



THE NEW BUILDING GATEWAYS: YOUR QUESTIONS ANSWERED

Webinar follow up

KEY TAKEAWAYS

1. Preparation of safety cases — One size doesn't fit all. There's no 'template' for preparation of a successful safety case. Clients must satisfy themselves that they understand the particular risk profile of every individual Higher-Risk Building (HRB).
2. The new gateway regime requires a change of mindset. It's more than just satisfying regulators. Clients should focus on how they'll be confident that they'll complete a safe HRB.
3. Costs of information and design works will be incurred sooner, but the work required to deliver a safe HRB should remain the same. Procurement and funding models should adapt. Frontloading may ultimately improve predictability and could even improve timings overall.
4. To take advantage of transitional arrangements, projects need to be sufficiently progressed by 6 April 2024. Clients may need to take advice on what that means in relation to individual projects.
5. Competency — Clients must declare contractor competency. They should ask relevant questions of the Project Team to confirm they have the right multi-disciplinary team for the development.

For more detail [click here](#) to watch our panel discussion.

CONTACTS

If you have any queries about the Building Safety Framework and how it may affect you, or require assistance with training and/or updating policies and procedures, please get in touch with one of the team:



DEBORAH WALLS

Director

Construction & Engineering

+44 (0)113 283 4081

deborah.walls@walkermorris.co.uk



HOLLY CARTER

Associate

Construction & Engineering

+44 (0)113 283 2699

holly.carter@walkermorris.co.uk

Is there a formula or a template for what makes a successful safety case?

Currently the answer to this is 'No', and the Building Safety Regulator (BSR) has no intention of producing templates. The best advice is to be curious about your building. Think about what you need to know to be assured that you're identifying your building safety risks (fire spread and structural safety) and that you're managing those risks. The range and variety of buildings means that one size could never fit all. There's guidance for occupied buildings here [Occupied buildings - Building safety - HSE](#); with specific guidance on safety cases here [Safety case for a high-rise residential building - GOV.UK \(www.gov.uk\)](#); and more resources here [Resources - Making Buildings Safer \(buildingsafety.campaign.gov.uk\)](#).

How can we deal with the buildings where there is little to no documentation regarding the original construction materials/design?

The BSR understands these are real issues and a degree of pragmatism needs to be applied. The question remains the same "How do you satisfy yourself that you have understood the safety risks of this building?". A good starting point is knowing what you have, where you can find any other information and what assumptions can logically be made from this. Establish what you need to satisfy yourself (not the BSR) that you have taken steps to understand the building's risk profile and can deliver a safe building. It is not expected that all data will be available from day 1 but, has the accountable person demonstrated that they understand where those gaps, how significant the gaps are and that they have a plan to fill them?

What is the current nervousness about the application process and can the BSR help understand this?

There's now commitment to providing significantly more detail around how a building will be designed and constructed when submitting applications to the BSR, involving many more disciplines. Contrary to perceptions, there won't then be a

period of 12 weeks where the project stands still whilst the BSR considers the application.

The process will be collaborative. It's expected that the BSR will undertake a preliminary review of the application in which it will meet relevant parties, discuss what the BSR needs and how the applicant will provide it. The client can still do preparatory work on scaffolding and surveying. Formal clarification requests can be made and the BSR will consider whether it can approve the application in 8 weeks (for work to an existing higher risk building (HRB)), 12 weeks (for a new HRB), or longer (and, if so, by how long), dependent on complexity and clarification requests issued. The BSR will take an active role in raising requests regularly for clarification from the design team. It will be a conversation, but applicants are advised to read Schedule 1 to [The Building \(Higher-Risk Buildings Procedures\) \(England\) Regulations 2023 \(legislation.gov.uk\) \(HRBR 2023\)](#), which sets out, in plain terms, what's expected from the documents submitted as part of the process.

Front loading of costs is a worry, particularly if approval can't be obtained and the project is shelved. Otherwise, expense outlaid much earlier should not, in theory, be an issue. The project team need to know that what they are proposing to build is compliant and can be built properly. Knowledge is expensive, but cheaper than remediating post-completion. Funding models need to catch up with the new approvals landscape. Overseeing bodies within the industry are publishing guidance on different funding models which could be overlaid on a project. The government can't instruct people on how to fund their projects, but funding models will adapt. The industry will have more confidence that the timescales will become more predictable, designs will be nailed down earlier and less likely to change.

Are there any patterns developing in the current applications which could provide guidance to the industry?

In short 'No', as far as major refurbishment or new applications are concerned. The industry is waiting for that one HRB new development

to go first. Smaller developments and works to existing applications are, however, allowing the BSR to look more closely at the Schedule 3 HRBR 2023 transitional provisions which don't cover all arrangements, and to decide where applications fall within the HRBRs. The BSR is taking a pragmatic approach, but buildings that haven't made sufficient progress are going to be coming to the BSR. Those with building control arrangements in place are advised to check the progress of building works, and the transitional arrangements in Schedule 3 to make sure they understand which provisions will apply.

Looking positively, smaller applications are allowing the BSR to test the new regime without losing sight of the key questions which need to be asked, of whom and by what means, and how to build a multi-disciplinary team (MDT) for the approval process.

Currently, the BSR has cases going through which can be anonymised and used as good examples of what applications should include.

Has how a professional put together a fee proposal for a client changed in light of the new regulatory framework?

A Fire Engineer's fee proposal will be very different now. There's a lot more work required earlier, with more collaboration. That additional work will happen early in the process but, overall, essentially the same work should be required as previously to ensure that what is built is a compliant, safe building.

Project teams should work through the prescribed documents and the forms and create their own templates for future applications. It will take longer to compile applications in the short term, but in the long term it will be easier for the BSR to review and approve applications. If the process takes longer, it will cost more. Again, overall, work to be done should still be the same, but the time when much of that work is to be undertaken has been brought forward. This more anticipatory approach should, hopefully balance the need to re-adjust budgets through the

construction phase to cater for unexpected/emerging challenges.

Enquiries from those new to development of HRBs suggest optimism that, now is a good time to become involved, when the industry as a whole is looking more carefully at how the new regime will work. There's a lot of information being published from the likes of RIBA and the CIAB, which makes explaining the process much better, and which gives guidance on submissions to demonstrate competency in HRBs.

How does the role of architect sit within the new regime?

The application phase was previously considered a Principal Designer (PD) role, but given the engagement of the full design team much earlier, this now speaks to an architect's core skill set. Previously, clients would have engaged a PD. Architects are now well placed to undertake this work, but some larger PDs have been reticent to engage with this change pending clarity on project liabilities. That has now been clarified such that where the PD is not the designer, liability for the design rests with the architect and PDs just need to demonstrate that they've taken reasonable steps to check compliance.

What work is covered, or not, by the transitional arrangements?

For work on a HRB to be caught by transitional arrangements, either an initial notice must have been given or full plans deposited with the local authority before 1 Oct 2023 and the building work must be sufficiently progressed by 6 Apr 2024. 'Sufficiently progressed' for new

HRBs means foundation works, piling or pouring concrete has started. For existing buildings, the permanent works need to have been started, not just temporary works. Scaffolding work in connection with planned/applied for works is not permanent works.

When would remedial fire safety works be considered as 'emergency works'?

The BSR will approach any such application looking to understand why the work was urgent and the nature of the risk to the health and safety of occupants — particularly vulnerable occupants. Why was it impractical to go through the new procedures? What's the urgent risk? When did the risk come to light? Are there other measures in place, or which can be put in place, to manage or mitigate the risk? How long will the work take, weighed against the time it will take to follow procedure? Applicants will have to consider these issues in deciding whether the work meets the threshold for emergency repairs.

In terms of practical examples, works which will take a long time planning and then, say, 11 months to complete are unlikely to meet the threshold, particularly if other measures could circumvent that risk (such as, fire safety risks mitigated by waking watches, or a change to an evacuation policy). Similarly, an applicant with knowledge that works were needed to their HRB who waited for a notice from the Fire and Rescue Service to address fire safety is unlikely to be given consent under an emergency works application. Undertaking work as emergency repairs is not a way to avoid the

regime. You'll still need to apply to have the work regularised once it's complete. At that point the BSR may take such steps as it thinks appropriate to ascertain whether any additional work is necessary to comply with building regulation requirements. This can include requiring work to be laid open.

How do you determine if works are required to individual parts, or all enterprises sharing the 'Building', and how do you determine an appropriate risk profile for the building as a whole?

Firstly, define the building. Does it fit under the HRBR 2023? The definition of a 'building' is different for new buildings and existing HRBs.

During construction, structurally connected elements such as shared foundations and basement car parks make the HRB a single building. When completed, this may change. Consideration should be given to regulation 4 (6) of the HRBR 2023 and the definition of 'independent sections'. If there's a connecting element to separate parts of the building, but this is not commonly used or doesn't access a part of the building with residential units, then they are considered independent sections. For example, a single tower building with a ground floor retail outlet and residential units in the storeys above could be linked during construction, but once completed, would be deemed as independent sections. The risk profiles for each would be very different. Guidance is available [here](#).

The purpose of the HRBR 2023 is to establish who has a building subject



to a safety case and who is the duty holder. It's necessary to determine which in-occupation buildings should fall within part 4 of the Building Safety Act 2022 (BSA) to manage building safety risk. In the above example, the residential part of the building might use its escape route through the ground floor unit, and there's a duty on the 'accountable person' to communicate, cooperate, and coordinate with the 'responsible person' to build the safety case to be relied upon. The accountable person would need to demonstrate suitable and robust arrangements to support that part of their fire strategy in the safety case.

What are the levels of competency required for the principal designer and what is the client's duty to assess this?

There are two levels of competency to consider. The competency of the individual, and the competency of the organisation.

Competency will depend on the project, as HRBs include anything from residential towers to hospitals. The designer will need to assess their own competency for each individual project, and their organisation will need to confirm capacity to carry out design work in accordance with the HRBR 2023.

Clients will have to consider the competency of the individuals they instruct. They'll need to satisfy themselves that they've engaged a competent design and build team. They'll need to request evidence of competency, which the design and build team will need to provide in writing. When the client applies to the BSR, it will need to advise what steps it's taken to ensure the competency of the design team.

The client will be under a duty to request and interrogate details of any serious infractions imposed on a member of the MDT as part of assessing competency. An infraction itself may not be as important as analysing how the professional learnt from that. Clients need to be familiar with what's considered an infraction and check such things as the public record.

On a positive note, our expert panel suggests the new regime may have a positive effect on professional indemnity insurance and premiums, as insurers become more confident that design work on HRBs will be correct.

What is considered a serious infraction?

Consideration of any serious infraction will need to be included within the competency statement of an HRB application. The client should set out what arrangements it has in place to check for serious infractions.

The government's response to consultation on the new regime explains:

1. 'A serious infraction means that within the previous five years, the person or organization being considered for appointment has been subject to any of:
 - 1.1. i. The issue of a compliance notice in relation to contravention of Part A (structural failure) or B (fire safety) of Schedule 1 to the Building Regulations 2010;
 - 1.2. ii. The issue of a stop notice in relation to a contravention any requirement of, or imposed under, the building regulations;
 - 1.3. iii. The conviction for any offence under the Building Safety Act 2022, Building Act 1984 or the Regulatory Reform (Fire Safety) Order 2005;
 - 1.4. iv. The conviction of an offence under the Health and Safety at Work etc. Act 1974;
 - 1.5. v. A finding by a formal inquiry of behaviour that directly resulted in loss of life, the deliberate misleading of customers or amounted to the failure to meet regulatory requirements.'

We are planning external works to an HRB and have a detailed design almost ready to submit for Gateway 2 approval. Will we, as a client, need to submit our Building Safety Case concurrently? Is this required for approval?

No. The Building Safety Case doesn't have to be submitted to obtain Gateway 2 approval. They are two

completely separate parts of the new regime. The building control approval application is part of the new building control regime for HRBs, under the Building Act 1984 and Building Regulations. A safety case, and the requirement for a safety case report, is part of the new regime for occupied buildings under the BSA.

Will the BSR's expectation be that a design team also submits (as part of an application for Gateway 2) a full design demonstrating that a fire alarm and detection system meets that standard - i.e. more detail than just a definition of the system performance/objective?

The level of information required to be submitted as part of the Gateway 2 application will depend on the wider context of the building/development at the center of the application. It's anticipated that, as a minimum, a greater level of information will be required than just stating a performance specification. That being said, if the development is a relatively simple one and the level of information required for the fire detection / alarm system is limited to the performance specification, then the information on the generic device types and location as well as a simple cause and effect protocol may be all that is required. Where the development is more complex, the level of information required will be greater, for example to include: confirmation of specific devices on the network, detailed cause and effect schedules, any management arrangements to support the system, and the like. Each application will be appraised on its own merits and should be supported by suitable and sufficient information. The bottom line is that the submission should provide enough information to demonstrate that, if built, the work will comply with the applicable building regulation requirements.

For more information on Gateway 2 applications generally, please see our [recent briefing](#).



www.walkermorris.co.uk
T +44 (0)113 283 2500
F +44 (0)113 245 9412

Walker Morris LLP
33 Wellington Street
Leeds
LS1 4DL

