

Annual mini-conference on building safety

Day two

Thursday 10 October 2024

Defects remediation legal update

Douglas Rhodes, Partner, Trowers & Hamlins LLP

Oliver Williams, Partner, Trowers & Hamlins LLP

Agenda

1. Context
2. Defect claims
3. Leaseholder remedies
4. Self-remediation terms

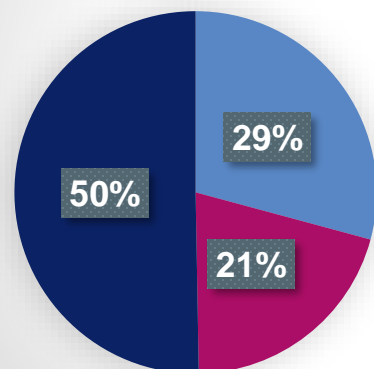
“ There are still buildings today with unsafe cladding. And the speed at which this is being addressed is far, far too slow.

1. Context

Defects remediation – the current picture

Overall picture (11m+)

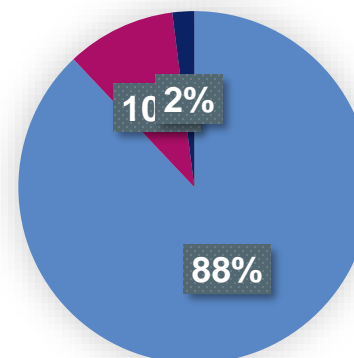
4,624 residential buildings 11m+ in height with unsafe cladding



- 1,350 have completed remediation works
- 949 have started remediation works
- 2325 have not started remediation works

ACM cladding (18m+)

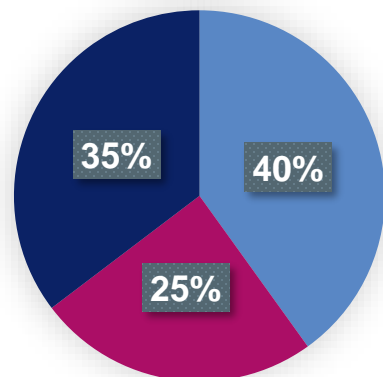
499 buildings total



- 438 with remediation complete
- 49 with remediation started
- 11 yet to start ACM remediation

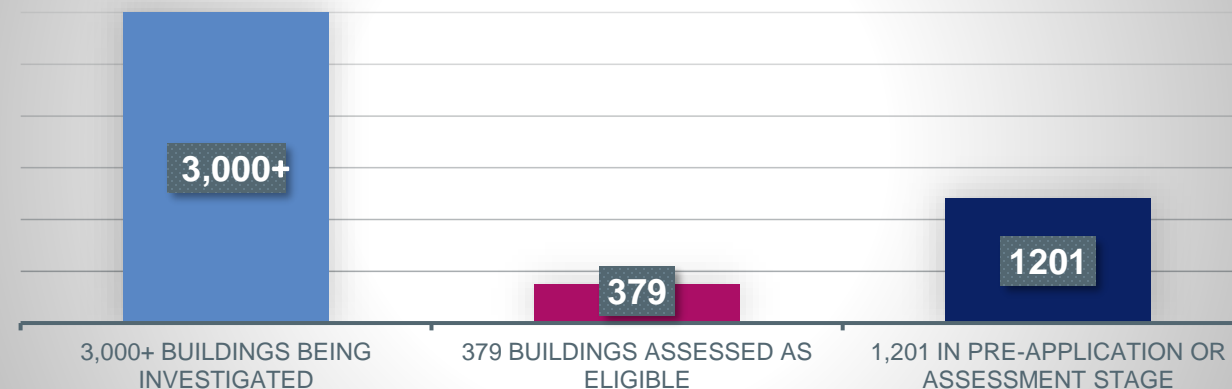
Building Safety Fund (18m+)

801 buildings proceeding in the BSF



- 321 have completed remediation works
- 197 have started remediation works
- 283 have not started remediation works

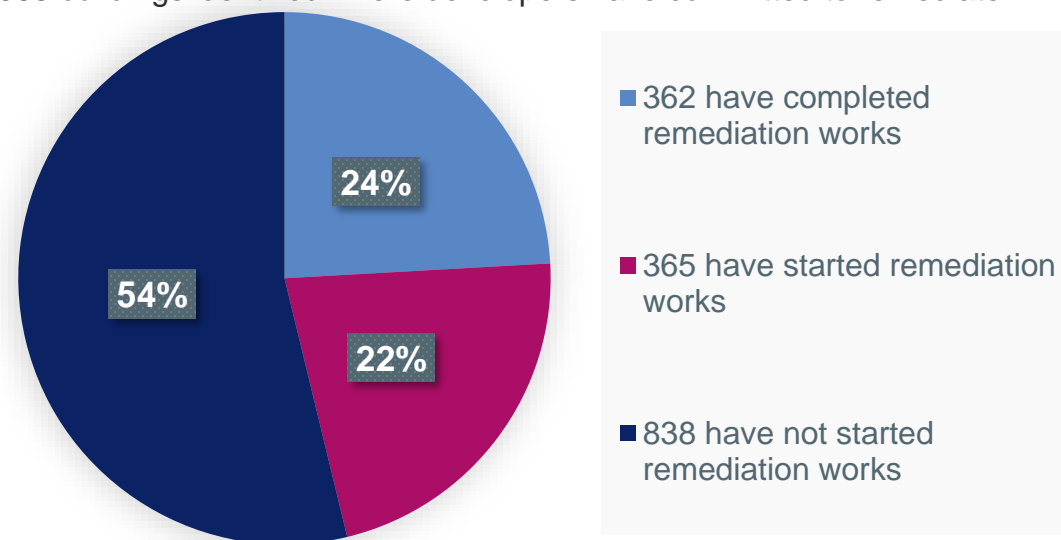
Cladding Safety Scheme (11m+)



Defects remediation – the current picture

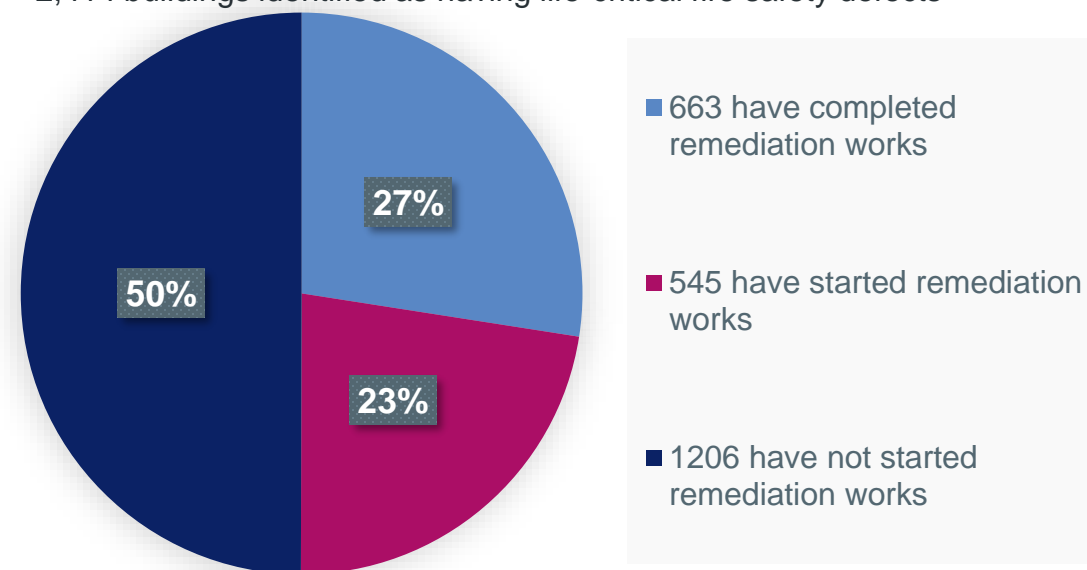
Developer remediation (11m+)

1,565 buildings identified where developers have committed to remediate



Social housing sector (11m+)

2,414 buildings identified as having life-critical fire safety defects



Costs

- Estimated overall cost of remediation = £15bn
- Developer Remediation = £3.2bn
- Building Safety Fund = £476m to date
- ACM Cladding Funds = £365m to date

Complexity

- 2017-2019 – Over 20 Government Advice Notes issued on building regulations compliance
- September 2018 – Social Sector ACM Cladding Fund opens
- September 2019 – Private Sector ACM Cladding Fund opens
- January 2020 – Consolidated Advice Note issued
- January 2022 – CAN withdrawn and replaced by PAS 9980
- June 2022 – Building Safety Act 2022 enacted
- November 2022 – Cladding Safety Scheme opens
- March 2023 – Government's deadline for Developer Remediation Terms
- April 2024 – new regulatory regime fully in force

Why is the pace so slow?

- Market conditions
 - Availability of fire engineers
 - Availability of contractors
 - Funding uncertainty
- Legal obstacles
 - Defect claims
 - Leaseholder remedies
 - Self-remediation terms

2. Defects / Claims

Investigations

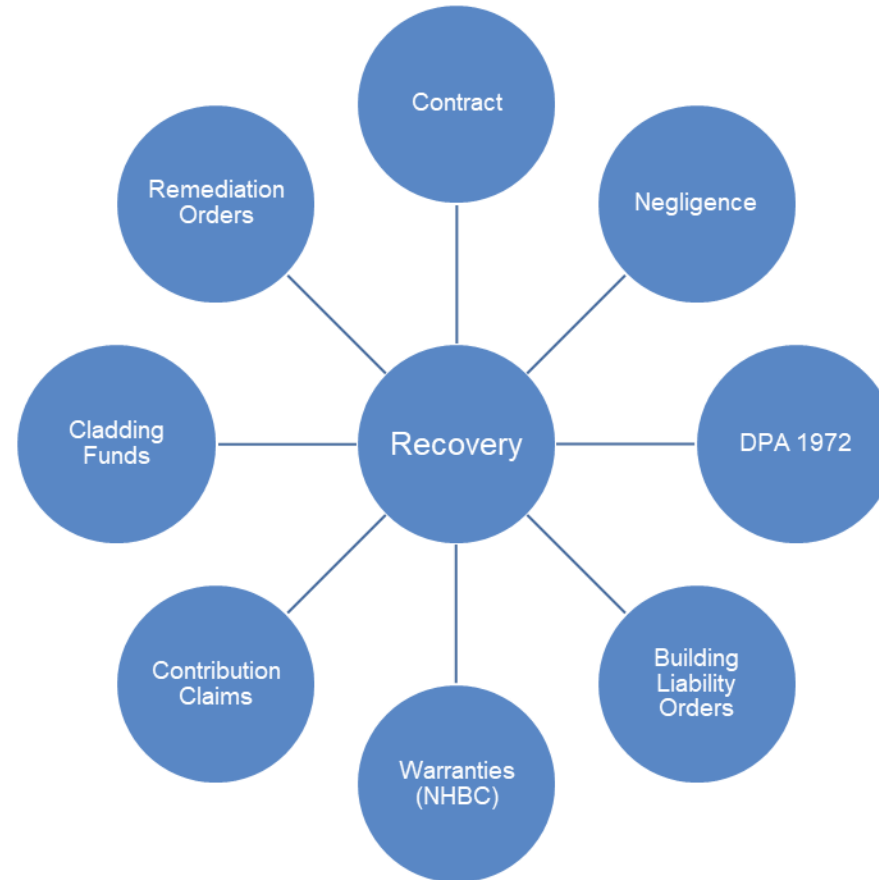
Identifying defects

Designing an adequate remedial scheme

Funding

Self-Remediation Terms

Types of claims – routes to recovery



Standards of rectification

Externall 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 fund will apply to removal and replacement of cladding systems with panels achieving European Class C-s1,d0 or worse in combination with any class of insulation, or cladding systems with panels achieving European Class B-s1,d0 to Class B-s3,d2 with insulation achieving Class B-s1,d0 or lower, unless the system has achieved a BR135 certificate via a BS8414 test. In most cases it is expected that cladding using the materials listed above

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;

Building Liability Orders

- Pre-legislative guidance “Redress: Factsheet” (now withdrawn):

“Property developers commonly set up a subsidiary company with very few assets to own and manage an individual development, and then be wound down once the development is completed.”

This practice can be used to secure investment in a project, but a consequence is that it leaves the developer group with no long-term civil liability.

Given the current situation, Government has decided to intervene to help those affected find fair redress for **building safety issues**.”

Building Liability Orders

- Section 130(2):

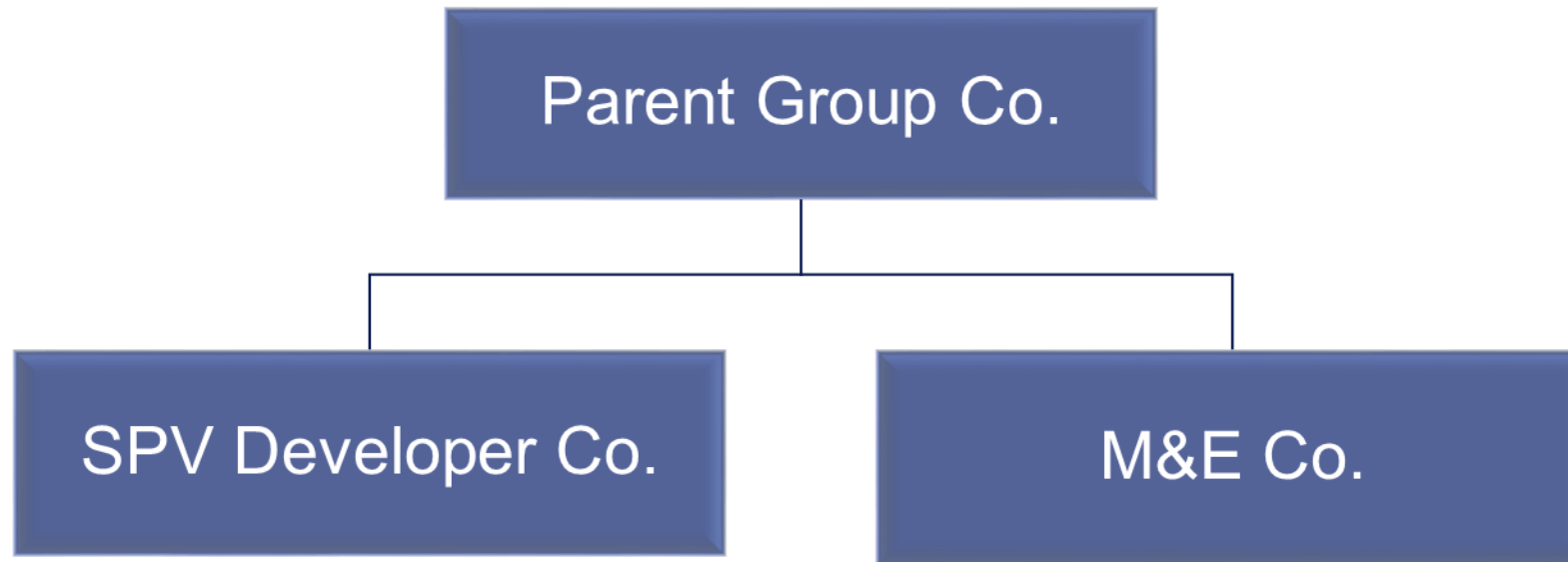
*"A "building liability order" is an order providing that any relevant liability (or any relevant liability of a specified description) of a body corporate ("the original body") relating to a specified building **is also**—*

*(a) **a liability of** a specified body corporate, or*

*(b) **a joint and several liability** of two or more specified bodies corporate."*

- **An Order that extends specific liabilities for one company to any other associated companies.**

Building Liability Orders



Building Liability Orders - Core Ingredients for BLOs?

1. Relevant Liability



Defective Premises Act 1972

Building Safety Risk

Building Liability Orders

- In a nutshell:
- BSA ss.130–131 confers a very wide discretion on the High Court to exercise on a case-by-case basis against “associated” companies of a body liable under the DPA / BA.
- This is primarily directed at **parent companies** and **corporate members of a partnership** with a controlling interest in a developer or contractor who has limited assets, as well as the **corporate beneficiaries** of a building which is held on trust.
- BSA ss.130–131 therefore creates an express statutory exception which allows the Court to pierce the corporate veil.

3. Leaseholder remedies

Remediation Orders

- 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.

The story so far...

- First-tier Tribunal (Property Chamber) = 8 remediation orders issued
- Binding precedent = None
- Battlegrounds
 - Identifying the Relevant Defects
 - Standard of remediation
 - Timescale for repairs

Remediation Contribution Orders

- Section 124 Building Safety Act 2022
 - An order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects relating to the relevant building
 - Can be made against:
 - Current landlord
 - Landlord as at 14 February 2022
 - Developer
 - Associated persons
 - "Just and equitable"

The story so far...

- First-tier Tribunal (Property Chamber) = 2 remediation contribution orders issued
- Binding precedent = None
- Triathlon Homes LLP v Get Living PLC (2024)
 - First-tier Tribunal decision
 - Non-fault based remedy
 - Covers pre-June 2022 costs
 - Wealthy parent companies of thinly capitalised development companies are the intended respondent
 - Difficult to see how a party well able to fund the works could claim these costs should be funded by public purse
 - Court of Appeal due to hear appeal
- Application of the "just and equitable" test remains unclear

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[@towers_law](https://www.instagram.com/towers_law)

Insurance market update

Helen Stuart, Partner, Trowers & Hamlin LLP

James Bainbridge, Head of Construction PI, Marsh Specialty

Paul Chetwynd-Talbot, Chairman for Real Estate, Marsh Specialty

Safety case reports – Making residential buildings safer?

Amanda Stubbs, Partner, Trowers & Hamlins LLP

Ismail Alsayed, Head of Building Safety Legislation, Compliance and Delivery,
Clarion Housing Group

Dr Bola Abisogun OBE, Founder and CEO, Digital Twin Skills Academy



CLARION
HOUSING

Building Safety Mini- Conference (Day 2)

Panel Discussion

10 October 2024

Introduction

- On **16 January 2024**, the rest of the 'in occupation' (Part 4) duties under the Building Safety Act 2022 commenced.

Principal Accountable Person

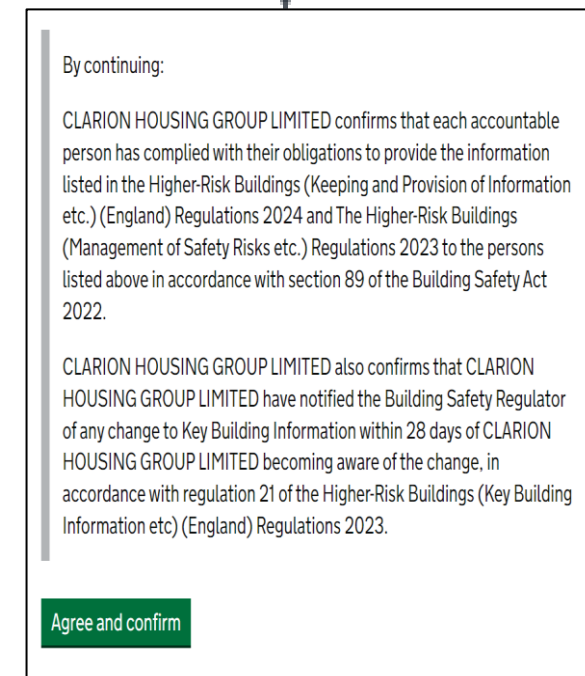
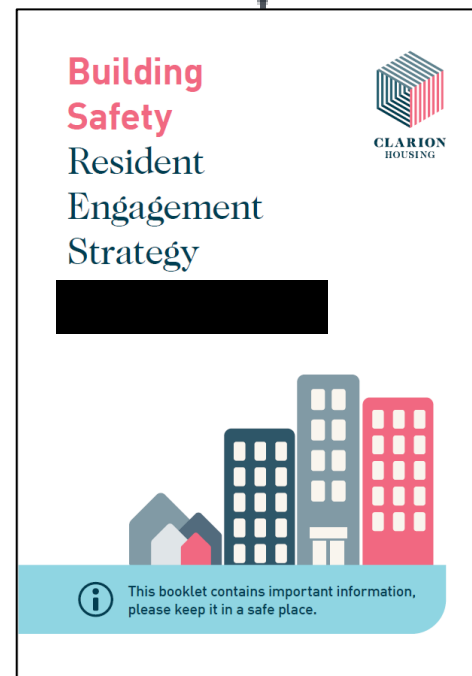
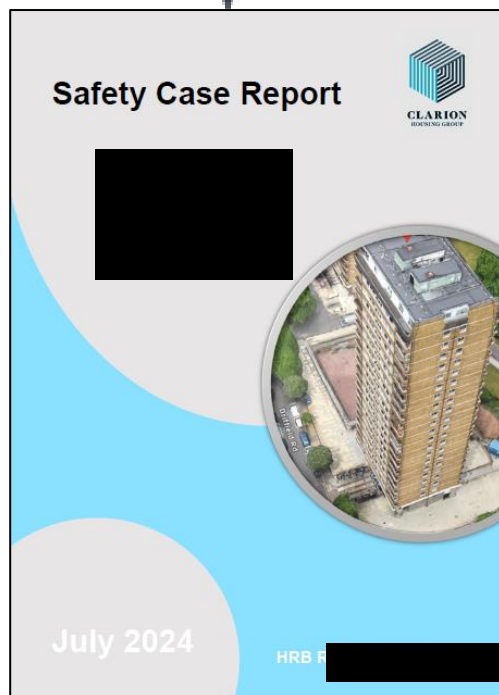
- ☐ Registering a building with the Building Safety Regulator.
- ☐ Applying for a Building Assessment Certificate (BAC).
- ☐ Displaying BAC once issued
- ☐ Establish a mandatory occurrence reporting framework.
- ☐ Establish a resident complaints procedure.
- ☐ Establish a resident engagement strategy.
- ☐ Develop and maintain an up-to-date safety case report.
- ☐ Remove BAC from display in building if under a special measures order.

Accountable Person

- ☐ Assess building safety risks.
- ☐ Taking all reasonable steps to manage building safety risks.
- ☐ Develop and maintain a digital golden thread of information.
- ☐ Provide residents with building safety info
- ☐ Mandatory reporting requirements
- ☐ Coordinate and cooperate with any other APs relevant to the building.
- ☐ Coordinate and cooperate with any RPs, under the FSO, relevant to the building.
- ☐ Update the Building Safety Regulator if they cease to be an AP.

Building Assessment Certificate Applications

BAC Applications



Building Assessment Certificate Applications

**90+ HRBs
we own
and
Manage as
PAP**

**Tranche 1:
5 BACs
Submitted**

**Tranche 2:
(Estimated)
14 BAC
Apps due
FY 25/26**

Our Approach to Risk Assessments

- The starting point several years ago was that for a lot of our older stock, we had limited information about some of our HRBs and the risks within them.
- To get a better understanding of each of our HRB's information/risks we have collected from a variety of sources, including (but not limited to):
 - Inspections, surveys, and records of work carried out as part of Clarion's building safety programme (structural reports, DSEAR assessments, FRAs, resident engagement activities, PCFRAs, external wall assessments)
 - Routine inspections and assessments of the building (carried out by building safety managers, compliance contractors, technical officers, housing officers etc.)
 - Review of external sources of information relevant to the building (public archives, local authority, utility providers etc.)

Our Approach to Risk Assessments

- **Section 1 – Assessment of Building Safety Risks:** This section describes [REDACTED] and sets out the detailed investigations that have been commissioned and a hazard and effects register to demonstrate the proactive identification of potential risks.
- **Section 2 – Management of Building Safety Risks:** In this section strategies and actions for risk management are described, highlighting structural integrity, emergency arrangements, and the maintenance of fire safety measures contained within the building.
- **Section 3 – Systems of Management:** This section clarifies Clarion's organisational framework for ongoing safety oversight, detailing roles, responsibilities, and processes for ensuring the building's safety during the occupation phase of its lifecycle.

Engagement with the Regulator

**3/5 –
supplementary
information
requested**

☐ Timescales Experienced

Themes

1. Detail on how competence for key roles is established and maintained with internal personnel and service providers e.g. competence/accreditation of the providers for risk assessments.
2. Evidence of quarterly communal fire door checks, and annual flat front door checks.
3. How the subject of costs is discussed with residents is needed.
4. Confirmation on whether there have been any structural or building alterations which may impact on structural safety.
5. Assurances of how of management of:
 - The competence of contractors and designers appointed
 - The quality of the materials used
 - The assessment and management of building safety risks whilst the works are in progress.

Engagement with our Residents

You must be provided with:

 <p>Your Home Your Safety</p>	 <p>Fire assessment information (for each part of your building)</p>	 <p>RISK Summary of your building's safety case report</p>	 <p>Guidance on how you can minimise fire risks, report safety issues and help manage building safety risks</p>
 <p>Information about fire and smoke control equipment</p>	 <p>Location of firefighting equipment and instructions for use</p>	 <p>Evacuation procedure – including where a 'stay put' policy is in place</p>	 <p>Contact details for your building's accountable persons and the responsible person under The Regulatory Reform (Fire Safety Order) 2005</p>

As well as providing our residents with the RES and additional information, we also conduct face-to-face annual customer safety checks for each of our HRBs.

Key Areas Covered

- Front door integrity, smoke detector tests, balcony inspections, and identification of evacuation challenges.
- Clarification of fire evacuation policy, identification of lifestyle risks, and addressing any building safety concerns.
- Customer Safety Check App for real-time data capture, ensuring timely building safety repairs, and addressing other resident-reported issues.

Supportive Information

- The quality of each safety case report is driven by the information we hold about each HRB, the building's golden thread of information.
- Government has prescribed information and documentation that APs must hold and maintain in the golden thread of information





Welcome to the Digital Twin Skills Academy

Empowering the Future with Emerging Tech Skills and Diversity



zoom

(<https://trowers.zoom.us/>)



Fifth annual mini-conference on building safety



IJ Samuel
Director, Turner & Townsend
Chair, Digital Twin Skills Academy



Dr Bola Abisogun OBE
Founder / Chief Excitement Officer
Digital Twin Skills Academy

Using **#EdTech** to
“create the talent pool, the industry doesn’t know it needs!”

– *why is the **Golden Thread** **so important**?*

[Home](#) > [Housing, local and community](#) > [Planning and building](#) > [Building regulation](#)

Policy paper

Publication of the Grenfell Tower Inquiry phase 2 report

The Inquiry published its final report on 4 September 2024. The Government will carefully consider its recommendations, to ensure that such a tragedy can never occur again.

From: [Ministry of Housing, Communities and Local Government](#), [Home Office](#) and [Cabinet Office](#)

Published 4 September 2024

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BBC NEWS BREAKING

Chair highlights 'incompetence', 'dishonesty' and 'greed'

▪ [bbc.com/news](#)

BBC NEWS BREAKING

Chair: All 72 deaths at Grenfell were avoidable

▪ [bbc.com/news](#)

Golden Thread

“Better Information Management!”

Dr Bola Abisogun OBE (Hon DUniv, Hon MBA) · You
Servant Leader [delivering #DigitalConstruction]
now ·

#GoldenThread #IAG

It's definitely an interesting time for the UK #construction sector; now and unapologetically, with a laser vision focus on #BuildingSafety. With thousands of built assets still enveloped in #cladding #products that have been deemed not #FitForPurpose, we may well continue to observe unfortunate events such as that seen just yesterday (26.08.24) on Freshwater Road, Dagenham in East London. My thoughts and prayers go out to all of the occupants that have suffered.

Notwithstanding, and ahead of the Final Report from the #GrenfellTower #Inquiry, [due next week on 4th September 2024] more than seven (7) years after that tragic event, I've been inspired to share the presence of a key document published today (27.08.24) by the Construction Leadership Council. This publication [a #guidance note] will enable the entire industry to 'raise their game' [thank you Rick Hartwig for the nod!]; Su Butcher Patricia Massey Paul Surin _ hope this document is aligned with your #PlainLanguage initiative; supported by Gill Kernick

Link to CLC website:
<https://lnkd.in/eH9VjiAj>

Key statistics:

#Competence _ has been mentioned circa forty-three (43) times in the main report – so please read item 1.6 on pg 10/85; additionally

#Skills _ was mentioned four (4) times, the most pivotal being that stated under item 4.20 on pg 42/85.

#ItsTime to be accountable, and definitely time (since 06.04.24) to deliver #Better #InformationManagement aka #BIM come and talk to us at the Digital Twin Skills Academy CIC as we seek to #upskill the sector alongside our colleagues at the Digital Twin Hub and the CITB; link below

Link to the #CITB #BSA #GoldenThread campaign _ July 2024
<https://lnkd.in/ee79h9EV>



THE LEGAL BASIS

Managing and storing the golden thread

- Good information management should not be something new.
- The golden thread of information should be managed and stored effectively.
- The golden thread is electronic information created, obtained, updated, maintained and shared for the life of the building.
- Information should be periodically reviewed and supported by effective change control processes.
- There should be structured storage and shareability for the information whilst maintaining security, commercial confidentiality and data protection.
- Greater competence is required by all who collect and manage golden thread information, and processes need to be put in place for good information management.
- Building information is a valuable asset in its own right.
- Effective management of the golden thread will bring greater collaborative and digital working, reduce duplication, and promote accountability.



There should be effective management and storage of the golden thread

Information should be: Accessible, Accountable, Accurate, Electronic, Secure, Transferable, Understandable and Up to date.

Right people, Right information, Right time

The golden thread provides the right people, the right information, at the right time to keep a building and those in and around it safe.

THE LEGAL BASIS

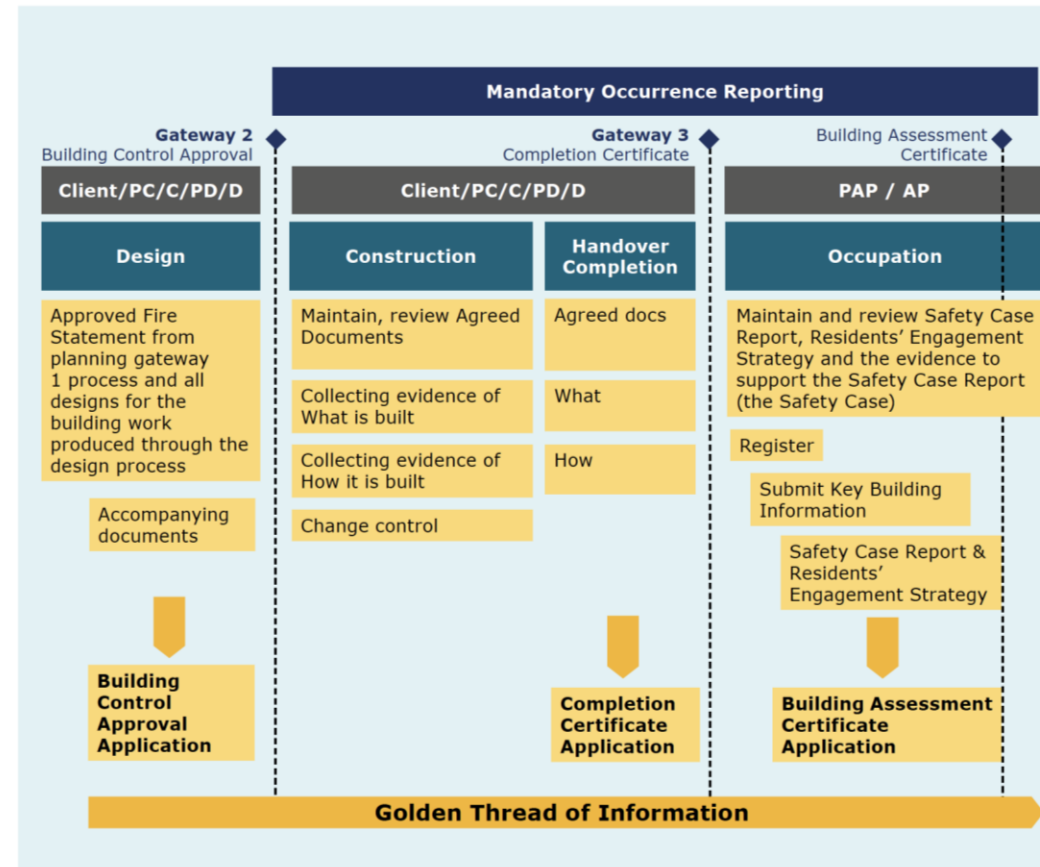
The new building safety regime for higher-risk buildings

- The new building safety regime for higher-risk buildings strengthens regulatory oversight – through the new building control and in-occupation regimes.
- The golden thread of information is an integral part of the new building safety regime.
- During the design and construction phase the duty to keep and manage the golden thread rests with the dutyholder – this is the client, principal contractor or principal designer.
- During occupation, the duty to keep and manage the information thread rests with the accountable persons.

The golden thread is for life

At design, in construction, at completion and in occupation of a higher-risk building.

The stages, processes and procedures through the lifecycle of a higher-risk building and how this aligns to the golden thread of information.



Should this workflow be adopted, and if so, are you ready?

If not, why not?

AI-QS

R T C M

The **Golden Thread** _ why '5D' Digital Twins matter

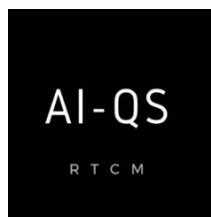
OPEX Solution

The construction sector, known for frequent **cost and time overruns**, can achieve substantial efficiencies through the adoption of new technologies, particularly **5D Digital Twins**. To maximize the value of public and private-led investments in capital projects, both the government and private sector must facilitate the implementation of these emerging (and disruptive) technologies.

Like other industries, the construction sector faces challenges in finding the talent necessary to effectively utilize new technologies.

The **DTSA** is determined to address this issue by creating micro-credentials and other training / upskilling programmes to develop essential skills whilst creating new opportunities for operatives & professionals displaced by technological advancements.

*“At the **DTSA** we seek to demonstrate the ‘**opportunity roadmap**’ and ‘**value appreciation**’ for implementing a **5D Digital Twin** approach to align with the growing demands of ‘**portfolio compliance, asset level optimisation and enhanced whole-life operational (OPEX) efficiency**’, during the occupation of any completed built asset(s). We have also proceeded to create **AIQS** _ a ‘**real-time**’ 5D cost management tool”*



CAPEX Solution

Overview: we begin by imagining the observation of a **3D virtual representation** of a real estate project, chronologically progress through each phase of the construction programme.

When you add time (i.e. programme) the design team can see [in **4D**] which elements will be constructed week-by-week and include an ‘**Order of Cost**’ prediction that calculates ‘actual’ outturn cost, in real time.

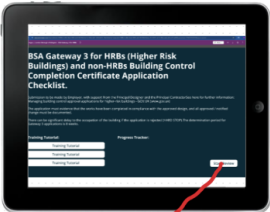
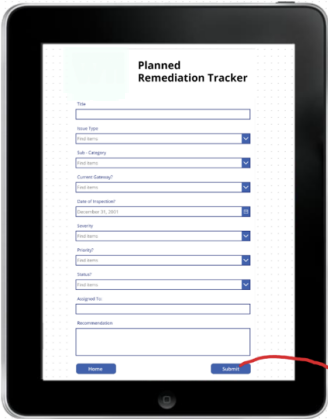
This process delivers a **5D Digital Twin** solution

Image: credit to [Autodesk](#)

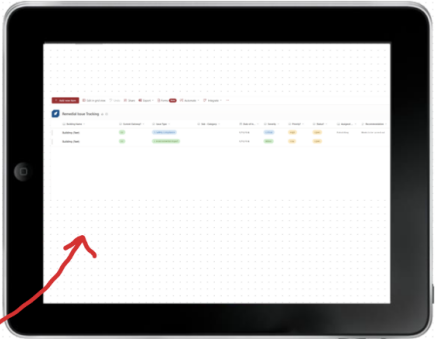
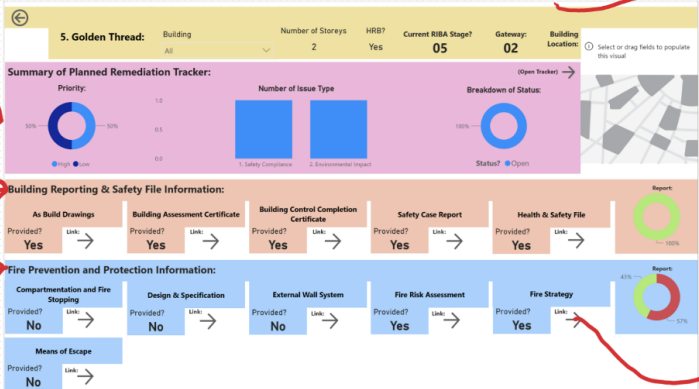


Data Management: Public Sector Client, West London

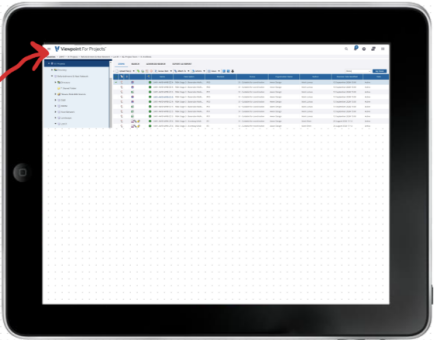
This APP is where all Planned Remediation Works will be captured and linked into the Digital Twin



Golden Thread Dashboard



By clicking on the arrow, this will open the tracker to view all items logged.

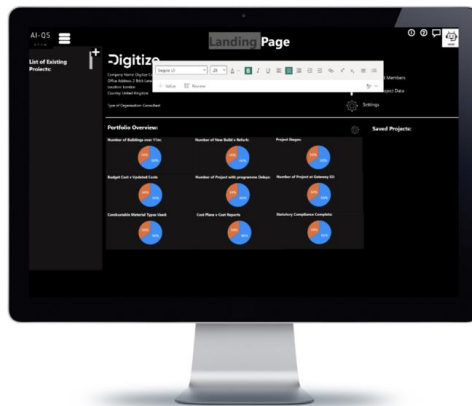


By clicking on the arrow, this will open the information folders/files on ViewPoint 4 Projects

5D Cost Management: Public Sector Client, West London

What is our Digital Twin:

Consolidate data from multiple sources into a single reporting platform.



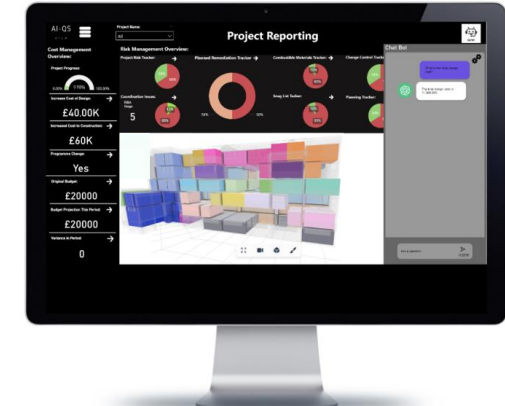
Access all your project and asset data in one place and receive the feedback you need.



Centralize your design, construction, and occupancy data in one location.



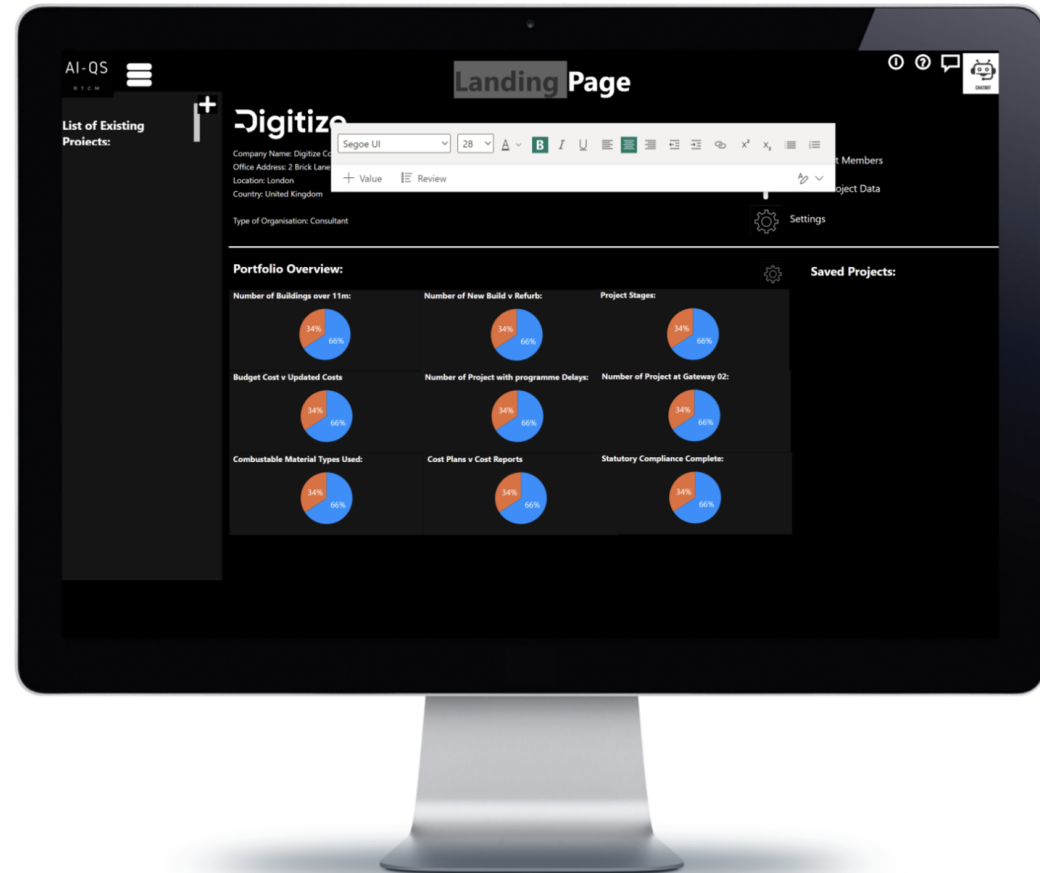
Tailor your reports to capture the specific insights you need.



Integrated chatbot to engage with your data.

Home Page

- "View all your projects and buildings in a single location."
- Gain a comprehensive overview of your Portfolio:
 - Compliance
 - Costs
 - Schedule
 - Risks
 - Assets
 - Repairs"



5D Cost Management: Public Sector Client, West London

Reporting

"Tailor your dashboard to display the information that matters most to you. Interact with your data to enhance project management and achieve better building results."



We deliver 'Social Value' in construction, for the Public Sector

A multi-tiered approach to _ 'Youth Engagement across the UK'

- *Pre-Employment*
- *Skills Training*



- *Transitional Job /
Career opportunity*



- *Delivering Digital Twins
for Social / Housing
[Asset Owners]*

- Tied to 'Section 106'
- KPI led / Social Value



*For Services to Diversity
and to Young People in the
Construction Industry
[Dec 2018]*

DIVERSECITY SURVEYORS

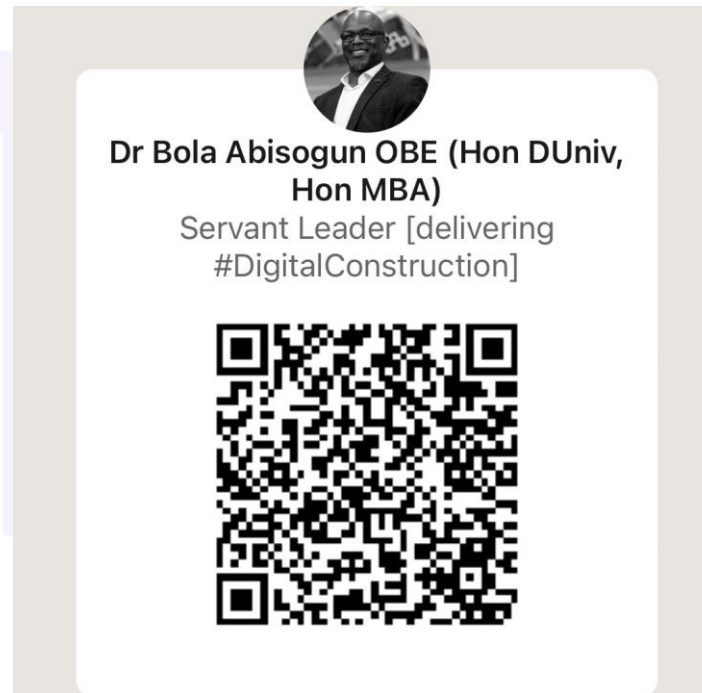
"individual potential"



SUPPORTED BY
MAYOR OF LONDON



“Creating the talent pool, the industry doesn’t know it needs!”



*“Thank you - **any questions?**”*

Keynote: Building Safety regulatory landscape – where are we now?

Dame Judith Hackitt