

Session 6: The Building Safety Act 2022: Legal Aspects and Liabilities

Questions & Answers from the Session

Please note that the responses provided are for informational purposes only and do not constitute legal advice

1. For in-occupation buildings, what constitutes a 'single building'? For example, if a multistorey block includes residential and commercial/hotel spaces, how should it be treated in a Safety Case submission?

- *Mixed use buildings with 2 residential units potentially need to be registered. An example of this might be a building which is 12 floors of mixed retail / office with 4 residential units on the top two floors. This type of building is within the HRB regime, such that the whole building may be covered and not just the resi-units.*
- *Structural independence is a key concept in examples such as the above. If multiple use-types are housed in one building with a shared structural frame, then the entire building would need to be considered. Each use would have an AP and there would need to be a PAP, the person responsible for the residential part. It is not appropriate to only consider the residential component. Taking the above example, any incident in the lower-level office/retail floors that affected the structural integrity of the building frame overall would have an inherent bearing on the upper-level residential units, and thus needs to be considered as part of a structural risk assessment.*
- *However, this is complicated where a single structure contains “independent sections”, in which case each independent section is regarded as a separate registration. The question of whether part of a structure is an “independent section” requires consideration of whether it:*
 - *has its own entrance and exit to the outside, accessible from anywhere within that section; and either*
 - *has no access to any other section within the overall structure or; only has access to another section of the overall structure which does not contain a residential unit*
 - *See the following for further guidance:*
<https://www.gov.uk/guidance/criteria-for-being-a-higher-risk-building-during-the-occupation-phase-of-the-new-higher-risk-regime>

- *In such cases, a separate risk assessment would need to be completed for each registered HRB given each will require its own safety case, although in practice the content is likely to be very similar.*

2. How is collaboration viewed in terms of the PI impact? Isn't there a ceiling on this based on what your insurance will allow?

- *This would need to be discussed with your insurance broker / provider. It's possible an insurer may ask that you evidence policies, controls, processes are in place to demonstrate how collaboration has or will be achieved. It will, of course, be subject to the terms of your policy*
- *As to the "ceiling", it is assumed this means ceiling to your liability. There may be a ceiling to your contractual liability if there is a limitation / cap on liability in any appointment documents – and this should be linked to your PI cover*
- *However, contractual limitations on liability will not be effective against statutory claims such as Defective Premises Act or Building Liability Order claims, or enforcement by the BSR being automatically assigned to you) you should refuse to take on the appointment*
- *The key thing is to define your role, and there will be further guidance on this within the forthcoming IStructE guidance*

3. Is it possible to contractually require the client to appoint a PD who is not you?

- *We assume this question relates to a non-domestic project*
- *If there is more than one contractor, the client must appoint a PD. In those circumstances, the client cannot force you to be the PD and so it is possible for you could have a contractual provision which confirms it won't be you*
- *If there is one contractor and only one designer, that designer must fulfil the duties of the PD. It's not possible to contract out of this*

4. What is the solution where we inherit the PD role but do not have the experience/ability to perform it?

- *If a replacement principal designer is appointed, the replacement must review the arrangements the previous principal designer so that all reasonable steps are taken to ensure that the design is such that if the building work to which the design relates were built in accordance with that design the building work would be in compliance with all relevant requirements*
- *If you don't have the competencies, you should either obtain the relevant competence (or appropriate external support) or refuse the appointment and not take on the job*

5. **Should designers refrain from starting work until they are satisfied that the client has fulfilled their duties, including appointing a PD?**
 - *Yes, designer should not start work unless satisfied that the client is aware of its duties*
6. **For minor extensions, is it not the builder who takes responsibility as PD? As structural designers, we do not necessarily handle drainage, insulation, or fire protection**
 - *We assume this question relates to a domestic project*
 - *If a domestic client fails to make the appointments of the principal designer and principal contractor then;*
 - *the designer in control of the design phase of the project will be the principal designer; and*
 - *the contractor in control of the construction phase of the project will be the principal contractor. If the contractor takes on design responsibilities it could also be a designer*
7. **Can you confirm where we can get copies of the slides and CPD recording?**
 - *A copy of the presentation slides is not available, but the recording of the full presentation is available on the IStructE YouTube channel*