

**Everything you always  
wanted to know about the  
Building Safety Act... but  
were too afraid to ask**

**SHOOSMITHS**



BSA CONFERENCE		AGENDA - TIMINGS - SPEAKERS	
PART	TIME	TOPIC	SPEAKERS
09:30 - 10:50 - FIRST SESSION - PARTS 1 TO 5			
Part 1: Legal liabilities for building defects before the Building Safety Act 2022	15 minutes	1.1 Some basic principles of law	Ian Reid and the Shoosmiths London Construction Team
		1.2 Liability in contract	
		1.3 Liability in tort	
		1.4 Collateral warranties	
		1.5 The Contracts (Rights of Third Parties) Act 1999	
		1.6 The standard liability model for property developments	
Part 2: The Defective Premises Act 1972	15 minutes	2.1 Why was the Act introduced?	Ian Reid and the Shoosmiths London Construction Team
		2.2 What does the Act do?	
		2.3 What is "fit for habitation"?	
Part 3: The Building Regulations	15 minutes	3.0 A brief history of building control	Ian Reid of Shoosmiths
		3.1 What are the Building Regulations and when do they apply? (The Building Act 1984 and the Building Regulations 2010)	Shaan Haque of Shoosmiths
		3.2 The nature of a performance-based system rather than a prescriptive system – its pros and cons	Jack Davies of Shoosmiths
		3.3 Approved Documents	Albi Bell of Shoosmiths
		3.4 Approved Document B – Fire Safety	
Part 4: Building Control Approval	15 minutes	inspectors	Ryan Fordham of Shoosmiths
		4.2 Why local authorities are not responsible for defective or non-compliant work	
		4.3 Can you claim against an approved inspector?	
		4.4 What happens if you fail to comply with the building regulations	
Part 5: The lead up to Grenfell	15 minutes	5.1 The UK's track record in building high density social housing	Ian Reid of Shoosmiths
		5.2 Deregulation and privatisation of social housing	Bijou Dunn of Shoosmiths
		5.3 The Summerland fire 1973	
		5.4 The privatisation of the building control profession	Jack Davies of
		5.5 Measures to improve the energy efficiency of buildings	Shaan Haque of
		5.6 The Lankanal House fire 2009	Albi Bell of Shoosmiths
10:50 - 11:10 - MID MORNING COFFEE BREAK			



11:10 - 12:30 - SECOND SESSION - PARTS 6 TO 10			
Part 6: Combustible cladding (with Stuart Macdougald-Denton, Global Manager of Diales Technical)	15 minutes	6.1 What exactly is combustible cladding?	Stuart Macdougald-Denton, Diales
		6.2 The 14th June 2017 – The Grenfell Fire	
Part 7: In the aftermath of Grenfell (with Glenn Horton, Fire Engineer)	15 minutes	7.1 The Grenfell Public Enquiry	Rubina Zaidi of Shoosmiths
		7.2 The challenges of criminal prosecutions arising out of Grenfell	Jack Davies of Glenn Horton, Fire Engineer
		7.3 The Hackitt Review	
		7.4 EWS1 Certificates	
		7.5 Sprinklers in high rise buildings	
		7.6 Second stairways in high rise buildings	
7.7 Tensions between central and local government			
Part 8: The Government's response to the Hackitt Review – the Building Safety Act 2022	15 minutes	8.1 A brief overview of the Act	Michael Bennett of Shoosmiths
		8.2 Devolved jurisdictions	
		8.3 Which buildings do the changes apply to?	
		8.4 What is in force and what the future holds	
Part 9: The Building Safety Regulator	15 minutes	9.1 What is the HSE and who is the Regulator?	Rubina Zaidi of Shoosmiths
		9.2 The Regulator's objectives, principles and duties	
		9.3 The new committees	
		9.4 The Regulator's interaction with local authorities and fire and rescue	
		9.5 Plans and reports	
		9.6 Going to jail – The enforcement powers of the Regulator	
9.7 The Building Safety Regulator in summary			
Part 10: The Government's "negotiations" with developers	15 minutes	10.1 The Developer's Pledge	Amber Wright of Shoosmiths
		10.2 The Self Remediation Terms	
		10.3 The Responsible Actors Scheme	
		10.4 Failure to join or comply with the Scheme	
12:30 - 13:30 - LUNCH BREAK			

13:30 - 14:50 - THIRD SESSION - PARTS 11 TO 16			
Part 11: The new regime for higher risk buildings	24 minutes	11.1 The new regime	Rick Atha of Shoosmiths
		11.2 What is a "Higher Risk Building"?	
		11.3 The Regulator as the automatic building control authority	
		11.4 The three gateway points for higher risk buildings	
		11.5 Gateway 1: The planning stage	
		11.6 Gateway 2: During construction	
		11.7 Gateway 3: On completion of the building work	
		11.8 The "Golden Thread" of information	
		11.9 Mandatory occurrence reporting	
Part 12: An Architect's perspective (with Simon Robins of Make Architects)	12 minutes	12.1 Residential tall buildings	Simon Robins of Make Architects
		12.2 Making the Gateway submissions	
		12.3 The effect of all this on projects	
Part 13: The Dutyholder Regime	12 minutes	13.1 Who are the new dutyholders?	Ian Hardman of Shoosmiths and Graham King of Safer Sphere
		13.2 What are their duties?	
		13.3 Who can be Principal Designer and Principal Contractor	
		13.4 Higher Risk Buildings – additional duties	
		13.5 What are we still waiting for?	
Part 14: The regime after the works are completed and during occupation	12 minutes	14.1 The "Accountable Person"	Richard Symonds of Shoosmiths
		14.2 The Fire Safety Order 2005 and the "Responsible Person" in blocks of flats	
		14.3 The ongoing duties to assess and manage building safety	
		14.4 Registering over 12,500 higher-risk residential buildings with the Regulator	
		14.5 The "Calling in" of registered buildings (estimated to take 5 years)	
Part 15: Reforms to the Building Control Profession	6 minutes	15.1 What did Dame Judith Hackitt have to say about the building control	Ian Hardman of Shoosmiths and Graham King of Safer Sphere
		15.2 What reforms is the government actually implementing?	
Part 16: An international perspective (with Jonathan Duler & Dr Brian Ashe, Fire Safety Engineers)	12 minutes	16.1 How does fire safety in the UK compare to other parts of the world?	Jonathan Duler & Dr Brian Ashe of Basic Expert
		16.2 How all this has played out previously in Australia	
		14:50 - 15:10 - MID-AFTERNOON COFFEE BREAK	

15:10 - 16:40 - FOURTH SESSION - PARTS 17 TO 22			
Part 17: Legal liabilities for building defects after the Building Safety Act (2022)	12 minutes	17.0 The effect of the Building Safety Act 2022 on the Defective Premises Act 1972	Ian Reid of Shoosmiths
		17.1 Remediation Orders	Richard Symonds of Shoosmiths
		17.2 Remediation Contribution Orders	
		17.3 Amendments to the DPA 1972 - Duties relating to work to dwellings	Ian Reid of Shoosmiths
		17.4 Extended limitation periods	
		17.5 Claims under s.38 of the Building Act 1984	
		17.6 The problems created by 30 year limitation periods	
Part 18: Claiming in the Courts (with Tom Coulson, Barrister, Keating Chambers)	12 minutes	18.1 Recent case law regarding defective cladding	Tom Coulson of Keating Chambers
		18.2 The difficulty in demonstrating compliance with the Building Regulations in a performance based system.	
Part 19: Lifting the "corporate veil" - New liabilities for your parent companies (with HHJ David Grant)	15 minutes	19.1 Privity of contract before the Act	Ian Reid of Shoosmiths
		19.2 Building Liability Orders	Barry Stimpson of Shoosmiths
		19.3 What is an "associated company"?	
		19.4 How might the courts approach this?	HH David Grant
		19.5 The new liability model for property developments	Ian Reid and the Shoosmiths London Construction Team
Part 20: Home Warranties and Insurance (with Gavin Oram, Head of Property and Construction, PIB Insurance Brokers, Joe Gooden, Director of Build-Zone and Calum English, Lead Underwriter at CNA Hardy)	12 minutes	20.1 The Insurance World	Gavin Oram, PIB Insurance Brokers
		20.2 The existing Home Warranty schemes	Joe Gooden, Director of Build-Zone
		20.3 "New Build Home Warranties" under the Act	Ian Reid of Shoosmiths
		20.4 What do insurers make of what the Act proposes about New Build Home Warranties?	Calum English of CNA Hardy, Gavin Oram and Joe Gooden
		20.5 What are the implications for Professional Indemnity Insurance?	Calum English of CNA Hardy
Part 21: Legal liabilities for construction products	6 minutes	21.1 Liability relating to construction products	Michael Bennett of Shoosmiths
		21.2 Liability for past defaults to cladding products	
		21.3 Limitation relating to construction products	
		21.4 Cost Contribution Orders	
		21.5 Regulation of construction products	
		21.6 Enforcement: The National Regulator for Construction Products	
Part 22: The effect of all of this on your contracts and transactions (with Sophie Rosier, Head of London Mixed Use, Savills)	18 minutes	22.1 The effect on building contracts	Rick Atha of Shoosmiths
		22.2 The effect on consultants appointments	Rick Atha of Shoosmiths
		22.3 The effect on real estate transactions	Choisanne Man of Shoosmiths
		22.4 The effect on the market	Sophie Rosier of Savills
		22.5 Are we going to get safer buildings and are the wheels of commerce still	Ian Reid of Shoosmiths
16:30 - 16:40 - TEN MINUTE REFRESHMENT BREAK			

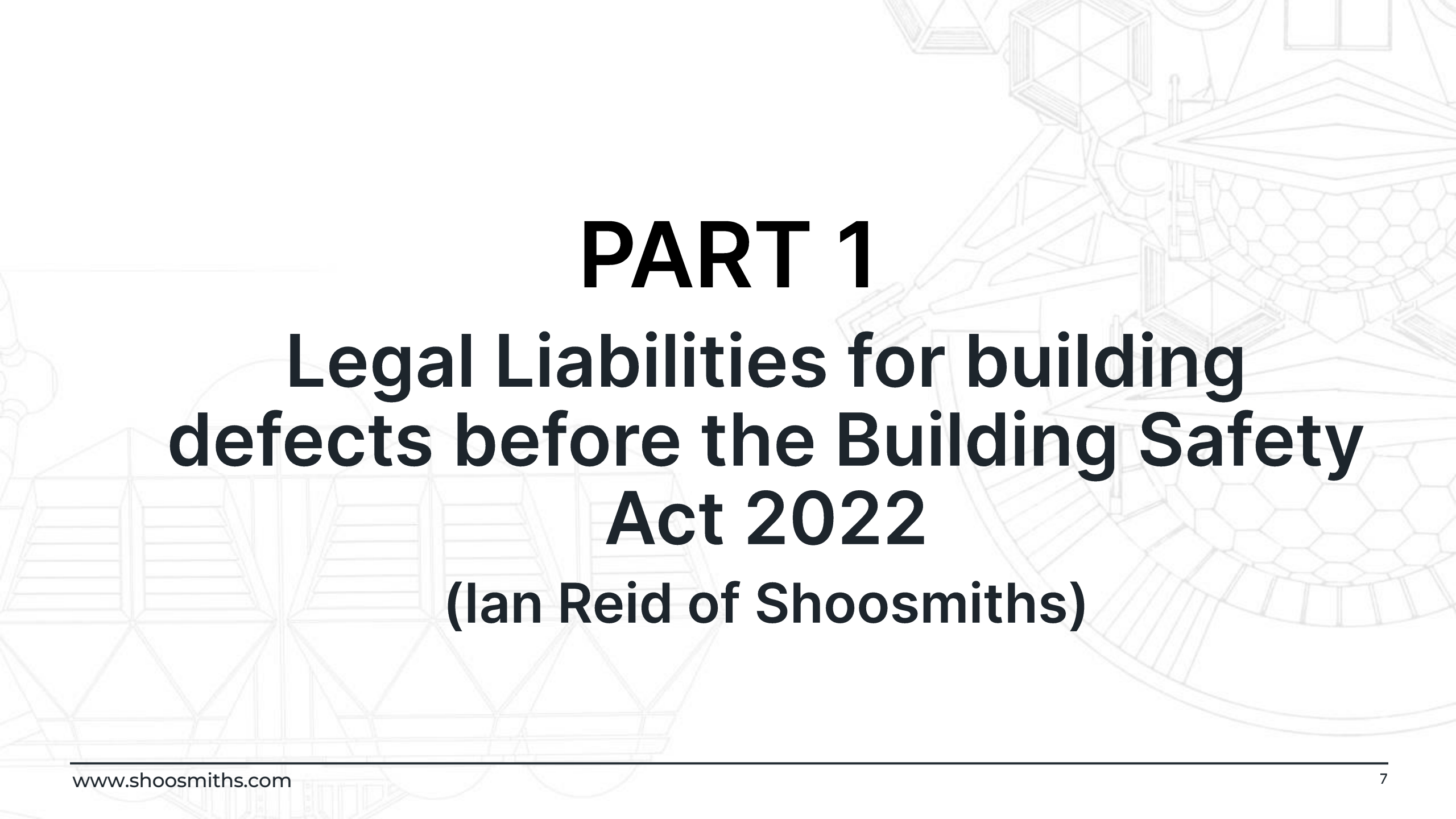
**16:40 - 17:20 - PANEL DISCUSSION - VIEWS ACROSS THE INDUSTRY**

**The panelists are:**

Alexander Nissen KC Head of Keating Chambers  
HH David Grant formerly the Technology and Construction Court Judge in Birmingham  
Tom Coulson Barrister of Keating Chambers  
Stuart Macdougald-Denton Global Managing Director of Diales Technical  
Glenn Horton Fire Engineer  
Graham King Director of Building Safety, Safer Sphere  
Simon Robins of Make Architects  
Sophie Rosier Head of London Mixed Use, Savills  
Gavin Oram Head of Property and Construciton, PIB Insurance Brokers  
Joe Gooden Director of Build-Zone  
Jonathan Duler, Basic Expert  
Dr Brian Ashe Fire Safety Engineer, Basic Expert

**17:20 - DRINKS ON THE TERRACE**





# **PART 1**

## **Legal Liabilities for building defects before the Building Safety Act 2022**

**(Ian Reid of Shoosmiths)**

# 1.1 Some basic principles of law



# **What is the purpose of the commercial courts?**

# The big risk to the wheels of commerce... the floodwaters of litigation

- The “Floodgates” argument
- The courts are engaged in a constant balancing act: maintaining a safe and reliable business environment where the wheels of commerce can keep turning and rights can be enforced.... But without opening the Floodgates of Litigation.

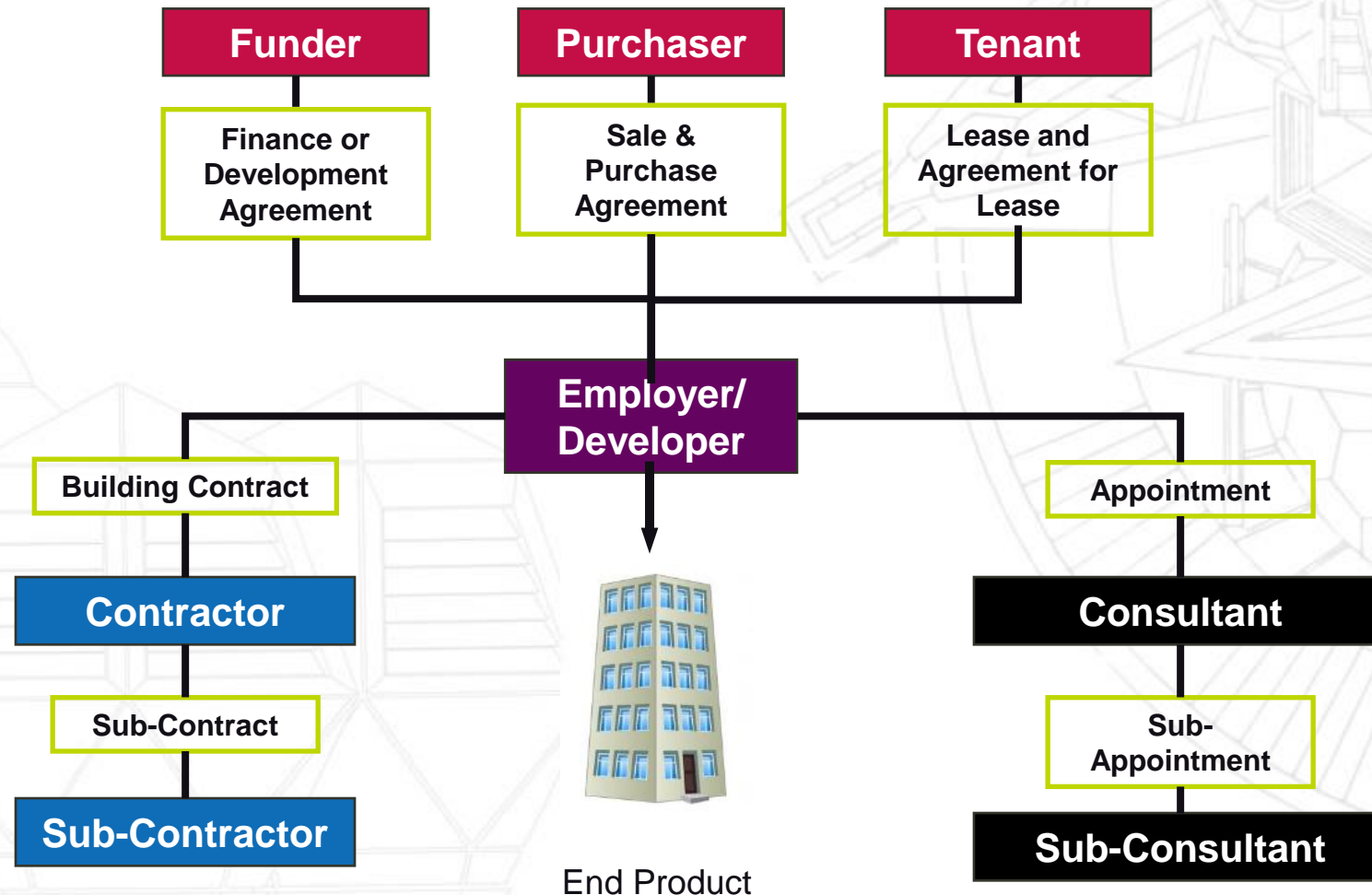


# Parties, Third Parties and Privity of Contract

**It is a mistake to think of a construction project as simply a contract between two parties, the Developer and the Contractor:**



# Contractual arrangements on a construction project

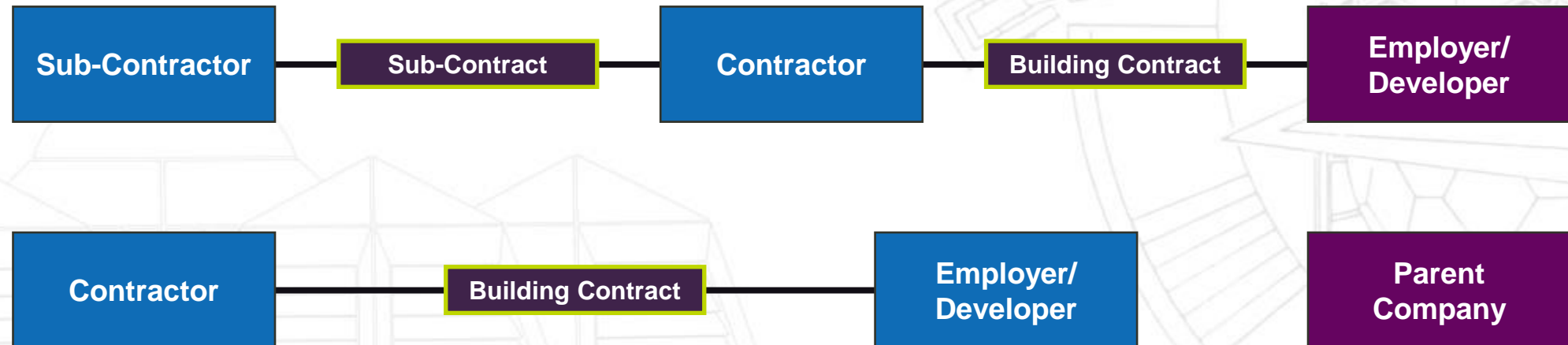


# What is a “Party”

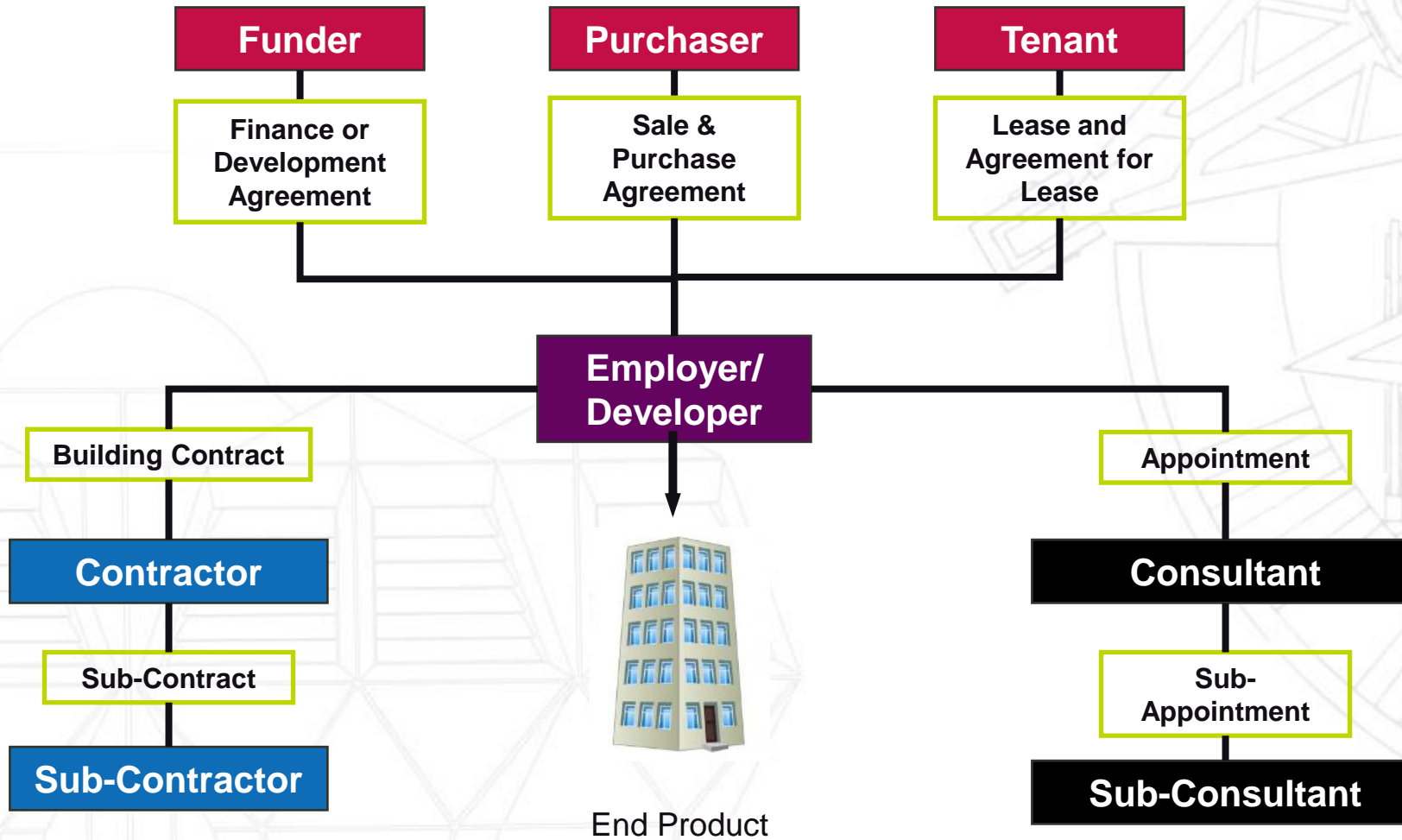




# What is a “Third Party”



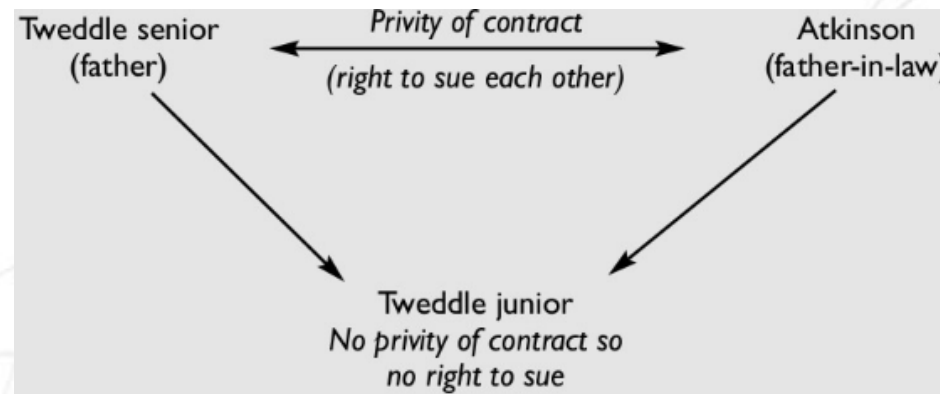
# Basic contractual arrangements



# The rule about “Privity of Contract”

- The rule of “privity of contract” means that (as a general rule) a person who is not “privity” to a contract (i.e. is not a party to a contract) can neither sue or be sued on that contract or enforce any of its terms even where it was made for his or her benefit

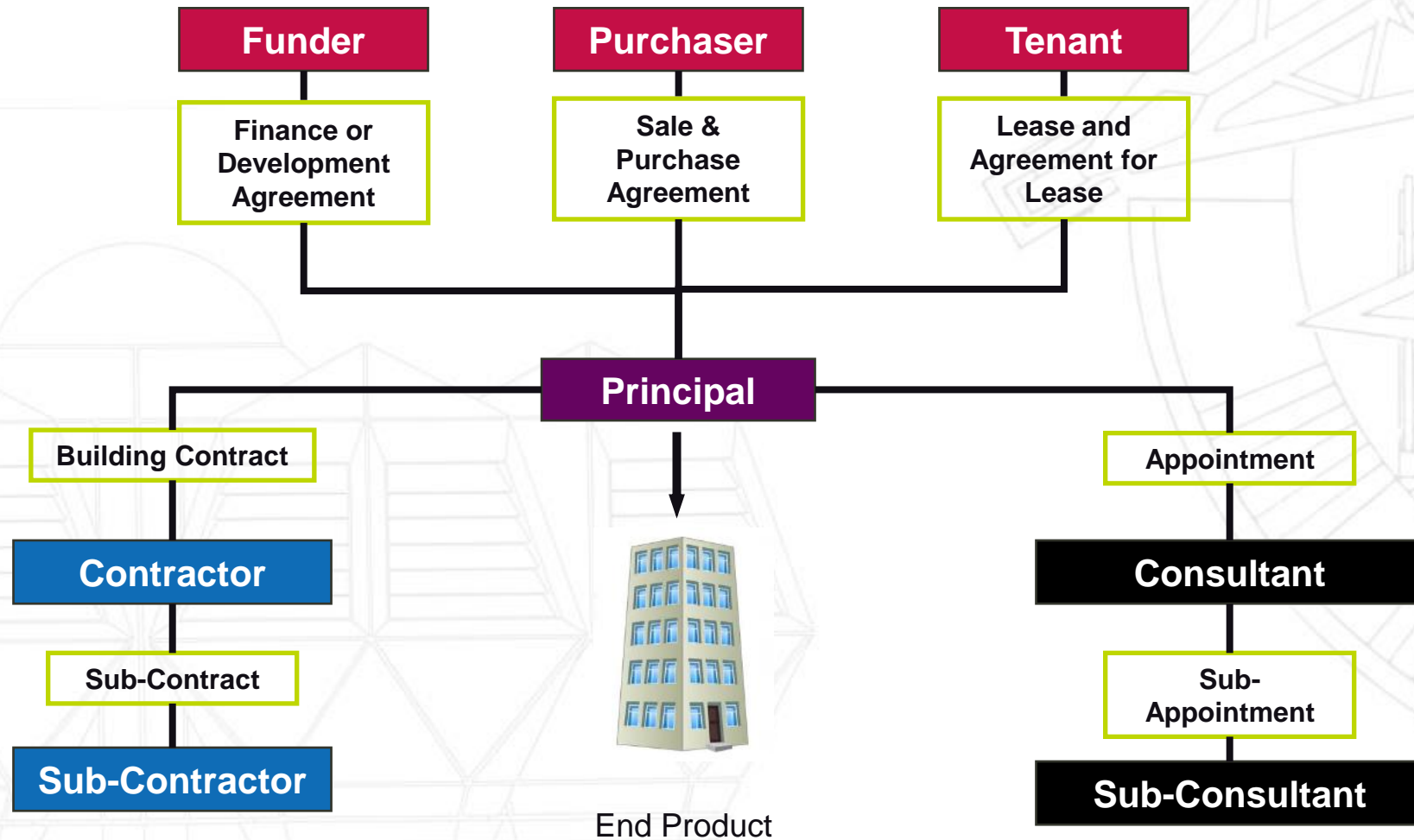
# The case of *Tweddle v Atkinson* (1861)



- The groom's claim failed, because he was not a party to the contract, even though the contract was for his benefit.



# Basic contractual arrangements





## 1.2 Liability in Contract

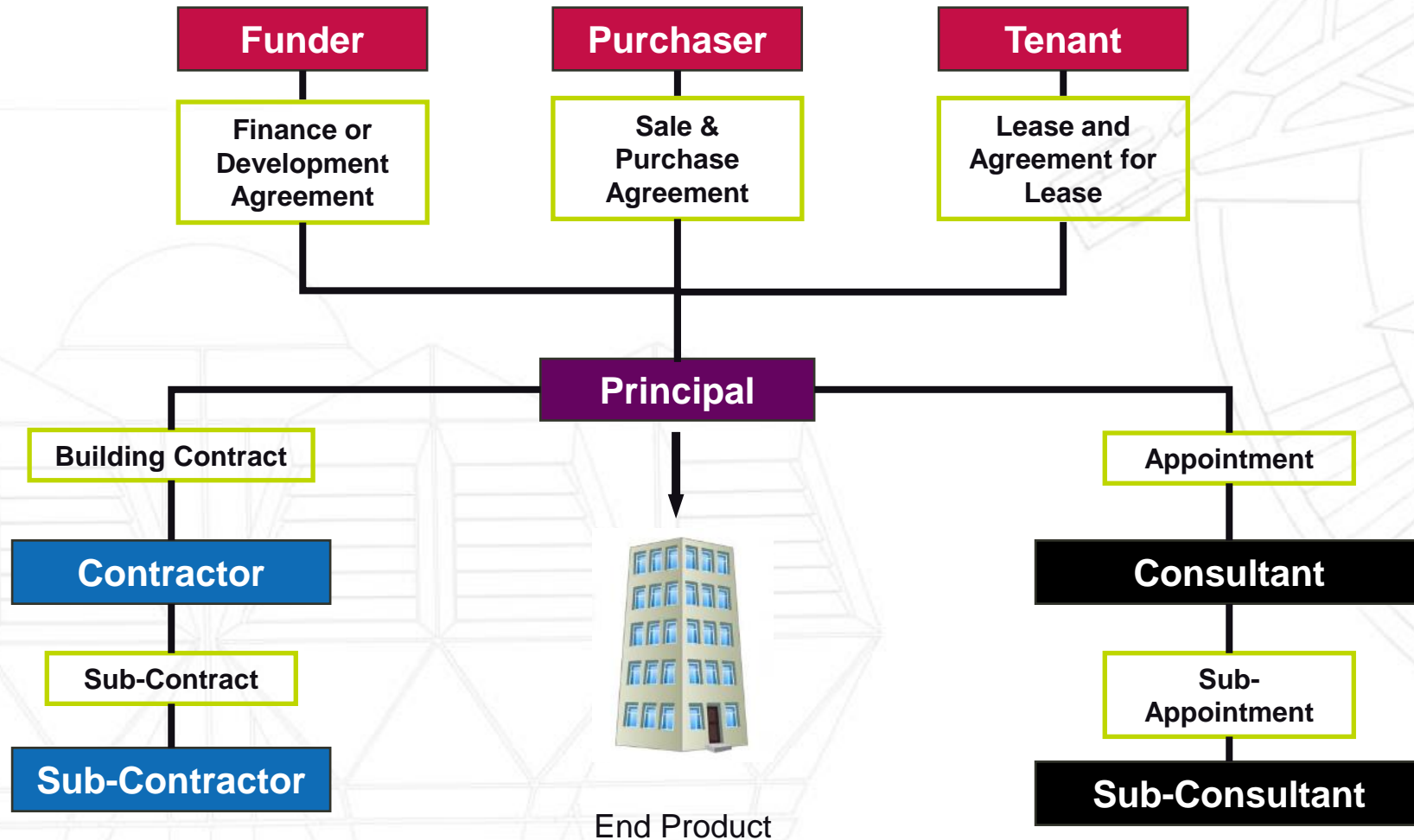


# **Some basic principles about suing people in contract on construction projects**

# What rights do the “Parties” to a contract have if something goes wrong?

- Contract
- Contractual terms / Contractual duty of care
- An action for breach of contract
- To recover damages
- If the problem is building defects, can the cost of repairing these building defects be recovered as “damages” in an action for “breach of contract”?

# Recovery in Contract







## 1.3 Liability in Tort

# What rights do “Third Parties” to a contract have if something goes wrong?

- There is no contract, so there can be no action for a breach of contract (rule about privity of contract)
- What is the alternative to an action in contract?
- An action in “Tort”



# **Some basic principles about suing people in Tort on construction projects**

# What is “Tort”?

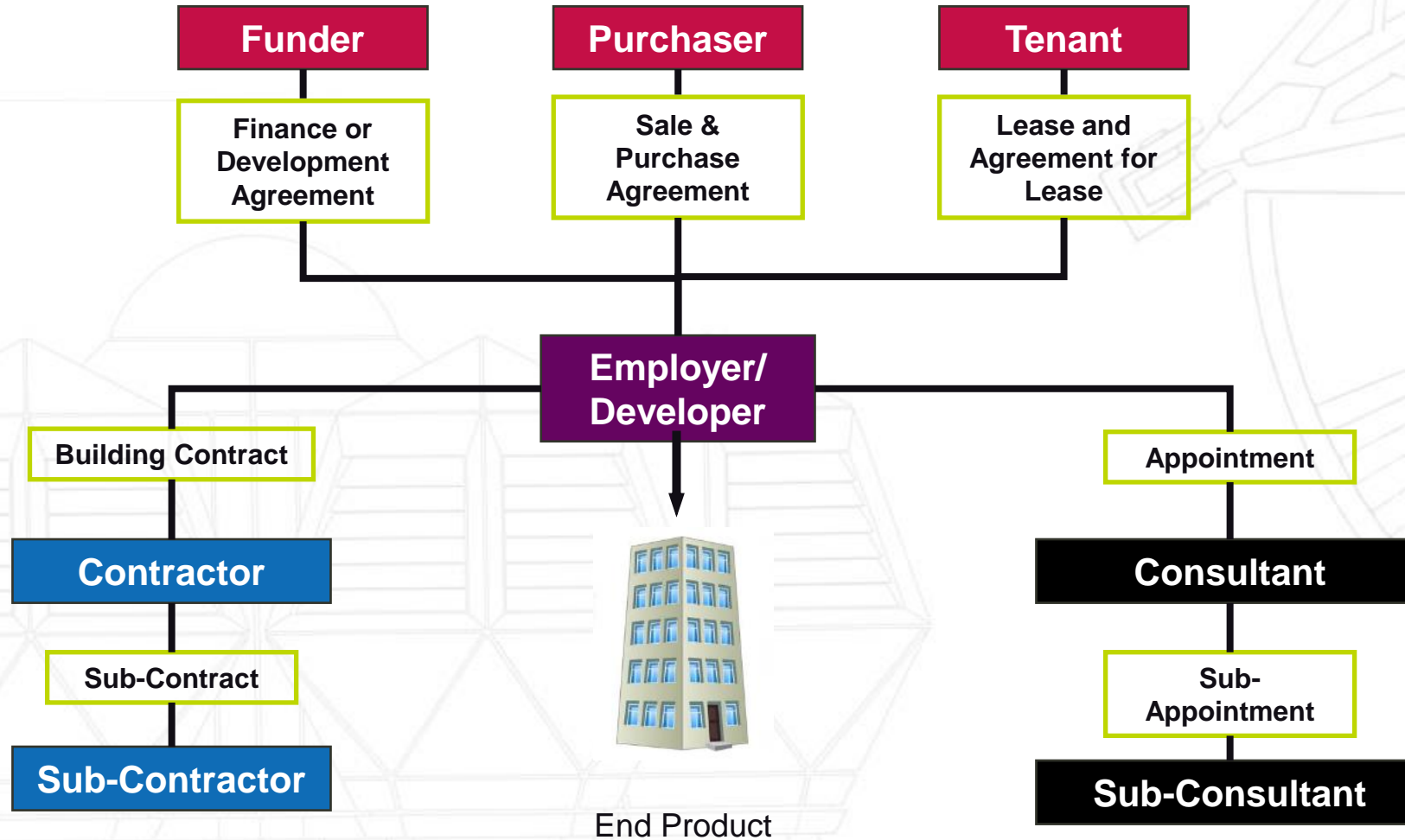
- What does a contract look like?
- What does “Tort” look like?
- Tortious duty of care
- An action for breach of a tortious duty of care
- To recover damages
- If the problem is building defects, can the cost of repairing those building defects be recovered as “damages” in an action for “breach of a tortious duty of care”?

# The Rule about “Economic Loss”

- From up its sleeves the law produces another test to go alongside the duty of care. That test relates to something called economic loss.
- The law regards the cost of repairing building defects as something called “economic loss” and the law says that you cannot recover pure economic loss in an action in tort (unless there is a “special relationship”... which is very, very rare)
- Now lets look at some caselaw about economic loss (see the cases of *Anns v London Borough of Merton* 1978, *Murphy v Brentwood District Council* 1991)



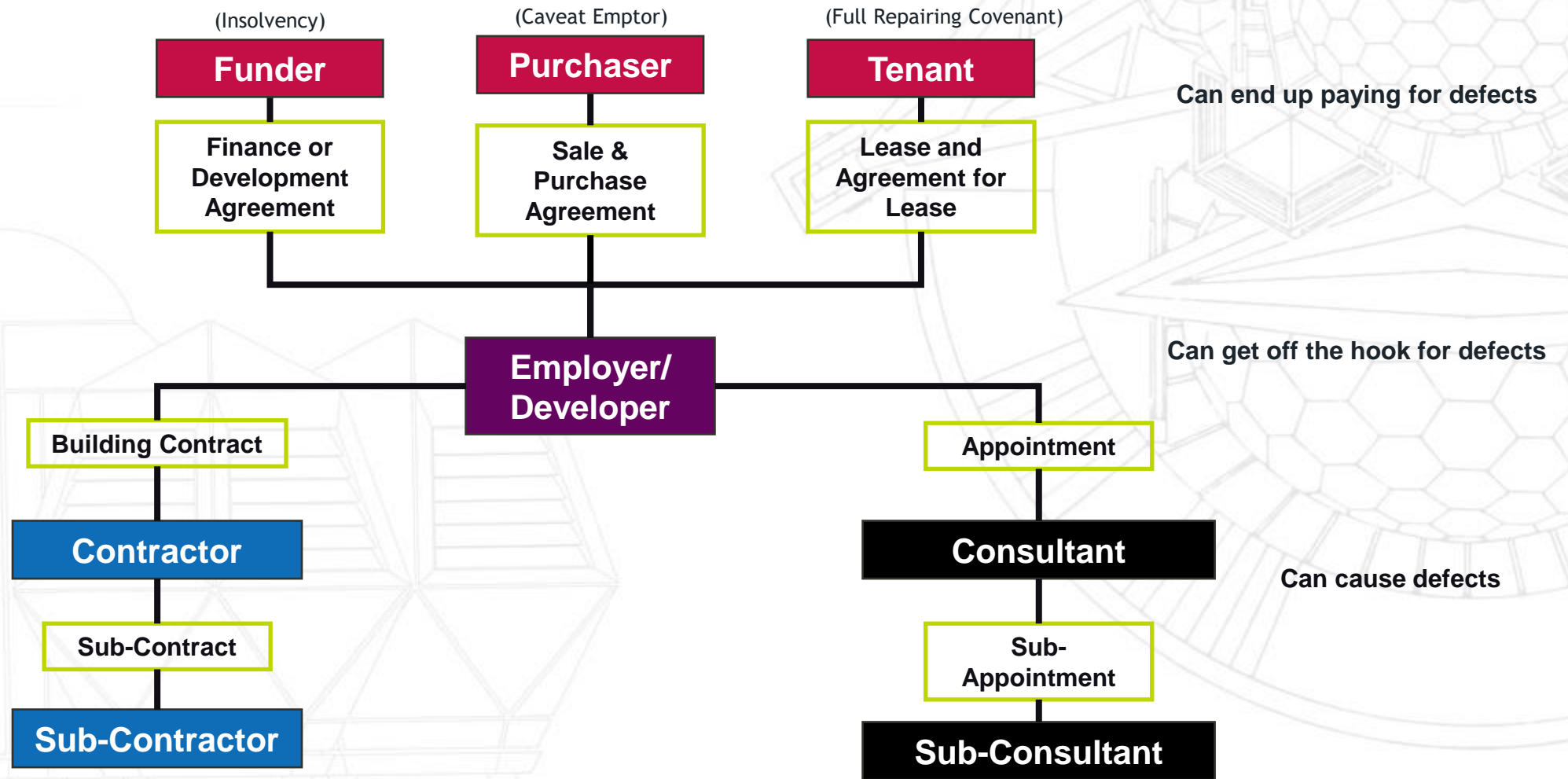
# No recovery in Tort – you need a contract



# Who do the Funder, Purchaser and Tenant (i.e. the “Third Parties”) have a contract with?

- So who is the only person they can sue for buildings defects
- But what are the characteristics of:
  - the Lease – Full Repairing Covenant
  - the Sale & Purchase Agreement – Caveat Emptor
  - the Finance Agreement – Funder takes over on default (insolvency)

# How the developer can get off the hook





# **Can you avoid Tort and get around the rule about Privity of Contract?**



## 1.4 Collateral Warranties



# What did lawyers do about this problem of no recovery in Tort for Third Parties?

- Introduced the collateral warranty
- What is it? It's a contract with someone who is a third party
- Who gets them? The third parties we are interested in (i.e. Funders, Purchasers, Tenants)
- The result: In the event of building defects the action by the third party can be in contract (rather than in tort) and the third party can now recover the cost of building repairs

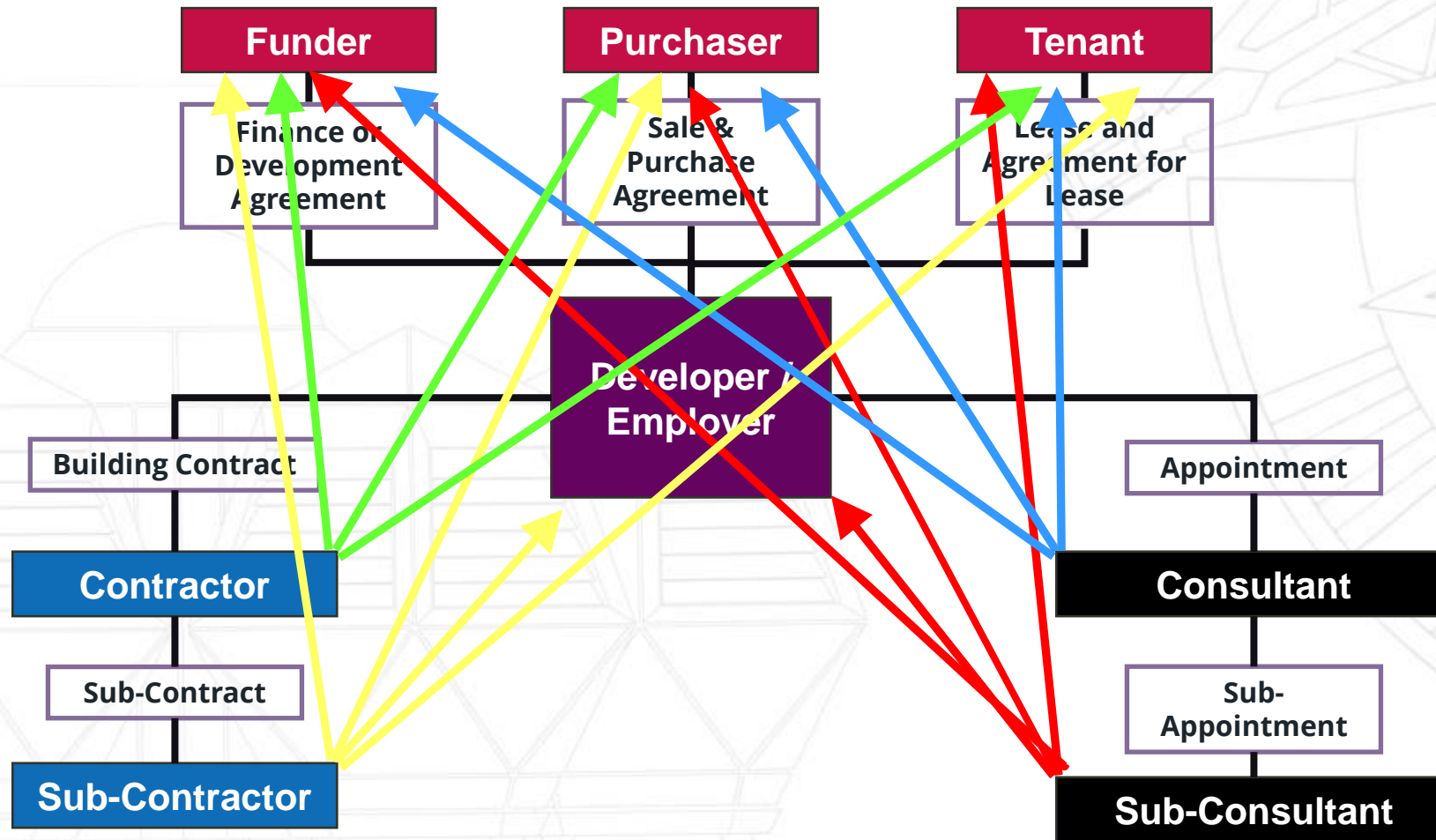


# **What does a collateral warranty look like?**

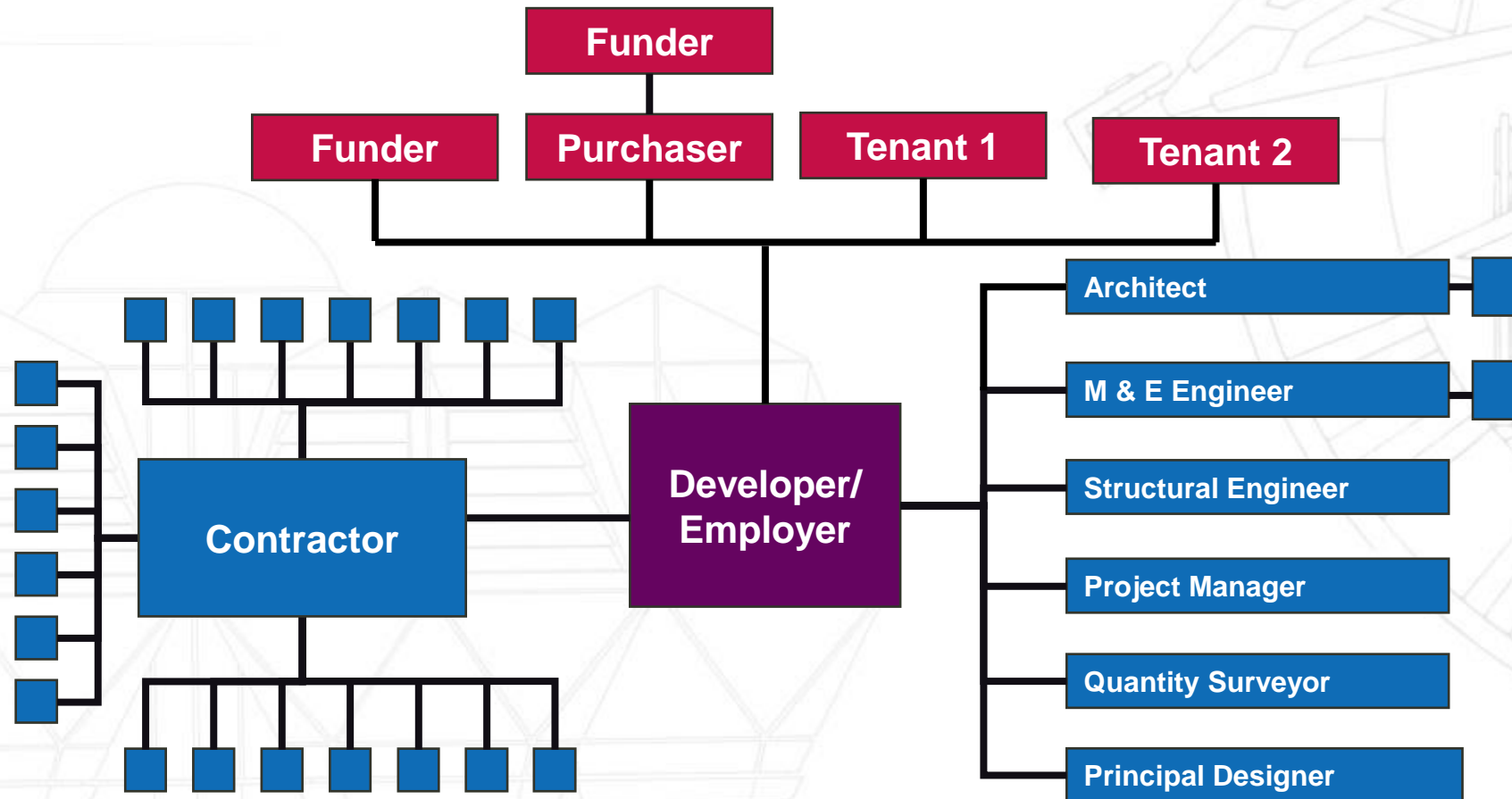
# The one sentence collateral warranty


- “I (the Contractor) promise to you (the Third Party), that I will properly carry out my obligations under the building contract that I have entered into with the Developer”
- So what are the consequences of this promise if there are subsequently defects in the building?

# Simplified collateral warranty diagram



# Actual contract diagram for a commercial property development





# **1.5 The Contract (Rights of Third Parties) Act 1999**



# The Contract (Rights Of Third Parties) Act 1999

- The Contract (Rights of Third Parties) Act 1999
- Applies to contracts entered into after 11 May 2000
- Allows a third party to enforce a contract (or certain terms of a contract) to which it is not a party. (The Act has driven a coach and horses through the rule about privity of contract)
- It is the UK's equivalent of Australia's (Queensland's) S.55 Property Law Act 1974 (It took the Brits 25 years to catch up!)

# The Contract (Rights Of Third Parties) Act 1999

- The Act allows a third party to enforce a contract (or certain terms of contract) and sets out 2 legal tests for when a third party should have the right to do so
  - Section 1(1)(a) and (b)

“Subject to the provisions of this Act, a person who is not a party to a contract (a “third party”) may in his own right enforce a term of the contract if:”

    - (a) the contract expressly provides that he may, or
    - (b) the term purports to confer a benefit on him
- Both tests are subject to Section 1(3)
  - “The third party must be expressly identified in the contract by name, as a member of a class or answering a particular description but need not be in existence when the contract is entered into.”

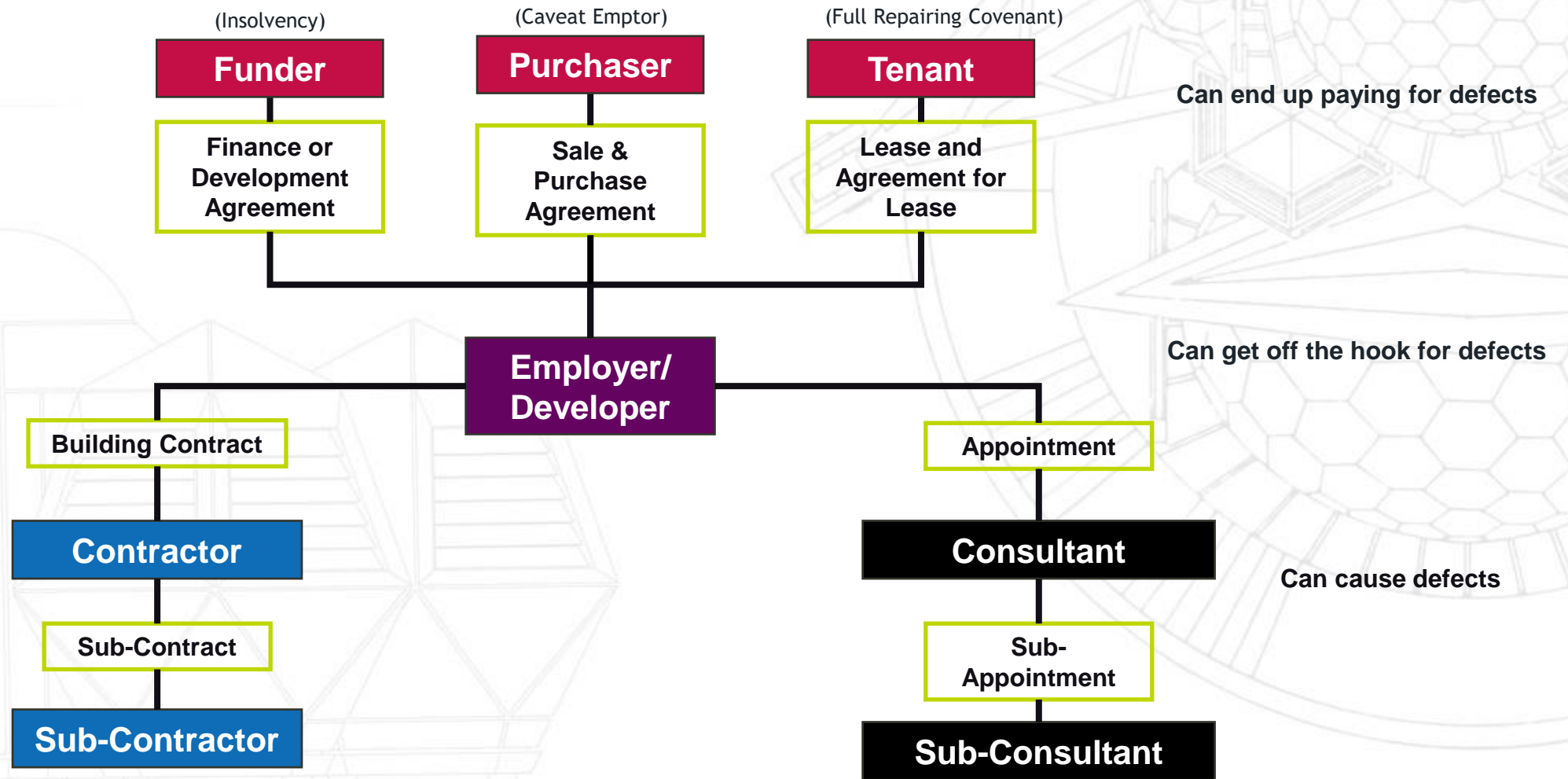
# Clause in a contract including third parties rights

- “The Purchaser/Tenant/Funder (the “third party”) shall be entitled to enforce the clauses of this building contract set out in annex 1 (the “third party rights”) as if they were themselves named as Employer under this building contract.”



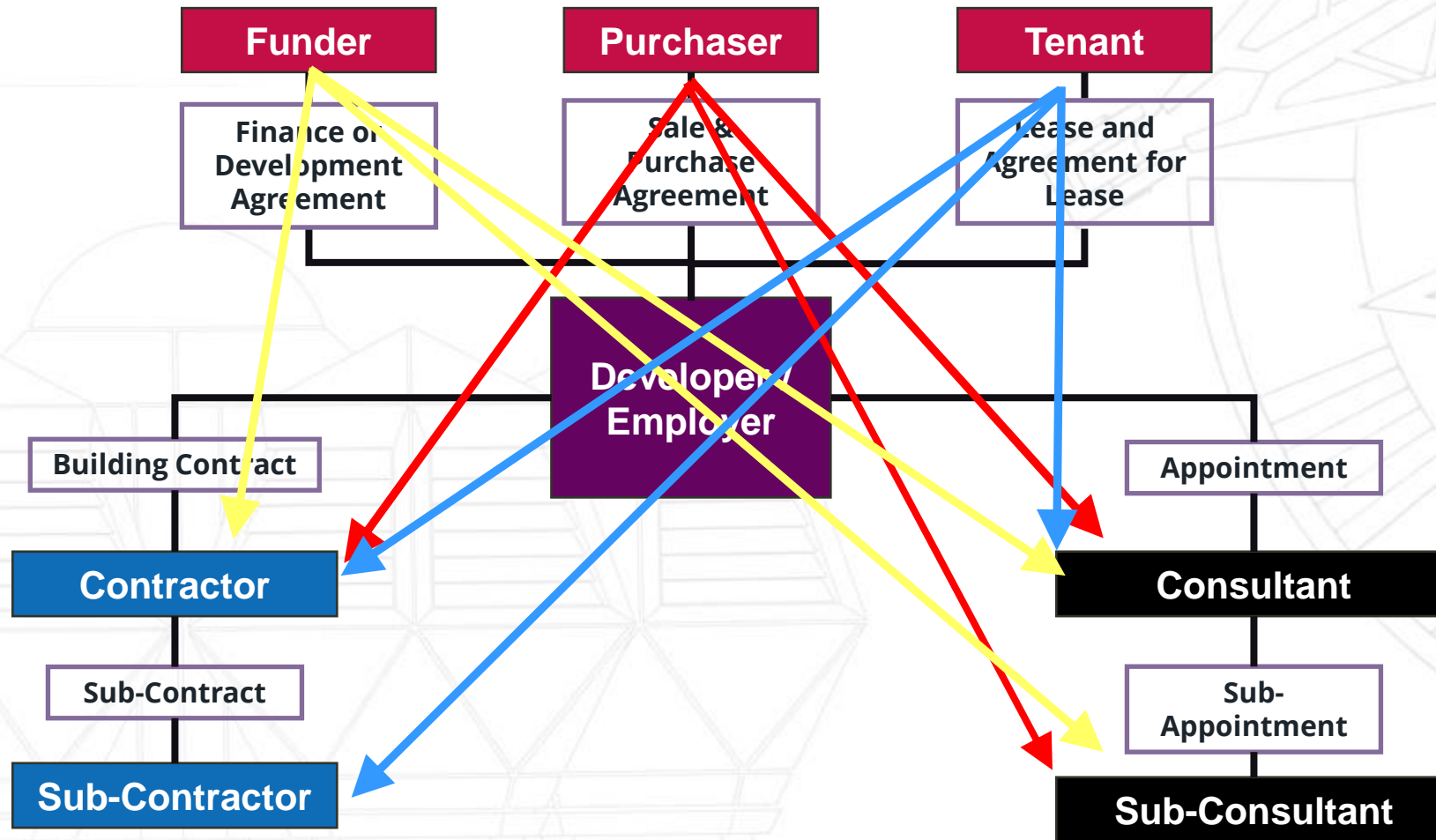
# **1.6 The standard liability model for property developments**

# The developer gets off the hook





# Simplified collateral warranty diagram







# **PART 2**

## **The Defective Premises Act 1972**

**(Ian Reid of Shoosmiths)**

## **2.1 Why was the Act introduced?**

# Why was the Defective Premises Act introduced?

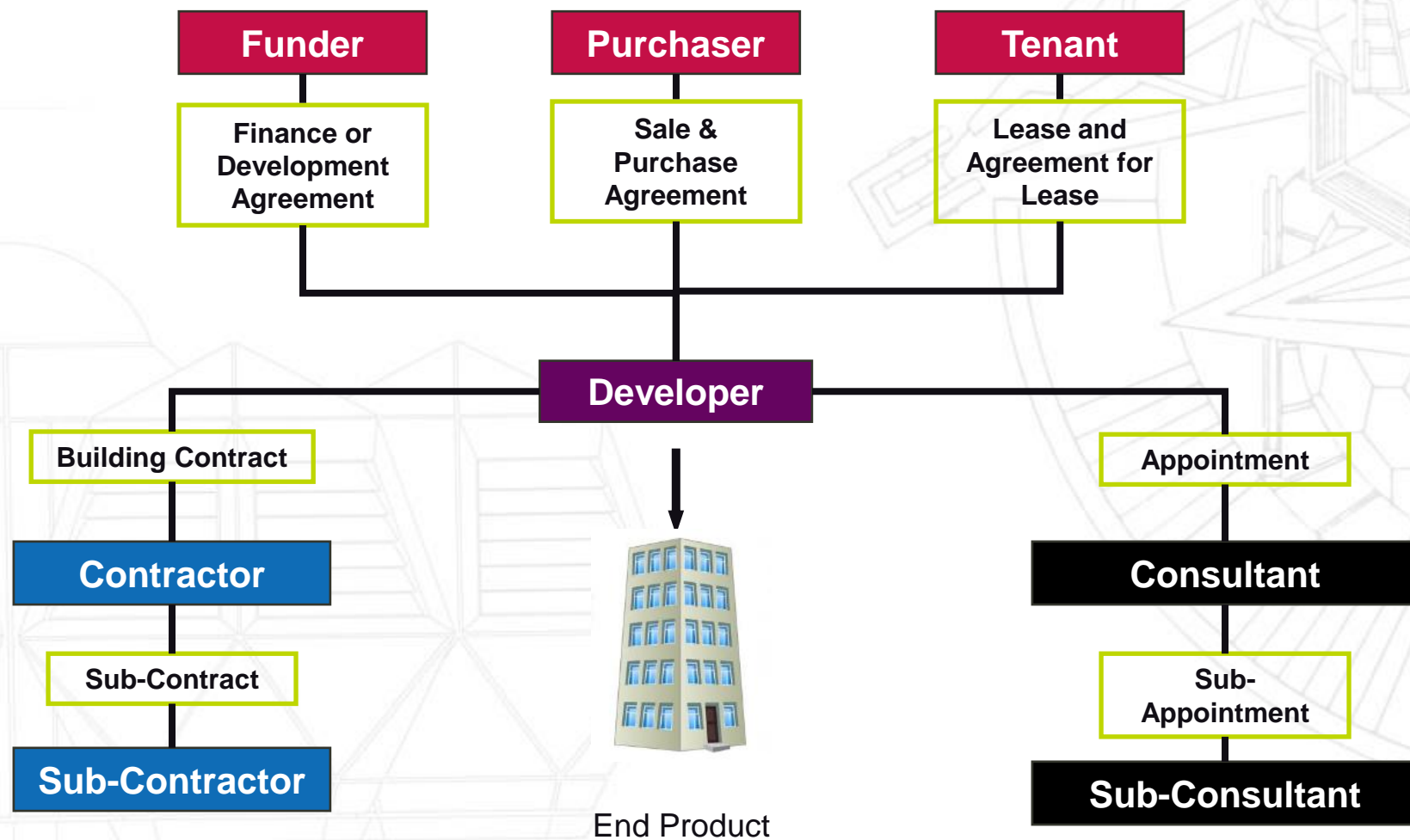
- The Act was introduced in response to the great house building boom in the UK of the 1960s and early 70s which saw a wave of residential tower blocks blanket the country.
- Its intention was to strengthen the legal position of purchasers of these newly built houses and flats.
- It was brought into force in response to a report in 1970 of the Law Commission '*Civil Liability of Vendors and Lessors of Defective Premises*' which took the view that such purchasers had little real redress against the parties who built and sold residential premises which turned out to be defective.



## **2.2 What does the Act do?**

# The Defective Premises Act provides for:

- Came into force in 1972.
- It creates a statutory duty on contractors and others (engaged in or connected with the work) to carry out work on new-build homes in such a way, and with such proper materials, so as to ensure that the finished product is fit to live in (“fit for habitation”).
- The Defective Premises Act was subject to a six-year limitation period commencing at practical completion of the works.
- (Many defects that may render a dwelling “unfit for habitation” are of the kind that contain longer than six-years to manifest themselves).







## 2.3 What is “fit for habitation”?

# But what does “Fit for habitation” really mean?

- There is no definition of “fit for habitation” in either the Defective Premises Act 1972 or the Building Safety Act 2022.
- This presents problems of interpretation. For example:
  - Does flammable cladding make a building “unfit for habitation”?
  - Everything is flammable if you apply enough heat to it.
  - Diamonds have a melting point of 700 degrees Celsius. A standard house fire can reach temperatures of up to 815 degrees Celsius. So your average house fire can melt diamonds.
  - So Mr and Mrs Jones can live quite comfortably in a house right up until the point it catches fire and melts Mrs Jones’ engagement ring!

# But what does “Fit for habitation” really mean?

- Although it is not defined by the act, it is understood that this concept cannot mean **just any defects**.
- The most useful guidance comes from the decision in *Rendlesham Estates* 2014. To be “fit for habitation”, a building must:
  - be capable of occupation for a reasonable time without risk to the health or safety of the occupants and without undue inconvenience or discomfort to the occupants;
  - if the dwelling would not be approved under the Building Regulations as fit for occupation it would probably not be “fit for habitation”; and
  - be considered in light of all of the types of person who might reasonably be expected to occupy including those who suffer from common conditions like asthma or hay fever.
- A broad range of defects have been recognised as capable of rendering a dwelling unfit for habitation, including:
  - the structural unsoundness of a building’s foundations;
  - an inability to lock or secure part of a home;
  - the persistent failure of lifts in residential tower blocks
  - a lack of gas or electricity supply; and
  - A failure to adequately design or install internal fire-safety partitions.



# **PART 3**

## **The Building Regulations**



# **3.0 A Brief History of Building Control**

**(Iain Reid of Shoosmiths)**



Who is this,  
and what  
was he  
famous for?





# Consorting with Nell Gwyn:

English stage actress and celebrity figure, regarded as *the living embodiment of the spirit of Restoration England*, and best known for being the long-time mistress of King Charles II (she bore him two sons).

Cause of death:

*“apoplexy, almost certainly due to the acquired variety of syphilis”.*



# And the other thing he was famous for... some draconian building safety control

- In 1666, after the Great Fire of London had destroyed 436 acres of the City (including 13,200 houses and 87 churches), King Charles II issued a proclamation which declared:

*“And it is the King’s wish that no man shall build any house or building, large or small, unless it is made of brick or stone. And if any man does not do this, his house will be pulled down”*

- The above is an example of what we call a ‘prescriptive’ regime or regulation.
- The dictionary describes ‘prescriptive’ as meaning: *“relating to the imposition or enforcement of a rule or method”*.
- In other words, in a prescriptive regime, you are explicitly told what you can do and what you cannot do.



# A brief history of building control

- In twelfth century London, bylaws developed regulating the construction of buildings in the city. Originally these were concerned with matters of safety and fire precautions, but as London grew they came to set standards of good building practice and town planning and to regulate many of the administrative problems of urban settlement.
- In 1666, the Great Fire of London destroyed much of the city. Immediately afterwards Charles II issued his proclamation. Sir Christopher Wren was then commissioned to draft regulations that became the London Building Act 1667, to be enforced by the first district surveyors. This extended the scope beyond fire safety to include structural load-bearing walls, foundations, timber in party walls, joist centres, beam bearings, roof coverings and rainwater gutters and down-pipes.
- From time to time new requirements were introduced and amendments added to the London Building Act and similar local acts developed throughout Britain.

- The Public Health Act 1875 was the first major piece of countrywide legislation dealing with many aspects of building.
- The first building regulations in their modern form were The Building Regulations 1965. This was the first set of national building standards. They were a set of prescriptive standards, setting out requirements in detail that had to be followed. These regulations were applied generally throughout England and Wales. They took the place of the building byelaws that had been made by individual local authorities.
- The Regulations introduced in 1965 remained in this prescriptive form for the next 20 years. During that time, various amendments and revisions were issued to increase the scope and areas they covered. This continued until the Building Act 1984, which marked a radical change from a prescriptive regime to a performance based regime.

# From a 'prescriptive' to a 'performance based' regime

- The move from prescriptive requirements to what can be referred to as 'performance based' requirements was a decision of the Thatcher government during the 1980s and formed part of that government's policy push for deregulation of many aspects of public life.
- A 'performance based' regime can be described as a regime where regulations are based on the achievement of specified results, rather than an adherence to a set of specified technologies or means and methods.
- This move to performance based Building Regulations happened in two steps:
  - The introduction of The Building Act 1984 – This Act fully consolidated the Building Regulations in one piece of legislation and provides for short functional requirements, with 'Approved Documents' to support them.
  - The Building Regulations 1985 – In contrast to their predecessors, these regulations took a new approach to building standards, adopting functional requirements and performance-based regulation instead of prescriptive regulation. This change swept away 306 pages of building regulations and replaced them with just 24 pages.

# **3.1 What are the Building Regulations and when do they apply? (The Building Act 1984 and the Building Regulations 2010)**

**(Shaan Haque of Shoosmiths)**

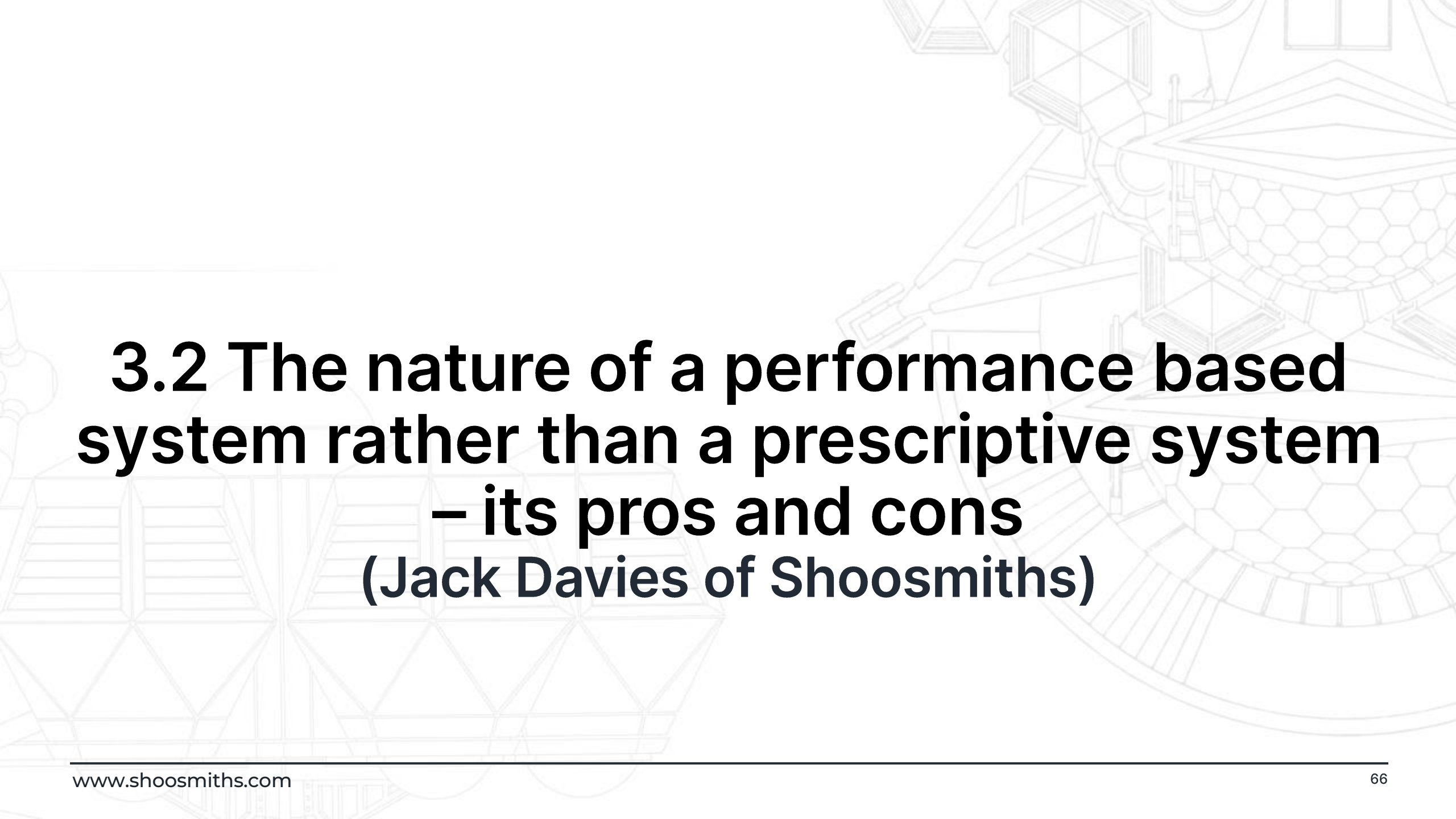


# What are the Building Regulations and when do they apply?

- Building work carried out in England must comply with the building regulations made under the Building Act 1984 and the Building Regulations 2010.
- Building regulations set minimum standards for the design, construction and performance of new buildings and refurbishment work in England. This is to ensure the health, safety and welfare of those who use or are affected by a building and set requirements (e.g. for energy efficiency, water use and reducing waste).
- Most building work carried out in England must comply with the Building Regulations.
- Regulation 3 of the Building Regulations 2010 sets out the definition of 'building works' and includes:
  - Building new buildings, making buildings bigger, altering buildings and changing what they are used for.
  - Installing a 'controlled service' (e.g. a boiler) or a 'controlled fitting' (e.g. replacing a window).
  - Renovation of thermal elements (e.g. external walls/roofs)
- The building regulations apply at the time the building work is taking place and there is no requirement to retrofit buildings with updated requirements (e.g. a home built in 2005 must comply with the standards set in the Building Regulations 2000 that were applicable at the time the home was built).

# Building Regulations 2010

- Technical requirements are set out at Schedule 1 of the Building Regulations and building work must meet all requirements in Schedule 1 that are relevant to the project.
- Regulation 7 of the Building Regulations 2010 requires that building work be carried out with adequate and proper materials which:
  - are appropriate for the circumstances in which they are used;
  - are adequately mixed or prepared; and
  - are applied, used or fixed so as adequately to perform the functions for which they are designed; and
  - in a workmanlike manner.
- Building regulations are performance based. They set outcomes that need to be met but do not specify what needs to be done to meet the outcomes. For example, a building must meet certain energy efficiency requirements, but it is not specified what heating or insulation must be used.



## **3.2 The nature of a performance based system rather than a prescriptive system – its pros and cons (Jack Davies of Shoosmiths)**

# The nature of a performance based system rather than a prescriptive system – its pros and cons

- The [Building Regulations](#) set out the required standard that building work must meet but not how these standards are to be met. How requirements are met will depend on the specific circumstances of a building.
- This contrasts with a prescriptive system where the law would set out how a certain type of building needs to be constructed and direct which materials, methods and/or technologies must be used (or avoided). The first set of national building standards were introduced in the Building Regulations 1965. These were a set of prescriptive standards that had to be followed.
- In a response to a January 2022 parliamentary question on solar panels, the government said a performance based system provided “the flexibility to innovate and select the most practical and cost-effective solutions appropriate in any development”.



# Key technical requirements of the Building Regulations

- A: Structure
- B: Fire safety (Regulations 7, 38)
- C: Site preparation and resistance to contaminants and moisture
- D: Toxic substances
- E: Resistance to the passage of sound (Regulation 41)
- F: Ventilation (Regulations 39, 42, 44)
- G: Sanitation, hot water safety and water efficiency (Regulations 36, 37)
- H: Drainage and waste disposal
- J: Combustion appliances and fuel storage systems
- K: Protection from falling, collision and impact
- L: Conservation of fuel and power (Regulations 23, 24, 25, 25a, 26, 26a, 27, 27a, 28, 35, 40, 43, 44)
- M: Access to and use of buildings
- P: Electrical safety (dwellings)
- Q: Security (dwellings)
- R: Physical infrastructure for high speed electronic communications networks (dwellings)



## **3.3 Approved Documents (Albi Bell of Shoosmiths)**



# Approved documents

- [Approved documents: Parts A-S](#) give guidance on how to meet the legal requirements of the Building Regulations 2010 in common building situations.
- The guidance explains one or more ways in which the legal requirements can be met. However, there may be other ways to meet the building regulations and compliance with the approved documents does not necessarily guarantee compliance with the building regulations.
- Therefore, anyone using the approved documents must have sufficient knowledge and skills to understand the guidance and correctly apply it to building works.

# Approved documents

**K4**

Protection against impact with glazing

## Requirement K4: Protection against impact with glazing

This approved document deals with the following requirement from Part K of Schedule 1 to the Building Regulations 2010.

### Requirements

*Requirement*

*Limits on application*

#### Protection against impact with glazing

**K4.**—Glazing, with which people are likely to come into contact whilst moving in or about the building shall:

- (a) if broken on impact, break in a way which is unlikely to cause injury; or
- (b) resist impact without breaking; or
- (c) be shielded or protected from impact.

1

### Performance

In the Secretary of State's view, you can meet requirement K4 if you adopt, in critical locations, one of the following approaches.

- a. Measures to limit the risk of cutting and piercing injuries by the use of glazing that is reasonably safe, such that, if breakage did occur, any particles would be relatively harmless.
- b. Use of glazing sufficiently robust to ensure that the risk of breakage is low.
- c. **Steps** are taken to limit the risk of contact with the glazing.

2

### Key

- 1 The law: extract from Schedule 1 to the Building Regulations 2010.
- 2 Statutory guidance.

## **3.4 Approved Document B - Fire Safety (Albi Bell of Shoosmiths)**

# Approved Document B: Fire Safety

- Part B of the Building Regulations 2010 sets:
  - requirements to limit the internal and external spread of fire within a building and the spread of fire between buildings; and
  - a requirement to help people escape in the event of a fire.
- Sets outcomes to be achieved but does not specify how these must be met:

## Requirement

### Requirement

#### Means of warning and escape

**B1.** The building shall be designed and constructed so that there are appropriate provisions for the early warning of fire, and appropriate means of escape in case of fire from the building to a place of safety outside the building capable of being safely and effectively used at all material times.

### Limits on application

Requirement B1 does not apply to any prison provided under section 33 of the Prison Act 1952<sup>(a)</sup> (power to provide prisons, etc.).

(a) 1952 c. 52; section 33 was amended by section 100 of the Criminal Justice and Public Order Act 1994 (c. 33) and by S.I. 1963/597.

# Approved Document B: Fire Safety

- Approved Document B sets out guidance on how to meet the requirements of Part B.
  - Volume 1: Dwellings.
  - Volume 2: all other types of buildings.
- Approved Document B was updated in 2020 and 2022 to recommend from November 2020:
  - A sprinkler system should be installed all new blocks of flats that are over 11 metres high (previously only required in blocks over 30 metres).
  - Wayfinding signage should be installed in all new blocks of flats over 11 metres to help fire services identify floors and flats in an emergency.
- From November 2022:
  - Secure information boxes should be included in all blocks of flats that are over 11 metres high. The boxes should contain information, such as floor plans, to help fire services navigate a building in an emergency.
  - An evacuation alert system (EAS) should be installed in all new blocks of flats that are 18 metres high. An EAS allows fire services to alert residents that they need to leave a building in the event of a fire.





# **PART 4**

## **Building Control Approval (Ryan Fordham of Shoosmiths)**





## **4.1 Obtaining building control approval – local authorities / privately approved inspectors**

# Obtaining building control approval – local authorities / privately approved inspectors

- The building control process is governed by the Building Act 1984, the Building Regulations 2010 and the Building (Approved Inspectors etc.) Regulations 2010.
- Where a person is carrying out work subject to the Building Regulations 2010, they must seek approval from a building control body.
- Work that is subject to building regulation compliance must obtain approval from a building control inspector:
  - local authority building control; or
  - privately approved inspector.
- Privately approved inspectors were introduced in 1985 and their role was initially limited to dwellings. [Dame Judith Hackitt's Interim Report](#) explains this role was introduced “to create a more commercial and customer-focused building control experience”.
- Since 2013, privately approved inspectors can cover all types of building control work.
- Some type of work can be checked by a ‘competent person’ instead (an installer (e.g., of windows or boilers) who works under a scheme that has been approved by the government).

# Building control approval process

- Before building work commences: applicant/privately approved inspector must notify the local authority before building work commences.
- During construction: local authority building control/privately approved inspector carries out regular inspections.
- Completion: When satisfied that the work meets the building regulation requirements the local authority building control/privately approved inspector will issue a completion or final certificate (see Regulation 17 of the Building Regulations 2010).

## **4.2 Why do local authorities only have limited liability for defective or non-compliant work?**

# Why do local authorities only have limited liability for defective or non-compliant work?

- A party cannot claim damages for breach of contract because there is no contract between that party and the local authority.
- A party therefore can only claim damages in tort (*Murphy v Brentwood District Council* (1991)).
- There's no statutory liability imposed on a local authority for their building control service (e.g. under the Defective Premises Act 1972)
- A completion certificate (local authority) or final certificate (approved inspector) states it is evidence of, but not conclusive evidence of, compliance with the Building Regulations.
- Building control officers/privately approved inspectors only inspect work periodically and therefore are not be able to inspect every aspect of the works to ensure it complies with the Building Regulations.
- Whilst a complaint can be made to the Local Government Ombudsman, those that procure the carrying out the works must ensure they have strong contractual links against the designers and contractors to ensure Building Regulations compliance.



# Local authorities are not responsible for defective or non-compliant work

- Local Government Ombudsman website:

“Councils should not be seen as a ‘guarantor of last resort’ when things go wrong and are not directly liable for poor or unlawful building work, because ... primary responsibility for building work and compliance with the Regulations rests with building owners and builders. A Council may inspect work or issue a completion certificate, but this is not a guarantee that all works meet with Building Regulations. The Council’s role is to maintain building standards for the public in general, rather than to protect the private interests of individuals. The Council’s role is simply to satisfy itself that buildings are safe and compliant with the Regulations. It is the responsibility of the person commissioning the works to ensure the work is to the required standard. If work is sub-standard, individuals may be able to seek redress in the courts, if they can show their builder did not act with reasonable care or skill”.



## **4.3 Can you claim against a privately approved inspector?**

# Liability of approved inspectors

- Similar position as against local authorities:
  - Claim for breach of contract?
  - No liability in tort for pure economic loss – *Murphy v Brentwood* (1991).
  - No liability under the Defective Premises Act 1972 – *In Lessees and Management Company of Herons Court v Heronslea Ltd and others* [2019] EWCA Civ 1423 a privately approved inspector was held not to be a person taking on work for or in connection with the provision of a dwelling:
    - “The emphasis is therefore on those who do work which positively contributes to the creation of the dwelling. That may include architects and engineers who prescribe how the dwelling is to be created, not just those who physically create it. It does not, however, include those whose role is the essentially negative one of seeing that no work is done which contravenes building regulations. Building control ensures that the dwelling is legal and properly certified, but it does not positively contribute to the provision or creation of that dwelling”.
- Make a complaint to the Construction Industry Council Approved Inspector Register, but note the CICAIR state the role of the privately approved inspector is to “check, but not to guarantee, that the work complies with the Building Regulations”.
- Fraudulent misrepresentation - *Zagora Management Ltd and others v Zurich Insurance plc and others* [2019] EWHC 140 (TCC)

# The case of *Anns v Merton LBC* (1978)

- Yes initially in this House of Lord's decision, which established a broad test for determining the existence of a duty of care in the tort of negligence called the Anns Test.
- Facts:
  - 1962 – Council approved building plans for the construction of maisonettes, which showed the base wall and concrete foundations being 3 ft or deeper.
  - 1962 – Block of maisonettes was finished.
  - 1970 – Structural movements occurred resulting in failure of the building comprising cracks in the wall, sloping of the floors and other defects.
- 1972 – Owners / occupiers issued claims against the builder and the Council for damage caused as a result of inadequate foundations with a depth of only 2 ft 6 in. The claim against the Council was for damages in negligence for approving the foundations and/or in failing to inspect the foundations.

## Decision:

- The House of Lords unanimously decided that a duty of care did exist, as the owners or occupiers are not an endless indeterminate class of potential plaintiff, and the claimants could sue the Council for damage arising from these defects.

# The case of *Murphy v Brentwood District Council* (1991)

- “No”, House of Lords overruled Anns.
- Facts:
  - Builder failed to build proper foundations.
  - Council approved the building for compliance with Building Regulations and failed to recognise the problem.
  - The building became dangerously unstable and the claimant, being unable to raise any money for repairs and choosing not to sue anyone at that stage, had to sell the house at a considerable loss.
- Claim:
  - Claimant sought to recover his loss, being the diminution in value of the property, from the Council.
- Decision:
  - No, House of Lords overruled Anns and held that the Council was not liable for pure economic loss in the absence of personal injury, death or damage to other property.



## **4.4 What happens if you fail to comply with the Building Regulations?**



# What happens if you do not comply with the Building Regulations?

- Local authorities can take enforcement action if notifiable work is carried out without submitting a Building Regulations application or initial notice.
- Local authorities can also take enforcement action against the building owner or those carrying out building works if the building does not comply with the Building Regulations.
- The powers of local authorities' for contraventions of the Building Regulations include:
  - Under Sections 35 and 35A of the Building Act 1984, a local authority can prosecute the person who carried out non-compliant building work. If found guilty, the person may have to pay an upfront fine and further daily fines for not fixing the problems. Prosecution can only be pursued up to two years from the date of completion of the building work.
  - Under Section 39 of the Building Act 1984, a local authority can require a building owner to remove non-compliant building work up to 12 months from the date of completion of the building work.
- Retrospective approval: Where unauthorised building work has been carried out on or after 11 November 1985, it may be possible to obtain a regularisation certificate from the local authority. If issued, the regularisation certificate shows that the works complied with the Building Regulations that were in place when the unauthorised work was carried out.

# Weaknesses in the current sanctions and enforcement regime

- In [Dame Judith Hackitt's final report](#), *Building a Safer Future*, a number of weaknesses in the current sanctions and enforcement regime were identified:
  - formal enforcements are increasingly rare;
  - building control bodies have primarily relied on informal enforcement to drive compliance;
  - magistrates' court fines are frequently minimal;
  - key stakeholders have identified that enforcement action does not actually lead to unsafe building work being corrected in most cases;
  - reluctance of individual local authority building controls to take formal enforcement action (for fear of loss of ongoing business / investment);
  - reluctance by some local authority legal departments to support building control enforcement; and
  - no prosecution can be brought beyond the two-year point, no matter how serious and deliberate the failure in building safety.

“Therefore the enforcement regime cannot serve its primary purpose: to ensure that dutyholder compliance with the legal requirements is far more straightforward and cost-effective than noncompliance”



# **PART 5**

## The lead up to Grenfell



# **5.1 The UK's track record in building high density social housing**

**(Ian Reid of Shoosmiths)**





**What is this a picture of?**



# Ronan Point – East London

- Ronan Point was one of a range of tower blocks built throughout the 1960s as cheap, affordable, prefabricated housing for the less well-off inhabitants of East London
- The 22 storey tower was built using a technique known as “Large Panel System” building (LPS) which made use of large, concrete prefabricated sections which were cast offsite and then bolted together onsite.
- Ronan Point opened in 1968 after two years of construction. Two months later an explosion in a gas stove in a corner flat on the eighteenth floor demolished the load bearing flank walls of the flat. Those flank walls were supporting the four flats above and what happened next was the sudden progressive collapse of that corner of the building. Four of the 260 residents were killed and 17 were injured.
- The government enquiry into the tragedy decided that Ronan Point’s designers had complied with the building regulations current at the time however the regulations were subsequently altered to prevent similar designs being used in future.
- Ronan Point was rebuilt, but subsequent investigations revealed that significant remaining construction defects had left unfilled gaps between floors and walls throughout the building which were hidden only by skirting boards and wallpaper; loads from structural concrete wall panels were not spread evenly along supporting panels and instead were taken up by point loads the concrete had never been designed to withstand; and strengthening put in during the rebuild was in turn found to be entirely inadequate in its method of attachment to the original building.
- In 1986, the Council eventually evacuated Ronan Point, demolished it and followed up by demolishing a further nine blocks on the same housing estate comprising some 1,000 flats. The area was subsequently redeveloped with two storey houses with gardens.
- It is estimated that there are some 1,500 buildings like Ronan Point still standing in the UK.



**What is  
this a  
picture of?**

# Hulme, Manchester

- When it was constructed in 1972 Hulme Crescents and its surrounding estates were the largest public housing development in Europe encompassing over 3000 deck-access homes (referred to as “streets in the sky”) with accommodation for over 13,000 people.
- Yet only two years after its opening, Manchester City Council deemed Hulme Crescents unsuitable for families and the housing scheme became adult only. A young child had died after falling from a balcony and a petition had been launched by residents who wished to be rehoused from dangerous properties where cockroach and mice infestation had been a problem from the outset.
- In 1975 just three years after opening, a survey was conducted which found 96% of residents wanted to leave Hulme Crescents and be rehoused. In 1978 the chair of Manchester City Council’s Housing Committee said of Hulme Crescents: *“An absolute disaster. It shouldn’t have been planned, it shouldn’t have been built”*.
- In 1983 the MP for Manchester Central was quoted as saying: *“Like most major authorities we had these system built estates thrust upon us. They are now a joke. They are falling around peoples’ shoulders. These systems were referred to by the experts and our advisors at the time as the panacea for all our housing problems. We have ended up with a complete disaster.”*
- By 1984 Hulme Crescents had become so despised that Manchester City Council, which lacked sufficient funds to demolish the housing scheme, stopped housing new council tenants there and stopped charging rents from existing tenants.
- After central government provided Manchester City Council with enough funds, the Hulme Crescents were eventually demolished between 1993-1995, a mere 20 years after they were built.
- Hulme has subsequently undergone a £400m redevelopment programme with input from the residents, most of whom have elected to return to traditional forms of terraced and semi-detached housing.





## **5.2 Deregulation and privatisation of social housing**

**(Ian Reid of Shoosmiths)**

# Deregulation and privatisation of social housing

- The 1950's: Post War notion of "Homes fit for Heroes" – the State as provider of social housing for the masses
- The 1980's: Margaret Thatcher's administration implemented policy aimed at transforming the entire approach to social housing, by privatising public housing and creating a "property-owning democracy"
- Since 1980, some 2.5 million "council houses" have been sold to council tenants under the "right to buy" scheme, without the council stock being replaced
- In the 1990's, the government programme known as "Stock Transfer" transfers local authority housing stock to "Housing Associations"
- The role of the State in providing social housing has been intentionally diminished
- At the same time, we see decades of what some commentators have described as "building deregulation and a shift to a more flexible interpretation of standards"





## **5.3 The Summerland fire 1973**

**(Bijou Dunn of Shoosmiths)**

# The Summerland Fire

- On 2 August 1973, a fire was caused by three boys smoking in a kiosk outside Summerland, an entertainment complex in the Isle of Man.
- No attempt to evacuate the 3,000 people present was made, which caused 50 people to be killed.



# The Summerland Fire

- The death toll resulted in a public inquiry, that stated the death toll was so high due to the “delayed, unorganised and difficult” evacuation.
- The report of the public inquiry found flammable material had been used to line the inner walls of the building as it was more soundproof than plasterboard.
- The aftermath of Summerland led to the tightening up of fire regulations, know as the *Summerland Amendments*. This included a specification that:
  - The external walls of a public building must always be fire resistant.
  - The lower level walls shall be non-combustible and fire resistant throughout, such as by the use of the materials brick, stone and concrete.



# The Summerland Fire

- On the Isle of Man, there have been events to mark the 50<sup>th</sup> anniversary of the fire.
- This includes a special service to recognise the key contribution of the emergency services and health care works in responding to the Summerland fire disaster.





## **5.4 The privatisation of the building control profession (Jack Davies of Shoosmiths)**



# The privatisation of the building control profession

- Building control was part privatised by Margaret Thatcher in 1985 with the creation of the National House Building Council (NHBC) to compete with local authorities
- In 1997, John Major expanded this programme by introducing the 'approved inspectors' regime, which allowed other companies to join the market
- The first company to gain CIC approval was the NHBC in the 1990s. There are now more than 150 companies nationwide who offer privatised Building Control services for residential or commercial properties

# The privatisation of the building control profession: continued

- Industry commentators have said that there is a:  
*“fundamental problem in allowing people to choose their own regulator and it is very obvious...it becomes extremely easy for the ‘regulated person’ to apply financial and commercial pressure to the person who is supposed to be upholding the standards. No other sphere of activity is regulated in this way.”*
- This refers to the fact that a developer can choose whether the local authority or an approved inspector of their choice examines their plans.
- The Building Safety Act 2022 seeks to reform the building control profession by trying to level the playing field between the public and private building control sectors and ensure that the same standards of competence and conduct are enforced across the building control profession.



## **5.5 Measures to improve the energy efficiency of buildings**

**(Shaan Haque of Shoosmiths)**

# Measures to improve the energy efficiency of buildings

- The 1997 Kyoto Agreement is an international climate change treaty. It commits signatories to limit and reduce greenhouse gas emissions.
- European Directive of Energy Performance of Buildings 2002



## **5.6 The Lakanal House Fire (Albi Bell of Shoosmiths)**



# The Lakanal House Fire

- Lakanal House was a residential block in Camberwell, south London. It was built in 1959 and consisted of 98 flats. It was refurbished in 2006 and clad with external panels. There were no communal fire alarms or sprinklers in the building
- On 3 July 2009 a fire, which started in a television set in a 9<sup>th</sup> floor flat, spread rapidly through the building leading to the deaths of 6 residents
- Government inquest into the deaths in 2013 finding that opportunities to prevent the disaster had been missed
- The inquest focused on the cladding panels that had been fitted as part of the refurbishment in 2006/2007, which were found to offer less fire resistance than the panels they replaced.
- The Lakanal House Coroner's report had recommended that social housing owners compile lists of buildings with ACM cladding and send samples of the cladding for fire tests for tower blocks of a certain height (18 metres and above). However, this was apparently never followed through.
- Recommendations made to the Coroner during the inquest included a specific proposal to make sprinklers compulsory in high rises, as they could put out the fire and save lives.



# Mid-morning coffee break

# PART 6

## Combustible Cladding

(with Stuart Macdougald-Denton,  
Global Manager of Diales Technical)

## 6.1 – What exactly is combustible cladding?

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Under the sub-heading “*Deregulating the building industry*”, Stuart Hodgkinson’s book ‘Safe as Houses - Private greed, political negligence and housing policy after Grenfell’ stated:

“ Prior to 2006, Approved Document B of the UK’s Building Regulations clearly banned combustible cladding and insulation in buildings over 18 metres high. But many commentators argue that this ban was relaxed in 2006 as a result of regulatory changes ostensibly designed to fulfil the UK’s promise to reduce carbon dioxide emissions under the 1997 Kyoto Agreement. Following Kyoto, the European Union (EU) issued a new European Directive on Energy Performance of Buildings in 2002 that tasked member states such as the UK with improving the overall energy efficiency of new and existing buildings, primarily through better insulation. Due in part to the enormous cost of insulating millions of homes with more expensive non-combustible materials, the building regulations were subtly changed in 2006 to create an alternative legal route through which combinations of combustible materials previously outlawed could be used. The changes were linked to a closed-door industry consultation run by the privatised BRE, which included representatives of the combustible insulation industry previously locked out of supplying high-rise developments. In 2014, the Building Control Alliance (BCA), which represents building control officials, agreed to formalise the approval of this cladding without it even being fire-tested as a system, through the use of ‘desktop study reports’ based on existing test data supplied by government-accredited testing bodies, including BRE.

”

## 6.1 – What exactly is combustible cladding?

### Building Regulation B4 – External Fire Spread:

2006 – 2020

Requirement	Li
<b>External fire spread</b>	
<b>B4. (1)</b> The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.	
(2) The roof of the building shall adequately resist the spread of fire over the roof and from one building to another, having regard to the use and position of the building.	

2019 >

Requirement
<i>Requirement</i>
<b>External fire spread</b>
<b>B4. (1)</b> The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.
(2) The roof of the building shall adequately resist the spread of fire over the roof and from one building to another, having regard to the use and position of the building.
Regulation
<b>Regulation 7 – Materials and workmanship</b>
(1) Building work shall be carried out—
(a) with adequate and proper materials which—
(i) are appropriate for the circumstances in which they are used,
(ii) are adequately mixed or prepared, and
(iii) are applied, used or fixed so as adequately to perform the functions for which they are designed; and
(b) in a workmanlike manner.
(2) Subject to paragraph (3), building work shall be carried out so that materials which become part of an external wall, or specified attachment, of a relevant building are of European Classification A2-s1, d0 or Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009.

Regulation continued
(3) Paragraph (2) does not apply to—
(a) cavity trays when used between two leaves of masonry;
(b) any part of a roof (other than any part of a roof which falls within paragraph (iv) of regulation 2(6)) if that part is connected to an external wall;
(c) door frames and doors;
(d) electrical installations;
(e) insulation and water proofing materials used below ground level;
(f) intumescent and fire stopping materials where the inclusion of the materials is necessary to meet the requirements of Part B of Schedule 1;
(g) membranes;
(h) seals, gaskets, fixings, sealants and backer rods;
(i) thermal break materials where the inclusion of the materials is necessary to meet the thermal bridging requirements of Part L of Schedule 1; or
(j) window frames and glass.
(4) In this regulation—
(a) a “relevant building” means a building with a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at least 18 metres above ground level and which—
(i) contains one or more dwellings;
(ii) contains an institution; or
(iii) contains a room for residential purposes (excluding any room in a hostel, hotel or boarding house); and
(b) “above ground level” in relation to a storey means above ground level when measured from the lowest ground level adjoining the outside of a building to the top of the floor surface of the storey.



## 6.1 – What exactly is combustible cladding?

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Approved Document B (2010 Revision)

### **External wall construction**

**12.5** The external envelope of a building should not provide a medium for fire spread if it is likely to be a risk to health or safety. The use of combustible materials in the cladding system and extensive cavities may present such a risk in tall buildings.

External walls should either meet the guidance given in paragraphs 12.6 to 12.9 or meet the performance criteria given in the BRE Report *Fire performance of external thermal insulation for walls of multi storey buildings* (BR 135) for cladding systems using full scale test data from BS 8414-1:2002 or BS 8414-2:2005.

## 6.1 – What exactly is combustible cladding?

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Approved Document B (2010 Revision)

### **External surfaces**

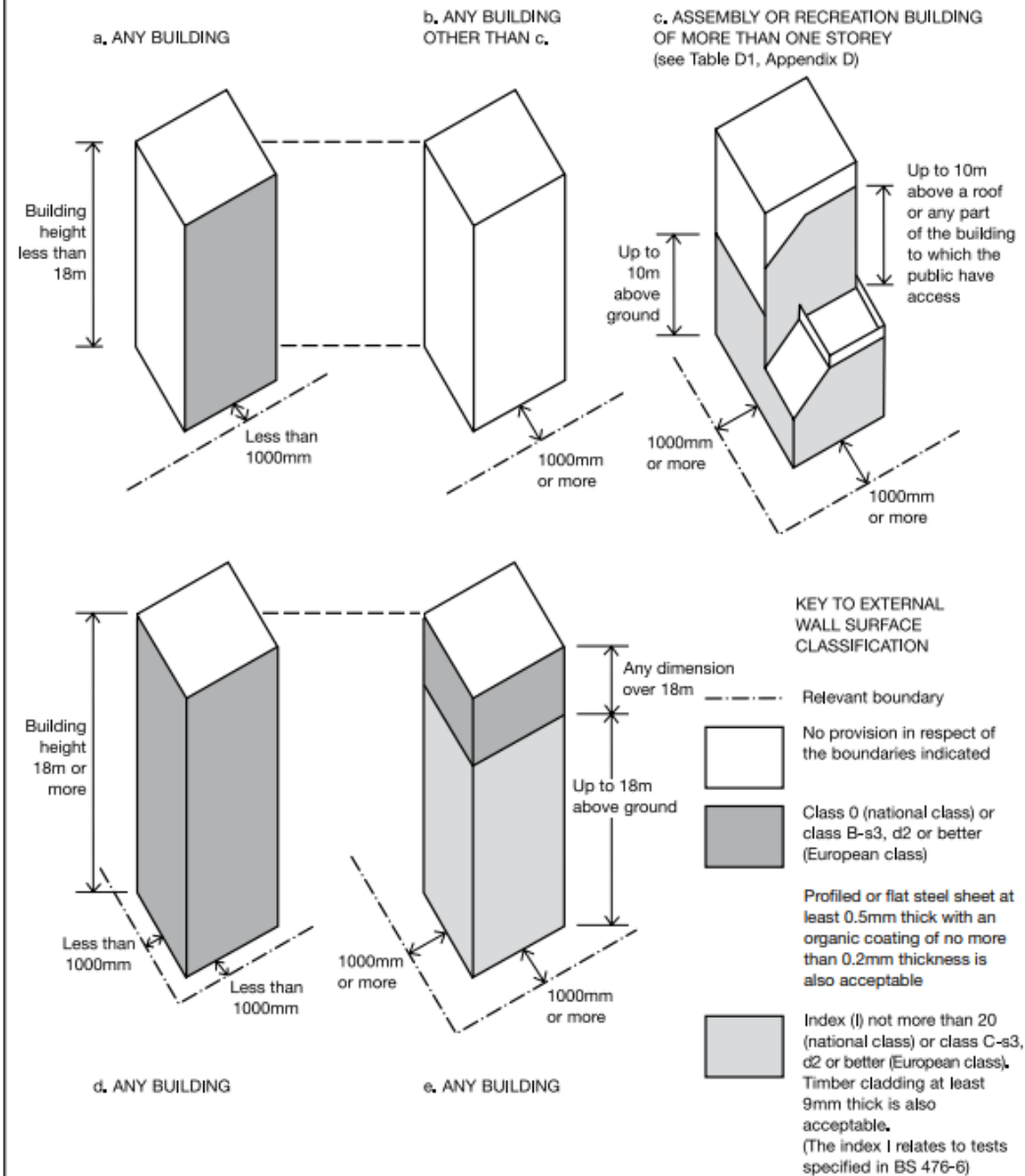
**12.6** The external surfaces of walls should meet the provisions in Diagram 40. Where a mixed use building includes Assembly and Recreation Purpose Group(s) accommodation, the external surfaces of walls should meet the provisions in Diagram 40c.

### **Insulation Materials/Products**

**12.7** In a building with a storey 18m or more above ground level any insulation product, filler material (not including gaskets, sealants and similar) etc. used in the external wall construction should be of limited combustibility (see Appendix A). This restriction does not apply to masonry cavity wall construction which complies with Diagram 34 in Section 9.

Approved  
Document B  
(2010 Revision)

See paras 12.5 and 12.6



- Notes:**

- 1 The national classifications do not automatically equate with the equivalent European classifications, therefore, products cannot typically assume a European class unless they have been tested accordingly.
- 2 When a classification includes "s3, d2", this means that there is no limit set for smoke production and/or flaming droplets/particles.

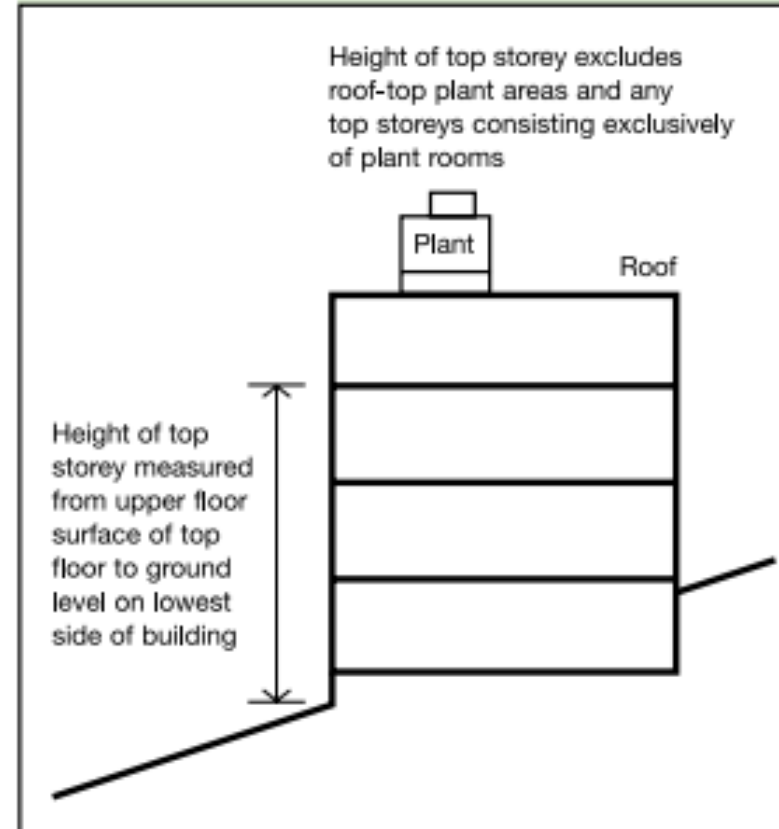
## 6.1 – What exactly is combustible cladding?

Approved Document B (2010 Revision)

### Insulation Materials/Products

**12.7** In a building with a storey 18m or more above ground level any insulation product, filler material (not including gaskets, sealants and similar) etc. used in the external wall construction should be of limited combustibility (see Appendix A). This restriction does not apply to masonry cavity wall construction which complies with Diagram 34 in Section 9.

Diagram C6 Height of top storey in building



## 6.1 – What exactly is combustible cladding?

Approved Document B (2010 Revision)

Table A7 Use and definitions of materials of limited combustibility		
References in AD B guidance to situations where such materials should be used	Definitions of materials of limited combustibility	
	National class	European class
8. insulation material in external wall construction referred to in paragraph 12.7.	<p>a. Any non-combustible material listed in Table A6.</p> <p>b. Any material of density 300/kg/m<sup>3</sup> or more, which when tested to BS 476-11:1982, does not flame and the rise in temperature on the furnace thermocouple is not more than 20°C.</p> <p>c. Any material with a non-combustible core at least 8mm thick having combustible facings (on one or both sides) not more than 0.5mm thick. (Where a flame spread rating is specified, these materials must also meet the appropriate test requirements).</p> <p>d. Any material of density less than 300kg/m<sup>3</sup>, which when tested to BS 476-11:1982, does not flame for more than 10 seconds and the rise in temperature on the centre (specimen) thermocouple is not more than 35°C and on the furnace thermocouple is not more than 25°C.</p>	<p>a. Any material listed in Table A6.</p> <p>b. Any material/product classified as Class A2-s3, d2 or better in accordance with BS EN 13501-1:2007 <i>Fire classification of construction products and building elements, Part 1 – Classification using data from reaction to fire tests.</i></p>



## 6.1 – What exactly is combustible cladding?

Approved Document B (2010 Revision)

**Table A6 Use and definitions of non-combustible materials**

References in AD B guidance to situations where such materials should be used	Definitions of non-combustible materials	
	National class	European class
1. refuse chutes meeting the provisions in the guidance to B3, paragraph 8.34c.	a. Any material which when tested to BS 476-11:1982 does not flame nor cause any rise in temperature on either the centre (specimen) or furnace thermocouples	a. Any material classified as class A1 in accordance with BS EN 13501-1:2007 <i>Fire classification of construction products and building elements</i> , Part 1 – <i>Classification using data from reaction to fire tests</i> .
2. suspended ceilings and their supports where there is provision in the guidance to B3, paragraph 9.12, for them to be constructed of non-combustible materials.	b. Totally inorganic materials such as concrete, fired clay, ceramics, metals, plaster and masonry containing not more than 1% by weight or volume of organic material. (Use in buildings of combustible metals such as magnesium/aluminium alloys should be assessed in each individual case).	b. Products made from one or more of the materials considered as Class A1 without the need for testing as defined in Commission Decision 2003/424/EC of 6th June 2003 amending Decision 96/603/EC establishing the list of products belonging to Classes A1 "No contribution to fire" provided for in the Decision 94/611/EC implementing Article 20 of the Council Directive 89/106/EEC on construction products. None of the materials shall contain more than 1% by weight or volume (whichever is the more onerous) of homogeneously distributed organic material.
3. pipes meeting the provisions in the guidance to B3, Table 14.	c. Concrete bricks or blocks meeting BS EN 771-3:2003	
4. flue walls meeting the provisions in the guidance to B3, Diagram 39.	d. Products classified as non-combustible under BS 476-4:1970	
5. construction forming car parks referred to in the guidance to B3, paragraph 11.3.		

**Note:**

The National classifications do not automatically equate with the equivalent classifications in the European column, therefore products cannot typically assume a European class unless they have been tested accordingly.

## 6.1 – What exactly is combustible cladding?

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Approved Document B (2010 Revision)

Critically then,

Surface Spread of Flame is tested in accordance with BS 8414 Parts 1 & 2,

whereas,

Materials of Limited Combustibility are determined by tests in accordance with BS 8414 Parts 4 & 11.

Or, **alternatively**, both can be established by tests in accordance with BS EN 13501

## 6.1 – What exactly is combustible cladding?

Approved Document B (2010 Revision)

Where BS EN 13501-1 give ratings following an assessment of the product on a range of characteristics, including combustibility (A-F), flame spread (s) and smoke release (d), where the best classification is A1, s1, d0:

### A guide to the classifications

The *BS EN 13501-1* classification comprises three ratings. The first is the main Euroclass rating, which will be the letter A1, A2, B, C, D, E or F. A1 is the highest level of performance, while F is the lowest. Flooring materials are followed by the abbreviation 'fl' (for example, A1fl). Linear pipe thermal insulation products are followed by the abbreviation 'L' (for example, A1L). A1 products are classified as non-combustible. A2 products are classified as limited combustibility, and B to F are classified as combustible in ascending order.

Classification	Definition	Description
A1	Non-combustible	No contribution to fire
A2	Limited combustibility	Very limited contribution to fire
B	Combustible	Limited contribution to fire
C		Minor contribution to fire
D		Medium contribution to fire
E		High contribution to fire
F		Easily flammable

**s1, s2 or s3, -**

for smoke emission during combustion (best to worst performing), and

**d0, d1 or d2, -**

d0 = No flaming droplets/ particles in EN 13823 within 600 s;

d1 = no flaming droplets/ particles persisting longer than 10 s in EN 13823 within 600 s;

d2 = not d0 or d1.

## 6.1 – What exactly is combustible cladding?

---

Approved Document B (2010 Revision)

### Cavity barriers

**12.8** Cavity barriers should be provided in accordance with Section 9.

**12.9** In the case of a an external wall construction, of a building which, by virtue of paragraph 9.10d (external cladding system with a masonry or concrete inner leaf), is not subject to the provisions of Table 13 *Maximum dimensions of cavities in non-domestic buildings*, the surfaces which face into cavities should also meet the provisions of Diagram 40.

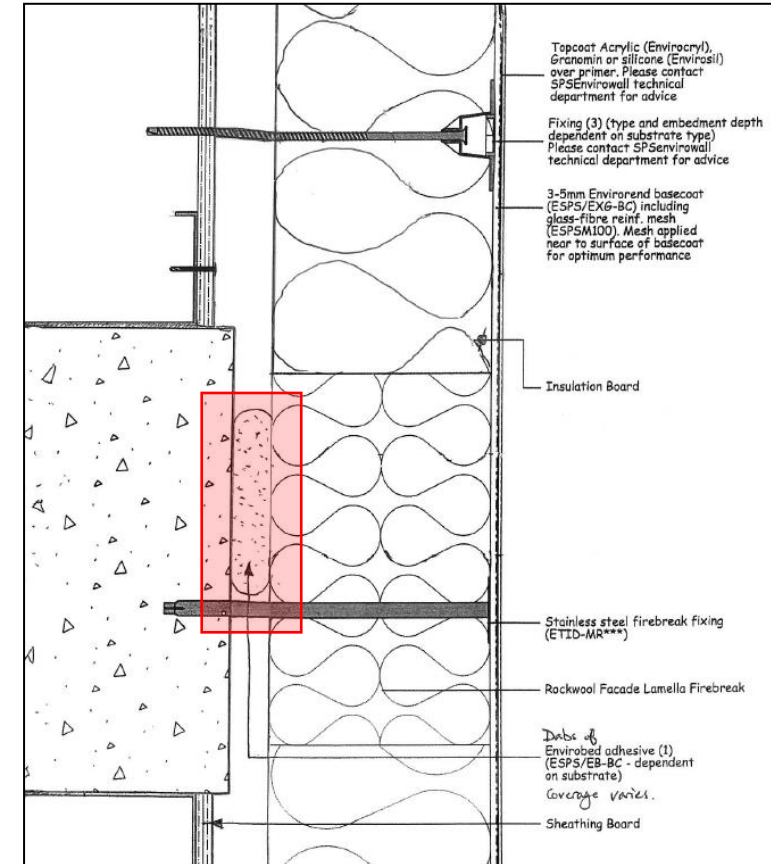
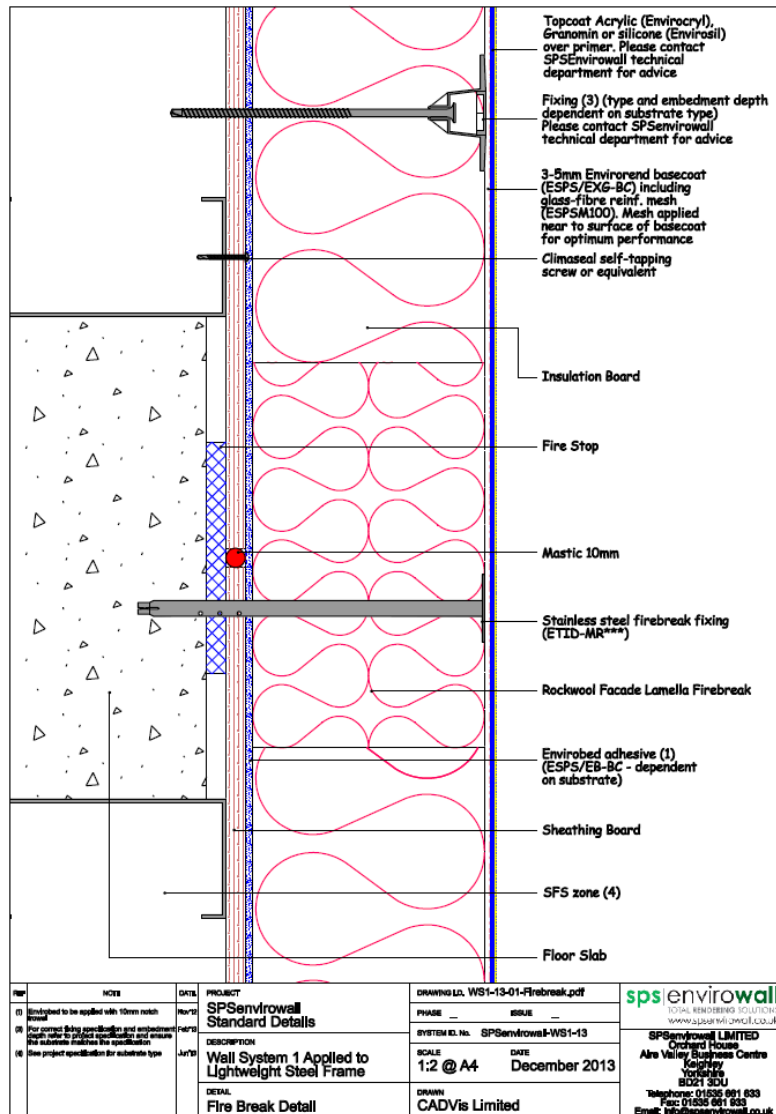
### Pathways around fire-separating elements

**9.3** Cavity barriers should be provided to close the edges of cavities, including around openings.

Cavity barriers should also be provided:

- a. at the junction between an external cavity wall (except where the cavity wall complies with Diagram 34) and every compartment floor and compartment wall; and
- b. at the junction between an internal cavity wall (except where the cavity wall complies with Diagram 34) and every compartment floor, compartment wall, or other wall or door assembly which forms a fire-resisting barrier.

## 6.1 – What exactly is combustible cladding?





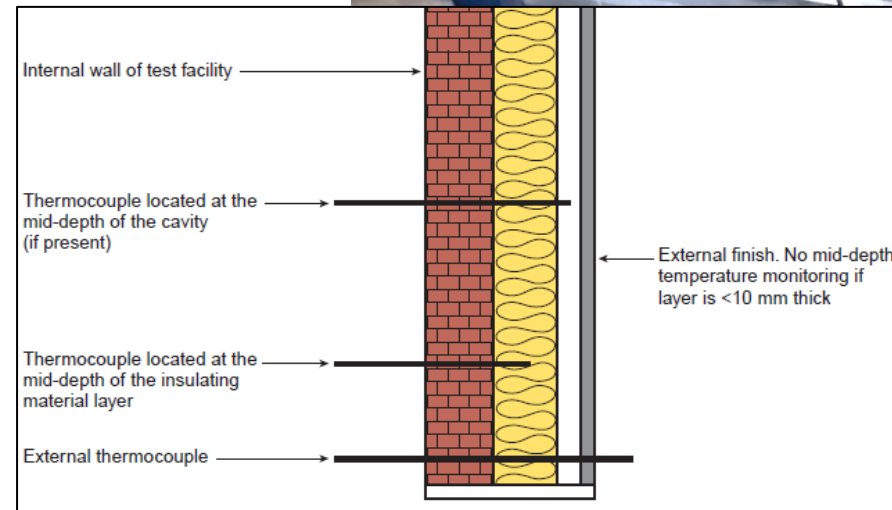
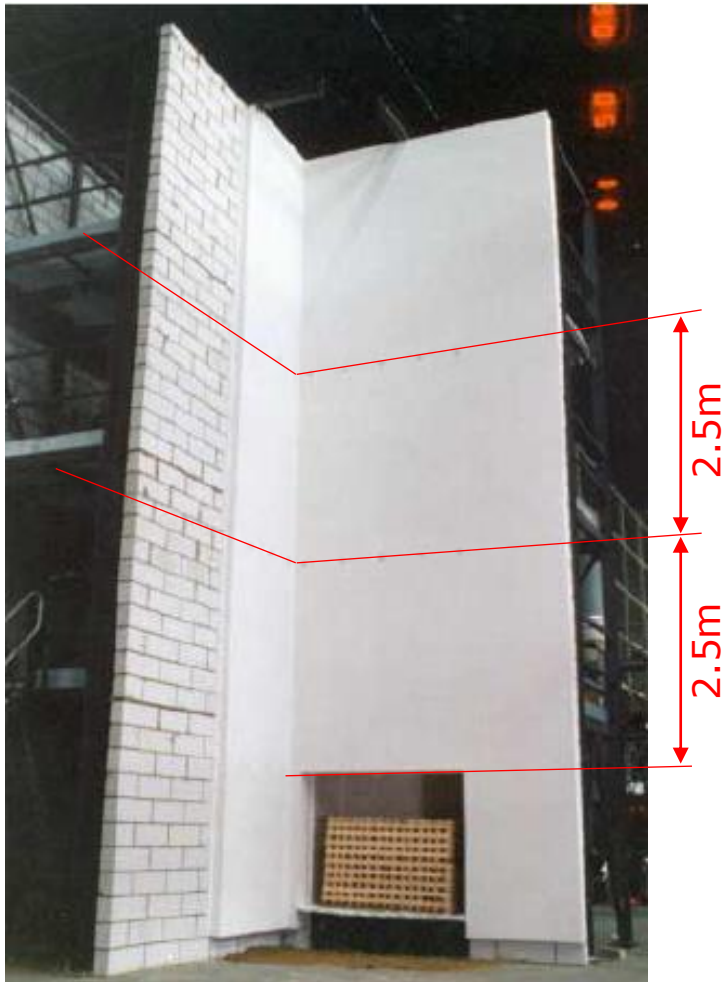
## 6.1 – What exactly is combustible cladding?

Approved Document B (2010 Revision) – Cavity Barriers



## 6.1 – What exactly is combustible cladding?

Approved Document B (2010 Revision) – BR 135 Fire Test



## 6.1 – What exactly is combustible cladding?

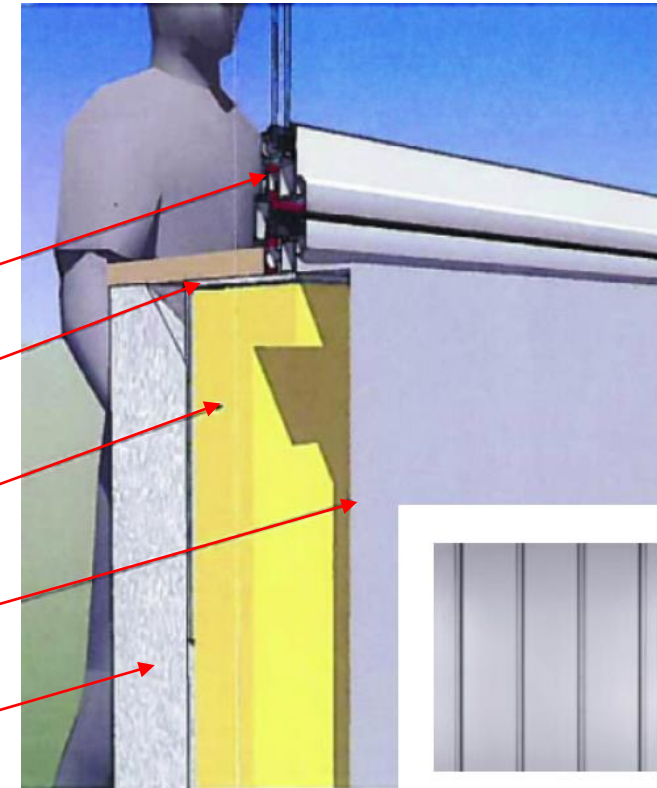
At Grenfell:

The cladding originally proposed for Grenfell Tower was solid zinc panels but, with the Council's budget being exceeded, cheaper 'Reynobond' aluminium composite material (ACM) cladding panels were selected.

'Celotex' polyisocyanurate (PIR) was selected for the insulation.



Reynobond ACM panel  
Although a similar PIR Product  
made by 'Kingspan' was also  
Original Pre-cast concrete outer  
used.  
wall panel



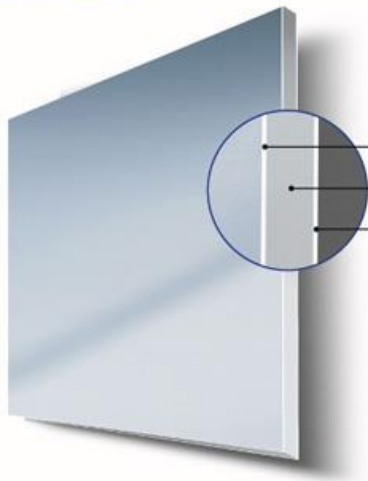


## 6.1 – What exactly is combustible cladding?

At Grenfell:

'Reynobond' ACM BBA Certificate

Reynobond®



Coil-coated sheet  
(upper side)  
Polyethylene core  
Coil-coated sheet  
(lower side)

CI/SfB

(21.9) Ry

### Alcoa Architectural Products

1 rue du Ballon  
68500 Merxheim  
France

Tel: 00 33 3 89 74 46 00 Fax: 00 33 3 89 74 46 90  
e-mail: aapmerxheim@alcoa.com  
website: www.alcoa.com/bcs/



Agrément Certificate  
No 08/4510

### PRODUCT SHEET 1 — REYNOBOND ARCHITECTURE WALL CLADDING PANELS

#### PRODUCT SCOPE AND SUMMARY OF CERTIFICATE

This Certificate of Confirmation relates to Reynobond Architecture Wall Cladding Panels, aluminium/polyethylene composite panels used to provide a decorative/protective façade over the external walls of buildings.

#### AGRÉMENT CERTIFICATION INCLUDES:

- factors relating to compliance with Building Regulations where applicable
- factors relating to additional non-regulatory information where applicable
- independently verified technical specification
- assessment criteria and technical investigations
- design considerations
- installation guidance
- regular surveillance of production
- formal three-yearly review.



#### KEY FACTORS ASSESSED

**Practicability of installation** — the panels are suitable for installation by cladding contractors providing they have undergone suitable training (see section 4).

**Strength and stability** — the panels can be incorporated in a cladding system designed to resist the wind loads normally encountered in the UK (see section 5).

**Behaviour in relation to fire** — in relation to the Building Regulations for reaction to fire, the panels may be regarded as having a Class 0 surface in England and Wales, and a 'low risk' material in Scotland (see section 6).

**Air and water penetration** — provided all joints between panels are adequately baffled, the cladding will minimise water entering the cavity. Any water collecting in the cavity will be removed by drainage and ventilation (see section 7).

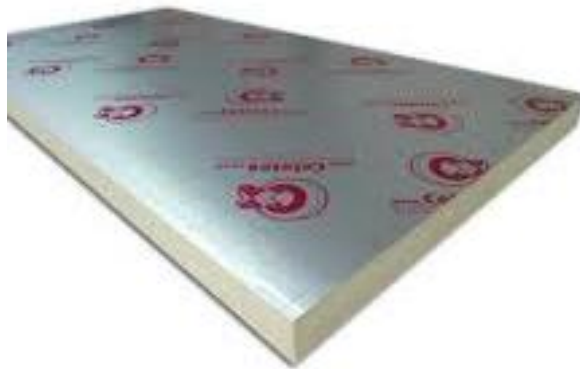
**Maintenance** — damaged panels may be replaced individually without disturbing adjacent ones (see section 8).

**Durability** — in normal UK conditions, the panels should have a service life in excess of 30 years (see section 9).

## 6.1 – What exactly is combustible cladding?

At Grenfell:

‘Celotex’ (PIR) and ‘Kingspan’ PIR



Fibre-free  
Core

### Kingspan Insulation Ltd

Pembridge  
Leominster  
Herefordshire HR6 9LA  
Tel: 0870 850 8555 Fax: 0870 850 8666  
e-mail: info.uk@insulation.kingspan.com  
website: www.insulation.kingspan.com



Agrément Certificate  
**08/4582**  
Product Sheet 1

### KINGSPAN INSULATION

### KOOLTHERM K15 RAINSCREEN INSULATION BOARD

#### PRODUCT SCOPE AND SUMMARY OF CERTIFICATE

This Certificate relates to Kooltherm K15 Rainscreen Insulation Board, a rigid phenolic board with foil composite facings, for use as external thermal insulation on new and existing steel frame or masonry walls. The board is used in domestic and non-domestic buildings in conjunction with masonry or weathertight ventilated cladding systems.

#### AGRÉMENT CERTIFICATION INCLUDES:

- factors relating to compliance with Building Regulations where applicable
- factors relating to additional non-regulatory information where applicable
- independently verified technical specification
- assessment criteria and technical investigations
- design considerations
- installation guidance
- regular surveillance of production
- formal three-yearly review.

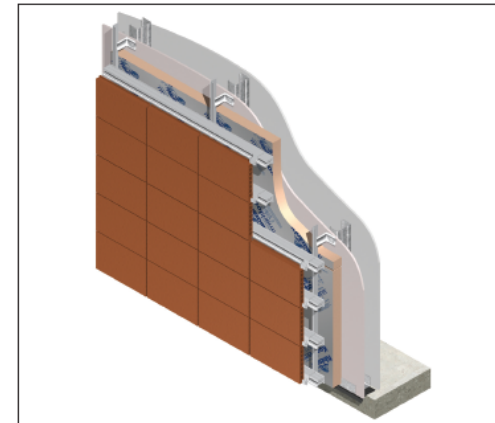
#### KEY FACTORS ASSESSED

**Thermal performance** — the boards will contribute to a wall achieving design U values that are specified for meeting a buildings Target Emission Rate and can also contribute to limiting heat loss at junctions and around openings (see section 5).

**Condensation risk** — the boards have a water vapour resistance of  $100 \text{ MNsg}^{-1}$  and can contribute to reducing the risk of surface and interstitial condensation (see section 6).

**Behaviour in relation to fire** — the boards will not contribute to the development stages of a fire or present a smoke or toxic hazard (see section 7).

**Durability** — the boards will have a life equivalent to that of the wall structure in which they are incorporated (see section 1.3).





## 6.2 – Grenfell and the reaction to it



## 6.2 – Grenfell and the reaction to it



## 6.2 – Grenfell and the reaction to it

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## 6.2 – Grenfell and the reaction to it



## 6.2 – Grenfell and the reaction to it





## 6.2 – Grenfell and the reaction to it

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Grenfell was undoubtedly a tragedy and one of the worst man-made disasters in post-war Britain.

However, is the Building Safety Act a considered and proportionate response to, or is it perhaps an over-reaction?



# **PART 7**

## **In the Aftermath of Grenfell (with Glenn Horton, Fire Engineer)**



# **7.1 The Grenfell Public Inquiry**

## **(Rubina Zaidi of Shoosmiths)**

# The Grenfell Public Inquiry

- A total of 319,956 documents disclosed across Phase One and Phase Two of the Inquiry.
- Over 1,500 witness statements.
- More than 300 public hearings.
- No arrests to date the Met have conducted at least 13 interviews under caution.
- The Inquiry has to date found, among other things:
  - there was compelling evidence that the external walls of the building failed to comply with Building Regulation B4(1) in that they did not adequately resist the spread of fire having regard to the height, use and position of the building;
  - the fire spread because of the ACM cladding; and
  - the London Fire Brigade's preparation and planning for a fire such as that at Grenfell Tower was gravely inadequate.

# The Grenfell Public Inquiry

- The final report has yet to be published. In its April newsletter the Grenfell Tower Inquiry stated:

“The Inquiry hopes to complete the drafting of the report before the end of 2023. Various practical steps will then need to follow, such as proof-reading, typesetting and printing, all of which take time. We shall send the report to the Prime Minister, as required by our terms of reference, as soon as we can but that will probably not be possible before the beginning of next year. The Prime Minister will decide when the report will be published and by whom, but we are ready to act quickly if he asks us to publish it, as we think likely”.

In the June newsletter, it stated:

“Drafting of the Phase 2 report continues. Each chapter of the report is at a different stage of drafting, with some now nearing completion. The Chairman is required to write to those who are subject to criticism in the report under rule 13 of the Inquiry Rules and has to allow them reasonable time to respond to the criticisms made against them. That process, which is entirely confidential, has now begun”.





## **7.2 The challenges of criminal prosecutions arising out of Grenfell**

**(Rubina Zaidi of Shoosmiths)**

# The challenges of criminal prosecutions arising out of Grenfell

- The evidential test hurdle which itself will be impacted by some of the other challenges
- The witness immunity granted
- Length of time until evidence obtained and until trials – impact on witnesses' ability to recall events
- Insolvency- winding up and re-opening - causing difficulties in tracing organisations/ individuals
- The causation issue - was the offence a significant factor in what occurred
- Difficulty of proving the potential offences themselves eg corporate manslaughter or gross negligence manslaughter
- Number of potential Defendants all blaming each other
- Number of prosecuting/ regulatory agencies involved (plus LFB and LA difficulties)
- Amount of highly technical expert evidence to be put before the jury
- External factors affecting prosecution decisions



## **7.3 The Hackitt Review (Jack Davies of Shoosmiths)**

# The Hackitt Review

- December 2017 (Interim) and May 2018 (final)

*“Current regulations and guidance are too complex and unclear. This can lead to confusion and misinterpretation in their application”*

- Dame Judith identified four key areas as being in urgent need of reform and which had to be addressed as top priorities by legislators. These were:
  - i) ignorance
  - ii) indifference;
  - iii) a lack of clarity on roles and responsibilities; and
  - iv) An absence of robust regulatory oversight and enforcement tools.
- Dame Judith’s report found that the current regulatory system during occupation and maintenance is not fit for purpose for higher-risk residential buildings.

# The Hackitt Review: continued

- Dame Hackitt's two reports made more than 50 recommendations covering the need for a new, more robust regulatory framework with an improved focus on accountability on building safety from procurement, design, and construction through to occupation of the buildings
- By April 2020, the Government published its response to the "Building a Safer Future" consultation.
- In its response, the Government committed to wholesale reform of the building and fire safety regulatory systems, accepting all 53 of Dame Hackitt's recommendations, and announced a then forthcoming "Building Safety Bill" to implement these changes...
- The Ministerial Foreword to the Government's response to a "Building a Safer Future Consultation" states:

*"Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety concluded that the current system for ensuring fire safety in high-rise multi-occupied residential buildings is not fit for purpose and would require a complete overhaul. We accepted all 53 of her recommendations and, in some instances, intend to go even further than the steps that she has set out."*





## **7.4 EWS1 Certificates**

**(with Glenn Horton, Fire Engineer)**

# EWS1



- Lenders concerns arose c2018/19 requiring 'letters'
- RICS/UK Finance/Lenders/MHCLG/Developers/Fire Engineers Sept 2019
- Single reporting method
- Fire engineering resources and Liability, 2 biggest issues
- PAS9980
- Future?



# **7.5 Sprinklers in high rise buildings**

**(with Glenn Horton, Fire Engineer)**

# Sprinklers (England)




- Requirement B3(3) sprinklers, or fire resisting construction, or combination of both
- Approved Document B pre 2020, recommended above 30m
- Approved Document B post 2020 recommended threshold reduced to 11m
- To prevent fires becoming large

# Sprinklers in high rise buildings

- Sprinkler systems – a tool to prevent the spread of fire in tall buildings
- Historically, buildings taller than 30m, constructed since 2007, were recommended to have sprinklers fitted (with buildings constructed before 2007 only requiring sprinklers if a fundamental change was made to the structure or use of the building)
- In May 2020, the Department for Levelling Up, Housing & Communities published amendments to the Statutory Guidance in Approved Document B (fire safety) volume 1 to state that sprinkler systems should be fitted throughout blocks of flats with a top storey more than 11m above ground level.
- As before, this applies to “newly constructed accommodation”, and those buildings which meet the minimum height threshold that are subject to material alterations, material changes of use and extensions.





# **7.6 Second stairways in high rise buildings**

**(with Glenn Horton, Fire Engineer)**

# 2<sup>nd</sup> stair core



- Post Grenfell Tower, increasing calls for alternative escape routes/firefighting access in 'tall buildings'.
- 2023 London Plan changed to require 2 stairs in buildings over 30m.
- 2023 HMG indicates lower threshold of 18m
- Lack of design guidance/purpose of 2<sup>nd</sup> stair
  - e.g. is is a staircase, staircase + single ff lift/staircase + ff + evac lifts
- Uncertainty IS stifling design/construction

# Government consultation on amendments to Approved Document B

- The consultation 'Sprinklers in care homes, removal of national classes, and staircases in residential buildings' proposed introducing provisions for new residential buildings more than 30 metres in height to be provided with a second staircase.
- On 13 February 2023, the Mayor of London, Sadiq Khan, announced that new buildings in London over 30m will need to be designed to provide two staircases.
- In July, the Secretary of State for Levelling Up, Housing and Communities, Michael Gove, confirmed that a second staircase will be required in buildings above 18m.
- In a speech, he said "18m will be the threshold that we will introduce for new buildings requiring second staircases. And of course there will be transitional arrangements in place to make sure that there is no disruption to housing supply".
- This announcement was in response "to the call from the sector for coherence and certainty".
- In a press release the government stated "The government is clear that this new regulation cannot jeopardise the supply of homes by disrupting schemes that have been planned for years. DLUHC will work rapidly with industry and regulators over the summer to design transitional arrangements with the aim of securing the viability of projects which are already underway, avoiding delays where there are other more appropriate mitigations".



# **7.7 Tensions between central and local government**

**(Ian Reid of Shoosmiths)**

# “Dither and delay”

- In 2022, the London Fire Brigade began expressing concerns about sole escape routes (single staircases) in proposed high-rise developments, with the result that some developers pulled schemes.
- In December 2022, the government launched a consultation on whether to mandate a second staircase in new residential buildings over 30m tall.
- In February 2023, the London Mayor, Sadiq Khan went ahead and required that in London buildings over 30m would be required to have a second staircase, despite this not applying to the rest of the country.
- In July 2023, the Housing Secretary, Michael Gove announced that the threshold would be lowered and new buildings throughout the country that are taller than 18m will require second staircases.
- A letter sent to Michael Gove in response to this by Housing First stated:

“The lack of technical specifications means that those designing or constructing tall buildings are not being given clear instruction on exactly what they need to do. They are also unable to make sensible evidence-based decisions on risk for themselves, because they are not clear on the core purpose of the two staircases.”
- Last week on the 14<sup>th</sup> September, Sadiq Khan wrote to Michael Gove to accuse the government of “*bureaucratic dither and delay*” over its proposed fire safety rules.
- Apparently Khan stated that the development of 34,000 homes in the capital was unable to proceed as it was still unclear how the new rules concerning second staircases would apply because the government’s policy on second staircases was announced without transitional arrangements or detail of technical requirements for compliance.
- City Hall claimed councils and housing developers currently have no guidance on what the transition period will allow for, or what technical requirements will be needed to satisfy the new rules.
- Khan stated that some of the 34,000 homes across various developments which are still in planning:

“they are in limbo at various stages of their evolution within the development sector while they wait for clarity from [the] department [for Levelling Up, Housing & Communities].”



# **PART 8**

## **The Government's response to the Hackitt Review – the Building Safety Act 2022 (Michael Bennett of Shoosmiths)**



# **8.1 A brief overview of the Act**

# An overview of the Act

- This Act has 6 Parts, and contains provisions intended to secure the safety of people in or about buildings and to improve the standard of buildings.
- Part 2 contains provision about the building safety regulator and its functions in relation to buildings in England.
- Part 3 amends the Building Act 1984.
- Amendments made by part 3 –
  - Provide that the regulator is the building control authority in relation to higher-risk buildings in England, and
  - Require the regulator (for England) and the Welsh Ministers (for Wales) to establish and maintain registers of building control approvers and building inspectors.
- Part 4 is about occupied higher-risk buildings in England, and imposes duties on accountable persons.
- Part 5 contains further provisions, including –
  - Provisions about remediation and redress;
  - Provision requiring a new homes ombudsman scheme to be established;
  - Powers to make provision about construction products;
  - Further provision about fire safety;
  - Provision about the regulation of architects;
  - Provision about housing complaints.
- Part 6 contains general provisions.

## 8.2 Devolved Jurisdictions

# Wales

- Wales will implement a slightly different regime for higher-risk buildings (HRBs):
  - The current proposal is for a different definition of HRBs to be used during the design and construction stage of the new regime. The current proposal is that a HRB will be:
    - 18 or more metres in height or have seven or more storeys, and
    - contain at least one residential unit, or are care homes or hospitals (with at least one bed to be used by people for an overnight stay).It is proposed that certain exclusions will apply including prisons, military premises and hotels.
  - The Building Safety Regulator will not be the building control authority for HRBs in Wales. This will be the local authority.
  - However, where a local authority is the developer, Welsh Ministers can choose another local authority to act as building control authority.
  - All HRBs will be required to have an accountable person during the occupation stage to assess and manage building safety risk. It is proposed that the definition of HRB during occupation will apply to all buildings with two or more dwellings but care homes and hospitals are excluded in addition to prisons and hotels.
  - There will be reform of the building control profession and oversight of the profession will be by the Welsh government rather than the Regulator.
  - Privately approved inspectors will be required to register as 'registered building control approvers' with the Welsh Government.
  - The Welsh government will set its own conduct rules for the building control profession and this was subject to a consultation that closed in April 2023.
  - Welsh local authorities will have greater enforcement powers for breach of the building regulations.



# Scotland

- The Building Safety Act 2022 has limited application in Scotland. The provisions applicable to Scotland are those relating to the safety of construction products and the regulation of architects.
- Following Grenfell, the Scottish government has implemented a number of changes:
  - From July 2019, the Technical Handbook to the building standards states that all new domestic buildings that are over 18 metres in height should have at least two escape stairs, an evacuation alert system and floor and flat identification signs.
  - From March 2021, new social homes, flats, and shared multi-occupied residential buildings must have automatic fire suppression systems (such as sprinklers) regardless of their height.
  - From February 2022, all new and existing homes are required to have interlinked fire and smoke alarm systems.
  - From June 2022, the use of combustible cladding for new blocks of flats, entertainment and assembly venues, hospitals and care homes over 11 metres has been banned. The use of metal composite cladding materials has been banned for use on new buildings of any height.

# Northern Ireland

- In April 2022, the use of materials that are not classified as A2-s1, d0 or Class A1 was banned on external walls in buildings that are 18 or more metres and contain:
  - a dwelling;
  - an institution; or
  - a room for residential purposes.



## **8.3 Which buildings do the changes apply to?**

# Which buildings do the changes apply to?

Which buildings do the changes under the Building Safety Act 2022 apply to, and from when?						
	Higher-risk buildings*			Other (non higher-risk)	Applies to new or existing buildings?	In effect from
	Residential	Hospitals	Care homes			
During design and construction						
Gateway 1: Fire statement and consultation of HSE	x				Only new	Aug 2021
Gateway 2: Approval from BSR for construction	x	x	x		Only new	Oct 2023
Gateway 3: Certificate from BSR for occupation	x	x	x		Only new	Oct 2023
Dutyholders (client, designer, contractor)	x	x	x	x	Only new	Not yet known
During occupation						
Registration of buildings with the BSR	x				New	Oct 2023
					Existing	Apr 2023 to Oct 2023
Building safety case	x				Both	Oct 2023
Call-in by the BSR for assessment	x				Both	Apr 2024
Building control profession						
Registration of RBCAs and RBIs with the BSR				x	Only new	Oct 2023 to Apr 2024
Shared standards for public and private BCBs				x	Only new	Apr 2024
Enforcement powers						
New: stop and compliance notices	x	x	x	x	Only new	Apr 2023
Existing: extension of time limits	x	x	x	x	Only new	Apr 2023
Recourse for homeowners: Section 38	x	x	x	x	Only new	Not yet known
*Note: Higher-risk buildings are those that are 18 or more metres in height, or have seven or more stories. Higher-risk residential buildings are those that meet those height requirements AND contain two or more dwellings (flats or homes). This includes educational accommodation.						

Source: Building regulations and safety (House of Commons library briefing paper, June 2023)



## 8.4 What is in force and what the future holds



# Timeline

- 1 August 2021: Planning Gateway 1
- 28 April 2022: Building Safety Act comes into force
- 28 June 2022: Changes to the Defective Premises Act 1972 take effect
- 1 December 2022: Changes to Approved Document B come into force
- 23 January 2023: Fire Safety (England) Regulations come into force
- 6 April 2023: The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 come into force.
- 12 April 2023: Registration with the Regulator open for existing higher-risk buildings
- 24 July 2023: Responsible Actors Scheme launched
- 30 September 2023: Deadline for registering existing higher-risk residential buildings

# 1 October 2023

- Registration of new higher-risk buildings with the Building Safety Regulator.
- New building control regime for the design and construction of higher-risk buildings (subject to transitional provisions)
- Amendments to the Regulatory Reform (Fire Safety) Order 2005
- Dutyholder regime



# **PART 9**

# **The Building Safety Regulator**

**(Rubina Zaidi of Shoosmiths)**



**An example of 'Regulators' in other industries...  
such as the cattle rustling industry**





# **9.1 What is the HSE and who is the regulator?**



# “Who is The Regulator?”

- The “Health and Safety Executive” (HSE) is Britain’s national regulator for workplace health and safety. Its aim is to prevent work related death, injury and ill health. The HSE is an executive non departmental public body sponsored by the Department for Work and Pensions.
- The HSE has been made the “regulator” for the purposes of the Building Safety Act (s.2)
- The HSE has decades of experience in managing workplace safety and has extensive powers to do so eg to enter premises, stop work, obtain documents, ask questions
- Its work ranges from research and guidance to conducting inspections and investigations and to taking enforcement action, including prosecutions, to prevent harm and hold those who break the law to account.

## **9.2 The regulator's objectives, principles and duties**

# The Regulator's objectives and regulatory principles

- The Regulator's objective is to exercise its "building functions" (being any function under the Building Safety Act 2022 or Building Act 1984) with a view to:
  - Securing the safety of people in or about buildings in relation to risks arising from buildings; and
  - Improving the standard of buildings. (s.3.1)
- The Regulator must have regard to the following principles:
  - regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
  - regulatory activities should be targeted only at cases in which action is needed. (s.3.2)
- The HSE's statement of intent indicates the Regulator will target its resources:
  - on those buildings and activities giving rise to the most serious risks
  - where the hazards are least well controlled, or
  - where the effectiveness in managing building safety is in doubt
- the Regulator will work closely with existing regulators such as local authorities and fire and rescue authorities as part of its approach to enforcement

# The Regulator's Duties

- The Regulator is under a duty to facilitate building safety in “higher-risk buildings” (as defined in part 4 of the Building Safety Act 2022). (s.4)
- The Regulator is under a duty to provide assistance and encouragement to “relevant persons” (being residents, owners of residential units, “accountable persons” and “duty holders”) as it considers appropriate with a view to their securing the safety of people in or about higher-risk buildings. (s.4.1)
- The Regulator is under a duty to keep the safety of people in or about buildings and the standard of buildings under review. (s.5)
- The Regulator is under a duty to facilitate the improvement of competence of persons in the building industry and of registered building inspectors. (s.6)
- The Regulator is under a duty to establish a system for the voluntary giving of information about building safety. (s.8)



## 9.3 The New committees



# The Regulator – Committees

- The Regulator must establish the “Building Advisory Committee” whose function is to give advice and information to the regulator. (The previous “Building Regulations Advisory Committee” established under the Building Act 1984 is abolished). (s.9)
- The Regulator has established a committee on “industry competence” whose function is to advise the regulator and persons in the building industry on matters of industry competence, monitor such matters and carry out analysis and research in connection with such matters. (s.10)
- The Regulator must establish a committee (the “residents panel”) made up of residents or owners of residential units in higher-risk buildings and bodies that represent the interests of such persons, whose function is to advise the Regulator in connection with higher-risk buildings.



## **9.4 The Regulator's interaction with local authorities and fire and rescue authorities**

# The Regulator – Assistance from local authorities and fire and rescue authorities

- A local authority or a fire and rescue authority may at the request of the Regulator do anything for the purpose of facilitating the exercise by the regulator of any of its functions relating to the regulation of higher-risk buildings. (s.13.1)
- The Regulator may give the relevant authority a “direction” to this effect, provided the Secretary of State consents to the direction. (s.13.5)
- The Secretary of State may pay a relevant authority what it considers appropriate for complying with a direction from the Regulator. (s.15.4)



## 9.5 Plans and reports

# The Regulator – Plans and Reports

- The HSE published its 10-year strategy last year (2022-2032) - refers to delivering a regime for higher-risk buildings that improves standards, compliance and accountability and to providing people with the assurance that businesses and industries can manage and control risk.
- The Regulator must prepare a three year “Strategic Plan” setting out how it intends to carry out its functions and submit it to the Secretary of State for approval. (s.17.1 and s17.2)
- The Regulator must publish the approved plan and act in accordance with it. (s.17.6)
- The Regulator may revise its Strategic Plan with the approval of the Secretary of State. (s.18)
- After the end of each financial year the Regulator must prepare and publish a report about the information provided to it pursuant to the mandatory reporting requirements. (s.19)
- At least once every financial year the Regulator must publish a statement about its engagement with the residents or owners of residential units in higher-risk buildings. (s.20)



# The Regulator – Plans and Reports

- Within 3 years of s.21 of the Act coming into force, the Regulator must carry out a **COST BENEFIT ANALYSIS** of making regular inspections of, testing and reporting on the condition of electrical installations in residential buildings (or any kind of building the Regulator considers appropriate) and prepare a report for the Secretary of State on such matters which the Secretary of State must publish. (s.21.1(a))
- Within the same time the Regulator must seek to improve the safety of persons in or about such buildings with regard to:
  - i. stairs and ramps;
  - ii. emergency egress of disabled persons;
  - iii. automatic water fire suppression systems

and prepare a **COST BENEFIT ANALYSIS** of the same. (s.21.1(b))



## **9.6 Going to jail – the enforcement powers of the Regulator and sentences**

# The Regulator – Enforcement

- The Regulator may authorise a suitably qualified person to be an “authorised officer” with powers to enforce on its behalf its functions under Part 4 of the Building Safety Act (higher-risk buildings) or the Building Act 1984. (s.22)
- Any person who intentionally obstructs an authorised officer (or with intent to deceive, impersonates an authorised officer) commits an offence and can be fined up to £1,000 for obstruction; unlimited fine for impersonation. (s.23)
- Any person who (knowingly or recklessly) provides false or misleading information to the Regulator commits an offence and can be fined and or imprisoned for up to 2 years. (s.24)

# The Regulator – Enforcement

- An authorised officer may enter any non-domestic premises at any reasonable time (or any time in dangerous situations) and may be accompanied by the police if the officer expects any obstruction and the officer may take measurements, photographs, recordings or seize anything that may be evidence of an offence under the Building Safety Act or the Building Act 1984 or make a seizure to stop that evidence being concealed, lost, altered or destroyed. (Schedule 2 s.1)
- A justice of the peace may issue a warrant allowing an authorised officer to enter any non-domestic premises by force if necessary. (Schedule 2 s.2)

# The Regulator – Enforcement

- A justice of the peace may issue a warrant allowing an authorised officer to enter any domestic premises (by force if necessary) provided one of the following conditions is met:
  - entry has otherwise been, or is likely to be refused; or
  - no person entitled to grant entry can be found; or
  - requesting entry may frustrate or seriously prejudice the purpose of entry (Schedule 2 s.3)
- An authorised officer may require any person to give specified information or documents to the officer or provide the officer with such facilities and assistance as may be specified by the officer. (Schedule 2 s.4)
- Any person who fails without reasonable excuse to comply with the requirements of an officer to provide information or documents or assistance commits an offence and can be fined and/or imprisoned for up to 2 years. (Schedule 2 s.6)



# Breaches of the building regulations

The Building Safety Act 2022 will also strengthen the enforcement powers of building control authorities for breaches of the building regulations:

- Under Sections 35 and 35A of the Building Act 1984, a local authority can prosecute the person who carried out non-compliant building work. If found guilty, the person may have to pay an upfront fine and further daily fines for not fixing the problems. Currently, prosecution can only be pursued up to two years from the date of completion of the building work. S.39 of the Building Safety Act 2022 will remove this time limit, so there will be no time limit in future. the penalty is imprisonment for a term not exceeding two years and/or a fine.
- Under Section 39 of the Building Act 1984, a local authority can require a building owner to remove non-compliant building work up to 12 months from the date of completion of the building work. This will be extended to 10 years under the Building Safety Act.
- Section 38: when in force, provides for stop notices (requiring work during the design and construction phase to stop until non-compliance is remedied) and compliance notices (which require non-compliant work during design or construction to stop temporarily and/or be fixed). These can be issued by the Regulator or the building control authority where there is or is likely to be a contravention of the building regulations. Contravention of these notices will be a criminal offence with up to two years in prison or an unlimited fine.
- S.40 of the Building Safety Act 2022 provides that where a dutyholder is a corporate entity, “any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity” may also be liable personally where the breach of the Building Act 1984 was committed with their consent, connivance or as a result of their neglect.

# What we can learn from experience

- Enforcement powers similar to HSE powers entering premises, obtaining evidence, stop and compliance notices
- Sentences for obstruction/ impersonation reflect Police Act offences
- Sentences for breach of the Building Safety legislation reflect Health and Safety offences
- Breach of CDM regulations- fines and imprisonment
- Section 28 Building Safety Act - enables the Secretary of State to make regulations authorising the regulator to charge fees and recover charges for/ in connection with the performance of a relevant function. The Building Safety (Regulator's Charges) Regulations 2023 set out provisions in relation to charges of the Regulator and come into force on 1 October 2023.
- Approach to sentencing
- Facing enforcement action



## 9.7 The Regulator in Summary

# The Building Safety Regulator in summary

- The Building Safety Regulator will have 3 main functions:
  - overseeing the safety and standards of all buildings
  - helping and encouraging the built environment industry and building control professionals to improve their competence
  - leading implementation of the new regulatory framework for high-rise buildings
- The Building Safety Regulator will be the building control authority for higher-risk buildings in England.



**So do we think the new Building Safety Regulator is going to carry on like 'Billy the Kid' and his gang?**







# **PART 10**

## **The Government's “negotiations” with developers**

**(Amber Wright of Shoosmiths)**



# 10.1 The Developer's Pledge

# Protecting leaseholders

- The government has been focused on getting commitment from the industry to pay for historical fire safety defects and protecting leaseholders from paying these costs.
- The Building Safety Act 2022 contains several measures to address the remediation of fire safety defects in existing buildings.

“The government is committed to protecting innocent leaseholders from the unfair burden of remediation costs to make their home safe, and Parliament has passed a law to give this effect”.

“The Act ensures that those who built defective buildings take responsibility for remedying them, that the industry contributes to fixing the problem, and that leaseholders are protected in law from crippling bills for historical safety defects”.

Source: “Building safety leaseholder protections: guidance for leaseholders”  
October 2022

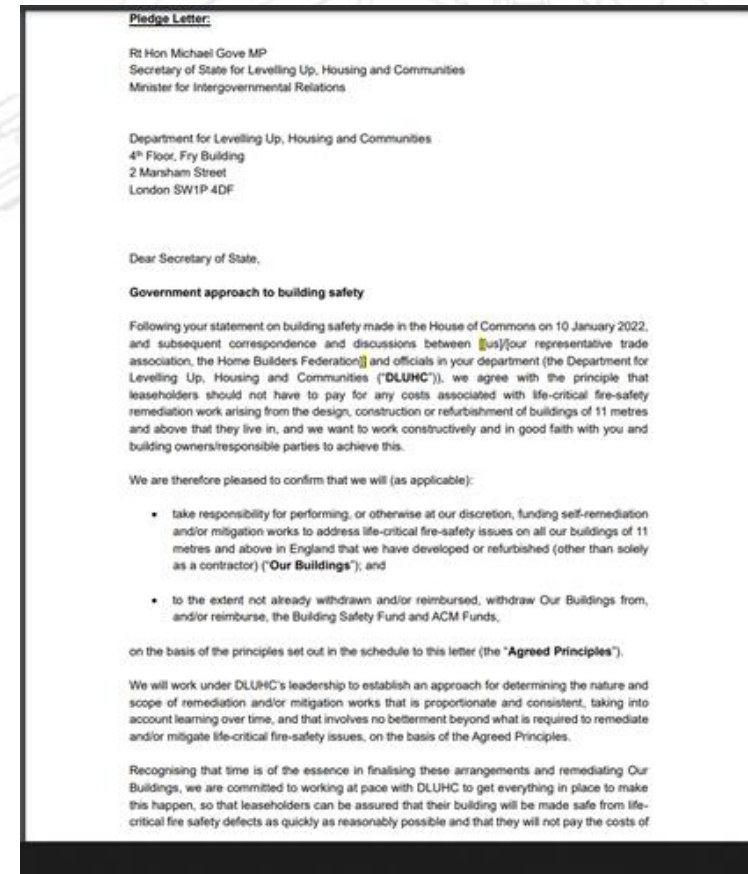
# Protecting leaseholders

- S.126 and s.127 of the Building Safety Act 2022 give powers to the government to establish a building industry scheme in England for any purpose connected with:
  - securing the safety of people in or about buildings; or
  - improving the standards of buildings.
- This includes “by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings” (s.126(2) of the Building Safety Act 2022).
- S.128 and s.129 of the Building Safety Act 2022 give powers to the government to prohibit a person of a prescribed description from carrying out development of land in England and impose building control prohibitions.
- During its passage through Parliament the government explained that the industry schemes “would act as a means of identifying which industry actors, including developers, and cladding and insulation manufacturers, have done the right thing and committed to act responsibly”. (Hansard, Volume 819, 24 February 2022)
- These provisions came into force on 1 September 2022.



# The developer's pledge

- The government sought to negotiate with major residential property developers.
- On 31 March 2022, developers were asked to voluntarily pledge to remediate “life critical fire safety works” in buildings over 11m that they were involved in developing and refurbishing in the last 30 years in England (since April 1992).
- The pledge also included a commitment to reimburse any funding received from government remediation programmes in relation to buildings they had a role in developing or refurbishing.
- The pledge was published on 13 April 2022 and to date 51 developers have signed.





## 10.2 The Self Remediation Terms

# Self Remediation Terms

The government sought to turn the commitments in the developer's pledge into a legally binding agreement:

- 13 July 2022: it published a draft contract with the aim of finalising terms by 10 August 2022.
- 30 January 2023: the draft contract was withdrawn, and a further “final form” contract was published with developers being given six weeks to sign (the Self Remediation Terms). At the same time, the government announced that secondary legislation would be brought forward to create a Responsible Actors Scheme (the Scheme) under s.126-129 of the Building Safety Act 2022. Eligible developers who did not sign the Self Remediation Terms would not be permitted to join the Scheme. In addition, eligible developers who did not sign the Self Remediation Terms or failed to comply with its terms may be blocked from carrying out developments and from receiving building control approval.
- Therefore, the government issued an ultimatum to developers - failure to sign the Self Remediation Terms would directly impact their ability to operate in the market.
- As of 26 June 2023, 49 developers have signed.

# Self Remediation Terms

Under the Self Remediation Terms developer's obligations include:

- Identifying those residential and mixed-use buildings over 11m in height in England for which they are responsible for developing or refurbishing in the last 30 years, which require remediation of life-critical fire safety defects.
- Undertaking at their own cost, or procuring at their own cost, the works necessary to remediate or fully mitigate any fire safety defects.
- Reimbursing any funding received from the government remediation programmes in relation to remediation works on their own buildings – limited grounds to challenge amount.
- Committing to and complying to a remediation timetable.
- Certain reporting and data obligations.

## 10.3 The Responsible Actors Scheme

# Responsible Actors Scheme

- The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 came into force on 4 July 2023.
- The Scheme was launched on 24 July 2023.
- Aimed at major housebuilders and other large developers that have developed or refurbished multiple residential buildings that are known to have life-critical fire safety defects. Initially, only be developers that have signed the Self Remediation Terms will be eligible to join.
- Essentially, developers who fail to sign or comply with the Self Remediation Terms will be blocked from carrying out developments and receiving building control approval.
- On 26 July 2023, the government confirmed that it had written to eligible developers inviting them to join the Scheme giving them 60 days to respond.



# Who can join?

- Developers are eligible under one or more of the following grounds (subject to meeting a profit threshold):
  - **Principal business residential property development:** Developers that have developed or refurbished a residential building over 11m in England between 5 April 1992 and 4 April 2022 and whose principal business is residential property development (Regulation 7).
  - **Buildings eligible for remediation funds:** Developers that have developed or refurbished two or more residential buildings, which have been assessed - before the date the Regulations come into force (4 July 2023) - as eligible for a relevant government cladding remediation scheme (Regulation 8).
- **Profits condition:** Broadly, annual operating profits over a 3-year period (2017, 2018, 2019) are £10 million or higher (Regulation 11).
- Note that registered providers of social housing or a wholly owned subsidiary of a registered provider of social housing is not eligible to join the Scheme (Regulation 6).
- **Note group liability:** a developer will be treated as responsible for the development or refurbishment of a building, if that building was a building for which a company in the same group was responsible for developing or refurbishing between 5 April 1992 and 4 April 2022, even if this was before the companies were in the same group.

# How to join

The government has published an enrolment guide outlining three pathways to joining the Scheme:

- **Invitation to join:** Under regulation 13, the Secretary of State will write to eligible companies and invite them to join the Scheme. For group companies, one eligible entity will be invited to join the Scheme on behalf of others in the group.
- **Request an invitation to join:** If a company meets the eligibility criteria but has not received an invitation, it can contact the DLUHC directly to request an invitation to join. If the DLUHC considers that the company is eligible, it will then receive an invite to join the Scheme.
- **Volunteer to join:** A company that is not eligible to join can volunteer if it has developed or refurbished one or more residential building at least 11m high in England between 5 April 1992 and 4 April 2022:
  - that would require remediation under the Self Remediation Terms; and
  - the company is willing to join the Scheme and sign the Self Remediation Terms.

Upon request, if the Secretary of State considers the company eligible to join, an invite to join will be issued.

# Membership conditions

The Scheme membership conditions include:

- Enter into the Self Remediation Terms (Regulation 21);
- Provide the Secretary of State with information in accordance with the Self Remediation Terms and such other information as the Secretary of State reasonably requires “in order to monitor and enforce their compliance” with the Self Remediation Terms and the Regulations (Regulation 22).
- Not to undertake restructurings or certain other steps which would mean that the Scheme member cannot fulfil its obligations under the Scheme.
- Not to take steps to avoid their obligations under the Scheme or defeat the Scheme’s aims.

The government maintains a list a developers that have joined the Scheme. As of 13 September 2023, 32 developers are on the published members list.



# 10.4 Failure to join or comply with the Scheme



# Failure to join or comply with the Scheme

- The Secretary of State can revoke membership of the Scheme where a member fails to comply with membership conditions.
- Eligible developers who are invited to join the Scheme but fail to do so or fail to comply with the membership conditions of the Scheme will be subject to planning and building control prohibitions.
- These prohibitions will apply to other entities in the company group. Therefore, prohibited developers will be unable to avoid the prohibitions by carrying out development work through other entities within the group.
- These prohibitions are subject to certain exceptions including that the Secretary of State may disapply the prohibition in respect of a specific site if the development or proposed development relates to critical national infrastructure and it is in the public interest to disapply the prohibition (Regulation 31).
- A list of prohibited developers is published and maintained. There are currently no developers listed to date.



# Planning prohibitions

- Prohibited developers will be prohibited from carrying out major development in England. This includes:
  - Schemes providing 10 or more residential units.
  - Residential schemes on a site at least 0.5 hectares in size - where it is not known if it will provide 10 units or more.
  - Commercial development creating at least 1,000 square metres of floorspace.
  - Development carried out on a site having an area of 1 hectare or more.
  - Development on a site over 1 hectare in size.
- Prohibited persons are required to notify the relevant local authority about their prohibited status when:
  - making relevant planning applications;
  - reserved matters applications; and
  - prior approval applications.
- They will also need to notify the local planning authority if they acquire or transfer an interest in land which has the benefit of planning permission for major development.
- The planning prohibition will apply to planning permission granted after the date on which the Regulations came into force (4 July 2023). It will not apply to planning permission received before 4 July 2023 unless a subsequent application is required for all or part of the development, and that application has not been determined before that date.

# Building control prohibitions

- Prohibited developers will also be prohibited from gaining building control sign-off in England.
- Prohibited developers may be unable to gain building control approval to start work, including through initial notices, as well as completion or final certificates for completed work. In some cases, this may result in a notice to terminate or suspend the work.
- The Regulations set out documents prohibited developers are prevented from giving (and local authorities and approved inspectors are prevented from accepting or issuing to a prohibited person or in respect of work carried out by them) including:
  - Deposit of full plans, notices of passing of plans, and plans certificates.
  - Initial notices.
  - Completion certificates, final certificates, and certificates for buildings occupied before work is completed.
  - Any other building control approval, including building notices, amendment notices, a notice of variation of work to which an initial notice relates, and regularisation certificates.

# What next?

- The Explanatory Memorandum states that the Scheme 'is to be expanded over time to cover other developers who developed or refurbished defective 11m+ residential buildings and should pay to fix them'.
- Government guidance states that additional membership conditions may be imposed in due course through additional secondary legislation "Those may include the application of a 'fit and proper person test' to directors and senior managers of members of the Scheme".
- The government's powers under s.126 to 129 could be used to establish building industry scheme for construction product manufacturers. To date, the government has made little progress on pursuing construction product manufacturers. On 20 April 2023 the government announced that Michael Gove had written to investors in Kingspan, Arconic, and Saint-Gobain warning them that if the manufacturers do not come forward with a comprehensive financial package to fix unsafe buildings then the focus of the Department for Levelling Up, Housing and Communities "will be trained upon them" and "the consequences for that firm are likely to be severe". The letter urged the investors to use their "position of influence" to encourage the firms to "engage constructively".

# Building safety levy

- S.58 of the Building Safety Act 2022 provides a new levy on applications for building control approval.
- The scope of the levy is wide and will apply to any new residential development in England regardless of height.
- The levy is intended to raise an estimated £3 billion over the next 10 years to fix unsafe buildings over 11m in height. This will help to fund remediation work to 'orphaned' buildings.
- The detail of the levy has yet to be finalised, but the government has published a second consultation containing the government's proposals. The consultation recognises that certainty of the levy rate is key for the industry so they can "project plan effectively". However, the consultation does not set out possible levy rates.
- It is unclear when the government intends to implement the levy.





# Lunch Break





# **PART 11**

## **The new regime for higher-risk buildings**

**(Rick Atha of Shoosmiths)**

# What is a higher-risk building?

- The Higher-Risk Buildings (Descriptions And Supplementary Provisions) Regulations 2023 complete the definition of HRBs during design, construction and occupation and determine which buildings will be subject to the new more stringent safety regime established by the Building Safety Act 2022.
- For the purposes of Part 3 of the Building Safety Act 2022, a HRB during design and construction is one that is at least 18 metres in height or has at least 7 storeys and is:
  - a building which contains at least two residential units;
  - a care home;
  - a hospital.(Regulation 2)
- Buildings excluded from the definition of HRB for the purposes of Part 3 (Regulation 7):
  - secure residential institutions (e.g. a prison);
  - hotels;
  - military barracks; and
  - living accommodation for military personnel.

# New building control regime for HRBs

## Gateway 1:

- Gateway 1 was in force prior to the Building Safety Act 2022 receiving Royal Assent.
- From 1 August 2021, new requirements were introduced by way of amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (the “Order”).
- The Order aims to ensure fire safety matters are incorporated at the planning stage for schemes involving relevant high-rise residential buildings.
- Developers are required to submit a Fire Statement detailing fire safety considerations specific to the development and the Health and Safety Executive is a statutory consultee for relevant planning applications

# Before building work commences

## Gateway 2:

- Before a building control approval application is made early engagement between the dutyholders and the Regulator is encouraged “to discuss the development of draft plans and documentation, including design approaches. This dialogue with the Regulator should support the submission of valid and accurate applications, speeding up the determinations process”.
- An applicant must submit a building control approval application to the Regulator with plans and prescribed documents.
- The application can be made on behalf of the client (Regulation 4(c)) but must include a statement signed by the client confirming they agree to the application being made and that the information contained in the application is correct.
- Work cannot commence without the Regulators’ approval (the 1st Hard Stop).



# Gateway 2

- A building control approval application must include prescribed information. This includes:
  - details of the principal contractor and principal designer appointed under the new dutyholder regime;
  - a competence declaration including a declaration by the client with a statement of truth confirming that they have considered any past misconduct of the principal designer and principal contractor and that they fulfil the requirements of the role set out in the Building Regulations 2010. The client must also provide a written record of the steps the client has taken to be satisfied of their competence;
  - a construction control plan;
  - a change control plan;
  - a mandatory occurrence reporting plan;
  - a building regulations compliance statement;
  - a fire and emergency file;
  - a partial completion strategy where the client proposes occupation of part of the building before completion of the HRB work.
- Where the building control approval application relates to a stage of HRB work, Regulation 4(3) sets out the additional information that must be included.
- Where work is to an existing HRB, the information submitted will depend on whether the work is Category A or Category B work (defined in Regulation 12(6)).



# Gateway 2 - timing

The Regulator will:

- initially review the application to ensure that it is valid i.e. that it complies with the information required and notify the applicant.
  - determine it within 12 weeks from the date the application is received (8 weeks for works to an existing HRB) or such longer period as the Regulator and the applicant agree in writing.
  - consult its multi-disciplinary team, including fire and rescue authority and sewerage undertaker.
  - if the application is approved, agree a bespoke inspection schedule with the applicant. Building work can then commence.
- Approval can be given subject to the Regulator's imposed requirements.
  - Where building control approval has been granted applicants must submit two notices to the Regulator:
    - at least five working days before the day on which the HRB work or the stage of HRB work starts, the client must give a notice to the Regulator setting out their intention to start the work and the date that work is to start;
    - not more than five working days after the day on which the HRB work is to be regarded as "commenced" (see Regulation 46A of the 2010 Regulations), the client must give a notice to that effect to the Regulator (commencement notice).
  - Where a notice is given by someone on behalf of the client, the notice must include a statement signed by the client confirming they agree to the notice being given and that the information contained in it is correct.

# Construction phase

During the construction phase the Regulator can:

- carry out inspections at agreed stages. Inspections can also be carried out without notice;
- request that specified work is not covered up for a specified period;
- require information to be submitted, the laying open of building work for inspection by the Regulator and/or require an inspection to be undertaken and the record of the inspection provided to the Regulator to check compliance with all applicable requirements of the building regulations;
- Issue stop and compliance notices.
- Dutyholders must comply with dutyholder and competence duties; mandatory occurrence reporting requirements; and golden thread requirements.

# Changes during construction

- The principal contractor (or sole contractor) must create and maintain a document for the purposes of recording information in respect of controlled changes to the project (“change control log”).
- A controlled change is defined in Regulation 18:
  - a change to any current plans of any work or proposed work or the carrying out of work otherwise than in accordance with the current plans;
  - a change to any stage of HRB work, including adding or removing a stage;
  - a change to any strategies, policies or procedures described in any current agreed document.
- Before a controlled change can be carried out, the client must ensure:
  - a record is made by entering the information set out in Regulation 19 in the change control log; and
  - a revised version of any agreed document effected is produced.

# Changes during construction

- Where a controlled change is a notifiable or major change (defined in Regulation 26), the Regulator will need to be notified before those changes can be made:
  - Notifiable (will have a lesser impact on compliance with the building control application): the Regulator must be notified before the change can be carried out.
  - Major (a change that would undermine the basis on which building control approval was granted): Applicant submits a change control application to the Regulator. The Regulator has six weeks to determine application. Change cannot be made without the Regulators' approval.
- The Regulator can notify that a Notifiable change can be a Major change.
- the Regulator must also be notified where there is a change to the client, principal contractor or principal designer.



# Gateway 3 (completion)

Full completion - notifiable building work is complete:

- Submit written completion certificate application to the Regulator, signed by the client and it must include the information set out in Regulation 40.
- This includes a statement, signed by the client, confirming that to the best of the client's knowledge the HRB as built complies with all applicable building regulations.
- Once in receipt of the completion certificate application, the Regulator will notify the applicant whether it is valid.
- The Regulator assesses the application and carries out final inspection/s of the building work (2<sup>nd</sup> Hard Stop).
- The Regulator has 8 weeks to determine the application or such longer period as is agreed with the applicant in writing (Regulation 41).
- If satisfied that the building work complies with all applicable building regulations, the Regulator will issue a completion certificate.
- This is the end of the building control process.
- Accountable Person can then register the building for occupation. This is separate to the building control process (Part 4 of the Act).
- Unlawful (criminal offence) to occupy without registration.



# Will the transitional provisions apply?

- The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 detail the new building control regime applicable to the design and construction of HRBs.
- Schedule 3 of the Regulations sets out the transitional provisions which allow a project to continue on the existing regime.
- These will apply if:
  - Before 1 October 2023: An initial notice has been given to a local authority (and not rejected); or full plans were deposited with a local authority (and not rejected);
  - By 6 April 2024: works have been “sufficiently progressed”; and
  - If an initial notice was given by an approved inspector, the AI has become a registered building control approver.
- For HRB projects not meeting the above criteria, the Regulator will become the building control authority and the project will be subject to the new building control regime for HRBs.

# Will the transitional provisions apply?

Work is to be regarded as “sufficiently progressed” as follows:

- For the construction of new HRBs: when the pouring of concrete for the permanent placement of the trench, pad or raft foundations, or the permanent placement of piling, for that building has started;
- For work to an existing building: when that work has started.
- Material change of use of a building: when work to effect that change of use has started.

(Schedule 3, para 1(6) of the Regulations)

HRB work meeting the above criteria would continue with the existing building control authority and not be subject to the new regime for HRBs.

However, the building will be subject to the provisions of Part 4 of the Building Safety Act 2022, including that it will need to be registered with the Regulator before it can be occupied.

Schedule 3 also sets out modifications to the regime if from October 2023 various circumstances apply e.g. building control lapses, full plans are rejected, initial notices are cancelled, work is not sufficiently progressed, AI does not become registered.

# Golden thread

- Building Regulations Advisory Committee: golden thread report: "The golden thread is both the information that allows you to understand a building and the steps needed to keep both the building and people safe, now and in the future."
- The client must arrange for the golden thread to be created and maintained (or by someone on their behalf) (Regulation 31).
- The golden thread must be:
  - kept in an electronic format;
  - capable of being transferred electronically to other persons without the data, information or document in it being lost or corrupted;
  - accurate and up to date;
  - available in a readable format which is intelligible to the intended readers of the data, and any key needed to understand the data is provided with the data;
  - made available as soon as reasonably practicable following a request from a principal designer (or sole or lead designer) or principal contractor (or sole contractor) to enable them to comply with their requirements under the building regulations;
  - secure from unauthorised access;
  - only changed in accordance with procedures which record the person who made the change and the date of that change; and
  - use language, terminology and definitions which are consistent.

# Golden thread

- Regulation 31 sets out the information that must be stored in the golden thread and this includes:
- a copy of the fire statement;
- a copy of the plans and documents approved as part of the building control approval application together with all the evidence recorded to show compliance with the applicable requirements of the building regulations;
- details of controlled changes;
- notice of a new principal contractor and/or designer;
- Mandatory occurrence reporting to the Regulator; and
- Completion certificate application and supporting documents.
- The Golden thread must be handed over to the accountable person on completion (Regulation 38).
- A statement, signed by both the client and the relevant person, must be given in the Regulator completion certificate application at Gateway 3, confirming that information has been handed over (Regulation 40(f)).



# Mandatory occurrence reporting

- The HSE guidance states: “Mandatory Occurrence Reporting (MOR) is required when there is a safety occurrence (structural safety or fire safety) in relation to the design of a building or an incident or situation during construction for which the building, if occupied without the risk being remedied, is likely to present a risk of a significant number of deaths or serious injury to a significant number of people. This will enable the Regulator to capture any risks that could have a potential impact on fire and structural safety and assess relevance to other buildings, improve knowledge, promote safety-conscious culture change and improve fire and structural safety standards and best practice across the industry”.
- Safety occurrences during the construction phase must be reported to the Regulator (Regulation 33).
- the Regulator must be notified of the safety occurrence “by the quickest practicable means without undue delay” and also, within 10 days of the principal dutyholder (the PD/PC) becomes aware of the safety occurrence, by a written report containing the information detailed in Regulation 33 (3).
- Failure to provide a MOR when required will be an offence.





# **PART 12**

## **The Architect's Perspective** **(with Simon Robins of Make Architects)**

# BSA 2022

## An architects perspective



Building Safety Act 2022

2022 CHAPTER 30

make  
make



# 12.1 Residential tall buildings



# Residential tall building experience

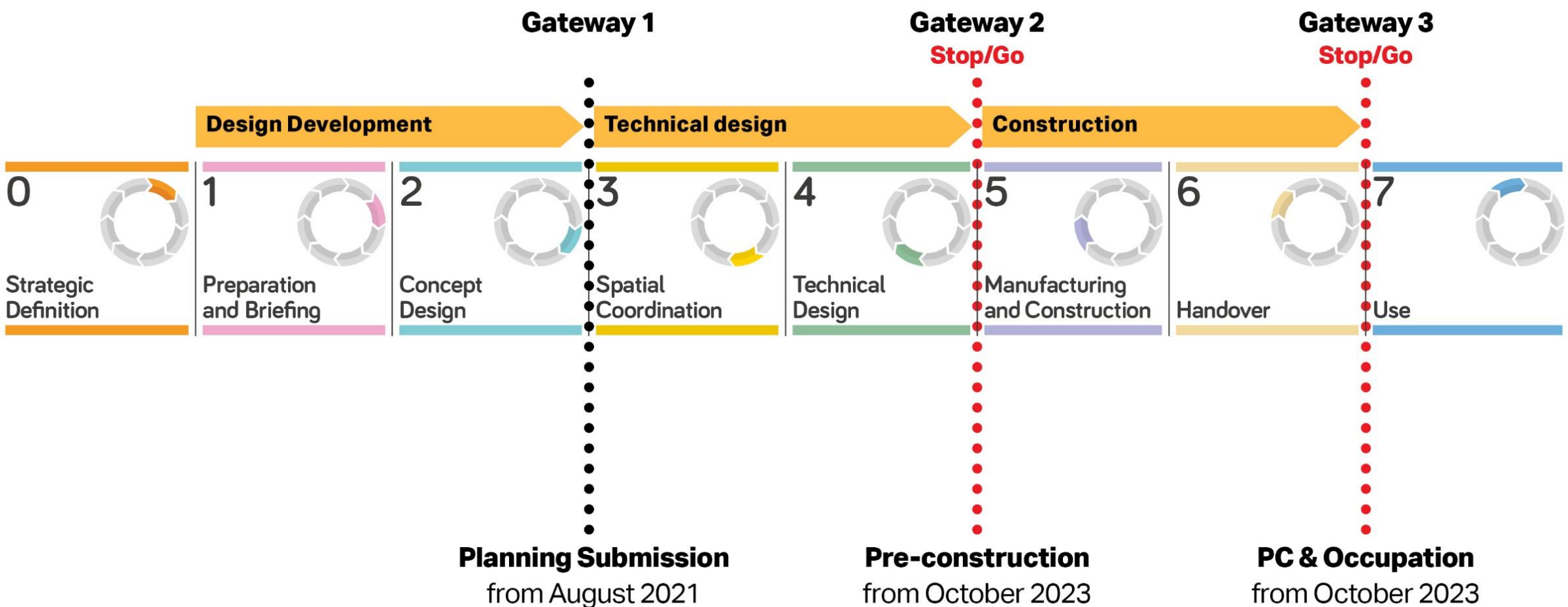


# 12.2 Making the Gateway Submissions



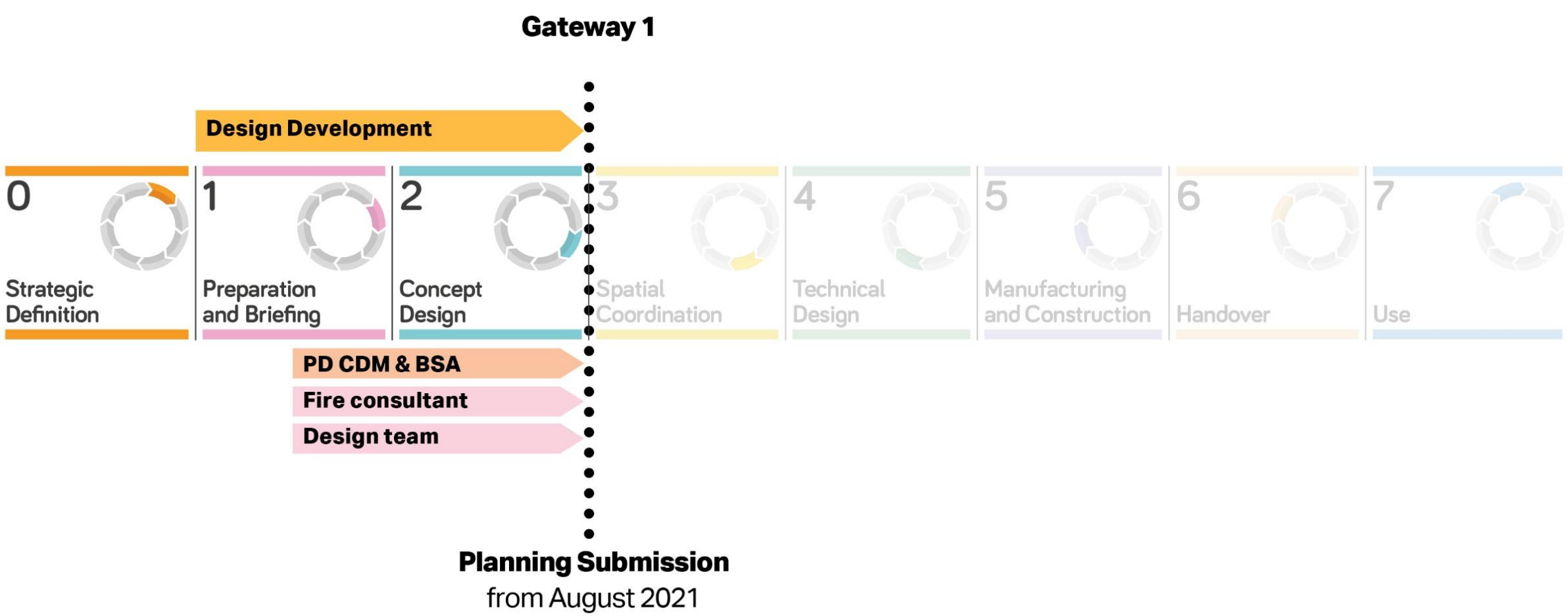
# Gateway Process

## RIBA Plan of Work



# Gateway 1

## Planning application



# Gateway 1 - Planning submission

## Submission information

- **Fire Safety Statement**

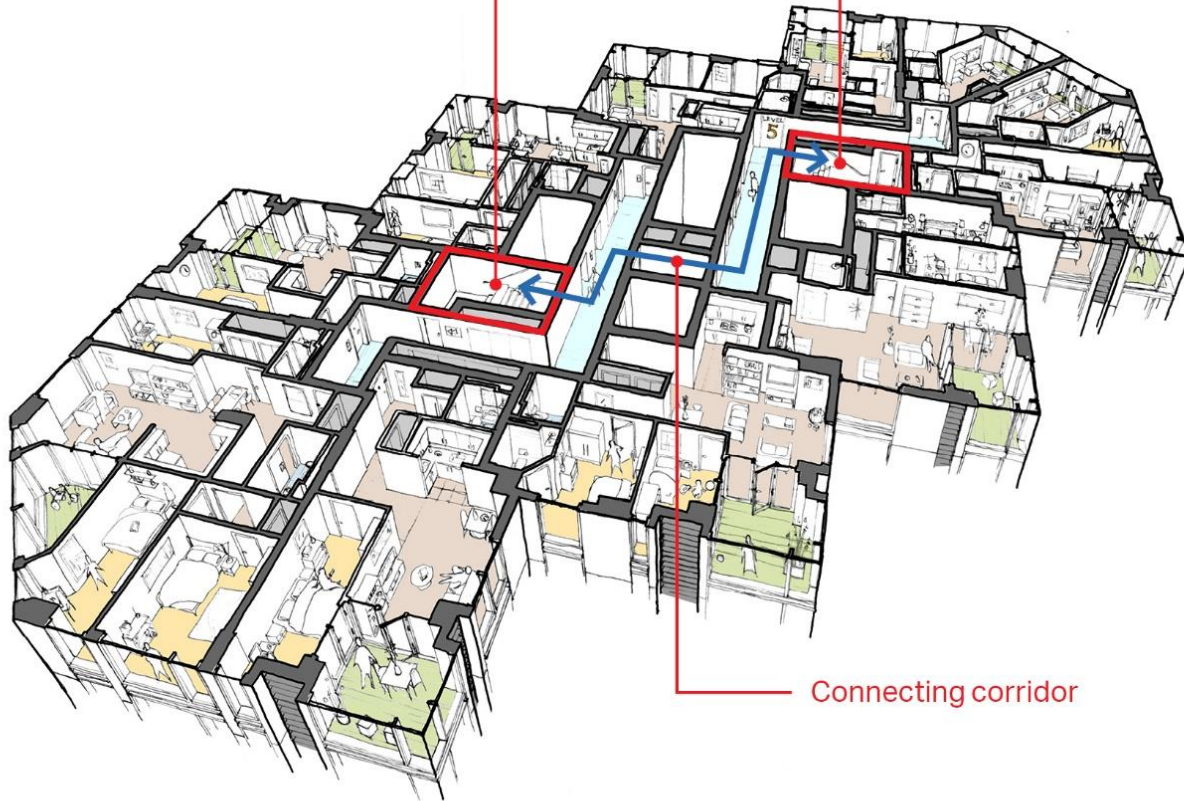
*Start of the Golden Thread  
Qualitative Design Review (QDR)  
BS 7974-0*





# One East Point

Two escape stairs



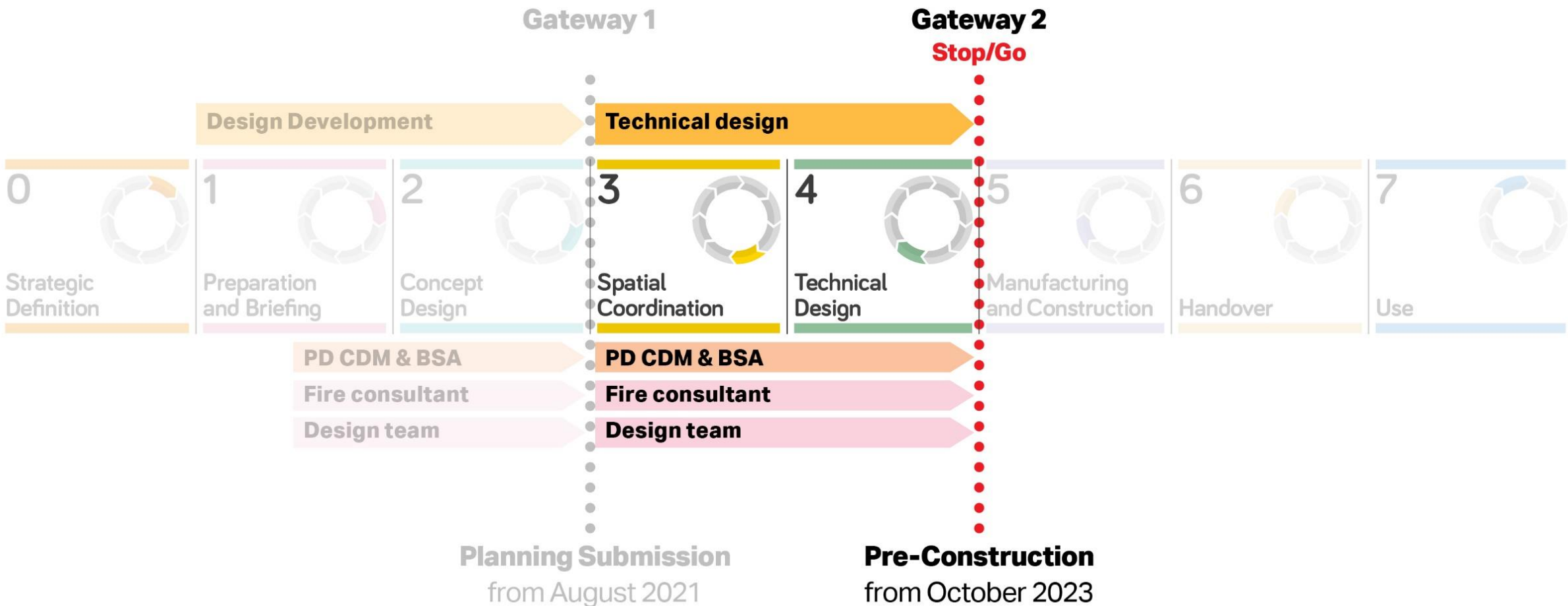
Connecting corridor



One East Point, Isle of Dogs

# Gateway 2

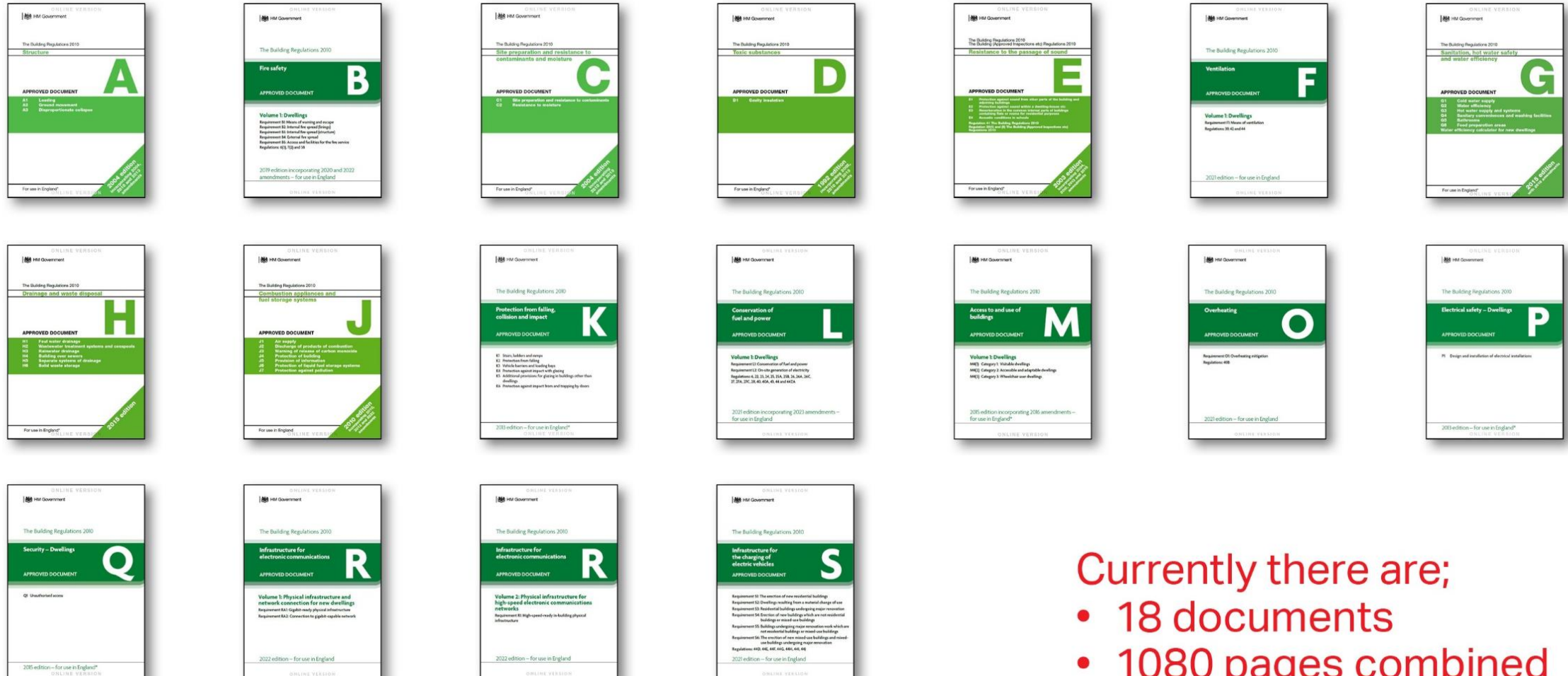
## Pre-Construction





# Principal Design BSA

## Approved Documents

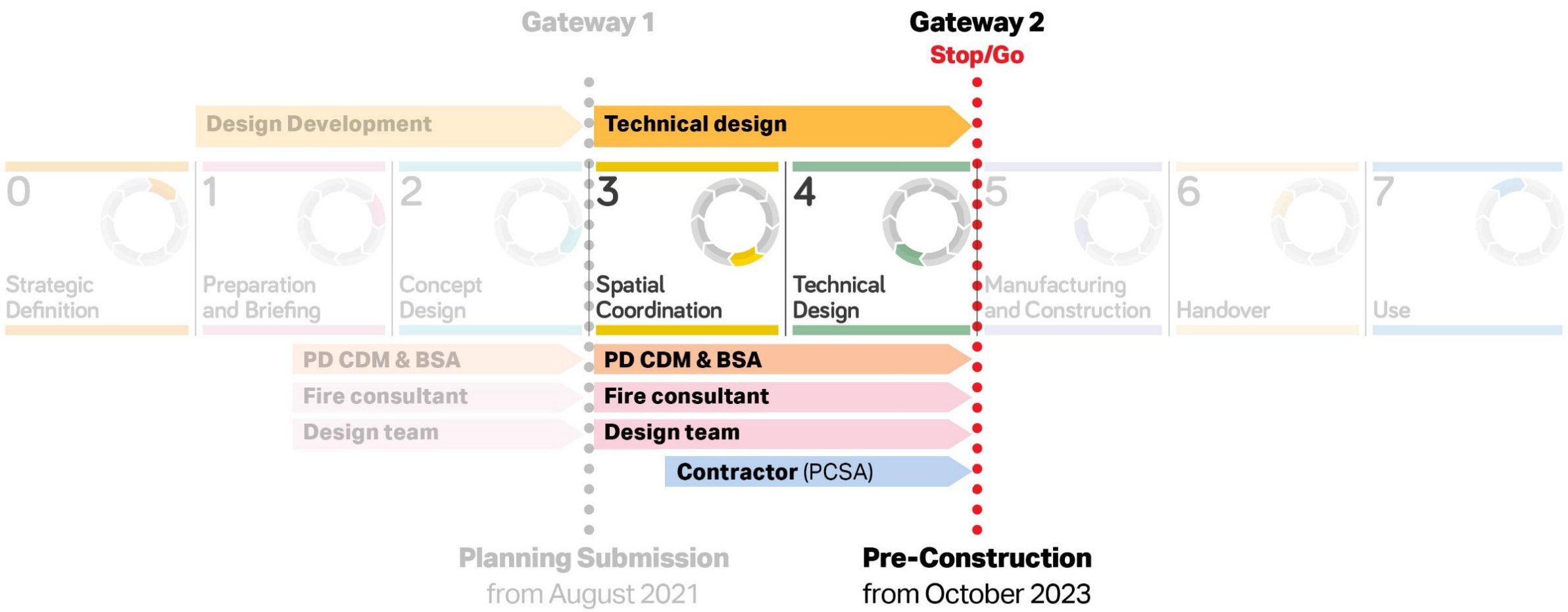


Currently there are;

- 18 documents
- 1080 pages combined

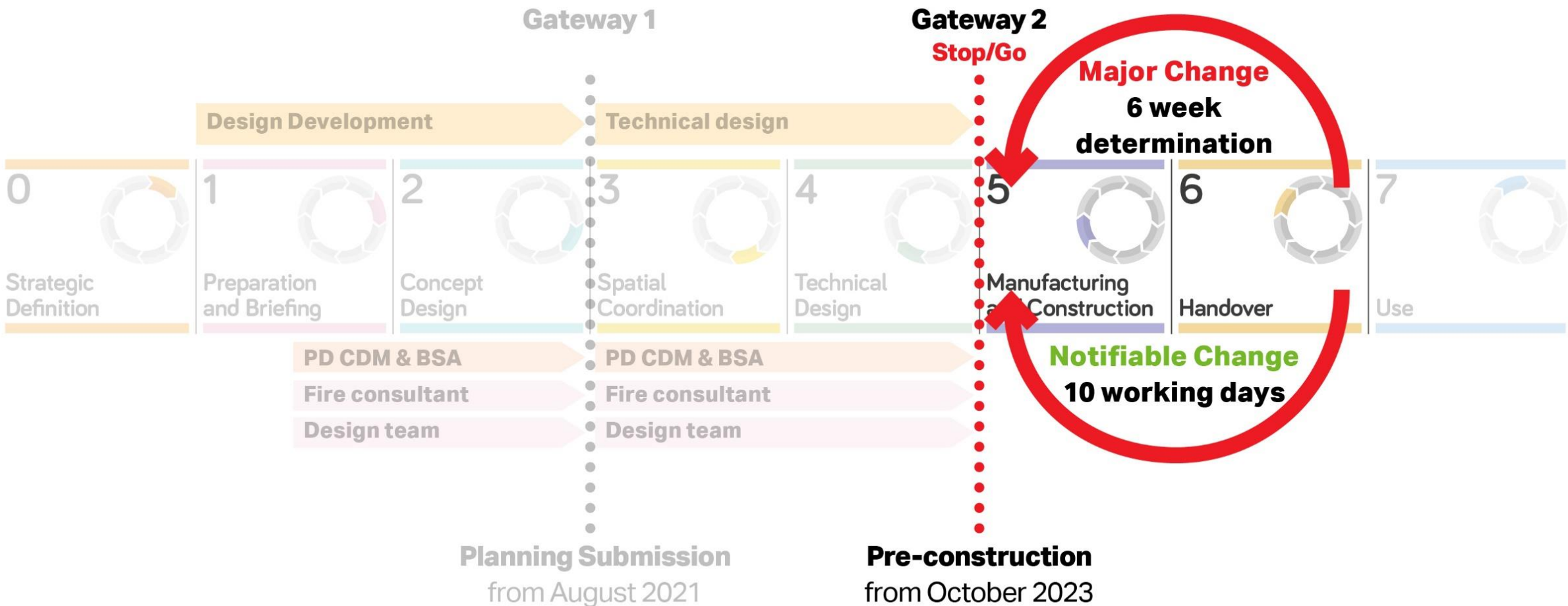
# Gateway 2

## Pre-Construction



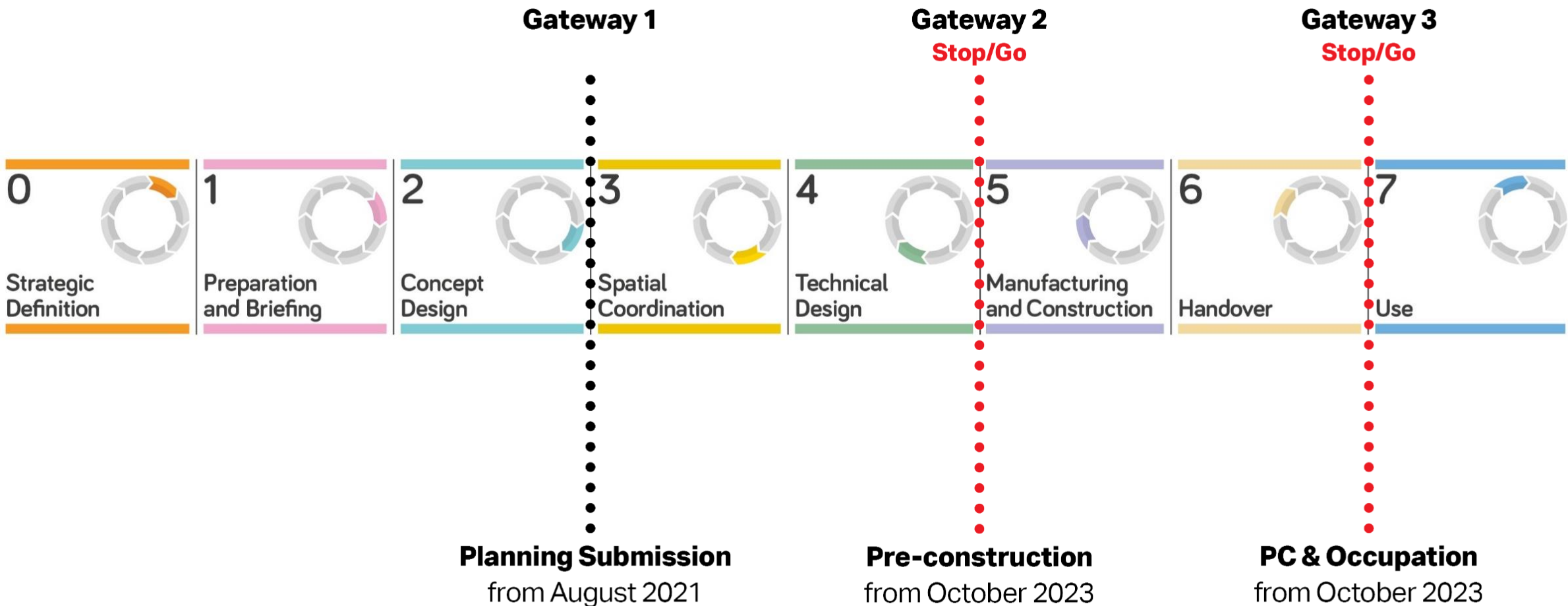
# Post Gateway 2

## Construction



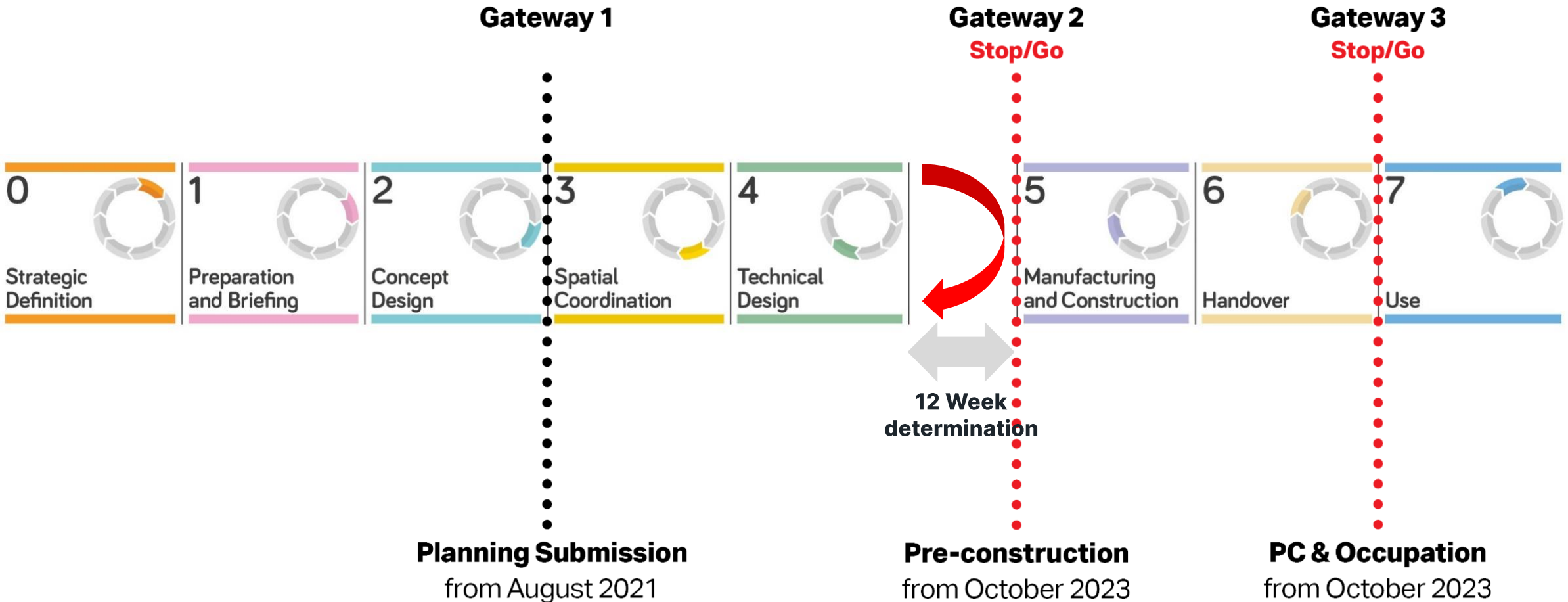
# Gateway 2

## Pre-Construction



# Gateway 2

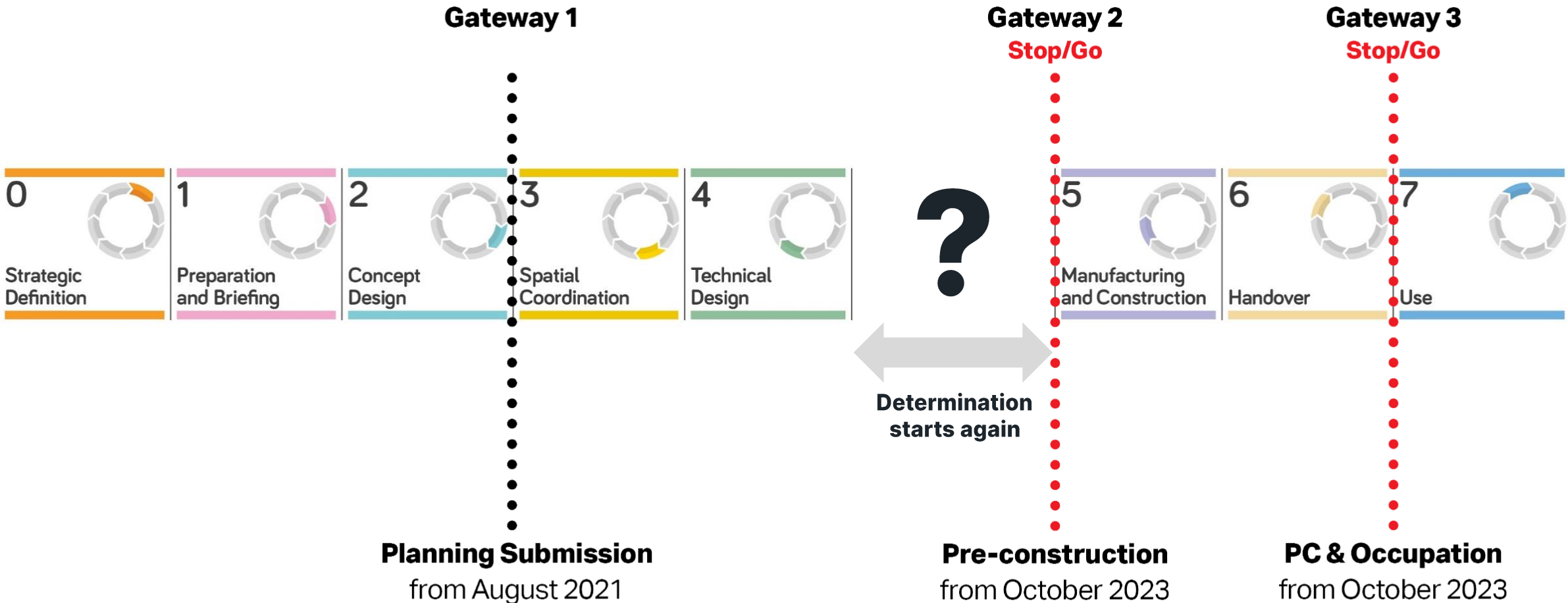
## Pre-Construction





# Gateway 2

## Pre-Construction



# **Gateway 2 - Pre construction**

## **Submission information**

- **Building Control compliance Statement including drawings and reports**
- **Competency declaration**
- **Construction control plan**
- **Change control plans & golden thread**
- **Fire and emergency file**
- **Mandatory Occurrence reporting framework**
- **Sectional completion strategy**





# Gateway 2

## Pre-Construction

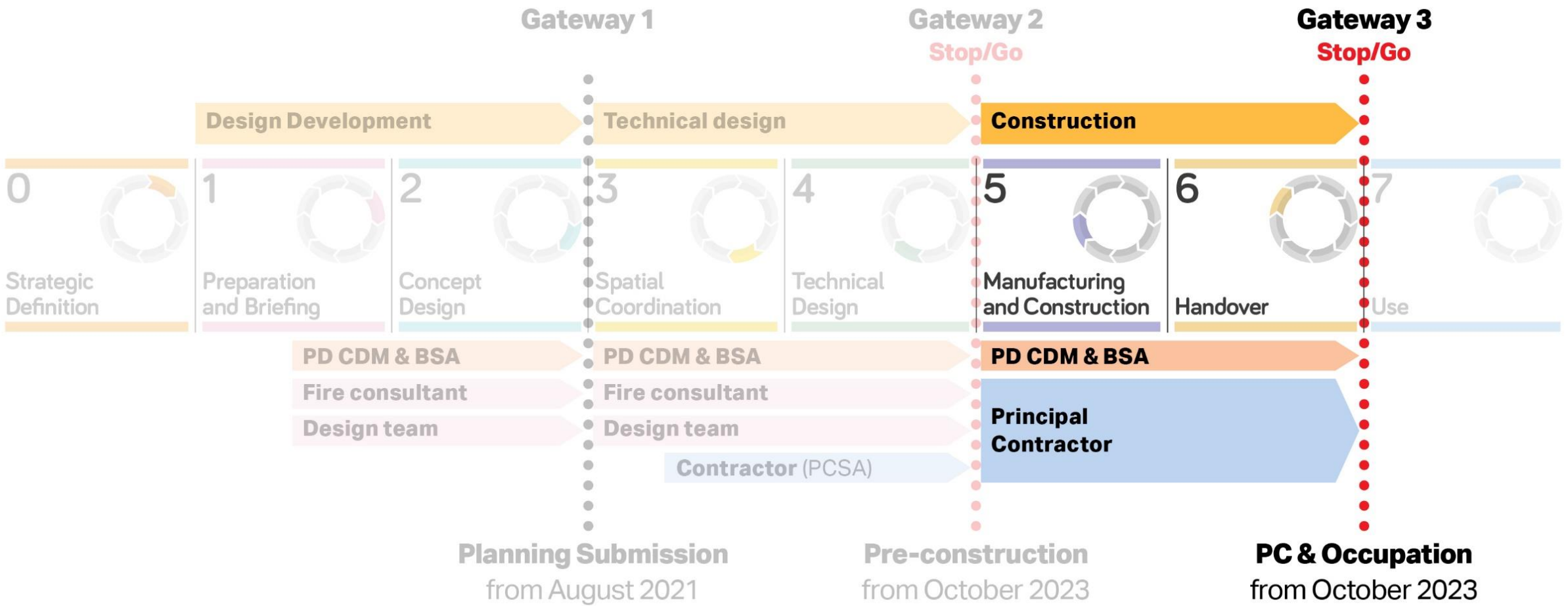
### Reducing risks of delays

- **Employ a Building Control Officer as a consultant through the design phase.**
- **Hold a building regulation check list for each project.**
- **Curate internal pre-application reviews.**



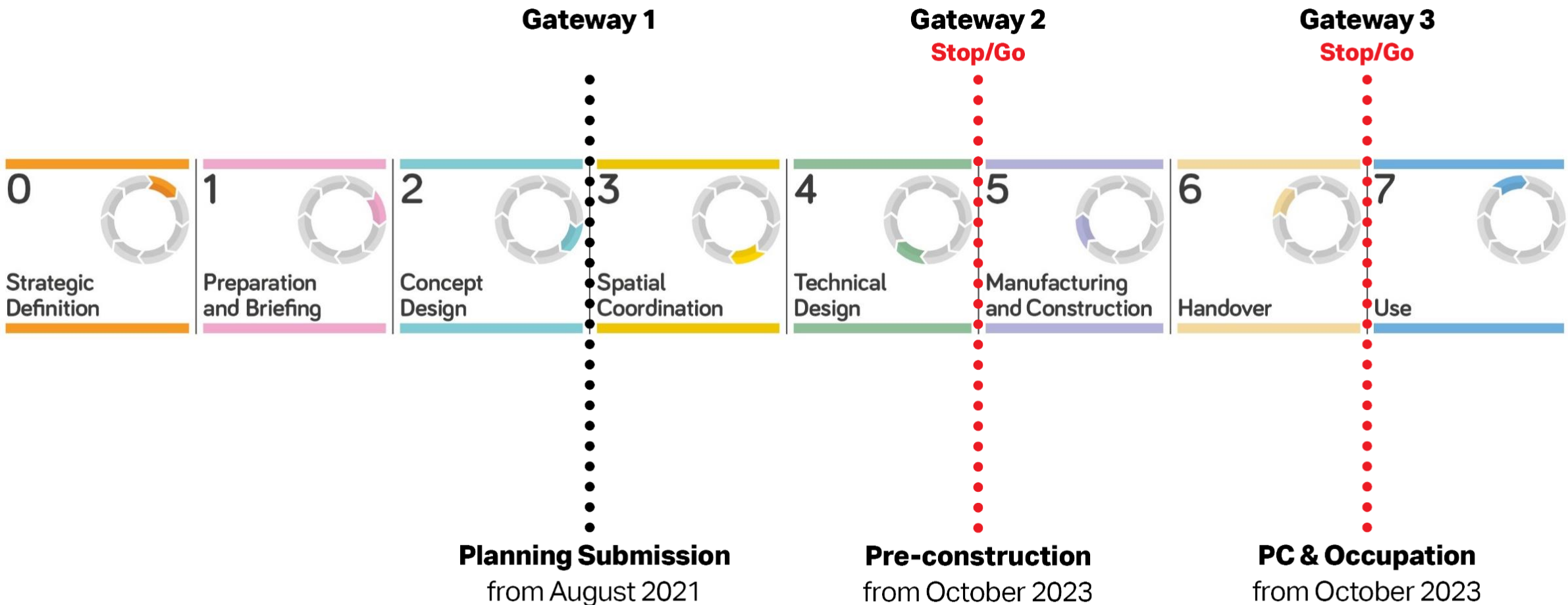
# Gateway 3

## Pre-Completion



# Gateway 3

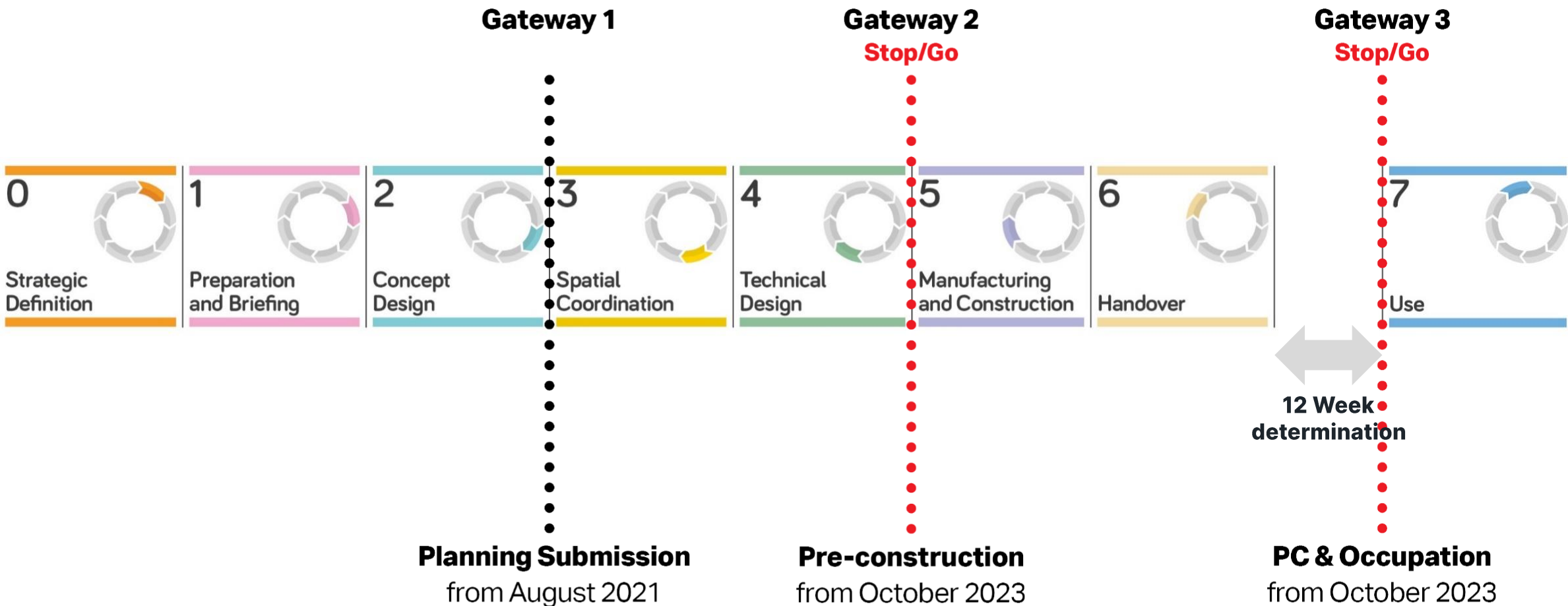
## Pre-Completion





# Gateway 3

## Pre-Completion



# **Gateway 3**

## **Pre-Completion**

- **'As Built' drawings not 'Final Issue' drawings**
- **O&M Manuals**
- **H&S File**
- **Golden thread information**
- **Lack of clarity and instruction from the HSE**



# Thank you



## Building Safety Act 2022

### 2022 CHAPTER 30

make  
provision about the safety of people in  
buildings, to amend the Architects Act 1997  
a housing ombudsman.  
n's most Eminent Member  
l, and Comm  
—

# make

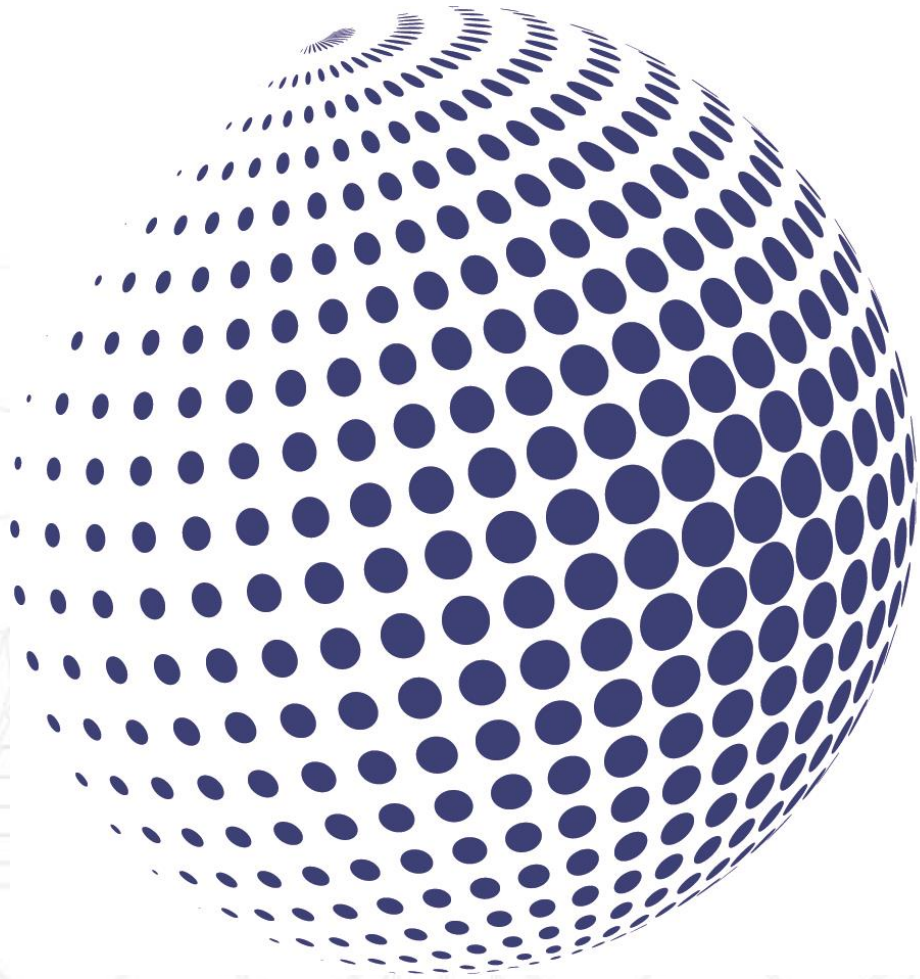


# **PART 13**

## **The Dutyholder Regime**

**(Ian Hardman of Shoosmiths with Graham King  
of Safer Sphere)**





# Safer Sphere

# • **13.1 - Who are the new dutyholders**

- The dutyholders during the design and construction will be identified in the same way as
- dutyholders under the CDM Regulations. Thus, the dutyholder roles will be:
  - Client
  - Designers
  - Principal Designer
  - Contractors
  - Principal Contractor
- Dutyholders under the CDM regs focus on health and safety during construction
- Dutyholders under the Building Safety Act focus on the safety of the building during its entire life cycle and also ensuring that the building complies with building regulations

## • **13.2 – What are their duties?**

- Client
  - Allow sufficient time and other resources to ensure compliance with the building regulations. Includes the appointment of:
    - A competent Principal Designer (CDM & BR)
    - A competent Principal Contractor (CDM & BR)
  - Clients must assess the competence of the PD and PC.
  - Clients are required to issue a compliance declaration on completion of the project.
- Building Regulations Principal Designer
  - Plan, manage monitor design work and cooperate, coordinate and communicate so that all reasonable steps are taken to ensure the design work, if built, complies with building regulations.
- Building Regulations Principal Contractor
  - Plan, manage and monitor the building work, cooperate, coordinate and communicate to ensure the building work complies with building regulations.

# • **13.3 – Who can be the Principal Designer and Principal Contractor?**

- Building Regulations Principal Designer
  - An individual or an organisation.
  - They are a designer in control of the design work, for example: an architect, engineer, a surveyor.
  - Should be able to co-ordinate the design team.
  - Not expected to be an expert in every design specialism, but expected to know enough about the building regulations to assess whether a building design will be compliant.
  - Competent under PAS 8671.
- Building Regulations Principal Contractor
  - A contractor is a contractor in control of the building work: a construction company or an individual contractor.
  - Competent under PAS 8672.



# • **13.3 – Who can be the Principal Designer and Principal Contractor?**

- PAS 8671 and 8672 Competence
  - Individual Principal Designers and Principal Contractors
  - Appropriate Skills, Knowledge, Experience & Behaviours
  - 
  - Organisations
  - The organisational capability to carry out their duties in a way that is compliant with the Building Regulations

## • **13.4 – Higher Risk Buildings – additional duties**

- Principal Designer and Principal Contractor require enhanced competence and the Client must maintain a record of the steps taken to assess competence.
- The Client must appoint the Principal Designer and Principal Contractor before the building control application is made to the Regulator (Gateway 2).
- All dutyholders to contribute to the creation of Prescribed Documents which demonstrate how the design is compliant and how it will be built to ensure compliance.
- Client must establish the Golden Thread - digital record of information about the building and its construction.
- Client to establish a Change Control Strategy for any controlled changes before or during construction. Principal Contractor to create and maintain a Change Control Log.
- Principal Designer and Principal Contractor to establish a Mandatory Occurrence Reporting strategy for safety occurrences.
- Client, Principal Designer and Principal Contractor to provide written compliance declarations on completion of the project.

## • **13.5 - What are we still waiting for?**

- Secondary legislation has been published where dutyholder and competence requirements are prescribed within amended building regulations.
- HSE guidance published – Building Control: An Overview of the New Regime.
- We know what is required, but some uncertainty remains on how best to deliver it.
- HRB process includes prescribed mandatory documents. There are no such documents or specified approach for non-HRB projects.
- The industry needs to develop systems of assurance and evidence based on an understanding of the outcomes required.



## **PART 14**

# **The regime after the works are completed and during occupation** (Richard Symonds of Shoosmiths)





# 14.1 The “Accountable Person”

# Higher-risk buildings during occupation

- Under Part 4 of the Building Safety Act 2022, higher-risk buildings (HRBs) during occupation are buildings with seven or more storeys or that are 18m or higher and contain at least two residential units (Part 4 excludes care homes and hospitals).
- The dutyholder regime that applies during the design and construction of a HRBs continues throughout its occupation.
- Dutyholder's during occupation are the Accountable Person and the Principal Accountable Person.
- These persons have responsibility for assessing and managing structural and fire risks in occupied HRBs and are subject to criminal sanctions for non-compliance.

# Who is the Accountable Person?

- Accountable Person(s): an individual or organisation with a legal obligation to repair any common parts of a HRB. There could be several Accountable Persons in respect of one HRB, perhaps including the freeholder, a management company or even a residents' Right to Manage company.
- Principal Accountable Person: All occupied higher-risk buildings will be required to have at least one clearly identifiable Accountable Person known as the Principal Accountable Person (PAP). They are responsible for ensuring that fire and structural safety is being properly managed for the whole building.
- If an occupied HRB has just one Accountable Person, they will automatically become the PAP for that building.
- If there are more than one accountable persons for the building , the individual or organisation that owns or has a legal obligation to repair the structure and exterior of the HRB will be the PAP.

# Role of an Accountable Person/PAP

- Accountable Persons are each responsible for assessing and managing the risks posed to people in and about the HRB from structural failure or the spread of fire, in the parts of the building they are responsible for.
- This responsibility may not only cover the common parts, but could also include balconies, residential units, in some circumstances, and any other part of the building not covered by the Regulatory Reform (Fire Safety) Order 2005.
- PAP: In addition to their role as an Accountable Person, the PAP has additional responsibilities for registering the HRB. This requires them to provide some basic information to enable the Regulator to identify the building and the persons responsible for its safety. As part of the registration process, the PAP will identify themselves to the Regulator.
- Accountable persons and the PAP cannot delegate their legal obligations to others. They can employ an individual or an organisation, like a managing agent, under a contract to carry out duties on their behalf. However, the accountability for making sure those duties are carried out and the liability for a building's safety remains with the accountable persons and PAP.



# **14.2 The Fire Safety Order 2005 and the “Responsible Person” in blocks of flats**



# Fire Safety Order 2005

- Governs the fire safety of non-domestic premises, including common areas in blocks of flats. It imposes duties on the Responsible Person (person in control of the building) to:
  - Carry out and regularly review fire risk assessment, which should identify what is needed to prevent fires and keep the people in buildings safe.
  - Put in place and maintain measures to reduce the risks they identified.
- Fire Safety Act 2021 confirmed the Responsible Person in blocks of flats (usually the building owner or manager) are responsible for:
  - A building's structure
  - External walls (including cladding)
  - Any common parts
  - Entrance doors to flats
- HRBs will have both an accountable person and a Responsible Person who are required to cooperate with each other to manage building safety risks (s.109 of the Building Safety Act 2022). In some buildings an Accountable Person or the PAP will also be the Responsible Person. The roles of the Responsible Person relate to keeping persons on the premises safe, rather than keeping the building itself safe, but there is an obvious overlap.



## **14.3 The ongoing duties to assess and manage building safety**

# Ongoing duty of an Accountable Person

- The Accountable Person will be under a duty to assess and manage the building safety risks for the part of the building for which they are responsible (s.83 and s.84 Building Safety Act 2022)
- The PAP is under a duty to:
  - Register the higher-risk building with the Regulator. Existing buildings must be registered between April and October 2023. New buildings will need to be registered from October 2023. This must be done before the building is occupied to avoid committing an offence.
  - The PAP must also provide further key building information within 28 days of submitting an application for registration and must also notify the Regulator of any changes to registration information, including copies of any updated certificates, within 14 days of becoming aware of the change.
  - Set out their assessment of building safety risks and the steps they have taken to manage these risks in a 'safety case report'. There will only be one safety case report for a building, which will include information from all of the accountable persons.
  - Share their 'safety case report' with the Regulator on request as part of the building assessment process.
  - Notify the Building Safety Regulator about changes to the building's safety risks and safety case report
  - Establish a "mandatory occurrence reporting system"
  - Operate a complaints system to investigate concerns about the building's safety risks or the performance of an accountable person
  - Display required information and documentation clearly within the building
  - Prepare and updating a residents' engagement strategy so that residents and owners can participate in making building safety decisions



## **14.4 Registering over 12,500 higher-risk residential buildings with the Regulator**

# Registration of existing buildings is underway

- Registration opened in April 2023 and buildings can be registered through an online registration service.
- At the end of May 2023, the HSE stated it had received 750 applications.
- It is estimated that 12,500 buildings need to be registered.
- The PAP has until 30 September 2023 to register their buildings or face prosecution.
- The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 (SI 2023/315) set out the information that must be contained within an application to register a higher-risk building, the documents that must be submitted and the registration fee (£251).
- The PAP must update the information provided to the Regulator at registration within 14 days of becoming aware of any changes.





## **14.5 The “Calling in” of registered buildings (estimated to take 5 years)**

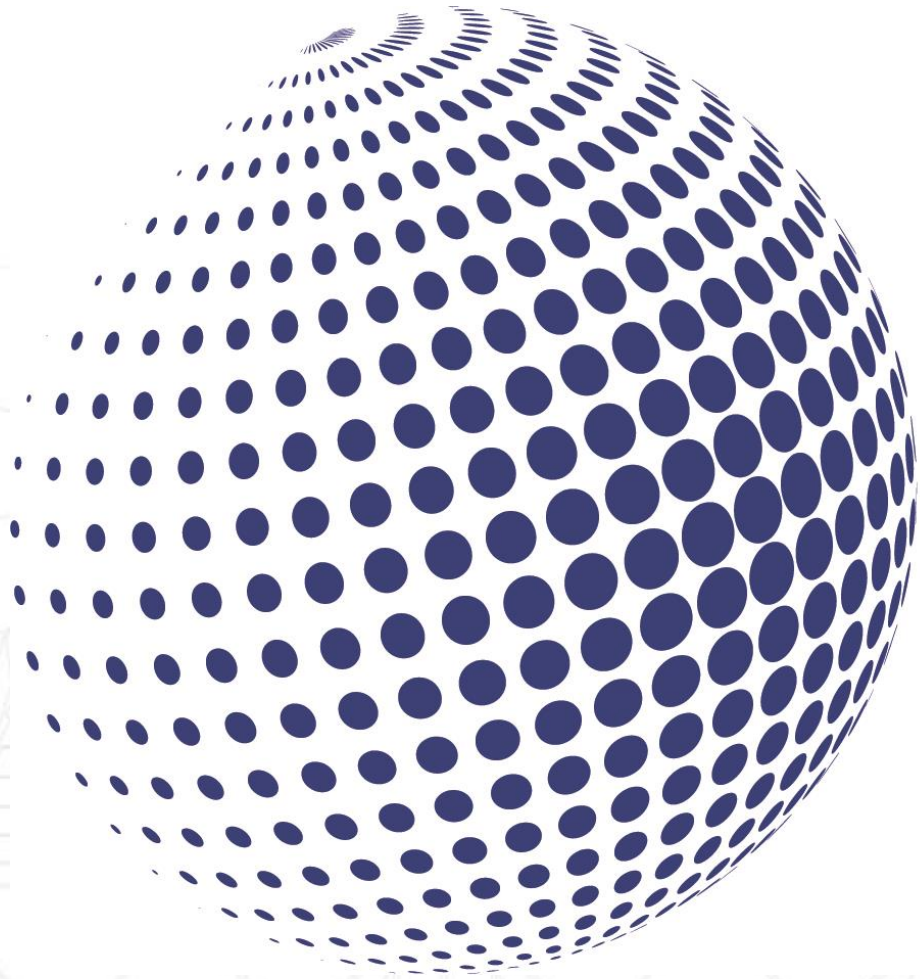
# Building Assessment Certificate

- After a building has been registered, the Building Safety Regulator will periodically assess the Accountable Persons' performance through the Building Assessment Certificate process.
- Once directed to apply for a Building Assessment Certificate by the Regulator, the PAP must apply for a Building Assessment Certificate within 28 days. The PAP will send a suite of documents to the Regulator. The documents will show how the Accountable Persons are managing their building safety risks and keeping residents safe. These documents will include:
  - A copy of the "Safety Case Report"
  - Details about the "Mandatory Occurring Reporting System", and
  - A copy of the "Residents' Engagement Strategy"
- The Regulator will issue a Building Assessment Certificate if it is satisfied that the relevant duties are being complied with. Once issued, the PAP must display the certificate in a prominent position in the building
- Once all occupied higher-risk residential buildings are registered with the Regulator, the Regulator will start issuing 'call-in' notifications (from April 2024). As there are over 12,500 occupied higher-risk residential buildings in England, the government estimates that it will take the Regulator around five years to call them all in for the first time. Therefore the Regulator will prioritise which buildings to assess first. Existing buildings will be called-in in tranches, based on height and other risk factors to be determined by the Regulator.
- New buildings will be called-in within six months of occupation.
- The Regulator will then call-in buildings for reassessment periodically. How often buildings are reassessed will be set out in regulations (government has indicated at least every five years).

# **PART 15**

## **Reforms to the Building Control Profession**

**(Ian Hardman of Shoosmiths with  
Graham King of Safer Sphere)**



# Safer Sphere

- **15.1 – What did Dame Judith Hackitt have to say about the building control profession?**

- She expressed concern about the competition between local authority building control bodies and private sector approved inspectors
- That this competition gave rise to a conflict of interest between commercial considerations (generating business and fees) and their role in providing regulatory oversight
- Approved inspectors didn't want to be perceived by their "clients" as being difficult and causing delays and additional costs
- She concluded that the currently regulatory structure for building control "was insufficient if there is to be a greater focus on the creation of safe buildings"



- **15.2 – What reforms is the Government actually implementing?**

- Creation of a new regulated profession under Section 42 of the Building Safety Act.
- Individual building control professionals must register as a building inspector (RBI) with the Building Safety Regulator.
- Approved Inspectors must register as building control approvers (RBCA), to continue to undertake building control work.
- Restricted activities for Local Authority Building Control (LABC) and RBCA but not for the Building Safety Regulator.
- Restricted functions for all building control authorities where advice must be sought from a RBI.
- Choice of building control authority removed for higher-risk building projects.

- **15.2 – What reforms is the Government actually implementing?**

- The Building Safety Regulator will establish:
  - a register of building inspectors, across both public and private sectors
  - a register of building control approvers
- Building inspector competence framework (BICoF). Building inspectors must:
  - be competent to undertake the tasks assigned to them
  - not work outside their competency unless appropriate supervision
  - maintain their competence

**Class 1:** trainee building inspector

**Class 2:** building inspector

**Class 3:** specialist building inspector

**Class 4:** building inspector (technical manager)

The background of the slide is a light gray line art illustration. It features a complex, multi-layered architectural design. On the right side, there is a large, multi-tiered structure that resembles a classical building or a temple, with a prominent dome and a series of steps leading up to it. To the left of this, there are several smaller, geometric structures, including what looks like a pyramid and some rectangular blocks. The overall style is that of a technical or architectural drawing, with clean lines and no shading.

# **PART 16**

## **An international perspective**

**(with Jonathan Duler and Dr Brian Ashe of Basic  
Expert)**



# Lessons from Down Under

Jonathan F. Duler

Managing Director, The BASIC Group

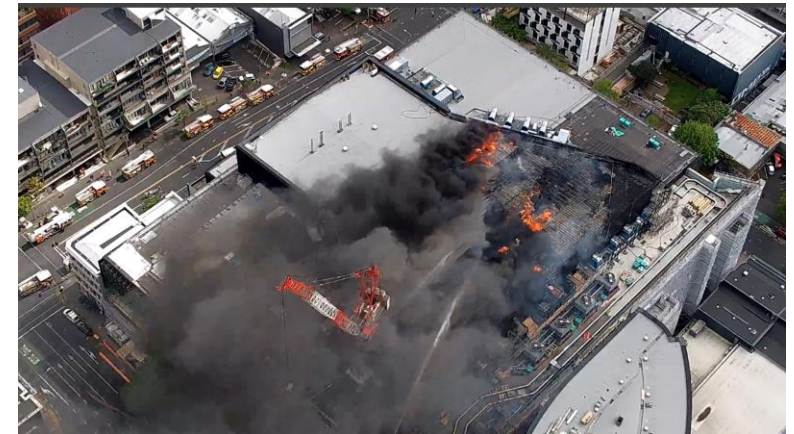
Brian Ashe

Managing Director, BASIC Expert UK



# Basic Expert

- Expert witness
  - Loss prevention
  - Fire engineering
  - Risk assessment
  - Failure analysis
- 
- VBB, Adelaide, BESS design in WA







# Now in the UK

Dr Brian  
Ashe

Dr Jonathan  
Barnett

Mr Jonathan  
Duler





# Building Regulatory System



System of Government (Central – Federated)



Type of regulation (outcomes-based to prescription)



Who certifies / controls



Professional registration (competency)



Australian and UK systems similar.





# Boundary conditions for the system



## Low flexibility

USA, Japan, AU/UK (pre-1980)



AU/UK per 2016, NZ

## High flexibility





# Drivers for change

**Was**

- Micro economic reform
- Innovation
- Productivity

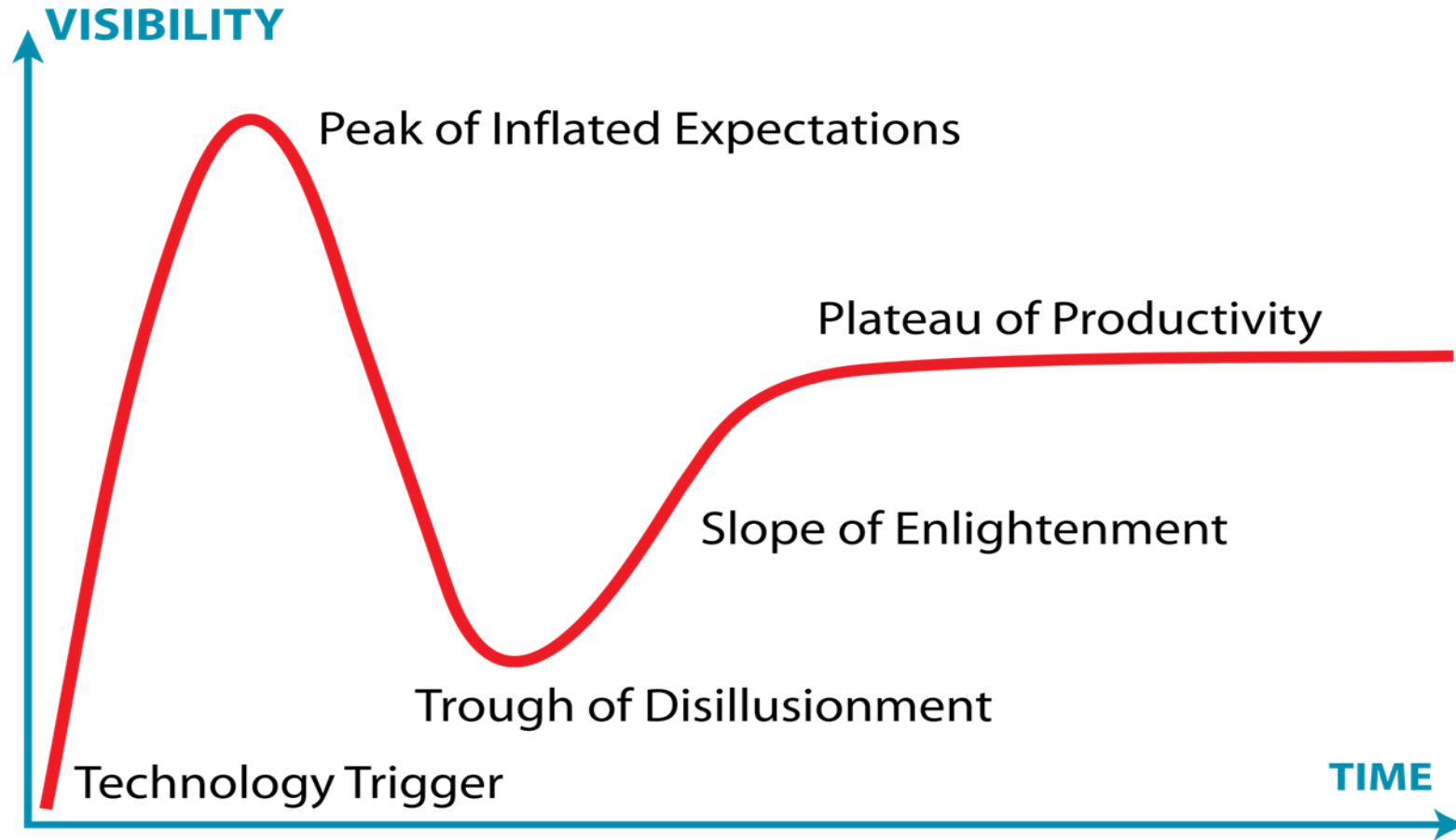
**Now**

- Safety
- Demonstrate performance
- Public confidence





# How did we get here





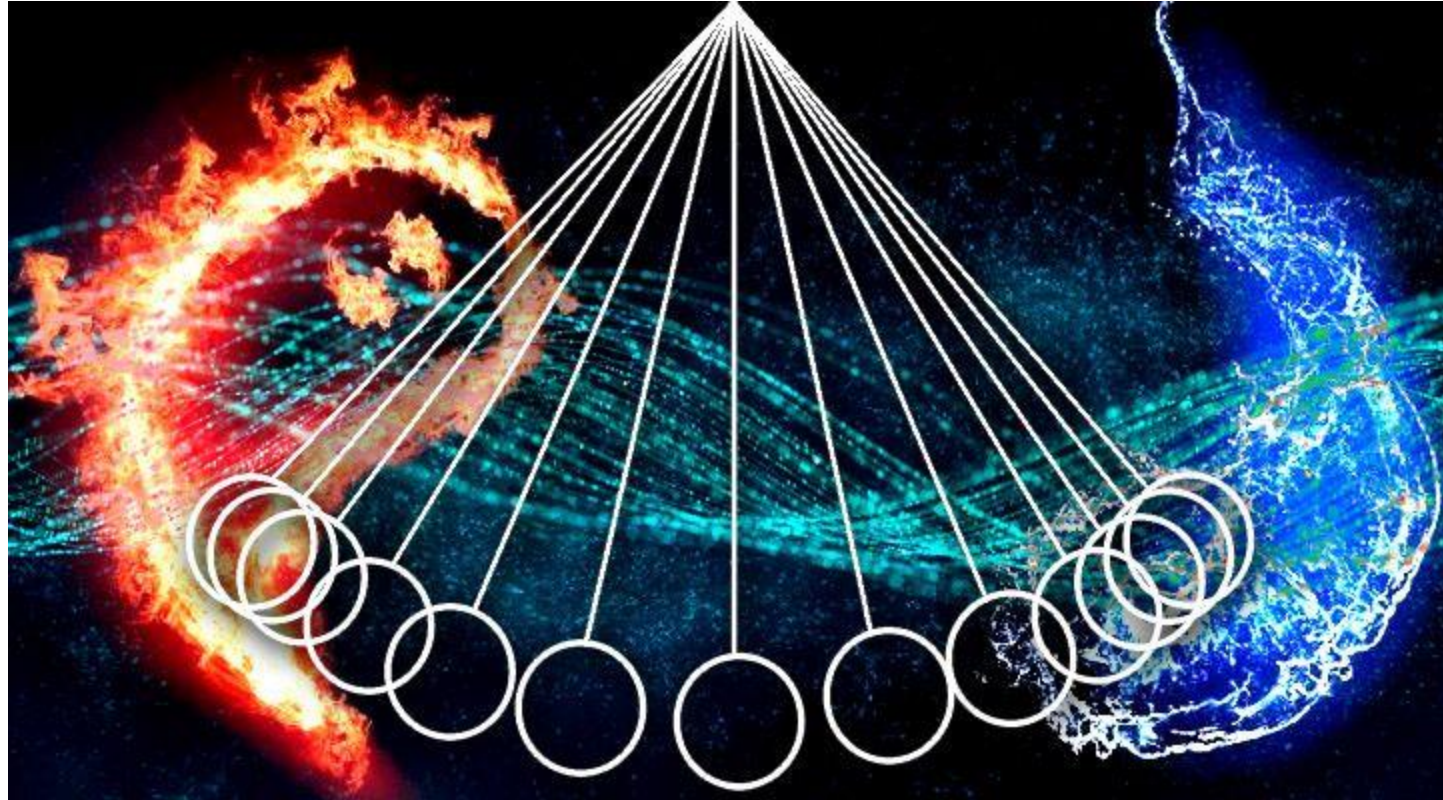


# Reviews (similar challenges)





# Pendulum





# Response (AU and England)



More prescription – less performance (demonstrate performance)



Robust / empowered regulators (acting in the public interest)



Increased competency (culture change)





# Victoria





# Victoria

- Change from the Victorian Building Commission to the Victorian Building Authority (VBA) in 2013 (170 to 216 employees)
- 2023 ~600 employees with changes afoot







# Cladding Safety Victoria (CSV)

- Another new agency, with over 100 employees
  - Created in 2020 by Act of parliament
  - Only some residential buildings addressed
- Only \$600 million budget





# Cladding Safety Victoria (CSV)

- Another new agency, with over 100 employees
  - Created in 2020 by Act of parliament
  - Only some residential buildings addressed
- Only \$600 million budget
- CSV have 828 buildings throughout the state
- 50 % have non-cladding defects





# Today's Solution (2013 revisited)

- Resignation of CEO, VBA
- Rewrite the Building Act
- Add more prescriptive requirements to code
- Hire more professionals for the VBA
- Provide more training for building practitioners





# Solution (2013 revisited)

- Resignation of CEO, VBA
- Rewrite the Building Act
- Add more prescriptive requirements to code
- ~~Hire more professionals for the VBA~~
- ~~Provide more training for building practitioners~~





# Engineering registration

- Still no nationwide registration scheme for fire safety engineers
- Still no international quality fire safety engineering academic program
- Architects are still not expected to be “experts” in the building code
- Building surveyors’ educational program now 2 years instead of 4







- More red tape
- More inspections
- More public servants
- No attempt to fix the real problem
  - Education/accountability/better regulation
- Welcome to the UK
  - I mean Australia





uk@basic.expert

# Mid-afternoon coffee break



# **PART 17**

## **Legal liabilities for building defects after the Building Safety Act 2022**



# **17.0 The effect of the Building Safety Act 2022 on the Defective Premises Act 1972**

**(Ian Reid of Shoosmiths)**



# The effect of the Building Safety Act 2022 on the Defective Premises Act 1972

- For a long time, the Defective Premises Act was the 'poor country cousin' of the Acts, left to sit at the back of the cupboard gathering dust.
- The Defective Premises Act has now been rehabilitated by the Building Safety Act 2022. The Building Safety Act 2022 puts the Defective Premises Act at the very heart of its transformative program, causing it to play an important role to deal with historic claims concerning building defects, most notably the wave of cladding-related disputes following the aftermath of Grenfell.
- Many claims which would previously have been statute barred (in other words, out of time) can now be made under the Defective Premises Act because of the changes brought in by the Building Safety Act 2022.

# At the same time, we have some recent case law about who owes duties under the Defective Premises Act 1972

- In the recent case of *URS Corporation Ltd v BDW Trading Ltd* [2023] EWCA Civ 772 the court confirmed that not only do developers owe a duty under the Defective Premises Act to the purchasers and tenants of residential dwellings, but parties such as contractors and architects owe a corresponding duty to developers.



# **17.1 Remediation Orders under the Building Safety Act 2022**

**(Richard Symonds of Shoosmiths)**

# Remediation orders

- S.177 to 125 and Schedule 8 of the Building Safety Act 2022 make provisions in respect of remediation orders and remediation contribution orders and the Building Safety (Leaseholder Protections) (Information etc.)(England) Regulations 2022 contains the relevant secondary legislation.
- A remediation order is an order requiring a relevant landlord to remedy “relevant defects” (causing a building safety risk) in a “relevant building” by a specified time.
- This will capture work carried out between 29 June 1992 to 28 June 2022.
- Who is a relevant landlord is not entirely clear, but it is thought that it is the person who is required to repair or maintain anything relating to the relevant defect. This could, for example, be a management company.
- A relevant building is defined as a self-contained building or part of a building containing at least two dwellings which is at least 11 meters in height, or which has at least five storeys. Note this differs from the definition of higher-risk building in Part 3 and Part 4 of the Act.
- The grounds on which an order will be made are not specified but where it is shown that a defect exists and requires remediation there is likely to be a presumption that an order should be made.
- An application for an order can be made the First-tier Tribunal (Property Chamber) by (a) the regulator (b) the local or fire authority, (c) a tenant and/or (d) any other person with a legal or equitable interest in the building.



# **17.2 Remediation Contribution Orders under the Building Safety Act 2022**

**(Richard Symonds of Shoosmiths)**

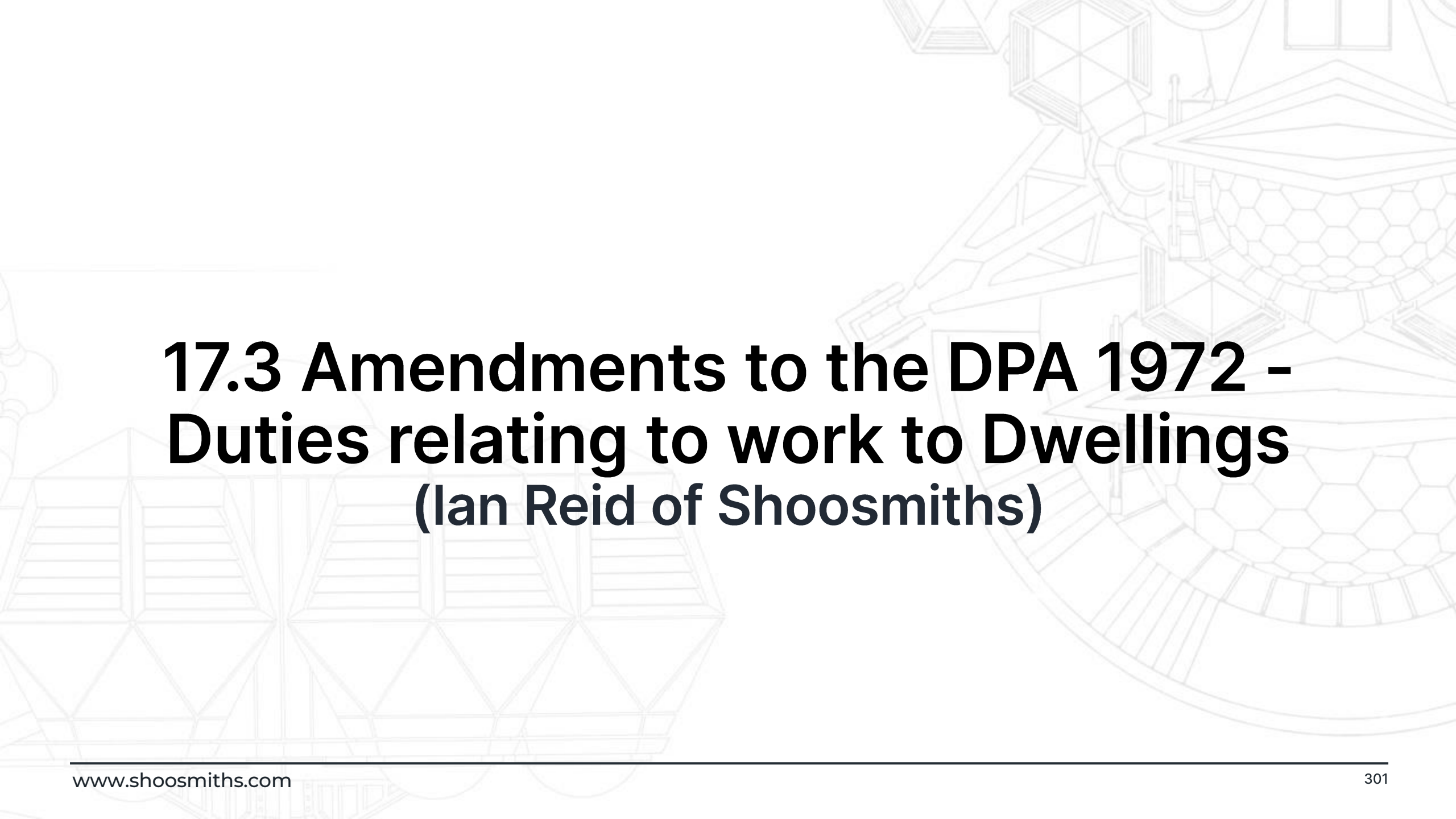


# Remediation Contribution Orders

- Under s.124 of the Building Safety Act 2022, A Remediation Contribution Order can be obtained against (a) the landlord under the lease, (b) a developer or (c) a person associated with (a) or (b). It is an order that can be made by the First Tier Tribunal requiring (if it is just and equitable to do so) a party to contribute towards the costs of relevant remediation works.
- Who is a landlord for this purpose is a little unclear. It appears to include the landlord or superior landlord under the lease currently and as at 14 February 2022 (although probably not previous landlords). A developer is a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it.
- An order will be made if it is just and equitable to do so. To date, there is no indication as to the basis on which this will be assessed.

# Test of 'just and equitable'

- Both Remediation contribution orders under s.124 and building liability orders under s. 130 are subject to the test of whether it would be 'just and equitable' to make these orders.
- This is not defined in the Act but the explanatory notes states:  
*'This is intended to ensure fairness in proceedings while giving the Tribunal a wide decision-making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom an order might be made'*
- It is unclear how this will be interpreted by the courts but the purpose of the provisions is to look to the wider group structure in terms of remediation costs.



# **17.3 Amendments to the DPA 1972 - Duties relating to work to Dwellings (Ian Reid of Shoosmiths)**

# Section 134 – duties relating to work to dwellings.

Previously the DPA 1972 only applied to work to create new buildings. This section of the Building Safety Act amends the DPA 1972 to allow the Defective Premises Act to apply to new work to existing buildings (i.e. recladding an old building). This Section provides:

- That a person who takes on work to a building containing a dwelling, owes a duty to
  - (i) the person for whom the work is done; and
  - (ii) any person who holds or acquires an interest in the dwelling

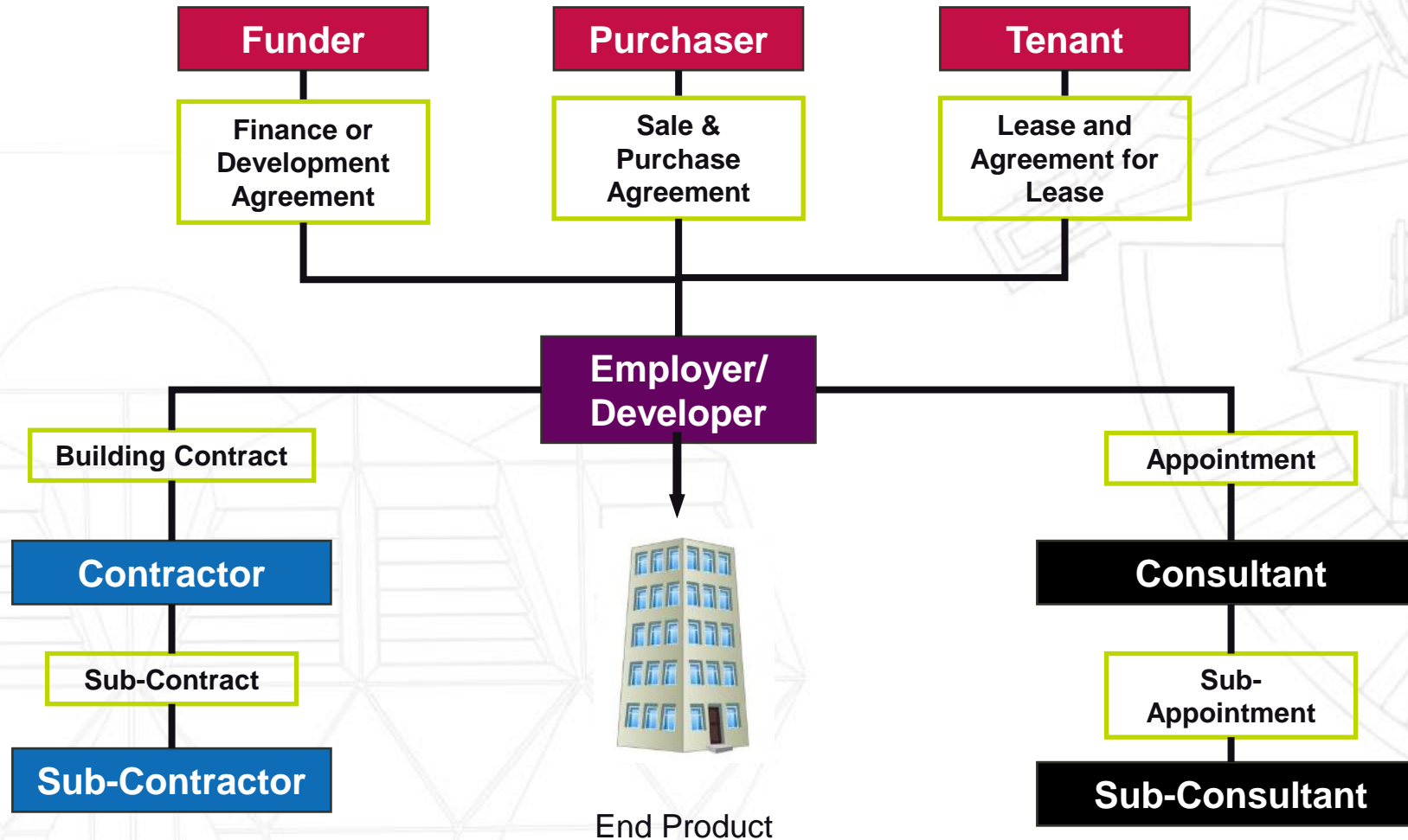
to see that the work is done in a workmanlike or (as the case may be) professional manner, with proper materials so that the dwelling is “fit for habitation” when the work is completed.

(This will apply to Contractors and Architects and Engineers etc.)

- A person who “arranges” for another to take on such work is to be treated (for the purposes of this section) as a person who takes on works

(This will apply to Developers)

# Remember our diagram about basic contractual arrangements.... nothing “consensual” this time.







# **17.4 Extended Limitation Periods**

## **(Ian Reid of Shoosmiths)**

# Extending limitation periods for claims

Longer limitation periods will apply to claims:

- Under the DPA 1972 (Residential focused)
- Under Section 38 of the Building Act 1984 (Buildings generally)
- Against construction product manufacturers arising from breaches of the Construction Products Regulations and their predecessor legislation (Residential focused)

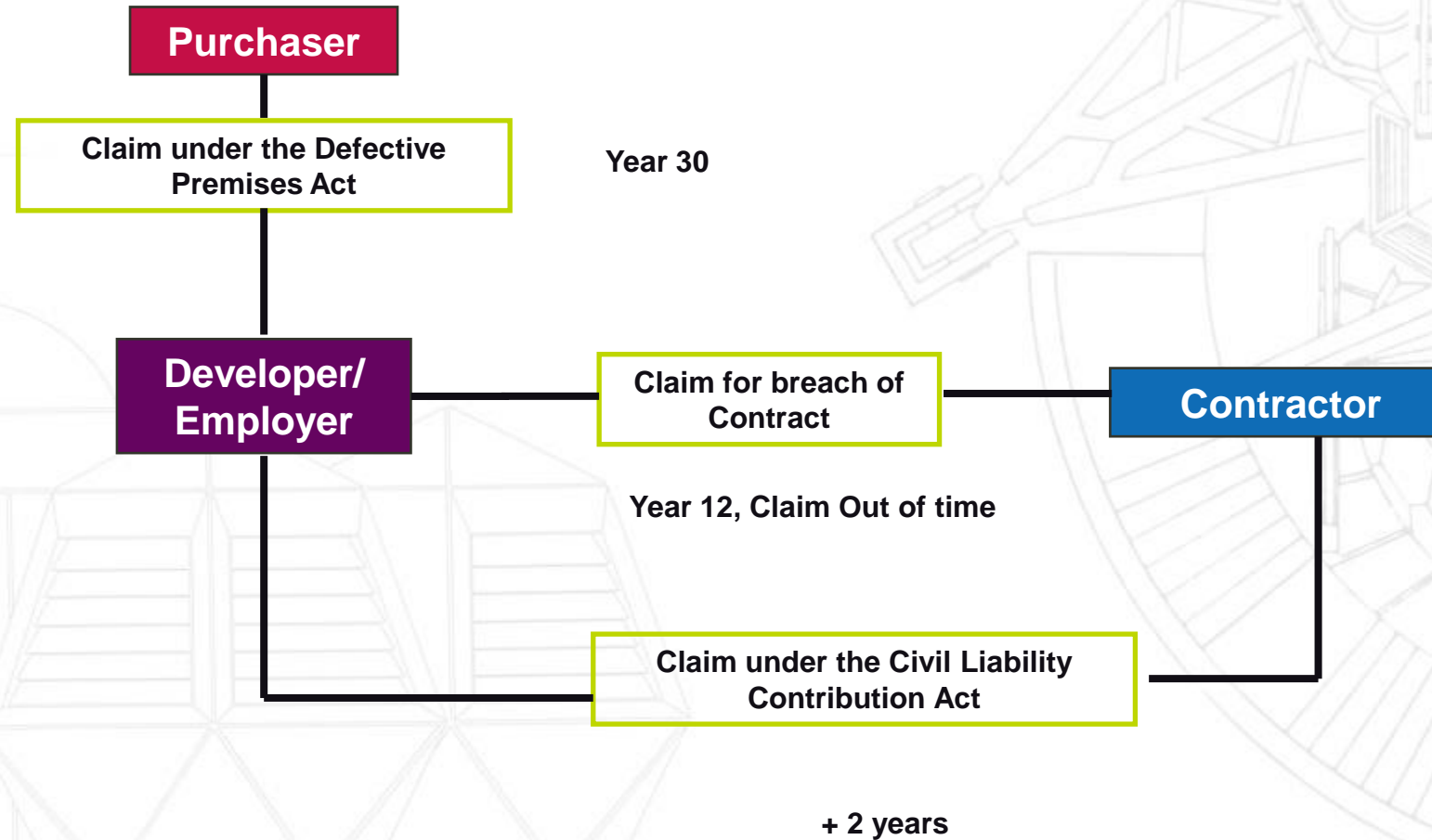
Also created new duties and liabilities in relation to each of the above.

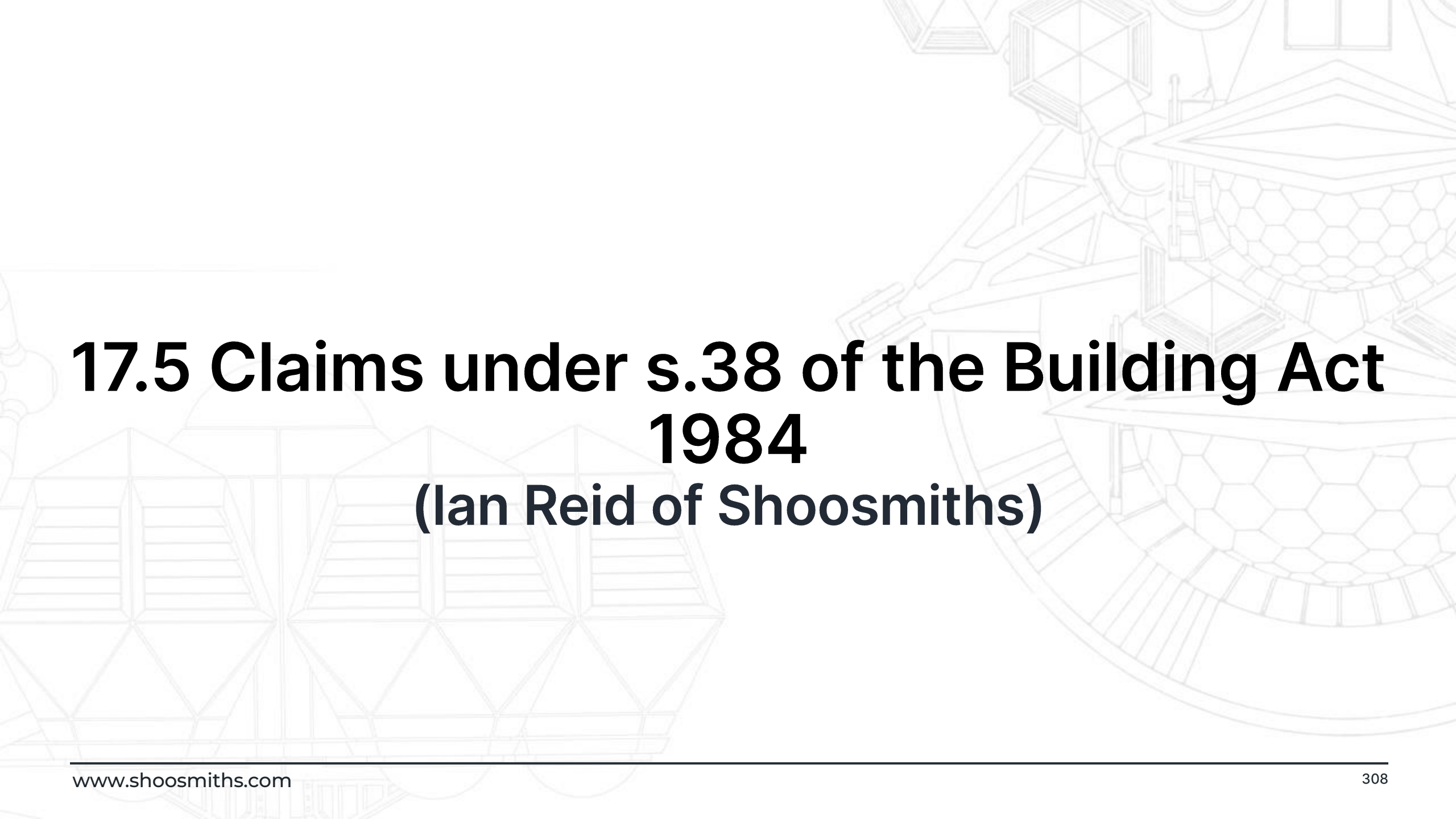
# Section 135 – Limitation Periods

**This section amends to the Limitation Act 1980 to provide for special time limits for claims concerning defects in buildings**

- The normal Limitation Periods for bringing a claim for breach of contract are:
  - 6 years from when the right of action accrued (the breach) if the contract is “under hand”.
  - 12 years from when the right of action accrued (the breach) if the contract is “a deed”.
- The Building Safety Act 2022 extends the limitation period for claims under the Defective Premises Act:
  - from 6 to 30 years for retrospective work (for work carried out before 28 June 2022); and
  - from 6 years to 15-years for work carried out on or after 28 June 2022.
- Note that the Court of Appeal decision in *URS Corporation Ltd v BDW Trading Ltd* [2023] EWCA Civ 772
  - s.135(3) Building Safety Act 2022 was retrospective and should “be treated as always having been in force”. There was no exception for parties involved in ongoing litigation.

# The Civil Liability Contribution Act





# **17.5 Claims under s.38 of the Building Act 1984**

**(Ian Reid of Shoosmiths)**



# Claims under Section 38 of the Building Act 1984

## Background

- Section 38 of the Building Act has never been brought fully into effect and it is not clear when the government plans to do this.
- It provides for a claim for compensation to be brought for physical damage (e.g., injury or damage to property) caused by a breach of building regulations.
- An example would be a fire is caused in a property, or if a child develops a respiratory condition because a property is damp, due to building work not meeting building regulations at the time the work was done.
- If brought into force, section 38 will allow a person who suffered such damage as a result of the breach of building regulations to claim compensation from those responsible.
- Purely financial loss is not covered by section 38.

# Claims under Section 38 of the Building Act 1984

## What are the changes?

- The limitation period will be extended from 6 years to 15 years when this provision is brought into force.
- It will only apply to work done after the changes become law.
- It should be noted that section 38 applies to all buildings not just residential buildings.
- It has not yet been brought into force.



# **17.6 The problems created by 30 year limitation periods (Ian Reid of Shoosmiths)**

# The problems created by 30 year Limitation Periods

- The right to a fair trial is guaranteed by: the Human Rights Act 1998/Article 6 of the European Convention on Human Rights.
- The key witness at the trial – the cladding sub-contractor
- There are serious difficulties with the credibility of any evidence.
- Section 135(5) and Section 149(9) of the Act provide: where a Court is dealing with a claim with a 30 year limitation period, the court “must dismiss” the claim if the court is satisfied that “it is necessary to do so to avoid a breach of the defendants Convention Rights”.



# **PART 18**

## **Claims in the Courts**

**(with Tom Coulson, Barrister, Keating Chambers)**



# Part 18: Claims in the Courts

Tom Coulson

- 18.1 Recent case law regarding defective cladding**
- 18.2 The difficulty in demonstrating compliance with Building Regulations in a performance based system**

# 18.1 Recent case law regarding defective cladding (1)



*Martlet Homes Ltd v Mulalley & Co Ltd* [2022] EWHC 1813 (TCC)

- 1) Strict obligation or reasonable skill and care?
- Obligation to comply with the Building Regulations
- Obligation to exercise reasonable skill and care in carrying out the design

# 18.1 Recent case law regarding defective cladding (2)



*LDC (Portfolio One) Ltd v George Downing Construction Ltd [2022]*  
EWHC 3356 (TCC)

- 2) Strict obligation on a sub-contractor?

# 18.1 Recent case law regarding defective cladding (3)



*Martlet Homes Ltd v Mulalley & Co Ltd* [2022] EWHC 1813 (TCC)

- 3) Everyone else was doing it / the lemmings defence



# 18.1 Recent case law regarding defective cladding (4)



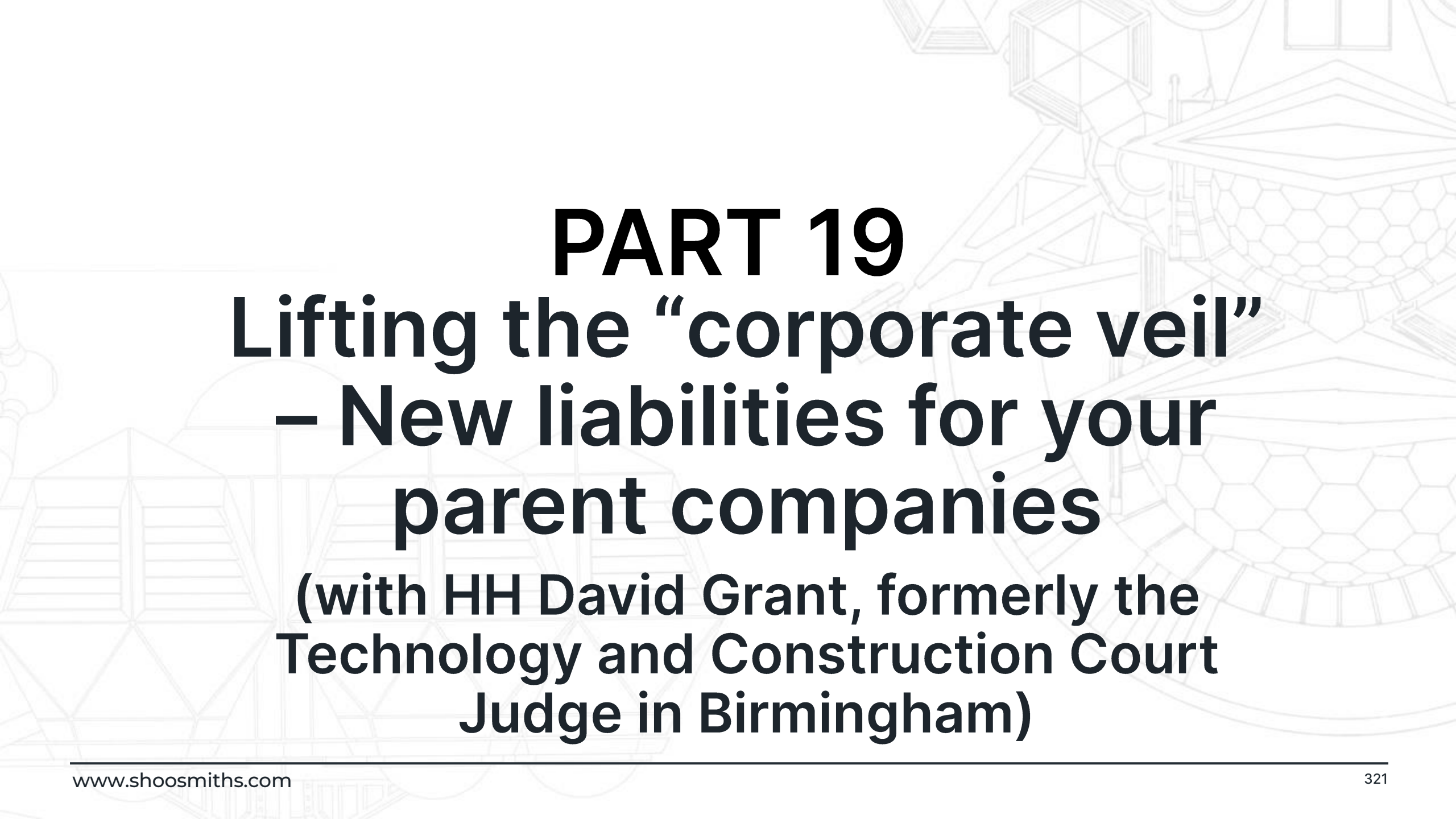
*St James's Oncology SPC Ltd v Lendlease Construction (Europe) Ltd* [2022] EWHC 2504 (TCC)

- 4) Carrying out remedial works – intention and delay



## 18.2 The difficulty in demonstrating compliance with the Building Regulations in a performance-based system

- The pros and cons of a performance-based system
- The meaning of “*adequately*” in Requirement B4(1)
- Approved Document B and the routes to compliance



# **PART 19**

## **Lifting the “corporate veil”**

### **– New liabilities for your parent companies**

**(with HH David Grant, formerly the  
Technology and Construction Court  
Judge in Birmingham)**

# **19.1 Privity of Contract before the Act**

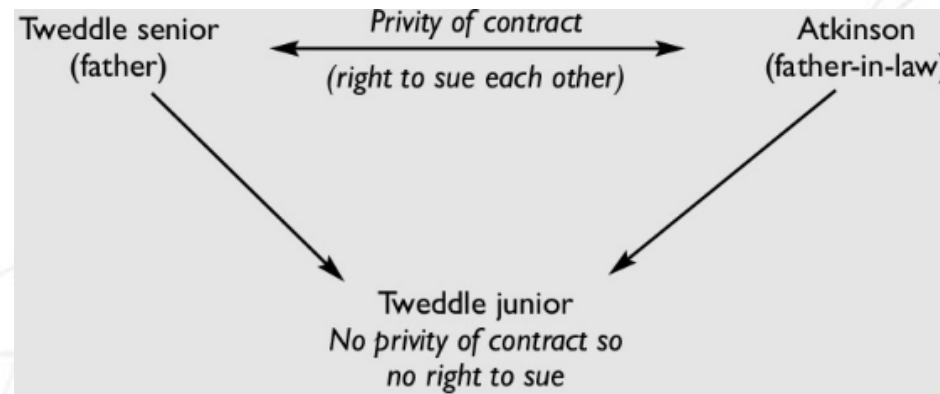
## **(Ian Reid of Shoosmiths)**

# The rule about “Privity of Contract”

- The rule of “privity of contract” means that (as a general rule) a person who is not “privity” to a contract (i.e. is not a party to a contract) can neither sue or be sued on that contract or enforce any of its terms even where it was made for his or her benefit

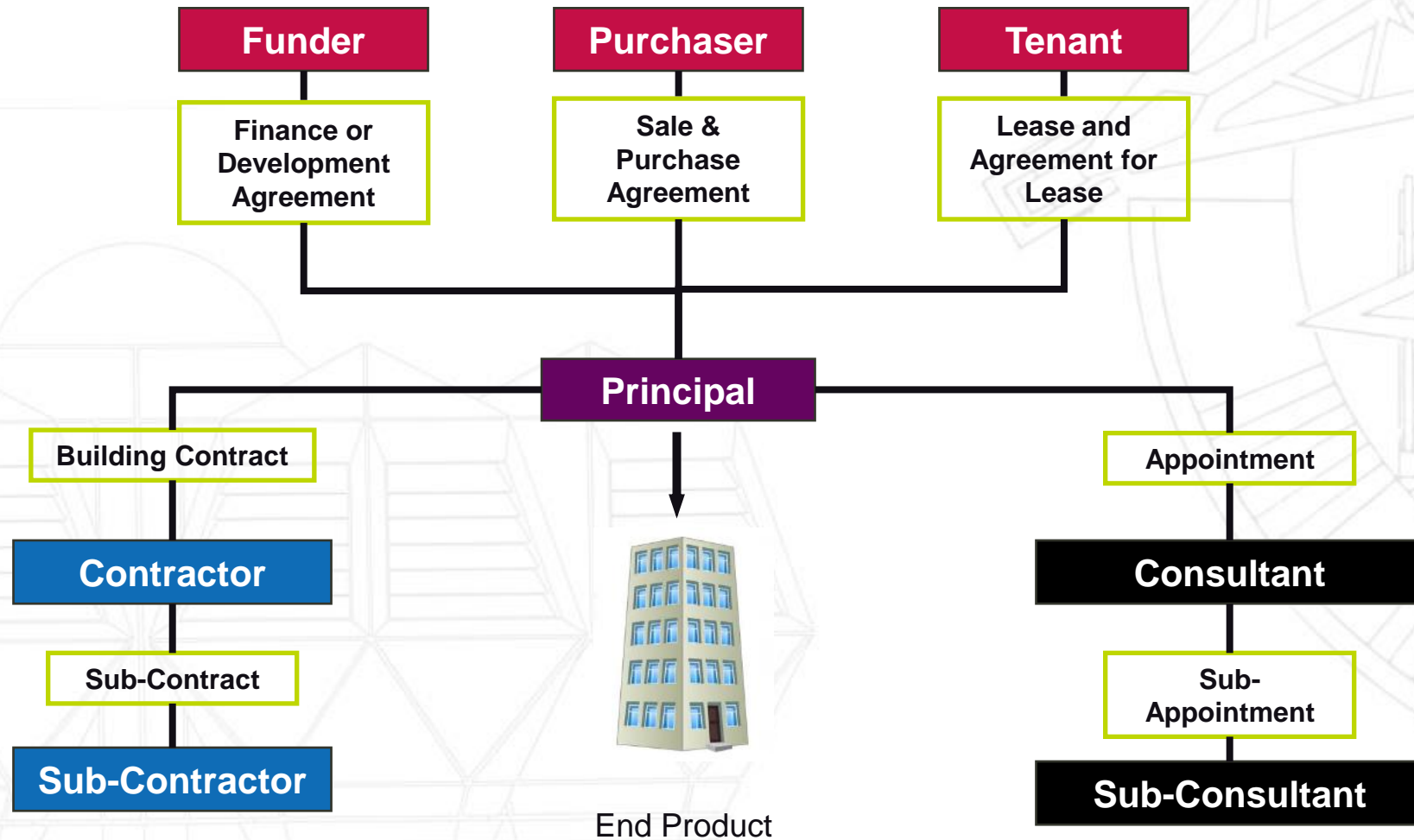


# The case of *Tweddle v Atkinson* (1861)



- The groom's claim failed, because he was not a party to the contract, even though the contract was for his benefit.

# Basic contractual arrangements



# The rule about “Privity of Contract”





# **19.2 Building Liability Orders**

## **(Ian Reid of Shoosmiths)**

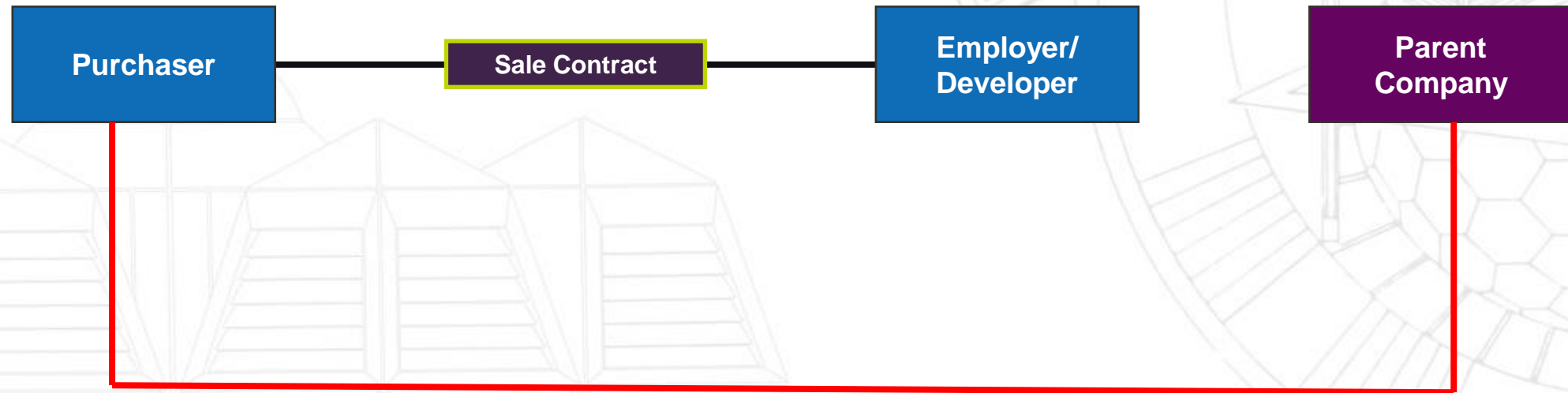
# Section 130 and 131 – Building Liability Orders and Associates.

These sections of the Act provide:

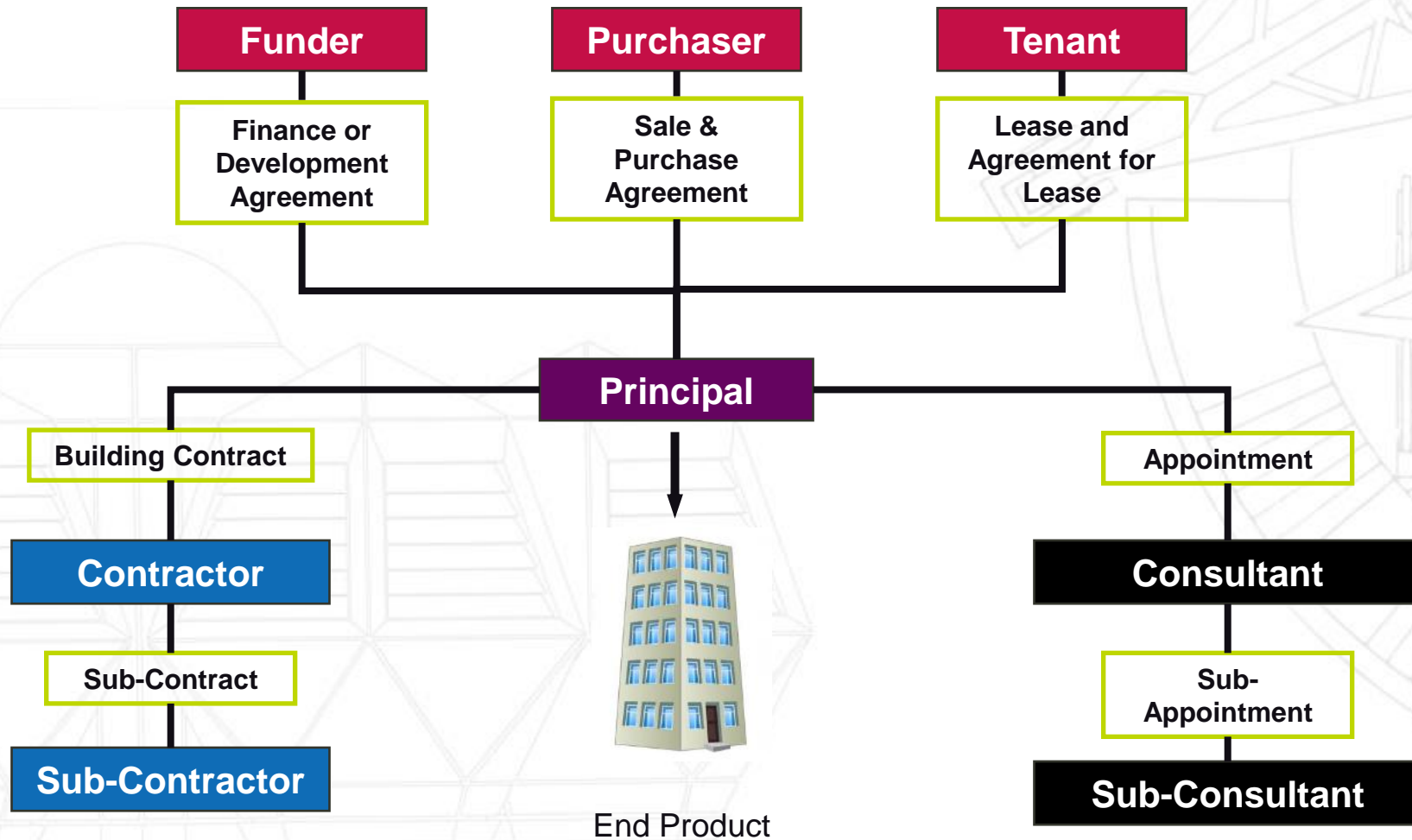
- If it considers it “just and equitable” to do so, the Court can issue a “Building Liability Order”
- The Order can take the liability of one company for building defects, and transfer it to another “associated” company (a company is “associated with another company if one of them controls the other or a third company controls both them)
- The liability must be a liability incurred under the Defective Premises Act or Section 38 of the Building Act 1984 or as a result of a “building safety risk” (which is a risk to the safety of people in or about the building arising from the spread of fire or structural failure)
- A Building Liability Order can be made in respect of a company that has already been dissolved, and continues to have effect even after a company has been dissolved.



# There is no longer any “Privity of Contract”



# Basic contractual arrangements





# **19.3 What is an “associated company”**

## **(Barry Stimpson of Shoosmiths)**

# S.131 Building liability orders: associates

- S.131(2) to(6) set out what is regarded as “control”:

“(2)A body corporate (X) controls a company (Y) if X possesses or is entitled to acquire—

- (a)at least half of the issued share capital of Y,
- (b)such rights as would entitle X to exercise at least half of the votes exercisable in general meetings of Y,
- (c)such part of the issued share capital of Y as would entitle X to at least half of the amount distributed, if the whole of the income of Y were in fact distributed among the shareholders, or
- (d)such rights as would, in the event of the winding up of Y or in any other circumstances, entitle it to receive at least half of the assets of Y which would then be available for distribution among the shareholders.

(3)A body corporate (X) controls a limited liability partnership (Y) if X—

- (a)holds a majority of the voting rights in Y,
- (b)is a member of Y and has a right to appoint or remove a majority of other members, or
- (c)is a member of Y and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in Y.

(4)A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X's wishes.

(5)In subsection (3) a reference to “voting rights” is to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(6)In determining under any of subsections (2) to (4) whether one body corporate (X) controls another, X is treated as possessing—

- (a)any rights and powers possessed by a person as nominee for it, and
- (b)any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph)”.

- Specific provisions usual and clear
- Wider and vaguer s.134(4) more likely to be a source of disagreement



# **19.4 How might the courts approach this?**

**(with HH David Grant)**

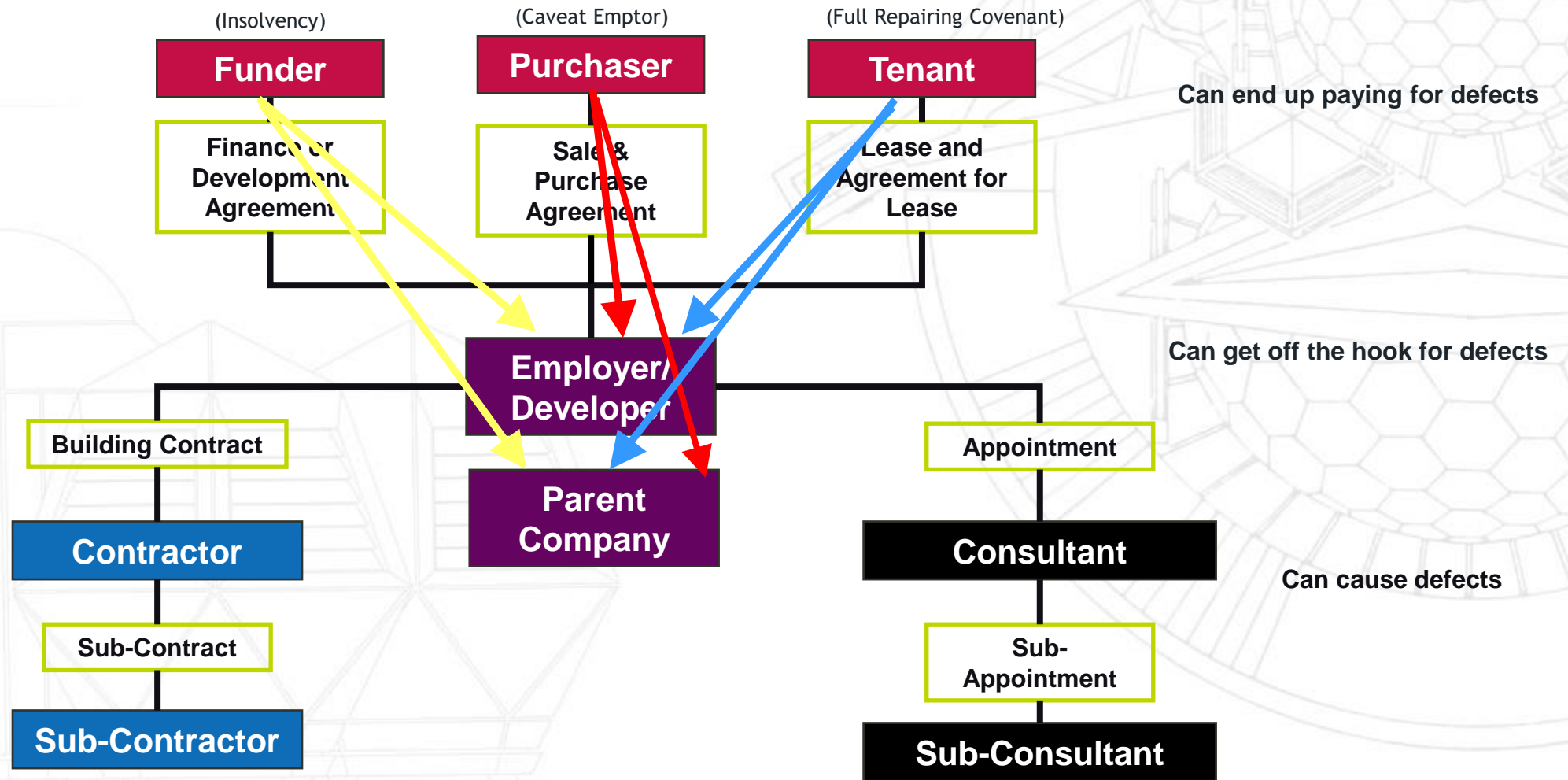




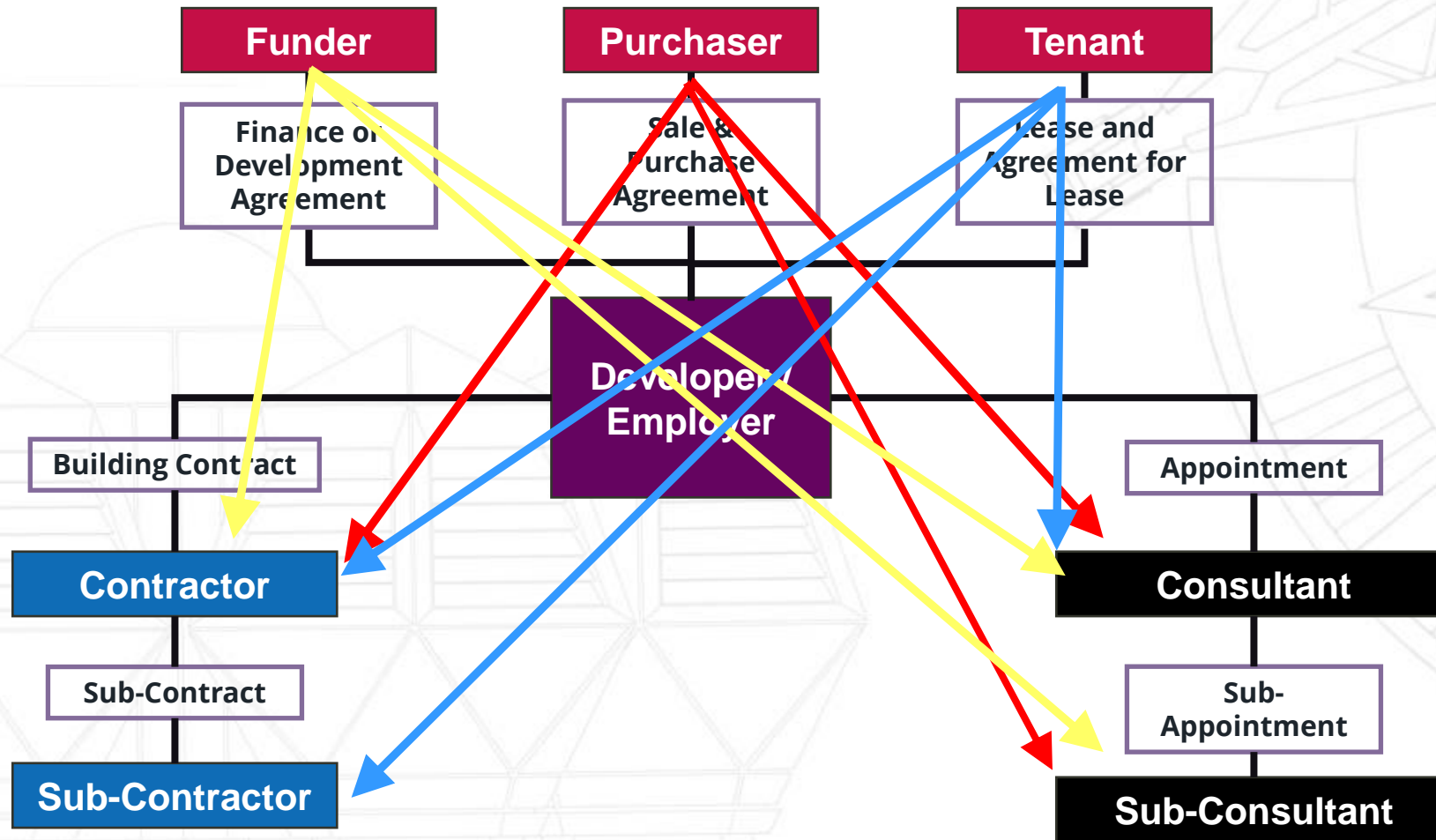
# **19.5 The new liability model for property developments**

**(Ian Reid of Shoosmiths)**

# The developer and its parent company no longer get off the hook



# Simplified collateral warranty diagram



# **PART 20**

## **Home Warranties and Insurance**

**(with Gavin Oram, Head of Property and Construction, PIB Insurance Brokers, Joe Gooden, Director of Build-Zone and Callum English, Lead Underwriter at CNA Hardy)**



# **20.1 The insurance world**

**(Gavin Oram, Head of Property and Construction,  
PIB Insurance Brokers)**





PIB Insurance Brokers  
**Property and Construction**

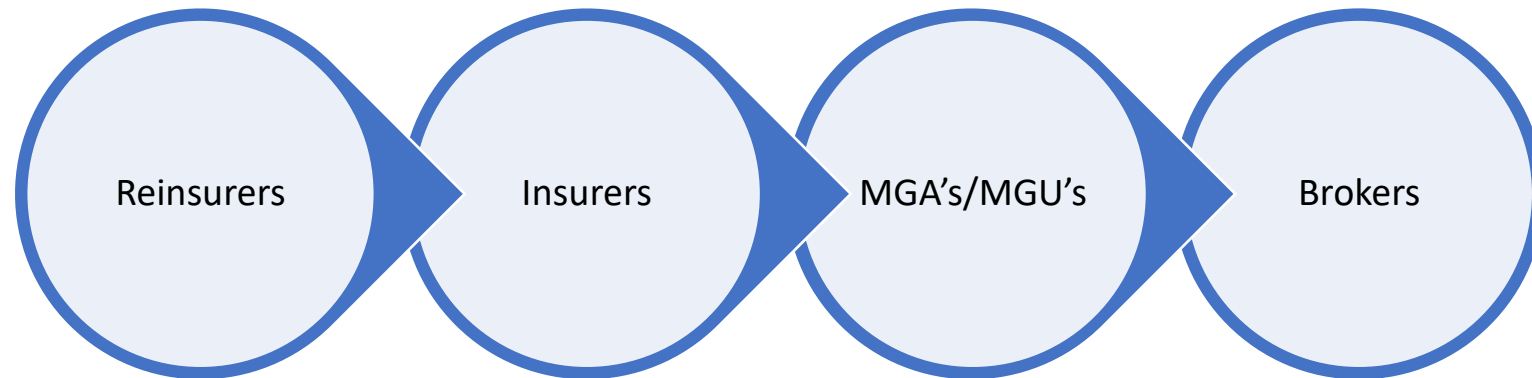
# Shoosmiths Building Safety Event

Gavin Oram - Head of Property &  
Construction



PART OF  **pib Group**

# Makeup of The Insurance Market



# Recent Events Affecting The Insurance Industry

Grenfell Tower	COVID19	Recession/Economic Slowdown	Reduction of Capacity	Building Safety Act
<ul style="list-style-type: none"> <li>• Catalyst for government enquiry</li> <li>• Insurers requesting greater construction information</li> <li>• Insurers exposure increasing - premium increases, some cover reduces</li> <li>• Michael Gove enquiry to the FCA re. the insurance placement of multi-tenue blocks</li> </ul>	<ul style="list-style-type: none"> <li>• \$44 Billion 3<sup>rd</sup> largest catastrophe experienced in the insurance industry ever</li> <li>• Insurers increase rates across their portfolios, attempting to recover losses</li> <li>• Business Interruption cases go to court - some setting precedent</li> <li>• Insurers reducing scope of cover in relation to infectious diseases</li> <li>• \$Millions of pending losses in the market</li> </ul>	<ul style="list-style-type: none"> <li>• Rising Interest Rates</li> <li>• Pricing adjustments experienced across multiple industries, thus increasing sums insured due to indexation</li> <li>• Customers opting to self-insure. Also reduced risk management due to rising costs – increasing claims</li> </ul>	<ul style="list-style-type: none"> <li>• Large losses sustained - insurers have withdrawn from writing UK Insurance, others class specific</li> <li>• Some insurers opting to operate in less regulated countries</li> <li>• Knock on effect - drives premiums up</li> </ul>	<ul style="list-style-type: none"> <li>• Defective Premises Act – how are insurers reacting?</li> <li>• Retrospective insurance cover on Professional Indemnity</li> <li>• Building Liability Orders</li> <li>• Increased scrutiny around cladding and construction products</li> <li>• 15yr Policy Term - Housing Warranties</li> </ul>

# Underwriter and MGA Representatives



**Callum English**

Professional Indemnity Class Manager – CNA Hardy

**Joe Gooden**

Director, Housing Warranties & Latent Defects – Build-Zone Insurance



# **20.2 The existing Home Warranty schemes**

**(Joe Gooden, Director of Build-Zone)**





# Home Warranties

By Joe Gooden

[www.build-zone.com](http://www.build-zone.com)

# Main Existing Warranty Providers



- NHBC
- Premier Guarantee
- LABC
- Build-Zone
- ICW
- Protek
- Ark
- Global Home
- Homeproof
- FMB
- Q Assure
- Compariqo
- Advantage
- ABC+
- Checkmate
- One Guarantee

# The BSA 2022

- 15 Year Policies
- Technical Design Information
- Building Safety Case Reports
- More focus on 'A' Rated Insurers

# New homes warranty

- A new build homes warranty is an insurance policy against construction defects.
- Currently there is no legal requirement to provide a new build homes warranty but are often a requirement of mortgage lenders.
- The usual warranty period that is provided is ten years.

# The existing NHBC Scheme

- The NHBC scheme provides for:
  - Two year “Builder Warranty Period” – The builder is responsible for rectifying defects arising from the builder’s failure to meet NHBC “Technical Requirements”.
  - Ten year structural cover - insurance cover is provided against certain types of structural and weatherproofing defects (structural and foundations, roofs, flues and chimneys, external walls, internal stairs, glazing) and contaminated land.
- Builders must be registered with NHBC to offer NHBC warranties. NHBC say that “only builders and developers who can demonstrate financial security and technical competence are accepted onto the NHBC register.
- NHBC (and similar) warranties are not a legal requirement, but mortgage providers will likely insist on purchasers obtaining them as a condition of lending, so developer’s therefore have to provide them.
- If there is a problem, NHBC are ultimately responsible – it is not the developer’s responsibility.





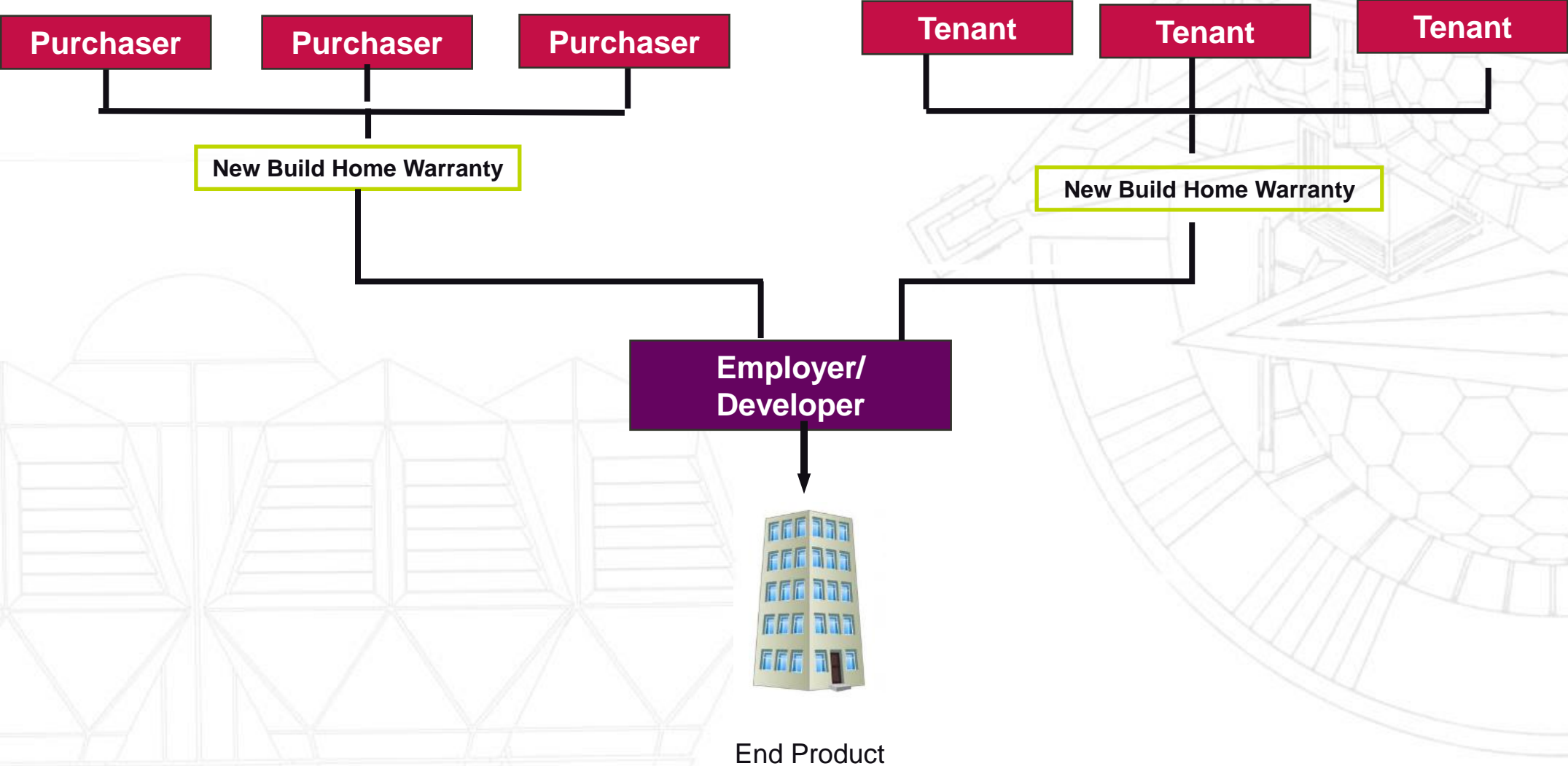
# **20.3 “New Build Home Warranties” under the Act (Ian Reid of Shoosmiths)**

# The New Build Home Warranties

- Under s.144 of the Building Safety Act 2022, it will be a legal requirement for developers of new build homes to provide a warranty for purchasers for a minimum term of 15 years.
- The minimum term reflects the extended limitation period for claims under the Defective Premises Act 1982 and s.38 of the Building Act 1984.
- The warranty must meet minimum standards that will be set out in regulations which form secondary legislation under the Building Safety Act 2022.
- The government has not yet implemented the provisions in relation to new build home warranties. Further detail would be needed by way of secondary legislation which has yet to be published.
- The Act gives the Secretary of State the power to set out in Regulations:
  - Financial penalties for failing to provide a warranty;
  - Interest or additional penalties for late payment;
  - The process of considering and issuing the warranty and rights of appeal; and

The maximum penalty prescribed in regulations may not exceed £10,000 or 10% of the sale price of the new home, whichever is the greater.

The new build home warranties could mean this..... Driving a coach and horses through the legal concept of caveat emptor



# So what happens next?

All we can do is await the government's regulations to find out what is going on with the New Build Home Warranties.

# **20.4 What do insurers make of what the Act proposes about New Build Home Warranties?**

(Joe Gooden, Director of Build-Zone)



The background features faint, light gray line art of various architectural structures, including domes, pyramids, and modern buildings, creating a geometric and architectural theme.

# **BUILD-ZONE** **INSURANCE**

# **20.5 What are the implications for Professional Indemnity Insurance?**

(Callum English,  
Lead Underwriter at CNA Hardy)

# **PART 21**

## **Legal liabilities for construction products (Michael Bennett of Shoosmiths)**



# **21.1 Liability relating to Construction Products**

# Section 148 – liability relating to construction products.

(came into force 28 June 2022)

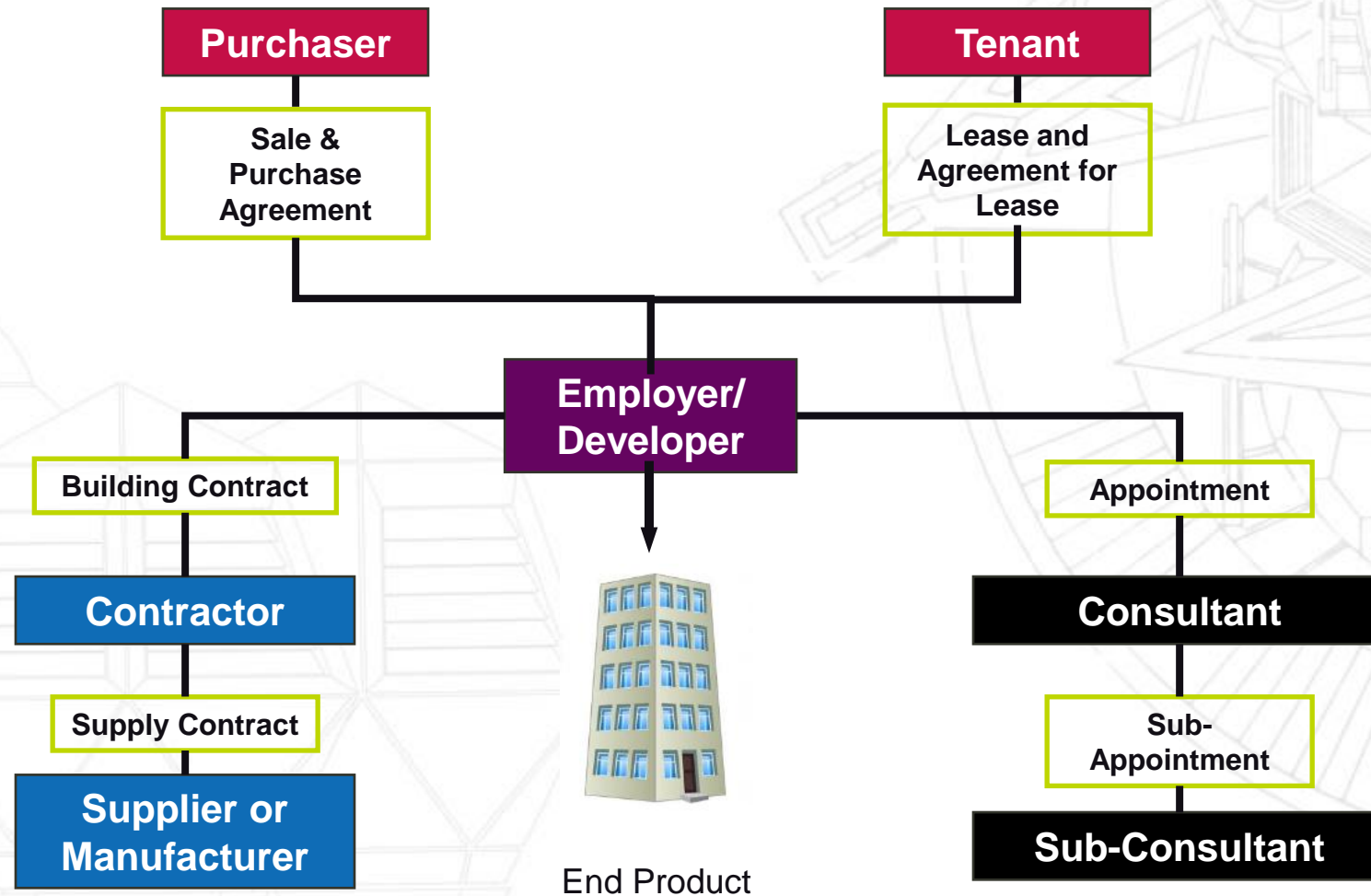
This section relates to the period after the Act comes into force and provides for:

- If a person manufactures a construction product that is inherently defective, or markets and supplies a construction product and makes misleading statements about it; and
- If that product is installed in, applied to or attached to a building that contains a dwelling; and
- If as a result the dwelling is “unfit for habitation”

THEN

- That person is liable to pay damages to anyone with a “legal or equitable” interest in the building for “personal injury, damage to property or economic loss”.
- Any term in any agreement or contract excluding or restricting liability under this Section of the Act is void.
- This will affect manufacturers and suppliers ..... but what about developers with their own modular construction facilities?







## **21.2 Liability for past defaults to cladding products**

# Section 149 – liability for past defaults relating to cladding products.

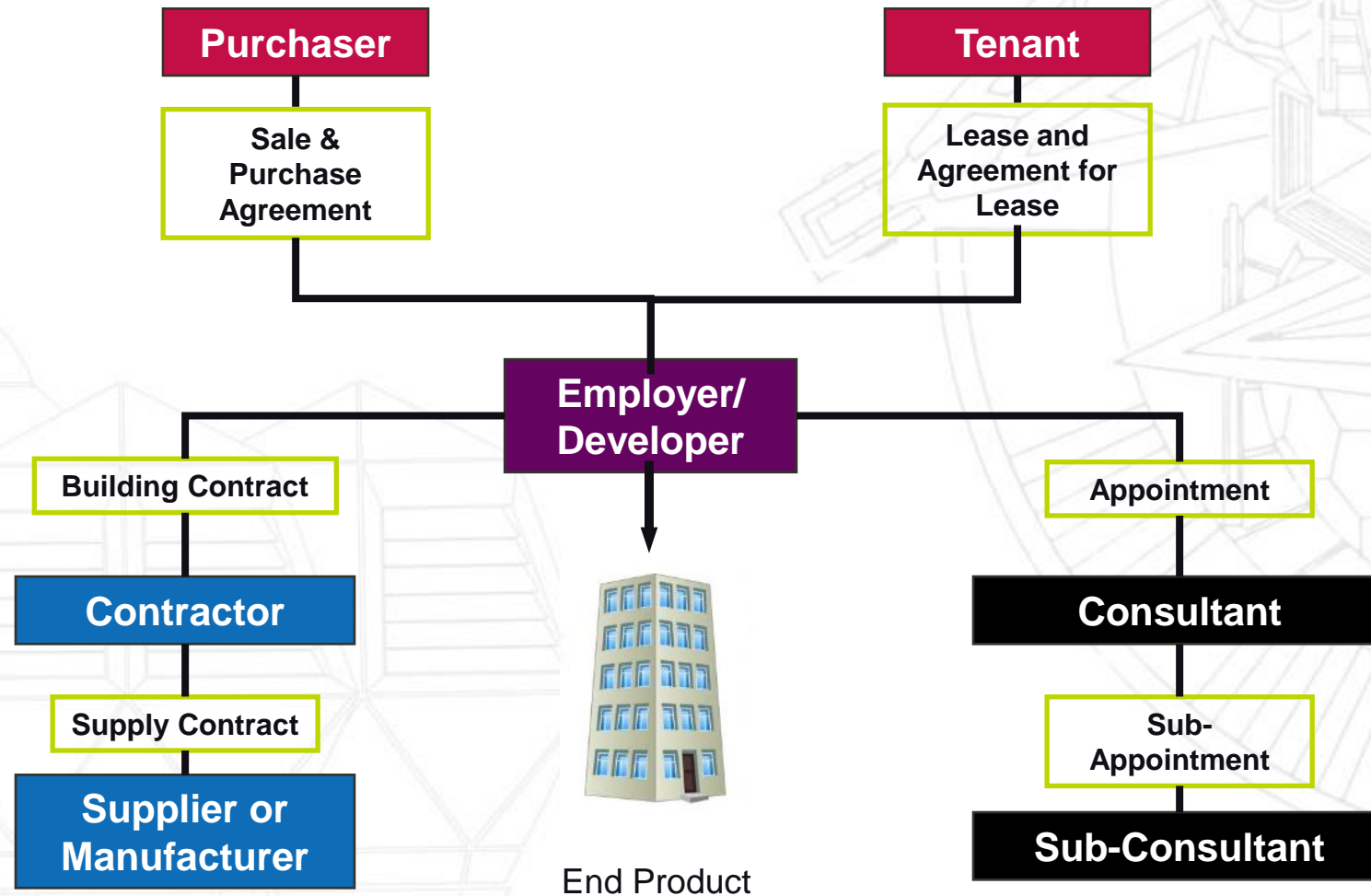
(came into force 28 June 2022)

This section relates to the period before the Act came into force (applying retrospectively) and provides for:

- If a person manufactured a cladding product that is inherently defective or marketed and supplied a cladding product and made misleading statements about it; and
- If that cladding product is attached to or included in the external wall of a building that contains a dwelling; and
- If as a result the dwelling is “unfit for habitation”

THEN

- That person is liable to pay damages to anyone with a legal or equitable interest in the dwelling for “personal injury, damage to property or economic loss”.
- Any term in any agreement or contract excluding or restricting liability under this section of the Act is void.





## **21.3 Limitation relating to construction products**



# Section 150 – liability relating to construction products – limitation

(came into force 28 June 2022)

This section provides for:

- Usually in an action for breach of contract the claimant has 6 years (for contracts under hand) or 12 years (for contracts that are deeds) from the time when the cause of action accrued (the date of the breach of contract) to bring the claim.
- The Act extends that limitation period to 15 years for actions brought under Section 148 (defective construction products after the Act came into force)
- The Act extends that limitation to 30 years for actions brought under Section 149 (defective cladding products before the Act came into force).

## 21.4 Costs Contribution Orders

# Section 153 and Section 154 – Cost Contribution Orders made by the courts or by the Secretary of State.

Those sections provide for:

- If a person (the “defaulter”) is convicted of an offence in relation to the failure to comply with a construction product requirement and the product has been installed in or applied or attached to a dwelling causing that dwelling to be unfit for habitation, then:
- Following an application by the Secretary of State, the Courts can make “Cost Contribution Orders” requiring a defaulter to pay money to a person with an interest in a dwelling (landlord, purchaser, tenant) in respect of the costs that person has incurred or is likely to incur to make the dwelling “fit for habitation”.
- Further details are to be provided by the future “Regulations”.



# 21.5 Regulation of construction products

# Building Safety Act 2022: regulation of construction products

- It is estimated that only one third of construction products are covered by the Construction Product Regulations. The Regulations primary purpose is not to ensure a product is safe but rather (as it is derived from EU legislation) to ensure a level playing field for the single market. In addition, the effectiveness of the Regulations depends on the suitability of the relevant standards and the competency of the testing bodies. Also, historically, there has been little or no enforcement. See the [independent review of the construction product testing regime commissioned by the government](#).
- Under the Building Safety Act 2022, there will be a new regulatory regime for construction products marketed in the UK including a new regulator.
- The Building Safety Act 2022 gives the Secretary of State powers to create regulations in respect of construction products. Schedule 11 of the Building Safety Act 2022 gives details of this power:
  - Requiring manufacturers to ensure that the products that they supply are safe;
  - Creating a statutory list of “safety critical” construction products;
  - New civil and criminal offences for breach of the new regulations;
  - Enforcement by Trading Standards and a new regulator for construction products within the Office for Product Safety and Standards (OPSS); and
  - Powers to share information about construction products between regulators (for example, the Regulator, the new regulator for construction products and local building control).





# **21.6 Enforcement: The National Regulator for Construction Products**

# National Regulator for Construction Products

- The Office for Product Safety and Standards (OPSS) is part of the Department for Business and Trade (DBT) and exercises the powers of the Secretary of State in relation to a range of regulations.
- In January 2021, the government announced that the OPSS would take responsibility for the national regulation of construction products through the National Construction Product Regulator (NCPR) and is accountable to the DLUHC for its construction products function.
- The new Regulator will oversee the new construction products regulatory regime and lead and co-ordinate market surveillance and enforcement. It will:
  - provide market surveillance and oversight.
  - lead and co-ordinate the enforcement of the strengthened construction product regulations, including removing products that pose a safety risk from the market
  - provide advice and support to the industry to improve compliance as well as providing technical advice to the government
  - carry out or commission its own product-testing to investigate non-compliance
  - establish a robust and coherent approach with the Building Safety Regulator and Trading Standards to drive change across the sector

# PART 22

## **The effect of all this on your contracts and transactions**

(with Sophie Rosier, Head of London Mixed Use,  
Savills)



# **22.1 The effect on building contracts**

## **(Rick Atha of Shoosmiths)**

# Effect on building contracts

- Dutyholder roles/responsibilities:
  - Appointment of principal contractor and principal designer (D&B) for building regulations
  - Performance of duties and warranties as to compliance/competence (cf. CDM approach)
- Performance of duties on behalf of the client, e.g.:
  - Applications for building control, completion certificates
  - Change control / notices and applications
- Practical completion definition - including Gateway 3/completion certificate and Golden thread information/documentation requirements
- Insurance and connection to PC
- Delay risk - Gateway periods, Regulator risk
- Liability extensions (15 year) and limitation clauses





## **22.2 The effect on professional appointments**

**(Rick Atha of Shoosmiths)**

# Effect on professional appointments

- Dutyholder roles/responsibilities:
  - Appointment of principal designer for building regulations
  - Performance of duties and warranties as to compliance/competence
  - Skill and care duty or absolute?
  - Nominated PD individual
- Performance of duties on behalf of the client: e.g.:
  - Applications for building control
- Liability extensions (15 year) and limitation clauses



## **22.3 The effect on real estate transactions**

### **(Choisanne Man of Shoosmiths)**

# Effect on real estate transactions

- Development Agreements
- Conditions
- Pre-Development Obligations
- Procurement
- Development Works
- Longstop Dates and Delay
- Events of Default
- Development Costs
- Completion/Handover Requirements



## **22.4 The effect on the market**

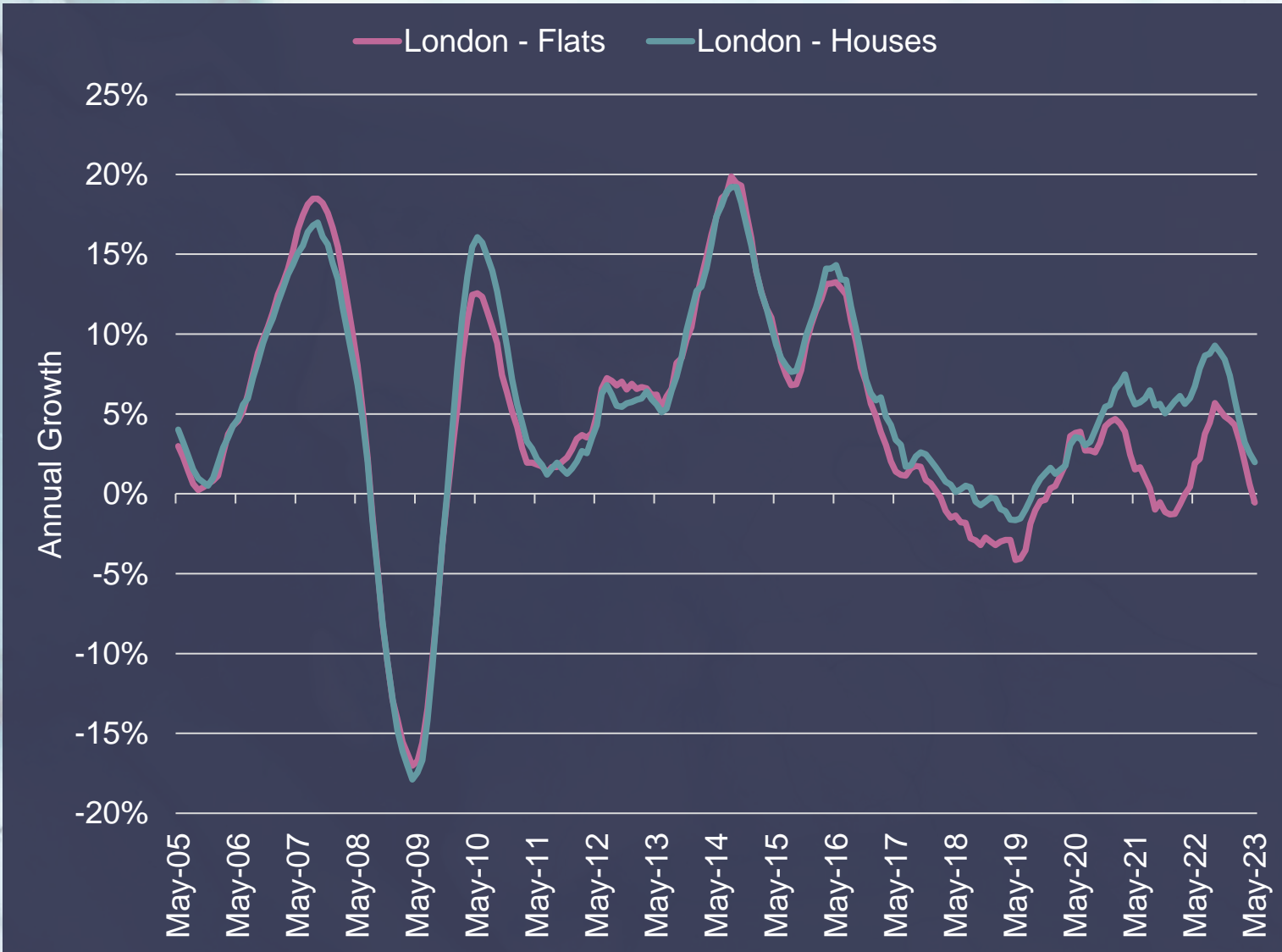
**(Sophie Rosier, Head of London Mixed Use,  
Savills)**



# The effect on the market

Sophie Rosier, Director  
Head of London Mixed Use

# Buyers: London flats are seeing less price growth relative to houses





## Development: Pipeline is decreasing

More Time

More Consultants

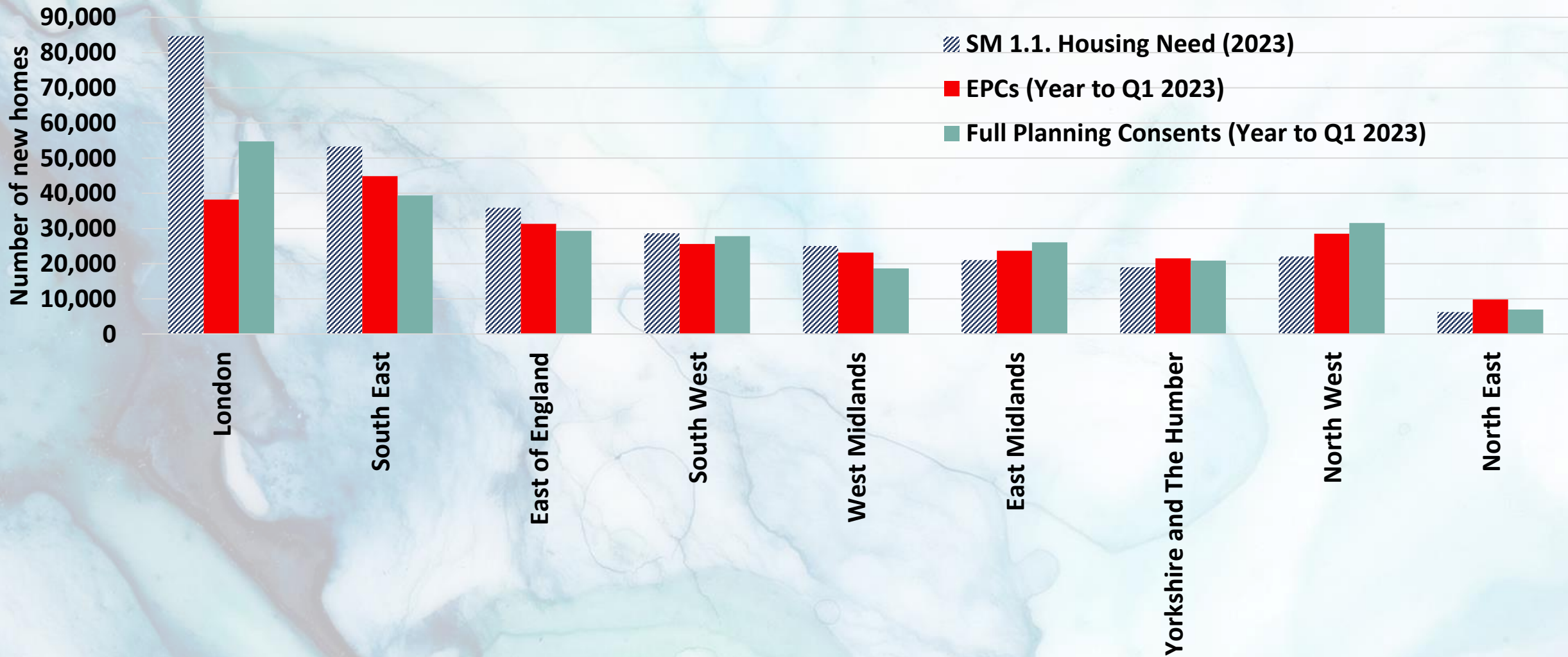
More Uncertainty



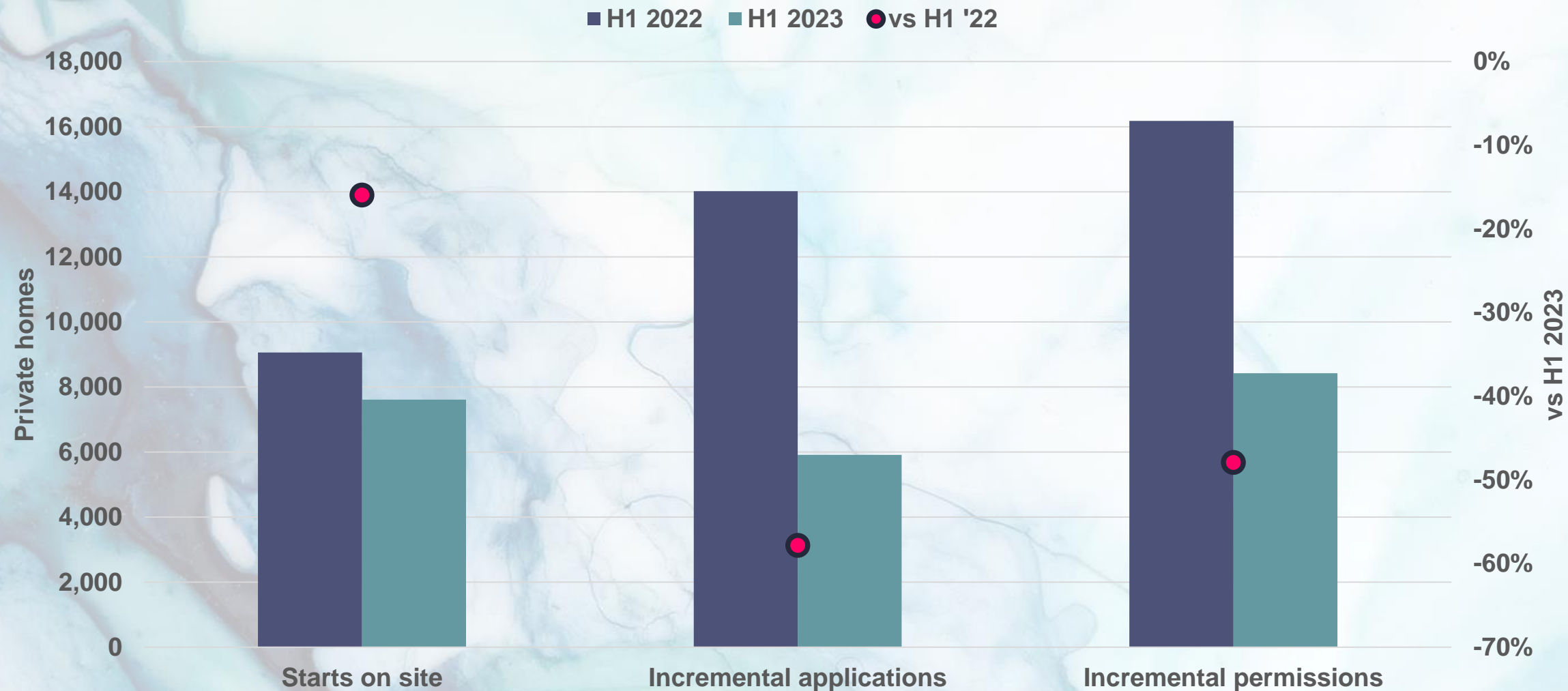
Private starts on site are **less than half** the peak in 2015

New incremental applications have **halved** since last year

# Housing is significantly undersupplied against need



# Development and planning activity has dropped off





# Multifaceted and interconnected – but the Act has compounded







Thank you

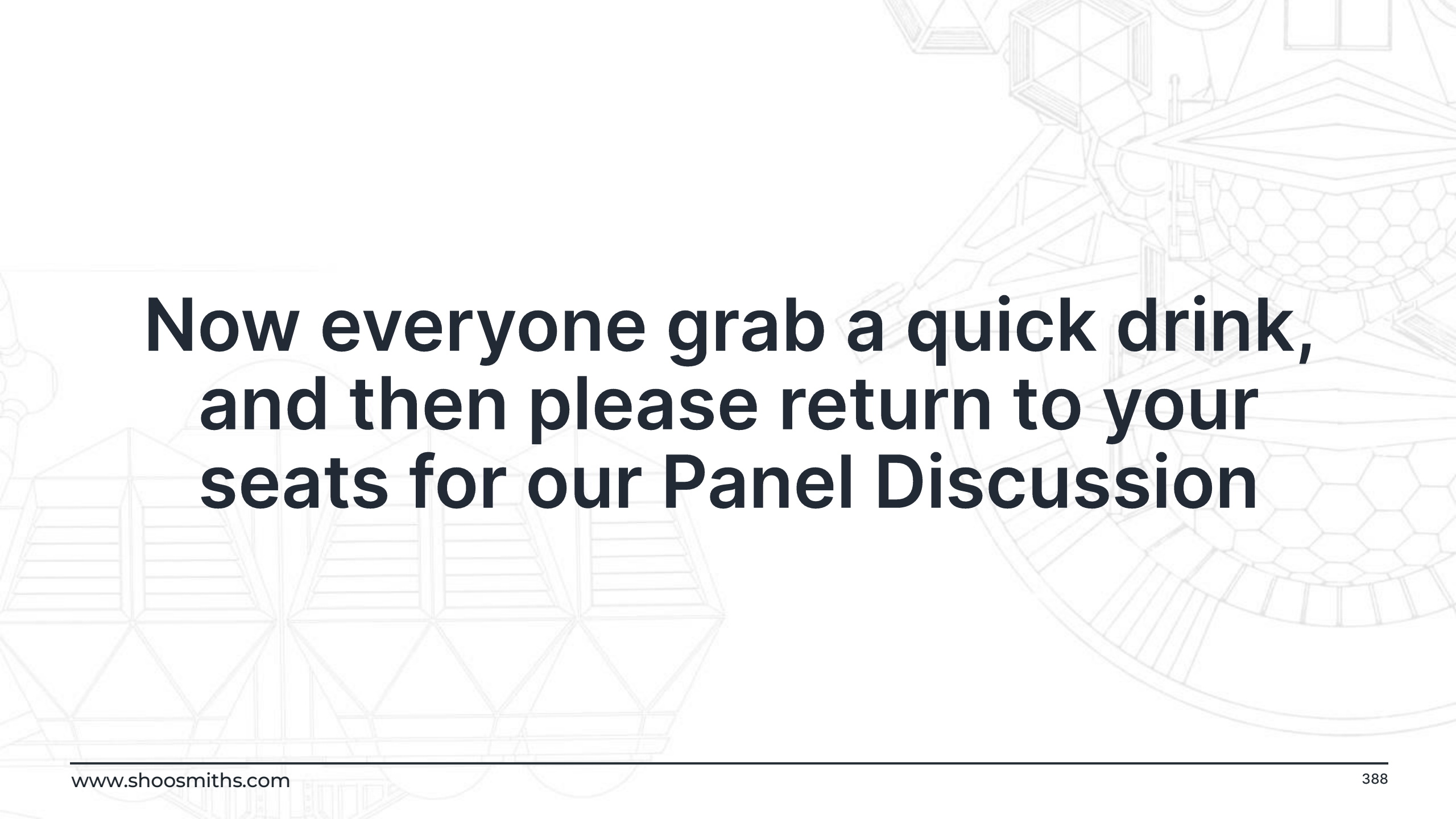


# **22.5 Are we going to get safety buildings and are the wheels of commerce still turning? (Ian Reid of Shoosmiths)**



**And lastly...a very special thank you  
to...**





**Now everyone grab a quick drink,  
and then please return to your  
seats for our Panel Discussion**



The background of the slide features a complex, light gray line-art pattern. It consists of various geometric shapes, including triangles, hexagons, and polygons, arranged in a way that suggests architectural structures or a crystalline lattice. The lines are thin and the overall effect is a subtle, textured backdrop.

# **Panel Discussion**

## Views from across the industry

# The members of our Panel:

- Alexander Nissen KC, Head of Keating Chambers
- HH David Grant, formerly the Technology and Construction Court Judge in Birmingham
- Tom Coulson, Barrister, Keating Chambers
- Stuart Macdougald-Denton, Global Managing Director of Diales Technical
- Glenn Horton, Fire Engineer
- Simon Robins, Makes Architects
- Sophie Rosier, Head of London Mixed Use, Savills
- Gavin Oram, Head of Property and Construction, PIB Insurance Brokers
- Joe Gooden, Director of Build Zone
- Jonathan Duler, Basic Expert
- Dr Brian Ashe, Fire Safety Engineer, Basic Expert
- Graham King, Director of Building Safety, Safer Sphere

**Everything you always  
wanted to know about the  
Building Safety Act... but  
were too afraid to ask**

**End**

