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12<sup>th</sup> October 2022

## **Consultation on the new safety regime for occupied higher-risk buildings**

The National Fire Chiefs Council (NFCC) is pleased to respond to the consultation published on 20<sup>th</sup> July 2022 on the new safety regime for occupied higher-risk buildings.

NFCC is the professional voice of the UK fire and rescue services (FRSs) and is comprised of a council of UK Chief Fire Officers. This response was collated by NFCC's Protection Policy and Reform Unit, and was drafted in consultation with our members across the UK FRS. Our response reflects their expertise and competence on the subject matter.

### **General Comments**

NFCC support the general principles for the Safety Case regime for occupied buildings. A number of recommendations are contained in our answers where we think the regulations need to be clear in order to achieve the policy intent of the Building Safety Act (BSA).

NFCC would like to take this opportunity to call upon the Department for Levelling Up, Housing and Communities (DLUHC) to issue clear guidance on how the evacuation needs of disabled people and persons who may find themselves in vulnerable positions will be regulated as part of the new regime.

NFCC note attempts by the Home Office to date to consult on this issue. However, we also note that the rules for how buildings are allowed to be built in the first instance, including their evacuation features, are overseen by DLUHC. The Regulatory Reform (Fire Safety) Order 2005 (the FSO), for which the Home Office took over responsibility in 2017, is not designed to easily enforce building works after a building is built. Even if it were, NFCC would question the intent of a system where buildings need additional works done to them retrospectively, because the design guidance is no longer fit for purpose.

In these regards, both before and after construction, NFCC observe that DLUHC are the policy owners of the Stay Put principle, and the only actor in Government with the ability to truly address the present Personal Emergency Evacuation Plans (PEEPs) recommendations.

In some cases, costly PEEPs solutions are being considered to compensate for failings and out of date guidance in the built environment. Arguably, if a person is vulnerable enough to require assistance to evacuate, management should be considering if there are further measures which would better protect their safety, such as increased use of sprinklers, refuge areas and evacuation lifts. As part of the proposed Safety Case regime, Accountable Persons (APs) should be required to consider further measures on how to mitigate risks.

As such, we fully support the proposals for the Safety Case regime, which we view as being the intended vehicle for addressing recommendation 33.22 of the Grenfell Tower Inquiry. As expressed by Dame Judith, the Safety Case should be a vehicle that requires the AP to reduce the risk of harm so far as is reasonably practicable.

DLUHC have stated that the Building Safety Regulator (BSR) can require improvements, including building work, in a building where reasonable steps have not been taken to manage building safety risks. Under the Safety Case approach, APs must ensure they have suitable and proportionate arrangements in place for managing building safety risks. If the BSR is of the view that building safety risks are not being managed effectively or the current arrangements are insufficient, they would be able to use their enforcement powers to ensure the AP takes reasonable further steps to reduce and manage risks.

NFCC implore DLUHC to ensure the regulations are drafted in such a way as to ensure that where, for example, there would be a clear cost/benefit to retrofitting sprinklers and that this would help to significantly mitigate risk in a building, the BSR will be able to require this even if it requires the AP to carry out building work which would go above the minimum guidance at the time of construction. Equally, if there were a case for retrofitting evacuation lifts.

If Safety Case reviews ask for improvements, then the non-worsening clause 4(3) must not prevent this. If Safety Cases cannot be used to require improvements, then we are not clear what powers they will give the BSR over and above the existing system.

NFCC have urged Government on many occasions to prioritise the review of Approved Document B (ADB) and introduce a legal requirement to retrofit sprinklers in all high rise residential buildings over 18m, or 6 storeys, which are served by a single staircase.

Measures that would bring English building safety standards closer to those of other countries to support safe evacuation would include:

- multiple staircases, with new tall buildings having a minimum of two staircases;
- evacuation lifts; and
- refuge areas with communications.

Without mechanisms to compel physical solutions in buildings, before or after they are built, we know, and we have seen that APs are likely to rely on management solutions such as waking watches to cover shortfalls in safety. These are costs that can be passed onto leaseholders and residents in lieu of investing in more sustainable mitigations.

Strengthening ADB in this way would be complemented in the new build regime by the need for the Fire and Emergency File to lay out the provisions incorporated into the building to facilitate the evacuation of disabled and other potentially vulnerable people. We believe, in future, this will help to achieve a package of holistic safety management.

There are several recommendations we make, which are crucial to achieving this intent.

The regulations and statutory guidance must make it clear beyond doubt that the benchmark for compliance with demonstrating safety, as part of a Safety Case, can go beyond the

minimum requirements of current building regulations guidance. If ADB is used or viewed by either the BSR or industry as the benchmark for compliance, then the policy intent can never be achieved because, as currently written, ADB does not appropriately consider the needs of disabled people or those who may find themselves in vulnerable positions.

NFCC hold concerns about the weight that the Health and Safety Executive (HSE) may be planning to attach to ADB as a benchmark for compliance. We, therefore, strongly encourage DLUHC to address this by producing clear and unambiguous guidance.

We also again implore DLUHC to expedite the review of ADB.

The current situation we find ourselves in makes it implicit that ADB does not provide equality to disabled people in residential flats to enable them to leave their building if there is a fire. If the appropriate part of ADB were updated to accommodate for disabled persons from the outset, then there would be a reduced need for retrospective changes to the building.

### **Legislative Primacy**

It is NFCC's position that the regulations and supporting guidance must make it clear that the BSAR is the legislation which takes primacy.

Dame Judith concluded in the Independent Review that, despite having joint protocols for the enforcement of the overlap of the FSO and housing legislation, the mismatch across these two frameworks makes it significantly more challenging to achieve holistic outcomes in residential buildings. This is the reason a new set of enforcement powers was developed. Those which are currently available to FRSs, even where they are used, are not achieving the *outcomes* that everyone desires. The most obvious examples of this are the circa 200+ buildings that remain with waking watches in place, despite efforts that have been made by regulators, including the £6m invested in the Building Risk Review and the £1m invested in the Joint Inspection Team.

The policy intent is that the wider set of new powers introduced by the BSA go beyond the types of enforcement options available to FRSs under the FSO. The new sanctions under the BSA will in future be available to the BSR to pursue different, more proportionate, outcomes within buildings to those which are currently available within the FSO and other existing legislation. We have explicitly written to DLUHC to seek assurance that these powers will enable the BSR to request works to buildings where they may be the best most proportionate way to manage risk, for example, by requiring the retrofitting of sprinklers.

The regulations and clear guidance for regulators should lay out the policy intent that safety issues in buildings should be approached and addressed via the new set of powers and sanctions that the BSA provides, wherever possible. This is particularly necessary in buildings where the FSO and the Housing Act 2004 also apply, especially mixed-use buildings. This approach is necessary to:

- address the finding of the Independent Review and achieve new outcomes in buildings.
- ensure there is a holistic approach to safety.
- ensure that there is clarity for Principal Accountable Persons (PAPs) and APs, and that they do not face multiple different enforcement actions from a number of different regulators.
- ensure that regulators are working to the spirit of the Regulators' Code.

- ensure that work which FRSs undertake within buildings in scope is covered by an appropriate funding stream and does not impact negatively on FRSs' Risk Based Inspection Programmes for other higher risk buildings which have been left out of scope of the BSA.

Yours faithfully,



**Nick Coombe**  
Head of Protection Policy and Reform Unit  
National Fire Chiefs Council

## Question Responses

### 2. Registration

#### Timescale and process for registration

**Question: Do you agree or disagree that 6 months is sufficient time for the principal accountable person to provide the information to register their building?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you disagree or neither agree nor disagree please say how many months you consider would be necessary to provide the information for registration?**

NFCC is not averse to a specified period of 6 months. We do, however, harbour concern that there may not be adequate guidance for PAPs in time to refer to and prepare prior to the regulations coming into force. Delays to this guidance is likely to hinder a PAP in preparing for the changes and may slow compliance needlessly.

In addition, we believe that a standardised template should be provided. This should be made available well ahead of the commencement of the regulations to ensure that PAPs stand the best chance of identifying and providing information to accompany applications for registration in a consistent and satisfactory manner.

There should also be a transparent and auditable process where there is a proposed change in ownership of relevant premises included in the regulations, during any 6-month period. Conveyancing protocols to secure this could be provided within the regulations.

When the regulations come into force, and in circumstances where buildings have yet to be completed, NFCC believe there is a risk that requirements to provide information to accompany applications for registration may not be considered during the handover. As opposed to just producing guidance, which would be considered essential in any event, the building control body responsible should reinforce those requirements in occupation at the time of the building's completion certificate being issued.

**Question: Do you agree or disagree that an agent may act for the principal accountable person in connection with the application?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree, please explain what changes you think should be made.**

In principle we do not disagree. Similar provision is provided within [Article 5 of the FSO](#). Regulatory safeguards may be necessary to ensure clarity of obligations of relevant parties,

and the ability for regulators to identify such parties and seek accountability should the need arise.

**Question: Do you agree or disagree that the required information is sufficient to identify the building and whether it is within scope of part 4 of the Act, and identify the principal accountable person and accountable person(s) (if there are multiple accountable persons) for the building?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree, please explain what else needs to be included. Could you explain why this information is important to include in registration?**

NFCC agree in principle with most of the proposals, however, as we have highlighted to DLUHC on numerous occasions through the remediation workstreams of the Building Safety Programme, the use of UPRNs by central Government has been a requirement since 2020. The Open Standards Board, via the Government Digital Service, mandated that from 1<sup>st</sup> July 2020, the UPRN and USRN are the public sector standard for referencing and sharing property and street information. Further information about the standards for use by Government is available on [GOV.UK](https://www.gov.uk).

Even where incorrect UPRNs are provided, they provide a starting point to work from. This will be highly relevant information where addresses are complex, such as in a single building formed of different occupancies. Straightforward guidance should be provided on supplying the correct information. We have experience of difficulties in locating premises where the address information is incorrect, and there is no guarantee that the PAP will provide the correct address.

In addition, some of the prescriptive requirements would benefit from greater clarity, such as:

- Why an individual has been nominated to act on behalf of the PAP or APs and in what capacity.
- What is meant by the term 'a registered private provider of social housing'. It appears to imply that the BSA and BSR do not apply to premises save where they are registered to provide social housing. This has the potential to cause confusion and should be clarified.
- The number and type of dwellings, for example, suitable for families, couples, or single occupation. This would be helpful in determining rough maximum occupancy figures.
- The purpose groups in occupation in mixed use buildings. While occupancy figures are difficult to determine in some premises, the BSR may determine them using the number of dwellings and the average number of occupants per unit. It would be beneficial to understand the occupancy types within the premises generally. A suitable list would identify which premises are purely residential, and those which are not and what they are used for.

## Changes to registration information

**Question: Do you agree or disagree that the principal accountable person should notify the Building Safety Regulator of any changes to registration information?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what else needs to be included.**

Such provision appears to harmonise with the spirit of the new fire/building safety regime in seeking to ensure compliance and greater safety within the built environment, by ensuring important information is provided to relevant parties, in good time.

**Question: Do you agree or disagree that the Building Safety Regulator should be notified within 14 calendar days, excluding Christmas Day, Good Friday or a bank holiday in England and Wales, of the change occurring?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you disagree or neither agree not disagree, please state how many days you consider should be allowed for notification of changes?**

NFCC agree, however, we question how this will be regulated by the BSR, and what regulatory remedy will be available if a PAP fails to inform the BSR within 14 days?

**Question: Do you envisage any difficulties with the requirement to provide a physical address in England and Wales for general communication and the service of notices?**

- Yes
- No
- Don't know

**Please provide an explanation for your answer to the question above. If you envisage difficulties, please explain why and what mitigations do you propose?**

NFCC support the requirement to provide a physical address in England and Wales. General communication appears unproblematic, except for the routine impediments which may cause delay. Electronic methods should be offered, and guidance provided accordingly.

Service of formal communication does require further thought, however. NFCC believe provisions similar to those provided within [Article 48 of the FSO](#) and [Section 29 of the BSA](#) should be introduced to improve consistency. Such provisions provide adequately for formal Service, both hard copy and electronic, and the FSO makes provision for those entities carrying out business outside of the UK, but with a principal office within the UK (FSO Article 48(3)). Moreover, the FSO provides reciprocal regulations regarding Service for those

entities being regulated, which we believe is helpful and should be addressed within the regulations.

## **Buildings built under the new regime**

**Question: Do you agree or disagree that for buildings built under the new regime, the principal accountable person must provide the unique reference number for the completion certificate?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree, please explain what changes you would make.**

We question whether new unique reference numbers are needed, since UPRNs already provide for the administrative identification of buildings and creating a new system could create duplication and unnecessary additional burdens.

Please see our earlier comments in relation to UPRNs above.

## **Buildings that will be subject to transitional arrangements**

**Question: Do you agree or disagree that for buildings for which construction has started before the new regime comes into effect and which are subject to transitional arrangements, the principal accountable person must provide the appropriate certificate to the regulator?**

- ~~Agree~~
- ~~Disagree~~
- Neither agree nor disagree
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree, please explain what changes you would make.**

In principle, requiring the PAP to provide the appropriate certificate to the BSR would suffice. It is evident from the Grenfell Tower Inquiry, however, that many buildings have been signed off and issued with completion certificates, thereby implying that they have been built to a satisfactory standard, despite numerous construction defects and/or building safety failings.

It is unclear, therefore, how providing the appropriate certificate to the BSR will assist. Such buildings will still be subject to the registration and Safety Case regime. These buildings will not have been subject to the enhanced regulation that the gateway process will bring and, therefore, should not be regarded in the same way as buildings that have been through the gateway process.

NFCC notes the passage of the consultation relating to “building regulations standards in place at the time” and requests general clarification of how this principle will interface with the requirements of the future Safety Case regime beyond the transitional arrangements.



DLUHC have stated that it is the policy intent that the benchmark for compliance will be future compliance with the Safety Case once the building is occupied, enabling powers to require measures in buildings which could go beyond the minimum requirements set out in building regulations guidance.

To ensure this will work properly, NFCC propose that [Regulation 4\(3\) \(non-worsening\) of the Building Regulations 2010](#) be disapplied for buildings within scope of the new regime.

## Existing buildings

**Question: Do you agree or disagree with this proposal?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree, please explain what changes you would make.**

NFCC believe that simply confirming “whether to their knowledge the building met the appropriate building standards applying at the time of completion” is neither adequate nor robust.

A PAP should demonstrate that they have undertaken sufficient research with the appropriate bodies to evidence that the building met the appropriate building standards at the time of completion. Furthermore, in circumstances where the building has undergone major alterations or refurbishments, the PAP should be able to demonstrate that compliance has been evidenced to the appropriate standards. It should be noted that Grenfell Tower appeared to have been built to the appropriate standards (of its time), and it is now evident that the renovations, refurbishment, and the non-worsening clause led to the building defects and degeneration of the original build standards.

In some circumstances, a ‘paper-trail’ will not be available for a party seeking to rely upon it or for the BSR to audit, as numerous buildings in scope will have been built many years ago. As a result, it is unclear how is it proposed a party without such documentation and stating that, to its knowledge, the building complied, could be robustly challenged and held to account.

## 3. Building Assessment Certificate

### Application for Building Assessment Certificate

**Question: Do you agree or disagree that 6 months is the appropriate time scale for calling in (i.e. issuing a direction) applications for a building assessment certificate following occupation of a registered new build building?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree please set out (in months) what you consider the appropriate time scale should be?**

NFCC believe that 6 months is largely an appropriate time scale, however, greater clarity is needed to understand the proposed policy for the following salient matters:

- How will the BSR identify new builds without a building assessment certificate or those who have not applied, and regulate accordingly and consistently, in particular regarding a PAP not making an application within the specified time?
- What will the threshold of testing the legitimacy of a PAP's 'reasonable excuse' submission be, and, in the event of a 'grace period' being agreed, what terms will apply?

It appears that, in some cases, a PAP may not be able to gather the relevant information within the specified timeframe. We are concerned that, in some circumstances, the PAP will not have had sufficient time to practice, superintend, and evaluate some of their attempts at compliance. For instance, the effectiveness of their resident engagement strategy or management of fire safety risks. These matters require consideration.

It is also possible that the PAP may need to undertake further work to form its Safety Case report. This may involve the PAP seeking the support of other resource from the industry at a time when demand will undoubtedly be high.

### **Prescribed information to accompany an application for a building assessment certificate**

**Question: Do you agree or disagree how the detail about the mandatory occurrence reporting system should be given in connection with the application?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

NFCC agree with the proposal that the PAP must provide an accompanying document to demonstrate compliance with [Sections 87\(5\) and \(6\)](#) as well as [93\(1\)](#) of the BSA. They should also provide assurance to the BSR of how the system will be monitored and maintained, how GDPR will be met, who will have access to it, and why.

There is little information currently available to assist PAPs or regulators to determine whether the information provided is of a suitable standard. This will need to be addressed, as simply giving information about the mandatory occurrence reporting system will be insufficient. If such information is made available and is appropriate for determining whether the reporting system will be effective and how it will contribute to the safe occupation of the building, then this proposal can be fully supported.

**Question: Do you agree or disagree with the proposed requirements for the provision of prescribed information for application for a building assessment certificate?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~

- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please describe the prescribed information you think should be provided.**

NFCC agree with the proposal that a statement confirming that each AP has provided the information and copies of the documents will be sufficient. We would add, however, that the statement would benefit from being signed by all the APs involved to ensure that the PAP is not exploiting the process.

## **Issue or refusal to issue a building assessment certificate**

### **Notices under section 81 – content and requirement for copies to be served on all other accountable persons for the building**

**Question: Do you agree or disagree that this information must be included in a notice refusing to issue a building assessment certificate?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you disagree or neither agree nor disagree, please explain why and what you think should be included in the notice.**

NFCC believe that there is merit in informing the PAP as to how long the refusal notice will be in force for. For example, to confirm whether the PAP can resubmit or submit a new application within 6 months of a refusal notice. In addition, signposting to relevant guidance that may assist the PAP to undertake actions to remedy the contravention, if it is possible to do so, in order to better prepare them to reapply. NFCC also request clarification on how many refusal notices it would take for the BSR to exclude a PAP or the building.

**Question: Do you agree or disagree that copy notices issued by the Building Safety Regulator under sections 81(3) or (4) should be provided to all accountable persons for the building?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree for the benefit of transparency and re-assurance. Moreover, there is benefit for all APs to receive copy notices since building safety requires the efforts of everyone involved, and this may streamline the communication and regulatory processes by involving all relevant parties.

Nevertheless, NFCC would suggest that the BSR ensure adequate safeguards, including guidance, is in place to apply appropriate data protection.

## **Display and content of certain information about accountable persons and the building assessment certificate**

**Question: Do you agree or disagree that the Building Safety Regulator must plan to conduct an assessment at least once in every 5 years?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please set out in years the frequency with which you think the Building Safety Regulator should conduct assessments.**

This proposal needs to be strengthened to ensure that, not only must the BSR plan to conduct an assessment at least once in every 5 years, but that the assessment must actually be undertaken at least once in those 5 years. The introduction of such a policy should provide assurance that, not only is the BSR fulfilling its duty through its strategic plan ([Section 17 of BSA](#)), but also prioritising resident safety in this new regime by monitoring and managing compliance with the BSA.

**Question: Do you agree or disagree that this is the right information to be included in a building assessment certificate?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what information you think should be included.**

The proposed information to be recorded on the building assessment certificate seems sufficient. It may also be of merit to include the proposed date of the next scheduled assessment or how long the certificate is valid for. This may be expressed as an 'inspection no later than' as a specified time to allow a degree of flexibility.

**Question: Do you agree or disagree that this is the right level of information which needs to be included in a displayed notice?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what information you think should be included.**

NFCC agree that, in principle, this is the right level of information, however, the BSR needs to ensure that appropriate safeguards are in place to ensure the safety of the APs and their families, especially in circumstances where there is any grievance. Furthermore, we agree with the proposal that the notice must include the date the notice was published and would encourage that the notice is reviewed and updated regularly to ensure any significant changes are captured and recorded. For example, change of contact details or change in AP, especially where there may be multiple APs.

## 4. Accountable Persons

**Question: Do you agree or disagree with the approach set out above?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, how do you envisage we define parts of a building for which the accountable person is responsible for?**

The proposal appears to be to vary the person responsible for carrying out repairs, and the extent to which that applies to the common areas or not depending on the specific nature of the occupancy, specifically the length of the lease. This could be confusing for the AP and, potentially, the BSR. NFCC is concerned that this suggests that the APs' duties only extend to the common areas where they have control. The proposals do not include those flats occupied under long leases or the typical leaseholder in such premises. It is not clear how these proposals would amend any existing processes, and it is difficult to see in practice how this alters any of our existing understanding. The duties on residents and owners in [Section 95 of the BSA](#) appear to apply regardless of the leasehold length and, therefore, this section appears only to be relevant to those responsible for repairs.

## 5. Principles for managing building safety risks and the Safety Case report

**Prescribed principles for managing building safety risks**

**Question: Do you agree or disagree with the proposed principles that the principal accountable person and accountable person(s) must follow when managing building safety risks?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the proposed principles. The following are several overarching principles which require more detail to provide clarity:

- Ensuring resident voices are simply heard is not enough. PAPs and APs need to ensure that they have a strong and effective resident engagement strategy and that resident voices are not just heard but acted upon, especially where life safety is in issue.
- Ensure that dangerous features are not applied or used and that buildings are built to be safe in the first instance. NFCC appreciate that, whilst this is more applicable to new builds, it should not prevent existing buildings from undertaking improvements or retrofitting upgrades to reduce or even eliminate the risk, even if the building had been built to the standards in ADB in force at the time. DLUHC must ensure that the non-worsening provisions do not prevent such measures where it would be necessary or reasonably practicable to do so.
- Provide clear instructions and information to employees, contractors, residents, and any other relevant persons as defined in the FSO. We consider this especially important as not all HRRBs or APs will have employees, for instance, within the private sector.

NFCC has previously made comments to DLUHC in response to the initial drafts of the regulations to which this consultation pertains specifically on the principles of prevention.

NFCC has previously taken the position that the term 'collective safety' was better used to describe 'depth of safety' where relevant safety measures would work together to prevent single points of failure. This approach is not reflected in these proposals, and we would encourage officials to reconsider this.

## **Form and content of Safety Case reports, and notifications and submissions of Safety Case reports to the Building Safety Regulator**

**Question: Do you agree or disagree with the proposed content of the Safety Case report?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you have answered disagree or neither agree nor disagree, please explain what changes should be made.**

Whilst NFCC agree with the proposed contents of the Safety Case report and the wider Safety Case, we strongly believe that some of the terminology is ambiguous. This might be interpreted, by design, to allow for the system to be manipulated. These terms include the following:

- 5.36 and 5.38 – the phrase “may include or may be referenced” suggests that the items referenced are not mandatory and are not important elements of the report. The descriptors of the building used to set the context and the risk assessments are vital elements of the report alongside the reassurance that the Safety Case provides. As a result, they should be mandated as minimum requirements.

- 5.36 – NFCC consider that additional information, such as the number of residential units and number of residents at maximum capacity, would be constructive to the BSR as well as the local FRS to help determine the level of resource and attendance requirements in the event of an incident.
- 5.37 – NFCC would welcome the requirement for PAPs and APs to demonstrate that every effort has been made and evidenced in ascertaining the necessary information to support the Safety Case report. The current draft implies that this will not be a mandatory requirement.
- 5.46 – the proposal is appropriate, but the language needs to be clearer as to what the expectations on the PAP and APs are, especially where it concerns matters such as informing the residents of what to do in the event of a fire or other emergency. It should follow that the PAP or AP must include this information as part of their resident engagement strategy and communications plan. This will provide residents with assurance in regard to fire safety.

**Question: Do you have you any views on the format in which a Safety Case report must be produced, stored and submitted?**

The current draft wording is open to interpretation. By saying that the Safety Case “should” be a written document rather than “must” implies that other formats will be acceptable. Robust guidance is required to provide clarity as to what other formats will be acceptable, if any. Furthermore:

- 5.50 – it is currently unclear whether any change in occupancy and residents’ needs is included in the overarching “change to the assessments made of building safety risks, or the steps taken to manage them.” This needs to be made clear to ensure that it is not just the structural or physical changes and assessment which will need to be addressed but must also recognise that those in occupancy are equally important.
- 5.51 – NFCC agree that, when a report is updated and the BSR notified, the notification should set out the reason for revision and an overview of the main change. Nevertheless, we believe that this needs to go further to have any meaningful value and include an assessment of the impact the changes and revisions will have on the management of building safety as well as the residents and those occupying the building.

**Question: Do you have any views on the way in which the Building Safety Regulator must be notified by the principal accountable person following the completion or update of a Safety Case report?**

No further comments.

**Question: Do you have any further observations you would like to share?**

NFCC believe that the process of developing and maintaining a Safety Case to produce a suitable Safety Case report would be greatly enhanced by delivering the specification for the report as a PAS or FLEX document. This would have the benefit of facilitating cross-industry development of the requirements within a formal document creation process. This would also align to previous work in the sector, such as PAS79, which avoid the process simply resulting in a tick box exercise, which we understand is a concern of the HSE.

## 6. Mandatory occurrence reporting

### Establishing and operating a mandatory reporting system

**Question: Do you agree or disagree with the proposals for establishing and operating a mandatory occurrence system by the principal accountable person?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC is concerned that many PAPs and APs may not have suitable technologies to maintain an appropriate reporting system, and that the financial burden of establishing and operating a mandatory occurrence system will fall to the leaseholders and residents, especially for those in existing buildings.

Clarity is needed as to who will have access to the mandatory occurrence reporting system, and what assurances residents and other interested persons will have that any issues they raise will be submitted through the system and that the BSR will be notified as necessary. The first bullet point of paragraph 6.7 states that the reporting system will “enable accountable persons, residents and those managing or working on the building to report safety occurrences.” However, paragraph 6.13 states that residents and other persons will report safety issues through the PAP or APs. It is currently unclear how accurate and timely reporting will be ensured if residents are dependent on the PAP or APs to process reports.

### Circumstances for requiring mandatory reporting

**Question: Do you agree or disagree with the proposed circumstance in which a safety occurrence is reportable?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Whilst NFCC agree with the proposed circumstance in principle, we do have the following concerns which Government will need to consider:

- Some PAPs and APs will not have the skills, knowledge, or competence to make such a judgement. Guidance needs to be clear that the PAP or AP should seek assistance from competent persons to help make this judgement. NFCC believe that there is a tangible risk that a PAP or AP will not consider an issue serious enough to be deemed a risk condition. An even bigger risk is where the PAP or AP opts to ignore a safety concern due to cost.



- In paragraph 6.19 it is unclear how the BSR will ensure the drive to proactive safety and reporting is happening and to determine whether there has been positive culture change.

**Question: Do you agree or disagree with the definition of a safety occurrence?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The definition of a safety occurrence is relatively broad and open to interpretation as to what constitutes a "significant number" when referring to the number of people at risk of death or serious injury. It is currently unclear what the threshold for a "significant number" would be and this will need to be clarified.

Furthermore, during the Safety Case trials, emphasis was placed on the potential for fire to spread beyond the compartment of origin, which would represent a failure of the building's safety system and a resultant risk to occupants. We are not clear on why the focus has shifted to the potential for injury or death, which is harder to quantify, from the design trials.

While it is possible that structural collapse can be isolated as far as it might only affect a very small part of the building, such as a single compartment, it is more likely that where this occurs there may be a significant impact on other structural elements. There should be a duty to fully investigate not only the occurrence but the potential further impacts of such an occurrence.

**Mandatory occurrence reporting to the Building Safety Regulator**

**Question: Do you agree or disagree with the proposed information that should be reported to the Building Safety Regulator?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the proposed information. There would also be merit in requiring the Building Registration Certificate number and date of last assessment.

**Question: Do you agree or disagree that safety occurrences should be reported to the Building Safety Regulator within 10 calendar days?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC believe that the serious nature of the incidences being reported under mandatory occurrence reporting should be reported to the BSR without delay and, therefore, 10 calendar days is too long given that most of the required information (as set out in paragraph 6.22 such as “the date and time of the safety occurrence; the address of the building at which the safety occurrence happened and the name and contact details of the principal accountable person or the accountable person making the report”) should all be available immediately. NFCC appreciate that the detail of the safety occurrence may take time, especially if further investigation is required, and, therefore, recommend that the BSR adopts the following two step notification process:

Step 1 – an immediate notification informing the BSR of the occurrence with the prescribed information including the date and time of the safety occurrence, the address of the building at which the safety occurrence happened, the name and contact details of the PAP or AP making the report, and confirmation to the BSR that further investigations are taking place and that a full report detailing the safety occurrence will be submitted within 7 calendar days of the safety occurrence.

Step 2 – the details of the safety occurrence, including the nature **and impact** of the risk, is submitted within 7 calendar days of the safety occurrence.

## 7. Residents voice

### Providing residents with building safety information

#### Information the principal accountable person or relevant accountable person will provide to residents

**Question: Do you agree or disagree with the instances in which the accountable person will be required to provide residents with information?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Whilst we agree with the instances for the provision of information, NFCC believe that the PAP or relevant AP should provide residents with information not only when the building is first occupied, for instance, but also when a new resident moves in, or when the information becomes out of date.

One of the biggest issues raised by residents and property owners to FRSs is the lack of consistency and standardisation in the information provided to residents. The proposal that the relevant AP will provide the relevant information to the residents in their part of the building where there are multiple APs risks exacerbating this problem further, creating a

tiered system within a single building. A whole building approach needs to be adopted whereby the PAP ensures that there is consistency in the information that the relevant APs are providing to their residents.

It is important that residents are provided with a sufficient level of relevant information to enable them to better understand what fire safety arrangements are in place to keep them safe. This provision should align with the requirements to provide information to relevant persons under the FSO, in addition to the requirements set out in the Social Housing Regulations Bill and in the private rented sector white paper to ensure that there is no discrepancy between residents living in high rise residential buildings versus other residential building types.

The guidance on the provision of information should make clear the expectations on an AP, for example, leaseholders who sublet could technically be an AP. Engagement with FRSs and the Governments' own research<sup>1</sup> supported by Dame Judith Hackitt identified that the provision of information is vital in building trust between residents and landlords, and ensuring residents feel safe in their own homes. Feedback and research have also identified the need for landlords to regularly repeat fire safety information to residents, and that the way the information is provided is equally important and should be available in an accessible format.

NFCC continue to highlight this discrepancy and inequality in our response to various Government consultations (such as our responses to DLUHC on the Social Housing White Paper, the Decent Homes Standards, the Carbon Monoxide and Smoke Alarm consultation, the Health and Housing Safety Rating System Review, Electrical Safety review as well as the Home Office's FSO call for evidence and DLUHC's earlier consultation on the Building Safety Bill) to ensure consistent standards across the social and privately rented sectors.

**Question: Do you agree or disagree with the proposed types of information residents should always receive?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above.**

NFCC support the proposed types of information that residents should always receive. We believe, however, that most of the examples provided under paragraph 7.9 should be mandatory and not a matter of choice. By providing a prescribed list of minimum required information, ambiguity would be removed for both the AP and residents.

**Question: Are there any specific documents or information you think should be included or excluded from the information residents receive automatically?**

- Yes
- No
- Don't know

**Please provide an explanation for your answer to the question above.**

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<sup>1</sup> [The Social Sector \(Building Safety\) Engagement Best Practice Group: Final Report](#)

The following should also be included in the information residents automatically receive:

- How residents can keep themselves safe in their own flat, such as in flat prevention measures or other sources of information, for example, the FireKills campaign.
- The buildings' evacuation strategy and what residents and those visiting the building should do in the event of a fire, which should be detailed in the resident engagement strategy that will be provided to all residents. The strategy should also provide information on how to alert their Responsible Person (RP) that they may need assistance in the event of an evacuation.
- The relationship between the AP and the RP where they are two different persons.
- What costs will be charged to the resident, what these charges will be used for, and why.

### Requests for further information

**Question: Do you agree or disagree with the proposed lists of further information that residents can request?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**If disagree or neither agree nor disagree, please explain what changes you propose and how it would support residents in understanding the safety of their building.**

NFCC support the need for residents to have access to relevant information in order to provide assurance and to help them to understand what they can do to keep themselves, others, and their building safe from fire. Furthermore, the AP should be required to record any such requests including the reason for the request, what information was provided, and on what grounds. This would ensure that appropriate safeguards are in place for the resident, the PAP and/or AP, and any other relevant persons that may be involved whilst also ensuring that data protection and building security are not compromised.

In the event that the PAP or AP has previously been subject to enforcement action from a public safety regulator, it would be useful to have knowledge of that, and, if such enforcement action has not been recorded within a public register, an onus on the PAP or AP to disclose such action should be required.

### How the information must be provided

**Question: Do you agree or disagree with how information will need to be provided to residents?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree that information should be provided in a clear format that is easily understandable to anyone with no knowledge of fire or building safety, and that reasonable efforts should be made by APs to provide information in residents' preferred format.

**Question: Do you agree or disagree that residents should be able to request information in an accessible form?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Information should be available in an accessible format in line with Government guidelines to ensure that critical safety information can be understood by all residents.

## **Exemptions**

**Question: Do these exemptions strike the right balance between making sure residents can access information and the need to protect sensitive information?**

- ~~Yes~~
- ~~No~~
- Don't know

**Please provide an explanation for your answer to the question above.**

Clarity is needed on how exemptions will be managed. It is not uncommon for businesses to use exemptions as a method of purposefully not issuing information despite being legally able to. Where residents believe information is being withheld unreasonably, they should be able to find redress through the BSR complaints procedure, which should balance the request for specific information against any genuine concern of commercial confidentiality.

**Question: Do you agree or disagree with the proposed approach to the intellectual property and commercial confidentiality exemptions?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

NFCC support the proposed approach and principles expressed in paragraph 7.20 that safety, transparency, and enabling residents to fully participate in the way decisions are made about the buildings they live in should be able to override commercial confidentiality.

## The residents' engagement strategy

### Providing the residents' engagement strategy

**Question: Do you agree or disagree that it should be up to the principal accountable person to decide how to provide residents with a copy of the residents' engagement strategy?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

NFCC agree, however, the PAP should be required to do so in consultation with the residents and through cooperation and coordination with the other APs to ensure that all needs are considered and addressed.

Guidance should be produced to ensure that resident engagement strategies are produced and implemented correctly, including around seeking advice from a competent person where necessary. This will help to ensure that the strategies are fit for purpose and give residents confidence that the level of engagement will be suitable.

**Question: If you think there should be specific requirements about how the residents' engagement strategy is provided to residents, set these out below.**

It is vital that the resident engagement strategy reflects the needs of the residents, is specific to their building, and is available in various formats including electronically, as a hard copy, and in accessible formats for those who may need them.

There also needs to be resilience whereby the PAP can discharge the duty, though not their responsibility, to a fellow AP or competent person if the PAP is unavailable, for example, due to illness.

### The content of the residents' engagement strategy

**Question: Do you agree or disagree with the proposed minimum requirements for when residents should be provided with building safety information?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

Notwithstanding situations which require immediate redress under the FSO, NFCC believe that proposed minimum requirements are reasonable. However, we believe that they should also include a requirement to inform residents when routine building safety and maintenance works are planned or taking place so that they can be fully engaged. The requirements should not simply be focused on costs, but also account for all aspects of the housing needs, including routine maintenance, repairs, and information on the evacuation strategy. NFCC are aware of existing resident engagement strategies which have been developed in

consultation with fire risk assessors, contractors, and the local FRS, which should be regarded as best practice to assist PAPs.

**Question: Do you agree or disagree with the proposed minimum requirements for the aspects of a decision residents should be consulted on?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

NFCC agree that the proposed minimum requirements for when residents should be consulted are reasonable, but that they should also include consulting with residents on their role. For example, as the resident single point of contact, helping to choose materials for building safety work and assisting with the development of a communication strategy.

## **Methods of engaging with residents**

**Question: Do you agree or disagree with allowing accountable persons to decide how best to seek residents' views?**

- ~~Agree~~
- ~~Disagree~~
- Neither agree nor disagree
- ~~Don't know~~

**If you disagree - explain your reasoning. Include any methods of engagement that should be used.**

NFCC agree that PAPs will be best placed to coordinate and implement the resident engagement strategy. However, the PAP will also require input from residents and, in some cases, external partner organisations in instances where residents with disabilities or neurodiverse needs are concerned in order to ensure that information is fully understood. Only in doing so can the PAP demonstrate they are meeting their responsibilities.

This approach is supported by evidence from organisations such as Tpas and the National Housing Federation as well as experience from FRSs when partaking in resident forums. Research has highlighted that resident engagement cannot and should not be left to the PAP or property owner in isolation from the residents. Seeking resident views and engagement should not be done *to* residents but should be done *with* residents through forums such as residents' boards, tenant and resident groups, resident advocates, and ambassadors.

## **Consulting on the residents' engagement strategy**

**Question: Do you agree or disagree with the proposed approach to when the residents' engagement strategy should be consulted on and with who?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

The triggers for consultation should be extended to include any material change to the building's structure, safety features, or occupancy type. The resident engagement strategy should also be reviewed as part of the review process for the fire risk assessment and Safety Case report, with reviews taking place more frequently in buildings with a high turnover of residents.

NFCC need reassurance that this proposed approach will align to the expectations and requirements as set out in [Article 9 of the Fire Safety \(England\) Regulations 2022](#) (the FSEng Regulations), the rules on provision of information in the FSO, and the Social Housing Regulations Bill.

In terms of who should be consulted, NFCC agree that all APs in a multiple AP situation should be consulted, and the cooperation and coordination requirements of [Article 22 of the FSO](#) should be mirrored. Moreover, residents should be consulted as to how and when they want to be consulted, and on what building and fire safety issues.

The outcome of the consultation needs to be shared with the residents and other persons who partook in the consultation, so they are informed of the outcome and any related decisions

**Question: Do you agree or disagree with the minimum period for consultation?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**If you disagree, what period would you propose instead and why?**

The minimum timeframe of 3 weeks appears arbitrary. Whilst we appreciate that a minimum timeframe may be necessary as a guide, the amount of time needed for consultation will vary depending on the specific circumstances in the building and the issues being consulted on. Guidance should be provided to APs to give them clearer direction in this area, and such guidance should also encourage APs to engage with residents in more ways beyond simply requesting comments on a document. Appropriate methods of engagement would also include face-to-face meetings, presentations, and door-to-door visits.

**Keeping the residents' engagement strategy under review**

**Question: Do you agree or disagree with the minimum timeframe for reviewing the residents' engagement strategy and the further instances where a review will be required?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above.**

Guidance should be provided to assist PAPs in determining when a review might be necessary. For example, when updating communications or management systems, or due to



changes in tenancy arrangements. These and other considerations will assist the PAP in understanding what the relevant triggers for review might be.

**Question: Are there other specific circumstances that should require a review of the residents' engagement strategy?**

- Yes
- ~~No~~
- ~~Don't know~~

**If yes, what circumstances should require the residents' engagement strategy to be reviewed? Explain your reasoning.**

A change in AP, in occupancy type, or in material alterations to the building structure should also trigger a review. The strategy should also be reviewed as part of the Safety Case report and review stages or if there is a complaint raised by a resident, contractor, or other interested party, such as the local FRS or the BSR.

## Complaints

### Making a complaint about building safety issues

**Question: Do you agree or disagree with the approach that anyone can make a relevant complaint?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

NFCC welcome the approach that there will be no restrictions on who can make a complaint providing it meets the definition of a 'relevant complaint'. NFCC appreciate that detail will follow in secondary legislation, and we encourage the provision of dedicated statutory guidance on how the AP should operate a complaints' procedure. However, it is important this guidance is unambiguous in setting out:

- the responsibilities of the PAP and the relevant AP.
- the role of the BSR and other regulatory authorities, such as the FRS.
- the definition and clear examples of a 'relevant complaint' and who decides whether a complaint is relevant or not.

NFCC are keen to understand what the process will be should the complaint be raised by another enforcing authority, such as the local authority or local FRS, in addition to how the BSR will investigate and enforce, especially if the multi-disciplinary team is involved.

## The complaints policy

**Question: Do you agree or disagree with the minimum requirements for a complaints policy as set out above?**

- ~~Agree~~
- ~~Disagree~~

- Neither agree nor disagree
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

Additional information in the policy would be useful. It would be beneficial for the resident to know whom they should take their concerns to, what to expect from the process, and who will decide whether a complaint is relevant or not. We are concerned that, if determination is left solely to the PAP or AP, this will not meet the intent of the recommendations made by Dame Judith Hackitt in the Building a Safety Future Final Report.

Further clarity is also needed around whether sublet tenants and privately rented sector residents can escalate their complaints to the Housing Ombudsman or whether leaseholders are 'relevant owners' and, therefore, if they can escalate concerns to the New Homes Ombudsman, the BSR, or the Housing Ombudsman, and, if so, which would take primacy.

It is unclear whether there is a distinction between the bodies residents can consult for higher risk buildings as opposed to out of scope buildings. It appears that residents in higher risk buildings can have their concerns heard directly by the BSR, but residents in buildings under 18m in height will need to refer to the Housing Ombudsman, which could create a two-tier complaints escalation and redress process.

In previous responses to Government consultations, NFCC asked for clarity on the 'No Wrong Door' approach consulted on as per the Government's policy intent. It is still unclear, for example, whether a complaint from a resident received by a local FRS can be referred up to the BSR and/or Housing Ombudsman.

**How to make a complaint**

**Question: Do you agree or disagree with the requirement to have suitable mechanisms for receiving potential complaints and to consider a complainant's communication preference?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Explain your reasoning. If you disagree, set out any further requirements you believe are necessary below.**

Suitable mechanisms should be in place to ensure that all residents and complainants are able to participate fully in the complaints process. Requiring APs to consider these arrangements and the complainant's preferences will help to ensure that complainants are not excluded from the process due to circumstances outside of their control, such as a disability or impairment.

**Question: Do you agree with the requirement to display how to make a complaint in the common parts of the building?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~

**Please provide an explanation for your answer to the question above.**

NFCC believe this requirement should not be restricted to making a complaint, but also be used to encourage and signpost residents, contractors, and visitors to report building and fire safety concerns that they identify. It should be recognised that not all concerns will be complaints, and clear guidance and direction on how to raise a concern or a complaint would be welcomed.

## Remedies

**Question: Do you agree or disagree with the requirements to communicate clearly with complainants when rectifying a relevant complaint?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

NFCC agree with the proposal to communicate clearly with the complainant but do not agree that the communication should be limited to a relevant complaint being rectified.

Communication should be open from the moment a complaint or concern is raised with the PAP or AP confirming receipt of the complaint or concern and what the complainant should expect next. However, there will be situations where it will not be possible for an issue to be rectified, and the PAP will need to inform the complainant of this, providing reasons why and what options are available to the complainant including an opportunity to escalate to the BSR.

All complaints and concerns, what action was taken, when, and by whom should be recorded as part of the Safety Case and resident engagement strategy in order to support the golden thread of information. The information should be reviewed periodically to establish any systematic concerns or trends that could lead to a greater building safety failure.

## The principle of escalation

**Question: Do you agree or disagree with this approach to escalating a complaint to the Building Safety Regulator?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above.**

NFCC agree with this approach to escalation, but we also believe that APs and RPs should have a similar mechanism to submit a complaint in order to demonstrate due diligence.

## Handling a complaint

**Question: Do you agree or disagree with the approach of requiring the principal accountable person to respond to building safety complaints in a timely manner and appropriately prioritise them, rather than within a fixed timeframe?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**If you disagree, explain why and set out what timeframe you think would be appropriate.**

This information should form part of the complaints policy and the information provided to residents and other persons. The complaints policy should be reviewed in line with the resident engagement strategy to ensure it is meeting the requirements set out in the BSA and the expectations of residents and other relevant persons.

**Question: Do you agree or disagree that the principal accountable person should have to keep complainants regularly informed of the steps they are taking to resolve a complaint and whether any progress has been made, including reasoning for any delays?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above.**

In addition, this requirement should be extended to include other relevant APs, RPs, and regulatory bodies that may be impacted. For example, if the complaint relates to a smoke control system, the local FRS should be kept informed as this might affect how they respond in the event of a fire.

**Question: Do you agree or disagree with these requirements on how a complaint should be stored?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above.**

The requirements for information that must be stored should also include:

- Any advice or intervention from other regulatory authorities, such as the FRS.
- Who dealt with the complaint if not the PAP, for example, the relevant AP or RP.

## **Contravention notices**

### **Issuing a notice**

**Question: Do you agree or disagree with the requirements for issuing a contravention notice?**

- Agree
- Disagree
- Neither agree nor disagree

- Don't know

**Please provide an explanation for your answer to the question above.**

NFCC agree with the proposed requirements of issuing a contravention notice if the resident does not comply with the duties set out in [Section 95 of the BSA](#). However, the proposals set out in this consultation do not clarify how the PAP or relevant AP will determine when to issue a contravention notice. It is unclear whether they will, for example, have three attempts to speak with the resident to resolve the issue and then, if not resolved, a contravention notice is issued.

The three obligations are open to interpretation and could prove difficult to establish non-compliance unless there is some prescribed guidance for the PAP and APs to help them include this information as part of their resident engagement strategy.

## Recording information

**Question: Do you agree or disagree that the accountable person must maintain a record of the contravention notices that they have served, and any relevant information in line with the principles of the golden thread?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above.**

NFCC agree and note that this should be supported by clear guidance as some PAPs and APs may require support to identify what information may be relevant in relation to the golden thread.

## 8. The contents of the golden thread

### Relevant and proportionate

**Question: Do you agree or disagree that only information relevant to building safety risks should be stored in the golden thread?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC would like assurance that Government will produce statutory guidance that sets out what is considered relevant information and how such judgements will be made, not only to remove any ambiguity for the PAP and APs, but also to ensure that there is consistency in the information retained in the golden thread for the BSR and other authorities to be able to access and assess as necessary.

Paragraph 8.5 of the proposals states that “Where they do not hold prescribed information or a copy of a prescribed document, they must obtain it except where it is not practicable to do so.” It is important that the PAP or AP can demonstrate due diligence that every effort has been made to obtain this information.

**Question: Do you agree or disagree that the information in the golden thread should be regularly reviewed to ensure it remains proportionate and relevant?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

**Do you have any other comments on how to ensure the golden thread is relevant and proportionate?**

Information should be reviewed regularly and whenever significant changes have been made that would require an update to the information or impact life or building safety, including changes in resident profile. All reviews including what happened to require a review, whether it was routine, the outcomes, who undertook the review, and when must be recorded.

The PAP and/or AP should be aware that the golden thread is never 'complete,' but is an ongoing process of information capture. Any guidance should make this clear and landmarks could be easily outlined as examples, such as when undertaking any works or alterations, changes in design, and when requested by the BSR.

## Responsibility

**Question: Do you agree or disagree with the approach outlined above?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Clarity is needed as to who the BSR will hold to account if it is deemed that one of the multiple APs has not kept the information up to date. If a PAP delegates this duty to a competent person, such as the managing agent or the safety manager for the building, it is unclear whether they be liable in a similar way to such an entity under [Article 5\(3\) of the FSO](#).

## Contents

**Question: Do you agree or disagree that the proposed information from the design and construction stage should be handed over to the principal accountable person,**

**and that this information should be stored in the golden thread as long as it remains relevant to building safety?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC broadly agree with the information being passed onto PAPs. However, we note that, in instances where partial occupation may be occurring, the list proposed is insufficient. NFCC believe that partial occupation should only be permitted in circumstances where there is a fire strategy / Safety Case in place that has assessed all the risks which ongoing building works pose to the occupied areas, similar to a pre-emptive fire risk assessment in accordance with the FSO.

It is the experience of the FRS that, where partial completion is currently permitted, there are multiple failings in the fire safety measures to adequately protect those occupants in the event of fire, and to ensure firefighters are provided with the appropriate access and facilities.

Common issues found where partial completion is currently pursued include, but are not limited to, inadequate fire resisting compartmentation between occupied and unoccupied areas, insufficient access to water for firefighting as well as inoperative smoke control systems, fire detection systems, dry/wet risers inoperative, and/or firefighters' lifts. NFCC are aware of instances where failings have been to the extent where a Prohibition Notice has been considered.

It is likely that, if the golden thread is being populated during the build phase, this should be a continuation of the process rather than the starting point. There may be specific technical elements which could cause problems, such as where systems or formats of information are not compatible with each other. Guidance should be provided around the content and format of the information to be handed over to ensure that it is able to be understood by the relevant person for the building in use. Further detail is needed around how this process may work in practice along with how the regulator will be able to assure the information and enforce any shortcomings.

**Question: Do you agree or disagree that the information/documentation provided at the registration and as part of the building assessment certificate application should be stored in the golden thread as long as it remains relevant to building safety?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

A building may undergo several alterations and refurbishments over many years, and the information in the golden thread is only as good as what has been retained.

Information contained within the golden thread will be vital to the ongoing management of a higher-risk building, including information that may be provided at registration.

**Question: Do you agree or disagree that the mandatory occurrence reports are stored in the golden thread as long as the reports remains relevant to building safety?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the proposal to store mandatory occurrence reports for as long as they remain relevant, however, guidance to support this policy area will need to consider how the relevance of information is determined in terms of the longer-term management of a building. Information to support the ongoing Safety Case for the building should not be lost during routine data management. Guidance should draw on existing information management practices that from part of building information management standards and BS 8644.

**Question: Do you agree or disagree that information deemed necessary for use by emergency services in an emergency, as stored by the Responsible Person in the information box, is stored in the golden thread?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree that information deemed necessary for use by FRSs should be stored as part of the golden thread. Such information should be based on the requirements for information exchange points that are detailed in BS 8644, in particular, those relating to risks in occupation and FRS intervention. Safeguards will need to be put in place which align any data protection provisions and to [Regulation 9 of the FSEng Regulations](#).

Where the PAP and the RP are different, the coordination and cooperation agreement/duty needs to be robust to ensure that any updates to this important information are not lost due to uncertainty as to who is taking the lead.

**Question: Do you agree or disagree that information the Responsible Person is required to collect on wall systems is stored in the golden thread as long as the information remains relevant to building safety?**

- Agree
- ~~Disagree~~



- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the proposal that the external wall system information, as collected under the FSEng Regulations, should be stored in the golden thread. It is likely that this information will also be required as part of a building's Safety Case, which would mean the consideration of its relevance should not be confined to compliance with the FSEng Regulations.

We do also note that, in cases where the golden thread is used during the design and construction phase, it may be the source of the information required by the FSEng Regulations.

**Question: Do you agree or disagree that the information set out above should be stored in the golden thread as long as the reports remains relevant to building safety?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC believe that the information obtained as part of [Regulation 9 of the FSEng Regulations](#) should also be stored.

**Question: Do you agree or disagree that the Safety Case report and Safety Case information set out in the list above should be stored in the golden thread as long as it remains relevant to building safety?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Guidance to support this policy area will need to consider how the relevance of information is determined in terms of the longer-term management of a building. Information to support the ongoing Safety Case for the building should not be lost during routine data management. Guidance should draw on existing information management practices that from part of building information management standards and BS 8644.

**Question: Do you agree or disagree with the information about building work in a higher-risk building to be stored in the golden thread?**

- Agree

- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with this proposal, but believe it will need to be made clear to the PAP or relevant AP that they may need to engage the services of a competent person, if they are not competent themselves, who will be able to advise them and ensure correct decisions are made and the rationale behind them recorded.

Further information is needed on whether it would be considered a contravention under the BSA if the person commissioning the work, for example, the leaseholder or tenant, refuses to provide information requested by the AP. Clarity is also needed on what safeguarding will be in place to ensure that the request for information or decision from the AP is reasonable.

Guidance, including examples, should be made available to APs and those who might undertake such work to ensure that they understand their obligations relating to the provision of information.

**Question: Do you agree or disagree that the key building information should be stored in the golden thread?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The key building information (KBI) will be available to the BSR and so will already be available to the PAP and/or AP. This means that it should not be onerous to include this information in the golden thread.

## 9. How the golden thread is stored and managed – golden thread principles

### Definition of digital

**Question: Do you agree or disagree with the proposal to require that the golden thread should be digital and that by digital we mean information and data is stored and can be transferred electronically?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If answered disagree or neither agree nor disagree please set out the changes you would like to see, including how you would define digital.**

NFCC agree with the principle to not define digital as outlined in the consultation. However, further information is required as to how the proposed system may operate. Different FRSs operate across different information technology systems and any proposed solutions to the storage and transfer of information needs to be able to interact with these various systems.

Further information about the proposal should be published at the earliest opportunity to enable FRSs to plan how they receive and use this digital information, and so that future software solutions can be capable of making use of it. From the proposal, it seems that the principles of building information modelling will be most likely to meet the policy intent, but more information should be published about how this may work.

Minimum requirements and guidance should take into account that the golden thread will often need to be queried and interpreted by others, such as FRSs. They should, therefore, ensure that information can be easily shared and used by others, and should not be in proprietary formats.

The principles stated in the consultation will provide some degree of future proofing, however, a minimum functional specification of what a solution should be able to do will need to be set out. The golden thread is already in existence, to some degree, through building information modelling and this regime extends it past the physical building. The guidance from the BSR could, therefore, outline these minimum requirements as well as detailing best practice and examples of implementation.

We believe that it may be of benefit to consult independently on this topic given the extreme importance of ensuring the digital platforms and processes are adequate and suitable for the new regime. This in addition to the potential for this to generate additional new burdens which may not have been factored into the economic appraisals for the Building Safety Act and these accompanying regulations to date.

## **Accurate**

**Question: Do you agree or disagree with the proposed requirements for keeping information and documents in the golden thread accurate and valid?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Whilst NFCC agree with this approach, we would reiterate the caveats regarding the competence of the PAP and/or AP to make this decision. The scope of the applicability of this information should be widened to encompass supporting compliance with other relevant legislation, such as the FSO and the Housing Act 2004.

Suitable guidance will need to be provided that is unambiguous about what is relevant. It is unclear what is proposed where historical information is kept in the golden thread or how it

might be stored. We have learned from the Grenfell Tower Inquiry that the ability to review and understand past events can be essential. There is a clear balance that needs to be struck to ensure that sufficient information is retained or archived that will allow regulators to understand a building from a historical perspective, as well as its current status and any issues.

### **Single source of truth and ensuring information can be shared and transferred with other people**

**Question: Do you agree or disagree with proposed requirements that the golden thread operates as an interoperable single point of truth?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please set out what changes you would like to see, including how you would enable the transfer of information.**

NFCC agree with the broad principles set out in the consultation around the need for a single source of truth, for the transfer of information, and interoperability of systems. In considering this area, thought should be given to FRS requirements for accessing and storing information as there may be instances where their system security requirements will need to be accounted for when transferring and accessing large amounts of data.

Guidance will be key to this area and NFCC would be keen to be involved in the formulation of this. As above, this could also form an area with the potential to create additional new burdens for FRSs and other regulators which are yet to be understood or captured in any existing impact assessments or economic appraisals.

Specific guidance may also be necessary for smaller property owners and the relevant standards for how to comply with the principles of transferability in order to mitigate the costs of compliance and the possibility these costs will be passed on to residents and tenants.

### **Secure**

**Question: Do you agree or disagree with proposed approach to ensuring the golden thread is secure and personal data is protected?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Accompanying guidance should consider the needs of all those who may need to access the golden thread, and how this will be monitored and assessed by the BSR, including what action will be taken if the PAP is found to have not complied with the requirements set out in this proposal.

## Accessibility

**Question: Do you agree or disagree with proposed approach to ensure the golden thread is accessible?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the principle that information should be available to those who need it in a timely manner. However, as per our response to the consultation on the new building control regime, the principles of this approach are difficult to comment on further until information about how this would operate in practice are known. There will be a need for clear guidance to cover matters such as competence in safeguarding information and how this will be policed. Guidance needs to be clear and unambiguous to avoid any gaming of the regulations or interpretations that may cause uncertainty for the PAP, residents, and the BSR.

## Understandable and consistent

**Question: Do you agree or disagree with the requirement that the language and information in the golden thread is consistent for the building and appropriate for the people who need to use it?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the principle that language should be consistent and appropriate for the people who use it. However, the principles themselves are difficult to comment on until further information about how this would operate in practice are known. There will be a need for clear guidance to support people to comply.

**Question: Do you agree or disagree with the approach not to mandate that the golden thread needs to comply with a particular British standard (BSI) or international standard (ISO) or data dictionary?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC believe a British or international standard would provide a minimum requirement, ensuring a consistent standard across the country, and across both the social housing and privately rented sectors. A standard would form a basis that can be built on to suit the specific needs of the building and its users, especially for those new to the role of PAP or AP. It would remove any ambiguity around expectations and provides residents, the BSR, and other regulators with the reassurance that a minimum standard has been applied and that the new regime is fit for purpose. Existing standards in the area of building information modelling and the digital management of fire safety information have already been formulated to outline processes that would be useful and relevant to this policy area, and these standards should form the basis of future guidance.

NFCC understand the desire not to mandate too specifically in this area so as not to make the proposals inflexible, however, by not mandating specific standards, the proposals may lead to a wide variation in what is produced. This may in turn make it difficult to achieve consistency across all buildings.

The danger of not mandating specific standards is that the BSR may lose control of how this data is produced, and lead to arbitrary perceptions of what is meant by 'accessible' and 'understandable'. This may in turn lead to inconsistencies and difficulties when it comes to sharing information between systems and stakeholders.

If a particular standard is not mandated, then it would be necessary to produce guidance that clearly sets out the required standards of how the proposed system would operate.

## **Accountability**

**Question: Do you agree or disagree with the approach for ensuring accountability?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the principles of accountability in the golden thread record. All principles of accountability should detail who, why, when, and how information has been updated as well as who authorised the update. For example, if a data manager updates information, it will need to be countersigned by the PAP to ensure that unauthorised changes are not occurring.

## 10. Duties on the principal accountable person and accountable person(s) to provide information

### Sharing information with other accountable person(s)

**Question: Do you agree or disagree with the proposed approach for information sharing between the principal accountable person and accountable person(s)?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Any information shared should be documented as part of the golden thread with an account of what information has been shared, why, and with whom.

### Sharing information with the Responsible Person under the Fire Safety Order

**Question: Do you agree or disagree with the approach around information sharing with the Responsible Person(s)?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes you would make to support the safe management of the building**

Any information shared should be documented as part of the golden thread with an account of what information has been shared, why, and with whom.

NFCC strongly advocate that this approach is extended to also include instances when information is shared with other regulatory authorities, especially where multiple parties are involved and regulations from both the BSA and the FSO are relevant. Clarity is needed on which piece of legislation would take precedence when both could be applied in order to ensure a holistic approach to building safety.

The original work carried out by Dame Judith Hackitt identified an environment that was overly complex and not fit for purpose, and recommendations focused on the need to simplify and reduce the number of overlapping regulations.

It remains to be seen if the BSA has achieved this. Key concerns, such as the multiple and overlapping pieces of legislation, remain, particularly the interaction between the FSO and the Housing Act 2004.

A key finding of Dame Judith's report was that "The overlap and mismatch across these two regulatory frameworks make it significantly more challenging for government to ensure that there is a sufficient holistic focus on the fire safety of all occupied buildings".

NFCC have held engagement with all FRSS across the UK and our members identified a number of concerns about how new legislative requirements will coexist with current ones. This includes the question of how multiple RPs will now interact with multiple APs, particularly in mixed-use buildings.

Crucially, one of the provisions which might have helped to mitigate this, the proposed role of the Building Safety Manager, was deleted from the Bill at the last minute despite being a proposal widely consulted on which enjoyed wide support over several years. As per the evidence previously submitted by NFCC, the duty to cooperate already exists, but in practice is rarely followed and difficult to enforce.

NFCC remain extremely concerned that the issues identified following the fire at Lakanal House have not been appropriately resolved, despite being a primary driver for the original reforms.

For this reason, it is NFCC's position that the regulations must make it clear that the BSA takes legislative primacy for buildings in scope in order to achieve a holistic focus. There must be robust provisions and incentives for relevant dutyholders to identify themselves and work together, and clear guidance for regulators in relation to enforcement.

### **Sharing information with the Client (building work)**

**Question: Do you agree or disagree with the approach for information sharing with the client?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The scenario in paragraph 10.15 where the client may not be the same person as the PAP likely underplays the frequency that this might be the case. We accept that, once the building is occupied, it is likely that the client will be closely involved in the building but may not have direct involvement with the maintenance of the golden thread and have easy access to them. As a result, it is essential that the client of any work has full access to the relevant information so that they can provide that information to the principal designers and contractors. This will help to ensure that any work is carefully planned and executed.

### **Informing the Building Safety Regulator if the principal accountable person or an accountable person becomes insolvent or of other receivership type scenarios**

#### **Information to be provided to the Building Safety Regulator**

**Question: Do you agree or disagree with the proposals detailed above?**

- Agree
- Disagree
- Neither agree nor disagree



- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Clarity is needed as to whether the BSR will then be able to share this information with the FRS as a prescribed person or warranted officer of the BSR. Without this information, we cannot fully assess the proposal.

### **Handing over information to the new principal accountable person or an accountable person**

**Question: Do you agree or disagree with the proposals on handover of information to the new principal accountable person or accountable person?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The proposals seem suitable.

**Question: Do you agree or disagree that the principal accountable person or accountable person must handover information over to the new principal accountable person or accountable person as soon as reasonably practicable after the relevant time?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

There would be benefit in setting a prescribed timescale to ensure that the handover occurs in a timely manner and that 'as soon as reasonably practicable' does not result in an extended period of time.

### **Informing the Building Safety Regulator about a change in the principal accountable person or accountable person(s)**

**Question: Do you agree or disagree with the proposed content that that the principal accountable person or accountable person must provide to the Building Safety Regulator after they leave their role?**

- Agree
- Disagree

- Neither agree nor disagree
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

Clarity is needed as to whether the BSR will then be able to share this information with the FRS as a prescribed person or warranted officer of the BSR. Without this information, we cannot fully assess the proposal.

## 11. Enforcement

### Service and content of compliance notices

**Question: Do you agree or disagree with the proposed content of compliance notices detailed above?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree, however, the regulations and supporting guidance must make it clear that the BSA is the legislation which takes primacy.

Dame Judith concluded in the Independent Review that, despite having joint protocols for the enforcement of the overlap of the FSO and Housing legislation, the mismatch across these two frameworks makes it significantly more challenging to achieve holistic outcomes in residential buildings. This is the reason a new set of enforcement powers was developed, because those which are currently available to FRSs, even where they are used, are simply not achieving the *outcomes* that everyone desires. The most obvious examples of this are the circa 200+ buildings that remain with waking watches in place, despite efforts that have been made by existing regulators, including the £6m invested in the Building Risk Review and the £1m invested in the Joint Inspection Team.

The policy intent is that the wider set of new powers introduced by the BSA go beyond the types of enforcement options available to FRSs under the FSO. The new sanctions under the BSA will in future be available to the BSR to pursue different, more proportionate, outcomes within buildings to those which are currently available within the FSO and other existing legislation. We have explicitly written to DLUHC to seek assurance that these powers will enable the BSR to request works to buildings where they may be the best most proportionate way to manage risk, for example, by requiring the retrofitting of sprinklers.

The regulations and clear guidance for enforcers should lay out the policy intent that safety issues in buildings should be approached and addressed via the new set of powers and sanctions that the BSA provides, wherever possible. This is particularly necessary in buildings where the FSO and the Housing Act 2004 also apply, especially mixed-use buildings. This is necessary to:

- Address the findings of the Independent Review and achieve new outcomes in buildings.
- Ensure there is a holistic approach to safety.
- Ensure that there is clarity for PAPs and APs and that they do not face multiple different enforcement actions from a number of different regulators.
- Ensure that regulators are working to the spirit of the Regulators' Code.
- Ensure that work which FRSs undertake within buildings in scope is covered by an appropriate funding stream, and does not impact negatively on FRS Risk Based Inspection Programmes for other higher risk buildings which have been left out of scope of the BSA.

Clear benchmarks for enforcement should be set out by Government that make it clear that enforcement can require works which go beyond the minimum standards laid out in building regulations guidance. Non-worsening provisions should be disapplied for buildings that are in scope to ensure that these provisions pose no barriers.

NFCC have written to the BSR about significant concerns we hold in relation to the work of the BSR to prepare for the Safety Case regime. We are yet to receive a response. We encourage DLUHC as the policy owners to ensure that the policy intent is clear by producing unambiguous regulations and guidance. We have also written to both the HSE and DLUHC with a case study requesting the HSE and DLUHC's positions on the approach to enforcement that would be taken under the new regime. We are yet to receive a response to our questions and have noted at the Joint Regulators Group Board our concerns at the lack of progress being made to develop the enforcement approach.

**Question: Do you agree or disagree with the suggested approach for the amendment, extension and withdrawal of compliance notices?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The proposals seem suitable.

## 12. Reviews and appeals

**Question: Do you agree or disagree that these decisions described above should be eligible for an internal review by the Building Safety Regulator prior to being appealed to the tribunal?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

We broadly agree that these are areas which could be determined internally prior to escalation to the first-tier tribunal. To fully support this, it will be important to understand the detail of how such reviews will take place and what involvement will be required from FRS staff acting on behalf of the BSR, as this will affect the demands on FRS resources.

It will also be important that the review process is fully documented including associated timescales, further appeal or progression routes, recording methods, and publication. This will aid consistent regulation as well as raise confidence in the process amongst those being regulated.

**Question: Do you agree or disagree that there should be a suspensive effect as described above?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The use of a suspensive effect as directed by the Secretary of State is similar to existing enforcement and decision-making processes already in use, and there is no overriding the status of an urgent action notice unless directed to do so by the court. Similarly, the suspension of notices while an appeal is ongoing is similar to the appeal of certain notices under the FSO. We do not consider this to be problematic and may assist in the consistency of enforcement across multiple pieces of legislation.

**Question: Do you agree or disagree with the internal review process outlined above?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

The review process seems appropriate.

## 13. Key building information

**What information is required in the key building information**

**Question: The key building information is to be provided to the Building Safety Regulator to enable oversight and analysis of the building industry. Do you agree or disagree with the information being required as part of the key building information?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Question: Please select any specific data requirements you believe should be changed.**

**Please provide an explanation for your answer to the question above and state what changes should be made.**

The information listed under paragraph 13.10 should be extended to include the number of residential units, which floors they are on, and maximum number of residents. Information about the evacuation strategy for the building should include any details of whether the strategy has been temporarily changed, including details of any interim measures that are in place to support this.

**Question: Please select any data requirements which you believe will require additional guidance or resource to provide.**

**Please provide an explanation for your answer to the question above and state what resource or guidance you consider will be needed?**

All the information listed under paragraph 13.10 plus the number of residential units, which floors they are on, and maximum number of residents. This will assist in clarifying the position.

Additional guidance will be needed for PAPs and APs when they are reporting the evacuation strategies for the building and details of any interim measures, especially where these have been the subject of temporary changes due to risk in the building. This would be similar to the [Simultaneous Evacuation Guidance](#), which, following the commencement of the Safety Case regulations, will require updating so that PAPs and APs of in scope buildings can understand what their duties are under the BSA (which should take primacy). The PAP and APs will have to demonstrate that the buildings that have a temporary simultaneous evacuation strategy can still meet the threshold of the Safety Case regime. In order to support the principles within the Regulators' Code, promote a consistent approach, and support PAPs and APs, NFCC believe that this guidance should be taken over and kept up to date either by DLUHC or the BSR.

## **Submission of information**

**Question: Do you agree or disagree with the timescale for submitting the key building information for new unoccupied buildings?**

- Agree
- ~~Disagree~~
- ~~Neither agree nor disagree~~
- ~~Don't know~~

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

While we understand that there may be instances where the PAP may need to delay sending the KBI to the BSR, it is our view that such matters could be treated as an exception, meaning that all KBI should be provided at the time of registration by default. It seems entirely reasonable to expect that, for most circumstances, where the PAP is registering the building, the KBI will be available.

Furthermore, this must be a matter for the BSR. It is noted that the submission of information only at the point when the building is occupied may have an impact on their ability to properly triage and prioritise premises, as it is NFCC's understanding that this information will be used partly for this purpose. A compromise might be that this information is provided on the invitation to apply for a building assessment certificate rather than, as is stated in paragraph 13.13, when the building becomes occupied.

We also note that paragraph 13.13 seems to contradict paragraph 13.14, which states that the KBI should be submitted at the time of registration, at which point a new build will not be occupied.

**Question: Do you agree or disagree with the timescale and for submitting the key building information for existing buildings?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

NFCC agree with the general arrangements proposed. We support fixing a date so that PAPs have something to work towards, and FRSs can also start to provide that advice in their interactions with future PAPs as well as consider any impacts on their activities. It is not clear, however, why there is a proposal that allows the PAP to submit the KBI up to 28 days later. In existing buildings, this information should already be readily available and, while there will always be the ability to deal with late submissions and unforeseen circumstances, we think it is more efficient and fairer to regulators to ensure all the information is provided at registration and not offer the extension as a matter of course.

**Question: Do you agree or disagree that any relevant updates to the key building information must be provided alongside the building assessment certificate application?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should be made.**

There appears to be a slight discrepancy in the timelines stated depending on the type of building and whether or not the building has been occupied. In general terms, however, in

future submissions, it is useful to provide a milestone at which the KBI has to be confirmed or updated.

**Question: Do you agree or disagree that key building information must be updated by the principal accountable person within 28 calendar days of any change or within 28 calendar days of them becoming aware of the work?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you do not agree or neither agree nor disagree, please write the number of days you consider would be appropriate.**

NFCC consider that, in many instances and given that the extent of the KBI is limited, the proposed time limit of 28 days seems reasonable. However, we can foresee instances where a change to the KBI would impact on FRSs' operational planned response in the building. Where a building temporarily changes from a stay put evacuation strategy to simultaneous evacuation, this change should be advised to the local FRS immediately. The BSR must ensure there is a process whereby, if they are notified by the PAP or AP of a change to the evacuation strategy for the building as part of the KBI, they must immediately notify the local FRS including details of any interim measures that have been provided. It has been DLUHC's view to date that this ought to be reflected within the [Simultaneous Evacuation Guidance](#) as a 'must'; however, because this is not currently a legal requirement, the guidance currently is only able to refer to this as best practice. DLUHC have an opportunity to make this a mandatory requirement as part of the KBI.

Additionally, a change of use in the building may impact on FRS pre-determined attendance in the event of fire. Where this is the case, it seems reasonable that the PAP or AP would themselves know that such a change was planned, therefore, we see that there should be no reason why this change could not be notified to the BSR immediately. It should be noted that the PAP or AP, on determining that changes to the building have altered the KBI, may need to take immediate actions to comply with their requirements under both the BSA and the FSO.

It is our expectation that KBI reporting will be aligned to any information reporting required under the FSEng Regulations, so that one set of reporting will not supersede the other and to avoid duplication.

## **Openness and transparency**

**Question: Do you agree or disagree with the proposal on publishing the key building information excluding any data that is a privacy, safety or security risk?**

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

**Please provide an explanation for your answer to the question above. If you've answered disagree or neither agree nor disagree, please explain what changes should**

## **be made to support greater transparency but also protects privacy, safety and security?**

It appears unclear from the consultation what the intention is regarding the use of KBI. While it is easy to imagine ways that it could be used, from regulatory purposes to understanding more about the built environment in this subset of buildings, there should be clear information on what this information could be used for and whether PAPs or APs would have the ability to opt out in certain circumstances.

NFCC support an open and transparent environment where such building data can be legally shared, as it may provide FRSs with useful datasets which will allow analysis of risk and targeting of resources across the fire and rescue portfolio of services.

## **Update to Part 4 of the Building Safety Bill's Regulatory Impact Assessment – Economic Annex**

It is unclear where, if anywhere, DLUHC have made provision for any aspect of its enforcement proposals within any iterations of the Regulatory Impact Assessments (either that published with the draft Bill, the updated one published with the Act, or the updated one published with this consultation in the Annex, or the accompanying Annex to Part 3). NFCC have on multiple occasions requested clarification from DLUHC through the Joint Regulators Group as to what assessment has been undertaken of the new burdens impact on regulators for enforcement of the new powers and sanctions of the BSA. It would appear that estimates are included for standard internal complaints procedures, but there appears to be no provision made for any regulators, either the HSE or other partners, to support formal enforcement such as prosecutions through the Courts or any proposed action within the Tribunal.

The compilation of evidence and work required to take enforcement and prosecution actions is a specialised skillset, and one that not all UK FRSs will hold. We note this also creates new burdens for Local Authority Building Control (LABC) which appear to have not been assessed anywhere.

In addition to the matters covered by this consultation, NFCC note the new powers inserted in the final passage of the Bill in relation to 'Remediation Orders'. This policy appears to have been drafted internally inside of a 48-hour period with no consultation either with partner regulators or, to our knowledge, with the Home Office. NFCC is yet to receive any response from DLUHC to our questions about what the benchmark for enforcement in order to determine 'remediation', or how the proposals are intended to be operationalised. There appears to be no attempt made to estimate the costs of these provisions, noting that they can apply to a wider range of buildings than those within scope of the rest of the BSA.

Furthermore, NFCC remain concerned that, even where new burdens on LABC have been estimated, no appropriate analysis has been undertaken on what the flow on impacts of the new regime will be to LABC business as usual, and on the ability of local authorities to continue to meet their existing statutory obligations. NFCC hold concerns that, rather than address the race to the bottom highlighted by Dame Judith, Government could instead be exacerbating the impact of competition on building control as a result of the way that the new regime is being set up.

Government must ensure that whatever framework is put in place is supported by adequate resourcing, appropriate benchmarks, and guidance.



## **Specific observations**

Paragraph 17 – NFCC have previously submitted substantive evidence to DLUHC via the Fire Protection Board and the Joint Regulators Group to inform assumptions about the time taken to inspect residential buildings. This evidence is based on actual experience data collected through our members' high rise taskforce inspection activity in high rise residential buildings. If DLUHC have found a better source of evidence than this, we would welcome this being shared with NFCC. The figures in DLUHC's revised Annex do not correspond, and we do not recognise them.

Paragraph 23 – The estimates here do not align to the data and evidence submitted by the NFCC on the average length of a site visit.

Paragraph 24 – In regard to the external experts and stakeholders referred to, NFCC is unclear how a number of the assumptions in this and other appraisals have been arrived at. We await responses to a number of questions we have raised with DLUHC through the Joint Regulators Group about what evidence is informing its planning assumptions.