



Building Safety Act Client Duties

Client's commissioning of Construction projects has always been fraught with risk, whether that is budget challenges, programme overruns or quality and compliance issues, to name but a few. Clients must now comply with the new Building Safety Act 2022, the question is how does this impact on Client's who commission construction projects, what is the true cost, and will it ensure quality safe buildings?

Following the Grenfell Tower tragedy and the inability for the construction industry to regulate itself, the new Building Safety Act 2022 has created three new bodies. The new bodies are the Building Safety Regulator, the National Regulator of Construction Products and the New Homes Ombudsman, these have been put in place to ensure oversight of a new regime specifically for Higher-Risk Buildings (HRBs).

Higher-Risk Buildings (HRB) are defined as buildings with at least two residential units, including care homes and hospitals, which are at least 18 metres in height or have at least 7 storeys.

The new regime has set up a framework of competencies and responsibilities to ensure the building's life cycle, from construction, future refurbishment and management is fully documented and monitored, with building safety and accountability at its heart.

Under the framework of competencies new duty holders have been established, Client, Principal Designer (PD) and Principle Contractor (PC), who will all need to work closely with the Building Safety Regulator and the Accountable Person. Clients should already be familiar with these duty holders as they are already set out in the Construction Design and Management Regulations 2015 (CDM Regulations).

It's important to note that the duty holder's responsibilities, imposed by the Building Safety Act 2022, relate to all construction projects and not just the design and development of higher-Risk Buildings (HRBs). It essentially expands upon and reinforces the existing CDM responsibilities and obligations.

It is possible for a duty holder to hold more than one role provided they have the required competencies, capabilities and necessary resources to carry out those roles however, my view is that they are best kept separate. I believe there are risks in one duty holder providing more than one role due to the potential conflict of interests and how that could influence decision making.

Previously, the commissioning of new buildings had been a disjointed process with responsibilities and accountabilities fragmented across the project team, with each party only assuming responsibility for their aspects of the works that they were specifically liable for. This approach often resulted in a lack of coordination and collaboration between the parties which increased the risks of errors from the initial design stages through to construction and then management of the building.

In the Building Safety Act the 'Client' is defined as an individual or organisation for whom the project is being developed, they will ultimately be commissioning the work and be responsible for ensuring that the requirements of the Building Safety Act are satisfied. It's important to understand that the Client's duties cannot be subcontracted to a third party, ignorance is no defence for non-compliance and Clients need to fully understand their duties before commencing a building project.

The Client has the responsibility to ensure suitable arrangements are in place to properly plan e.g. sufficient time, manage e.g. sufficient resource and monitor the project. This means ensuring the right duty holders are appointed for the project, evidencing they have the right competencies and capabilities for the work you are commissioning them to undertake. Allocating sufficient time to the project is a must together with establishing robust systems (evidenced based) to ensure compliance with the building regulations.

The 'golden thread' of information cannot be underestimated, the Client needs to ensure all relevant building information is issued to the designer and contractor involved with the project and ensure that all 'As Built' information is received from the Principal Contractor. Accurate detailed O&M information is key in keeping records of the building fabric and safe maintenance of the building.

An overriding objective of the Building Safety Act is to promote competence and accountability within the construction industry. Under the BSA, a party may only be appointed as PD and/or PC where they are competent and the BSR will seek evidence from duty holders as to how competence is established and maintained. In relation to HRBs, the Client must submit a declaration that they are satisfied the PD/PC/any other person carrying out work are competent to carry out their roles.

As such, it is vital the Client understand that any party intending to take on the role of Principle Designer and/or Principal Contractor is not only competent but is also able to evidence this.

Whilst 'competence' is not defined in a prescriptive test, a new suite of Publicly Available Standards (PAS 8671:2022 and PAS 8672:2022) has been published, setting out competence requirements for PDs and PCs which will assist Clients with ensuring their Teams competence.

The obligations on the new duty holders are intended to improve coordination and collaboration and promote competence to ensure compliance with the building regulations and are an essential part of the new building safety regime introduced by the Building Safety Act.

Failure to comply with these duties could have a number of repercussions, ranging from the rejection of an application for building control approval (resulting in delays and additional costs to a project) through to the inability to secure a building control completion certificate (meaning that the building cannot be handed over for occupation). Individual duty holders could also face significant fines and/or the risk of imprisonment.