

THE LAWYER
AWARDS 2018
LAW FIRM OF THE YEAR

BHSEA

Building Safety Reform

- What's coming?

Sean Elson, Partner



Pinsent Masons

Agenda

- Overview of building safety reforms
- Development and delivery of new residential buildings
- Management and operation
- Managing building safety

OVERVIEW OF BUILDING SAFETY REFORMS

THE LAWYER
AWARDS 2018
LAW FIRM OF THE YEAR

 Pinsent Masons

What does building safety mean?

A post Grenfell response

Don't think only in terms of fire – wider structural safety integrity as well

Existing H&S and fire safety duties – CAR/Lifts/Electrical safety/RRO remain unchanged

Clear linkage with wider duties – in particular CDM 2015 and Management Regulations

The safety of buildings has a real world consequence

Recent example - Birmingham

Al-Miraj &
Builder Peter
Lakin

Ceiling collapse
on 400 primary
school pupils

Al-Mriaaj fined
£12k plus £3k

Builder – 4
months
suspended
sentence

Framed around
CDM and
Building
Regulations

Building Safety Bill Timeline

Dec 17 - Hackitt Interim Report

May 18 - Hackitt Final Report

July 20 - Introduction of Building Safety Bill

July 21 – Bill receives Royal Assent

? – secondary legislation and guidance issued

? – new buildings brought into the regime

? – existing buildings brought into the regime

Reform of Building Control

- Applies to **all** buildings
- New role for HSE
 - Overseeing competence of inspectors
 - Updates to building regulations
 - Updates to approved documents
- Enhanced enforcement powers
- Increased penalties for non-compliance
- Personal liability for directors and senior managers

New Building Safety Regime

- Applies to Higher Risk Buildings – initially buildings with residential units and over 18 metres or more than 6 storeys (with some exceptions)
- A new regulatory framework for fire and structural safety overseen by the Health and Safety Executive which will drive culture change and new behaviours
- A clear model of risk ownership - clear responsibilities for Client, Designer, Contractor, Accountable Person and Building Safety Manager
- Outcomes based - not prescriptive rules and complex guidance

Model for future enforcement

- Improvement/Correction Notices
- Prohibition Notices
- Withdrawal or conditions attached to building safety certificate
- Civil and criminal sanctions:
 - Carrying out work without Gateway approval
 - Not applying for a building safety certificate
 - Non-compliance with certificate conditions

DEVELOPMENT AND DELIVERY OF NEW RESIDENTIAL BUILDINGS

THE LAWYER
AWARDS 2018
LAW FIRM OF THE YEAR

 Pinsent Masons

Gateway System – Overview

- Duty holders must demonstrate how they are ensuring building safety to gain approval of the new regulator to proceed to the next stage to development.
- Gateways:
 - Gateway 1 – Before planning permission is granted
 - Gateway 2 – Before construction begins
 - Gateway 3 – Before occupation begins

Who has duties during design/construction?

- During design/construction and refurbishment:
 - Aligned with CDM
 - Client, Principal Designer and Principal Contractor
 - Over-arching duties to ensure building safety and to certify compliance with the Building Regulations

Gateway 1 – planning permission

- Will apply to buildings over 18 m
- A Fire Statement must be submitted with the planning application
- Local authority to consult the FRS (should fire authorities be statutory consultees?)
- Focus is on FRS access in an emergency and water availability only
- Other developments “in the vicinity” of such buildings

Gateway 2 – Before Construction

- Greater dialogue with the regulator at an early stage
- Submission of:
 - **Full plans** produced by the PD with detailed specification in relation to fire and structural safety and how risks will be managed
 - **3D digital model of the building** “as planned” including products to be used
 - **Fire and Emergency File** building on the Fire Statement, to be prepared by the PD and updated during construction
 - **Construction Control Plan** – by the PC setting out how compliance will be achieved during construction and change control procedures

Gateway 2 - continued

- An inspection regime must be agreed with regulator
- No building work until approval obtained from the regulator – a “hard stop”
- A phased approach is possible for complex projects
- PC must consult Client and PD before deviating from original full plans. These are recorded in the Change Control Plan
- The regulator must approve any proposed “major changes” in advance
- The end of value engineering?

Gateway 3 – Before occupation

- Declaration of compliance with Building Regulations
- Duty holders to hand over as-built building safety information to the accountable person
- Registration of the building
- Registration of the accountable person and appointed building manager
- Submission of the safety case
- Building assurance certificate – with conditions attached
- No certificate, no occupation

MANAGEMENT AND OPERATION OF BUILDINGS

THE LAWYER
AWARDS 2018
LAW FIRM OF THE YEAR

 Pinsent Masons

Building Safety Duty Holders

- During occupation:
 - New “**accountable person**” – usually the owner
 - An appointed **building safety manager**
- Only the building safety regulator may transfer the Accountable Person and Building Safety Manager accountability under the building assurance certificate to a third party

Existing Buildings

- Gateway 3 applied on a phased basis
- Safety case required
- An intrusive survey is recommended as a first step to build an accurate record to support the safety case, e.g. a Type 4 fire risk assessment
- Potential for claims as defects discovered
- Major refurbishment will trigger Gateway 2 process

MANAGING BUILDING SAFETY

THE LAWYER
AWARDS 2018
LAW FIRM OF THE YEAR

 Pinsent Masons

Competence

Competence Steering Group - 'Setting the Bar'

- overarching system of competence with four key elements:
 - a new competence committee overseen by the Building Safety Regulator
 - a national suite of competence standards –12 new sector-specific frameworks
 - independent assessment and reassessment against competence standards
 - Accreditation of assessors.

Competence (2)

- British Standard for an overarching competence framework
- PAS standards for three regulated roles – PC, PD and BSM
- Registers of competent individuals maintained by professional bodies
- Registers of competent organisations maintained by HSE

Building safety management system

- Team structure
- policies and procedures
- reporting and monitoring
- record keeping
- directors' duties and named individuals
- incident response protocols

And there's more

- Consultation ended on 12 October of revisions to the Regulatory Reform (Fire Safety) Order 2005
- Could result in further requirements imposed on responsible persons
- Recognises competency issues but does not solve them
- Potential for greater enforcement – potentially an ability for a fire authority to charge duty holders for enforcement
- This will apply much more widely than the current scope of the Building Safety Bill

Questions