

Trowers & Hamlins' third annual mini-conference on building safety

21 November 2022

Competence Frameworks

Transforming the Construction Sector

Overview

- A broken industry
- Competence and the Dutyholding regime
- Industry transformation

Presented by: Richard Harral FCABE

Technical Director
Chartered Association of Building Engineers (CABE)



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A broken industry.....

“The [construction] industry has evolved a ‘survivalist’ shape, structure and set of commercial behaviours in reaction to the environment in which it operates. That environment is fundamentally characterised by low capital reserves and high demand cyclicity.”

Farmer Review 2016

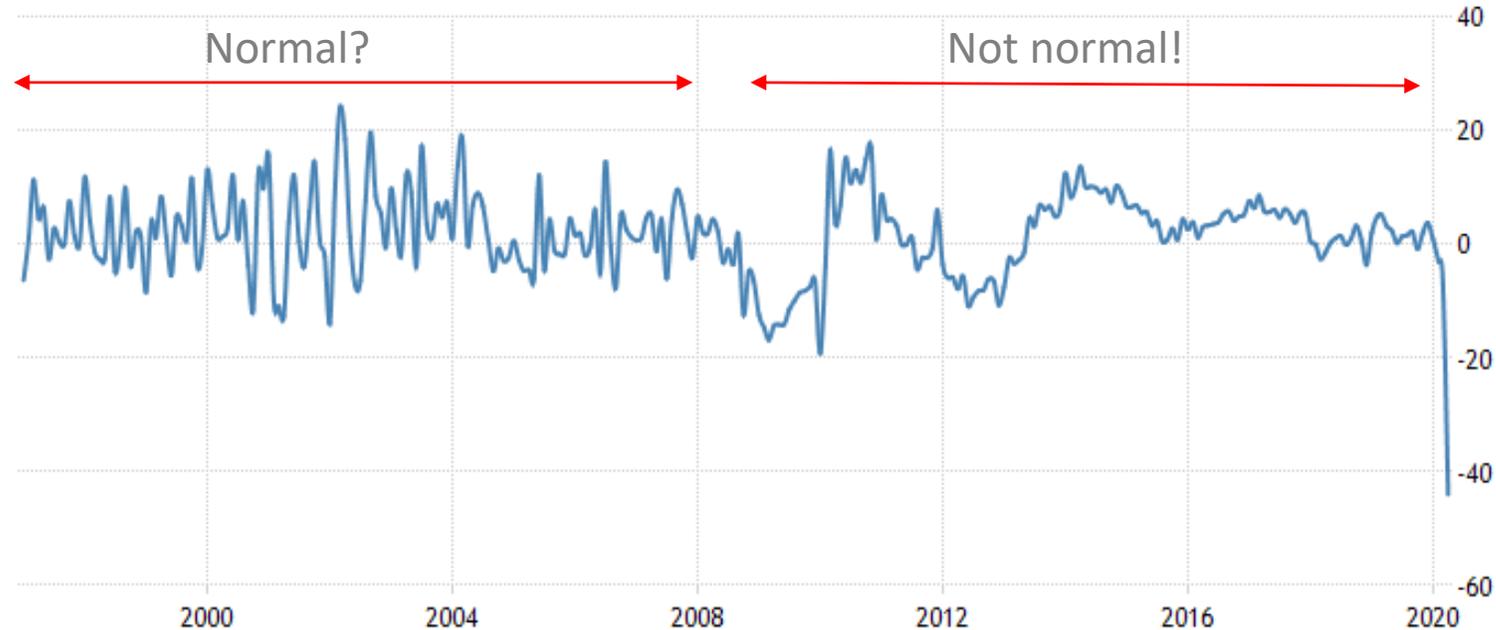


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Root causes - Cyclic volatility

- Output peak to trough regularly 30-40%
- The industry is shaped primarily to respond to frequent large fluctuations in demand
- The double dip in 2008-10 and 2011-13 was deep and sustained
- This includes rapid shedding of risk and labour in downturns followed by rapid expansion in upturns



SOURCE: TRADINGECONOMICS.COM | OFFICE FOR NATIONAL STATISTICS

Rapid expansion is the point of greatest risk:

- labour shortages result in less competent people being employed or rapidly promoted.
- quality management is sacrificed to ensure over-competitive contractual obligations are met.

Root cause – Latham 1994

Problems:

- Failure to deliver value for money
- Ineffective
- Adversarial and Fragmented

Priorities for change

- **Client leadership as best practice procurers**
- Better briefing
- Use of coordinated project information (now BIM?)
- **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

CONSTRUCTING THE TEAM

BY SIR MICHAEL LATHAM

FINAL REPORT OF THE
GOVERNMENT/INDUSTRY REVIEW OF
PROCUREMENT AND CONTRACTUAL
ARRANGEMENTS IN THE UK
CONSTRUCTION INDUSTRY

HMSO

Root cause – Egan 1998

Problems:

- Industry under achieving
- Wasteful
- **Poor quality resulting from industry structure and working practices**

Priorities for change

- **Committed Leadership**
- Focus on the customer
- **Integrated process and teams**
- **Quality driven agenda**
- **Commitment to people**

And proposed:

- Integrated project processes
- **Decent and safe working conditions**
- **Improved management and supervisory skills**
- **Replacing competitive tendering with long term relationships**
- Public sector as best practice clients

RETHINKING



CONSTRUCTION

Root cause – Farmer

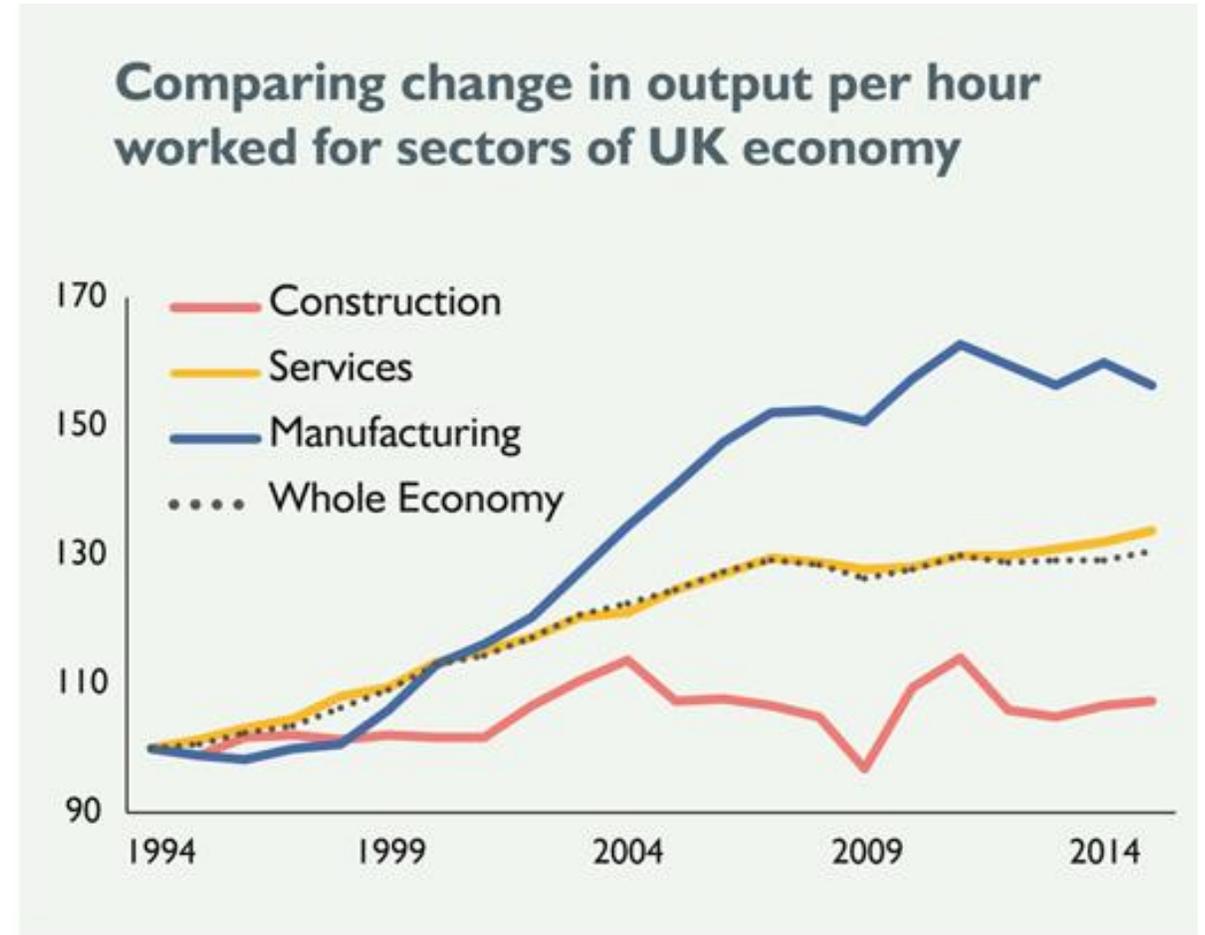


SYMPTOMS

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



Industry problems



Industry problems



Structural Fragmentation



Leadership Fragmentation



Low Margins, Adversarial
Pricing Models & Financial
Fragility

“93% of Construction business in the UK have 7 or fewer employees”

“Operating margins, a key performance indicator had fallen by almost 60% from 2.8% in 2010 to an average of 1.2% in 2013” KPMG

Industry problems

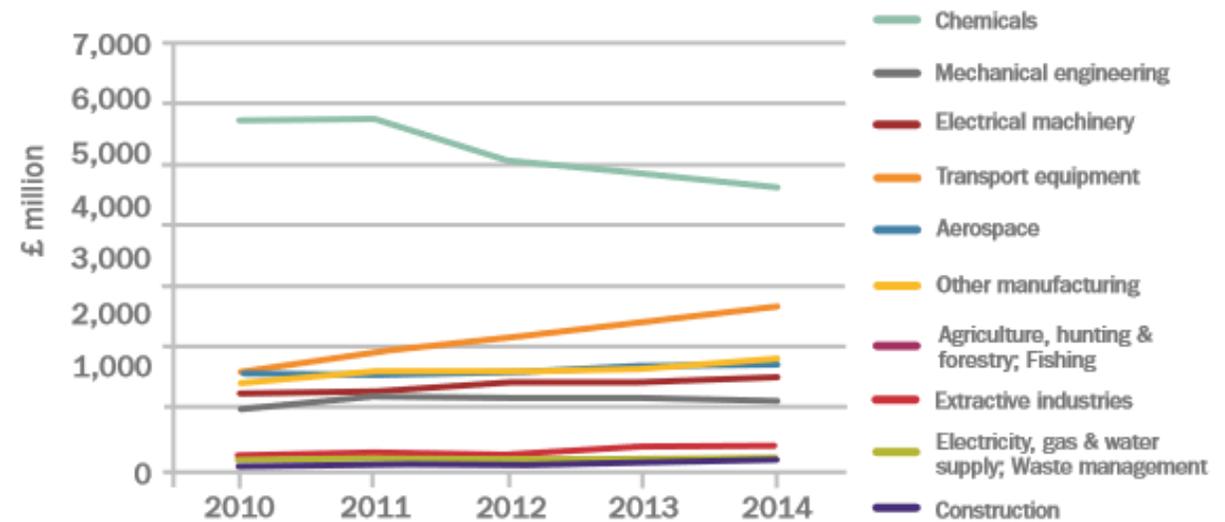


Lack of Collaboration & Improvement Culture

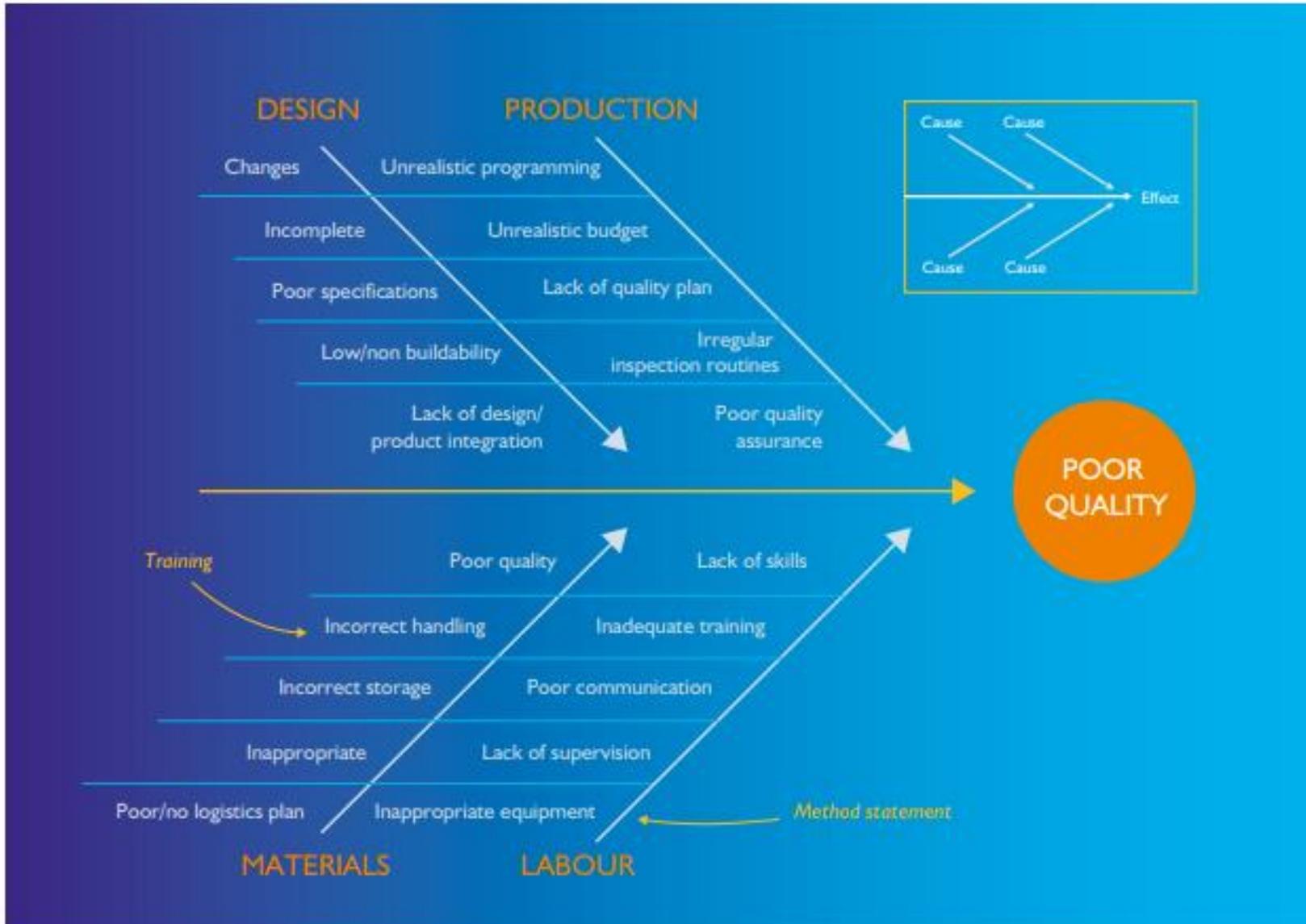


Lack of R&D & Investment in Innovation

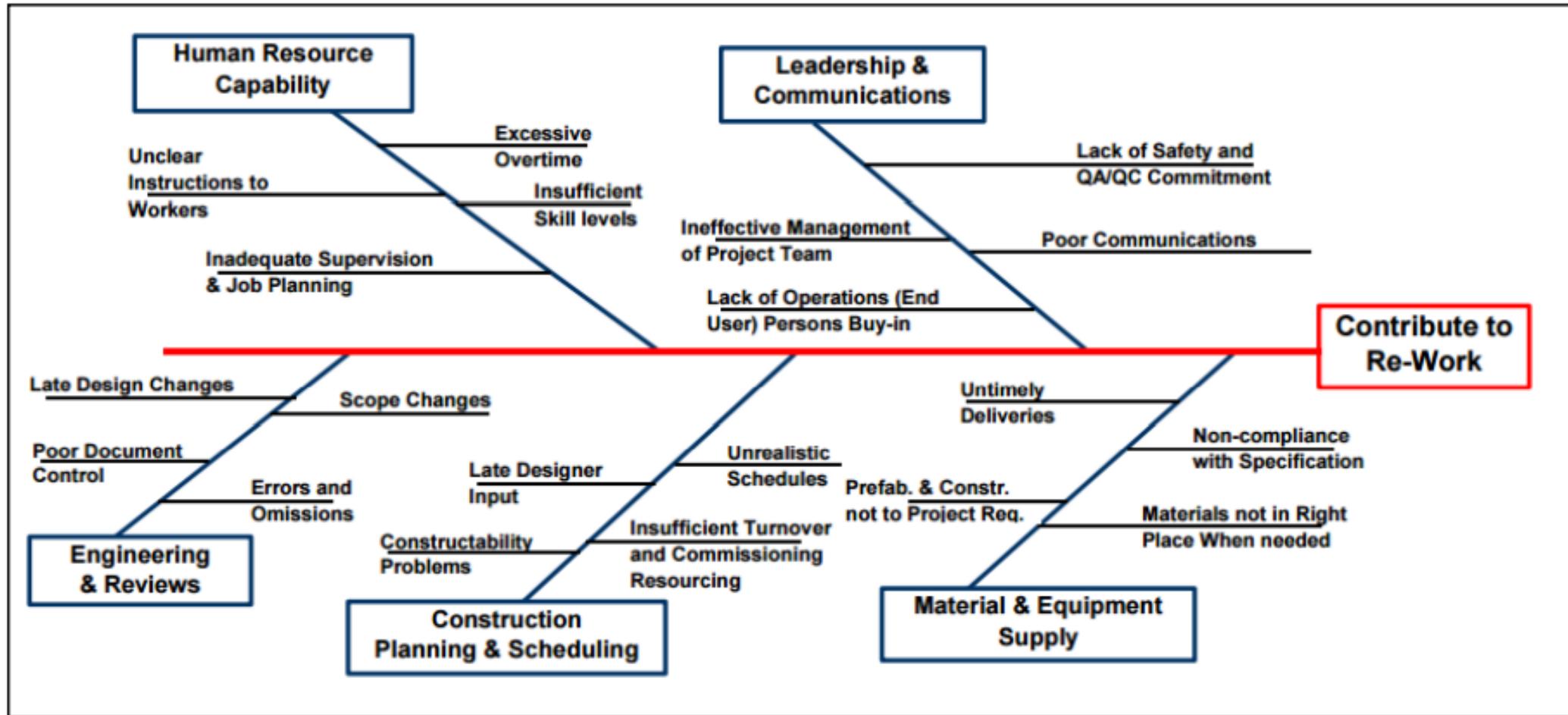
Expenditure on R&D Performed in UK Businesses: Broad Product Groups (2010-2014, constant 2014 prices)



Construction Quality Management



Workmanship and quality



Root cause – Hackitt 2017/18

Key Issues

- Regulation and guidance too complex and unclear.
- **Lack of clarity on roles and responsibilities**
- **Lack of competence and competence management**
- **Compliance, enforcement and sanctions too weak**
- Residents concerns not addressed
- Systems for product testing, marketing and quality assurance unclear

Priorities for change

- New regulatory framework for Higher Risk Buildings
- **A new building safety regulator**
- **New Dutyholding roles and responsibilities**
- **Competence in the supply chain**
- **Robust gateways for safety**
- **Enhanced sanctions and enforcement powers**
- Clearer rights and obligations for residents
- Reformed construction products testing and regulation



Time, cost and quality management.....

“In many instances, the unavoidable conclusion for both clients and industry is that in competitive (lowest price) tendering, whoever wins a project is often the party that has made the largest mistake in pricing it.”

Farmer review



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Grenfell tower



Edinburgh schools



Cladding crisis



Competence and the Dutyholding regime



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Part 1 Introduction

Provides an overview of the act

Part 2 – The Regulator and its Function

- Provision about Building Safety Regulator
- Functions including oversight of competence and registration of building control professionals
- Definitions of 'building safety risk' and 'higher risk building'

Part 3 – Building Act 1984

- Building control authorities and Building Regulations
- Dutyholders and general duties / Industry competence
- Enforcement including Liability of officers of body corporate
- Building Control Approvers and inspectors including registration

Part 4 – Higher risk buildings

- Definitions
- Registration and certificates
- Building Safety managers and Accountable persons
- Information and documents
- Residents engagement / duties / Safety related costs
- Enforcement

Part 5 – Supplementary and general

- New Homes Ombudsmen
- Construction Products
- Architects
- Housing Complaints

Schedule 1

Amendments to H&S at work Act 1974

Schedule 2

Authorised officers: investigatory powers

Schedule 3

Cooperation and information sharing

Schedule 4 - Transfer AI functions to registered building control approvers

Schedule 5 - Minor and consequential amendments in connection part 3

Schedule 6 - Appeals and other determinations

Schedule 7 – Special measures

Schedule 8 – Remediation cost under qualifying lease

Schedule 9 – New Homes Ombudsman (NHO) Scheme

Schedule 10 – Amendments NHO scheme

Schedule 11 - Construction Products Regulations

Building Safety Act



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Part 3 – Building Act 1984

- Building control authorities and Building Regulations
- Dutyholders and general duties / Industry competence
- Enforcement including Liability of officers of body corporate
- Building Control Approvers and inspectors including registration

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;
- 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.**

Competence as a relevant 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:

- need to demonstrate the skills, knowledge, experience and behaviours of an individual
- the capability of organisations to perform their functions under the building regulations.

Capability means having appropriate management systems, processes, policies and resources to carry out its functions under these Regulations and ensuring that individuals who carry out the work for them have the appropriate skills, knowledge, experience and behaviours for their roles

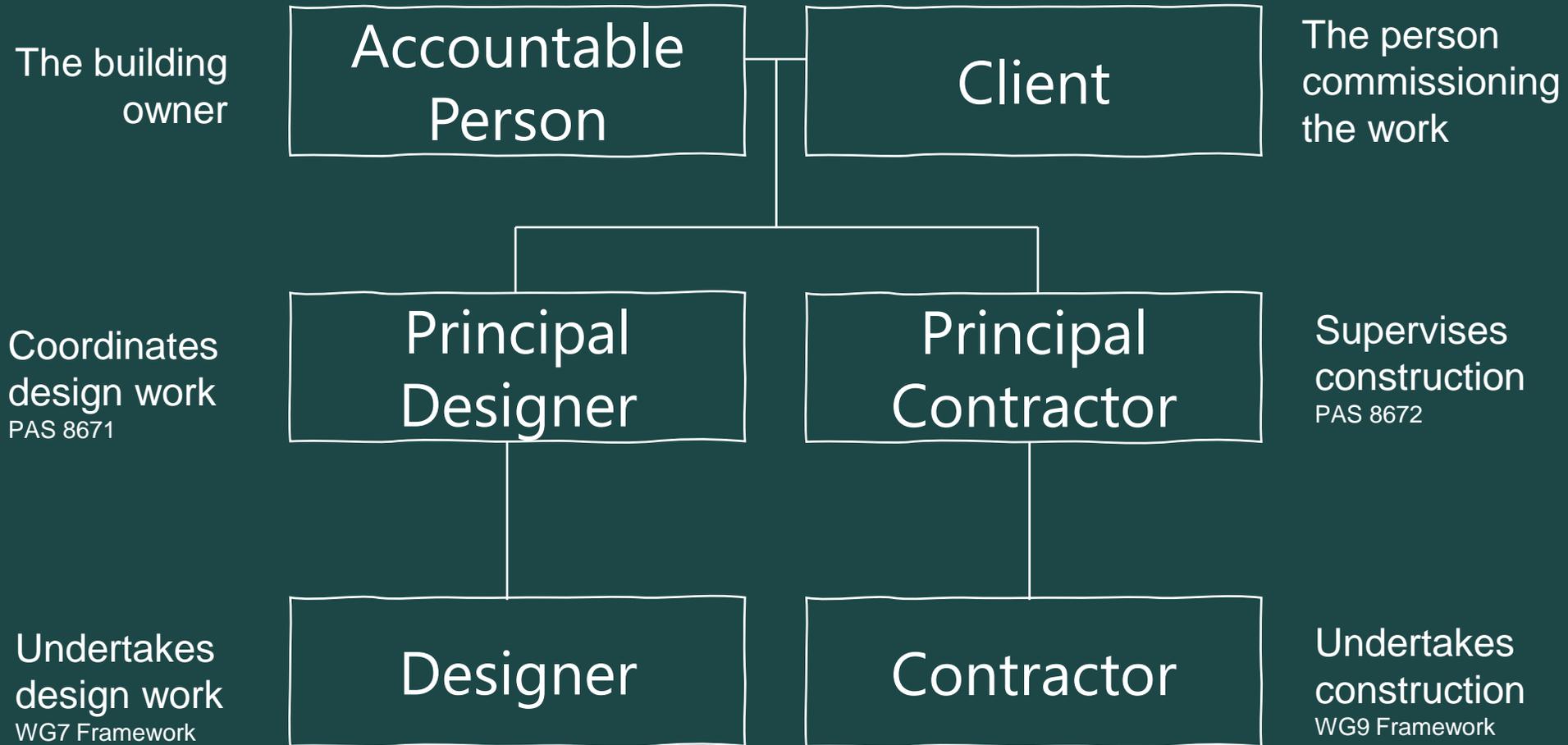
3. Regs can require companies / legal entities to **allocate management responsibility to individuals** with suitable competence.



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Dutyholders



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Specific Duties on the client

- Make suitable arrangements for **planning, managing and monitoring a project**, including the allocation of **sufficient time and resource**, to deliver compliance with building regulations.
- Where there are a number of firms working on different aspects of the project, the client will need to **appoint a Principal Designer to be in control of design work and a Principal Contractor to be in control of the building work**;
- **Provide building information to every designer and contractor on the project** and have arrangements to ensure information is provided to designers and contractors to make them aware that the project includes any higher-risk building work; and,
- **Cooperate and share information** with other relevant dutyholders.

“A designer must ensure the client understands their duties prior to commencing work.”



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Dutyholders

Dutyholding Requirement	Client	Principal Designer	Principal Contractor	Designer	Contractor
Allocate sufficient time and resource to ensure that work can be undertaken competently	Y				
Plan manage and monitor project to ensure compliance with building regulations	Y	Y (during design phase)	Y (construction phase)		
Appointing persons with suitable competence (SKEB) to comply with Building Regulations	Y	Y	Y		
Have systems in place to ensure appointees are competent	Y	Y	Y		
Appoint Principal Designer and Principal Contractor	Y				
Co-ordinate design to ensure that, if / as built, complies with Building Regulations		Y	Y		
Ensure co-operation, communication and collaboration with client, PD /PC and other Designer / Contractors		Y	Y	Y	Y
Liaise with PC / PD and and share information		Y	Y	Y	Y
Assist client in providing informaiton to other designers and contractors		Y	Y	Y	Y
To not start work until satisfied client is aware of their duties				Y	Y
Design / construct work to ensure, if/as built complies with all relevant reequirements				Y	Y
Consider other design / construction work and report concerns to Principal Designer				Y	Y
Provide workers with appropriate supervision, instruction and information to ensure work complies with relevant requirements					Y
Notify relevant parties if cease to be competent		Y	Y	Y	Y

What are key elements of compliance?

Behavioural – acting responsibly, co-operating and collaborating

Procedural – complying with regulatory frameworks

Managerial – exercising effective oversight and control

Technical – ensuring compliance with the Building Regulations



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Dutyholder declarations

Client declarations

Gateway 2 (Building Control Application). Statement of competence of Principal Designer and Principal Contractor including records of checks and consideration in determining competence.

Gateway 3 (Occupation) - A statement, signed by the client or someone on their behalf such as the company's director, confirming that to the best of the client's knowledge the higher-risk building, as built, complies with all applicable requirements of the building regulation. The client will not be able to delegate responsibility for signing the statement to an external organisation such as the Principal Designer or Principal Contractor

Principal Designer Declaration – Gateway 3 (Occupation)

A compliance declaration signed by each Principal Designer involved in the project at any stage with their contact details; dates of appointment; and a statement confirming that they took all reasonable steps to fulfil their duties as a Principal Designer under the proposals set out in the previous section on dutyholders

Principal Contractor Declaration – Gateway 3 (Occupation)

A compliance declaration signed by each Principal Contractor involved in the project at any stage with their contact details; dates of appointment; and a statement confirming that they took all reasonable steps to fulfil their duties as a Principal Contractor under the proposals set out in the previous section on dutyholders.



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Where to focus attention?

Competence

- Implement good competence management practice for self and staff.
- Assess and work within limits of competence for both individuals and organisations.
- Professional membership or accreditation for individuals as a minimum.
- Record how competence is managed.
- Consider formalising QA for organisational competence i.e. ISO 9001 / 99001.

Process and records

- Review procedures and bring into alignment with Dutyholding regime.
- Check appointments define responsibility as designer and principal designer.
- Ensure confirmation at key points and through project are in writing.
- Record management and review processes.

Communication and collaboration

- Commit to a strong safety culture and provide leadership.
- Mainstream effective behaviours.
- Review how you / your organisation communicates and shares information on projects.
- Ensure understanding of principals of golden thread and apply these to all projects.
- Seek feedback to identify weak points e.g. from other team members.

Compliance with the building regulations

- Understand procedural and technical framework.
- Improve audit of steps taken to comply at key work stages.
- Review and update understanding of technical requirements.
- Apply precautionary principal – go further than the minimum wherever possible.



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Enforcement

Part 3 – Building Act 1984

- Building control authorities and Building Regulations
- Dutyholders and general duties / Industry competence
- Enforcement including Liability of officers of body corporate
- Building Control Approvers and inspectors including registration

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
- £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 from April 28 2022

Implications

Timescales

- DPA 15 years going forward
- DPA 30 years before 28 April 2022
- Section 35 and 36 extended to 10 years.

In general:

- Timescales for enforcement or litigation longer.

Enforcement

- Wider range of potential sanctions.
- Pro-active regulator with culture of enforcement.
- Intelligence led, with wide ranging powers of investigation.
- Expect to see a change in posture of building control bodies

Dutyholding regime

- Applies to all building work.
- Additional requirements in Higher Risk Buildings.
- Covers planning, management, monitoring, competence, collaboration and compliance.
- Enforceable under section 35.

Case law

- Martlett homes judgement indicative of direction of travel
- Focused on functional outcomes + statutory guidance + good practice guidance – not minimum standards.
- Emphasises future importance of contract / client requirements.

Steps towards industry transformation



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Competence

“... the ISSG is not yet satisfied that all in industry have embedded good practices and embraced the far-reaching culture change required to ensure the safety of buildings – and so there is still a huge challenge for all those involved in the competence work to make sure that their proposals are implemented at all levels.”

Industry Safety Steering Group report 2020



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BSR Objectives

Part 2 – The Regulator and its Function

- Provision about Building Safety Regulator
- Functions including oversight of competence and registration of building control professionals
- Definitions of 'building safety risk' and 'higher risk building'

Legal application

- Mainly Extends to England and Wales; but
- Majority of measures currently England only; but
- Some measures apply in Wales, Scotland and Northern Ireland as well:
 - New Homes ombudsmen
 - Construction Products
 - Architects registration

C4 - Duty to facilitate safety in higher risk buildings

C5 - Duty to keep safety and standard of buildings under review

C6 - Facilitating Improvement in competence of industry and building inspectors

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

C7 - Proposals and consultation on regulations

C8 - Duty to establish system for giving of building safety information

Health and safety at work Act

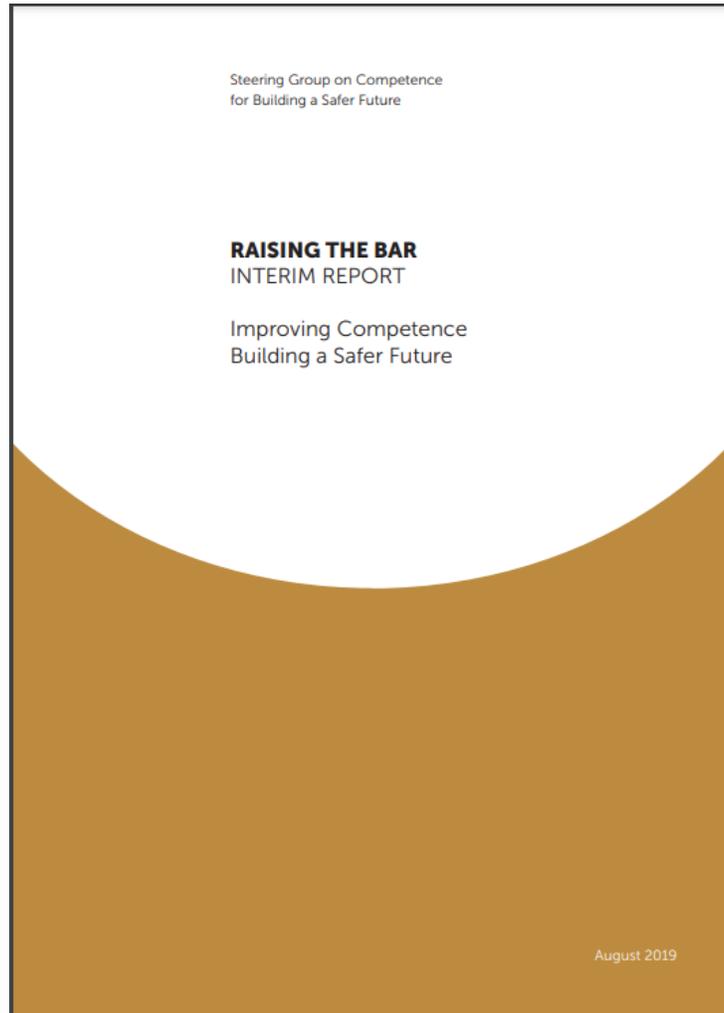
- **Schedule 1** contains amendments of provision of the Health and Safety at work Act 1974 relating to the regulator
- Extends powers to building safety
- Enables criminal prosecution in relation to building safety powers

C10 – Committee on industry competence

Functions must include:

- 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

Industry action plans



A new system for competence

Third Party Accreditation of organisations certifying competence

UKAS

Engineering Council

A another?

Professional Bodies

Certification and training bodies

Trade Bodies / associations

Validation

Oversight

- Maintain register of certified competence
- Recording and auditing CPD / Training
- Managing complaints / disciplinary and adherence to Code of Conduct
- Maintain public register where appropriate

Re-validation

Building Safety Regulator

- Guidance, engagement, research, analysis

MHCLG
Approved Document on competence

Industry Competence Committee

FLEX

8670

Framework for building safety competence

Competence Steering Group

Sector specific competence frameworks

e.g. Building Control Professional / Installer / Principal Designer



Regulation and registration of building control

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RE-DRAFT

Building Inspector Competence Framework (BICoF)

September 2022



Building Inspector Competence Framework (BICoF)



Role Profile for Building Control

– scope of the sector-specific framework, including the roles, functions, activities, tasks, sector and context

Role Name	Role Profile	Activities	Accountabilities	Skills	Knowledge/Qualifications	Experiences	Behaviours	Registration
Registered Building Inspector	Building inspectors check that building work achieves compliance with Building Act 1984 and other application legislation, standards and guidance. They do this through undertaking evaluations of plans and other documents and by undertaking site inspections to ensure compliance.	Evaluate plans, drawings, specifications etc. to advise if Building Regulations approval should be given? Site inspections to determine compliance with Building Regulations Issue final/completion certificates when satisfied that work is satisfactory	Determine Compliance Provide competent advice Act within own competence. Maintain own competence and support others in maintaining compliance Identify and report conflicts of interest Secure compliance Stakeholder Comms/ statutory consultation	Decision making Problem solving Record keeping Analysis of information Influencing Communication and interpersonal skills Report writing IT proficient	Level 4-6 qualification or equivalent Building control processes Regulations & legislation Approved documents, best practice & guidance Fire safety Health & safety Design construction Change management Relevant policy & framework Code of conduct	Dependent upon role Assessing compliance against regulation & legislation Types of building on which they will be working Site inspections Plan checking Develop & implementing plans Assessing safety & risk Enforcement	Working together Adaptable & resistant Leadership Teamworkers with respect Willing to develop knowledge & skills/ commitment to CPD Making effective decisions Communicating & influencing Seeing the bigger picture Act with integrity commitment to CoC	Yes
Registered Building Inspectors are those who need to be registered to carry out certain restricted activities and to advise building control bodies who are undertaking certain restricted functions	Provide advice to a building control body exercising specific restricted functions	Administrative processes for all types of Building Regulations applications and the use of systems including appropriate changes						

Roles: Assistant Building Inspector; Registered Building Inspector; Registered Building Inspector (HRB's/complex); Building Control Manager



Standardisation frameworks

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CPB/1 - Competence in the Built Environment

Sector: Construction Message Committee

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. Become a committee member

Committee members

Nominating organizations
 67008776 duplicate expired 26.11.2019
 Architects Registration Board
 Associate Director - Built Environment
 Association of British Certification

Committee standards activity

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

Reference Standards description

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



Department for Levelling Up, Housing & Communities

PAS 8672:2022
 Built environment – Framework for competence of individual Principal Contractors – Specification



Department for Levelling Up, Housing & Communities

PAS 8673:2022
 Built environment – Competence requirements for the management of safety in residential buildings – Specification



Department for Levelling Up, Housing & Communities bsi.

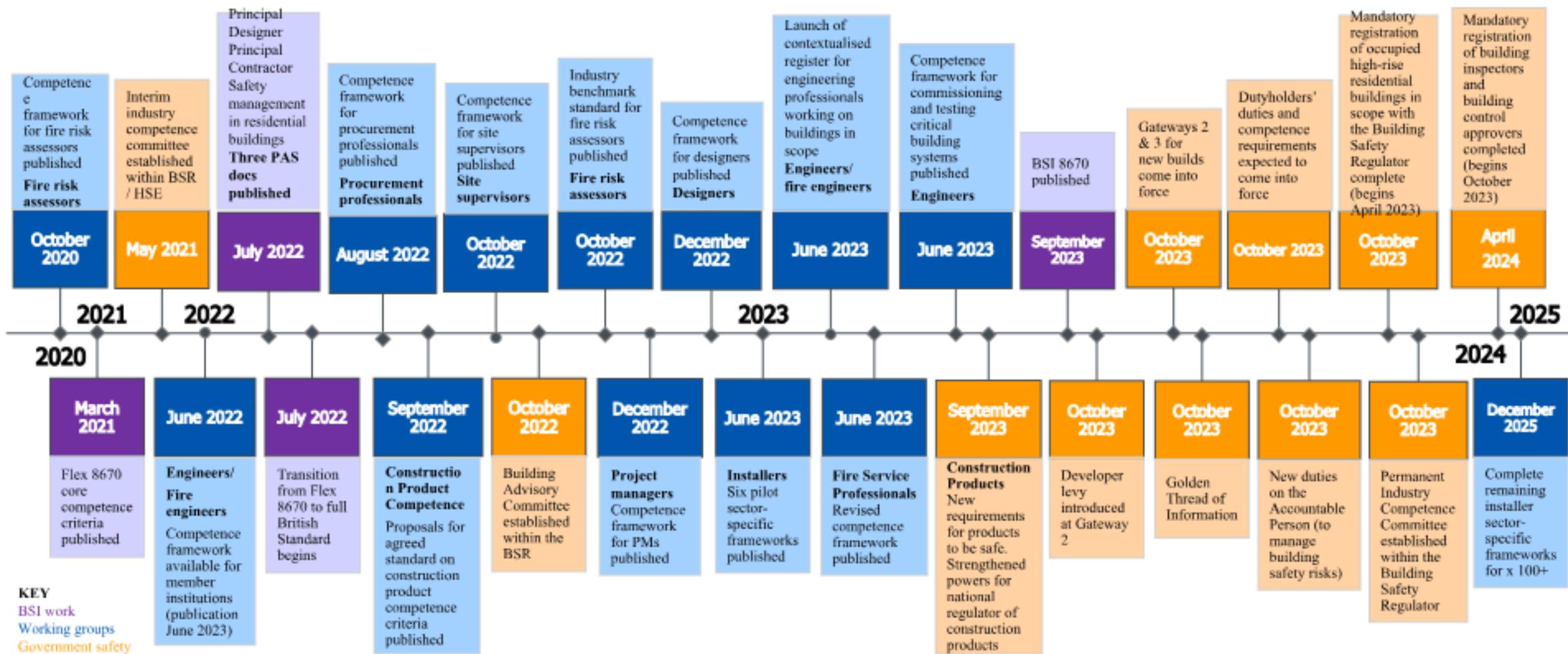
BUILT ENVIRONMENT – PROPOSED CONSTRUCTION PRODUCT COMPETENCE STANDARD
 WHITE PAPER



Competence Steering Group
 Working Group 12:
 Construction Product Competence cpa | construction products association



Timeline for competence activity



KEY
 BSI work
 Working groups
 Government safety legislation / Building Safety Regulator

T&H Third mini-conference on building safety: how can you procure for safety?

Rebecca Rees, Partner – Head of Public Procurement, Trowers & Hamlins

21 November 2022

Agenda

Procuring for building safety

- Independent Review
- PAG Guidance

Independent Review – Chapter 9: Procurement

- "procurement sets the tone and direction of the contractual relationships"
- "The way in which procurement is often managed can reduce the likelihood that a building will be safe"
- "Issues at the procurement stage, including:
 - Inadequate specification
 - Focus on low cost
 - Adversarial contracting

Can make it more difficult (and most likely, more expensive) to produce a safe building"

- "The aim of the procurement should be to obtain best value, rather than lowest cost"

Independent Review: Recommendations

- An understanding of what you're procuring and how much is it going to cost:

Parties should devise contracts that specifically state that safety requirements must not be compromised for cost reduction

- Rigour in the procurement process:

Tenders should set out how the proposed solution will produce safe building outcomes – approaching the building as a system and clients should use a "tender review process" to test whether this is the case

- Data and contract management is key:

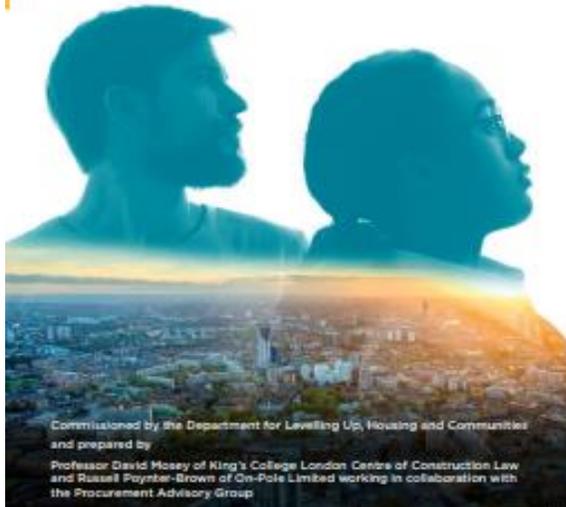
Information in the contract documents relating to all safety aspects should be included in the digital record for the building

"Guidance on Collaborative Procurement for Design and Construction to Support Building Safety"



Department for Levelling Up,
Housing & Communities

Guidance on Collaborative Procurement for Design and Construction to Support Building Safety



DLUHC Procurement Advisory Group

- Cross sector group
- Tasked to assist in the review of Technical Guidance for procurement: "Guidance on Collaborative Procurement for Design and Construction to Support Building Safety"
- Collaborative approaches have been proven to succeed in reducing risks and improving value on construction projects in the public sector and the private sector. They should be adopted on all building projects
- Guidance shows why it is essential that they are adopted on high-risk building projects

Guidance on collaborative procurement:

- Recommends procurement and contracting questions that should be addressed in advance of each 'gateway' application:
 - 'Planning gateway one' – at the planning application stage
 - 'Gateway two' – before building work starts
 - 'Gateway three' – when building work is completed.
- Does not prescribe a particular form of contract or procurement model but does assume that the procurement will be connected with the commercial and delivery imperatives – not vague or idealistic concepts
- Now endorsed by September 2022 version of the Construction Playbook (see pages 5/6)

Guidance on collaborative procurement

- Guidance covers two key areas:
- **How the procurement guidance helps deliver safer outcomes within the legislative framework:**
 - What gateway questions link the guidance to the new building safety regime?
- **Collaborative procurement (what is it and why it works):**
 - Key points and features and their likely outcomes
 - Case studies and learning points
 - Proposed changes

Aim: to create improvements in the safety and quality of higher risk projects within the scope of the BSA (and include case studies to prove it can be done!)

DLUHC Procurement Advisory Group cont.

As such, it sets out guidance to deliver up key points:

- Selection by value that avoids a race to the bottom
- Early Supply-chain Involvement that improves safety and reduces risks
- Collaborative relationships that improve commitments and involve residents
- A golden thread of information that integrates design, construction and operation
- what systems sustain and enhance a collaborative culture
- how strategic collaboration can embed improved safety
- how, in addition to improved safety and quality, collaborative procurement enables public and private sector clients and their teams to achieve other improvements in economic, social and environmental value

DLUHC Procurement Advisory Group cont.

- Guidance recognises that collaborative procurement is not the norm:
- many clients, consultants and contractors continue to use procurement models and contracts that endanger building safety by:
 - Gambling on lowest price bids without joint review of detailed costs
 - Focusing primarily on transferring risk down the supply chain and preparing the ground for potential claims and disputes
- Guidance shows how collaborative procurement preserves reasonable legal and commercial protections while using early planning, clear roles, full consultation and accurate information to reduce the potential for failures, errors, misunderstandings and disputes
- And don't forget price evaluation models: get involved – CLC Evaluation Working Group – focussing on how to prevent a race to the bottom
- And see <https://www.trowers.com/-/media/files/news-related-pdfs/white-paper---price-evaluation-models-for-the-housing-sector.pdf>



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Optivo – case study

21st November 2022

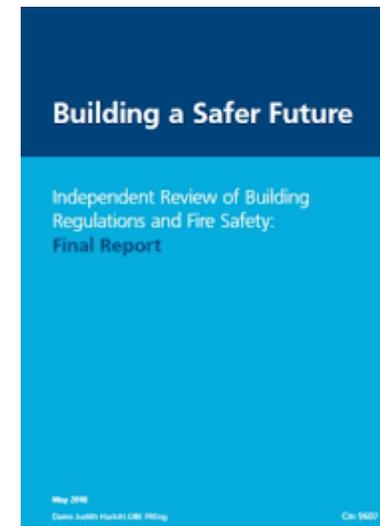
Shane Hughes

Director, Savills (UK) Limited

Background



- Circa 100 blocks over 6 storeys expected to fail new building safety regulations in respect of fire safety
- Spent 12 months understanding scale of the problem informed by Fire Risk Assessments
- Waking watch appointed to at risk buildings
- Appointed façade specialists to undertake intrusive surveys to blocks with highest priority
- £100m set aside for remedial works over a 7 year term (3+2+2)
- Circa £50m set aside for blocks with highest priority in first 3 years



Procurement route

- Market testing to establish appetite and approach with outcomes shaping the procurement route
- Single contractor with full D&B responsibility
- The contractor to appoint the design team necessary to deliver the Project
- Optivo's façade reports were made available to support the final design and scope of work
- The project to be delivered by way of strategic partnering
- Two stage open book using PPC2000
- Restricted Procedure



Selection

- Savills appointed as procurement advisors, Trowers & Hamlins as legal advisors
- SQ drafted to ensure Applicants carried the right level of competence and experience. Five key criteria:
 1. Experience of installing fire resistant, insulated render to replace flammable ACM cladding to high rise blocks
 2. Evidence of tests to ensure cladding that is fire resistant has been fixed correctly in accordance with Building Regulations. To include works undertaken by them in the event corrective measures were required
 3. Their ability / willingness to accept full design liability and the associated insurance backed warranties



Selection

4. Evidence of working in collaboration with Clients and the design team in jointly agreeing the scope of work, specifications and construction method to arrive at an Agreed Maximum Price
5. Their experience of working with PPC2000 and in particular, those schemes using a two stage ordering process
6. Willing to accept 24 month DLP



Qualitative tender evaluation

- Focussed on resident involvement and their input to final design solutions
- Highest weighting on questions around resident engagement, quality management, supply chain tendering and technology
- 50 / 50 Quality / Price ratio



Financial tender evaluation

- Prices sought for OH&P, design fees and a % adjustment against a bespoke SoR
- Mindful that leaseholder consultation likely to be required
- Included basket rates for other standard refurbishment items that may be undertaken at the same time
- Evaluated using the Optimum Price model where the bid closest to the mean average scored the highest mark



Outcome

- Four tenders received
- Prices ranged from £8.2m to £11.4m for Year 1
- EQUANS Regeneration Ltd successful
 - scored second on Price (second lowest bid)
 - highest on Quality
- Had the lowest price = highest mark model been in place, the winning Tender would have been the one with the lowest quality score and the cheapest price



Project delivery

- Successful first 18 months
- Optivo took decision not to re-charge leaseholders
- Residents been supportive and engaged throughout
- Use of the 'Inspection Panel' to sign off each elevation and lift
- Panel members include Client Rep, Constructor, Lead Designer, Fire Engineer, Tier 2 supply chain, manufacturers
- Conducted lessons learned workshops



Guidance and resources

- Savills Housing Consultancy team
Shane Hughes
E: shughes@savills.com
M: 07870 555 755
- Trowers & Hamlins LLP
Rebecca Rees
- ACA Guide to PPC2000 - www.ppc2000.co.uk
- The 'Alliancing Forms' website – www.allianceforms.co.uk





Constructing the Golden Thread: navigating the Building Control Process for Higher-Risk Buildings

John Forde, Managing Associate, Projects & Construction

When does the new regime come into force?

- **Building Safety Act 2022:**
 - Establishes Building Safety Regulator who will implement and oversee new regulatory regime
 - Provides basic definition of **Higher-Risk Building**
 - Provides for Building Act to be amended to import new regulatory process for "prescribed buildings"
- Remainder of new regime set out in draft secondary legislation
- **Draft Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations and Building (Higher-Risk Buildings) (England) Regulations published in October 2021**
- Consulted on over the summer – still waiting for Government's response and revised versions of Regulations

Higher-Risk Buildings

- Act defines **Higher-Risk Buildings** as a building in England that is:
 - at least 18 metres in height or has at least 7 storeys, whichever is achieved first; and
 - is as specified by regulations issued by Secretary of State
- Draft **Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations** say Higher-Risk Buildings:
 - must contain at least 2 residential units
 - height is measured from ground level to the top floor surface of top storey, ignoring any roof-top machinery or plant area
 - Care homes and hospitals that meet the height requirements will be Higher-Risk Buildings for their design, construction and refurbishment
 - Exclusions: secure residential institutions (eg prisons); temporary leisure establishments (eg hotels); military premises

Building control regime for Higher-Risk Buildings

- Draft **Building (Higher-Risk Buildings) (England) Regulations**
- Covers all **HRB works**:
 - The construction of a Higher-Risk Building
 - Work to an existing building that causes it to become a Higher-Risk Building
 - Works necessary to ensure a building that undergoes a material change of use to become a Higher-Risk Building complies with the Building Regulations
 - Doesn't appear to cover repairs and maintenance/refurbishment of existing Higher-Risk Buildings?

Planning applications (Gateway 1)

- As from 1 August 2021, all planning applications for HRB work must include a Fire Statement setting out fire safety considerations specific to the works
- Government guidance: <https://www.gov.uk/guidance/fire-safety-and-high-rise-residential-buildings-from-1-august-2021>

Building control applications (Gateway 2)

- Client or someone acting on client's behalf must apply for building control approval **before** the HRB works start on site
- Detailed list of requirements and documents to support application
- Client must demonstrate that those working on the project are **competent**
- Regulator must determine a building control application within **12 weeks** (to be confirmed) or such longer period agreed with applicant
- Approvals may be subject to any requirements imposed by Regulator
- Works must not commence until any requirements have been satisfied

Change control and Mandatory occurrence reporting

- Clients may request a **controlled change** in relation to HRB works
- **Notifiable change:** Client or someone on client's behalf must notify Regulator of all notifiable changes (not yet defined) – works must not be carried out till 14 days after notice is given
- **Major change:** Client or someone on client's behalf must make **change control application** for any major change (not yet defined) - works must not be carried out until application is granted
- Regulator must determine change control applications within **[4] weeks** of application (to be confirmed)
- Projects must develop and maintain a **mandatory occurrence reporting system**

Completion notices and completion certificates (Gateway 3)

- After HRB work is completed, client or someone on its behalf must notify Regulator that work has been completed (a **completion notice**)
- After completing HRB work, client or someone on its behalf must apply for a **completion certificate**, which must be approved before building can be **occupied**
- Application must include detailed information for as-built building, and also:
 - **compliance declaration** signed by principal contractor and principal designer that the HRB work complies with Building Regulations
 - confirmation that Accountable Person has received **Golden Thread Information**
 - copy of **Key Building Information** for as-built building
 - Regulator must determine completion certificate applications within **[12] weeks** of application (to be confirmed) or such longer period agreed with applicant
- Any approvals may be subject to any requirements imposed by Regulator

Golden Thread Information

- Building Control Regulations set out definition of **golden thread information**, comprising:
 - Fire statements and planning applications
 - All building control applications, change control applications and completion certificates, with supporting information
 - All mandatory occurrence reports and supporting information
 - All competency declarations
- Client must arrange for electronic facility for golden thread information to be stored
- Information must be kept in electronic form - Regulator to provide further details on appropriate standards and formats
- Golden thread information must be supplied to Accountable Person/relevant person for Higher-Risk Building before completion certificate is applied for

Key Building Information requirements

- A list of key information about Higher-Risk Buildings to be given to and stored by the Regulator
- Purpose of information is to allow Regulator to keep a register of Higher-Risk Buildings
- Gateways Regulations defines **key building information**: detailed specification of size and dimensions and purpose of building and key safety equipment
- Information to be provided to Regulator via an online portal set up by Regulator
- Information will be in electronic form – Regulator to specify format and standards
- Client or someone on client's behalf must provide key building information to the **relevant person** for the Higher-Risk Building before completion certificate is applied for

Electronic submission of documents

- The Regulator must make a direction as to the way in which any applications and documents are issued, including where they must be given electronically
- No further guidance about the nature or extent of requirements for electronic submission
- Act allows Regulator to prescribe format of key information
- Further guidance to be provided
- Impact Assessment (June 2020) states that Government assumes all firms already comply with BIM 1 standards and using a Common Data Requirement and COBie files
- Firms not meeting these standards will have to self-fund digitisation

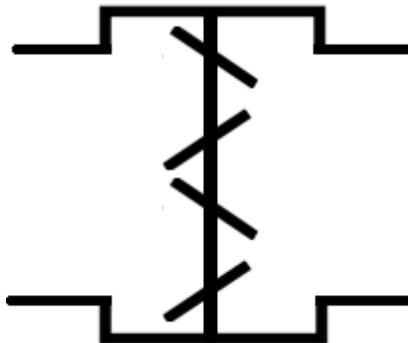
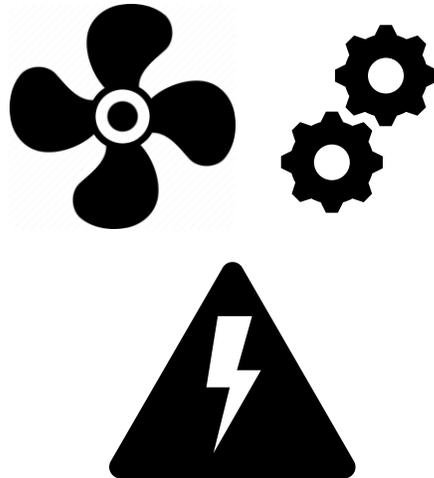
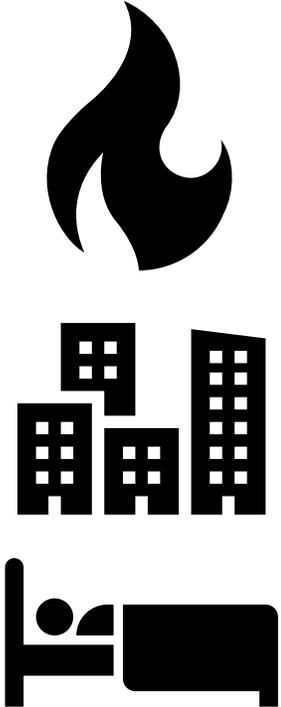
Registering Higher-Risk Buildings

- Accountable Person or Principal Accountable Person must:
 - register Higher-Risk Buildings with the Regulator;
 - prepare and update Safety Case report;
 - develop a Resident Engagement Strategy with residents;
 - apply for **building assurance certificate**;
 - manage building and fire safety in the building during its entire occupation stage
- Government has indicated that existing Higher-Risk Buildings will need to be registered
 - 5 year programme anticipated, broken into categories based on risk/need
 - Regulator still to confirm timetable and information requirements
 - Likely that information will need to be digitised

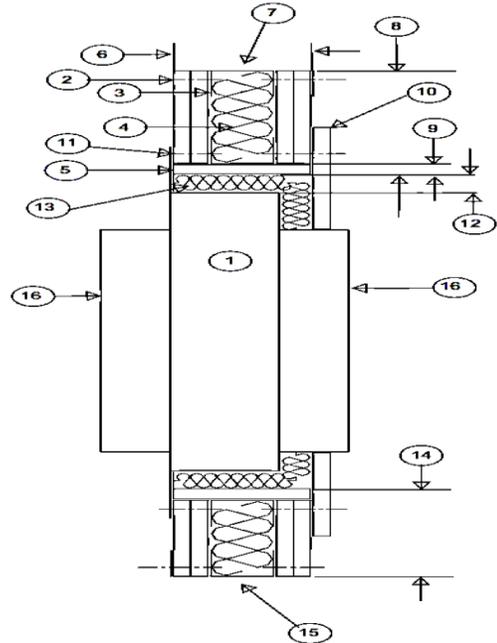
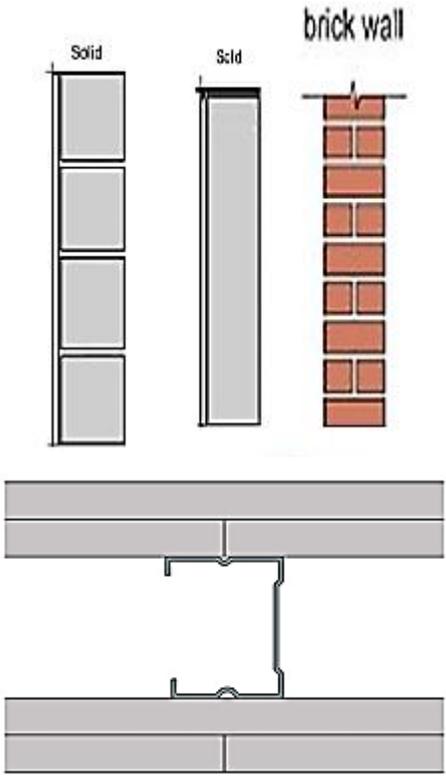
Questions / Discussion

- How will clients, contractors and designers manage information sharing?
- What duties of care will parties owe each other for provision of information?
- How will new regime work for design-and-build projects?
- How will handover to Accountable Person work in practice?
- How should clients / contractors manage current projects?
- What can the industry do to get prepared?

The Process required for descriptive



E120(ho i↔o)S - (300Pa)



Building fire safety
type/space risk
fire safety type

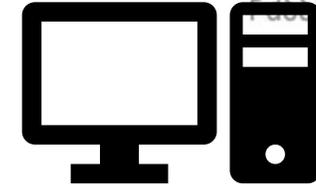
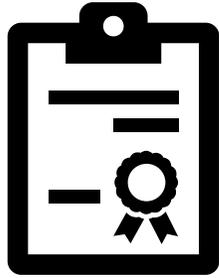
System fire safety
operational type

classification for
product fire
safety type

Supporting
construction
compatibility type
/P.F safety seal type

The
installation/
maintenance
access types.

Outputs



**Known
installation
records
prescriptive
digital
information**

**Quality
parameters &
workmanship
standards**

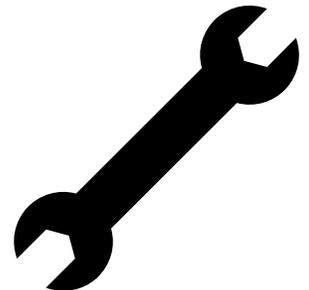
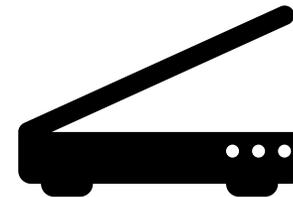
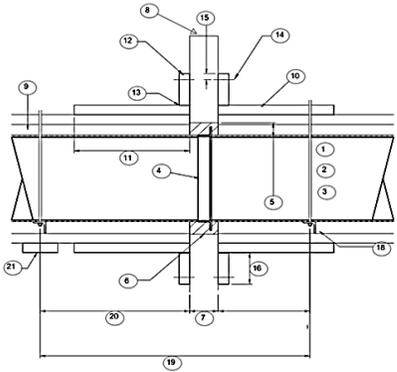
Benchmarking

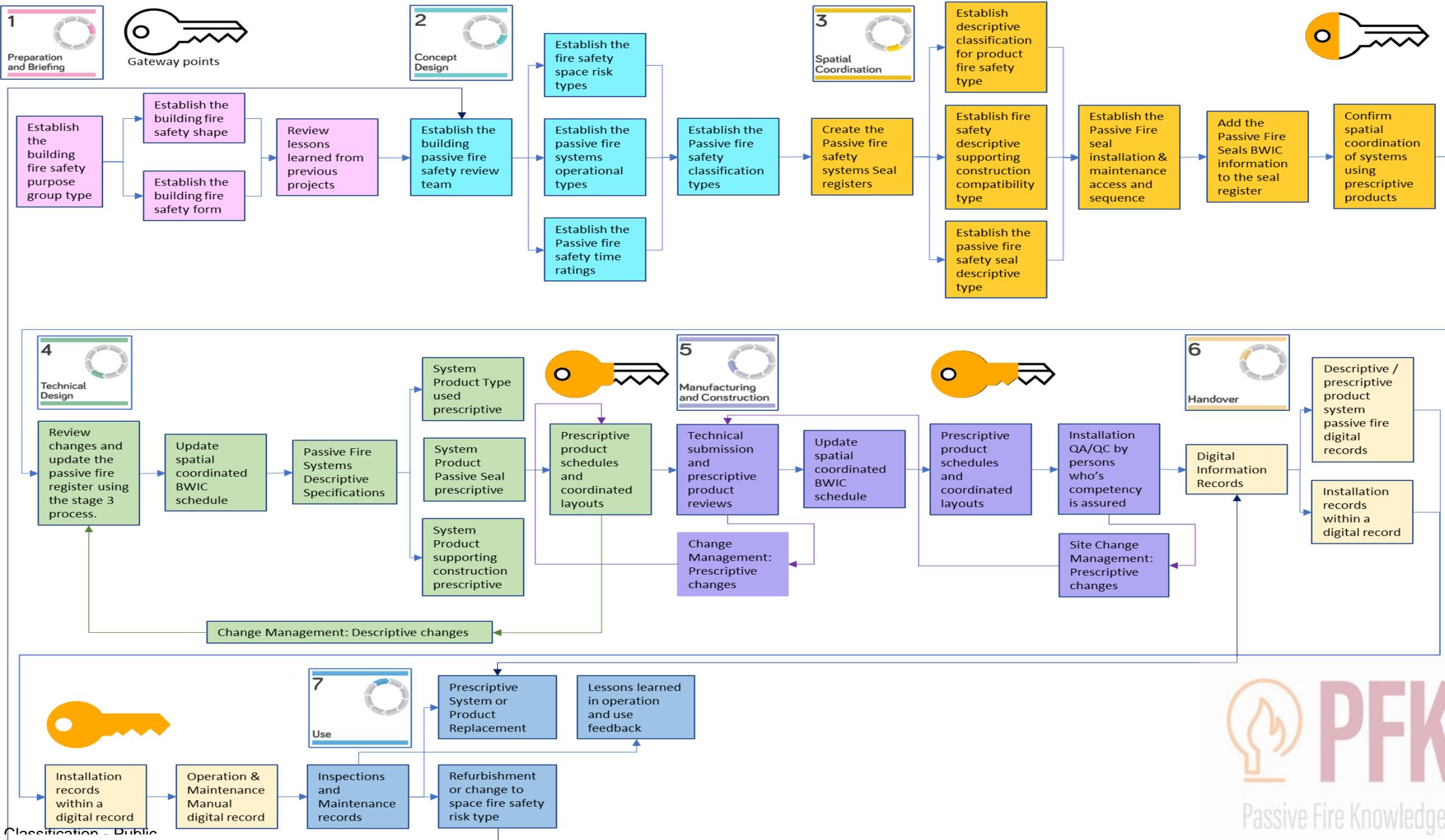
**Installation
acceptance**

**Digital
Records**

**Information
for future
change
management**

**operating &
maintenance
instructions.**





Accountable Person – Responsibilities & Risks

Amanda Stubbs, Trowers & Hamlins and Matthew Lewis, Clarion Housing Group

21 November 2022

Agenda

1. Who is the Accountable Person and what does this mean ?
2. Responsibilities ?
3. Risks ?
4. Clarion Housing Group – Practical Digitisation Solution for Managing Risks in Existing Stock

Accountable Person

- In-occupation duty holder is called the “Accountable Person”
- Legally responsible for fire and structural safety risks within Higher-Risk Buildings throughout the in-occupation phase
- Criminal liability will attach to some offences committed by an AP
- Who is the Accountable Person ?
 - *a person who holds a legal estate in possession in any part of the common parts; or*
 - *a person who is under a relevant repairing obligation in relation to any part of the common parts*
 - *"relevant repairing obligation" means a repairing obligation under a lease or "by virtue of an enactment"*
- Could be more than one AP for each building
- NB: Accountable Persons must cooperate with "Responsible Person" under Fire Safety Order where this is a different person – and the RP has reciprocal duties

Principal Accountable Person

- In relation to a building with a single Accountable Person, this will also be the "Principal Accountable Person"
- Where a building has more than one Accountable Person, the PAP will be the Accountable person who—
 - holds a legal estate in possession in the relevant parts of the **structure and exterior** of the building, or
 - has a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building

Responsibilities of the Principal Accountable Person

- Section 78 – register a higher-risk building
- Section 79 – apply for a Building Assessment Certificate
- Section 80 – information to accompany a BAC application
- Section 82 – duty to display Building Assessment Certificate
- Section 85 – prepare a Safety Case Report
- Section 86 – notify the Regulator that the Safety Case Report has been prepared or revised
- Section 87 – establish and operate a mandatory occurrence reporting system
- Section 91 – produce a residents' engagement strategy
- Section 93 – operate a complaints procedure for residents

Responsibilities of the Accountable Person

- Section 76 – completion certificate needed before occupation of resi units
- Section 83 – assess building safety risks – to be fed into Safety Case Report
- Section 84 – manage building safety risks
- Section 87 – general reporting requirements in respect of part of the HRB for which the AP is responsible
- Section 88 – duty to keep certain information about HRBs
- Section 89 – duty to provide such information to the Regulator, residents, other APs or RPs
- Section 90 – provide handover information on change of AP
- Section 92 – provide certain prescribed information to residents on request

Risks for APs and PAPs: relevant sanctions

- The new regime toughens existing sanctions and introduces new ones
- 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
 - 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)

How to Manage the Risks

- Safety Case Report aims to create an holistic approach to fire and safety risk management and should :
 - Include information re hazards affecting the building
 - Go beyond a risk assessment and demonstrate that fire and structural risks are being managed so far as practicable
 - Be evidenced
 - Use plain language
 - Include a comprehensive Resident Engagement Strategy
- Every HRB will need a Building Assessment Certificate
- Safety Case Report review cycle: to be reviewed constantly by PAP/ AP and by the Regulator every five years during occupation
- If case is not made: cancellation of valid Building Assessment Certificate or conditions placed on the Certificate
- Ensure "Golden Thread" information is comprehensive and up-to-date – it is the lifeline for Accountable Persons and the Principal Accountable Person



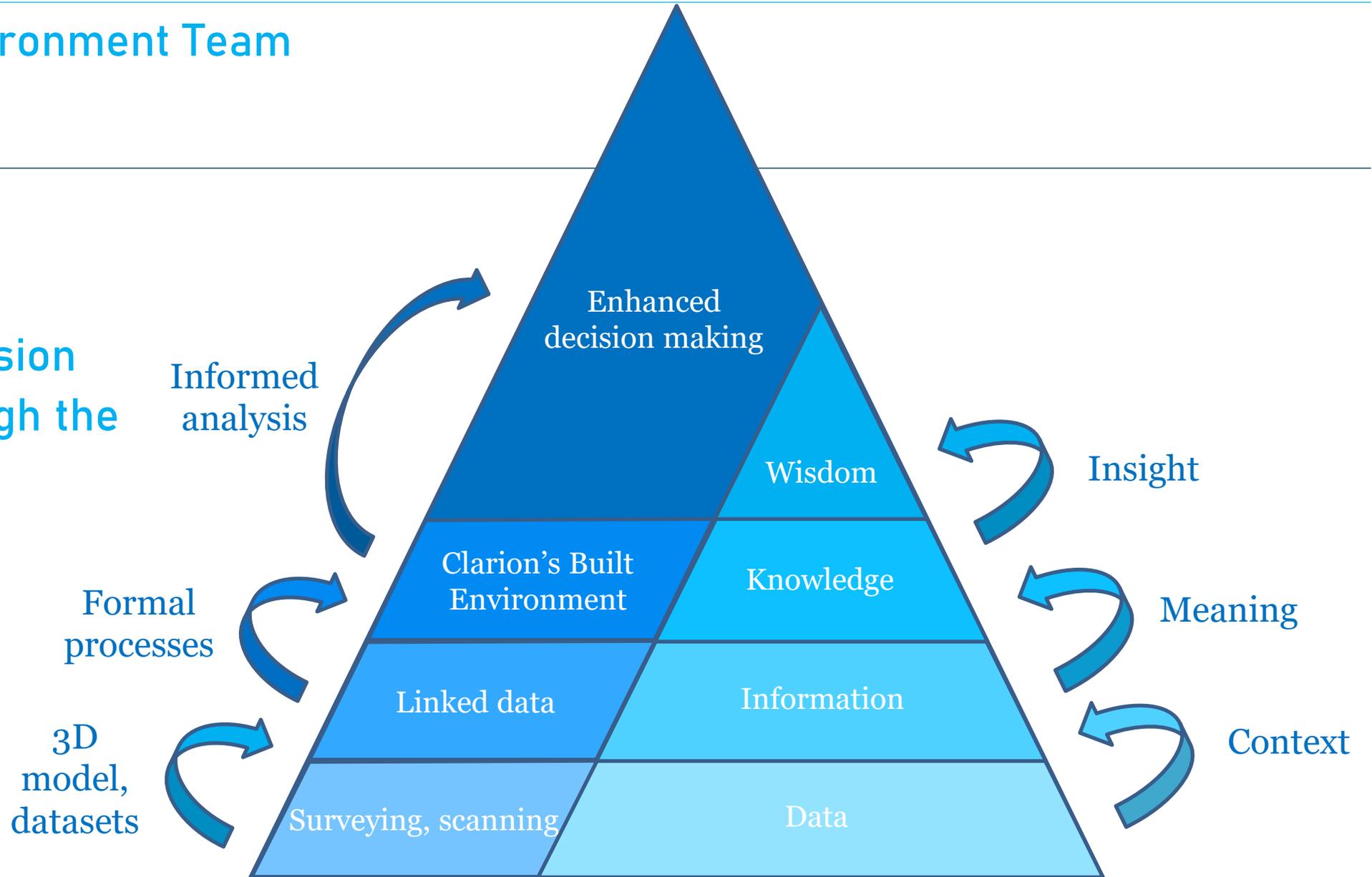
CLARION
HOUSING GROUP

Twins

A Digital Built Environment for data
driven decisions

Digital Built Environment Team

Goal:
Enhance decision making through the use of data



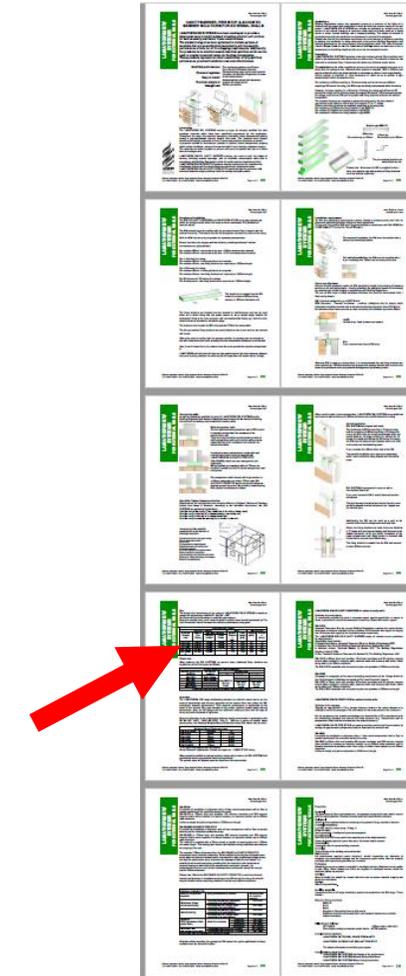
What did Clarion's 'Golden Thread' look like?

O & Ms

Cavity Barrier Fire Rating:

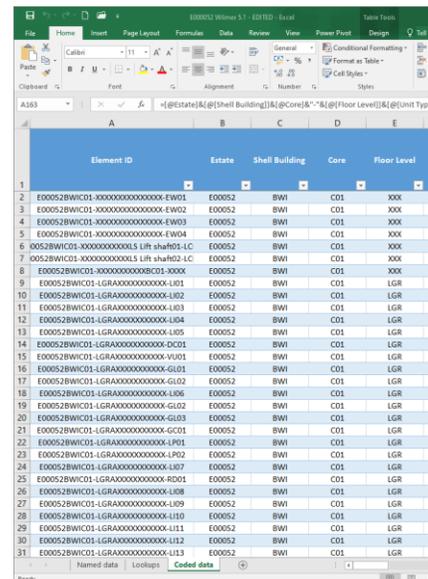
- Actual
- Required

FIRE RATING TABLE							
SYSTEM Product code	PRODUCT RANGE			Size		BS 476 Pt 20	
	Nominal Fire Rating	Void Size Limitation		Material Thickness (mm)	Cover Length (mm)	Integrity (mins.)	Insulation (mins.)
	Masonry cavities	Timber Frame					
EW-CB15	15 mins.	150mm	150mm	50	1200	30	15
EW-CB30	30 mins.	150mm	150mm	75	1200	30	30
EW-FS60	60 mins.	400mm	150mm	90	1200	300	60
EW-FS120	120 mins.	400mm	-	120	1200	300	120
EW-FSA300	300 mins.	400mm	-	175	1125	300	300

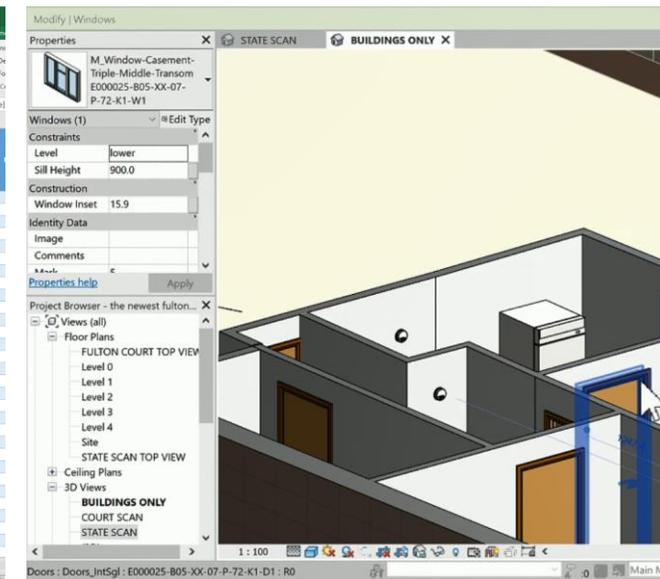


TWINS

The information and steps to make a building safe



Element ID	Estate	Shell Building	Core	Floor Level		
1						
2	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	EW01	E00052	BWI	CO1	XXX
3	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	EW02	E00052	BWI	CO1	XXX
4	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	EW03	E00052	BWI	CO1	XXX
5	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	EW04	E00052	BWI	CO1	XXX
6	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	Lift shaR01-LC	E00052	BWI	CO1	XXX
7	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	Lift shaR02-LC	E00052	BWI	CO1	XXX
8	E00052BWWC01-XXXXXXXXXXXXXXXXXXXX	XXX	E00052	BWI	CO1	XXX
9	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	L01	E00052	BWI	CO1	LGR
10	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	L02	E00052	BWI	CO1	LGR
11	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	L03	E00052	BWI	CO1	LGR
12	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	L04	E00052	BWI	CO1	LGR
13	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	L05	E00052	BWI	CO1	LGR
14	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	DC01	E00052	BWI	CO1	LGR
15	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	VU01	E00052	BWI	CO1	LGR
16	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	GL01	E00052	BWI	CO1	LGR
17	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	GL02	E00052	BWI	CO1	LGR
18	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	GL06	E00052	BWI	CO1	LGR
19	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	GL02	E00052	BWI	CO1	LGR
20	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	GL03	E00052	BWI	CO1	LGR
21	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	GC01	E00052	BWI	CO1	LGR
22	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LP01	E00052	BWI	CO1	LGR
23	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LP02	E00052	BWI	CO1	LGR
24	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LB07	E00052	BWI	CO1	LGR
25	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	RD01	E00052	BWI	CO1	LGR
26	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LB08	E00052	BWI	CO1	LGR
27	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LB09	E00052	BWI	CO1	LGR
28	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LB10	E00052	BWI	CO1	LGR
29	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LB11	E00052	BWI	CO1	LGR
30	E00052BWWC01-LGRAXXXXXXXXXXXXXXXXXXXX	LB12	E00052	BWI	CO1	LGR
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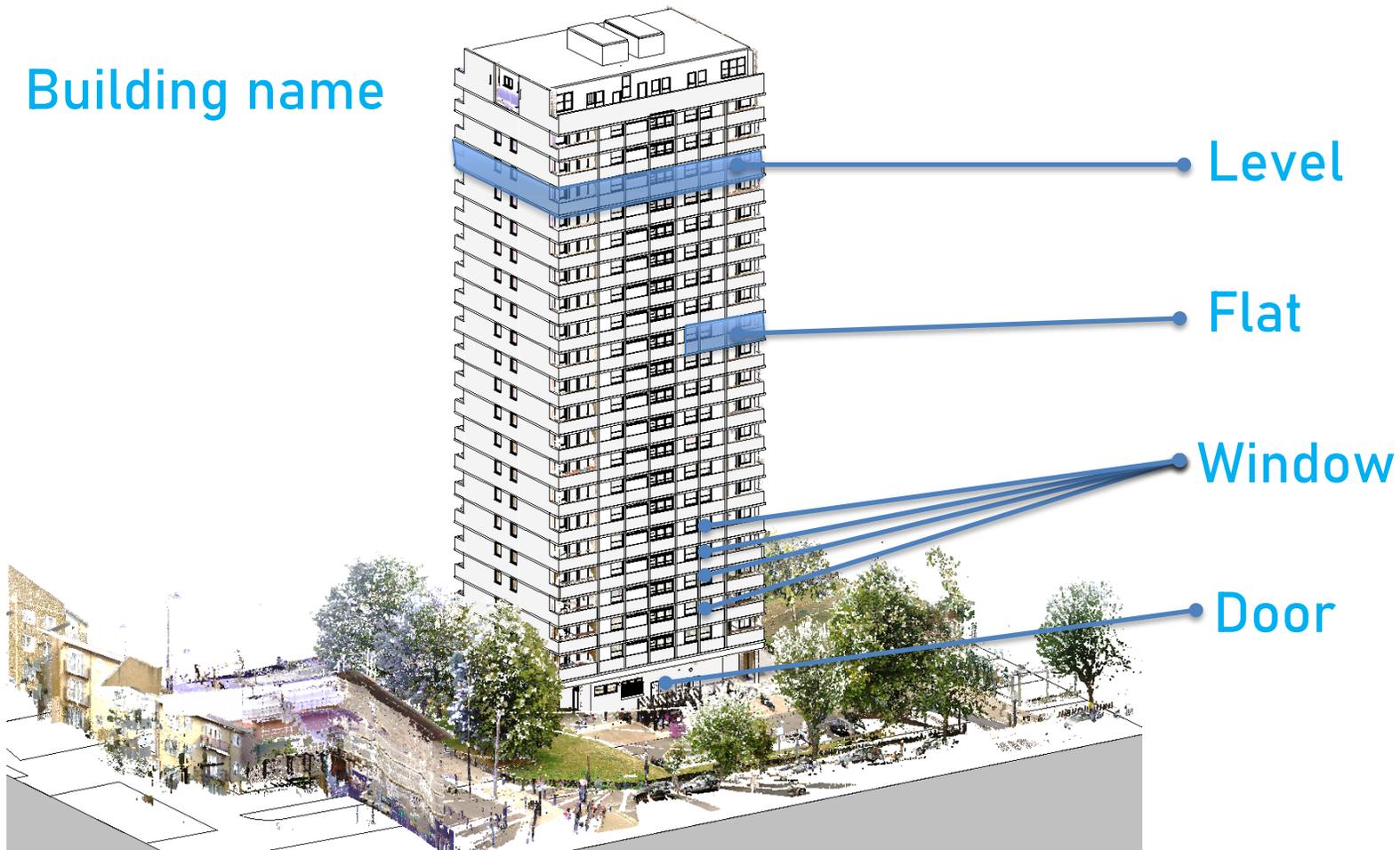


TWINS

PHASE 1 –
Register Baseline data

Data points per block:
c. 2,000

Building name



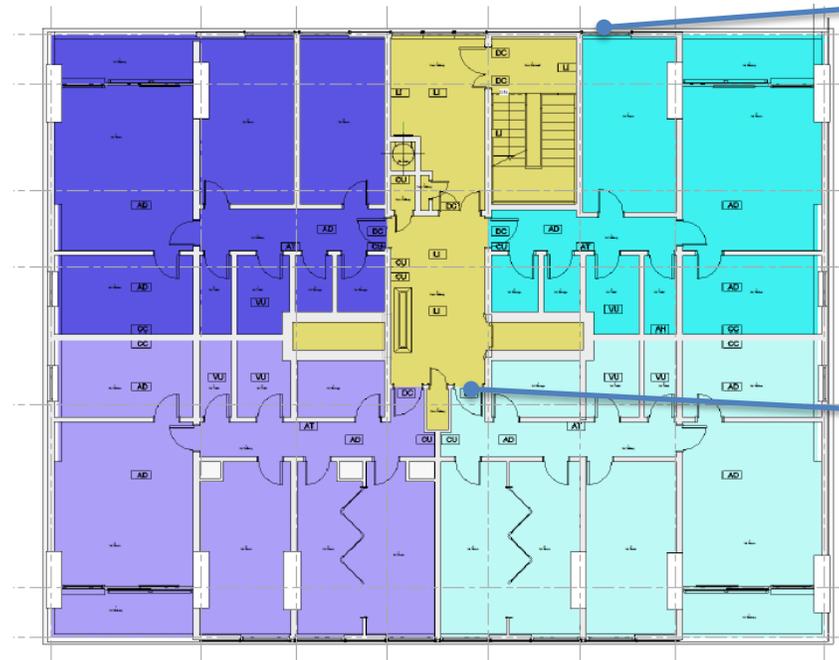
TWINS

PHASE 2 - Collect Attribute Data

Data points per block:
c. 20,000

Building:

- Evacuation strategy
- AHJ
- Development name



Window:

- Material
- Dimensions
- Install date

Door:

- Fire rating
- Furniture
- Installer

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PHASE 3 – Collect Operational data

Data points per block:
unknown

Building:

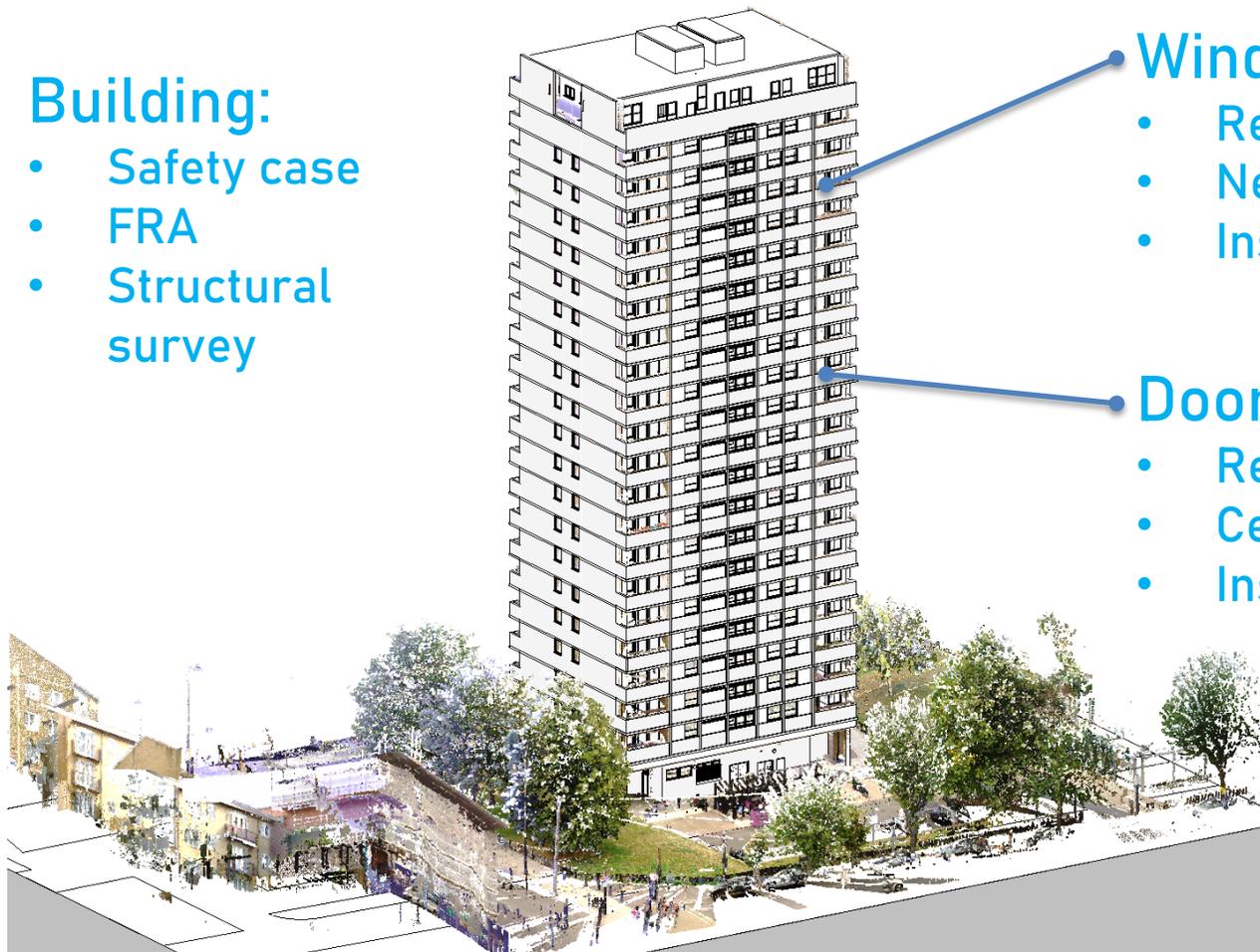
- Safety case
- FRA
- Structural survey

Window:

- Repair
- New and historical data
- Installation photos

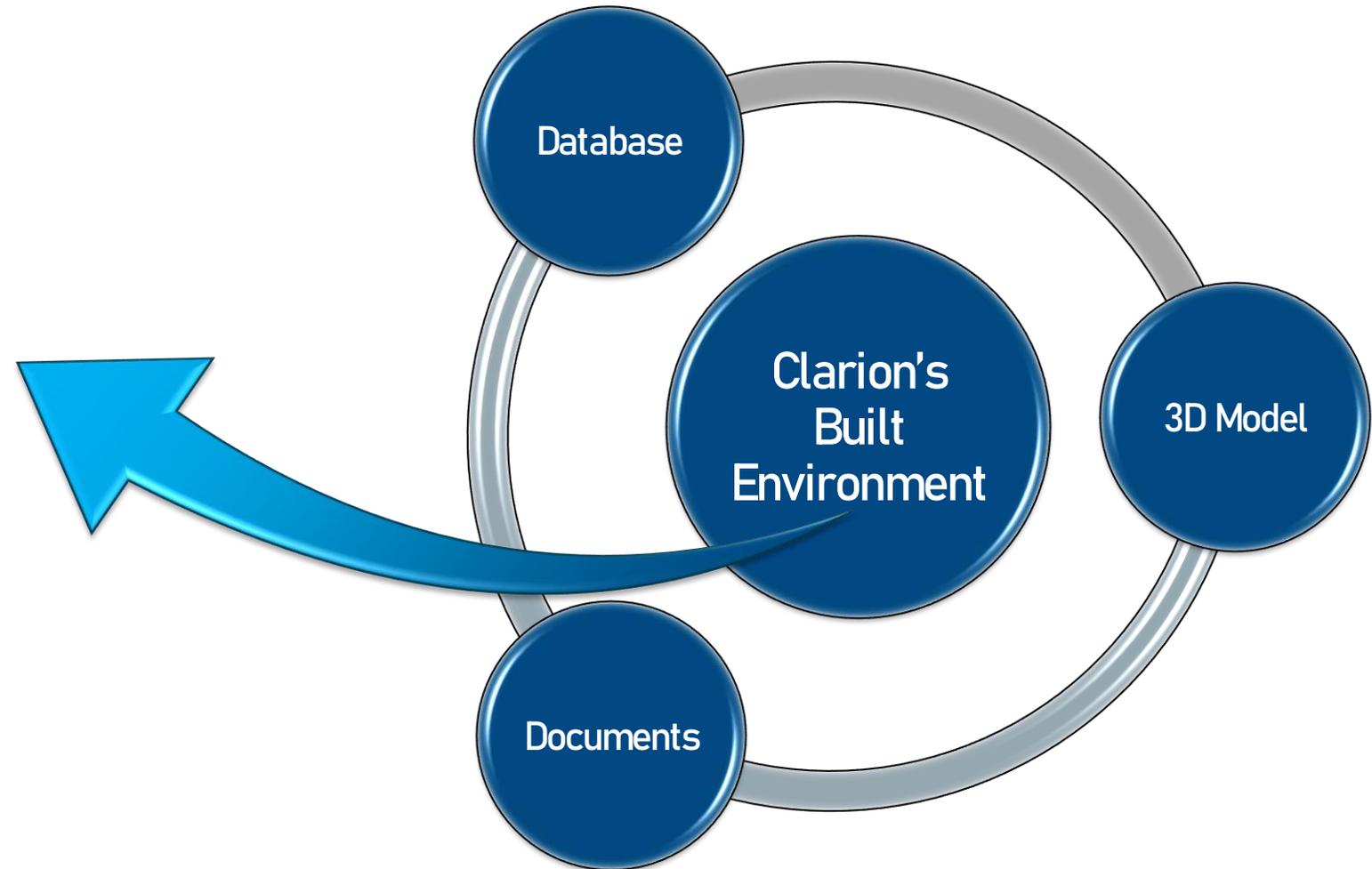
Door:

- Replacement
- Certificate
- Inspection/check



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- Safety Case
- Asset Management
- Residents
- Fire & Rescue Service interaction
- Development handover



Digital Built Environment - Structure

Results Attributes

Parameters

Region
LON-NORTH

Estate

Block

Export all to Excel

Code	Name
E00011	Queen
E00058	Radfori
E00052	Ranwel

Filter tree by name or code...

Attributes Levels Instances Documents

Show all assets

Element

Actions Quick add: search for assets

Icon	Root	Type	Code	Name
<input type="checkbox"/>		AFD - Detector	E00050-S01-C01-LGR-R001-IH01-XXXX-AD01	AD01
<input type="checkbox"/>		Boiler	E00050-S01-C01-LGR-R001-IH01-XXXX-BO01	BO01
<input type="checkbox"/>		Consumer unit	E00050-S01-C01-LGR-R001-IH01-XXXX-CU01	CU01
<input type="checkbox"/>		Door Closer	E00050-S01-C01-LGR-R001-IH01-XXXX-DC01	DC01
<input type="checkbox"/>		Door	E00050-S01-C01-LGR-R001-IH01-XXXX-DO01	DO01
<input type="checkbox"/>		Flue	E00050-S01-C01-LGR-R001-IH01-XXXX-FU01	FU01

- Whiston
 - Block 1
 - Core 1
 - LB1
 - LGR
 - A000
 - Y000
 - R001
 - IH01
 - IK01
 - IT01
 - IR01
 - IR02
 - R002
 - L01
 - L02
 - L03
 - L04
 - L05

Level
Unit
Room

Elements Unique ID

Region
Estate
Block
Core

Digital Built Environment - Structure

In-depth data

Type*	Description	Name*	Code	Scope
Door Closer		DC01	E00050-S01-C01-L01-R003-	Global
Date Effective	End Date			

Properties

Data Certainty	Operational Status	Serial Number	Date Installed
	P		
Replacement Due Date	Installation Configuraiton	Alert Notification Destination	
Owner	Major Works Responsibility	Repairs Responsibility	Servicer
Browse for Organizations...	Browse for Organizations...	Browse for Organizations...	Browse for Organizations...
Property Management System ID	Customer Reference Number		

Technical Requirements

Technical Requirement Field	Technical Requirement

Systems

Validate Element I...

Filter tree by name or code...

- Whiston Road
 - Block 1
 - Core 1
 - All Flats All Systems
 - Core Lighting System
 - Core Fire Alarm System
 - Core Internal Compartmentatic
 - Core Fire Safety Equipment Sys
 - Core Electrical System
 - Core External Wall System
 - Core Water System
 - Core Gas System
 - Core Roof and Floor System
 - Core Fire Suppression System
 - Core Ventilation and Air Condi

Digital Built Environment - Structure

Advanced Search

Search for: Assets

Where: + - Add Group

Search by: Door

Attribute: Search attributes...
Door Handle/s
Door Material
Door Viewer
Fire Rating
Glazed panels (door)
Glazed panels (frame)
Height (mm)

Operator: Value

Search

Advanced Search

Search for: Assets

Where: + - and

Search by: Door

Attribute: Search attributes...
Code

Operator: Contains

Value: E00050

Search

Icon	Root	Type	Code	Name	Description	Scope
<input type="checkbox"/>		Door	E00050-S01-C01-L01-R003-IH01-XXXX-DO01	DO01		Global
<input type="checkbox"/>		Door	E00050-S01-C01-L01-R004-IH01-XXXX-DO01	DO01		Global
<input type="checkbox"/>		Door	E00050-S01-C01-L02-R005-IH01-XXXX-DO01	DO01		Global
<input type="checkbox"/>		Door	E00050-S01-C01-L02-R006-IH01-XXXX-DO01	DO01		Global
<input type="checkbox"/>		Door	E00050-S01-C01-L03-R007-IH01-XXXX-DO01	DO01		Global
<input type="checkbox"/>		Door	E00050-S01-C01-L03-R007-IR02-XXXX-DO01	DO01		Global
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Documents

 Document: Leybridge 1-44 QC, D-DT-00002 (Rev. 01) 

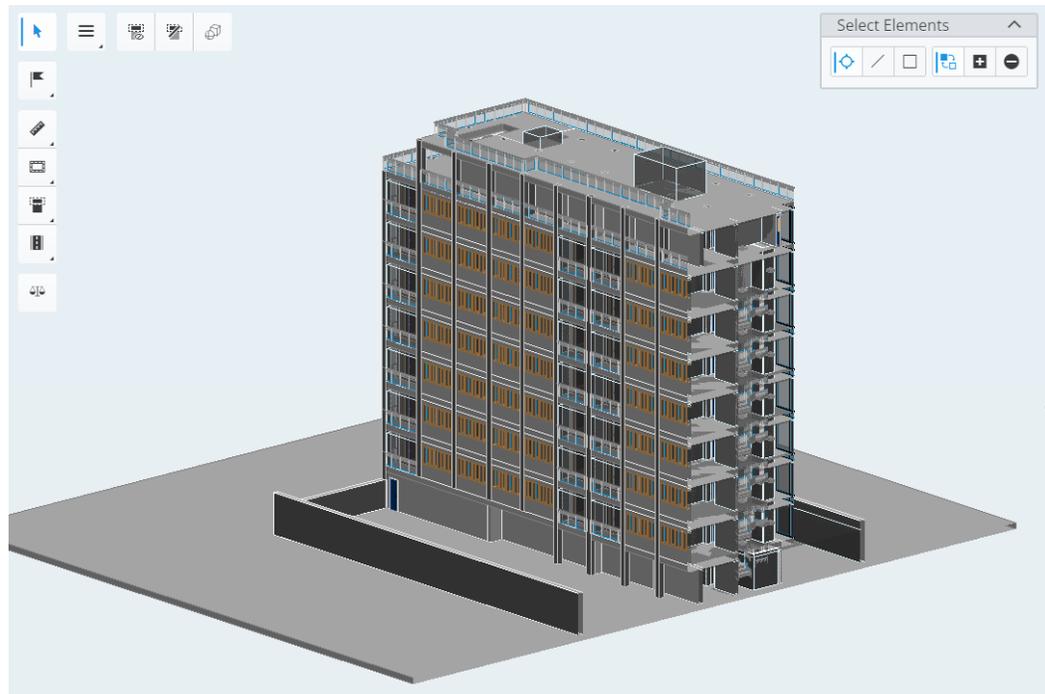
Attributes | Files | Security | Approvers

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Revision Status	Scope	Approval Status*	Description	
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Effective From	Valid Until			
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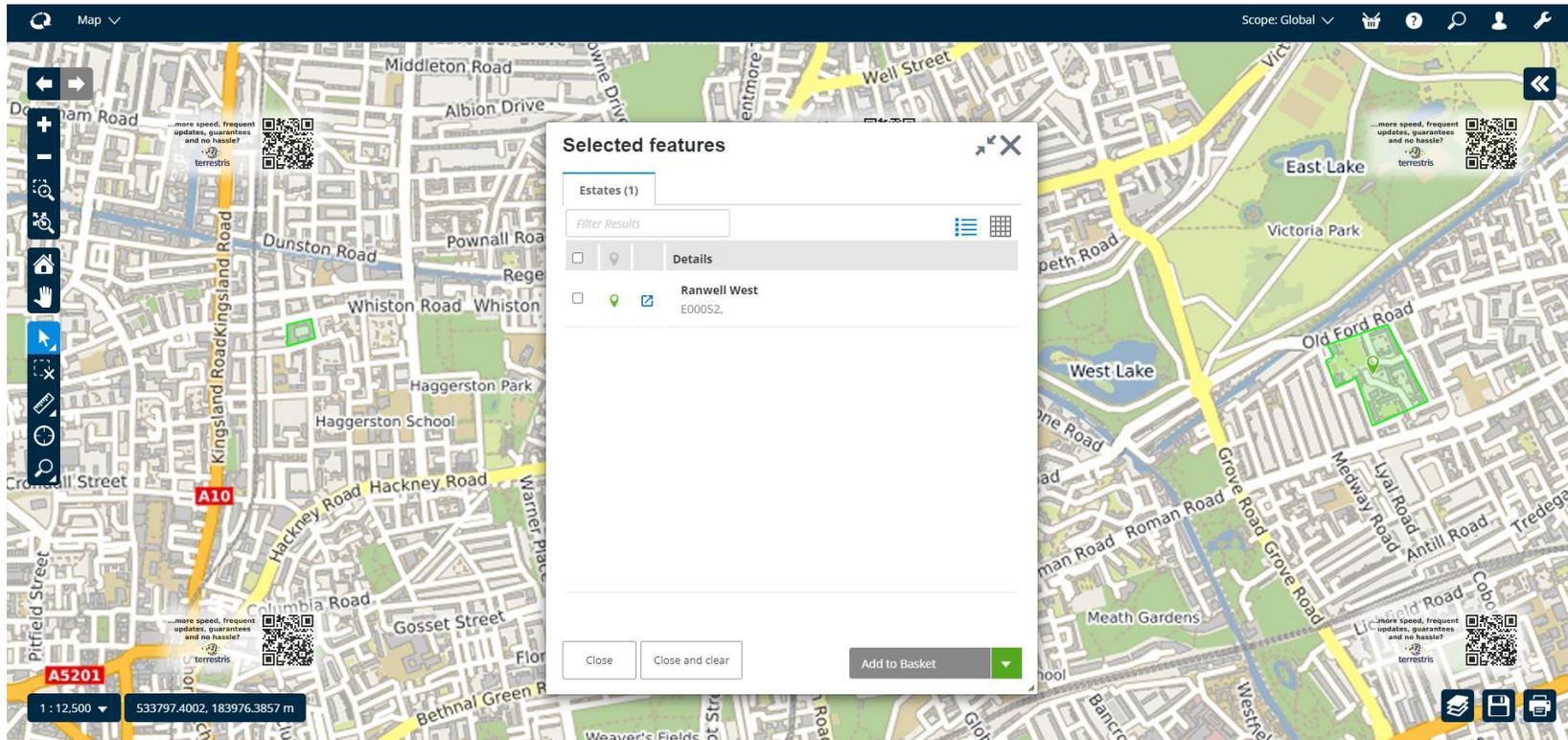
Common Metadata

Date Received	Date Valid Until	Asset Content Type	Author
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Approver	Internal Team	Author Organisation	
<input type="text"/>	DE Digital Built Environment Team	CLAR Clarion	
Element Instance	Element Type	Location	
<input type="text"/>	<input type="text"/>	E00031-S01-C01 - Core 1	

Digital Built Environment - 3D model



Digital Built Environment - Maps



Digital Built Environment - Entities

Work exchange > Home > Search organizations

Search organizations

Organization

Code Name Type

Actions

<input type="checkbox"/>	Code	Name
<input type="checkbox"/>	2UGE	2U GetSmarter (US) LLC
<input type="checkbox"/>	4ISO	4i Solutions
<input type="checkbox"/>	ABCS	Abca Systems Ltd
<input type="checkbox"/>	ACEU	Asbestos Consultants Europe Limited
<input type="checkbox"/>	ADEL	ADELARD LLP
<input type="checkbox"/>	AFMA	ASH Fire Management and Ventilation Systems Ltd

Digital Built Environment - Work flows



Work exchange

Planned
Inbox
Forthcoming
Work in progress



Import and Export

New Package
View packages

Future plans

This will help futureproof our assets and ways of working. It will help allow for the following:

- QR Codes
- IoT
- Sustainability
- AI
- BIM



**THANK
YOU**

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Trowers & Hamlins' third annual mini-conference on building safety

22 November 2022

Remediation: who pays? Service Charges and Remediation Orders

Douglas Rhodes

22 November 2022

Agenda

- Context
- Building Safety Act 2022: leaseholder protections
- Landlord's and leaseholder's certificates
- Practical impact

“ A major rebalancing of financial risk in existing blocks of flats of at least 5 storeys or 11 metres height

Context

- £4bn = estimated cost of remediating safety defects
- Government has always urged landlords to pay
- Action taken:
 - Building Safety Fund
 - Developer's Pledge
 - Building Safety Act 2022 – leaseholder protection provisions

Building Safety Act 2022 – leaseholder protections

- Remediation costs under qualifying leases (s.122 and Schedule 8)
- Came into force on 28 June 2022
- Major restrictions on service charge recovery
- Not just about cladding
- Waterfall principle:
 - Developer
 - Persons associated with developer
 - Landlord
 - Leaseholders

Building Safety Act 2022 – leaseholder protections

- Key concepts:
 - "Relevant building"
 - At least 5 storeys or 11m high containing at least two flats
 - Excludes enfranchised buildings or where freehold is leaseholder owned, or rights of first refusal exercised
 - "Qualifying lease"
 - Leaseholder's only or principal home on 14 February 2022, or they own no more than two other dwellings
 - "Relevant defect"
 - A defect causing a building safety risk that arises in connection with relevant works
 - Relevant works = any works between 28 June 1992 – 28 June 2022

Caps on recovery (1)

- No service charge recoverable if any of the following apply:
 - Landlord as at 14 February 2022 (or associated person) responsible for relevant defect;
 - Landlord group's net worth more than £2m per building;
 - Value of lease less than £325,000 in Greater London or £175,000 elsewhere;
 - Costs relate to:
 - cladding remediation;
 - legal or professional services relating to the liability of any person as a result of a relevant defect

Caps on recovery (2)

- Limit on service charge in other cases
- The permitted maximum:
 - If the value of the qualifying lease is less than £1m
 - £15,000 in Greater London
 - £10,000 elsewhere
 - £50,000 if the value of the qualifying lease is between £1m-£2m
 - £100,000 if the value of the qualifying lease exceeds £2m
 - Shared ownership leases
 - If tenant's share is less than 100%, the cap is subject to the same percentage
 - e.g if tenant owns a 50% share of a lease in Greater London valued at less than £1m, the cap is £7,500
- Applies to total service charges in respect of relevant measures relating to a relevant defect from 28 June 2017 onwards
- Annual limit of one tenth of the permitted maximum

Landlord's certificates

- Building Safety (Leaseholder Protections) (England) Regulations 2022
- Landlords of qualifying leases must provide within 28 days of request
- Highly prescriptive and detailed form of certificate
- Requires comprehensive information to enable leaseholder to understand whether remediation costs will be charged
- Supporting evidence to be provided:
 - Comprehensive details of corporate structure of landlord group
 - Company accounts for each company in landlord group
 - Details of relevant works carried out between 1992-2022;
 - Details of remedial costs paid since 28 June 2017
- If certificate not provided, no costs are recoverable

Leaseholder certificates

- Leases are presumed to be qualifying leases unless a "qualifying lease certificate" is requested and not provided
- Six page document
- Information and evidence to show whether the lease is a qualifying lease
 - Qualifying lease criteria
 - Price when last sold
 - Details of percentage share under shared ownership leases

Remediation orders (s.123)

- An order requiring a relevant landlord to remedy specified relevant defects by a specified time
- Relevant landlord = landlord or management company
- Interested persons can apply:
 - Regulator, local authority, local fire and rescue authority
 - A person with a legal or equitable interest in the relevant building
 - Any other person prescribed by regulations – Secretary of State
- Explanatory notes: "will ensure that essential remediation work needed to remedy relevant defects can take place, especially where landlords are not fulfilling their obligations as regards the safety of the building"

Remediation contribution order (s.124)

- An order requiring a specified body corporate to pay for remediation works
- Can be made "if just and equitable to do so"
- Specified body corporate:
 - Landlord under a lease
 - A person who was the landlord on 14 February 2022
 - A developer in relation to the relevant building
 - A person associated with any of the above
- Primary target:
 - Well-capitalised wider group structures of thinly capitalised special purpose vehicle developers
- Example: Vista House, Stevenage

Service charges in respect of remediation works (s.133)

- Likely to come into force April 2023
- Regulations awaited confirming which buildings it will apply to
- Requires landlords to take reasonable steps to obtain:
 - Grant funding (if available)
 - Monies from third parties (e.g insurance, guarantees or indemnities, claims against developer or professional team)
- Where there is a failure to comply, tenants can apply to a Tribunal to limit any service charges demanded
- Regulatory guidance due to be issued explaining what "reasonable steps" are

Practical impact

- Major reform to the law of service charges of residential buildings of at least 11 metres or 5 storeys
- Service charge recovery severely limited
- Highly prescriptive set of detailed supporting regulations
- Unexpected loopholes
 - Resident-owned management companies
 - Intermediate landlords
- Potential unforeseen future implications

Third annual mini-conference on building safety
Development Liability and Building Liability Orders
Assad Maqbool

22 November 2022

Agenda

- Building Safety Act 2022 (Commencement No. 2) Regulations 2022
- The Developers' Pledge and DLUHC long form agreement
- Building Liability Orders and Associate liability

**Building Safety Act 2022
(Commencement No. 2) Regulations
2022**

Building Safety Act 2022 (Commencement No. 2) Regulations 2022

- Sections 126 to 129 of the Building Safety Act 2022 (building industry schemes and prohibitions on development and building control) come into force on 1st September 2022
- The Secretary of State may establish and make provisions about a scheme for any purpose connected with:
 - (a) securing the safety of people in or about buildings in relation to risks arising from buildings; or
 - (b) improving the standards of buildings

Building Safety Act 2022 (Commencement No. 2) Regulations 2022

- Membership conditions
 - (a) remedying defects in buildings in which the eligible person has a connection;
 - (b) the making of financial contributions towards costs associated with remedying buildings (including in relation to which that person may have no connection)
 - (c) the use of certain construction products;
 - (d) the provision of information to the Secretary of State;
 - (e) the competence or conduct of any individual connected the member (e.g. a director or senior manager)

Building Safety Act 2022 (Commencement No. 2) Regulations 2022

- Prohibition on development
 - **Section 128**
 - prohibit persons from carrying out the development in England
 - may include those who are eligible to be members of a Building Industry Scheme but are not members of that scheme
 - prohibition may be imposed even if planning permission has previously been granted
 - **Section 129**
 - prohibit persons taking actions under the planning regime

**The Developers' Pledge and DLUHC
long form agreement**

Developers' Pledge

- "established the principle that leaseholders must be protected and that the industry responsible should pay to fix the problems it created"
- As at 9 August, 49 developers have signed a pledge committing to remediate life critical fire safety works in buildings over 11 metres that they have played a role in developing or refurbishing over the last 30 years in England.
- Developers making this commitment have also agreed to reimburse any funding received from government remediation programmes in relation to buildings they had a role in developing or refurbishing.

DLUHC Longform Agreement

- Principles set out in Pledge now expanded into a full agreement:
 - Engage with current owners / occupiers
 - Assess buildings
 - Obligations to carry out works including the standard of remediation
- Complexities of works in occupied properties
 - Interference with occupation
 - Insurance arrangements
 - Defects due to failure to maintain
 - Uncovering other defects in the building

**Building Liability Orders and
Associate liability**

Just and equitable

- **130 Building liability orders**
- (1) The High Court may make a building liability order if it considers it just and equitable to do so.
- (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.

Relevant liability

- 130(3) In this section “relevant liability” means a liability (whether arising before or after commencement) that is incurred—
 - (a) under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
 - (b) as a result of a building safety risk
- “building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from the spread of fire or structural failure

Associate

- 130(4) A body corporate may be specified only if it is, or has at any time in the relevant period been, associated with the original body.
- **131 Building liability orders: associates**
- (1) For the purposes of section 130, a body corporate (A) is associated with another body corporate (B) if—
 - (a) one of them controls the other, or
 - (b) a third body corporate controls both of them.
- Subsections (2) to (4) set out the cases in which a body corporate is regarded as controlling another body corporate

Associated persons

- Corporate X / Company Y
 - X possesses or is entitled to acquire:
 - 50% share capital in Y
 - 50% voting rights at general meetings of Y
 - 50% distribution if all income of Y were distributed
 - 50% assets of Y's on Y's winding up
- Corporate X / LLP Y:
 - X holds a majority of the voting rights in Y
 - is a member of Y and has a right to appoint or remove a majority of other members
 - is a member of Y and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in Y
- Actual control:
 - A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X's wishes.

Example of Vista Tower

- Relates to a Remediation Contribution Order
- "an organisation ultimately owned by RailPen"
- "The Secretary of State will also consider issuing an application for a Remediation Contribution Order against other entities associated with Grey GR including Railways Pension Trustee Company Limited (RailPen) and Railtrust Holdings Limited (Railtrust), requiring them to financially contribute to the remediation costs."

Associate issues

- Duties of care
- Contribution agreements
- Contingent liabilities
- Purpose of SPVs

Fire Safety: the Remediation Standard

'Fitness for habitation', the 'Developer's Pledge' and 'Martlet v Mulalley'

Olivia Jenkins

22 November 2022

Fitness for habitation

s148/149 Building Safety Act

- From 28 June 2022:
 - 15 year liability period prospectively re:
 - dwelling unfit for habitation due to installation of cladding products, construction products.
 - Marketing/supply/misleading statements/inherent defect/non-compliant with applicable requirements.
 - 30 year liability period retrospectively re cladding products
 - 1 year buffer for those close to end of 30 year period.
- S148/149 Building Safety Act – captures manufacturers/suppliers.
- Fitness for habitation?
- S1 DPA 1972: "duty to build dwellings property"; "fit for habitation when completed".

Fitness for habitation

Rendlesham Estates plc and others v Barr Limited [2014] EWHC 3968 (TCC)

[68] ...for a dwelling to be fit for habitation within the meaning of the Act, it must, on completion (without any remedial works being carried out):

(a) be capable of occupation for a reasonable time without risk to the health or safety of the occupants: where a dwelling is or is part of a newly constructed building, what is a reasonable time will be a question of fact (it may or may not be as long as the design life of the building); and

(b) be capable of occupation for a reasonable time without undue inconvenience or discomfort to the occupants

- Fitness for habitation in fire safety context – what is the standard?
- DPA liability periods – from 28 June: 15 years prospectively (s1, 2A) | 30 years retrospectively (s1)

Liability period for breaches of Building Regulations

- 15 years re buildings completed after 28 June
- Section 38 Building Act

Building Regulations and Building (Amendment) Regulations

- Post-Grenfell amendments: Building (Amendment) Regulations
- E.g:
 - Dec 2018: Ban on combustible materials in external wall (re buildings = 18m or more in height. Some exceptions re use).
 - Dec 2022: Ban on use of metal composite materials in external wall (re all buildings of any height or use).

Approved Documents

(Ref: Building Act 1984)

- Approved Doc B
- Guidance docs
- Section 7 Building Act: if it is alleged that a person has at any time contravened a provision of building regulations:
 - Failure to comply with a relevant approved document may be relied upon as "tending to establish liability", and
 - Proof of compliance may be relied on as "tending to negative liability"
 - Failure to comply with approved doc does not of itself = liability.
- Post-Grenfell amendments: further revision to ADB in Dec 2022
- What about fire safety requirements in a historical context?

The Developer's Pledge

remediation of life critical fire safety issues

- Applies to "life critical" fire safety issues as a result of construction or refurbishment of a building 11 metres or more in height since 5 April 1992.
- Commitment to remediate as quickly as reasonably possible to 'Standard':

"Buildings will be assessed and remediated proportionately to the standard as articulated in the PAS9980 methodology and other industry standards relevant to ensuring the building meets a life-critical safety standard, DLUHC will work with each Participant Developer... to agree the means of auditing and assuring this standard ("the **Standard**").
- PAS 9980 – methodology for assessing risk of fire spread across external walls.
- Exception = where only employed in capacity as contractor.
- Legally binding contracts are expected.

Martlet v Mulalley

[2022] EWHC 1813 (TCC)

- External wall system specified for installation:

Inner layer of combustible expanded polystyrene insulation boards fixed to the existing external wall with adhesive and supplementary mechanical stainless steel fixings, underneath two coats of combustible render, which had a reinforcing glass fibre mesh layer sandwiched between them. Horizontal mineral wool fire barriers were specified for installation at each floor level above the third storey.

- Contractually:

Design liability of an architect

Design and construction works - required to comply with applicable Building Regulations and related materials, including Codes of Practice, British Standards, manufacturer's and supplier's recommendations and applicable BBA Certificates.

- Claim = cost of replacement with non-combustible system + waking watch costs

Martlet v Mulalley

continued

1. System specified and installed = non-compliant
2. Installation defects = voids for fire to pass through / medium for fire spread / insulation not consistently fixed
3. Specification defects = no full scale test against BR 135 criteria
4. Test needed because:
 - I. BBA certificate was not enough to demonstrate compliance.
 - II. Approved Document B couldn't be relied upon because it gave no guidance on the system specified by Mulalley for installation.
 - III. In absence of applicable guidance in ADB = full scale test needed

Martlet v Mulalley

continued

- Due to non-compliance in design and construction:
 - Cost of replacement system awarded
 - Cost of waking watch awarded
- If only succeeded on installation case = cost of repair scheme would be awarded plus waking watch costs for a lesser time period.

Martlet v Mulalley

what does it tell us?

1. Starting point = contract and applicable statute by ref to building type.
2. Arguing others acted the same = no defence to professional negligence.
3. Re fire safety standards in external wall construction:
 - a) No material differences: Building Regulations 2000 and 2010.
 - b) There are material differences between Approved Document B 2002 and 2006.
4. Offer opportunity to inspect and remediate.
5. Proper measure of damages = cost of works necessary to repair or reinstate defects.
6. In this case = sufficient to demonstrate that non-compliance was effective cause of loss.

Remediation Standard

outstanding questions

- Fitness for habitation in fire safety context (esp re external wall construction)
- Different thresholds for remediation:
 - Developer's Pledge / PAS 8890
 - Fitness for habitation
 - Building Regs
 - = disputes.
- Defences to claims where 30 year limitation period applies:
 - Breach of right to fair trial?

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