

UK building safety – post Grenfell

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The Government's response to the Grenfell tragedy on 14 June 2017 has been multi-faceted – including immediate, interim and remedial measures for existing high rise buildings with ACM ; medium term including numerous advice notes, published responses to consultations and amendments to guidance; and long term, involving the development of a wider package of reforms for the future of building safety.

As part of this wider package, the most significant outcome, so far, has been the publication of the Government's draft Building Safety Bill which has far reaching implications for building owners, occupiers and those involved in the construction industry. The draft Bill was born out of the findings and recommendations of the Hackitt Review – its objectives being to learn the lessons from Grenfell and to remedy the systemic issues identified, by strengthening the whole regulatory system for building safety.

The key conclusion of the Hackitt Review was that the construction industry was 'deeply flawed', in need of a radical overhaul and the regulatory system simply 'not fit for purpose'. It should not be surprising therefore that this has triggered the biggest change in building safety for a generation.

The key afflictions of the construction industry identified in the Hackitt Final Report were: ignorance, indifference, lack of clarity on roles and responsibilities and inadequate regulatory oversight and enforcement tools. Evidence given in the last few weeks, as part of the on-going Grenfell Inquiry, has provided some stark illustrations of these failings:

- A 2013 email chain discussing cladding quotes, revealed why the supplier's non-fire resistant panels (used at the Grenfell Tower) were considerably cheaper than a rival firm's fire-rated and fire-retardant version: "[X] won't change their [polyethylene] core until they are forced to due to changes in the fire regulations, else [their panels] will become too expensive".
- An M&E consultant's 'recommendation' to use the combustible insulation product in question (based on the desire to meet an 'aspirational efficiency target' for the building) was later taken by other key consultants as a 'tacit endorsement' of that product. Assumptions were mistakenly made and then critically relied upon, despite a later admission that the consultant had no experience in and had given no consideration as to the product's suitability for use on a tower block.
- The project manager of the specialist cladding sub-contractor overseeing installation said that although he had read parts of Approved Document B of the Building Regulations (which deals with fire safety), he found the document 'confusing'.

These examples epitomise what was so wrong: apathy, priority of price over safety, siloed thinking, lack of co-ordination, oversight and responsibility and, crucially, lack of basic understanding. A radical and immediate rethink of culture and practice was called for, together with the need for greater clarity and accountability over who is responsible for a building's safety during construction, refurbishment and its on-going management (i.e. the whole life cycle of a building).

As mentioned above, the draft Building Safety Bill (published on 20 July 2020 for 'pre-legislative scrutiny'), forms part of the long term package of building and fire safety reform . The draft sets out wide ranging changes relating to the design, construction and management of all buildings with more stringent requirements for 'higher risk' buildings (i.e. residential buildings of 18m or over). It establishes a new Building Safety Regulator (which will operate within the Health and Safety Executive) overseeing construction professionals and their competence; introduces a new 'duty holder' regime (similar to that under the CDM Regulations) and tougher sanctions (including criminal liability) for non-compliance – i.e. the 'real teeth' the Hackitt Review deemed necessary to 'deliver the right behaviours'. The Bill has, however, already raised the concerns of some, who welcome its intention but question its contents. RIBA, for example, have raised 'fundamental concerns' relating to the delegation of duties and scope of the regulatory system. It will be interesting, then, to see how the draft bill fairs as a result of its pre-legislative scrutiny and what further changes to the existing system may follow.

The Government's message, however, is that the industry should not wait for legislative change to be fully implemented before action is taken.

Following a consultation this time last year, amendments have been made to the guidance in Approved Document B (fire safety) providing that sprinkler systems should be fitted throughout blocks of flats of 11m or higher (the previous height threshold was 30m) and wayfinding signage for the fire and rescue services should also be provided in such blocks. The Amendment to Approved Document B comes into force shortly, on 26 November 2020, and will apply to any buildings undertaking building works unless the works have started on site (or an initial notice, building notice or full plans have been deposited by 26 November 2020 and work has started on site by 29 January 2021). Although there is no statutory obligation to adopt any solution included in an Approved Document (as it is statutory 'guidance'), designers must demonstrate a similar level of safety to that proposed in the Approved Documents. Generally, therefore, it will be easier to demonstrate compliance with Building Regulations if the design is (rather than isn't) in accordance with Approved Document B. We have already seen the resulting impact on projects which now fall within the scope of these changes being felt by developers in the way of significant additional costs and time involved in ensuring that their design complies with the new guidance.

The Hackitt Review called for more rigour and oversight at the front end of the process together with a drive for quality and good outcomes rather than the lowest cost. It is good news for all that the much needed change in culture and behaviour throughout the industry is underway but this will also, undoubtedly, be accompanied by impacts on the cost and time involved in delivering projects.

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