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health, safety and wellbeing in the built environment

Summer 2024



First steps for dutyholders

Now the transition period is over,
professionals face new challenges



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How the Scottish government is tackling unsafe cladding

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Atom Media Partners

Project Safety Journal is published for the Association of Project Safety by Atom Media Partners.
Atom Media Partners, 26 Bedford Square, London WC1B 3HP
Telephone: +44 (0)20 7490 5595
www.atompublishing.co.uk | eva@atompublishing.co.uk

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Printing

Printed by Precision Colour

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ISSN 2755-7855

Member profile

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I've enjoyed my time in health and safety. It's challenging and there are so many aspects to it. You are always learning something new. I would certainly recommend it as a career

Chris Cooter, APS assessor



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Welcome

With a new president, the debut of the Principal Designer Building Regulations Register and political change all round, it's certainly going to be a busy summer for APS, says **Andrew Leslie**

This wasn't quite how I expected my semi-retirement to start, however I am delighted to take on the role of interim chief executive at APS and look forward to leading the association through an exciting time ahead.

I must first express my heartfelt gratitude to Lesley for her invaluable contributions to APS. Her kind and compassionate leadership of the HQ team, effective elevation of APS's visibility, enhancement of member support and services and adept navigation of the association through the uncharted waters of the pandemic have been truly commendable. Thank you, Lesley, for everything.

The association has seen a further change at the top with Mark Snelling taking up the presidency in March. And now we are on the hunt for his successor – it could even be you!

As you'd expect, we hear first-hand from Mark on his agenda for APS and his efforts to raise the game when it comes to competence. Central to this is the new Principal Designer Building Regulations Register, giving



Andrew Leslie
Association for
Project Safety

“APS will always work to keep you up to date with changes as they impact you at work

expert practitioners the means to demonstrate their competence. Joining the register is all about showcasing what you know so the competency requirements have been rigorously peer-reviewed to ensure APS has one of the best schemes out there.

Mark has been at the heart of discussions on how the Building Safety Act will be delivered. APS is very lucky to have in our president an expert with his finger firmly on the pulse of what the powers that be are thinking. He is well placed to make your voice heard at the highest levels in government – all the more important as everything gears up for the General Election.

But change is not confined to Westminster. We take a look at the implications for medium and high-rise multi-residential buildings in Scotland as debate gets underway at Holyrood on the Housing (Cladding Remediation) (Scotland) Bill. APS is, of course, active around the country and we have plans for face-to-face events coming to your area starting in the autumn.

For now, we have a timely reminder, as aircon goes on, about legionella,

as well as fascinating insights into how ripples from Grenfell are having implications for safety in all buildings. We consider the additional duties introduced by way of the Building Regulations etc (Amendment) (England) Regulations 2023 and changes to the Building Regulations 2010 with the introduction of the new Part 2A.

And we hear from members how, in the first months since new dutyholders came into force, many people remain concerned about the rules and worried about how things may pan out.

APS will always work to keep you up to date with changes as they impact you at work. Don't just rely on the list in the magazine. You'll find all the events inclusive to your membership at www.aps.org.uk/ events. We add new things all the time.

APS is not just what you see in these pages, on our website or at events. APS is, and always will be, its network of wonderful, expert members. You are our association – and long may that continue.

Andrew Leslie is interim CEO of the Association for Project Safety.

APS PD BR Register

COMING SOON...



Find out more at www.aps.org.uk



Snelling: Time to take centre stage on safety

New APS president Mark Snelling sets out plans for increasing competence training

APS president Mark Snelling has set out plans for the association to play a bigger role in improving industry competence to meet the requirements of new legislation.

Snelling, who took up the post in March, said that the organisation saw its remit as one promoting project safety across all its forms relating to the built environment – “health and safety, building safety and fire safety”.

He added: “It’s a time of huge change and it’s a chance for APS and its members to grow, particularly in providing training to meet new requirements for competence. We are an organisation that has

historically delivered guidance, training and member development and we intend to build on that.”

The first of its new competence initiatives is the launch of a register for principal designers. This is a new dutyholder role in England introduced under the building regulations and is a separate role to principal designer for CDM compliance.

Principal designers will be held responsible for making sure that all projects of all types are designed to comply with building regulations. The transition period to put this in place ended on April 6 2024.

To be listed on the new APS register applicants will be assessed against

Mark Snelling:
“The industry needs to start working together in a far more coherent manner”

“It’s a time of huge change and it’s a chance for APS to grow, particularly in providing training to meet new requirements for competence
Mark Snelling, APS

competence requirements set out in PAS 8671 (see cover feature, p10-13).

Snelling said: “APS is in the process of reviewing existing member accreditation against BSI Flex 8670 [soon to be replaced by BS 8670] – which sets out the core criteria for building safety in competence frameworks – and then considering how we might take that forward to make sure that members, if they wish, can be reassessed to meet the current requirements against PAS 8670.”

He added: “We will almost certainly be delivering an organisational capability assessment accreditation scheme as well. But we are planning all of this very carefully so that we do not miss the opportunity that the current environment presents – but neither do we overload and fail.”

These initiatives form part of the organisation’s three-year plan, which Snelling has been involved in drawing up as APS president elect.

He said APS would also be looking to “link up with other professional bodies to share training opportunities. We have very specialist knowledge and very specialist members able to provide that information.”

He added: “The industry needs to start working together in a far more coherent manner. And that was Dame Judith Hackitt’s challenge. But I think that the industry still operates in too many silos.”

Asked whether he was optimistic more generally about the sweeping changes in building safety, Snelling said: “There are lots of people who would like the status quo to stay. But I think the government and the regulator are going to drive this change. It’s not going to happen overnight – my work on organisational capability [the management of competence] has shown me that.

“Some people know how to do their job because they have worked in it a long while. But if they were asked to demonstrate what they know about the building regulations – which is now

News in brief

Fire brigade rescues man from collapsed trench

London Fire Brigade firefighters rescued a man trapped up to his waist in sand and clay at a construction site in Charlton, south-east London.

The worker was trapped when a trench approximately 12m long and 4m deep collapsed on April 16 2024.

The rescue took more than six hours and involved five Fire Rescue Units. Once released, the man was taken to hospital by paramedics.

The London Fire Brigade said the investigation had been handed over to the Metropolitan Police and Health and Safety Executive (HSE).

Safety levy for Scotland

The Scottish government has secured powers from Westminster to introduce a tax to fix unsafe cladding.

The proposed measures mirror the Building Safety Levy introduced by the Building Safety Act 2022 in England, which aims to raise an estimated £5bn from developers responsible for unsafe buildings to fix them.

Funds raised through the levy would support the Scottish government's cladding remediation programme. (See p18-19.)

CSCS cards not needed for principal designers

The Construction Industry Council (CIC) says designers and principal designers do not require a Certification Scheme for Construction Skills (CSCS) card to demonstrate competence.

CIC issued the clarification after the body said there had been "some

confusion" over how designers and principal designers can present evidence of competence.

"CSCS cards are awarded based on competence in construction-related tasks and do not provide evidence of competence to act as a designer or principal designer," CIC said in a statement.

Government clarifies second staircase rules

From 30 September 2026, all new residential buildings 18m or over in England will have to include a second staircase.

The government has introduced this new threshold after considering the responses to its consultation on the fire safety guidance of the building regulations, known as Approved Document B.

The consultation ran from December 2022 until March 2023 and received 285 responses.

Grenfell Tower Inquiry report delayed again

The Grenfell Tower Inquiry has said that the report into the 2017 fire will not be published before the seventh anniversary of the tragedy as planned.

Although the report is reaching its final stages, the inquiry said the process of notifying those who may be subject to criticism as per the inquiry rules "has been significantly larger and more complex than we had originally expected".

The report was initially due in late 2023 but was delayed until early 2024, before a further delay until summer 2024 – and a further delay now.

fundamentally part of the role of all sorts of dutyholders – and evidence that, a lot of people will be found wanting, which organisations are beginning to discover."

Snelling added: "There has been an absolute reliance on building control for compliance. But the role of building control was never the gatekeeper to the building regulations or an audit function to demonstrate compliance.

"The law now makes it very clear that every dutyholder is responsible for their own actions and building control have been given categorical instructions: you do not give advice on projects."

Snelling takes over from Ray Bone, who remains as an adviser to the board of directors. His term of office will run until 31 January 2027. ●

About Mark Snelling

Mark Snelling is a health, safety and fire consultant for The Property Institute. He is a founder director of the Building Safety Alliance and technical author of its organisational capability standard.

Snelling is also the technical author for The Property Institute's health and safety and fire safety guidance notes.

A fellow of APS, he is a chartered builder (MCIOB) and certified member of IOSH (Grad IOSH). He has written guidance for APS and the Institute of Workplace and Facilities Management.

Snelling is involved in the Home Office's Fire Safety Reform Implementation Review Group and the Guidance Technical Group, the PAS 8760 Core Criteria for Building Safety in Competence Frameworks Steering Committee and the PAS 8764 Fire Risk Assessor Competence Steering Committee.

“The law now makes it very clear that every dutyholder is responsible for their own actions

Mark Snelling, APS

Firefighters from east and south London attended the Charlton trench collapse



IMAGE: LONDON FIRE BRIGADE



Why we need to design for demolition

There is no time to lose in following the example of other industries if the built environment is to become truly sustainable, says

Mike Kehoe, managing director at C&D Demolition Consultants

Why don't we design buildings for future demolition? Hopefully, we can agree that we should, but it's rare that we do. The one major exception is nuclear, where every new building must have a demolition plan for deconstruction in the future.

In contrast, aircraft and motor car industries routinely design and build products for reuse, salvage and ultimately recycling, as I discovered during my recent research for a master's in sustainable demolition.

Volkswagen claims that between 75% and 80% of new modern cars today can be recycled or reused and diverted from landfill in the future. The aircraft industry adopts a similar approach where a significant portion of an aircraft can be reused and salvaged once it is commercially unviable.

But as a specialist demolition consultancy we have only once been asked to assist in the design of a new-build structure for future demolition. Instead, we continue to store up problems – and wasted resources – for the future.

Take the Shard in London, built over London Bridge railway station and with plenty of other infrastructure built



Mike Kehoe
C&D Demolition
Consultants

Top: Demolition of a 1960s building in Edinburgh

around it. Just imagine the difficulties disassembling or decommissioning it. I am confident there are no slinging bolts installed or areas to remove the glass safely. How do we demolish such an awkward-shaped building where traditional scaffolding would probably not be able to give a safe and secure retention system?

Yet some simple ideas and a plan to demolish the building could have been identified at an early stage and informed the design. And the plan could have included microchipping glass, metal sections and other materials that could be reused.

The technology is certainly there to microchip building products to aid identification and reuse. Demolition is not a dinosaur industry, but one that promotes technical advances.

It's keen to seize the opportunity to promote the so-called circular economy. The National Federation of Demolition Contractors and the Institute of Demolition Engineers have set up working groups to ensure we are at the forefront of recycling, reuse and diversion away from landfill.

In addition to greater sustainability, reusing materials provides great business opportunities too.

“Government legislation may be needed to force new-build property companies to design so that components can be reused at the end of a building's life

We have started to see some of the first projects where virtually the entirety of the steel structure has been disassembled, checked, given a new code of acceptance and resold back into the UK steel fabrication market, thereby saving vast amounts of expended carbon. The reuse of glass and timber continues to be a significant diversion from landfill.

For design for demolition to be a fully coherent policy, a number of changes need to be made. Government legislation may be needed to force new build property companies to design so that components can also be reused at the end of a building's life. Planning regulations can play a big part in driving this agenda.

It is also vital that demolition contractors are part of a collaborative approach at the early stages of a project so that we can advise on how materials could be salvaged and dismantled for reuse.

Issuing owners with a safety handover document where the demolition had been planned at the conception of the building could provide an incentive.

Bearing in mind we are currently involved in demolishing some city-centre developments built in the late 1990s and early 2000s, it's feasible that some of those being built today could be obsolete and ready to be demolished in 2050 or 2060. We need to start changing this mindset today.

I don't want to be too negative – things are starting to improve and a few clients are now seeing the value of producing a sustainable building for future reuse. There are also loud calls for whole carbon assessments to become part of the building regulations. This could drive greater reuse of components which inherently have less embodied carbon.

We have one planet and we do not have finite resources. If we don't recycle, reuse, upcycle and divert from landfill not only will the demolition and construction industries struggle, but, more importantly, so will our planet. ●



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Dutyholders must now step up

The transition period for new dutyholder roles, including that of principal designer, for building regulation compliance has now ended. **Denise Chevin** asked APS members and other professionals how they have been gearing up for this new challenge and the impact it will have

One of many legislative changes introduced in the wake of the Grenfell Tower fire are new dutyholder roles that aim to provide accountability and responsibility for compliance with building regulations. The transition period to implement the new dutyholder roles ended on 6 April 2024.

The responsibilities of dutyholders mirror those under CDM which concern site safety – client, principal designer (PD), principal contractor, designer and contractor. The new requirements make similar demands in terms of coordination, management and working with other dutyholders, but also for ensuring that building works comply with building regulations.

These additional duties have been introduced through the Building Regulations (Amendments etc) (England) Regulations 2023, which insert a new Part 2A into the Building Regulations 2010.

Growing confidence

Unlike other aspects of building safety legislation, these do not just apply to higher-risk buildings. Instead they apply to any building project that has to comply with building regulations (with a few limited exceptions for domestic properties).

Since they were introduced in October 2023, there has been trepidation – and some confusion. But there seems to be growing confidence that the system will settle down in time.

Some point to the fact that the new regulations are, in fact, only imposing responsibilities that designers and contractors should already be shouldering if they are doing their job properly.

The dutyholder roles for building regulations can be performed by the same parties who carry out the roles under the CDM regulations. The key is that clients are obliged to appoint people who are competent to carry out the role and can evidence this.

Bobby Chakravarthy, partner at Arcus Consulting and past president of APS, explains: “It then becomes the responsibility of the principal designer and principal contractor to ensure that the design teams and the contracting teams are competent as well. It means the duty is transferred on to them to check that other people are competent. So there are checks and balances in place. That’s the ethos it’s trying to create.

“But these are two separate roles – and anybody who thinks that just because they’re qualified to be the principal designer for the CDM regulations they are therefore qualified to carry out the principal designer role for building regulations is kidding themselves. They are completely different sets of competencies, though there will be individuals with both.”

There is an expectation that the principal designer under the building regulations will be a ‘designer’ and will need to be fully knowledgeable about the regulations and their implementation. RIBA launched a register for principal designers towards the end of last year for its members only. APS will launch a register this month (May). Both will require applicants to demonstrate competence, that is show they have the right skills, knowledge and experience and demonstrate the appropriate behaviour to be appointed principal designer (see box, p13).

“There are checks and balances in place. That’s the ethos it’s trying to create”
Bobby Chakravarthy,
Arcus Consulting

Two roles with the same name

The twin-track approach – a principal designer for CDM regulations and a principal designer for building regulations – has been causing some confusion among clients and there is frustration that the two roles have been given the same name.

It is widely thought that the Building Safety Regulator (BSR) hoped the two roles would be carried out by the same organisation – the lead designer. Calling both by the same name has led to concern that clients don’t necessarily expect to pay two lots of fees.

Chris Bracewell, a member of the APS policy and resource committee and senior CDM coordinator at consultancy ORSA, says that his company makes it clear to clients the two roles are separate.

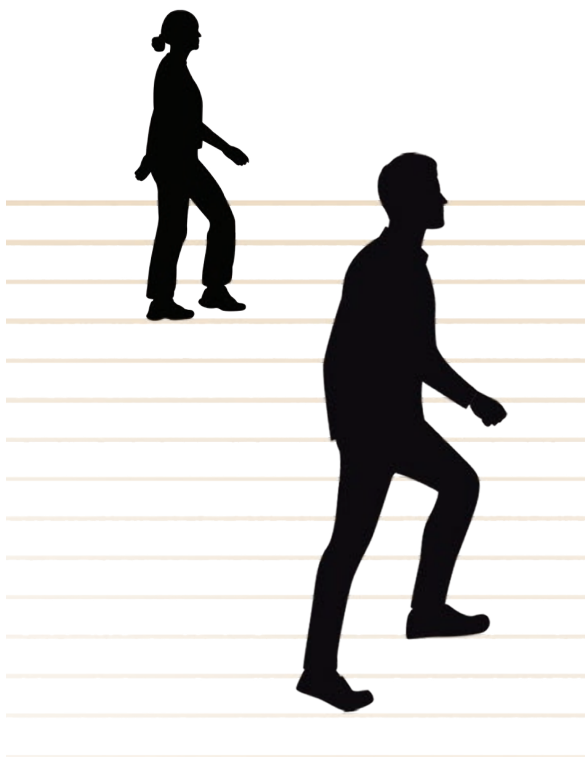
“Having said that, only yesterday I got an appointment document for a project that the company will undertake the role of principal designer CDM and principal designer building regulations,” he says.

“But the solicitor who has written the appointment documents tried to combine the two roles. There is not a problem with you doing both roles, but they are two separate roles with two separate sets of legislation.”

Another issue causing confusion is what happens in a design and build contract, which is the most popular way of procuring buildings.

John Gray, a partner at HTA Design and its head of delivery, points out: “The strong guidance and opinion of the RIBA is that if you are employed by the contractor as architects, you cannot be the principal designer. The principal designer has to be the contractor themselves. ►





“It is looking like quite a lot of design and build contractors are realising that they have to carry out the PD role in name at least, even if they delegate the actual duties

John Gray, HTA Design

“So the only mechanism by which an architect can be the principal designer is to be appointed by the client. However, we have had situations where we are working for the contractor and the client has asked us to have a separate mini-team acting as principal designer appointed by them.

He adds: “I think it’s a knotty problem that the government didn’t anticipate. And it has not been resolved – though it is looking like quite a lot of design and build contractors are coming to the same conclusions and realising that they have to carry out the PD role in name at least, even if they might delegate the actual duties to the architect working for them.”

Alternatively, as others point out, they might contract the role to a consultant.

Chakravarthy says there is no problem with a contractor taking on both roles as long as they are competent: “I think every project needs to be looked at in its own merit and within its own complexities. You have to find the right pathway to deliver it successfully and ensure that the regulation compliances are met.”

Peter Waxman, a director at Gleeds Health and Safety, says the spirit of the act has been very much about getting architects to assume a wider responsibility to do with health and safety – and there has been frustration within the HSE that the responsibility for the CDM regulations was being shunned by the profession.

“The CDM regulations came in the first place because architects weren’t taking a holistic view,” he says. “There are various models that are developing currently. There are some where the major architects are looking to take on approved inspectors full time to advise on their design. Other CDM companies are offering the building regulations PD role as an add-on.”

Gearing up for new dutyholder roles – what are your thoughts?

Samantha Mephram



Head of health and safety, Rider Levett Bucknall

Initially there was lots of confusion around the need to appoint the new dutyholders of principal designer and principal contractor under the building regulations, with many believing it only applied to higher-risk buildings.

As the transition came to an end, clients and project team members were becoming more familiar with the requirements. We have seen an exponential increase in requests for assistance and guidance around the new dutyholder roles as the industry starts to realise the scale of the legal application.

RLB was prepared for the changes. We had already undertaken competency reviews of all our technical teams and our principal designers against PAS 8671 and identified the gaps we wanted to fill.

We also overlaid the new requirements of the Building

Safety Act and its secondary legislation on top of our existing processes, ensuring our teams knew the requirements and how they could navigate and assist on their projects.

There is a real industry concern that the people supposed to deliver the new dutyholder roles simply do not exist – because of professional indemnity (PI) cover, competence, resource levels or all three.

Unlike CDM, an individual needs to be named in these roles, and until aspects such as the declaration statement are fully understood, there appears to be a reluctance for people to take this on.

It is difficult to predict when/if this will change until we start to see case law to demonstrate the legal interpretations. As a consequence, it is likely we will see an increase in costs due to supply and demand of ‘competent’ dutyholders.

As a minimum it is hoped that something will be done quickly to address the confusion caused by multiple dutyholders with the same name.

Chris Bracewell



Senior CDM consultant ORSA

I’m an architect, a fire engineer and a member of

APS, which is a little unusual.

I have seen the changes that have been coming and done something about it. I was one of the first four people to be accepted on the RIBA principal designer register.

Another thing I have done in anticipation of this role of the principal designer was that I’ve been working with APS members Mark Snelling (the new president), Andrew Leslie and Professor Sam Alwinkle to help to create the APS accreditation system against PAS 8671, which will enable members and also people from outside to get an accreditation that demonstrates their competence to undertake the new principal designer role.

In the past I’ve had my own architectural practice and worked for a number of years as the CDM lead for a practice in York.

Last year I joined ORSA, which is a safety consultancy based in London, as senior CDM consultant. ORSA is offering both CDM and building regulations compliance services and we are working for a number of big practices in London.

The role of principal designer doesn’t seem to have been well received. But then a lot of architects have not wanted to take charge of CDM and employed a consultancy to deal with CDM – and I believe many of them are thinking the same way now. I hear that many have also been struggling with PI insurance under the new role.

I’m optimistic that the new arrangements will raise standards in design and construction and building operation. The whole thing is about competence and accountability.

If you don’t do what you’re supposed to do, then the Building Safety Regulator will deal with you and may prosecute you for a serious offence. And if people don’t act accordingly, then they’re going to be made accountable.

However, as Peter Taylor, a partner at Leslie Clark, points out: “The problem is, you don’t get architects involved on all projects and others might not require building control. We’ve also started to notice that on some projects, companies previously providing approved inspector services are taking on the new role.

“When looking at design and build projects, under the CDM regulations many clients have always kept the principal designer appointment client side. This approach may also be adopted for the building regulations principal designer.”

The consensus is one of optimism – that the new rules will take time to settle down but industry will adapt. ●

“Under the CDM regulations many clients have always kept the PD appointment client side. This approach may also be adopted for the building regulations PD”
Peter Taylor, Leslie Clark



Application forms for the APS Principal Designer Building Regulations register will be sent out in May

APS principal designer register

The APS Principal Designer Building Regulations (PDBR) register allows clients searching for a principal designer (PD) organisation to check that their chosen firm has the appropriately competent staff for their project.

A small group within the APS has drawn up the competence requirements to mirror those set out in the PAS 8671 for principal designers and has been putting together a cohort of assessors.

Chris Bracewell, who has been involved in drawing up the competence requirements, says that the assessor group have all been “assessing” each other to ensure that they comply with the competence requirements and are therefore in a position to assess applicants.

President Mark Snelling says APS has received over 400 expressions of interest since the scheme was announced in April. APS intends to start sending out application forms in May.

Snelling says: “It will be expected that applicants will write a narrative and accompany that with evidence that they have delivered on the various competencies.”

APS says that the new scheme will be of interest to both members and non members.

It will include sections for competent PDs who have been assessed for non-higher-risk buildings and higher-risk buildings.

To learn more about the register, contact Andrew Leslie at andrew.leslie@aps.org.uk.

Bobby Chakravarthy



Partner, Arcus Consulting
We are a multidisciplinary practice with

a range of services including principal designer and CDM adviser and compliance services and will be providing principal designer services under the building regulations as well.

We are doing quite a lot of work at the moment, advising clients on the Building Safety Act regulation and how they need to do to comply and manage it within their organisations.

This regulation provides a new pathway to make the construction industry a better place. But there is a lot to bed down. Some clients are switched on, some have no idea where to start. And it will be interesting to see how it works for building control applications through the Building Safety Regulator (BSR) [for higher risk buildings].

The maturity level within the BSR will continue to develop as

it will across the industry – in the way that CDM regulations did.

We still have flaws in the industry where people don’t undertake the CDM regulations in a proper way and see it as a tick-box exercise. I think that will continue for a while under the new regs as well.

Peter Waxman



Director, Gleeds Health and Safety, Gleeds

When the secondary legislation for the new dutyholder roles arrived in October 2023 everybody was nervous, particularly architects about the new principal designer role.

But, actually, it’s an opportunity for them to get greater control of what they are designing, rather than something to be worried about. The regulations say that the principal designer should take all reasonable steps. It’s not a strict liability, unlike that of the principal contractor.

The zeitgeist is changing and there is a realisation of the need to grasp the nettle and take it on.

At Gleeds we’ve been educating our clients and their teams in exactly what needs to be done to comply with the Building Safety Act and secondary legislation.

There is huge change to take on board. But if you take a reductionist view, it is fairly straightforward. The big problem will be getting dutyholders to understand their obligations and get on board with them.

Peter Taylor



Partner, Leslie Clark Construction Consultants
Leslie Clark acts

as a CDM principal designer and we don’t intend to take on the responsibility for principal designer under the building regulations.

We have been clearing up confusion with our clients, including explaining that CDM regs have not changed. We’re advising clients on what the changes are, and how it’s not as complicated as it can sound. I think those working on higher-risk buildings have become a bit fixated by the gateways process.

But in reality, the gateways are just normal building control stages – the initial plans, the full plans and the final certificate. The only difference is it goes through the BSR, it requires more detailed information and you have certain legal hard stops that prevent dutyholders moving on at risk.

What the new dutyholder roles do is make it clear you have to follow the building regulations. That’s the big change. And you have to prove it and also that the building is compliant.

The liability is on the designer, contractor and client rather than the building control approver who won’t issue the final certificate until provided with evidence that the works/design complied with building regulations.

So we might get hold-ups as people will have to take more time to get used to the process – I think the whole industry got used to rushing through this stage as quickly as possible. A building would be handed over before the final certificate had been issued by building control – that won’t happen now.



Anatomy of a fall: Inside a mock HSE trial

If there's an accident on your site and the HSE investigates, what happens next? A 'mock trial' shows how proceedings work in a health and safety prosecution. **Cristina Lago** sits in

“Although the company and witnesses were all fictional, the case echoed one of the many construction prosecutions brought by the Health and Safety Executive

PSJ was in court recently. Only, in this case, the court was a bright room of a riverside London office, those sitting in the dock were lawyers with impressive acting skills and the jury was made up of curious guests keen to understand what happens during a prosecution following a serious accident at a construction site.

During this ‘mock trial’, the health and safety team at law firm Fieldfisher recreated a prosecution brought forward by the Health and Safety Executive (HSE).

Although the company and witnesses were all fictional – played by actual lawyers – the case echoed one of the many construction prosecutions brought by HSE. The jury was made up of the guests in attendance, split into three groups to see if they would all reach the same verdict.

The prosecution barrister sent ‘the jury’ a clear message during his opening speech: these proceedings were not just about an accident but about determining if the company accused of health and safety breaches did everything that was at hand to reduce risk.

“Scaffolding is a dangerous business, and the prosecution claims that the company should have taken steps to mitigate risks,” he gravely told the jury.

The circumstances leading to the accident

The court was given the background to the accident. An agency worker hired by fictitious scaffolding company Rud Hill Ltd suffered multiple injuries to the head, spine and one leg following a fall from height at a project in Essex.

When the senior projects manager rushed to the scene, he found out the worker had not been using a security lanyard when the incident happened.

Although Rud Hill employed a team of professional scaffolders trained to varying levels in the Construction Industry Scaffolders Record Scheme, an increase in service demand since



The prosecution counsel (right) asks the agency worker about the accident he had at the Rud Hill site

the pandemic led the company to hire additional agency workers.

However, Rud Hill had been slow to expand its back-office function and roll out recruitment and training programmes to match its increased hiring strategy. It had also not reviewed its health and safety policies and procedures for some time.

While the senior projects manager was on leave, the managing director tasked a less experienced employee to hire agency workers for the Essex job. These were given a very brief induction to the project and site. They did not receive proper training and no risk assessments were carried out.

When the senior projects manager returned from leave days before the accident, he found that his colleague who had hired the agency workers had not yet completed risk assessments.

The senior projects manager raised concerns about this with the MD, who told him he would look into the issue – but then the accident happened.

An investigation by the police concluded that the accident was caused by a failure of Rud Hill to provide appropriate equipment to the agency worker. It also found that there was an overall lack of health and safety systems in place to protect employees, contractors and other third parties. As a result, the police reported the accident to the HSE.

Following the HSE inspector's investigation, the HSE informed Rud Hill that it would be prosecuted and the matter proceeded to trial.

The charges

Rud Hill was charged with breaching s.3(1) Health and Safety at Work Act 1974 – failing to protect non-employees from health and safety risks from its undertaking.

The mock trial's time constraints did not allow it to incorporate other charges. However, in this scenario, there was also the possibility of the following charges:

- s.2(1) Health and Safety at Work Act 1974: failing to protect employees from health and safety risks (in relation to the agency failing to protect the agency worker); and
- s.37 Health and Safety at Work Act 1974: providing for the liability of a director, manager, secretary or similar officer of a body corporate where it is shown that an offence was committed by the company and this was due to the consent or connivance, or attributable to any neglect on the part of, the director or manager, etc.

Evidence and cross-examination

The prosecution's opening speech was followed by its witnesses' evidence and cross-examination.

These included the agency worker who suffered the accident, Rud Hill's managing director, Rud Hill's senior projects manager, a company employee and the HSE inspector who carried out the investigation.

The first witness to be called was the agency worker. He gave evidence as to what happened in the lead-up to the accident. Having suffered life-changing injuries didn't ►



spare him from being ferociously grilled by the defence's counsel.

"There was confusion about what we should or should not be wearing in terms of safety equipment on site," the agency worker said.

Although he admitted that he often made his own judgement about whether a lanyard was needed, he said he wasn't provided with one on the day of the accident anyway.

He also explained to the prosecution that on his first day he received a short induction and tour of the site but could not remember getting any training or being told about "safe systems of work".

He accepted that his memory was "quite hazy" as a result of his injuries, a fact that the defence highlighted in his cross-examination.

After the accident, the agency worker had to move back to his parents, who were looking after him. He got tired often, wasn't working and recovery was taking longer than expected by the doctors.

Here, the judge interjected to explain to the jury that these issues would be relevant to the sentence.

During the prosecution's questioning of the company's MD, she admitted that her senior projects manager had on occasion raised the issue of health and safety with her but

The jury groups were divided in their verdict

“The agency worker received a short induction but could not remember being told about ‘safe systems of work’

this had not been prioritised due to "other pressing operational issues".

Perhaps one of the most interesting parts of the trial was the exchange between the judge and the HSE inspector. The former requested that the latter should focus on the facts and actions, not the conclusions he drew.

"You are not an expert. You are an inspector," the judge said. He asked if he had already made up his mind before visiting the site where the accident took place. "Absolutely not," the HSE inspector replied.

The defence then called Rud Hill's MD, senior projects manager and employee. The employee said that the training on site "was normally good, provided the senior projects manager was about", but it became clear from the cross-examination that Rud Hill's health and safety procedures had been severely impacted and overlooked since its expansion in recent years.

For example, risk assessments of the project were done only after the accident, a copy of the company's health and safety policy wasn't available on site and concerns were raised by the senior projects manager just days before the accident.

In his closing speech, the defence barrister tried to persuade

the jury that Rud Hill had done everything it could to prevent the accident and, as such, it should be declared not guilty.

The jury decides

Before the three jury groups retired to ponder the verdict, the judge summed up the evidence of the case.

"You have to decide only those matters that enable you to say whether the charges in this case have been proved," he told the jury.

"You decide the case on the evidence you have heard. There will be no more and you must not speculate about what other evidence there might have been.

"But remember, you are bringing with you to your task your good sense and life experience and so you are entitled to draw inferences – that is, come to commonsense conclusions based on the evidence you have heard."

After much deliberation, two out of the three groups declared Rud Hill guilty. They considered the company's health and safety shortcomings meant it missed important steps to mitigate risks on the project.

The third group didn't consider that the evidence presented was compelling enough to find Rud Hill guilty.

Unfortunately, time ran out before the court could decide on a fine. ●

Low Friction Layer

Allows the head to move inside the helmet, engineered to help reduce the rotational force on certain impacts.



Mips

Safety for helmets

Scotland puts spotlight on cladding reforms

Lisa Dromgoole and **Francesca Macmillan** from international law firm Womble Bond Dickinson on new cladding legislation and other plans to enhance building safety in Scotland



Progress to identify, assess and fix unsafe cladding on Scotland's medium and high-rise multi-residential buildings will be accelerated, according to the Scottish government, which recently published its Housing (Cladding Remediation) (Scotland) Bill (the Bill).

The Bill has been introduced to the Scottish parliament as part of the 2023/2024 Programme for Government, with the aim of supporting the delivery of the Scottish cladding remediation programme and speeding up the remediation process.

The Bill's explanatory note advises that all provisions are intended to contribute towards eliminating or mitigating the risks to human life that are created or exacerbated by

Cladding on a high-rise residential building in Glasgow is replaced with fire-resistant materials

the external wall cladding systems of buildings that are at least partly residential.

There are three key features of the Bill. These are covered in Parts 1, 2 and 4 of the Bill. (Part 3 covers individual liability where an organisation commits an offence and Part 5 addresses interpretation.)

1. Cladding Assurance Register

Part 1 of the Bill sets out that Scottish ministers are to create and maintain a register (Cladding Assurance Register) of information on buildings that have undergone a single building assessment (SBA).

2. New powers to arrange remedial works

Part 2 would allow the Scottish government to arrange for SBAs and

remedial works to be carried out and to order evacuation of buildings where necessary. This part aims to combat the practical difficulties of obtaining owners' consent.

3. Responsible Developers Scheme

Part 4 gives ministers the power to establish a scheme to support engagement with developers and encourage them to pay for, or carry out, remediation work. Potential sanctions for developers that are eligible but do not join or continue membership are also contained in this section of the Bill.

● **Eligibility:** The Bill prescribes that regulations must make membership of a scheme depend on (but not only on) a person being a developer and having a connection to a building of a kind described by the regulations that has problematic cladding.

● **Sanctions:** The Bill sets out the consequences of developers not being a member of this scheme:

- They would be on a 'prohibited developers list' – a published list of developers eligible for membership but which are not members.
- Regulations would be created that would prohibit such developers from carrying out any development or developments of a kind described in the regulations.

- Regulations would also prevent building warrants from being granted, or amended, on application by the developer and would require a verifier to reject any completion certificate submitted by the person.
- The maximum penalties in respect of offences created under this Bill would be a fine of up to £50,000.

Cladding measures in Scotland

The Bill is being introduced against the backdrop of various measures that have already been implemented in relation to cladding in Scotland.

These initiatives aim to improve public safety following the Grenfell Tower fire in 2017. They include:

● Ministerial working groups:

The Ministerial Working Group on Building and Fire Safety was created, followed by the Ministerial Working Group on Mortgage Lending and Cladding.

● **Recent legislation:** On 22 April 2022 the Scottish parliament passed legislation to ban combustible cladding on high-risk buildings, and the highest-risk metal composite cladding material from all buildings. This was implemented through amendments to the Building (Scotland) Regulations 2004 introduced on 1 June 2022.

● **Scottish Safer Buildings Accord:** Scottish ministers and a list of developers have committed to ensuring there are no high-risk combustible cladding systems on multi-occupancy high-rise residential buildings in Scotland.

● **Single building assessments:** SBAs were introduced in March 2021, through a pilot scheme for 25 buildings, following a recommendation of the Ministerial Working Group on Mortgage Lending and Cladding for multi-occupancy residential buildings with cladding on their external walls.

● **Register of buildings:** A register is being created at the recommendation of the Ministerial Working Group on Mortgage Lending and Cladding. It will contain details of buildings assessed through an SBA and remediated to an agreed and consistent set of standards, reducing a building's status from high to low risk.

● Cladding Remediation

Programme: As of 21 June 2023, 105 buildings were listed as involved in the Scottish Cladding Remediation Programme. Fourteen were at the reporting stage, meaning action could begin on remediation as required.

Scotland's building safety progress

The parliamentary meeting of the Local Government, Housing and Planning Committee on 30 May 2023 raised salient points about the continuing challenges of cladding remediation work in Scotland.

There were discussions of the cladding remediation work in Scotland in comparison with what is currently being done in the rest of the UK.

The UK Government's Building Safety Act 2022 (and the raft of regulations that have come into force under it in the past 12 months, most recently on 1 October 2023), appear to have accelerated progress in England. However, this Act has limited application in Scotland.



Francesca Macmillan
Womble Bond Dickinson



Lisa Dromgoole
Womble Bond Dickinson

Fionna Kell, director of policy at Homes for Scotland, advised that her organisation was disappointed that there had not been a UK-wide coherent approach to cladding legislation. She acknowledged that both Homes for Scotland and homebuilders north and south of the border recognise that Scotland has different standards and regimes.

Kell commented: "The home-building market in Scotland traditionally has significantly more small and medium-sized enterprises than the rest of the UK."

She went on to warn that remediation payments required by businesses must not be so crippling as to put them out of business – not least because this would increase the number of 'orphan buildings' (those without a developer to contribute) to be remediated out of the public purse.

Paul McLennan, the Scottish minister for Housing, advised that £400m has been set aside for this purpose, but that this figure was likely to rise once the process is under way.

A Scottish levy?

One way of funding the necessary remediation works would be through a Scottish Building Safety Levy. The Scottish government set out its intention to seek devolution of powers to introduce a levy "equivalent to the UK government's new Building Safety Levy for England".

The aim is to ensure that developers in Scotland continue to contribute financially to tackling cladding issues.

McLennan said a levy would guarantee that developers make a "fair contribution" towards cladding

“The Scottish government remains committed to working with developers to agree a contract setting out their commitments to support the remediation of buildings that they developed

Paul McLennan, housing minister

remediation. He stated that the Scottish government remains "committed to working with developers to agree a contract setting out their commitments to support the remediation of buildings that they developed".

A levy is not included in the Bill. At the time of writing, however, it was announced that the Scottish government had secured powers from Westminster to introduce a new levy.

What comes next

There is still a lot of work to be done in Scotland to remediate buildings affected by unsafe cladding and to bring further legislative changes around cladding into force, but progress is being made.

Keep an eye out for the following:

- the outcome from the Ministerial Working Group on Building and Fire Safety's next meeting; and
- phase 2 of the Grenfell Tower Inquiry report, due to be published this year.

Furthermore, there is the Bill. It is currently at Stage 2. Stage 1 was concluded on 12 March 2024 and the meeting to consider amendments under Stage 2 is scheduled to take place on 23 April 2024.

It is not certain that the members of the Scottish parliament will vote to pass the Bill to make it an Act. And it is likely that we will see some amendments as it passes through parliament, so it will be interesting to see how the Bill develops. ●

Lisa Dromgoole is a partner of Womble Bond Dickinson, based in Edinburgh. She heads the construction and engineering practice in Scotland. Francesca Macmillan is a second-year trainee solicitor in the construction and engineering team. She is also based in Edinburgh.

The Bill is available on the Scottish parliament website: www.parliament.scot. For more on building safety in the UK, visit the Building Safety Hub at www.womblebond Dickinson.com.

Progress is being made on remediating cladding through legislation





Chris Cooter:
“I am an APS fellow, which I’m very proud about”

I know you’ve had a long and interesting career, what are you doing now?

I’m at retirement age – I’m 71. I still enjoy working and now just work a few days a week. My main work is as an APS assessor, which involves assessing new and existing members and corporate businesses for membership of APS.

I am also an asbestos and fire consultant and carry out asbestos surveys and fire risk assessments. I have been a member of APS for 20 years and am a fellow, which I’m very proud about.

How did you get into this line of work?

After leaving school at 16, I worked for a few years before signing up for the army and joined the Royal Engineers in 1972 as a sapper. I undertook my trade training as a plant operator mechanic, which I really enjoyed – it’s far easier to dig a trench with an excavator rather than a shovel!

During my career I served on several tours to Northern Ireland, Germany, Cyprus, Belize, Hong Kong, Falklands and Canada, to name a few. I was mostly posted to the construction squadrons undertaking various projects around the world.

During my 22 years in the Royal Engineers I carried out a wide variety of construction projects worldwide and gained a wealth of experience that has made me the person I am today. In 1994 I left the forces to embark upon a civilian life.

Prior to leaving the forces I undertook my NEBOSH certificate and entered the world of health and safety. I had a number of positions over the following years as a health and safety and environmental manager and obtained IOSH chartered safety practitioner.

I undertook positions in the sawmilling industry and vehicle accident repair sectors. As I had a construction background, my next role was construction safety adviser for a principal contractor working on

‘I feel that we are taking a massive step forward’

Chris Cooter, APS assessor and asbestos consultant, is optimistic about Building Safety Act changes, but is concerned by a too often cavalier approach to asbestos

“I’ve enjoyed my time in health and safety. It’s challenging and there are so many aspects to it. You are always learning something new
Chris Cooter, APS assessor

the airports. This was a challenging and rewarding role.

To move my career forward and build on my knowledge, I joined a multidisciplinary consultancy as a principal supervisor and CDM coordinator. I continued in this role up to 2012.

For personal and health reasons I was then forced to give up work until 2015 and began doing competence assessments for APS. I also became chairman of the Yorkshire APS branch, which I really enjoyed.

What can you tell us about the new PD building safety register?

The APS Competency Scheme is relevant to individual designers of all disciplines who are undertaking the role of PDBR (principal designer building regulations). It will be assessed against a competency framework based on PAS 8671.

The APS register will include sections for competent principal designers (PDs) who have been

assessed for non-higher-risk buildings and higher-risk buildings. Following an application and successful assessment, designers will be included on a register of competent PDs within their area of specialism.

The APS PDBR register is open to both members and non-members.

It’s a changing time in health and safety. Do you feel optimistic about what’s going on?

Change was needed, and I feel that we are taking a massive step forward in building and construction safety – for example, the introduction of the Building Safety Act 2022.

Under the Act there is a requirement to demonstrate building safety through a new system of gateway points during design and construction plus a safety case report during occupation.

Importantly the gateways apply for construction, refurbishment and on any works in higher-risk buildings (HRBs). But, as with any big changes, there is always uncertainty.

Asbestos requires careful management or removal

However, as more information and training has been provided, organisations and individuals begin to understand what is required from them and start to prepare for the changes.

One of the things I’m still concerned about, though, is asbestos work. In spite of all the legislation in place, it is still not fully understood that a refurbishment/demolition survey is necessary when the building (or part of it) is to be upgraded, refurbished or demolished.

It aims to ensure that nobody will be harmed by work on asbestos-containing materials in the premises or equipment. There’s still a lot of asbestos in buildings and it needs careful management or removal.

What advice would you give people starting out in the industry today?

I think people need to have a defined goal about where they’d like to be in five years’ time. They can then work out what qualifications they need and the experience they need to get there.

I’ve enjoyed my time in health and safety. It’s challenging and there are so many aspects to it. You are always learning something new.

I would certainly recommend it as a career – the 22 years in the forces are not mandatory!

And outside of work?

I’m a very keen photographer – particularly landscapes. ●



Reducing legionella risks in the built environment

In this CPD **Nick Barsby**, technical director with NJB Associates, and **Matt Morse**, technical director, Dragonfly Water, explain developments in the assessment and monitoring of water systems to prevent legionella and the guidance and legislation that building operators and consultants need to follow

The risk posed by legionella has been known for over four decades. During this time, the way we manage that risk has not fundamentally changed, although we are on the precipice of a significant evolution in terms of rapid testing and monitoring.

The legionella bacterium was first identified following an outbreak of mystery pneumonia in 1976 at a convention of the American Legion at the Bellevue-Stratford hotel in Philadelphia, though its existence can be traced back decades before.

This outbreak resulted in the death of 34 people and over 221 confirmed cases, and led to the naming of legionella and Legionnaires' disease.

Legionella: What is it?

Legionella is considered a ubiquitous bacterium that lives in many water systems. Legionella bacteria become a risk to humans when water containing the pathogen becomes aerosolised and can be inhaled.

Legionella thrives in man-made water systems where water can sit between 20C and 45C. Once it enters the human body it



Nick Barsby
NJB Associates

infects the patient's lungs, causing pneumonia. This has a mortality rate of 10%.

Legionella, as a genus, has more than 60 different species. The most commonly known is *Legionella pneumophila*, yet over 20 legionella species have been clinically linked with human infection.

A study by the Legionella Control Association looked at laboratory data from 2019-2021. In environmental samples, *L. anisa* was found in over 50% of samples while *L. pneumophila* was present in only 32% of samples.

The study also highlighted that, during this period, the percentage of results returning a positive result increased from around 10% to 13%. During this time the number of samples taken increased by 20%.

In reality this meant there were around 15,000 positive legionella samples a month in 2021 compared with 10,000 a month at the start of the dataset in 2019.

Two new species were identified after the Covid pandemic. These were confirmed in Italy (*L. Bononiensis*) and Mallorca (*L. Maioricensis*) following whole genome sequencing.

What is the legislation and guidance?

The laws covering legionella control are the Health and Safety at Work etc Act 1974 (HSWA) and, in healthcare settings, the Health and Social Care Act 2008.

Regulations such as COSHH, Management of Health and Safety at Work Regulations and the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) build on the legal requirements and give more detail.

These include:

- risk assessment;
- risk elimination, substitution, control measures, PPE; and
- access to competent help.

The law around legionella control is criminal law and carries penalties of up to two years in prison and unlimited fines.

The legal test is exposure to risk of harm. There have been many prosecutions without cases of disease or even positive legionella samples – simply risk conditions being present and uncontrolled.

Designers, builders and commissioners of building water systems can all be prosecuted for

failings that lead to unacceptable risk conditions in water systems.

The *Approved Code of Practice for Legionella (ACoP L8)*, fourth edition (2013) gives specific information on how dutyholders must comply with the law. ACoPs have special legal status. If they are not followed, dutyholders must be able to show they have complied with the law in some other way, or the court will find them at fault.

The principles in the ACoP are developed into detailed guidance health and safety guidance (HSG) for specific risk systems:

- *HSG274 Part 1: The control of legionella bacteria in evaporative cooling systems (2024);*
- *HSG274 Part 2: The control of legionella bacteria in hot and cold water systems (2024);*
- *HSG274 Part 3: The control of legionella bacteria in other risk systems (2024);* and
- *HSG282: The control of legionella and other infectious agents in spa-pool systems (2017).*

In healthcare settings there are more detailed and stringent guidance documents in the form of health technical memorandums (HTMs).

The key one for legionella control is *HTM 04-01 Safe water in healthcare premises*. This was published in 2016 and is supplied in four parts:

- *HTM 04-01 Part A: Design, installation and commissioning*



- *HTM 04-01 Part B: Operational management*
- *HTM 04-01 Part C: Pseudomonas aeruginosa, advice for augmented care units*
- *HTM 04-01 Supplement: Performance specification D 08, thermostatic mixing valves (healthcare premises)*

The HTM guidance builds on the ACoP and HSG documents and goes further due to the increased risk and susceptibility in healthcare settings.

There are slight variations on these documents in England, Scotland and Wales. It's important to read your local copy and understand the nuances.

What do I need to do to manage the risk?

The guidance is clear: water systems must have a Legionella Risk Assessment (LRA). The LRA must:

- identify the hazards and quantify the risk;

***Legionella pneumophila* is the best known of over 60 species**

“There have been many prosecutions without cases of disease or even positive legionella samples – simply risk conditions being present and uncontrolled

- evaluate the key people involved in legionella control and their impact on risk – the dutyholder, the responsible person, their deputy and any other key staff or contractors;
- highlight any areas where improvements could be made to reduce risk to be as low as reasonably practicable (ALARP);
- provide technical or remedial recommendations; and
- provide recommendations for a written scheme of control – that is, things necessary to reduce risk on an ongoing basis.

It is important to note that prosecutions have taken place for companies not having an adequate Legionella Risk Assessment.

In a recent case a company which had installed and operated a cooling tower without a risk assessment or scheme of control in place was prosecuted for failings under the HSWA Section 2(1), protect the health of employees and 3(1) protect the public from risks to health.

The two dutyholders were sentenced to 12 weeks in prison with fines in excess of £12,000 each.

How do I mitigate against the risk?

ACoP L8 has some very clear advice for the reader on circumstances to avoid. These are listed in Paragraph 59. If achieved, the risk of exposure to legionella is reduced. ►

“*L. pneumophila* is most commonly associated with outbreaks and deaths but there are over 20 different legionella species with known links to human infection

These are:

- Avoid growth temperatures of between 20°C and 45°C;
- Avoid water stagnation;
- Avoid using materials that harbour bacteria;
- Control the release of water spray;
- Maintain the cleanliness of the system and water inside it;
- Use water treatment techniques; and
- Ensure correct and safe operation and maintenance of the system.

The ability to avoid growth temperatures or stagnation may seem simple in principle. However, a cooling tower or a hot tub must operate within the growth temperatures for legionella and both may have periods of stagnation.

These high inherent risk systems rely more on water treatment and cleaning than other lower inherent risk systems.

Even in ‘normal’ hot and cold water systems there will be natural times of stagnation. Think of an office block – it is busy and frequently used from Monday to Friday, yet at weekends usage plummets.

How long does it take for heat gain/loss to enable the hot or cold water to reach legionella growth temperatures? Over the course of the 48 hours of reduced usage it is likely to happen.



Top: An evaporative cooling system in situ

Above: A cooling tower ‘pack’ before a clean and descale

Even in these low risk systems, we need to consider the full selection of tools in ACoP L8 Paragraph 59 to reduce the risk.

It is important to note that all of the UK guidance and regulation surrounding legionella control is very clear that the risk is posed by all species of legionella.

Actions targeted to just one species, such as *L. pneumophila*, do not follow the guidance and are

not good practice. *L. pneumophila* is most commonly associated with outbreaks and deaths but it needs to be considered that the risk is posed by over 20 different legionella species with known links to human infection.

What does the future hold?

The observant among you will have seen that *Health and Safety Guidance 274* was all updated this year. The true reflection is that Part 1 (the cooling tower guidance) was updated and Parts 2 and 3 will have broader updates in 2025 and beyond.

But the reference section has been updated in all documents. The topics of remote monitoring and rapid testing are likely to feature in the updates to HSG 274 Parts 2 and 3.

Significant advances are taking place in remote monitoring. The Water Management Society (WMSoc) has published guidance on the subject in *Initial Guidance for End Users on Remote Temperature Monitoring Systems – Part One*.

This gave the market some key questions to ask and included some follow-on questions to aid understanding. The focus was very much on understanding the pros and cons of remote sensors, without answering the questions as to what to do with thousands of temperature readings per asset per month as opposed to a single data point.

Part Two of this guidance is due in the coming weeks. It may have even been published by the time you read this. It will give a bit more of a steer on considerations but it is unlikely to give any firm and fast metrics.

If we think back to ACoP L8 and Paragraph 59, the aim is to avoid

growth temperatures of between 20°C and 45°C. How long we need to stay out of those zones is unlikely to be covered and the consideration should move to a risk management approach instead of a compliance approach.

Rapid test methods, both onsite and quicker laboratory tests, are developing fast. The key to any rapid test is its ability to identify all legionella species. There have been major advancements in polymerase chain reaction (PCR) testing post Covid. An influx of instruments has been bought by laboratories, with a wider acceptance of the data they provide.

The downside of PCR is that it reports the data in genomic units (GU), estimating the amount of target DNA in the sample. Yet the guidance and control limits are predominantly written around colony forming units (CFU) for the older culture testing method. There is no direct correlation between amount of DNA present and the growth possible on a culture plate.

Control and action limits for GU are being developed. It is hoped that these may have some coverage in HSG274 updates in the future.

Various other methods have developed in recent years. Antigen tests (similar to Covid home test kits) are used widely across Europe for



Rapid laboratory tests are being developed

L. pneumophila testing. At present these methods can only identify *L. pneumophila*, so more work is needed on these to meet the strict UK requirements. They do offer a rapid pass/fail response for a one species and definitely have a place in our toolkit of responses.

Conclusion

The need for Legionella Risk Assessment is a clear legal requirement that falls under HSWA. There is clear direction on how to comply with legislation in ACoP L8 and guidance on good practice in the HSG documents.

The need to create a control scheme based on findings of risk assessment and the use of a range of techniques to reduce any risk is clearly defined in ACoP L8 Paragraph 59.

Remember, ACoP L8 has a special legal status. If you are prosecuted for breach of health and safety law, and it is proved that you did not follow the code's provisions, you will need to show that you have complied in some other way. ●

“Antigen tests (similar to Covid home test kits) are used widely across Europe. At present these only identify *L. pneumophila*, so more work is needed on these to meet UK requirements

CPD Questions

1) How many species of legionella have been clinically linked with human infection?
a) 2 b) 10 c) Over 20

2) What does the *Approved Code of Practice for Legionella (ACoP L8)* give guidance on?

- a) Specific information on how dutyholders must comply with the law around legionella
- b) The control of legionella and other infectious agents in spa-pool systems.
- c) COSHH regulations

3) The topics are likely to feature in the updates to HSG274 Parts 2 and 3?

- a) *Pseudomonas aeruginosa*, advice for augmented care units
- b) Remote monitoring and rapid testing
- c) Use of PPE

4) What is the growth temperature for legionella?

- a) Between 15C and 45C
- b) Between 20C and 45C
- c) Between 45C and 55C

5) Post Covid there have been major advancements in what concerning legionella?

- a) Polymerase chain reaction (PCR) testing
- b) Design of cooling systems
- c) Chemicals to reduce legionella outbreaks

To test yourself on the questions and collect CPD points, go to:
projectsafetyjournal.com

Number of high-rise block fires down by 17% in past 10 years

Two fire-related fatalities in the 12 months to September 2023



The terrible fire at Grenfell Tower in June 2017 – where 72 people lost their lives – has placed the spotlight firmly on building safety. It has spurred a wave of new legislation to ensure that such tragic events in high-rise blocks could never happen again.

The Grenfell fire unmasked systemic building failures in many facets of design, construction, regulation and housing management. Luckily, however, the number of incidents attended by fire and rescue services

in purpose built blocks of flats and maisonettes has been declining over the past decade, according to government statistics for the year ending September 2023.

In the 12-month period to September 2023 there were 707 fires in purpose-built high-rise (10 or more storeys) flats or maisonettes. This was a decrease of 5% compared with the previous year (744) and of 13% compared with five years ago (810). Compared with 10 years ago (856) it shows a decrease of 17%.

A fire crew in attendance at a high-rise tower block

There were two fatal fires resulting in two fire-related fatalities in purpose-built high-rise flats or maisonettes, compared to four fatal fires with four fire-related fatalities in the previous year.

Over the five years to September 2023, fire and rescue services attended 3,800 fires in purpose-built high-rise (10+ storeys) flats or maisonettes. These resulted in 19 fatal fires and 21 fire-related fatalities.

This compared to a higher figure of 3,911 fires, resulting in 14 fatal fires and 84 fire-related fatalities, in the five years ending in September 2018. This five-year span included the 2017 Grenfell Tower fire.

The number of non-fatal casualties in fires in England in these types of dwelling has been on a downward trend in the past decade. In the year ending September 2023, there were 6,205 non-fatal casualties, an increase of 0.9% compared with the previous year (6,149).

Across all types of buildings, in those 12 months there were 39,045 building fires (dwelling and other building fires), which made up 6.6% of all incidents attended by fire and rescue services, 27% of all fires and 62% of all primary fires. (Primary fires are those considered to be the most serious or with a threat to life or property.)

This reflects the changing mix of incidents and fire types within primary fires over the past decade. A decade ago, in the year ending September 2013, 9.4% of all incidents, 28% of all fires and 66% of all primary fires were building fires.

In the year ending September 2023 there were:

- 278 fire-related fatalities (an increase of 1.8% compared with 273 in the previous year);
- 208 fire-related fatalities in dwelling fires (a decrease of 3.7% compared with 216 in the previous year);
- 6,205 non-fatal casualties (an increase of 0.9% compared with 6,149 in the previous year); and
- 2,762 non-fatal casualties requiring hospital treatment (an increase of 12% on the 2,460 in the previous year). ●

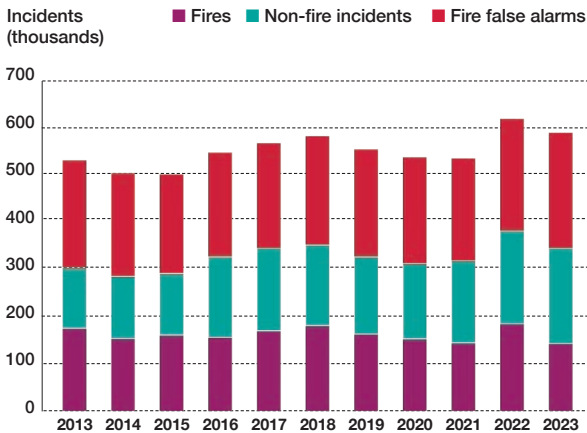
Total fire-related fatalities, fires that resulted in at least one fatality and percentage of primary fires that resulted in a fatality, England. Year ending September 2013 to year ending September 2023



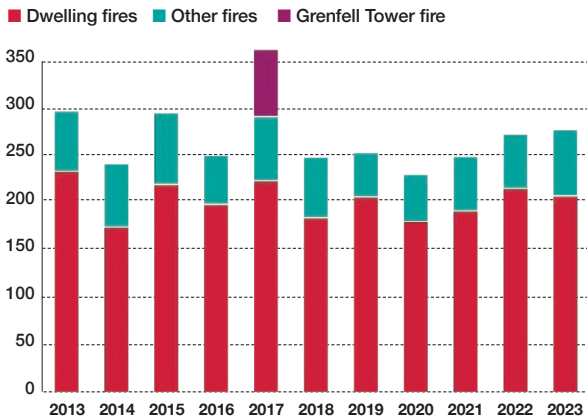
3,800

In the five years ending September 2023, fire and rescue services attended 3,800 fires in purpose-built high-rise flats

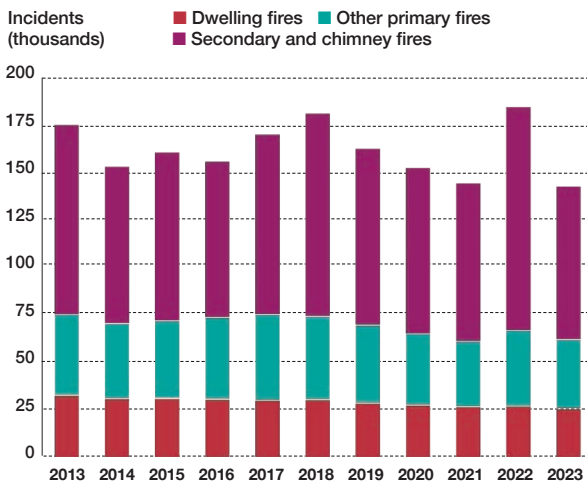
Total incidents attended by incident type, England. Year ending September 2013 to year ending September 2023



Total fire-related fatalities, England. Year ending September 2013 to the year ending September 2023



Total fires attended by type of fire, England. Year ending September 2013 to year ending September 2023



In the dock

Recent prosecutions for health and safety breaches

Herts firm fined £133,330 under CDM regs

A Hertfordshire firm has been fined after a 22-year-old employee was crushed to death by an excavator.

James Rourke died after being struck and run over by the excavator at Sarazen Gardens, Brampton, on 18 November 2019. Materials Movement had been hired to undertake ground clearance works in preparation for new houses.

Rourke had only joined his employer months after graduating from the University of Birmingham with a degree in geology in the summer of 2019.

Materials Movement, of Royston Road, Baldock, Hertfordshire, pleaded guilty to breaching Regulation 15(2) of the Construction (Design and Management) Regulations 2015.

The company was fined £133,330 and ordered to pay £8,500 in costs at Peterborough Magistrates' Court on 22 March 2024.

“A demolition grab, attached to an excavator, fell onto the 24-year-old from Gravesend while it was loaded onto a lorry at the company's workshop

NG Bailey fined after death of subcontractor

Alistair Hutton, a subcontractor hired by NG Bailey, lost his life while working on the construction of the Baird Family Hospital in Aberdeen on 18 January 2023.

Hutton had been navigating a mobile elevating work platform (MEWP) along an unfinished corridor at the hospital when his head struck a metal lintel.

The 51-year-old lost consciousness and died at the scene shortly after.

An HSE investigation found NG Bailey, the lead contractor, failed to consider overhead obstructions.

NG Bailey, of Brown Lane West, Leeds, pleaded guilty to breaching Sections 3(1) and 33(1)(a) of the Health and Safety at Work etc Act 1974. It was fined £135,000 and ordered to pay a victim surcharge of £10,125 at Aberdeen Sheriff Court on 21 March 2024.

£175,000 fine for Erith after employee is crushed

Erith has been fined £175,000 after the death of one of its employees.

Liam McArdle was fatally crushed by an excavator attachment while working for Erith Plant Services on 21 September 2021.

A demolition grab, attached to an excavator, fell onto the 24-year-old from Gravesend while it was loaded onto a lorry at the company's workshop at Eastern Quarry on Watling Street, Swanscombe.

Erith Plant Services of Queen Street, Erith, Kent, pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974.

The company was fined £175,000 and ordered to pay £37,804 in costs at Woolwich Crown Court on 27 March 2024.

Kent housebuilder fined under CDM after death

Construction company Amberley Homes (Kent) has been fined £25,000 after a subcontractor fell and died from his injuries.

Mark Tolley, 51, fell nearly 2m through an opening in a scaffold on 5 July 2017 while working on the construction of six houses on Smeden Road in Headcorn, Kent. He died on 13 July 2017.

An HSE investigation found the principal contractor, Amberley Homes (Kent), had not appointed a person with the necessary skills, knowledge, experience and training to manage the site.

Amberley Homes (Kent), of London Road, Sevenoaks, Kent, entered a guilty plea to breaching Regulation 13(1) of the Construction (Design and Management) Regulations 2015 at Maidstone Nightingale Court in January 2024.

It was fined £25,000 and ordered to pay £83,842.34 in costs at Canterbury Crown Court on 15 March 2024.

Regional focus: South spreads its branches

We catch up with the England South region to find out what is going on

The top 10 projects in the UK expecting to start this year are all in London, according to data from Barbour ABI.

London stands out as easily the strongest market in the country for contractors on the lookout for new orders in 2024, agrees Glenigan. "A series of large private apartment and build-to-rent projects around the city and the capital's busy office construction and hotel and leisure sectors are buoying up private building activity," it reports.

It is perhaps not surprising to hear that APS's two regional representatives from the England South region are both flat out with work. "The market is extremely buoyant. It's pretty non-stop," says Peter Waxman, project director, Gleeds Health and Safety.

Fellow representative Peter Taylor agrees: "The private sector in the south east is extremely busy, in commercial, retail, warehousing and hospitality."

Waxman's work is advising clients on dutyholding and CDM regulations – and providing advice for the CDM principal designer obligations. Taylor is a partner at Leslie Clark, which provides CDM consultancy services and acts as CDM principal designer.

The pair discuss how their work is changing under the new building

“Our conversations tend to be about changes to the building regulations and how each of us within our own organisations are managing it and what messages we’re sending out to clients

Peter Waxman, England South

“Our aim is to grow as many branches as possible so that we can gather feedback to take to the centre
Peter Taylor, England South

safety landscape in our cover feature (see p10-13).

Getting to grips with the changes under the Building Safety Act, including changes to the building regulations, is inevitably a key talking point in conversations with fellow APS members.

"Our conversations tend to be about changes to the building regulations, and how each of us within our own organisations are managing it and what messages we're also sending out to our clients," says Waxman.

Waxman and Taylor are founder members of the London branch, the first to be founded in the England South region. The region includes the capital and spans the south east and south west all the way down to Land's End.

The branch was formed from the former London committee when the APS regional structure changed from 12 to six regions last year. The London branch is, however, open to any APS member. As Taylor proudly says, it has a member from Cornwall. "Clearly it's not practical for everyone to travel that far to meetings," he says.

He adds: "Our aim is to grow as many branches as possible so that we can gather feedback to take to the centre." This will happen through the National Members' Representative Group (NMRG). The two representatives from each region have a seat around this table and Taylor is the deputy chair.



Peter Waxman
London branch,
APS



Peter Taylor
London branch,
APS

A new company branch has also been set up out of the region by Potter Raper, the multidisciplinary construction consultancy.

The idea is that branches can be formed if five members propose one and if it has sponsorship from a regional representative.

Some of the new APS branches, such as the Potter Raper one, are being formed by APS members working for the same company, for CPD purposes. A new branch in east Kent is also being explored.

Taylor explains that the London branch is looking to host CPD workshops soon and is hoping its first events will be on structural steel and fire risk assessments. ●

To find out more about the England South region, contact Peter Waxman (peter.waxman@gleeds.com) or Peter Taylor (p.taylor@lclark.com).

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Summer learning

As the evenings grow longer, APS events continue to offer a range of opportunities to expand your professional capabilities

The APS 2024 events programme is in full swing. So far this year, the association has seen almost 5,000 registrations for events.

The webinar series *The More You Know* was well received. It covered subjects such as building control, significant risk, the golden thread, controlling contractors on site, principal designer competence, logistics planning and much more.

If you missed any of it, you can catch up on demand at:

www.aps.org.uk/category/webinars

Building regulations webinars

The new building regulations webinar series has begun and will run until July 2024.

The series focuses on various topics in relation to the regulations. Subjects to be covered include:

- What a principal designer under CDM must know;
- What a client needs to know;
- Delivering organisational capability (managing competence);
- Working on higher risk buildings (residential buildings, care homes and hospitals);

- Assuring and evidencing compliance and storing information;

- Designing for fire safety – principal designer CDM and principal designer building regulations duties explained; and

- Final session open Q&A.

Find out more and book your place at:

www.aps.org.uk/events

Spring CPD session: Dust

There is still time to catch the spring CPD event focusing on dust. The next date is Monday June 17 2024.

Reducing Harms Caused by Dusts is a CPD certified session that looks at occupational diseases in the construction industry related to different types of dusts.

The seminar will explore the wide range of dusts and their adverse effects on people, and how the effects might be different if the substances are present in different forms.

It will touch on the other effects that dusts might have, for example the creation of explosive atmospheres and environmental harms.

Find out more and book your place at:

www.aps.org.uk/events

Autumn webinar series, from September

As always, the series is being produced in response to what members are asking to learn more about. Speakers and topics are being finalised but suggested topics include:

- Working near water;
- File briefing;
- Conservation and heritage sites;
- Design risk management;
- Asbestos; and
- The golden thread.

Winter CPD series

The winter CPD series, starting in November, is in the planning stage at the moment. It will focus either on fire safety or artificial intelligence. More details to follow here soon.

Find out more about APS events and book your place at: www.aps.org.uk/events

Important note for APS members

Remember, the spring and winter webinar series plus the two CPD series are included in your membership. You can also catch up on demand in the members' area of the website at any time. Also, you receive a CPD certificate for attending the sessions live. ●



BUILT FOR THIS MOMENT

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