



Construction Management CPD Series

Building Safety Act through the lens of Contractor/PM

MARK WAKEFORD, SPEAKING ON BEHALF OF THE NATIONAL FEDERATION OF BUILDERS (NFB), PROVIDED AN UPDATE ON THE **BUILDING SAFETY ACT (BSA)** A YEAR AFTER ITS FULL IMPLEMENTATION. HE HIGHLIGHTED ITS **SIGNIFICANT IMPACT** ON THE CONSTRUCTION INDUSTRY, PARTICULARLY FOR **REGIONAL CONTRACTORS**.

KEY POINTS FROM THE DISCUSSION

- **Industry Impact & Cultural Change:**
 - The **Grenfell disaster** was a wake-up call, emphasizing the need for improved building safety and **cultural change** in the sector.
 - The **Building Safety Act** has triggered widespread discussion and reforms, marking a shift in industry responsibility and accountability.
 - Contractors now recognize that **finger-pointing and lack of responsibility** in past projects is no longer acceptable.
- **Major Changes Introduced by the BSA:**
 - **New building control regime** for high-rise buildings and stricter **building control regulations** across all projects.
 - **Three new regulators:**
 - **Building Safety Regulator (BSR)**
 - **Office for Product Safety and Standards**
 - **New Homes Ombudsman**
 - **Registration of building control professionals** and enhanced **Architects Registration Board** powers.
 - **New duty holders** (clients, principal designers, principal contractors) with **personal accountability**.
 - Strengthened **fire safety laws** and an upcoming **Building Safety Levy** to address unsafe buildings.
- **Challenges & Progress in Implementation:**
 - **Information flow:**
 - Duty holders are now legally obligated to share relevant safety information.
 - **Golden thread** and **mandatory digital records** for high-risk buildings ensure transparency.
 - **Competency Requirements:**
 - Individuals must have **Skills, Knowledge, Experience, and Behaviours (SKEB)** to be deemed competent.
 - **Corporate competence** (ensuring entire firms are qualified) is still being debated.
 - **Client Awareness:**
 - Many clients are unaware they **now have legal responsibilities** under the BSA.
 - Unlike contractors and designers, **clients lack formal competency standards**, creating confusion.
- **Practical Issues in Implementation:**
 - Even **small projects** now require an **accountable person** to sign off designs and construction.
 - **Finding competent professionals** to meet new regulatory requirements remains a challenge, especially for smaller projects.
 - The **regulator is allowing time** for the industry to adapt due to the scale of changes.
- **Future Developments & Industry Outlook:**
 - A **Government Construction Advisor** is being reinstated to bridge gaps between **policy and industry**.

- A **contractor registration system** is being considered, but concerns remain over how it will be enforced and its **real-world effectiveness**.
- The **NFB is positioning itself** as a leading body for professional, competent contractors in response to the Act's changes.

CONCLUSION

The **Building Safety Act** has driven **major reforms**, and while **transactional changes** (new regulations) are being adopted, the **cultural shift** is ongoing. The **industry still faces challenges** in fully implementing the Act, especially around **competency standards, client awareness, and contractor registration**. However, there is broad support for raising building standards to ensure **safety and accountability**.

Q&A SUMMARY

Question: What are the challenges facing small organizations in light of the Building Safety Act and its defined processes?

Answer: The key challenges facing small organizations include the struggle with the "design and build" model. Dame Judith Hackett pointed out that this model may not survive in its current form, emphasizing the need for consistent design processes and accountability.

A specific challenge is subcontractor design, where contractors are expected to manage design changes without the necessary skills or liability, especially in fixed-price contracts. This often leads to subcontractors being asked to handle design aspects without proper design responsibility, creating issues.

The solution could lie in standardizing product designs and ensuring more systemized, reliable designs that duty holders can depend on.

Question: In Australia, contractors must go through formal qualifications and interviews, but in the UK, is there a move towards formalizing training for the industry?

Answer: The speaker, a Chartered Director, expressed concern over the lack of professional qualifications at the board level in some UK companies, citing ISG as an example where no professional directors were on the board despite the company's significant financial troubles. They criticized the existence of grandfather rights for board directors while such rights are eliminated for other industry positions.

The speaker emphasized the importance of evaluating whether boards of directors are fit for purpose, especially given the insolvency of some large businesses and risky financial practices. They suggested that while the Building Safety Act addresses organizational competence, they are doubtful the industry will extend this focus beyond organizational to individual competence.

Question: How can the NFB and individuals improve their understanding and competence regarding the Building Safety Act?

Answer: The NFB is actively promoting the professionalization of its members and has resources like the "Ask NFB" system, open to the industry for support and answering questions. Additionally, organizations such as Construction Excellence Midlands are also key players in educating the industry. The Building Safety Act will encourage breaking down the industry's silos, promoting better collaboration between contractors, clients, and supply chains. It's emphasized that clients need to take more responsibility for decisions traditionally made by contractors. The speaker stresses the importance of professionals staying informed, highlighting that ignorance is not an excuse in the modern, information-driven age. They mention resources like short courses at Nottingham Trent University to help professionals stay up to date on current changes. The Building Safety Act is seen as a game changer for the industry, and while past attempts at reform (e.g., the Bangalore and Network reports) had limited impact, the Act is driving significant cultural changes. The speaker warns against merely treating the Act as a "tick-box" exercise like previous regulations, urging professionals to take ownership and truly understand its implications.

Question: Is the correct person being named as the duty holder for contractors? Should it always be the CEO, given their ultimate responsibility?

Answer: The responsibility for signing off on a project does not always need to fall on the CEO, particularly in larger organizations. It should be the most competent individual, such as a project manager or site manager, depending on the project's size and complexity. The key is selecting someone with the right competencies, based on their skills, knowledge, experience, and behaviours. It's important that the person signing off on the project is involved in the work and understands it thoroughly. There have been cases where individuals unfamiliar with the project have signed off on it, only to face problems later in court. This process will drive better control within organizations. The individual signing off will need to ensure that everyone involved in the project, including the supply chain, has done their part. While smaller projects may be easier to manage, larger, high-risk buildings will require extensive quality control and process assurance. The role of professionals and their accountability will grow, with organizations like RICS and the Institute of Civil Engineers facing more scrutiny regarding their continuous professional development (CPD). Ensuring that CPD is relevant and well-maintained will become increasingly important for professionals.

Question: As 'named duty holder', if contractor staff move employers, should they take out individual Professional Indemnity (PI) insurance to cover long-term liability?

Answer: It is unlikely that individuals would need to take out their own personal PI insurance when moving employers. PI insurance typically covers employees while they are employed by an organization. The responsibility lies with the organization, not the individual. However, if a claim is made after the individual has moved to a new employer, the coverage details may become unclear, and it is important to consult with a professional indemnity insurer for clarification. There have been past cases where professionals, like valuers, were sued personally after leaving an employer, suggesting that while employer PI coverage may protect employees, personal liability could still arise. This raises the concern of setting a precedent for personal PI policies. While it is challenging to manage PI coverage for individuals after they leave an organization, the idea of everyone needing personal PI insurance could lead to a complex and costly situation. Therefore, the hope is that individuals would not be required to take out personal insurance.

Question: Would you agree that 'Change or Variations' are going to be harder to get through the system now (approvals in writing by Building Regulations PD and Building Control), and that this could negatively impact project progress, cost, and quality?

Answer: Yes, inevitably, getting changes or variations through the system will become harder, especially significant ones. The process of obtaining written approvals from Building Regulations PD and Building Control will slow things down. This can disrupt the momentum on-site, which is crucial for maintaining project schedules and budgets. Delays from variations lead to increased costs and delays for everyone involved. To address this, projects will need much more detailed design before construction begins. As Dame Judith Hackett highlighted, the traditional model of quickly placing orders with contractors and having them on-site immediately is no longer feasible. Therefore, the concerns about the impact of changes on project progress, cost, and quality are valid.

Question: There seems to be a drive for contractors to be more competent about building regulations, but there is a conflict where contractors must follow designs strictly, and cannot use their own competence to make changes. What are your thoughts on this?

Answer: This is a valid concern. Contractors are often expected to follow designs exactly, and making changes on-site could risk them taking on a design role, which is not allowed. However, in practice, issues arise when contractors encounter problems on-site, such as with M&E systems, where decisions may need to be made on-site. The system must allow for such adjustments, but this becomes challenging as it requires a clear communication loop with designers and approval processes. There is a duty to warn designers and clients if issues arise, but the process to handle these changes efficiently is not fully developed yet. With increased use of digital design and checks, the process could be sped up, but there are concerns that current contractor and supply chain processes may not be equipped to handle the speed required. Furthermore, contractors must be confident that the design is adhered to, and any changes need to be approved upstream. Building control is not responsible for the design, only for auditing the "golden thread" of information. The role of contractors and clients in handling these changes is crucial, and clients must understand that delays and cost increases may arise, especially in high-risk buildings awaiting regulatory approval. There are concerns about many projects unnecessarily going through the Building Safety Regulator, further congesting the system. Finally, if building regulations are expanded to include smaller buildings (e.g., those under 18 meters), it will place significant pressure on

resources, making the process even more complex. Therefore, clear, consistent advice and processes are critical for navigating these challenges.

Question : Will contractors price for increased risks, costs, and time due to discovered issues on-site during tender?

Answer: Contractors cannot price in risks for issues that arise on-site that are not their fault. However, contractors are advised to inform clients of potential risks related to poor design or delivery. While the hope is that there will be no additional costs, contractors are concerned about the increased training costs for competency, which could raise tender prices. The risks to cost and time depend on the type of contract used, such as JCT (lump sum fixed price) versus NEC (which assumes a deeper pocket for unforeseen costs). The potential challenges for clients are greater when rush jobs are involved.

Question: Can you elaborate on NFB's approach to competency and how it will assess the adequate level for BSA duties?

Answer: NFB supports the work of the Construction Leadership Council (CLC) and the Building Safety Regulator in developing industry-wide standards for competency. Employers are responsible for confirming the competency of individuals, as it varies depending on the role. Guidance and standards are being developed to support this, but it will be up to employers to demonstrate competency. The jury is still out on how these standards will be used, but a solution may involve an approved standard for demonstrating competency. There is a significant effort to address these challenges within the industry, but the effectiveness remains to be seen.

Question: Why might the design and build approach struggle in the future, as mentioned by Dame Judith Hackett?

Answer: The design and build model may struggle because once the design is handed over, commercial pressures begin to influence the quality, which can affect the final product. This is illustrated by the Grenfell Tower tragedy, where cost-cutting in design contributed to the building's inability to withstand the fire. Design and build still offers some advantages, such as speed, but with the Building Safety Act, these advantages might be overshadowed by increased scrutiny and the need for more detailed design processes. The accountability for design and delivery needs to be clear, and the system may not work as efficiently in high-risk buildings due to the regulatory challenges.

Question: Can contractors afford the PI (Professional Indemnity) insurance for design, and can they prove their competency?

Answer: Most contractors are covered for design under their professional indemnity insurance, which assumes that they appoint competent designers, just as they do with subcontractors. The insurance covers the contractor because they are outsourcing design work to competent professionals. This practice is expected to continue in the industry, and there is no indication that it will change significantly.

Question: How are the rigid change control requirements for higher-risk buildings affecting contractors' approach to risk, programme, and design changes during construction? Will this limit contractors' ability to add value through design optimizations?

Answer: The rigid requirements, especially the 1st and 2nd gateways, are causing challenges for funders and developers. High-rise buildings, now categorized as high-risk under the Building Safety Act, involve a lot of upfront design work, making the risk more defined. This stricter approach will likely affect the project programme and may reduce the contractor's ability to optimize design during construction. However, early contractor involvement (ECI) is seen as a way to manage this risk by involving contractors in the early phases of design, which allows them to provide input and help optimize the design based on their expertise.