyholder** during the **Structural Insurance Period** against the cost of repairing, replacing or rectifying the **Housing Unit** where such repair, replacement or rectification cost is the result of a present or **imminent** danger to the physical health and safety of the occupants of the **Housing Unit** because the **Housing Unit** does

to see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.

- an FRAEW following the PAS 9980:2022 methodology which recommends action to address life safety risks presented by the external wall system.

*The fundamental basis of this PAS is that it is risk-based, not compliance-based. It cannot establish absolute safety, but can only categorize risk on a relative basis.*

“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from

- (a) the spread of fire, or
- (b) the collapse of the building or any part of it;

- 3.1 In the performance of the Services and discharging all the obligations under the Contract, the Architect/Consultant will exercise the reasonable skill, care and diligence to be expected of an Architect/Consultant experienced in the provision of such services for projects of a similar size, nature and complexity to the Project. Notwithstanding anything



Remedial Action	Building Regulations/A DB?	Fit for Habitation?	Professional Skill & Care?	Imminent Danger?	PAS 9980 /life critical fire safety risk?	Building Safety Risk?
Replace cladding/render system						
Install/re-install cavity barriers						
Replace insulation						
Replace fire doors						
Internal fire stopping						
Sprinkler system						

# Practical issues



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# Fourth annual mini-conference on building safety

Day two

12 October 2023

A low-angle photograph of the Grenfell Tower under construction against a clear blue sky. The building's facade is covered in scaffolding and safety netting. Two large murals are visible on the upper floors: a heart shape on the left and the text 'GRENFELL FOREVER IN OUR HEARTS' on the right. A tall construction crane is positioned vertically along the side of the building.

# The Grenfell Tower Inquiry

Pete Apps



# The structure of the inquiry

- Phase one – the events of the night. Ran from May 2018 to December 2018 with a report published in October 2019.
- Phase two – the background story. Ran from January 2020 to July 2022 (closing statements next month). Split into eight modules:
  1. The refurbishment
  2. Testing and certification
  3. The responsibilities of the social housing providers
  4. The aftermath of the fire
  5. The London Fire Brigade
  6. Central government
  7. Expert evidence
  8. Inquest evidence



# Phase One

- The story of the night.
- To very briefly recap... fire started in a kitchen on the fourth floor (very likely in a fridge). It then burned through a window which was made of highly combustible plastic and ignited cladding panels on the outside which had a core of polyethylene – essentially solid petrol
- Fire went up in a straight line, all the flats ending in 'six' on each floor were affected immediately. These residents evacuated swiftly.
- Self-closers on front doors were broken or missing, so smoke travelled very rapidly from their flats into common lobbies.



# Phase one, continued...

- As a result those still in the building were reluctant to leave their flats (smoke was highly toxic). Phoned 999 and were told to stay put
- This advice repeated despite obviously deteriorating fire conditions. Residents promised help was coming when it wasn't. Told the fire was on the fourth floor when it was at the top of the building and spreading.
- Most cladding fires in the world have only gone straight up. This went sideways – largely thanks to an 'architectural crown'
- Stay put not lifted until 2.35am. By then – too late for many to escape

# Phase one report—October 2019

## Inquiry

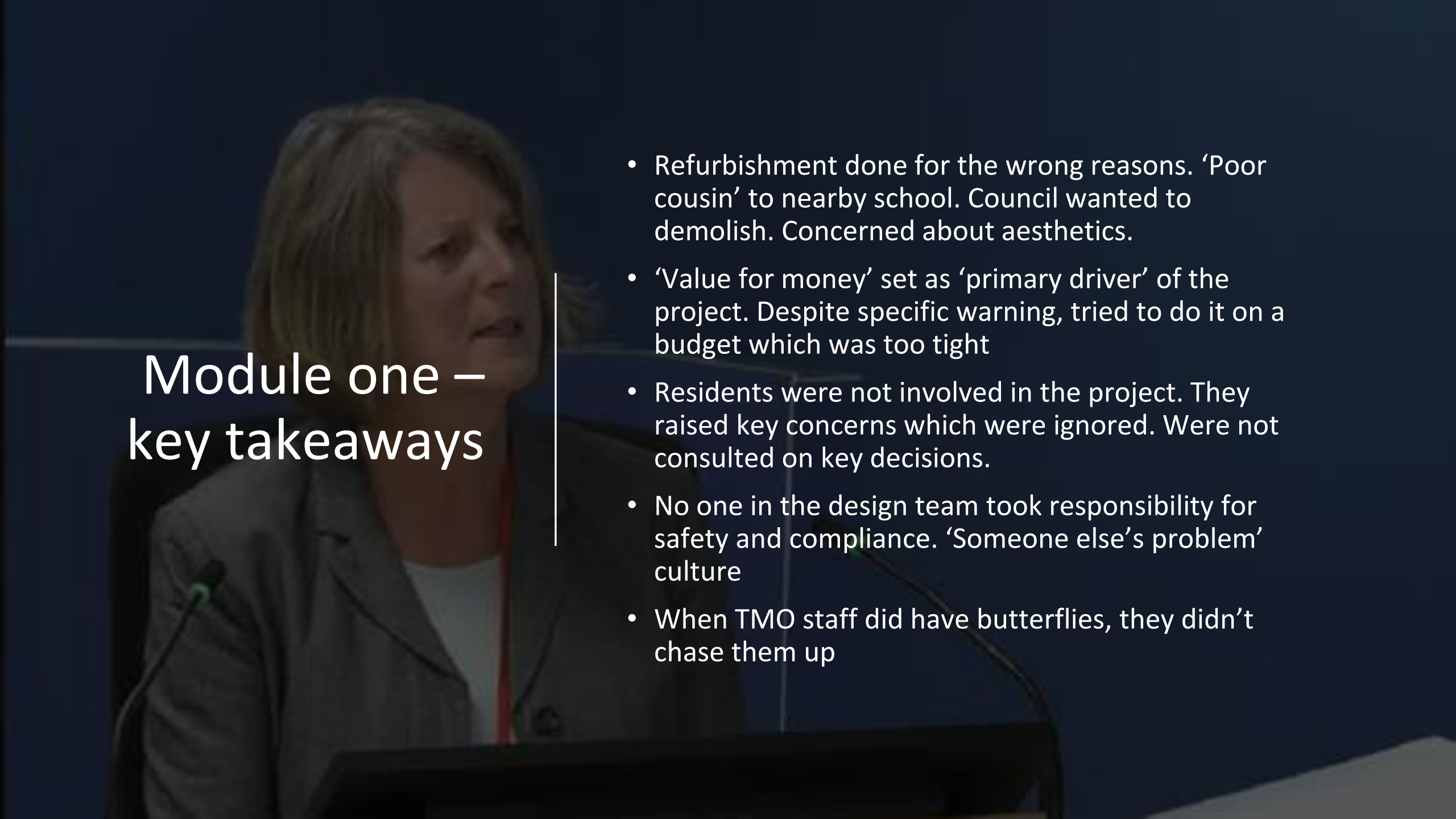
- Stay put an 'article of faith'
- No Plan B. How would firefighters have evacuated the building?
- Recommends PEEPs, evacuation plans manual fire alarms and regular checks on door closers. None of these have been fully implemented
- Also finds primary cause of fire spread was the cladding panels and the building breached regulatory requirement to “adequately resist” the spread of fire. Performance-based system.

REPORT of the PUBLIC INQUIRY into the  
FIRE at GRENFELL TOWER  
on 14 JUNE 2017



# Phase Two – Module One

- The refurbishment
- Complex web of companies involved
- KCTMO the client
- RBKC paying for the work
- Rydon the primary contractor
- Studio E, architects. Harley Facades cladding sub-contractor. Exova providing fire engineering advice
- RBKC building control providing sign off

A woman with blonde hair, wearing a grey blazer over a white top, is speaking at a podium. A microphone is in front of her. The background is dark blue.

## Module one – key takeaways

- Refurbishment done for the wrong reasons. ‘Poor cousin’ to nearby school. Council wanted to demolish. Concerned about aesthetics.
- ‘Value for money’ set as ‘primary driver’ of the project. Despite specific warning, tried to do it on a budget which was too tight
- Residents were not involved in the project. They raised key concerns which were ignored. Were not consulted on key decisions.
- No one in the design team took responsibility for safety and compliance. ‘Someone else’s problem’ culture
- When TMO staff did have butterflies, they didn’t chase them up



Agreement Certificate  
No 08/4510

REYNOLDS ARCHITECTURE WALL CLADDING PANELS

OF CERTIFICATE

in European  
standard /  
a provides a  
standard rating of

Building

category

is a fire rated  
product / class



is an indicator for installation for cladding systems providing they have  
been tested in accordance with the relevant standards.

When incorporated in a cladding system designed to resist the wind loads normally

occurring in the building category the system is fire rated and may be regarded as  
meeting the requirements of the relevant standards in Scotland and London.

## Module Two - Arconic

- Arconic (which made the cladding) tested it in 2004 against new European standards. They discovered that if bent into 'cassette' form it performed far worse in a fire and could not meet the minimum standards
- This test was never released to the market, or to the British Board of Agreement (BBA) – who provided a certificate which suggested the cladding had a 'Class 0' rating
- Internal emails warned "we are in the know" and said the test failures should be kept "very confidential". "Even if we know that PE material in cassette has a bad behaviour exposed to fire, we can still work with national regulations who are not as restrictive."





# Module two - insulation

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- Celotex, which made the insulation, passed a large-scale fire test which secretly used fire resisting boards to help it pass. It then dishonestly marketed its insulation as “suitable for use on high rise buildings”
- Kingspan ran tests on a system containing a legacy product. It also advertised as suitable for use on high rise buildings, and got a certificate backing this up “without even getting any real ale” down the inspector who wrote it
- Both organisations lobbied against standards regulating the smoke toxicity of building products

# Module two – lessons to takeaway

- Massive culture change, tighter regulation and transparency urgently required in the field of construction products
- But, clients must adopt a position of extreme skepticism. Beware of Greeks bearing gifts and product manufacturers bearing certificates. They are marketing people not independent experts.
- Likely to be consequences for the firms involved

# Module three – the social housing providers

- RBKC – landlord and owner of Grenfell Tower
- KCTMO – so-called tenant management organisation, but legally speaking an ALMO
- Set up in 1996 to take over housing management. Designed to avoid compulsory competitive tendering.
- Had a large percentage of tenants on board, but things were going wrong long before Grenfell. Huge repairs backlog. Memoli report.

Kensington  
& Chelsea

CALL 100 FOR OFFICE



# Module three – the key failures

- Tenant complaints ignored. Either treated individually, and forced through exhausting three-stage process, or treated collectively and dismissed for not being specific enough.
- Tenants raised crucial issues – door closers, smoke ventilation, escape routes, firefighter access. They were treated as a nuisance. Relationship became hostile, but didn't have to be
- Maintenance of the block. Huge repairs backlog and fire risk assessment actions backlog. Board sought to conceal from LFB rather than address.
- Within this – crystal clear warnings re fire door self-closers ignored as too expensive. Fire safety treated as an annoying burden. 'Non-issue'.
- 'Let's hope our luck holds'

# Module three – the key failures

- Disabled residents. Did not have good data. Did not plan for their evacuation. Very much part of a national problem.
- Lifts. Stigma played a part in the decisions which were ultimately critical failures.
- Fire risk assessor working in league with the TMO instead of being a critical voice.
- Believed criticism - including from a scrutiny committee - was not valid





2323/68/10A  
16 APR 1991

Mr. Sage

Reference

Knowsley Heights.

1. You will wish to be aware of  
Alison Curtis's comments on the  
recent fire.

2. We have received, via HREA, a request  
from M. St. Pless Office to play down  
the issue of the fire. Our briefing  
for Sot 8 is purely factual and as  
far as I am aware Knowsley will  
not be making an issue of the  
fire.

1. Mr. [unclear]  
2. Mr. [unclear]

11 April

Usual view of  
Liverpool + Kirkby

Needs some  
research via  
Knowsley.

Thurs. What do you  
think of X in para 3?

+ More importantly  
what are the local  
management arrangements  
(para 14)? Is the  
criticism less justified  
for 11/4/91

CODE 18-78

# In 1991...

- UK government ran pilot for overcladding at Knowsley Heights in Merseyside
- In April, it caught fire. Flames ripped up all 11 storeys and in through windows. A crucial chance to realise the risk and eliminate it.
- But internal memo says fire will be “played down”. Official report by BRE ignores the fact that cladding was combustible and permitted by weak official standard Class 0



## In 1999...

---

- Fire at Garnock Court in Scotland. Select Committee investigation says it should not take a major disaster to tighten standards. Recommends rule change to require non-combustible cladding unless it has passed a large-scale test and regular risk assessment of cladding systems on social housing
- This is only half implemented. Issue of Class 0 mysteriously absent from BRE report to central government.





## In 2001...

---

- Government commissions tests on cladding systems. Includes a test on an ACM system, using similar cladding to that later used on Grenfell.
- Test fails, with 20m high flames endangering setting the laboratory on fire.
- They know this product is on the market and permitted as it can obtain Class 0. They don't act. Industry lobbying warns of “economic consequences” of tighter standards



## In 2009...

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- Lakanal House fire spreads via combustible panels beneath windows on high rise building in south London. Six people die after being told to stay put – including three children.
- A coroner's inquest in 2013 calls for a review of building regulations "with particular regard" to external fire spread
- But new Coalition government has declared "war on health and safety culture". Regulations subject to one in, two out rule





## 2014 to 2016

---

- Brian Martin, the civil servant responsible for fire safety rules, attends a meeting where he is warned that the 'Class 0' standard means dangerous cladding is in use on UK buildings. An 'FAQ' to clarify that it is banned is never published
- Martin is warned in 2016 that the use of dangerous cladding in the UK is of "grave concern". But asked by his superiors, he claims his guidance bans it in the UK.
- Internally, he tells ministers they do not need to follow the Lakanal coroner recommendations. "We do not need to kiss her backside"
- Challenged on his failure to do so he tells a campaigner to "show me the bodies" (he denies this)

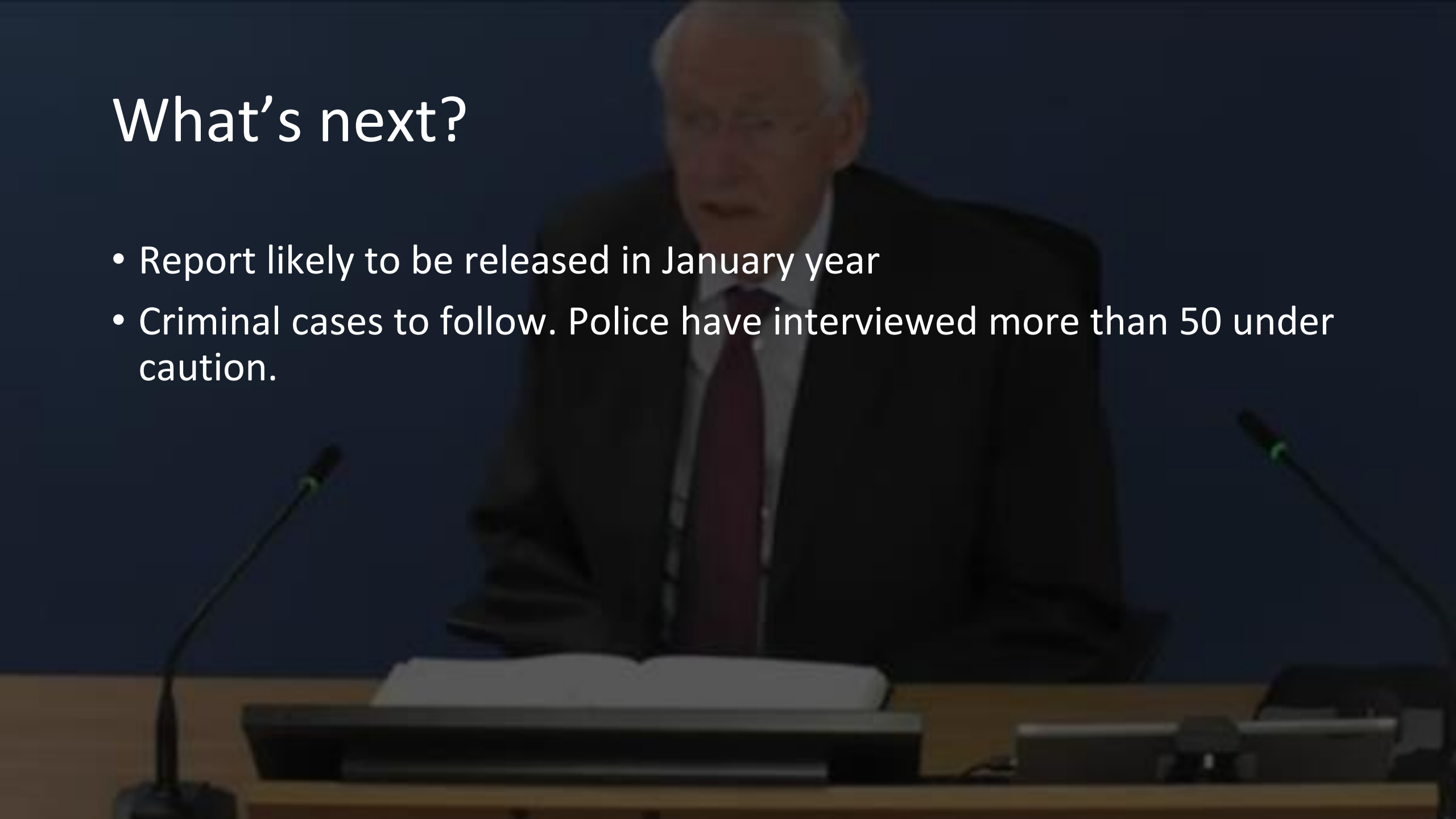


# Module six – philosophies behind failure

- Civil servants tired, demotivated and under-resourced. Hard to recruit professional expertise.
- Central government pressure towards deregulation - across a long period, but particularly accelerated in 2010s
- Industry lobbying given primacy over voices advocating safety
- Failure to understand the need to prevent a low-probability, high consequence event
- Austerity - but by unexpected routes

# What's next?

- Report likely to be released in January year
- Criminal cases to follow. Police have interviewed more than 50 under caution.



# More information:

Show Me The Bodies: How we let Grenfell happen  
Catastrophe, Gill Kernick

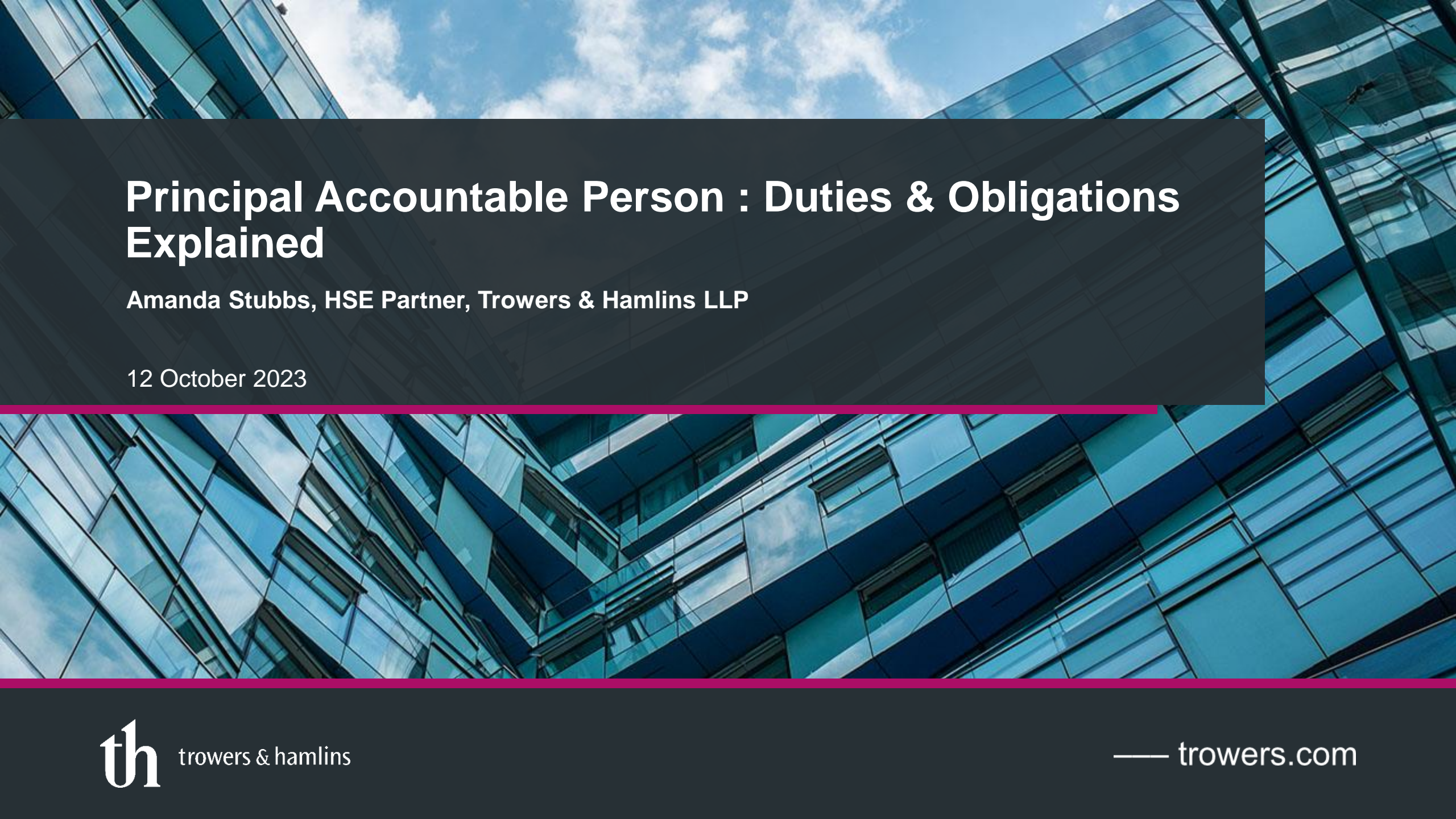
Before Grenfell, Shane Ewen (free download)

Inside Housing back catalogue. Google  
'insidehousing.co.uk Grenfell tower inquiry weekly  
diary' and scroll to bottom for guide

**SHOW  
ME THE  
BODIES  
HOW  
WE LET  
GRENFELL  
HAPPEN  
PETER APPS**

Any questions?





# Principal Accountable Person : Duties & Obligations Explained

Amanda Stubbs, HSE Partner, Trowers & Hamlins LLP

12 October 2023

# Session Agenda

- Who is the Principal Accountable Person ?
- What are the key duties and responsibilities ?
- How will these work in practice ?
- Sticks and carrots
- Q&A ?

# Who is the Principal Accountable Person ?

- Legal Definition for Accountable Persons:
  - a person who holds a legal estate in possession in any part of the common parts; OR
  - a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts;
  - "a relevant repairing obligation" – created under a lease or an enactment;
  - Specific provisions for commonhold associations, Right to Manage Companies and Resident Management Companies;
- Principal Accountable Persons – where there's more than one AP – is the entity that holds a legal estate in possession in the relevant parts of the structure or exterior of a HRB;
- Essentially the organisation or business who owns, or who has responsibility for, the Higher-Risk Building – it's about accountability;
- While you will need to provide a named individual as a single point of contact for the Regulator, the PAP will invariably be a company rather than an individual.
- Are you aware of any HRBs where identification of the PAP has yet to be determined or has been contested ?
- (YES ; NO ; Don't know)



# Key Duties of the Principal Accountable Person

- The PAP has a number of new and significant duties, including:
  - Registering the higher-risk building(s) for which it is responsible with the Building Safety Regulator;
  - Preparing a Safety Case Report using the risk assessments available for the HRB – possibly prepared by other Accountable Persons – and updating it as required, to ensure that it is suitable and sufficient;
  - Developing a resident engagement strategy and complaints procedure;
  - Applying for a Building Assessment Certificate, when called to do so by the Regulator, and displaying it in the higher-risk building;
  - Maintaining the key information required to manage the building safely : the "golden thread";
  - Reporting certain occurrences, such as fires, to the Building Safety Regulator in the form of mandatory occurrence reports.



# Registering Higher-Risk Buildings

- For existing / occupied HRBs, the PAP had from 6 April until 1 October 2023 to get these registered:
  - The PAP can formally authorise someone else to register a building for them, such as a managing agent or legal representative, but the duty remains the PAP's;
  - Initially the PAP must provide the basic building information (name, address, height in metres, number of storeys and residential units, date of completion) and the name of the PAP and all other APs;
  - Pay a fee of £251, and provide the Key Building Information within 28 days – this is more detail about the building's structure and fire safety information, its energy supply, its use, any building work since it was originally built, and any connections with other structures or buildings;
  - The Government guidance suggests that this information should be available from the building's most recent FRA – optimistic ?
  - On-going duty to notify changes within 14 days of becoming aware of them; and
  - Requirement to manage HRBs in accordance with "prescribed principles" (Reg 4, HRB Management Regs):
    - Avoid building safety risks, but where unavoidable, identify proportionate measures to reduce, mitigate and control risks;
    - Adapt to technical progress;
    - Consider resident impacts and engage with residents;
    - Ensure everyone performing a building safety role has the necessary competence, and supervision where required.
- POLL Do you know of any HRBs that have not yet been registered ? (Yes, No, Don't Know)

# Preparing the Safety Case

- Use the existing risk assessments available for the HRB – possibly prepared by other Accountable Persons – and update as required;
- Distil into a single Report that is suitable and sufficient, using risk scenarios identified by the APs with solutions that encompass the entire building and which seek to assure the competence of all those in the supply chain;
- Include information about building structure, policies and procedures, and a description of emergency plans and how these interact in an emergency;
- Describe any ongoing works and when these might be achieved;
- Notify the Regulator of any changes to the safety case information; and
- Once registered, you may not have long to plan the safety case as the BSR will start calling in HRBs for assessment from April 2024.

# Developing a Resident Engagement Strategy

- PAP must develop a strategy for consulting all residents and owners of dwellings in the building (over the age of 16) on the management of building safety risks;
  - Strategy must be reviewed at least every two years, and sooner following a mandatory occurrence report or completion of significant material alterations to the building;
  - PAP must inform residents when works resulting from a building safety decision will be carried out, and the purpose of the works;
  - Material changes to the strategy must be notified to the residents.
- 
- POLL Do you think that the Safety Case Report should be shared with residents?  
(Yes No Don't know)

# Applying for a Building Assessment Certificate

- The Principal Accountable Person cannot choose when to apply for a Building Assessment Certificate; the BSR will start calling in the highest-priority HRBs from April 2024;
- All HRBs should have been called within five years (April 2029), and thereafter will be re-assessed every five years.
- When invited to make an application for the Building Assessment Certificate, the Principal Accountable Person must provide extensive information in addition to the Safety Case Report :
  - Details of any Compliance or Contravention Notices served on the PAP;
  - Evidence to demonstrate compliance with the PAP's various duties eg. details of the complaints procedure for tenants; and
  - A copy of the Residents' Engagement Strategy.

# Reporting Mandatory Occurrences

- The PAP and other APs will be responsible for mandatory occurrence reporting (S. 87(1));
- Specific people responsible for the safety of HRBs required to capture and report certain fire and structural safety issues called 'safety occurrences' to the BSR;
- Mandatory occurrence reporting will enable BSR to capture risks with potential impact on fire and structural safety and assess their relevance other buildings;
- Drive intelligence-led enforcement, promote safety-conscious culture change, and improve safety standards and best practice across the built environment;
- Failure to report an occurrence without a reasonable excuse will be a criminal offence and liable on summary conviction to a fine;
- Information provided via the reporting procedure is not admissible as evidence in criminal proceedings except in proceedings :
  - For failure to report an occurrence; and/or for providing false or misleading information to BSR.

# Sticks...

- **Part 2 – Building Safety Regulator Offences**
  - S.23 Intentionally obstructing and impersonating officers (summary offence)
  - S.24 Providing false or misleading information to the BSR (triable either way)
- **Part 4 – Offences during occupation of HRBs**
  - S.99 Breaching Compliance notices (triable either way)
  - S.101 Breaches giving rise to risk of death or serious injury (triable either way)
- **Part 6 – General**
  - S.161 Personal liability of Directors and Officers (sweep up of offences under Parts 2 and 4)

## Risks for APs and PAPs: relevant sanctions

- The new regime toughens existing sanctions and introduces new ones
- The following offences all attract sanctions for the AP or PAP of imprisonment for up to a year on summary conviction, or up to two years on indictment, or a fine, or both :
  - failure to respond to, comply with, or implement Compliance Notices or Stop Notices issued by the Regulator;
  - failure to register a building before the occupation phase;
  - failure to provide information to a replacement Accountable Person; and
  - contravening without reasonable excuse any relevant requirement where that failure places one or more people in or about the building at *critical risk* (Section 101);
- Officers in corporate bodies may also be liable for offences where breach occurred as a result of their consent, connivance or negligence;
- Building Liability Orders – can be made where a court considers that there has been a risk to people's safety from the spread of fire or structural failure.

## ... and Carrots

Managing safer buildings should enable :

- (More) affordable insurance;
- The ability to attract investment, finance existing loans, deliver financial returns;
- The ability to attract good people – employees, clients, tenants; and
- The ability to do more with the assets you have.

And avoid :

- impacts on business continuity and related cost implications;
- Damage to track record, reputation and credit rating;
- Unanticipated financial losses; and
- Criminal fines, potential prison sentences and a criminal record.



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# Data Challenge for Landlords

Maintaining the Golden Thread

Katie Saunders and James Tickell

12 October 2023

# Data Challenge for Landlords

- Golden Thread Information and the Building Safety Act - Katie Saunders
- Practicalities of storing and maintaining data – James Tickell - Campbell Tickell

# Building a safer future

Dame Judith recommended the introduction of a ‘**golden thread**’ as a tool to manage buildings as holistic systems and allow people to use information to safely and effectively design, construct and operate their buildings

A robust golden thread of key information should be passed across to future building owners to underpin more effective safety management throughout the building life cycle



# Golden Thread Information and current legislative framework

- **Building Safety Act 2022**- applies to all buildings
- **The Building (Higher - Risk Buildings Procedures) (England) Regulations 2023** covers the obligations to produce, maintain and store Golden Thread Information in relation to construction of HRBs and works undertaken to HRBs
- **The Higher Risk Buildings (Management of Safety Risks etc) (England) (Regulations) 2023** - applies to management of higher risk buildings and covers format and method of storing Golden Thread Information during in-occupation phase
- **Higher - Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023** - yet to be published covers the detail of what should form the Golden Thread Information during the in-occupation phase



# General duties imposed on Landlords of HRBs

Store information about building safety electronically and secure from unauthorised access

Enable building safety information to be provided to Regulator, fire and rescue, other accountable persons

Provide information about building safety to residents in an easy to understand format with diagrams and displayed in the building

Record and store mandatory reporting to the Regulator

Produce and update and store the Safety Case



# Carrying out works to HRBs

## Inform residents about the works to be carried out

- update the electronic facility to include designs for the works and enable designers to have access to maintain Golden Thread

## Before any works commence obtain all information required to achieve sign off by the Regulator for Gateways 1 and 2 and update the electronic facility

- if emergency repair works include the notification in the electronic facility
- ensure all controlled changes are recorded and stored
- include the partial completion/ completion certificate application

# Golden Thread guidance

The Golden Thread will hold the information that those responsible for the building require to:

- show that the building was compliant with applicable building regulations during its construction and provide evidence of meeting the requirements of the new building control route throughout the design and construction and refurbishment of a building
- identify, understand, manage and mitigate building safety risks in order to prevent or reduce the severity of the consequences of fire spread or structural collapse throughout the life cycle of a building

The information stored in the Golden Thread will be reviewed and managed so that the information retained, at all times, achieves these purposes

The Golden Thread covers both the information and documents and the information management processes (or steps) used to support building safety

The Golden Thread Information should be stored as structured digital information but no requirement to store Golden Thread in a single electronic facility following feedback from consultation

No mandated standards for structuring information, data coding or an index structure

Recommendation to use BIM standards following Government guidance including the Construction Playbook

# THE DATA CHALLENGE FOR LANDLORDS

Trowers mini-conference on  
building safety, October 2023

*James Tickell*

# The data challenge ...

- A big guilty secret: many landlords have data integrity issues, some very significant
- We need to think of ourselves as data businesses:
  - *Data about property*
  - *Data about processes and compliance*
  - *Data about people*
  - *And bringing it all together to provide intelligence*
- Without solid data integrity, safety and compliance cannot be assured
- Many current regulatory and Ombudsman cases have their roots in data issues

# What threatens data integrity?

*How long have you got?*

- Legacy IT systems
- Disruptive IT upgrades
- Failed data migration
- Post-merger integration
- The dreaded spreadsheets
- Cyber attacks and hacks
- Data held by (former) contractors
- Office moves and paper records lost
- Human error, compounded by complexity
- Cutting corners, sloppiness
- Weak organisational culture
- Rent and service charge setting huge complexity
- Systems not interacting as intended
- Weak data governance and oversight
- C-Suite lack of interest

# The (huge) costs of poor data

*Another litany of woe ...*

- Deaths and injuries may result
- Compensation and fines
- Feeding frenzy from ambulance chasing lawyers
- Reputational damage
- Remediation and catch-up costs – surveys & inspections: can be in tens of £m
- Time wasted, inefficiency, morale, staff loss
- Stock reinvestment misdirected
- Planned maintenance harder
- Need for new IT systems
- Regulatory implications: increased borrowing costs?
- Dealing with Ombudsman cases
- Consultancy and interim costs



# So what's the answer?

*“It's complicated, but for starters ... ”*

- Consider an exec-level Chief Information Officer
- Recruit 2 or more Board members with relevant skills / experience
- Have an ongoing data integrity programme:
  - *Based on three lines of defence*
  - *Sampling / spot checks*
  - *External validation*
  - *Using all data gathered on property visits, from complaints etc*
- Foster diligent organisational culture
- Have an ongoing data integrity programme:
  - *Based on three lines of defence*
  - *Sampling / spot checks*
  - *External validation*
  - *Using all data gathered on property visits, from complaints etc*

# The useful 'chronic unease' concept

*Sounds uncomfortable but ...*

- Developed in high-risk industries such as mining, deep sea diving
- The five features of chronic unease
  1. A tendency to **worry** about data integrity
  2. **Vigilance** - awareness of near misses, local failures
  3. Resisting **complacency**
  4. **Imagination** to visualise unfavourable scenarios
  5. **Flexibility**, systems thinking, not jumping to conclusions
- Just never believe your own propaganda – no organisation has 100% data integrity

# Looking forward

- This is a good time for a one-off push!
- Artificial intelligence – huge potential, also risks
  - *Identifying gaps/ anomalies*
  - *Pulling together different data sources to create real understanding of resident needs and risks*
  - *But still in its very early days, one to watch for the future*
- Taking data governance seriously
- Wise and timely investment in new systems
- Relentless data cleansing, checking, assurance
- Focus on organisational culture and behaviours
- Avoiding complexity where possible
- Better collaboration, sharing, mutual support

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# **In-occupation costs recovery: landlord and tenant issues**


Douglas Rhodes, Partner, Trowers & Hamlins LLP

12 October 2023

# Agenda

1. Remediation orders
2. Remediation contribution orders
3. Landlord's Certificates
4. Compliance costs
5. Lease extensions





**Five things that we didn't know  
this time last year...**



**And five things we still don't  
know...**

# 1. We know... what a remediation order looks like

- Section 123 Building Safety Act 2022
  - An order requiring a landlord to remedy specified relevant defects in a specified relevant building within a specified time
  - Relevant defect (s.120):
    - a defect arising as a result of anything done or not done, or anything used (or not used) in connection with relevant works; and
    - causes a building safety risk
  - Relevant works:
    - works relating to the construction or conversion of the building, if completed between 28 June 1992 and 28 June 2022
    - works undertaken or commissioned by or on behalf of landlord/management company, if works completed in the relevant period
    - works undertaken after the end of the relevant period to remedy a relevant defect.

## ***Waite v Kedai Limited (August 2023)***

- First remediation order made
- ACM cladding, fire stopping and cavity barriers admitted to be relevant defects
- Kingspan insulation panels and fibre cement panels determined to be relevant defects
- Balcony soffits determined not to be relevant defects
- 3 page schedule of works
- 115 week timescale (September 2025)

# 1. We don't know... who will pay for them?



## 2. We know... remediation contribution orders can be retrospective

- Section 124 Building Safety Act 2022
  - An order requiring a specified body corporate to pay costs incurred or to be incurred in remedying relevant defects
  - Can be made "if just and equitable to do so"
  - Defendants:
    - Landlord under a lease
    - Landlord as at 14 February 2022
    - Developer
    - Associated persons of any of the above



## ***Batish v Inspired Sutton (2023)***

- First remediation contribution order made
- Respondents: Landlord, parent company, individual directors
- Facts:
  - Cladding replacement was grant funded
  - Balcony replacement paid for by leaseholders via service charges in 2021
  - Landlord was pursuing building contractor
  - Local authority had served an Improvement Notice
- Outcome:
  - Landlord debarred from taking part in proceedings
  - Parent company was in liquidation and removed from proceedings
  - Application against individual directors was dismissed
  - Landlord ordered to repay £192,635.64 to leaseholders

## 2. We don't know... what does "just and equitable" mean?



### 3. We know: Landlord's certificates are a minefield

- Purpose: informing leaseholders of their potential liability to pay service charges for relevant defects
- Regulations were amended in August due to "defective drafting and doubtful vires"
- Practical difficulties persist:
  - Complex series of steps to determine what information needs to be provided
  - Most (but not all) information is to be provided as at 14 February 2022
  - Highly onerous requirements:
    - Landlord's certificate must be provided within 28 days of request
    - Request for leaseholder deed of certificate must be made within 5 days of becoming aware of leaseholder's intention to sell, or of a relevant defect
    - follow-up request to be made by post and telephone 7-14 days before the reply date
- Supporting evidence to be provided depends on:
  - Whether the landlord or an associated person was the developer
  - Whether the landlord met the contribution condition (or is exempt from it)
  - Whether there is a known defect at the time of completing the certificate

# Landlord's certificates

- Strict processes and procedures required to ensure compliance
- If compliant landlord certificate not provided, no costs are recoverable
- If leaseholder deed of certificate requests not provided, lease is deemed to be qualifying

### 3. We don't know... will it make any difference?



## 4. We know... compliance costs can be recovered

- Section 112 Building Safety Act 2022
  - Implied terms in long leases of flats within higher-risk buildings with a variable service charge
  - Lease is construed as though the recoverable service charges include:
    - Applying for registration of higher-risk building
    - Preparation of safety case report
    - Establishing and operating mandatory occurrence reporting system
    - Preparing residents' engagement strategy
    - Operating complaints investigation system
    - Serving an access contravention notice and applying to County Court
- Excludes:
  - Works to the building
  - Costs incurred by reason of negligence or breach of contract

## 4. We don't know... how to demand them





## 5. We know... the lease extension loophole exists

- Most leaseholder protection only apply to Qualifying Leases, which are:
  - A lease of a dwelling with a variable service charge
  - granted before 14 February 2022
  - where the leaseholder lives as their only or principal home or owns no more than two other dwellings
- Extended leases take effect as a surrender and regrant
- Therefore, any lease extension since the Act came into force loses its Qualifying Lease status

## 5. We don't know... will the Government close it?



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