

# What does the Building Safety Bill mean for you?

15<sup>th</sup> October 2020

Working together to eliminate error,  
by industry, for industry.

**Weightmans**

[getitright.uk.com](https://getitright.uk.com)  [@GIRI\\_UK](https://twitter.com/GIRI_UK)  [@GIRI](https://www.linkedin.com/company/GIRI)

**GIRI**

Get It Right Initiative



# Online forum: housekeeping

- Presentation is being recorded
- Use Q&A to ask questions
- If you need help use Q&A

# GIRI

# Agenda

- GIRI - An introduction
- What does the Building Safety Bill mean for you?
- Q&A

# GIRI

# Wasted spend on error

## Direct costs of error (5%)

resources used in correcting an error

## Indirect costs of error (7%)

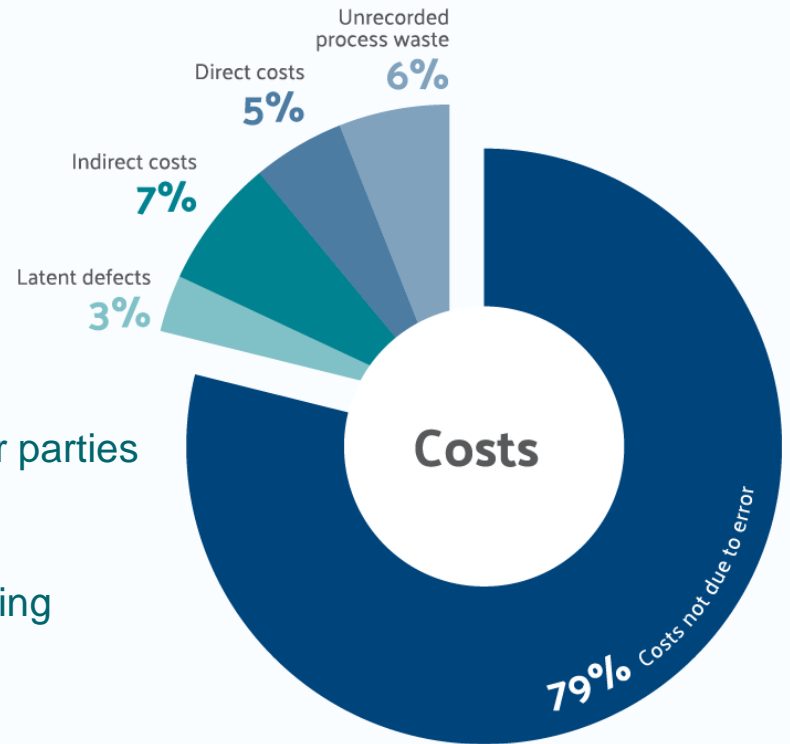
Resources used in follow on work and costs to other parties

## Unrecorded process waste (6%)

Errors occur, are identified and corrected without being recorded

## Latent defects (3%)

remain in place after client acceptance and any 'defects liability period' has passed



# GIRI

# Strategic Aim of GIRI

**To improve construction  
productivity and quality by  
eliminating error.**

**GIRI**

## Get It Right Initiative members – September 2020



# Grenfell Podcasts BBC Sounds

- Podcast 86 - Marcio Gomes
- Podcast 127 - Hartley, CEP, John Rowan and Max Fordham.

# GIRI



# Weightmans

What does the Building Safety Bill mean for you?

October 2020

Paul Lowe – Partner

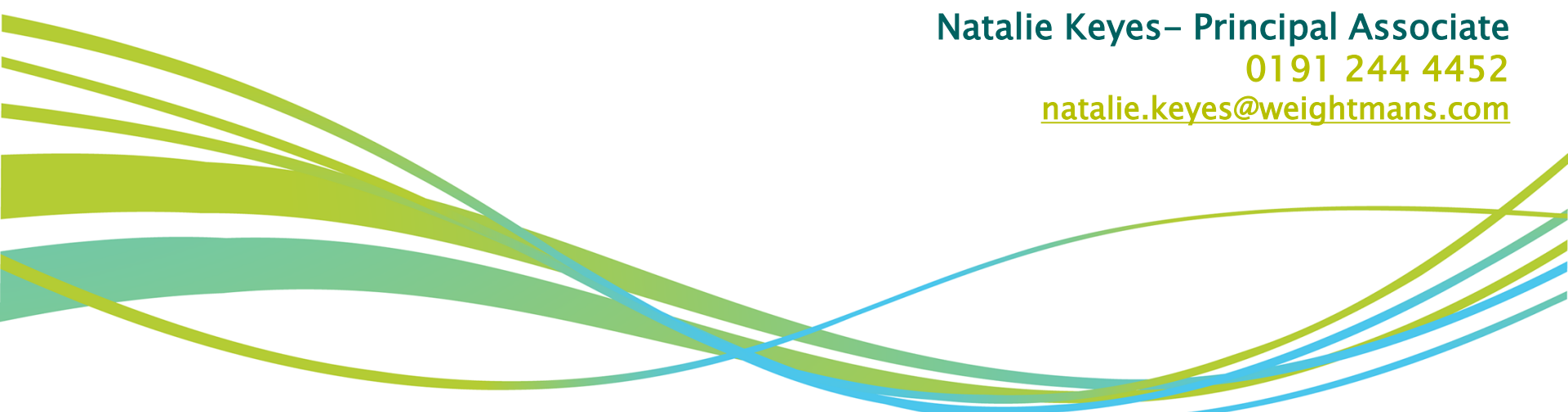
0207 822 7134

[paul.lowe@weightmans.com](mailto:paul.lowe@weightmans.com)

Natalie Keyes – Principal Associate

0191 244 4452

[natalie.keyes@weightmans.com](mailto:natalie.keyes@weightmans.com)





## Building Safety

- Programme:
  1. Building Safety – where are we now? How did we get here?
  2. A Reformed Building Safety System – what is involved?
  3. What the changes mean for claims and underwriting?
  4. Case Studies

## \*\*\*BREAKING NEWS – BUILDING SAFETY BILL PUBLISHED – 20 July 2020\*\*\*

### ■ The Building Safety Bill

- Complex legislation. 5 Parts, 119 sections and 8 Schedules.
- *Part 2* – establishes a new Building Safety Regulator.
- *Part 3* – new regulatory regime during the design and construction phase for higher-risk buildings.
- *Part 4* – concerned with higher-risk buildings when they are occupied, defines and places duties on the Accountable Person.
- Detailed Explanatory Notes set out scope of necessary secondary legislation.

# 1. Building Safety – where are we now? How did we get here?

- **Torre Windsor (Madrid) – February 2005**  
Fire during refurbishment works; fire spread from the upper floors leading to the demolition of the tower. Cladding exacerbated fire spread.
- **Lakanal House – July 2009**  
The exterior cladding panels had burned through in less than five minutes.
- **Grenfell Tower – June 2017**



# 1. Building Safety – where are we now? How did we get here?

## Building a Safer Future

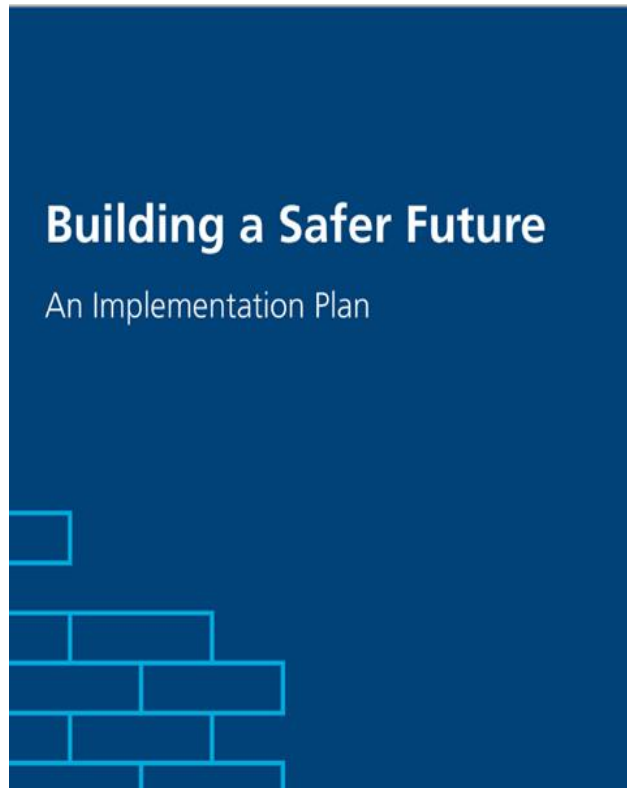
Independent Review of Building  
Regulations and Fire Safety:  
**Final Report**

May 2018 – Report

Findings included:

- Ignorance and indifference;
- Need for a “*radical rethink*” of the building safety system and how it works;
- Roles and responsibilities are unclear and competence is patchy;
- Inadequate regulatory oversight and enforcement tools;
- Over 50 recommendations made.

# 1. Building Safety – where are we now? How did we get here?



- **December 2018 – Government Implementation Plan**
- Create effective regulatory and accountability framework.
- Work with industry to drive culture change to increase responsibility for building safety (inc. competency of those undertaking building work).
- Construction and fire safety sectors to work holistically on building safety – focusing beyond own disciplines.
- Joint Regulators Group to work with Early Adopters to test the proposals.



# 1. Building Safety – where are we now?

## How did we get here?

### June 2019 Consultation:

- Key proposals for the reform of the building safety regulatory system.
- Multi occupied residential buildings of 18m high or more (i.e. “Buildings in Scope”).
  - Statutory objectives: accountability over building life cycle; mandatory occurrence reporting; putting residents at the heart of building safety.
- Industry-led Competence Steering Group.
- A single building safety regulator (the “Regulator”) overseeing safety/regulation at national level for Buildings in Scope (in place of current regime of approved building inspectors).
- More robust sanctions/enforcement measures.

# 1. Building Safety – where are we now?

## How did we get here?

### April 2020 – Government Proposals.

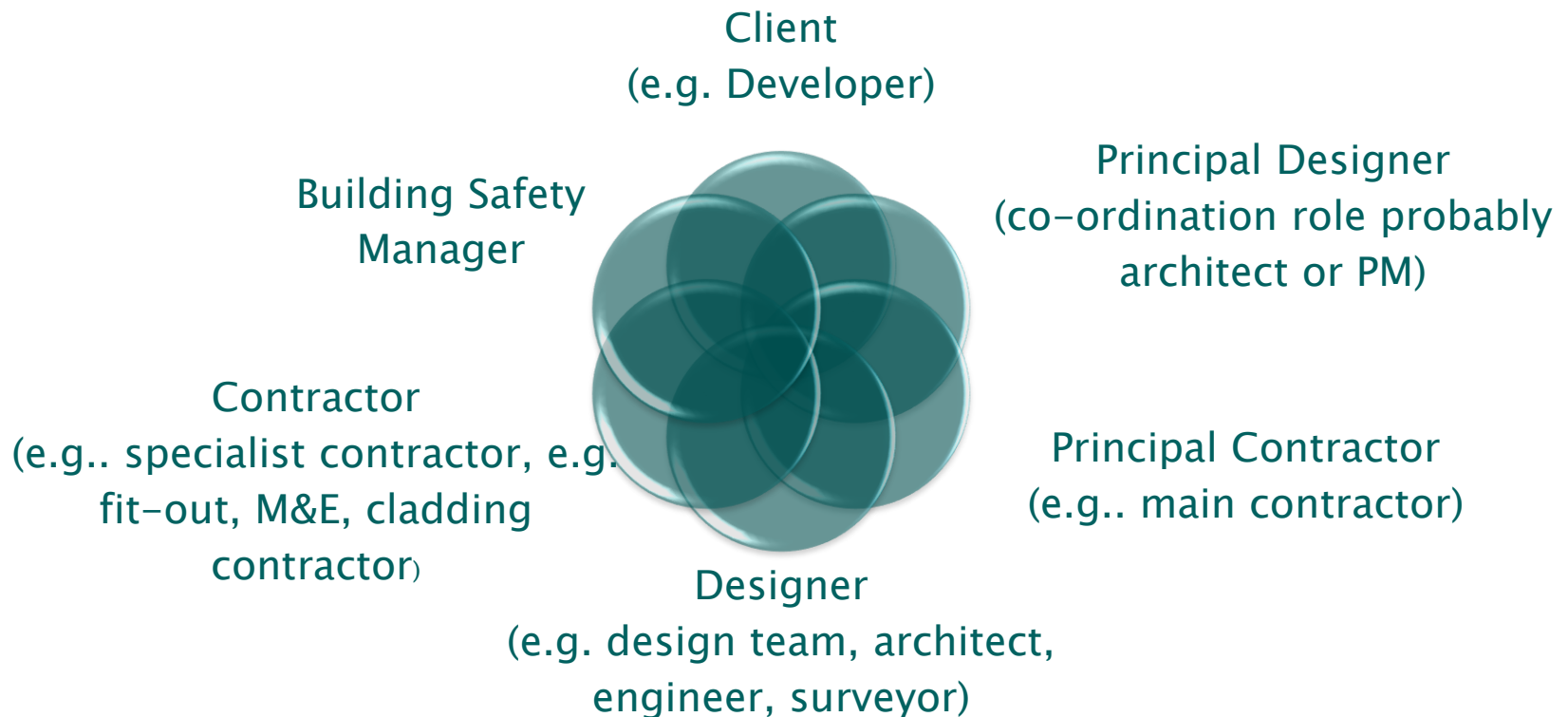
- A Building Safety Bill that will:
  - Apply to all multi-occupied residential buildings of 18 metres or more in height and, in due course, extend to include other premises, based on emerging risk evidence. Apply to both new and existing buildings.
  - Create a more effective regulatory and accountability framework to provide greater oversight of the building industry;
  - Introduce clearer standards and guidance;
  - Put residents at the heart of a new system of building safety for buildings in scope,
  - Help to create a culture change and a more responsible building industry, from design, through to construction, management and refurbishment.
- Bill just published!

## 2. A Reformed Building Safety System – what is involved?

**New Statutory Building Safety Regulator (s.2– s.8 of the BSB)**

## 2. A Reformed Building Safety System – what is involved?

Who is a Duty Holder?: (*S.38 of BSB and secondary legislation*)



## 2. A Reformed Building Safety System – what is involved?

**General Duties on all duty holders: (s.8, s.16 and secondary legislation)**

- Co-operate and share information with the Building Safety Regulator;
- Ensure compliance with building regulations;
- Comply with the specific regulatory requirements imposed upon them; and
- Ensure they and the people they employ are competent to do the work they are undertaking.



## 2. A Reformed Building Safety System – what is involved?

### Specific duties

- **Mandatory occurrence reporting (s.78 BSB);**
  - **Client** – to promote a ‘just culture’ of reporting safety concerns.
  - **Client/Principal Designer/Principal Contractor** – to report ‘appropriate occurrences’ to Regulator.
- Ensuring building safety and risk management through a system of **gateway points**.
- Creating and maintaining a **golden thread** of Building Information to handover on occupation.

## 2. A Reformed Building Safety System – what is involved

**The 3 Gateway stages (set out in Secondary Legislation):**

- **Gateway 1 – Before planning permission is granted:**
  - Duties imposed on Client (Developer).
  - Planning applicant to submit to LPA a Fire Statement as part of planning application.
  - Proposed new statutory requirements:
    - LPAs to consult with Fire Rescue Authority (FRA) regarding access by fire and rescue services to water supplies and the building.

## 2. A Reformed Building Safety System – what is involved

- **Gateway 2 – Before construction begins:**
  - The **Client** will build a **safety case** document (handover on occupation) to show the Regulator compliance with Bldg Regs and plans for management of fire and structural risks.
  - **Principal Designer**: full plans (inc. any changes since initial plans), 3D digital building model, fire and emergency file);
  - **Principal Contractor**: construction control plan.
  - Dutyholder and Regulator to agree inspection regime for whole build (flexible and agile to avoid unnecessary delays)
  - Regulator may have right to condemn non compliant works and/or works commenced before approval.

## 2. A Reformed Building Safety System – what is involved

- **Gateway 3 – Before occupation begins:**
  - **Client** to confirm relevant Building Regulations are met; apply for/receive a provisional registration of the building; assure the Regulator that risks assessed and managed and the building is ready to be operated safely during occupation.
  - **Principal Designer/Principal Contractor** to co-sign a *final declaration of compliance* that Building Regs complied with and documents handed back to Client. Regulator to decide whether to accept it or to request further info.
  - **Building owner** (i) to receive ‘safety case’ showing how fire and structural risks have been managed inc the golden thread docs and (ii) to meet various duties/complete & maintain docs.

## 2. A Reformed Building Safety System – what is involved

### Occupancy Phase (s. 60 – s.77 BSB)

- The Accountable Person, a new duty-holder for occupation, will be responsible for applying for and meeting the conditions of a Building Registration Certificate (ie allowing occupancy to commence).
- The Accountable Person will be legally responsible fire and structural risks in their buildings so the building can be safely occupied.
- Accountable Person will be required to appoint a competent **Building Safety Manager** to carry out day to day functions of ensuring that the building is safely managed.



## 2. A Reformed Building Safety System – what is involved

### The implications for Duty Holders – Culture change

- **Improve internal safety reporting** – Without fear of blame or retribution, there is a need to capture more safety risks to prevent future failures and improve public safety (pilot schemes underway).
- **Improve competency** ('Raising the bar') – Top down as well as bottom up = increased management responsibilities/costs (Competence Steering Group).
- **Improve quality.** 'code of quality management' by Chartered Institute of Building (construction quality/industry codes and standards).
- **Commit/collaborate** – Put safety before profit & engage early.
- **Greater criminal sanctions** – In the event of non compliance.

## 2. A Reformed Building Safety System – what is involved?

### Building Control Reforms

- Creation of a “unified professional and regulatory structure for building control, changing and modernising the existing legislative framework.”
- Register of inspectors and building control approvers.
- Electronic register/portal of information.

## 2. A Reformed Building Safety System – what is involved?

### Higher Risk Buildings

- Registration and Certificates
- Building Safety Managers
- Building Safety Risks
- Information and documents
- Resident duties
- Costs

## 2. A Reformed Building Safety System – what is involved?

New Homes Ombudsman

Construction Products

### 3. What the changes mean for claims and underwriting?

Ambition of a safer industry producing less claims and fewer losses to insurers.

But.....

- Extensive new duties on professionals
- What does mandatory reporting mean for policy notifications?
- Availability of insurance for regulatory fines?



### 3. What the changes mean for claims and underwriting?

#### Numerous new duties

- Likely to give rise to an extension of the professional duties owed by construction professionals;
- For instance, failure to obtain the regulator's approval, thereby delaying a project, is likely to be considered a breach of professional duty.
- Similar points arise in connection with the duty to collaborate and share information. Lack of compliance is likely to cause financial losses and amount to a breach of professional duty.
- Creation of a new profession of **Building Safety Manager** (probably a building surveyor)
- The possibility of tortious claims of breach of statutory duty subject to the wording of the Bill.

### 3. What the changes mean for claims and underwriting?

#### Mandatory Reporting & Policy Notification (s.78 BSB)

- The Building Safety Regulator will establish a system of mandatory occurrence reporting for dutyholders.
- Mandatory occurrence will be defined as any structural safety or fire safety related event which is perceived to represent a significant risk to life in multi-occupied residential buildings within the scope of the new regime. A voluntary scheme for non-significant risks will also operate.
- Should underwriters require notice of when a formal report is made by a policy holder?;
- Should a report be automatically considered a notification to a policy?
- Would a mandatory report amount to a notifiable circumstance?

### 3. What the changes mean for claims and underwriting?

#### Regulator's Enforcement Powers, D&O and insurable fines

- The Building Safety Regulator will have powers to sanction duty holders for breaches of duty.
- Sanctions range from stop notices, civil fines and criminal prosecution of directors.
- D&O insurers will face exposure in the event that regulatory and enforcement action is taken against dutyholder's leadership.
- Regulatory fines may be insurable – will insurers have appetite to extend cover where fines fall short of criminal sanctions?

## 4. Case studies

- 1. D&B Contractor – stop notice served and fails to achieve sign off for occupancy (Gateway 3). Notifications made to PI and D&O policies.
  
- More to follow, surveyors, architects, engineers.....
- What happens next?

## CladdingRe

- Potential Compensation fund for ‘trapped leaseholders’ backed by insurers and finance houses.
- Indemnity from claims in exchange for reserves.
- Risk transfer mechanism for insurers.
- Could it work in practice?



Q&A





**Next event: Monday 19<sup>th</sup> Oct, 1.30pm**

# **GIRI Forum: Are your checking procedures fit for purpose?**

Working together to eliminate error,  
by industry, for industry.

**Weightmans**

[getitright.uk.com](http://getitright.uk.com)  [@GIRI\\_UK](https://twitter.com/GIRI_UK)  [@GIRI](https://www.linkedin.com/company/giri)

**GIRI**

Get It Right Initiative





# Weightmans

What does the Building Safety Bill mean for you?

October 2020

Paul Lowe – Partner

0207 822 7134

[paul.lowe@weightmans.com](mailto:paul.lowe@weightmans.com)

Natalie Keyes – Principal Associate

0191 244 4452

[natalie.keyes@weightmans.com](mailto:natalie.keyes@weightmans.com)

