

Written evidence submitted by the Construction Industry Council [BSB 133]

A. About the Construction Industry Council (CIC)

1. The CIC is the umbrella organisation for the professional bodies serving the built environment. At the time of this submission the CIC has 34 Member organisations, 10 Associate members and 33 Honorary Affiliates. A full list of all members can be found via this link:

<http://cic.org.uk/about-us/cic-members.php>

2. In addition the CIC owns a number of organisations that are relevant to the essential issue of building safety, which are listed below:
 - **CICAIR Ltd** (a wholly owned subsidiary)
 - **Considerate Constructors Scheme - CCS Ltd** (jointly owned with the Construction Products Association)
 - **Building a Safer Future Ltd** - the company set up by CCS Ltd to manage the Building Safety Charter, developed by the Early Adopters Group
 - **Constructionarium Ltd** - a company offering experiential project-based learning for construction undergraduates
3. We would draw particular attention to **CICAIR Ltd**, which is the body designated by the Secretary of State in England, and Welsh Ministers in Wales, to maintain and operate the Approved Inspectors Register. CICAIR Ltd has responded separately to the pre-legislative consultation.
4. Approved Inspectors registered with CICAIR are qualified to undertake building control work in accordance with Part II of the Building Act 1984 and the Building (Approved Inspectors etc.) Regulations 2010.
5. The CIC is actively engaged in a number of Building Safety initiatives including:
 - The CIC established an **After-Grenfell Expert Panel** in July 2017, which has subsequently become a permanent **Building Safety Committee**;
 - Through its Chief Executive, Graham Watts OBE, the CIC has been a member of the **Industry Response Group (IRG)** set up by the MHCLG immediately after the Grenfell Tower tragedy;
 - The Chief Executive has chaired the **Competence Steering Group (CSG)** set up by the IRG in August 2017, which has produced two reports aimed at enhancing the level of competence for all those engaged in designing, constructing and managing higher-risk buildings: 'Raising the Bar', an interim report, published in August 2019; and 'Setting the Bar', to be published on 29 September 2020;
 - The Chief Executive also chaired the Working Group established to look at the issue of competence as part of Dame Judith Hackitt's

Independent Review of Building Regulations and Fire Safety, which led to the **'Building a Safer Future'** report;

- Together with Peter Caplehorn, CEO of the Construction Products Association (CPA), the CIC Chief Executive co-chairs the Building Safety Workstream of the **Construction Leadership Council (CLC)**. The Chief Executive is also a member of the CLC covid-19 industry task force, which has met regularly through the pandemic;
- Through the IRG, the CIC is directly involved in fortnightly meetings with the PMO responsible for the **ACM Remediation** programme;
- The Considerate Constructors Scheme, which - as noted earlier - is co-owned by the CPA and CIC has been given responsibility for managing and developing the **Building Safety Charter** and has set up a subsidiary company for this purpose;
- The Chief Executive has attended meetings of both the **Industry Safety Steering Group (ISSG)** and the **Independent Expert Panel** to give updates on the above activities;
- Both CIC and CICAIR Ltd are active members of **The Future of Building Control Working Group (FoBCWG)**, which also includes the LABC, the ACAI and the main professional bodies concerned with the qualification of building control surveyors (CABE, CIOB and the RICS), all of which are members of CIC. We support the recommendations laid out in the FoBCWG [published report](#) on the future of the building control profession. The Future of Building Control Group has made a separate submission to the pre-legislative consultation.

B. How well does the Bill, as drafted, meet the Government's own policy intentions?

1. The CIC welcomes the sustained commitment of Government in bringing forward the draft Building Safety Bill as an enabling mechanism to implement 'Building A Safer Future', Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, which CIC has supported unreservedly.
2. There has been a logical and systematic approach to developing effective policy to ensure that people are safe (and feel safe) in their homes, which has involved appropriate consultation with all stakeholders at each stage of the process.
3. We strongly support the essential principles of ensuring clear accountability for building safety at each stage of a project, including the requirement for an Accountable Person and the various dutyholders, linked to the establishment of a robust Gateway process. This will be the single most effective reform of the regulatory environment for the construction of higher-risk buildings (and, we hope, in due course, all buildings).
4. It is essential that there are effective interfaces with existing legislation and regulations including The Building Act (1984), the Fire Safety Order (being developed simultaneously) and the CDM Regulations 2015.
5. The dutyholder roles during the design, construction and refurbishment of buildings in the new regulatory regime are the same as those identified in the

Construction (Design and Management) Regulations, commonly known as the CDM Regulations 2015. However, the responsibilities inherent in the roles themselves are very different.

6. Under sections 38 and 39 of the Building Safety Bill the government is given power to impose substantial requirements on the current CDM dutyholders. Paragraph 352 of the Explanatory Notes to the Bill states that 'those appointed under CDM 2015 will be deemed appointed under the Building Regulations'. The Explanatory Notes go on to explain that the CDM dutyholders will have obligations under the Building Regulations. For instance, paragraph 358 states that all dutyholders under CDM 2015 'will have formal responsibilities for compliance with Building Regulations'.
7. The requirements for the proposed principal designer and principal contractor roles under the proposed draft Building Safety Bill require different competences and skills to those required under CDM and the doubling-up of these dutyholder responsibilities will require very careful consideration.
8. It is our concern that the requirement, in relation to principal designers, appears to be based on the incorrect assumption that a principal designer occupies a role similar to that of a lead designer, insofar as they manage and co-ordinate the design team. Whereas, in fact, the role of principal designer under CDM is dealing with health and safety issues affecting the workers on a construction site as a result of design decisions made during the design phase.
9. In clause 11(1) of the CDM Regulations 2015, the role of the principal designer is to 'plan, manage and monitor the pre-construction phase ...', not to carry out design or to co-ordinate the designers generally.
10. Our legal advice is that the CDM Regulations are made under the Health and Safety at Work Act 1974 and cannot therefore exceed the parameters of that Act, i.e. to legislate for the health and safety of those at work. This is not the same as the Building Regulations, which deal with the health and safety of those in and around buildings, once constructed. The CDM Regulations do not impose on principal designers any duties in relation to the Building Regulations; the expertise required of a principal designer under CDM is in the application of health and safety concepts to a design, so as to promote the health and safety of workers when they are constructing to that design, which is a very different skill-set.
11. The proposed role of a principal designer under the Building Safety Bill is so different from that of the CDM principal designer, that there should at the very least be a different title used, such as 'lead designer', since the responsibilities of co-ordinating the overall design of the project fall most naturally within the remit of a lead designer.
12. Additionally, the proposed new term, Building Control Approver, is liable to be misunderstood in the current context of the Approved Inspector under the Building Act.

13. In general, more thought needs to be given to the terms used to avoid confusion with existing roles.
14. While the extensive programme of regulatory change set out in the Bill is welcome, we are concerned about the implications of this change for the availability of professional indemnity insurance for dutyholders who will hold increased levels of responsibility under the proposed legislation. Insurance is likely to become prohibitively expensive or impossible to buy as a direct result of the Bill and some degree of intervention may be necessary by government to avoid a market failure which would mean that construction work will be unable to go ahead unless construction businesses are able to obtain affordable cover. Considerable thought must be given to how the insurance industry can adapt to changes set out in the Bill.
15. Key questions around timescales and cost must be considered, including the length of time it will take for developers to get approval from the new regulator and the impact this will have.
16. We fully support the proposals for a Golden Thread of information and that this be stored digitally and the requirement for Safety Cases to be robust and proportionate.

C. Does the draft Bill establish an appropriate scope for the new regulatory system?

1. The inquiry by Dame Judith has exposed inadequacies in the current system for managing the design, construction, management and occupation of buildings that led to the devastating fire and loss of life at the Grenfell Tower. Naturally, her investigations and report were concerned with high-rise residential towers, which she defined as buildings of ten storeys and above, defined as HRRBs (High Risk Residential Buildings).
2. The members of CIC accept that the rate of fire risk is considerably higher in buildings over 18m/six storeys than in high-rise residential blocks of any height (respectively, 43 fires/9 fires per 1,000 buildings) and that evacuation plans are inevitably more challenging, the higher the building. Nonetheless, our members generally believe that the Bill in its current form is too limited in scope and does not cover other buildings in which vulnerable people sleep. The Bill, as currently drafted, will not capture the significant risks to loss of life in buildings that will remain out of scope to the proposed legislation.
3. However, we also recognise the pragmatic difficulties in bringing too many buildings in scope to a wholly-revised regulatory regime at the same time and note that the system, which already struggles for sufficient capacity in the current regulatory environment would likely be unable to cope.
4. **We therefore fully support a proposal that starts at the narrower definitions currently indicated in the draft bill but which is capable of being extended regularly through revisions to secondary legislation, after suitable reviews, to bring a much wider range of buildings into scope of the enhanced regulatory regime.**

5. For the initial purposes of the Bill, “higher-risk buildings” are exclusively defined by the height of the building structure used for multi-occupancy residential purposes. We fully support the decision to include storey height as an alternative to metric height since this will avoid any temptation to ‘game’ the system by building six storeys to a height just under 18m. We note that the fire that destroyed student accommodation in Bolton (The Cube) in November 2019 was of a six-storey building that was just under 18m in height.
6. The draft Bill is very particular in its assessment that the major incident hazards in scope for safety management in a higher-risk building would be rapidly escalating fire, structural failure or explosive events. We note that Government expects that expansion to other building safety risks in the future is likely to be minimal and therefore has no current plans for the proposed higher-risk building regulatory regime to extend beyond the risks of fire and structural integrity.
7. Whilst fully understanding the major focus on fire risk, we agree with the Institution of Structural Engineers’ in their assertion of the critical importance of structural safety and integrity in the classified actions surrounding the definition of higher risk buildings in the draft Bill.
8. We draw the attention of the Consultation Review Group to a submission from Structural Safety, which demonstrates with reference to fatalities in a range of building failures that such structures would have fallen outside the scope and context of the draft Building Safety Bill. Subject to our comment, in para C3 above, we believe that bringing similar buildings within scope should be a logical and ethical extension of the proposed legislation.

D. Will the Bill provide for a robust - and realistic - system of accountability for those responsible for building safety? Are the sanctions on those who do not meet their responsibilities strong enough?

1. We agree completely with the expectation that to achieve many of the improvements outlined in the draft bill, a change in attitude and culture of the sector and its companies and workforce will be required.
2. We support the notion of mandatory and voluntary reporting schemes in support of improving overall building safety and believe this to be an important development arising from Dame Judith Hackitt’s inquiry.
3. The issue of confidentiality and freedom to report must always be free from potential conflicts of interests and these arrangements would need to be assured by the Building Safety Regulator.
4. We note that for the most part, detailed arrangements in respect of competence of Built Environment Professionals and others engaged working on structures within scope, will be developed under the scope of secondary legislation. It is essential that the requirements for enhanced competences are enforceable and that sanctions are issued to any dutyholder who is found

not to have appointed appropriately competent people. The industry is always concerned that the best will be come better but unscrupulous businesses will find ways to flout the system and building safety will continue to be compromised if this is allowed to occur.

5. A more pro-active approach to audit (including technical judgements) and disciplinary procedures will help drive culture change where needed in the sector to raise standards faster and more effectively.

E. Will the Bill provide strong mechanisms to ensure residents are listened to when they have concerns about their building's safety?

1. CIC fully supports giving residents a stronger voice and ensuring that their interests regarding the safety of their buildings can never again be ignored.
2. For this intention, we fully support the formal recognition of Residents' panels and the role of the Regulator to establish these with the participation of defined "relevant persons"
3. In adopting the pragmatic widening of the definition of 'higher risk buildings' there would need to be a broadening of intent to include all occupiers of higher risk buildings whether or not defined as resident.
4. This will require some re-working on the intent and proposals for stand-alone Resident's Groups but is we believe, entirely consistent in working towards a safer environment for all.

F. Is the Government right to propose a new Building Safety Charge? Does the bill introduce sufficient protections to ensure that leaseholders do not face excessive charges and that their funds are properly managed?

1. It is essential that leaseholders do not face unaffordable costs for the refurbishment of their buildings due to the historic use of materials now seen to be unsafe.
2. The current maximum figure cited for the cost to leaseholders (£78,000) is clearly a hypothetical maximum figure determined by an aggregation of all possible costs but it is an absurdly unaffordable figure and has caused a great deal of consternation amongst residents that the Bill is intended to protect.
3. 28 days' notice to pay leaseholder contributions is insufficient.

G. Does the Bill improve the product testing regime in a way that will command the full confidence of the sector?

1. CIC agrees that construction products should be brought within the regulatory framework to ensure greater testing and oversight of products; and that more safety-critical products should be required to be tested.

H. Is it right that the new Building Safety Regulator be established under the Health and Safety Executive, and how should it be funded?

1. CIC fully supports the establishment of the Building Safety Regulator under the Health and Safety Executive.
2. By utilising the considerable expertise of the HSE for this purpose, the BSR can be established quickly under the leadership of an organisation that has significant credibility in the industry and amongst residents and which already has long experience of working in close collaboration with other regulatory bodies and with the construction industry.
3. The HSE has an impressive track record in supporting the industry in a dramatic improvement in the reduction of fatalities amongst workers on construction sites. One death on a construction site is too many but the 80% reduction in fatalities on construction sites during the 21st century has been remarkable (from 154 fatalities in 2000 to 30 in 2018).
4. To deliver the new regime, it is essential that the new Regulator has a strong degree of independence from both the industry and Ministers and the HSE has a long track record of such independence.
5. The BSR will need to be funded by a mix of public funds and by recovering costs from regulated parties. We question whether the initial government funding of £16.4 million is sufficient to establish the shadow regulator at the level required for it to be effective and to provide the necessary momentum once the bill has been enacted.

I. Does the Bill present an opportunity to address other building safety issues, such as requirements for sprinkler systems?

1. It is essential that the Bill provides sufficient flexibility to consider - in secondary legislation - any recommendations that will flow from phase two of the Grenfell Public Inquiry.
2. We fully support the proposal to establish the **New Homes Ombudsman**, which was a recommendation of the All Party Parliamentary Group for Excellence in the Built Environment, for which CIC supplies the Secretariat and Commission experts, in its report, 'More Homes, Fewer Complaints' (2016); a recommendation which was developed in detail in a follow-up report 'Better Redress for Homebuyers' (2018). Both reports can be accessed here: <http://cic.org.uk/services/all-party-parliamentary-group.php>