

Written evidence submitted by the Institute of Workplace and Facilities Management (IWFM) [BSB 426]

1. The Institute of Workplace and Facilities Management (IWFM) welcomes this opportunity to provide feedback to the Committee's Pre-legislative scrutiny of the Draft Building Safety Bill (BSB).

About IWFM

IWFM is the professional body for workplace and facilities management¹. We promote excellence in our profession for the benefit of practitioners, the economy and wider society. We support and represent a community of over 30,000 around the world, both individual professionals and organisations, as well as thousands more through advocating professional standards and best practice. We do this through education, guidance and supporting research that helps increase workplace productivity; all of which contributes to raising standards, a happy workforce and a healthy economy. We also provide a platform for meaningful and evidenced debate on these and other issues of importance.

Encompassing multi-disciplinary activities, workplace and facilities professionals contribute to the everyday functioning of hospitals, student accommodation, care homes, hotel accommodation, schools, shopping centres and businesses of all kind, by integrating people, place and process across the built environment with the purpose of improving the performance and quality of life of people and the productivity of the core business. Our profession has a major role to play in making places - including where people sleep - safer, and more widely making the UK a more productive and sustainable place².

The total value of the workplace and facilities services sector in the UK amounts to around 7% of the UK's GDP³, with a value of up to £120 billion⁴.

As the professional body for the FM profession, IWFM is engaged in the ongoing debate around improving building safety and enabling safer homes for people and have stepped up its activity since the Grenfell tragedy in June 2017. To date we have played a major role in driving the development of competence criteria for the proposed new statutory role of building safety manager (BSM) by way of providing the secretariat for Working Group 8 (WG8). WG8 has been working on the competence framework under the auspices of the Competence Steering Group (CSG), a sub-Group of the Industry Response Group (IRG). The CSG has been coordinating industry's response to the competence challenge set by Dame Judith Hackitt in her report: 'Building a safer Future: Independent Review of Building Regulations and Fire Safety: Final Report'⁵. The CSG full report on competence 'Setting the Bar', including the WG8 report, is due to be published by end of September 2020.

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

IWFM welcome the progress the BSB is making towards achieving its policy intentions. Implementing the policy objectives derived from Dame Hackitt's vision is no mean feat, not made easier by the complexity of residential property management. We would like to however highlight certain areas for improvement to enable the bill to work 'on the ground' and to deliver a holistic 'whole building' building safety approach.

Timetable and greater detail:

While the BSB confirms many of the high-level principles, a lot of the detail on these important areas, such as the competence standards for the BSM or the clarity around what a safety case will actually look like, is still being developed. It is not until either secondary legislation or statutory guidance is developed that change will be enabled and effected.

Golden thread and safety case:

¹ Founded in 1993 as the British Institute of Facilities Management, we went through our name change in 2018

² An effective workplace can improve productivity by 1-3.5%, potentially delivering a £20 billion uplift to the UK economy, The Stoddart Review – The Workplace Advantage, (December 2016), Raconteur, 42p.

³ FM Business Monitor, (May 2015), 12p.

⁴ Value Judgement, Facilitate, FM World, May 2017, p. 49

⁵ Building a safer Future: Independent Review of Building Regulations and Fire Safety: Final Report, Dame Judith Hackitt, May 2018, 159p.

Appropriate transition periods will be a necessity, especially for older, existing buildings which for example may struggle to collect the necessary information (often this information may not be available as it was collected pre-digital times). Given the importance to have the right, accurate and up to date information to inform decision making in this risk-management model, the golden thread is not just an essential element for property management. It is also important to get the format, structure and information requirements right of the different elements underpinning it, including the safety case, as this will enable greater transparency and improve standards in information management.

Access:

Most of the risk to building safety lies within resident's units. Greater clarity is required on access and how the proposed mechanism would work so that the Accountable Person (AP) and BSM can meet their duties. Precedent exists where the regulator has power of access in certain circumstances. If a duty holder could demonstrate they had done everything reasonable to discharge their duty and avoid placing others at risk and that immediate actions could further be taken to ensure safety within the building.

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

Building safety risk – Clause 16

IWFM welcomes the inclusion in the draft Bill to extend the scope of 'building safety risks' beyond fire and safety to any prescribed matter. IWFM has always been an advocate for the new BSB to truly deliver a holistic 'whole systems and life safety' approach, meaning the regime's scope should be extended beyond fire and structural safety.

We acknowledge the expansion to other building safety risks in the future is however unlikely, as noted in the explanatory notes to the BSB, especially as wider life safety duties exist in other legislation. Not bringing these duties together in one overarching act is a missed opportunity to simplify the application of life safety in buildings. While this approach is not taken, the BSB could still cross reference relevant pieces of legislation to ensure that from a compliance and operational perspective, life safety is considered holistically. Alternatively, a similar approach could be taken as to clause 102 - the duty to cooperate and coordinate with the responsible person (RP) under the Regulatory Reform (Fire Safety) Order 2005 (FSO).

Our rationale is as following:

- The 'single point of accountability and/or responsibility' within a 'whole building' concept recommended by Dame Judith Hackitt will be significantly undermined with multiple material areas potentially covered by different people.
- The objective of the regime change is to provide residents with safe homes, rather than 'only' providing fire and structural safety.
- The wider scope would provide a revised framework for building regulations that would provide a holistic, whole building approach, rather than separating out fire and structural safety, continuing a fractured approach with gaps, maintaining safety and integrity throughout the lifecycle of a building.
- A whole building safety scope would transfer the principles of clarity and effectiveness of the CDM Regulation into the complete lifecycle of the building.
- A wider scope would reflect the principle that buildings are thought of as complex systems.
- Following the above, the scope for the BSM should also be wider and cover wider life and building safety. This would provide the opportunity to remove the fragmentation that surrounds the current delivery of health and safety management (in its widest sense) of buildings.

Higher risk buildings – clause 19

As far as building types included in the scope, we agree with the initial limited and phased approach pursued by the government. In due course, we would strongly recommend the inclusion of other buildings with greater risks - multi-occupied residential building types such as hospitals, care homes, prisons, complete mixed-use buildings and workplaces, but appreciate the system needs sufficient time to properly embed.

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?

- IWFM welcome the more explicit need for competent people across the life cycle of buildings and further welcome the clear appointment of the AP as the duty holder in the occupation phase, who has got clear and final accountability for the delivery of building safety.
- Greater clarity is however needed on the effective role division between the AP and the BSM. This is because unlike the earlier stages of the BSB, where the duty holder role and the competence requirements are locked into a single role, the accountability and competence requirements have been split in the occupation phase of the building. Having been involved with the WG8 competence work, an assumption is being made that many of the AP duties will be carried out by the BSM, the new statutory role. This is supported by the explanatory notes which say the BSM will provide the day-to day management of the building safety on behalf of the AP. Additionally, the BSM has competence requirements while the AP has not, indeed it appears to be the accepted assumption that the AP will not be competent to carry out their duties. This is concerning as they at least need to understand their accountability, duties and responsibilities to ensure that they can support the BSM in an appropriate manner. One of the aims of the new regime was to provide greater clarity. To achieve this, we would like the clarity on the AP-BSM role division from the explanatory notes to be written in the BSB itself. Greater clarity and transparency about who will carry out the legislation's objectives in the occupation phase will provide greater confidence in the regime.
- One of the complexities of residential management is the wide range of ownership models in a single 'whole building'. Greater clarity should be provided for in legislation or secondary legislation what would happen in situations with a potential for different APs and BSMs, all with a series of overlapping duties and responsibilities. Where there are overlapping duties, there is the potential for gaps and effective non-compliance.

Likewise, where there are common areas or commercial parts of a in a 'mixed use' building in scope, the RP under the FSO will have an overlapping duty. Our concern is that despite clause 102 - the duty to cooperate and coordinate – these situations give rise for potential gaps.

- While it is right to focus on competence requirements in first instance for the key roles of Principal Designer, Principal Contractor and the BSM, there is entire ecosystem of stakeholders working in buildings in a manner that affects fire and structural safety. Without competence embedded throughout that ecosystem, it will not only be difficult for the three key competent roles to discharge their duties, the whole culture change ambition outlined by Dame Hackitt will remain elusive.
- Greater clarity is needed on how the existing BSM competence work will be linked to statutory guidance the Building Safety Regulator is anticipated to develop (clause 101). We would welcome an explicit reference to the forthcoming BSM PAS work in such statutory guidance. The explanatory notes supporting clause 101 state that not following the guidance will tend to establish non-compliance with the relevant provision. However, without the clarity and reference to the specific competence requirements and the uniform assessment against those requirements, past experience would suggest a race to the bottom by some providers giving 'assurance' in the cheapest manner. This will obviously impact on the competence quality delivered.
- We support the WG8 report recommendations around the need for a Central Register and common assessment standards. The Regulator will be unable to keep an open central register of people deemed competent. Having an (industry led) central register has several benefits:
 - Greater assurance for regulator and AP – if a potential BSM were not to be on the register, additional checks would need to be done by the AP to ensure competence criteria are met. These additional checks would need to be demonstrated to the Regulator who would require more time to review the application submitted
 - Making the process easier and more cost effective – the register would reduce the APs burden of proof to demonstrate the BSMs competence, cutting back application time
 - 'Single source' of assurance - in the absence of which a plethora of 'registers' will come into existence with specific commercial interests, and a clear risk of a race to the bottom.
 - Dynamic source of information – the register would ensure the information will be kept up to date as they will engage with the certification schemes to ensure those on the register maintain their certification criteria. This function will not be carried out by the Building Safety Regulator

To give such register some authority, it must have some recognition in law or by way of a requirement included in statutory guidance.

- There are concerns around the potential lack of future BSMs linked to the issue of professional indemnity (PI). Government should continue to work with the insurance industry to ensure PI remains realistic. Currently there are many competent people leaving the fire safety risk assurance world because the cost of PI makes it too challenging. Given the duties and responsibilities linked to the BSM role, liability for the role is going to have to be paid for. It is anticipated PI may be a challenge too far to attract people into the role, or that the costs will be borne by the leaseholders.

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

Yes, we welcome the different mechanisms and tools the BSB provides to ensure residents are listened to.

One area for concern that needs to be addressed is how some of these mechanisms will work across the different ownership models, some of which co-exist in a single building. This can give rise to a potential hierarchy of multiple APs/BSMs in a single building with overlapping duties and responsibilities. Specifically, student accommodation as there can be many 'owners' of the building. A single joint AP & BSM should be appointed in these circumstances to ensure a clear, concise, and consistent building safety process operates.

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?

While Government is right to introduce such a Building Safety Charge it will need further consideration as it does not provide the necessary protection for leaseholders from both historical and future charges. The challenge for government therefore is to ensure that the costs of implementing requirements in the new regulatory system remain affordable, both to residents and owners.

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

The choice for the Health and Safety Executive (HSE) as regulator was right, especially as the HSE has a reputation for independence and authority across the built environment.

Funding: we consider a two-pronged approach needs to be taken between new and existing buildings.

The cost of compliance should be easier to bear for new buildings as they can set up the systems required during the previous phase.

As for existing buildings, the cost of delivering new systems to cover overall compliance will be more disproportionate than compared with new build systems. While it could be argued that existing buildings should have already for example information systems set up, this is much less likely in existing buildings with material changes that pre-date the digital era.

Following the above, we recommend a phased approach, towards a full self-funding model, with initial self-funding approach for new builds and delayed self-funding for existing, occupied buildings. This would mean that additional government funding would be required in the initial phase, to ensure a working enforcement system is properly enabled.

Conclusion

We welcome the progress made in the Draft Building Safety Bill towards achieving greater safety for people's homes. There are areas that would benefit from greater clarity to ensure that the draft Bill works on the ground as is intended.

Key priorities are:

1. The need to address the presentation of the AP role and its translation on the ground, including their identification, competence and relationship with the BSM so that it's clear in the legislation itself that the BSM will effectively carry out many of the AP responsibilities, whilst accountability remains with the AP. This can be achieved by incorporating the clarity on the AP-BSM relationship from the explanatory notes into the BSB itself. Greater clarity and transparency about who will carry out the objectives will provide greater confidence in the regime
2. Greater clarity on how the BSM competence work will be linked to statutory guidance and its consequent status. We recommend an explicit reference to the forthcoming BSM PAS work in statutory guidance
3. The need for a central register of competent people and common assessment
4. Developing standards for the golden thread of information
5. Cost, clarity and deliverability of transition periods
6. A reasonable and proportionate right of access – a role for the Building Safety Regulator that enables greater flexibility for addressing immediate concerns. We realise this is an important and sensitive issue that requires a careful balance between different rights and duties. Many of the risks to manage by the BSM, will however continue to fall within residents' flats.

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