



Overview of  
Interim Report by  
Dame Judith  
Hackitt DBE  
FREng

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## Introduction

In July 2017, following the Grenfell Tower disaster, the government announced an independent review of building regulations and fire safety, with a particular focus on the provisions applicable to high rise and complex buildings. Earlier today, Dame Judith Hackitt DBE FREng presented an interim report of the key findings of this review to date. This report is the first key milestone in the review and indicates the proposed 'direction of travel' for the final report. The final report is due to be provided in spring 2018.

The central theme of the report is that the current regulatory system for ensuring fire safety in high rise and complex buildings is not fit for purpose. The key points arising from the interim report are as follows:

- Current regulations and guidance are too complex and unclear, which can lead to confusion in their application to high-rise and complex buildings.
- There is a lack of clarity in respect of roles and responsibilities for key activities.
- Methods of assessing and ensuring the competency of key people are inadequate. Specifically, there are currently no special competency requirements for those working on high-rise and complex buildings.
- Compliance, enforcement and sanctions processes are too weak. Often the building that has been designed is not the building that is constructed, and there is a lack of change control when this is the case. Deterrents and / or redress for non-compliance is currently inadequate.
- The system of product testing, marketing and quality assurance is not clear. The use of desktop studies in particular to assess the equivalence of products and systems should be restricted.

## Regulation and guidance

The report notes that although the Building Regulations 2010 are clear as to the required outcomes in respect of fire safety, they are not clear as to where responsibilities lie. There is also confusion within the industry as to what constitutes the regulations and what constitutes guidance, with the Approved Documents commonly referred to as 'the regulations'. The report is critical of the format of the Approved Documents and the lack of definition of key terms, including 'persons carrying out the work' and 'limited combustibility'. It is said that the lack of clarity leaves too much open to interpretation. This view is supported by the Construction Industry Council's response to the call for evidence, which was:

"For some, there is a lack of understanding about how all the strands of legislation and guidance fit

together, and about the distinction between legal requirements and extensive guidance. It seems clear that some readers believe that the Approved Documents are the requirements...There is a general sense that the Approved Documents do not provide sufficient clarity. Approved Document B is generally considered complex, difficult to follow, and in some places contradictory. Difficulties in understanding, and even navigating, the documents leads to differences in interpretation.”

The report observes that, as a result of confusion between the regulations and guidance, the requirements in Approved Document B are treated as a tick box exercise by those involved in the design and construction of buildings, and focus has shifted away from the outcome and performance of projects. The response from the industry confirms a need for the Approved Documents to be updated and simplified to prevent confusion.

The report recommends the government considers (with input from the Building Regulations Committee) how the Approved Documents could be restructured to provide a more streamlined view, while retaining the right level of technical guidance. Given that this may take some time, Dame Hackitt has asked that presentational changes are made to improve the clarity of Approved Document B as an interim measure.

## Roles and responsibilities

The report observes a general lack of clarity surrounding roles and responsibilities throughout the system, including in respect of key activities. There is currently no requirement for identifiable, named duty holders responsible for ensuring and demonstrating compliance with Building Regulations. It is suggested that there is a widespread culture in relation to fire and building standards of being told to what to do by regulators rather than taking responsibility for building to correct standards and the approach is driven by minimum compliance rather than ensuring the safety of a building for its lifetime. Even where regulations and guidance require consultation with others in the system, including fire authorities, in respect of fire safety there is currently no clear understanding of when this should take place or evidence that account is taken of the views expressed.

The report suggests that primary responsibility for ensuring a building is fit for purpose must rest with those who commission, design and build the project. Rather than responsibility being dispersed across the entire supply chain, it should rest with key identifiable personnel presumably with a view to promoting accountability.

## Competence

The report addresses that the competence of some of those involved in the design, construction, ongoing operational management and maintenance of complex and high-risk buildings has been

called into question. In particular, it is highlighted that there are currently no statutory registration or accreditation requirements for fire risk assessors undertaking assessments on high-risk or complex buildings.

The report observes that this is one area in which England and Wales are lagging behind other parts of the world that require key personnel throughout the system to be properly trained, assessed and in some instances, licensed.

## Process, compliance and enforcement

The report refers to numerous deficiencies in compliance assurance and sanctions.

It acknowledges the common situation of deviation between what is originally designed to be built and what is actually built, without clear and consistent requirements to seek authorisation, or to document, changes made. It identifies the 'design and build method' as being particularly problematic due to the way the design can evolve without proper documentation or review. The report suggests there should be a 'golden thread' throughout the life of a project.

Other issues referred to in the report include:

- The absence of a requirement in the Building Regulations for existing buildings to be brought up to the latest safety standards
- The overlap and variation between different regulations that apply during the life cycle of a complex or high risk building.
- Key control stages failing to be followed, including the handover of fire safety information and issue of Completion Certificates.
- Works starting to be undertaken before full plans have been approved by building control. This has resulted in some instances of non-compliance not being picked up because they have already been encapsulated in the fabric of the building.
- Inadequate public record to ensure the safety of a building throughout its lifetime as a result of developers failing to provide sufficient documentation to building control bodies

In addition the report suggests the required consultation with fire and rescue services in respect of building plans does not work as intended. It suggests that consultation by building control bodies and those commissioning and designing the building should take place early in the process and fire and rescue advice should be fully taken into account. The aim should be to secure their input as soon as possible so that fire safety may be fully designed in.

## Quality assurance and products

DCLG's Building Safety Programme identified more than 200 high-rise residential buildings across England fitted with aluminium composite materials cladding systems that are likely to present a fire hazard – the report notes there does not seem to be a single, simple reason to explain why so many buildings are affected.

The report notes that products have been / are marketed with specification date presented in ways that can easily be misinterpreted. In addition, individual elements that are used as part of compound systems are not being fully tested as systems.

The report is directly critical of the widespread use of desktop studies to assess the equivalence of products and systems. It suggests that these studies are not properly managed or controlled in terms of the circumstances in which they can be used. It is reported that a number of people engaged in the system have said that test conditions do not adequately reflect real life conditions. The report recommends the use of desktop studies to approve changes to cladding should be restricted, and only used where appropriate and with relevant test evidence. Those undertaking the desktop studies should demonstrate suitable competency to do so.

The next stage of the review will consider the case for a requirement for product testing to be made transparent and publicly available, and clearer system of product classification and labelling. The report acknowledges the integrity and efficacy of product and system classifications are highly dependent on correct installation by competent and knowledgeable persons. The standards of workmanship and competency are not currently made clear in the Approved Documents themselves.

## Next stages

The interim report states explicitly it is a clear call to action for the entire construction industry and the government departments that oversee it. Dame Hackitt emphasises that there is no quick fix and a universal change in culture is required.

## Conclusion

Our review of the interim report suggests that there are helpful comments for parties in seeking to defend professional negligence claims that they had incorrectly interpreted the requirements of the Building Regulations 2010 with reference to the core of ACM panels. The interim report makes it plain that the requirements of the Building Regulations 2010 and the relevant approved documents are far from clear and that that can lead to confusion and misinterpretation. As Dame Hackitt herself puts it: "As the review has progressed, it had become clear that the whole system of regulation, covering

what is written down and the way in which it is enacted in practice, is not fit for purpose, leaving room for those who want to take shortcuts to do so.”



**Emily Monastiriotis**  
Partner

T +44 20 7825 5718

E [emily.monastiriotis@simmons-simmons.com](mailto:emily.monastiriotis@simmons-simmons.com)



**Felix Zimmermann**  
Partner

T +44 20 7825 3820

E [felix.zimmermann@simmons-simmons.com](mailto:felix.zimmermann@simmons-simmons.com)



**James Pollock**  
Partner

T +44 20 7825 3936

E [james.pollock@simmons-simmons.com](mailto:james.pollock@simmons-simmons.com)



**Frances Gordon-Weeks**  
Associate

T +44 20 7825 3582

E [frances.gordon-weeks@simmons-simmons.com](mailto:frances.gordon-weeks@simmons-simmons.com)

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