

Proposed building safety act

Safety case principles - higher risk buildings

Background

On 9th September 2021 the Health & Safety Executive (“HSE”), published an industry-focussed paper ‘**Safety case principles for high-rise residential buildings: Building safety reform – Early key messages.**’

The purpose of the document HSE noted, with reference to the Building Safety Bill, was ‘**to give early insights into some of these potential changes to help those who may have new roles to prepare for the reforms.**’ Noting always, that ‘**the law has not yet been settled, so the points covered may be subject to change.**’

This is the first time that some degree of clarity has been circulated of current thinking within HSE as to how it is to engage with the **Accountable Person** to discharge its function as the proposed **Building Safety Regulator for Higher Risk Buildings**, as defined by the Building Safety Bill.

The Building Safety Bill aims to ensure that Higher Risk Buildings are designed and constructed to be safe. Then operated and managed in a way that protects people from the spread of fire or structural failure and reduces the potential of and severity of a serious incident.

Aim of this paper

This paper aims to inform our clients as to:

- What is a ‘Safety Case Report’ as referred to by the Building Safety Bill?
- Why do you need a ‘Safety Case Report’?
- Who is responsible for providing the ‘Safety Case Report’?

- When is a ‘Safety Case Report’ required?
- What are the consequences of not providing a ‘Safety Case Report’?
- What are the timelines for providing a ‘Safety Case Report’?
- Next steps.

What is a Safety Case Report?

Safety Case and **Safety Case Reports** are referenced in Part 4, Section 85 of the **Building Safety Bill**.

The function of the Safety Case Report is to demonstrate and summarise the Safety Case and bring together the different functions of design, construction, operation and management into a justifiable and auditable explanation of the complex interactions of people and property in a hazardous situation. Buildings are to be considered as complex systems and to be reviewed on a building-by-building basis.

The Safety Case Report is to be developed to:

- Identify the hazards with the potential to cause harm;
- Assess how people will be harmed and how likely it is to happen; and
- Implement measures that effectively reduce these risks and limit or mitigate the consequences for people.

Hopkins, A, in his publication titled “Working Paper 87: Explaining Safety Cases”, stated, “**A safety case regime requires companies to adopt a systematic hazard management framework. This means they must identify all major hazards and develop plans for how these hazards will be managed. In particular, they must identify the controls that will be put in place.**”

The HSE Safety case principles paper identifies that ‘**Safety case regimes are used when the potential consequences of a single or linked series of events are significant and unacceptable, and to provide greater assurance that the necessary systems to prevent and limit the consequences of a serious incident are in place. Up to now they have been reserved for high hazard industries (for example nuclear energy, railways, aviation and chemical manufacturing).**’

Do you need a Safety Case Report?

HSE notes '**Major accident hazards usually need a series of failures to happen in the existing systems and measures to result in catastrophic outcomes. These will be failures of the measures designed to prevent or reduce the likelihood of harm occurring, or in the measures to limit the consequences, or both.**'

In her book '**Catastrophe and Systemic Change: Learning from the Grenfell Tower Fire and Other Disasters**' Gill Kernick refers to this as the '**Swiss Cheese Model**'. This considers that layers of protection through multiple barriers are put in place to protect us from major accidents. However, in each of these layers of protection are latent conditions or holes. In a catastrophic situation, usually resulting from a single trigger failure, these holes line up and a hazard finds its way through all of the barriers with catastrophic results.

The production of the Safety Case Report provides a systematic approach to identifying these 'holes' and establishing and demonstrating measures to remediate the holes as far as

can reasonably be undertaken and to mitigate or manage the consequences of their alignment. Thereby targeting the avoidance and occurrence of a catastrophic situation.

In the case of Higher Risk Residential Buildings the Safety Case Report will be limited to the potential scenarios assessment of spread of fire or structural failure that has the ability to spread beyond its origin and exposes, or has potential to expose, a number of people to significant harm.

The Safety Case Report is to identify:

- What could go wrong?
- How could it go wrong? and
- How significant the impact could be?



Who is responsible for providing the Safety Case Report?

The Building Safety Bill notes the provision of the Safety Case Report is one of the duties of the **Accountable Person**.

The **Accountable Person** is "accountable" for building safety, in particular the safety of residents, visitors, guests and staff within the Higher Risk Building.

Whilst some of the associated duties of the '**Accountable Person**' can be delegated to a competent **Building Safety Manager** to assist in discharging those responsibilities, the Accountable Person remains accountable at all times.

When is a Safety Case Report required?

The Safety Case Report will be required for a Higher Risk Building as part of the submission of evidence to HSE, as the Building Safety Regulator, to obtain the **Building Assurance Certificate**.

It is also understood that a revised Safety Case Report will require to be submitted, as applicable, on the renewal of the Building Assurance Certificate. That is understood to be every 5 years, or upon any amendment to the building structure or operations.

What are the consequences of not providing Safety Case Report?

The failure to provide a Safety Case Report when required by HSE, acting as the Building Safety Regulator, will result in the relevant building being unoccupiable. The occupation of a relevant building

without a Safety Case Report being approved by the Building Safety Regulator is likely to result in a criminal offence for the Accountable Person.

Next steps

The Safety Case and Safety Case Report are considered to be part of the 'Golden Thread' of information under the Building Safety Bill.

Secondary Legislation around the Safety Case and Safety Case Report have not yet been provided. However, the proposed Gateway 3 of the Building Safety Act and the requirement for the 'Golden Thread' is likely to be in force by circa December 2023. Timelines are therefore already defined.

The process required to produce a Safety Case Report for a relevant building is likely to be:

- RIBA Stage 4/5 and as-built data record gathering of fire engineering and structural engineering information for the Safety Case.

- Risk and hazard identification workshops and techniques as used, for example, in the petrochemical and nuclear industries will be utilised as good practice to analyse and assess the relevant individual building and its operation & management. This will also include analysis of the evacuation, escape and rescue (ERR) measures. This is a quantum leap of protocol for the construction and facilities management sectors.
- Draft Safety Case Report.
- Peer review of Safety Case Report.
- Establish the building's Safety Management System (SMS).
- Submit Safety Case Report as part of the 'Golden Thread' to obtain the Building Assurance Certificate.

Conclusion

As there are no test cases to reference, it is unclear what the timescales the HSE, acting as the Building Safety Regulator, will require to review and approve the Safety Case Report. Nor will they be time bound to approve the Building Assurance Certificate.

As such, consideration and management of these risks needs to commence now for Higher Risk Buildings, and the demand for expert advice is already prevalent as developers and landlords/owners begin to understand the risks of not adhering to these early messages – unoccupied residential developments and a significant reduction in asset value.

HSE has provided guidance of their "early key messages" and it is clear that no excuses will be accepted by them for developers and landlords/ owners not being fully prepared for the pending implementation of the new building safety reforms, including the Safety Case.



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The HAALO team



Peter Bowe

Peter has over 30 years' experience delivering high value infrastructure projects and services in the UK, Europe and the Middle East. Over his career, Peter has predominantly worked in securing and delivering high value PFI/PPP partnership transactions in the Private Rental, Education, Healthcare, Central Government and Defence sectors. Peter has personally delivered programmes exceeding £3.5bn in contract values ranging from £50m to £500m.

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With over 20 years of practical experience in delivering technical and commercial project management solutions on PPP, Infrastructure and development transactions, Ben has a deep understanding of managing risk and applying control tools to successfully execute project strategies. Ben has delivered bid, transaction management, construction implementation and asset management functions on structured finance transactions across residential, hospitality and commercial sectors.

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