

BUILDING CONTROL MATTERS

The Newsletter for Leaders of Council, Chief Executives, Portfolio Holders, Other Elected Members, Senior Managers

July 2019



Responding to
MHCLG's Consultation
on the Hackitt Review
Implementation

40°



A special briefing edition for local government

Dame Judith Hackitt's report into building safety following the terrible Grenfell fire seemed set to bring about a single clear and transparent building safety system. Sadly, the MHCLG has gone back on its promise to bring about this necessary change. Its consultation on reform of building safety hides an intent to allow a role to continue for the private sector in regulating higher risk residential buildings.

This role for private sector consultants in building safety regulation is at odds with the recommendations of Dame Judith. The current chaos will remain where local government picks up regulatory failure and the private sector creams profitable work.

Hence the name *Building Control Matters* – the new voice of LABC, the membership organisation of public service building control. It will provide regular news and views about building standards, community protection and public safety issues as well as information about new local authority duties. This first special edition focusses on the Government's consultation 'Building a safer future'.

THE GRENFELL TRAGEDY

More than two years on things are still unclear

Paul Everall, LABC Chief Executive, reflects on how we got here



Paul Everall

It's now been more than two years since the terrible and tragic events at Grenfell. The Inquiry hasn't yet concluded (nor will it for some time). Dame Judith Hackitt's final report was published last year and now the Ministry is consulting on its ideas on implementing her recommendations. This consultation is far reaching and not altogether positive for local government.

Before 2017 a few wise people said the fire safety system in construction had become dangerously lax – and sadly they were proved right. Deregulation, rampant competition, red tape challenges, smart working, value engineering and austerity were all hard to argue against at the time. The two main consequences were unsustainable margins for firms recklessly selling on price and a corresponding commoditisation of building control. So the least interference was sought at the lowest cost.

Climate change created tough energy performance demands which were hard and expensive to achieve using traditional methods. Making matters worse, the recession following the banking crash saw many skilled people leave the industry further damaging workmanship and site supervision.

These pressures took their toll on local authority building control too. Instead of being a valued regulatory service protecting public safety, many local authorities sought to shrink its role to the minimum or just focus on revenue-raising work. For those working with little regard to regulation, the prospects of being caught and sanctioned were greatly diminished so the downward spiral in standards accelerated.

This isn't just my view. All Party Groups of MPs looking at quality in various aspects of construction all reached the same conclusion.

Having worked in the industry and as a civil servant for many years, I'm saddened to look back in this way – it reflects badly on everyone. It's why Dame Judith Hackitt's radical root and branch reform should have been the outcome – a system that can't be run down by political doctrine, commercial pressures or additional regulatory demands.

So LABC agreed 100% with Dame Judith and with all 53 recommendations in her report. Like us she recognised it will take radical change to overcome the practices and culture of the last 25 years.

The positives

The know-how to support the new way forward is clear and LABC hasn't delayed in getting ready. In two years we have delivered:

- New standards
- National quality management
- Independent UKAS audits of local authority teams
- A comprehensive competency matrix
- Independently verified exams and measured competence
- New accredited learning and qualifications
- A new degree in public service building control

The negatives

The government has now published in detail how they are going to implement Dame Judith's recommendations. In some respects they go 'beyond Hackitt' by bringing all residential buildings over 18m into scope. And they propose to respond flexibly over time as an understanding of risks evolves. However, elsewhere they appear to go against Dame Judith's recommendations in their proposals for a Building Safety Regulator. Here, the details have been deliberately obscured – in fact there is nothing about who runs the regulator or who gets what work. I believe this has been done to give maximum freedom to civil servants to 'find a place' for private building inspectors in what will still be a commercial regulatory system.

Three ways this affects local government

1. Because private inspectors will only accept profitable work, local authorities will have to take the work they don't want and carry out costly enforcement
2. Council staff will be poached by private Approved Inspectors and the new regulator
3. Insurance issues already mean these private consultants are failing to complete building regulation jobs – these are falling on local authority building control for completion adding to the growing list of problems resulting from a bad system

What you need to do now

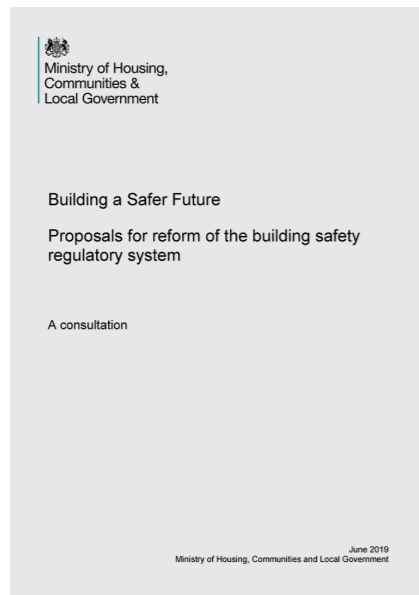
Respond to the consultation before the end of July. Support the positive changes and – if you agree – object to how it has been framed with the most important elements hidden from view. Only a building control system based on implementing all of Dame Judith Hackitt's 53 recommendations will make our communities safe.

All local authority managers face new duties and risks

Lorna Stimpson, LABC Deputy Chief Executive, looks in more detail at the likely new duties for local authorities and the resulting risks



Above: LABC award winner Portsoken Pavilion, Aldgate Square
Below: Dame Judith Hackitt



Left: Lorna Stimpson
Right: MHCLG consultation

It won't just affect Building Control. The new 'Hackitt' duties and responsibilities are going to fall on those who own, commission, manage, design and operate multi-household buildings. Even with all the competing demands, local government and other public services need to make building standards a top priority now.

The MHCLG believe the simple measure of identifying a single person with the duty to make and keep buildings safe is the key to making the new model work. They will face tough new criminal sanctions and enforcement powers from the new regulator, should their attention stray from the focus of safety.

Starting at a building's design and construction, five duty holder roles have been identified – from client, through designers and contractors. Once occupied, two further duty holder roles

are created – the *Accountable Person* and the *Building Safety Manager* who are legally responsible for reducing fire and structural safety risks and engaging with residents.

The second key change for new building projects is a series of three gateways – planning, pre-construction and before occupation where the new regulator must approve the work.

The third change is introducing a safety case regime – an holistic approach to fire and structural risks and hazards. This must be approved, probably by the regulator, before a Safety Certificate is issued.

This 'case for safety' shows how risks would be effectively managed throughout the whole lifecycle of the building from conception through to demolition, including the 'golden thread' of

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Local government and other public services need to make building standards a top priority now
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information that has to pass from duty holder to duty holder. It also tackles openness and transparency, mandatory occurrence reporting and whistleblowing.

So far so good – all of this LABC supports 100%...

Public and private regulatory confusion

These new duties are going to be backed by a new Building Safety Regulator with oversight extending to all buildings. However, it moves away from Dame Judith Hackitt's model combining both the Joint Competent Authority and the overarching competency body. And LABC has been informed it will also involve private sector organisations in compliance.

Sadly, the ministry has failed to openly explain their intentions for this new regime or why it is proposing to allow competing interests to remain at the centre of high-risk regulation. The lack of transparency means the civil service can claim the consultation is supported by industry – but support for what? The actual plans have not been revealed!

We are continuing to push for the MHCLG to adopt a system with a single strong undisputed regulator and which removes choice from those who regulate high risk projects.

The failure of consultation

Other things are still unclear too. The most important is the relationship between the Building Safety Regulator and local projects.



Unlike other regulated areas, the construction industry requires pro-active and continuous inspection of projects as they develop over time. This is because construction literally covers up what it builds as it goes along.

These complex building projects require a myriad of local interventions and it's clear that building control specialists will be required to assess design, procurement and construction. This will ensure a coherent safety strategy throughout the project – including handover for occupation. It will need greater involvement of professionals and more frequent inspections.

In my view it is unlikely that simply defining new duties for owners, developers and accountable persons during construction and occupation will be enough to raise standards without powerful, independent local regulators on the ground.

FAILURE WILL BE A CRIMINAL OFFENCE

Budgets, quality, safety and procurement

Martin Taylor, Director of Regulatory Policy, explores what local government needs to do to get ready for change



Martin Taylor

The concept of ‘duty holder’ isn’t new. Health and safety legislation uses it so company directors are accountable for their corporate risks and responsibilities – within the company and through their supply chain. Senior decision-makers directing or commissioning work, dictating budgets, quality, safety and procurement are duty holders. They need to know what they are doing and that those they delegate work to are competent.

Large organisations in the construction industry have adapted to health and safety duty holding responsibilities and as a consequence deaths and injuries on large sites have been radically reduced. If there’s a gap it’s among small and medium size businesses where scrutiny levels are much lower and not as pro-active.

Will it work for fire and other building standards?

All the indications, so far, are that it will. Large organisations generally adapt processes to ensure the right outcomes. This is particularly true for those focussed on single activities such as social housing providers, new home builders or ‘tier 1’ contractors. In fact, I have already seen the best firms changing practices in advance of the implementation of the Hackitt plans. They involve people with specialist knowledge and work in new ways through the design, procurement and construction processes to ensure the safety case is never compromised.

However, it feels to me that many local authorities haven’t followed suit because of the Hackitt Review’s focus on high rise towers.

Just about all the feedback from industry and professionals said arbitrary heights (30m, 18m or 10 storeys) didn’t help. The real risks come from the way in which buildings are used, maintained and managed, the number of storeys and probably most importantly, the quality of work.

All councils have buildings in-scope

The consultation is quite clear – the scope of buildings will be much wider and will continue to expand. We don’t yet have the exact definition, or know the timing, but all local authorities will be brought into the new regime.

So, firstly local government must adopt the changes and adapt its management of building control.

Secondly (and harder to do), councils need to understand who its duty holders are. Many managers directing policies and projects will become duty holders, as the Accountable Person, Building Safety Manager or the Designer.

“**My advice is simple. Local authorities need to understand, rationalise processes and provide training now... Failure to comply will be a criminal offence**”

Identify duty holders now

Perhaps in smaller local authorities this will be the Chief Executive, but it is the directing role that defines the duty holder. Anyone who makes decisions about plans, designs, budgets or procurement takes the role and will be subject to its legal responsibilities. Given enforcement and sanctions are to have real ‘teeth’ and failure to comply will become a criminal offence, local authorities need to think really deeply about their duty holders.

From my experience in local government there are real constraints. Public sector managers with experience of large-scale construction and technical knowledge are rare. Instead local government managers and councillors tend to be generalists delivering a wide range of services and projects to increasingly restricted budgets and timescales. In future, safety and quality will be top priorities. It’s a radical change.

My advice is simple. Local authorities need to understand, rationalise processes and provide training now because the old measure of success – delivery on time and within budget – will no longer apply. And LABC is here to help.

LABC award winner Farnborough International Exhibition and Conference Centre



A quick guide to the new responsibilities

Risk is about vulnerability of users of all buildings not just residential towers

A stringent approach putting residents’ safety at the heart of the system

Applies to the whole lifecycle of buildings

Duty holders defined in construction and occupation with mandatory regimes

Government committed to duty holders not choosing their own regulator

Duty Holder responsibilities will be underpinned by criminal offences

All participants to audit standards and prove competence verified by third party

Projects to be signed off by regulator at various gateways otherwise work stops

Duty holders need to prove ‘safety case’ before building safety certificate issued

Building Act amended extending time limits for prosecution and applying to discovery of defect, not completion of work

Ten ways LABC can help all local authorities manage their new duties

Richard Scott, Head of Network Change and Transformation, explains about the extensive support that is available for local authorities and their building control teams



Richard Scott

Let's be clear – the proposed changes will affect every local authority in the country. It's no longer about urban tower blocks – the scope of the new regulations has been extended to include every residential building over 18 metres – usually around six storeys. Over time the scope will be widened to include other 'at risk' buildings including prisons, educational buildings, hospitals, health centres and care homes or any other building where vulnerable people sleep. And in my travels across the country I cannot think of a single local council where this new scope would not apply. So we all have to get ready.

For too long and in too many places building control has been the 'Cinderella' service. Austerity cuts and a lack of training have hampered its effectiveness and depressed pay in comparison with the private sector. As budgets have contracted we've seen mid-career surveyors move to the private sector – so in many places there is a demographic bias towards retirement age.

And depending on the local built environment, many teams could see 15%+ increases in workloads so will need support from local government bosses as well as development from LABC.

LABC understood the way forward

Even before Grenfell, LABC was looking at how building control could be protected and nurtured despite the real budget pressures in local government.

Fortunately for the last two years LABC has been leading work on competencies and standards which has seen the organisation introduce an ISO backed quality management system linked to standards and learning. In addition, LABC has worked with the Institution of Fire Engineers to develop an assessment for the most experienced level 6 surveyors to evidence their competence in dealing with the complex buildings identified by Dame Judith Hackitt. So far more than 1,000 public service building professionals have been identified and LABC is testing them at around 100 a month. This work has put the organisation at the forefront of the culture change in the industry and we are well placed to take on new duties if they land on local authorities under the proposed new arrangements.

Local councils have to make sure their building control teams fulfil all their current duties. This includes public protection and safety at sports grounds, consumer protection as well as preparing for any additional work. LABC already reports an upturn in work across the country because developers are becoming aware private Approved Inspectors are struggling to renew professional indemnity insurance. Additionally some large organisations changing culture now wish to be fully regulated by a non-commercial service.

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Helping you adapt

My job is to help local authorities adapt to the new system and its resource, expertise and staffing implications. LABC has identified options for local authority managers – on recruitment, working with neighbouring authorities, using agency, part time or semi-retired staff and we can assist with outsourcing of appropriate specialist consultants. We have the tools and resources ready for local use – so there is no need to worry about taking on new work.

One area where joint arrangements between local authorities will be needed is to stop any perceived 'conflict of interest' where councils carry out the building regulation on their own projects. This doesn't require a formal shared service and LABC can help set up local agreements using validated surveyors from our register.

Like all good management, it isn't rocket science. However, additional systems will be needed – clear proof building control is properly managed, competent, resourced and resilient with secure record-keeping.

LABC's 10-step plan

- 1 Understand LABC Standards and ISO, check practices, systems and processes using the LABC Quality team
- 2 Use the LABC Competency Matrix
- 3 Ask for LABC work profiling and service reviews
- 4 Measure competency needs against risk and work profile
- 5 Support senior surveyors to go through Level 6 LABC validation
- 6 Plan resourcing against future workload
- 7 Use the LABC Virtual Learning Environment to access level 3-6 qualifications including the levy funded apprenticeship degree
- 8 Engage with neighbouring authorities for resilience and peer review back-up
- 9 Identify authority's and local duty holders and carry out briefings/learning
- 10 Engage with LABC's strategy team to keep up with MHCLG implementation, how it works and adapts

ETHICS ARE KEY TO INDUSTRY SWITCH

Why insurers, developers and industry are returning to local authority building control

Barry Turner, Director of Technical Policy, explores some of the welcome reasons for industry switching back to LABC



Barry Turner



Since the Grenfell tragedy, LABC has seen a steady flow of larger organisations returning to using public service building control. LABC has been exploring some of the reasons for this welcome switch.

Following the Grenfell fire, LABC reported cross industry willingness to focus on professional practices and ethics. Many larger firms are re-thinking what professionalism means and rejecting 'regulator choice' because of a mindset that hits minimum standards or measures success solely as budget and delivery timing. Ultimately this creates the culture where it's OK to dictate levels of regulatory involvement and encourage dangerous 'I know best' assumptions.

People in all professions and trades have realised that 'standards' are not meant to be negotiable. And anyone operating without independent review is now viewed as dangerously conceited. Having a robust regulation system allows developers to trust the process more and deliver a far better building.

Ethics have practical value

LABC had been pointing out the problems are wider and more extensive than just ACM cladding. Quality of work on site was frequently under-supervised and teams making mistakes on one site would repeat them elsewhere. Feedback from industry – especially in the fire protection sector – was that passive fire protection was not understood, valued or preserved during construction. This can only be put right through constant attention and inspection and this has to be paid for. So, at last, the focus on fire safety has concentrated minds.

Unsurprisingly, the same point also applies to other construction outcomes. The industry spent several years of work looking into the 'performance gap' in energy conservation. Research showed a gap between the design performance and as-built actual achievement was as high as 25%. Poor training, on site practices and insufficient inspections – like in fire safety – were the culprit.

“ Many larger firms are re-thinking what professionalism means... Having a robust regulation system allows developers to trust the process more and deliver a far better building

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LABC Building Excellence award winner Coal Drops Yard, Kings Cross

Getting design and specification right is key

LABC has published research on the value of plan assessments. This reveals massive savings produced by public service building control by giving feedback on design and specification before construction even starts. These savings are amplified because the cost of putting work right after construction is 2.3 times the cost of getting it right first time. The focus on saving small amounts of money on quality management showed how industry went wrong in understanding value. It meant buildings require far greater amounts spent on them to put things right.

More technical problems are now coming to light, especially with the new legislative focus on 'non-combustible' facades. Although the ACM problem was found elsewhere, England and Wales have issues with other cladding materials, systems, balconies and the rating of fire doors that have been in use for many years. Now the accepted basis for testing fire doors has been found wanting.

These revelations are all making insurers risk averse which is affecting many Approved Inspectors and other professionals. Last month this resulted in a number of Approved Inspectors being denied insurance cover and being unable to trade.

The other impact is professional indemnity insurance costs are rising massively (LABC estimates often more than fourfold) which will, in turn, increase costs to all private sector professionals.

LABC has recently issued advice to all its teams on ensuring the smooth reversion of work from private professionals and will continue to update members as the situation develops.



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Resources, further information and help

The MHCLG consultation

Government website
<http://bit.ly/2NUmBA6>

Hackitt Review documents

Government website
<http://bit.ly/2XWocVg>

LABC draft response to MHCLG consultation

LABC Member document
<https://bit.ly/32IY183>

LABC Standards and ISO

How defining standards and improving quality helps our customers
<http://bit.ly/2JG13IM>

Not a single case of non-conformance in LABC quality management accreditation
<http://bit.ly/2XAcQvq>

LABC Competency

Lorna Stimpson calls for all construction professionals to move forward on competency
<http://bit.ly/2Lhs6XE>

LABC launches virtual learning hub as part of competency validation drive
<http://bit.ly/30spfPi>

LABC Qualifications and Learning

LABC Training
<http://bit.ly/2LesFBI>
LABC Qualifications
<http://bit.ly/2LKFrAd>

LABC is seeing a huge increase in signups for structured training and qualifications
<http://bit.ly/2YTBK69>

LABC High Risk Fire Validation for Surveyors

Course page
<http://bit.ly/2JpFfMa>

LABC Plan Assessment Research

Research shows 85% of plan assessments reveal non-compliant design
<http://bit.ly/2BVGjRb>

What to do if an AI can't continue

Approved Inspectors – what you need to know
<http://bit.ly/2Jt2kgZ>