

Patrick Ryan Associates



The Future of Façade Remediation Part II

The Building Safety Act & Impact on the Recladding of Apartment Buildings

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Overview

The remediation of unsafe residential High-Risk Buildings (HRB's) has been an urgent requirement for the façade industry to grapple with for the past seven years since the Grenfell Tower disaster.

The Building Safety Act (BSA 2022) was introduced to Parliament in July 2021 and came into force on 1st April 2023. It introduced new duties for the management of the design process and fire safety in high-rise residential buildings. As of 1st October 2023, the legislation came into law and brought about changes to the requirements for higher-risk buildings. It also introduced the role of the Building Safety Regulator (BSR).

This article aims to look more closely at the impact of the Building Safety Act (BSA) on the recladding of apartment buildings due to shortcomings in their fire safety.

Introduction

Our last article featuring the Grosvenor Waterside Caro Point cladding remediation project looked at a typical fire safety recladding project to give context to the future of façade remediation.

This project began early in 2021, prior to the implementation of the Building Safety Act (BSA), with the appointment of a professional team following the identification of unsafe cladding material by the building owner. Grosvenor Waterside Caro Point achieved practical completion in September 2023.

Following our second Façade Focus session on the Future of Façade Remediation in October 2024, this article now focusses more closely on the impact that the Building Safety Act 2022 is having on the recladding of apartment buildings.

The Latest Government Statistics

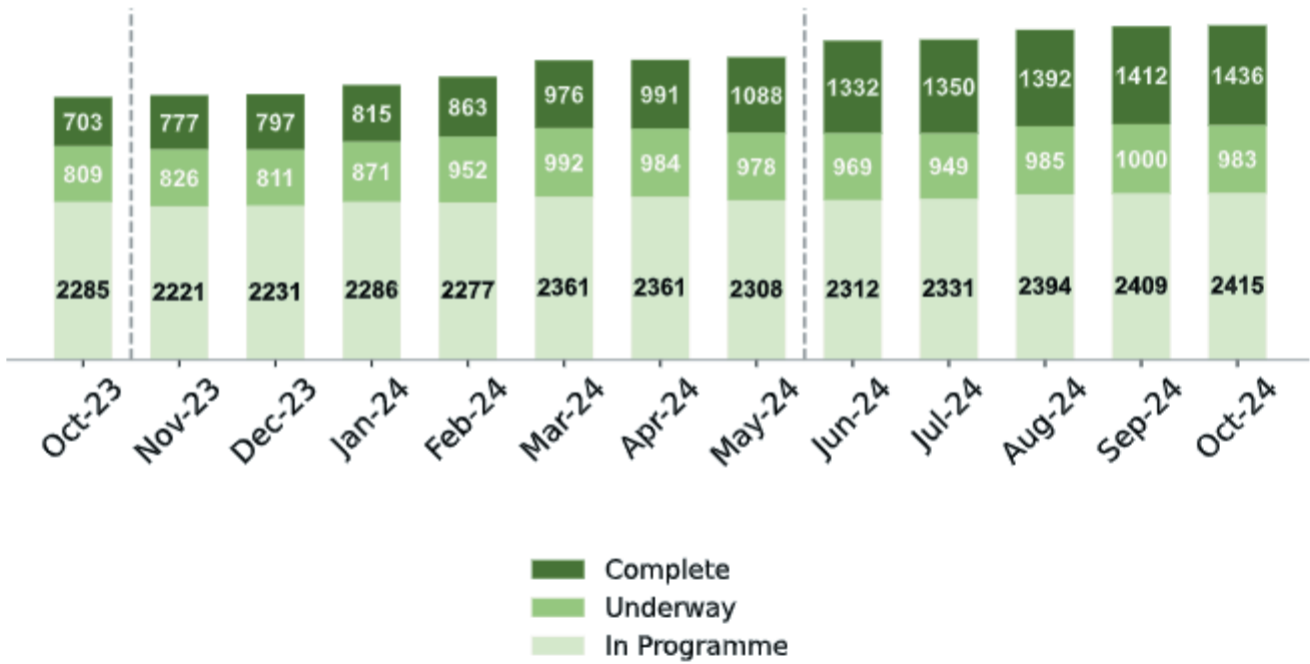
According to figures released by the Government in November 2024, by the end of October 2024, there were 4,834 residential buildings of height 11 metres and over, identified as having unsafe cladding. 2,419 (50%) had started or completed remediation work and 1,436 (30%) have achieved practical completion.

This indicates that 50% of these buildings (2,409) still need to start remediation works. This is a worryingly high figure and the number of reported buildings continues to rise every month, to say nothing of the unreported buildings highlighted by the National Audit Office and covered later in this article.

The scope of the government reporting changed at the beginning of the previous year (in 2023) and figures now include all buildings which come under the five Government schemes:

- ACM remediation scheme - Buildings over 18 metres high with ACM cladding unlikely to meet building regulations
- Building Safety Fund (BSF) - Buildings over 18 metres with unsafe non-ACM cladding
- Cladding Safety Scheme (CSS) - Buildings 11-18 metres with unsafe cladding
- Developer - Led Remediation
- Social Housing Sector

The figures are shown graphically below.



The National Audit Office Report

In November 2024, The National Audit Office released a report “Dangerous cladding: the government's remediation portfolio”. As well as acknowledging the good work that has been done by government and industry to remediate buildings with unsafe cladding, there are still a number of issues including the concerns of residents who still do not know when their buildings will be made safe.

In February 2024, MHCLG estimated 9,000 to 12,000 buildings over 11 metres required remediating, with only 4,821 currently in programme, indicating that up to 60% of buildings with dangerous cladding still have not been identified by government.

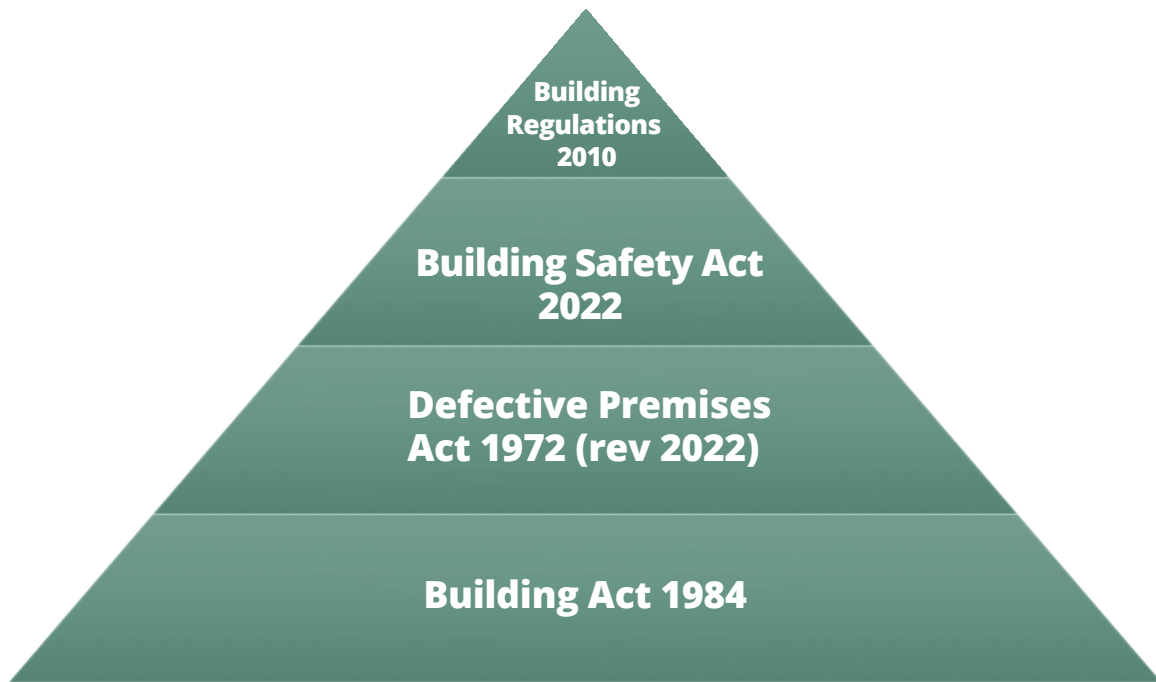
The report suggests also that at its current rate of progress, government was due to miss its own estimated completion date of 2035 for the works with significant challenges still to be overcome. The NAO has also recommended that if progress with identifying buildings with dangerous cladding did not improve by the end of 2024, the government should consider other measures. After speculation about what these measures might be, a further £1 billion was set aside for cladding remediation by the government in the October 2024 budget.

Façade remediation projects pose multiple unique challenges:

Our many remediation projects have shown us that each has a set of unique challenges. Some of the commonly occurring ones include:

- Immediate fire safety concerns
- Is the existing building design adequate?
- Residents in situ during the construction project
- Little or no building information available
- Can we adopt a sustainable replacement cladding?
- Balancing the often conflicting requirements - e.g. structural, thermal, fire and condensation

Current Building Regulations



There are four main pieces of legislation which govern the construction of buildings over 11 metres high in the UK:

- **Building Regulations 2010 (as amended)**
- **Building Safety Act 2022**
- **Defective Premises Act 1972 (rev 2022)**
- **Building Act 1984**

Other Secondary Legislation includes:

- The Building Regulations etc. (Amendment England) Regulations Oct 1st 2023
 - o PAS – 8671 – Principal Designer
 - o PAS – 8672 – Principal Contractor
- The Building (Higher-Risk Buildings procedures) (England) Regulations 2023 (Module 5)
- CDM Regulations 2015

The Building Safety Act – Time delays

This is overseen by the Building Safety Regulator (BSR) who implements and enforces the regime. The Gateways provide a safety framework because they are decision points, through the design process and on-site contractors work for construction of an HRB.

In addition to the gateways, the BSA has introduced a “golden thread” of information which is a digital record of all the necessary documents and data, which must be preserved and stored so that they can be accessed for the purpose of ensuring the safety of the buildings.

The graphic below developed by i3PT Certification, illustrates the various new Gateways that have been implemented as part of the BSA.



This process, whilst it is correctly directed at ensuring building safety, seems to be causing a bottleneck in the undertaking of the remediation of apartment buildings. It is currently taking approx. 17-24 weeks to get approval through the BSR at Gateway 2. This was originally intended by the BSR to take 8 weeks for cladding refurbishment works and 13 weeks for new build façade works.

The impact of this level of time delay is felt differently by the various types of organisation involved in the construction process:

- ⇒ **Housebuilders** - need to cover the time delays with the finance available
- ⇒ **Property owners** - often large financial institutions tend to err on the side of safety and Institute practices such as "waking watch" to keep tenants safe. The cost of this is increased by Gateway time delays
- ⇒ **Legal action** - the involvement of lawyers slows the whole process down and Gateway time delay only adds to this
- ⇒ **Compliant professionals** - regulation around compliance has exposed a shortage of professional engineers, designers and contractors - projects therefore take longer beyond Gateway 1
- ⇒ **Risk** - Some contractors for example have removed themselves from the fire remediation process, leaving less contractor capacity and further impacting the speed at which the work can be completed
- ⇒ **Fire safety inspector shortage** - Between 1996 & 1997 there were 1,724 fire safety officers in England and Wales, but this figure has now fallen in England to 1,191 between 2023 & 2024

There is a lack of industry collaboration which is also holding up the process. Closer working together between the various interested parties would certainly help to make key decisions and apportion responsibilities. Also, a better understanding of roles such as Principal Designer for example, would help in ensuring the right people are making the right choices and approvals in the remediation process.

The Building Safety Act – Cost factors

There are two cost factors which are having an impact on how cladding remediation proceeds, and the rate at which it proceeds.

1) The cost to residents:

There has been a huge misunderstanding generated by government about the real costs to residents.

These real costs include items that are not often mentioned or understood:

- ⇒ Necessary fire system improvements - these are usually chargeable to residents
- ⇒ Insurance cost increases - building insurance is usually shared out among residents and has increased dramatically in the last few years
- ⇒ Devaluation of property, leaving owners unable to sell or remortgage with fire safety sign offs incomplete
- ⇒ Notices being issued under The Housing Act which incur legal costs
- ⇒ The requirement to renew EWS1 after 5 years

2) The cost to organisations:

- ⇒ The onus has been very firmly put upon Housebuilders & Developers to foot the bill of remediation to the buildings they originally developed whereas property owners, often big financial institutions such as pension funds err on the side of fire safety as they are not financially responsible for remediation
- ⇒ Once legal firms are involved in the process, not only does the whole process slow, but the costs begin to escalate
- ⇒ The cost of labour and materials has risen significantly since Brexit, coupled with the shortage of skilled tradespeople, the impact on contractors has pushed the cost of remediation work upwards

The BSA - Compliance & Competency

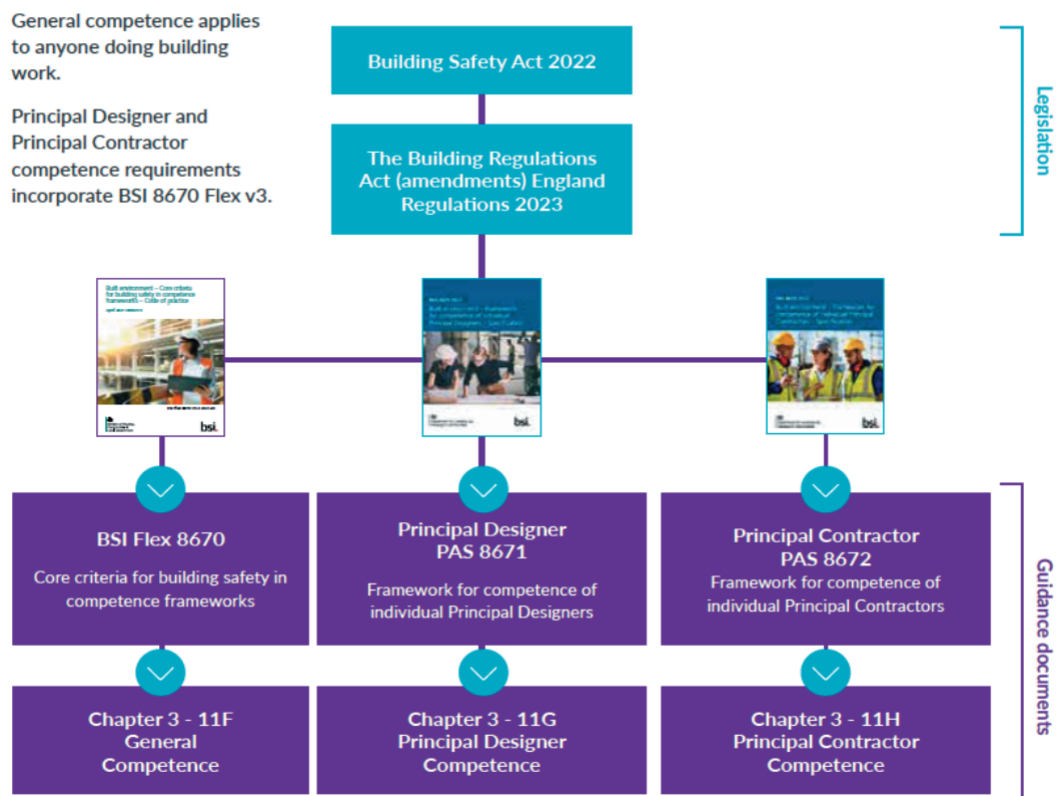
All individuals engaged in design, construction, refurbishment, and maintenance work must demonstrate competence in their respective roles throughout the supply chain.

It is the client's responsibility to:

1. Make suitable arrangements for planning, managing and monitoring a project.
2. Check all parties including the Principal Designer and Principal Contractor have required competence.

Competence Requirements

The graphic below produced by Constructionline, illustrates the competence requirements set out in the relevant frameworks.



Secondary legislation (B Regs Part 2A 2023) provides a clearer structure for:

- ⇒ **The Client**
- ⇒ **The Principal Designer**
- ⇒ **The Principal Contractor**

Duty Holder roles introduced into the building regulations:

- ⇒ **The Client**
- ⇒ **The Principal Designer**
- ⇒ **The Principal Contractor**
- ⇒ **General Contractors**
- ⇒ **General Designers**

Organisations need to show they have the appropriate skills, knowledge, experience and behaviours to perform the role and demonstrate capabilities. They must also appoint people to the project who have these qualities.

The Building Safety Act – Issues with Competence Shortages

There are severe shortages of competent professionals across the construction industry, in every area that competence is required to carry out cladding remediation projects. In our own area of façade design there is not enough consultancy capacity. There are not enough professionally competent, experienced consulting practices who have experience in façade design and engineering consultancy.

We estimate that it will take at least 4 years to carry out the design work necessary on the projects that are currently identified by the government. This is without any new buildings being added to the list. Given that the official government figures have consistently risen every month over the past 12 months, this problem will only get worse unless more capacity can be found.

There has also been confusion about the role of Principal Designer under the BSA, which mirrors the CDM 2015 duty holder role. There is also uncertainty around the requirements and extent of the Principal Designer role itself, the extent of professional liability and the competence required to perform the role. This uncertainty is also deterring competent professionals consultants and consultancy practices from entering the recladding arena.

The Question of Risk

There is still some uncertainty in the industry about the accountability of clients, contractors and consultants and inevitably, arguments about how risk is shared. The tendency to push all risk down to the consultant is misguided, unequal and damaging to our chances of success in reducing the backlog of remediations, and it must be resisted. The consultant is often the party with the least resources to answer any claim, therefore it makes little sense to push excessive risk in that direction. Other solutions are required.

Shortage of Professionals

There may not be an immediate fix for the shortage of competent professionals, but if the MHCLG wants to improve the situation, more consultation, encouragement, education and training around the specific requirements of the new roles would help. Looking longer term, we need to start planning for the future, producing more engineers and construction professionals, which should have started 10 years ago.

Finding and retaining qualified, experienced people is also key and comes at a price. Training young people to become engineers starts at school with a focus on maths and sciences. Then, all higher education courses for engineers, architects, surveyors and all construction professionals should be competency based. Courses must include teaching that enables our next generation of construction professionals to have the appropriate skills, knowledge, experience and behaviours to perform their role in industry successfully and safely.

Should the Lead Designer be the Principal Designer?



Lead Designer

This role is a contractual appointment

The Lead Designer sees all aspects of the project are design coordinated.



Principal Designer

This is a statutory appointment with roles and responsibilities set out in law

The Principal Designer role incorporates planning management and monitoring of design work to ensure compliance with relevant requirements of the building regulations.

The task of the Principal Designer is to plan, manage and monitor the design work during the design stage; and to take all reasonable steps so that the design work carried out by the Principal Designer and those under its control including the lead consultant is planned, managed and monitored to ensure, if built, that design complies with the building regulations.

If the Lead Designer is also the Principal Designer then there is an established knowledge of the projects' complexities and Building Regulations requirements that need to be complied with and demonstrated.

If the Lead Designer is not the Principal Designer and another consultant is introduced, as is often the case, then there is a catch-up exercise for the Principal Designer to familiarise themselves with the project details, check on designers competencies and arrange meetings for the route to building regulations compliance.

In order to speed up the remediation process, it may be that going forward, the Lead Designer should be the Principal Designer, which would almost certainly have the added advantage of reducing cost as well.

This approach however does not take into account the reluctance of many engineering consultants to enter this field of work and they are still weighing-up the risks, responsibilities and rewards which are involved in taking on the Principal Designer role.

Whichever profession takes up the Principal Designer role, the hope is that we develop skilled, knowledgeable, and professional individuals who can take us forward into a future where building safety is fully considered, and our remediated residential buildings no longer contain a series of unwise cost savings.

Conclusion

In November 2024, The National Audit Office summed up the situation with the UK cladding remediation programme.

“Seven years on from the Grenfell Tower fire, there has been progress, but there also remains considerable uncertainty about the number of buildings needing remediation, the cost of remediating them, and how long it will take to fix them and to recoup the spending in the long run”. The key finding of the recent report by the NAO cited above is that up to 60% of the buildings which need remediation of their cladding have not yet been identified by the government. Clearly there are more to be identified, but the full scale of the problem is significantly larger than we thought.

As façade remediation consultants, we cannot emphasize enough the need right now for a collaborative approach. Gathering to discuss our collective experience with a view to helping each other navigate the Building Safety Act as well as try to speed up the key finding process, is vital. The apportioning of responsibility rather than blame is key, which will all be aided by a better and clearer understanding of what our individual roles are.

The announcement in in November 2024 that a Parliamentary Committee is being set up to investigate the progress of remediating cladding is welcome. In particular it will examine the scale of issues facing residents in buildings due to combustible cladding. The committee will also look at the quality and effectiveness of Government support for the removal of all forms of dangerous cladding from existing buildings, in particular the pace of remediation.

We look forward to the results of this enquiry and hope it will give further guidance to our industry as to how to improve and speed up the process. In the meantime, we at Patrick Ryan Associates remain committed to contribute our professional expertise to the remediation of unsafe cladding in buildings across the UK, with safety of the building occupants at the forefront of our work.

For more information about the services provided by **Patrick Ryan Associates**, please contact us.



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