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SHLA Newsletter

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Building Safety Act 2022: is the social housing sector prepared?

Louise Mansfield, Legal Director at Bevan Brittan

The much anticipated Building Safety Act 2022 is now law after receiving royal assent in April 2022.

The Act applies to England and aims to improve the standard of buildings and secure the safety of people. It will bring about the "*biggest improvements to building safety in nearly 40 years"* by putting in place "*new and enhanced regulatory regimes for building safety and construction products" and ensuring "residents have a stronger voice in the system".*

The Act received Royal Assent just before the fifth anniversary of the tragic Grenfell Tower fire. But the Act is not just about cladding, and not just about fire, it is about the safety of buildings as a whole. Whilst much of the detail will be provided in future Regulations and many of the provisions are not therefore yet in force, the Act gives us advance warning of what is to come.

Some of the changes and requirements of the Act will apply to **all** buildings. Section 3(1) of the Act tasks the new Building Safety Regulator (part of the Health and Safety Executive) to secure the safety of people in or about and the overall standards of all buildings (not just higher-risk ones).

The key provisions for the social housing sector are however those which apply to "higher-risk" buildings, generally defined as buildings which are 18m or more high or have seven or more storeys and which have a residential element.

- The buildings must be registered with the Building Safety Regulator. If the Building Safety Regulator so directs for the relevant building - within 28 days from request, a Building Assessment Certificate must be obtained from the Building Safety Regulator (who must be satisfied that all duties are being complied with).
- An **Accountable Person must be appointed to have** legal responsibility for ensuring that fire and structural risks are understood, and that appropriate steps and actions to mitigate and manage these risks are taken.
- A safety case must be prepared by the Accountable Person to demonstrate how building safety risks are being managed proportionately for each building.
- A golden thread of building information must be created, stored and updated throughout the building's lifecycle.
- Information must be provided to the fire service, including a floor plan and details of design and construction.
- In relation to residents:
    - The accountable person must prepare and promote a resident engagement strategy encouraging residents to participate in relevant decision-making about their building's safety.
    - A complaints procedure must be provided with appeal to Building Safety Regulator if Accountable Person has not resolved their concerns to ensure that their concerns are addressed and not dismissed.
    - Social Housing residents will have direct and unrestricted access to the housing ombudsman (previously residents had to approach their landlord, a "designated person (MP, local councillor or tenant panel - who can refer to the ombudsman if that cannot help) and wait 8 weeks before they could contact the ombudsman directly).

In some case, the costs of complying with the above can be recovered from leaseholders of high-risk buildings with leases over seven years or more through increase in the service charge, regardless of whether they are an owner-occupier or renting to a tenant, and regardless of whether the landlord is a private landlord, local authority or housing association. Costs recovered must relate to 'relevant building safety measures' (i.e. costs of fulfilling duties under the new regime), including, for example, preparing a resident's engagement strategy or preparing or revising a safety case. In most circumstances the service charge must not include the cost of fixing historical building-safety risks. These costs should be borne by the original developer. Where the developer cannot be found the costs should be borne by the freeholder but not where the freeholder is a social landlord who did not build the block. In this case, the costs can be passed to tenants (apart from costs relating to cladding) subject to £10,000 caps.

- Using the Building Safety Regulator as the sole building control body.
- A number of stringent gateways at each of which building safety must be evidenced to the Building Safety Regulator. These include during the planning stage (this requirement already being in force), before construction starts and then before occupation will be permitted.

Given the reputational and financial risks associated with building and fire safety, not to mention moral duties and the duty of care owed to staff and residents, now is the time for social housing providers to be reviewing their estates and buildings (both existing and proposed) to ensure that they are safe. This is particularly important due to the new duty on duty holders to report to the Regulator structural and fire safety occurrences that could cause a significant risk to life.

If you would like more information about this topic, or assistance with auditing your estates and identifying whether any additional actions need to be taken to improve the safety of buildings, or if you want to discuss health and safety matters in social housing more generally, please contact Louise Mansfield.

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Overcrowding: A Contested Standard

Claire Wrigley, PhD candidate, University of California, Berkeley

In Roman, R v London Borough of Southwark (24 May 2022) Justice Lang ruled that Milton Laines Roman and his wife and two children were not deliberately living in overcrowded conditions and therefore, as they were statutorily overcrowded, Southwark Council had to place them in Priority Band 1 of its social housing allocation scheme. Southwark had put the Roman family, who live in a studio flat, in Band 3, the second-lowest priority band, on the grounds that Mr Roman had chosen to bring his wife and children to join him from Ecuador and to live together in a one-bedroom flat when he could have secured more suitable accommodation for them elsewhere. They continued that it was not “necessary” but merely “desirable” for Mr Roman to have his family join him, despite their strong

account the family's circumstances as a low-income non-English-speaking family with a small and tight-knit community in south London. The actions of Southwark Council speak to a long history of the subjectivity of a supposedly clear standard, overcrowding.

Overcrowding was one of the most potent arguments invoked by nineteenth-century housing reformers agitating for the legislation that became the Housing of the Working Classes Act, 1890, Britain's first true council housing legislation. The 'moral evils', delinquency and deviancy, caused by overcrowding were, reformers argued, as serious as physical degeneration and disease. This interpretation of overcrowding's baleful influence led to an enduring suspicion of poor families living in cramped conditions. When overcrowding was defined in law and local authorities were given the duty to abate it (Housing Acts, 1935, 1936), it became an offence to continue to live in overcrowded conditions if an offer of "suitable alternative accommodation" was made. After the Second World War local authorities embarked on ambitious building and slum clearance programs and implemented allocation schemes with overcrowding standards stricter than the law required. Local authorities called their own standard 'moral overcrowding', to distinguish it from statuory, and families found to be morally overcrowded received the next-highest priority. However the difficulty of establishing who slept where in a residence at any given time meant that families found to be 'morally overcrowded' were also routinely investigated for 'collusion'. Like the Roman family, these families were frequently low-income migrants, often from Ireland and the Commonwealth.

Southwark Council translated their suspicion of the Roman family's motives into a refusal to fulfil their statutory duties. The undermining of a clearly worded statutory obligation by subjective assessments of family circumstances has been a consistent feature of the application of the overcrowding standard. The ruling for the Roman family is a timely reminder that low-income families, particularly those of migrants, simply do not have a full range of options available to them, but their choice to keep their families together does not negate their right to decent housing.

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Upcoming Events and Training

Taking place on the 4th August at 17:00 pm - 19:00 pm

42 Bedford Row, London, WC1R 4LL 42 Bedford Row, London

Book Now

SHLA Annual Conference 2022

Taking place on the 17th November

Ashworth Centre, Honourable Society of Lincoln's Inn, London, WC2A 3TL London

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