

BSA response to Building A Safer Future

Restricted
19 July 2019



Introduction

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 5 credit unions. Building societies have total assets of £415 billion and, together with their subsidiaries, hold residential mortgages of almost £330 billion, 23% of the total outstanding in the UK. They hold over £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

The BSA has been fortunate to have a close and constructive relationship with Ministry of Housing, Communities and Local Government (MHCLG) officials on issues of building regulation reform and fire safety since the Grenfell Tower tragedy. We are supportive of the proposals to strengthen the regulatory and accountability framework for building safety in general but recognise that others in the industry will have a greater degree of technical expertise. Therefore our responses below are limited to questions where our members have an interest or where we feel we can add value.

The BSA holds quarterly Property Risk Panel meetings where building society staff valuers, underwriters and heads of lending can meet with valuation panel managers and discuss issues such as building safety. Feedback from the Property Risk Panel has been supportive of stronger regulation, but also mindful of the practical and commercial considerations of needing to ensure that an "accountable person" is able to obtain affordable indemnity insurance.

We are working with MHCLG on an industry response to issues with ACM and other potentially combustible forms of cladding. Part of the uncertainty currently being experienced in the sector is due to a lack of clarity around responsibilities and accountability for building safety, as well as who should bear the costs for remediating unsafe buildings. As such we are supportive of clearer responsibilities going forward and believe these proposals should help with remediation programmes also.

As a final general point, we feel it is important to highlight the work the BSA is also doing with MHCLG on Modern Methods of Construction (MMC). Similar issues around building safety, durability, repairability and responsibility for design and construction have been raised within the cross-sector MMC Group, and we would stress the importance of any outputs from the two strands of work being consistent with each other.

Responses

Q. 1.1. Do you agree/ that the new regime should go beyond Dame Judith's recommendation and initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys)? Please support your view.

Yes we agree, as this would bring the regime in line with the height used in the Government's advice notes on external wall systems and avoid confusion within the industry. It would also aid consistency with mortgage valuations as valuers could be sure that all tall buildings are subject to the same levels of regulation.

Q. 1.8. Where there are two or more persons responsible for different parts of the building under separate legislation, how should we ensure fire safety of a whole building in mixed use?

A duty to cooperate and coordinate appears sensible. For the most part, building societies lend on residential properties but in some circumstances the value of their security can be affected by adjoining commercial premises.

Q. 2.1. Do you agree that the duties set out in paragraphs 61 to 65 are the right ones?

Yes we agree. The duty to ensure competence is particularly important given the increase in the use of Modern Methods of Construction and use of components such as cladding which make it vital for designers and contractors to have sufficient levels of knowledge and experience of the construction method being used and how it is likely to perform over the long-term.

Q. 3.4. Which options should we explore, and why, to mitigate the costs to residents of crucial safety works

It is vital for the purposes of mortgage lending that service charges are clear and not unduly onerous for leaseholders, as these need to be factored into mortgage affordability assessments. In terms of mitigating the costs, MHCLG may want to explore whether accountable persons could be required to pay a levy, as a percentage of the development value, on each building developed which could be held by the regulator to disburse for any unanticipated crucial safety works.

Q. 3.5. Do you agree with the proposed approach in identifying the accountable person? Please support your view.

In our view the regime should also apply to administrators if a building owner becomes insolvent.

Q. 3.9. Do you agree with the proposed duties and functions of the building safety manager? Please support your view.

Yes we agree although it is important that the cost of the building safety manager should be absorbed by the building owner as a cost of compliance, rather than passed onto leaseholders.

Q. 4.18. Should one of the building safety regulator's statutory objectives be framed to 'promote building safety and the safety of persons in and around the building'?

Yes it is important for regulation to be principles-based and complied with in spirit as well as compliance with specific requirements

Q. 5.6. Do you think there should be a new requirement on residents of buildings in scope to co-operate with the accountable person (and the building safety manager) to allow them to fulfil their duties in the new regime? Please support your view.

Yes, engaging residents is an important part of ensuring that regulations are complied with at a practical level.

Q. 5.9. Do you agree with the proposed requirements for the accountable person's internal process for raising safety concerns?

There should also be a 'whistleblowing' route for residents where, for example, other residents have raised concerns and may have been intimidated or threatened with legal action.

Q. 5.10. Do you agree to our proposal for an escalation route for fire and structural safety concerns that accountable persons have not resolved via their internal process? If not, how should unresolved concerns be escalated and actioned quickly and effectively?

Q. 5.11. Do you agree that there should be a duty to cooperate as set out in paragraph 290 to support the system of escalation and redress?

We agree on both points.

Q. 6.1. Should the periodic review of the regulatory system be carried out every five years/less frequently? If less frequently, please provide an alternative time-frame and support your view

We agree with a five-year timeframe.

Q. 6.2. Do you agree that regulatory and oversight functions at paragraph 315 are the right functions for a new building safety regulator to undertake to enable us to achieve our aim of ensuring buildings are safe? If not, please support your view on what changes should be made.

The building safety regulator should also collect data on the performance of different materials and construction methods, and should work with the MHCLG Modern Methods of Construction working group on the design of a database, likely to be held by building control.

Q. 6.3. Do you agree that some or all of the national building safety regulator functions should be delivered ahead of legislation, either by the Joint Regulators Group or by an existing national regulator? Please support your view.

Yes we agree that the regulator should be set up as soon as practical but it is important that it is well-resourced from day one and able to take action.

Q. 7.2. Government agrees with the Competence Steering Group's recommendations for establishing an industry-led committee to drive competence. Do you agree with this proposal? Please support your view.

Yes the competence knowledge and skills of people constructing buildings is just as important as the integrity of the materials used and should receive equal attention.

Q. 8.2. Do you agree that an 'inventory list' should begin with including those constructions products with standards advised in Approved Documents?

Products that are essential to safety should certainly be the priority for a new regime but this should also include structural elements of the building. It is also important to be aware that many products will be manufactured overseas so the regime may also need to apply to the UK distributors of construction products.

Q. 8.4. Do you agree with the proposed approach to requirements for construction products caught within the new regulatory regime? Please support your view.

Yes it would be very useful to be able track products and components used within construction so that if any defects were found in one building, the manufacturer would be able track where else these products have been used. For example, it would have been far easier to find the buildings where ACM cladding had been used, without needing such an extensive testing programme. This also avoids blighting other properties built with components with similar aesthetics but different performance.

This approach also enables data to be collected on durability and repairability of buildings which are important considerations for mortgage lenders.

Q. 8.7. Do you agree construction product regulators have a role in ensuring modern methods of construction meet required standards? Please support your view.

Yes we agree, and feel these standards would be very valuable for mortgage lenders who are exposed to the risk of poor construction on properties they lend on for 25-40 year periods. However, it is important to be aware that not all construction components will be manufactured in the UK so the standards will also need to cover imports.

Q. 8.13. Do you agree that third-party schemes should have minimum standards? Please support your view.

Yes but MHCLG should ensure this matches up with the standards to be set out in the forthcoming Manufacturing Acceptance Protocol and Warranty Acceptance Protocol for Modern Methods of Construction.

Q. 9.5. Do you agree that formal enforcement powers to correct noncompliant work should start from the time the serious defect was discovered? Please support your view.

This sounds sensible as it can take a number of years for defects to become apparent and the timeframe may elapse between the offence being committed and discovery.

Q. 9.6. Do you agree that we should extend the limits in the Building Act 1984 for taking enforcement action (including prosecution)? If agree, should the limits be six or ten years?

Ten years to match up with new-build warranties.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £400 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.