

# Demystifying Section 156 of the BSA, in partnership with Ark Workplace Risk

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# Panellists



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Navigating turbulent times



# Demystifying s.156 of the Building Safety Act 2022

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## The Changing Climate in Fire Risk Assessments



Workplace Risk™

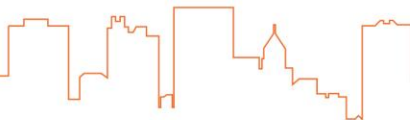
# Speaker



**David Hills** FRICS, FIIRSM, MIFireE, MSFPE, RSP

**Senior Director (Regulatory, Technical and Technology Solutions) Ark Workplace Risk Ltd.**

David has been working at Ark for over 24 years. David is a Chartered Building Surveyor, a fire engineer, a health and safety consultant. David is well known and respected in the property sector and supports 1000's of clients in risk management within the built environment demystifying and supporting clients in meeting their obligations.







# About Ark

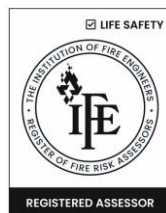
Ark Workplace Risk is the trusted partner for organisations seeking to take control of their risk, compliance, and safety.

With over 25 years of experience, we are the go-to experts in the built environment, providing highly differentiated services creating value not readily available elsewhere and most importantly workable solutions.

Our client-first approach and hands-on engagement from the executive teams to the teams on the ground ensure exceptional client experiences. We have an excellent track record of delivering results and offer qualified risk and compliance professionals for dedicated account management.

From outsourcing solutions to comprehensive services across risk and compliance, health and safety, sustainability, and our innovative QUOODA® platform, we empower organisations to be in control.

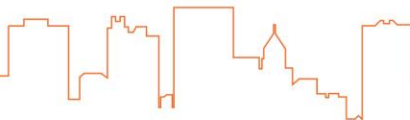
Over 500 brands trust us and experience transformative outcomes through our unparalleled expertise and cutting-edge technology.





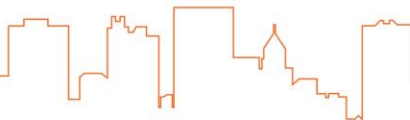
# Agenda

- Introduction
- Changing The Culture
- How did we get here and the Two Regimes
- The Impact of Sect 156
- Types of FRA
- The Management of Risk
- The Prescribed Principles
- Consequences
- Conclusions
- Questions



# Introduction

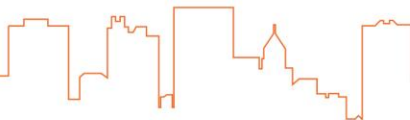
- Building Safety Act 2022 – A new **“framework” for managing safety**
  - Growing emphasis on ensuring the safety of **“whole”** buildings and their occupants
  - Regulations aimed at preventing incidents, enhancing overall safety standards and holding people to account
    - Ushering in a new era of accountability – from developers, designers, contractors, owners, and property and facilities managers
    - Looking to change the culture of the industry – from design, construction to management
- Central to this new framework is effective **“risk assessment”** and **“effective risk management”**
- **Historical issues** with fire risk assessments
  - Seeing conflicting advice and recommendation – local fire and rescue authorities v the Building Safety Regulator
  - The race to the bottom – cheapest option





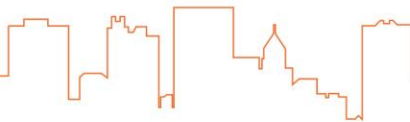
# Introduction

- **Section 156 of the Building Safety Act 2022**
  - amends the **Regulatory Reform (Fire Safety) Order 2005** (FSO)
  - Came into force 1<sup>st</sup> October 2023
  - **affects all buildings and workplaces** covered by the FSO,
    - ***residential,***
    - ***commercial,***
    - ***retail,***
    - ***Industrial,***
      - *etc.*



# Changing the Culture

- Change in the **regulatory climate** – regulatory focus is now on
  - *construction and construction products, and*
  - *Accountability*
- Change in **expectations on corporate entities** –
  - **“corporate” and “personal accountability”** post Grenfell (Sect 161 BSA)
  - **increased information, clarity and detail in fire risk assessments**
  - **“Competence”** – proving it
- Change in **enforcement** – targeted enforcement action – especially for high-risk buildings
  - Higher fines for getting it wrong or jail sentences



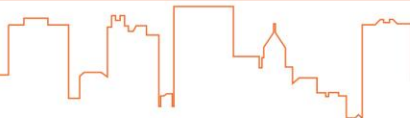
# How did we get here?

## Fire Safety Act 2021

- **Clarified and extended the scope of the RRO** to the following parts of a multi-occupied residential buildings
  - the building's structure, external walls and any common parts.
  - The external walls include doors or windows in those walls, and anything attached to the exterior of those walls, e.g. balconies and cladding.
  - all doors between the domestic premises and common parts
- **Requires update of the risk assessment**

## *The Fire Safety (England) Regulations 2022*

## *Section 156 Building Safety Act 2022*



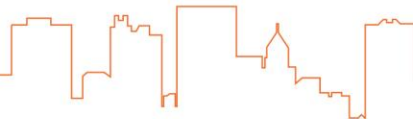
# How did we get here?

## Fire Safety Act 2021

## Fire Safety (England) Regulations 2022

- **All multi-occupied residential buildings with 2 or more sets of domestic premises**
  - provide clear and relevant fire safety instructions to residents
  - provide residents with fire door information
- **Residential buildings with storeys over 11 metres in height**
  - carry out annual checks of flat entrance doors / quarterly checks of all fire doors in the common parts
- **High-rise residential buildings (18 metres or 7 storeys or more)**
  - Building Plans
  - External Wall Systems
  - Lifts and other key firefighting equipment
  - Secure information boxes
  - Wayfinding signage

## Section 156 Building Safety Act 2022



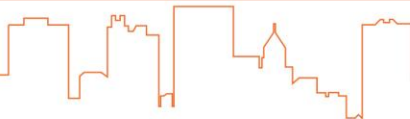
# How did we get here?

*Fire Safety Act 2021*

*Fire Safety (England) Regulations 2022*

**Section 156 Building Safety Act 2022**

- **Amends FSO regarding fire risk assessments** (from **1 Oct 2023**) applies to all types of building – not just residential
  - All FRAs must be completed **in full – not just the substantive risk**
  - FRA needs to **include details** or at least take reasonable steps to ascertain RP's, AP's and PAP – ensure cooperation
  - Departing RP's must share info with new RP's
  - RP's must provide residents with relevant fire safety info



# Two Regimes – FSO v BSA

Regulatory Reform (Fire Safety) Order 2005

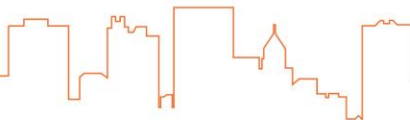
## Enforced by Fire and Rescue Service

- *Responsible Persons – normally the managing agents/facilities managers plus other commercial tenants*
- *Common Area Coverage for the FRA (Type 1) is generally acceptable.*

## Enforced by Building Safety Regulator

- *Accountable Persons – normally owners, not managing agents and facilities managers*
- *“Whole Building” – FRA (Type 3/4) acceptable – has to include commercial tenants*

Building Safety Act 2022 – plus Secondary Legislation





# Suitable and Sufficient – Regulators View

No definition of the term “**suitable and sufficient**” in the FSO

For an assessment to be considered “**suitable and sufficient**”, according to the HSE/BSR and meet the requirements of S.156, the assessment should:

- Ensure that a full and proper check of the whole property is made i.e., **have sufficient coverage**.
- Provide **full and detailed justification** – including providing commentary and assessment on the acceptance or not of fire safety measures in place, and those additionally required, detailing all available evidence, including what is provided, what is missing, what additionally is needed and why. This should include risks posed by all the tenants (residential and commercial).
- Provide **full technical consideration** – the assessment has to consider all of the areas of fire safety systems that apply within a building.
- Where possible, include all **those who may be affected by the risks**.
- **Consider all the risks**, taking into consideration the number of people who may be affected.



# Suitable and Sufficient – Section 156

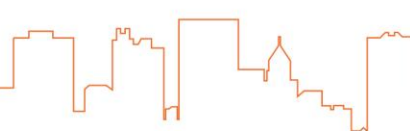
In addition, due to the enactment of s.156 and amendment of the FSO, responsible persons...

- must take reasonably practicable steps to ascertain the existence of **other Responsible Persons** who share or have duties in respect of the same premises, **and of any Accountable Persons** in relation to the premises – they must then identify themselves to said persons.
- must share all “**relevant fire safety information**” with incoming Responsible Persons if they are departing.
- **provide residents with relevant fire safety information in a format that is easily understood by the residents.** This requirement is also included within the Fire Safety (England) Regulations 2022.
- Secondary Legislation in the form of Higher-Risk Buildings (Keeping and Provision of Information) (England) Regulations 2024 – states that the AP/PAP must provide the resident with a “**summary of the findings of the fire risk assessment.**”



# Examples of Comments in FRAs

Typical Commentary in FRA	Suitable	Comments
<i>“Vertical mechanical smoke extract/AOVs are installed.”</i>	✘	<b>Insufficient</b> – under the amended FSO, assessors now need to now explain what type of ventilation system it is? where it is? what is it covering? is it satisfactory? and why?
<i>“The fire alarm and detection system installed covers the common areas only and is in line with BS5839:1”</i>	✘	<b>Insufficient</b> – under the amended FSO, assessors now need to be more specific and provide more detail – what type is it? (detection/alarm or both), what is it designed to do? Is it satisfactory and why?
<i>“The fire doors were noted to be satisfactory.”</i>	✘	<b>Insufficient</b> – assessors now need to outline what fire doors? Where are they (what doors)? How did we ascertain that they were satisfactory? Who / what are they protecting?



# The Role of Type 3 FRA's in Safety Case Reports

Home Office / BSR Guidance states that the justification of the preventative and protective steps within any safety case report should be based upon considering:

*"...the measures in place to prevent and mitigate building safety risks for the **whole building**."*

The guidance goes on to state:

*"It is vital that your fire risk assessment, and any fire safety measures you take as a result, align with, and complement, the fire risk assessment(s) and fire safety measures for the rest of the building in order to provide a **whole building** approach to fire safety."*

The guidance issued by the Government on Sect 156 of the BSA 2022 states

*"The purpose of this requirement is to make sure that Responsible Persons and Accountable Persons take a **whole building** approach to building and fire safety in the higher-risk building."*



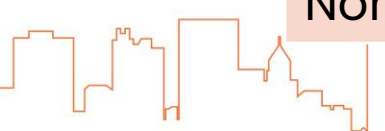


# Types of Fire Risk Assessment

- Awaiting New British Standard – new definitions of the Types of Assessment
- Sets out in principle, four different types of Fire Risk Assessment
- They differ in the extent to which the building is
  - inspected, and
  - in the use of intrusive techniques

**The various types of FRA only apply to Residential Buildings**

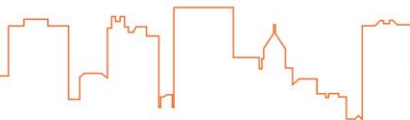
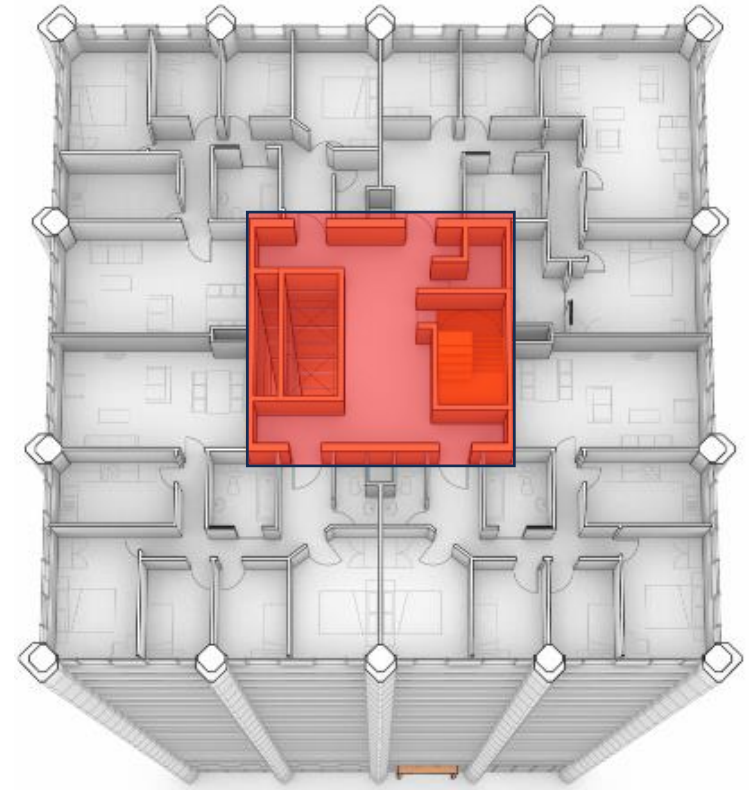
<b>Type 1 FRA</b>	<b>Type 2 FRA</b>
Common Areas Non-Intrusive in nature	Common Areas Intrusive in nature
<b>Type 3 FRA</b>	<b>Type 4 FRA</b>
Common Areas and Demised Areas Non-Intrusive in nature	Common Areas and Demised Areas Intrusive in nature



# Types of Fire Risk Assessment

## Type 1 Fire Risk Assessment

- **Basic Assessment – designed for the purpose of satisfying the Fire Safety Order**
  - Relies upon the duty holder / responsible person having a comprehensive understanding of the fabric of the building
- Covers **Common Areas only** – the means of escape, plant rooms, risers, shared areas (car parks, lounges), etc.
- Non-intrusive in nature – but
  - Includes **a sample of flat entrance doors, riser cupboards**
  - Includes (where appropriate/practical) – **roof voids**
  - Includes **separation construction between the common areas and the residential demises** – without opening up of the construction
  - Includes **consideration of the External Wall and any Attachments**

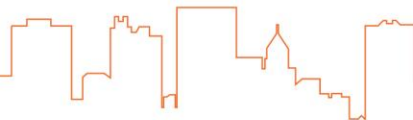
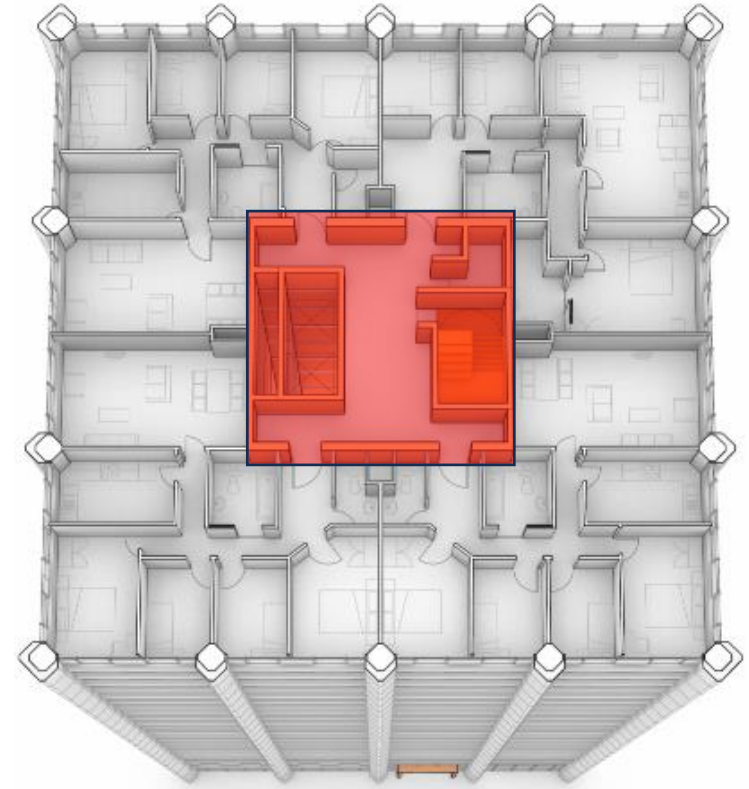




# Types of Fire Risk Assessment

## Type 2 Fire Risk Assessment

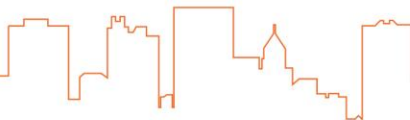
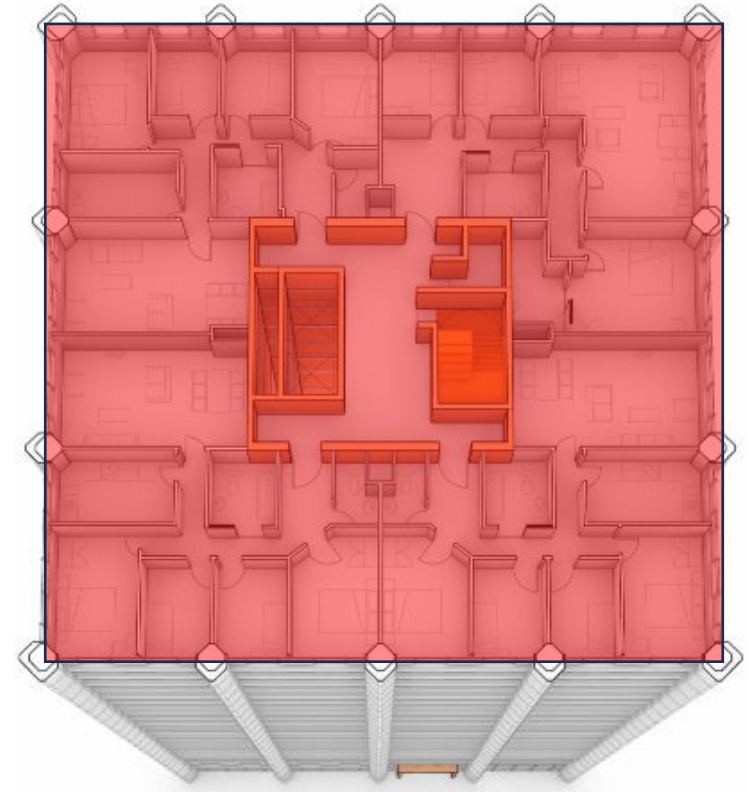
- Like the Type 1 Assessment – but **includes a degree of intrusive inspection** – carried out on a sampling basis
  - Generally, requires the presence of a contractor for opening-up and making good
- Covers Common Areas only – the means of escape, plant rooms, risers, shared areas (car parks, lounges), etc.
- Intrusive in nature – as per Type 1 but includes opening up of the construction between the common areas and the residential demises



# Types of Fire Risk Assessment

## Type 3 Fire Risk Assessment

- “**Whole Building**” consideration – in line with BSA guidance
- Covers Common Areas plus a sample of the dwellings
- Non-intrusive in nature – but
  - Includes **a sample of flat / demised areas**
  - Includes (where appropriate/practical) – **roof voids**
  - Includes **separation construction between the common areas and the residential demises** – without opening up of the construction
  - Includes **consideration of the External Wall and any Attachments**

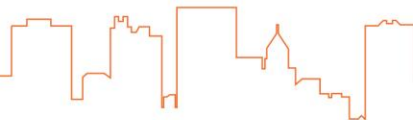
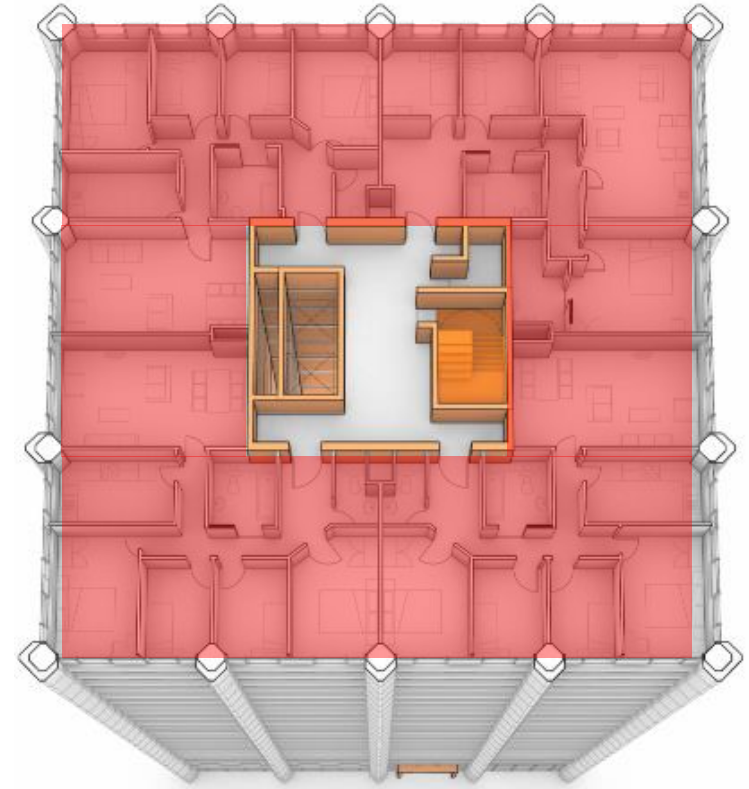


# Types of Fire Risk Assessment

## Type 3 Fire Risk Assessment

Matters to be considered (captured via visual inspection) in a Type 3 FRA within the demised areas could include:

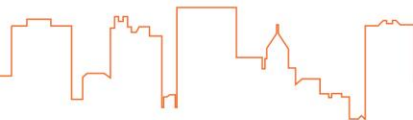
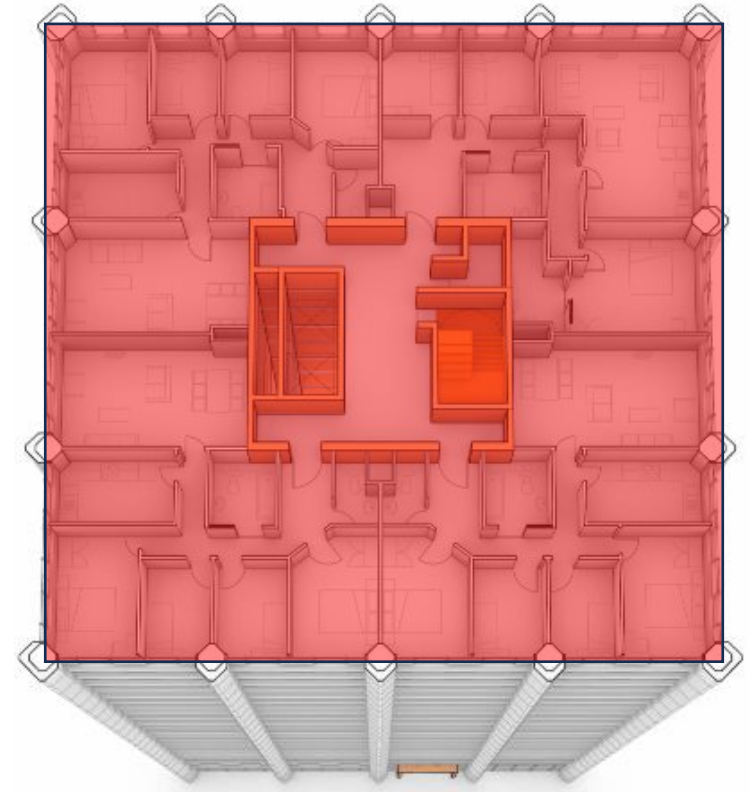
- **integrity** of fire-resisting elements (walls, floors, ceilings) between the dwelling and other dwellings;
- maximum **travel distance** from any point within a flat to the flat entrance door;
- **protection of hallways** (where relevant);
- ease of **opening of the dwelling entrance door**;
- fire safety of **inner rooms** (if any);
- means of escape from **upper levels of any maisonettes**;
- provision of **smoke and heat alarms**; and
- provision of **sprinkler or water mist systems**.
- electrical and heating installations provided by duty holders;



# Types of Fire Risk Assessment

## Type 4 Fire Risk Assessment

- **“Whole Building”** consideration – in line with BSA guidance
- Covers Common Areas plus a sample of the dwellings
- Degree of Intrusive inspection in both common and demised areas
- Most comprehensive FRA
- Most often used when there is a reason to suspect serious risk to residents from both fire in their own dwellings or a fire in a neighbours dwelling



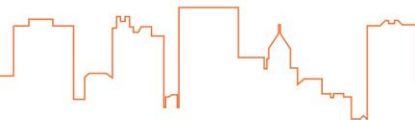
## S.84 – Building Safety Act 2022

### Management of Building Safety Risks

- (1) An accountable person for an occupied higher-risk building must take all reasonable steps for the following purposes—
  - (a) **preventing** a building safety risk materialising as regards the part of the building for which they are responsible;
  - (b) **reducing the severity** of any incident resulting from such a risk materialising.
- (2) Those steps may in particular involve the accountable person **carrying out works** to the part of the building for which they are responsible.



Defined in S.62 as –  
“a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—  
(a) the **spread of fire**;  
(b) **structural failure**;  
(c) any other prescribed matter.”





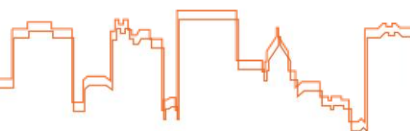
# S.84 – Building Safety Act 2022

## Management of Building Safety Risks

- (3) When taking the steps the accountable person must act in accordance with **prescribed principles**.
- (4) The steps must be taken **promptly**.
- (5) The accountable person must make and give effect to **“arrangements for the purpose of ensuring the effective planning, organisation, control, monitoring and review”** of steps taken under this section.



“Prescribed Principles” – defined within The Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023

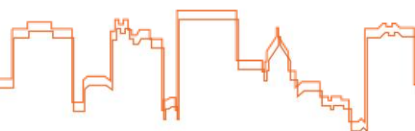




# “Prescribed Principles”

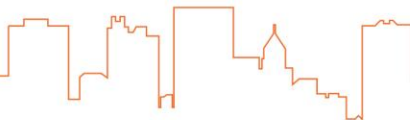
## Regulation 4 - The Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023

- (a) **avoid building safety risks**;
- (b) **evaluate building safety risks** that cannot be avoided, including identifying the proportionate measures required to address, reduce, mitigate and control the risks;
- (c) **combat building safety risks at source** by introducing proportionate measures to address, reduce, mitigate and control the risk at the earliest opportunity;
- (d) ensure **suitable and proportionate systems** are in place for the effective inspection, testing and maintenance of the efficacy of measures taken;
- (e) give **collective protective measures priority over individual protective measures**;



## “Prescribed Principles”

- (f) adapt to **technical progress**;
- (g) where reasonable to do so, **replace the dangerous with the non-dangerous or less dangerous**;
- (h) consider the impacts on residents and carry out **engagement with residents**;
- (i) give appropriate **instructions and information** to employees and persons working on or in the building;
- (j) ensure that any person responsible for or assisting with compliance with a duty in or under Part 4 of the 2022 Act has the **relevant competence**.



## “Prescribed Principles”

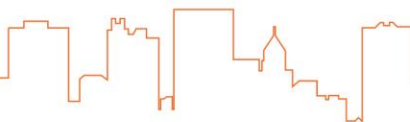
- (2) A person has the **relevant competence**—
  - (a) where the person is an individual, if that person has the **skills, knowledge, experience and behaviours** necessary to perform the functions for which they are responsible in a satisfactory manner;
  - (b) where the person is not an individual, if that person has the organisational capability to ensure that the functions for which it is responsible are performed in a satisfactory manner.
- (3) An individual who is in training is deemed to have the relevant competence for a function if that individual is **adequately supervised by a person with the relevant competence** when performing the function.



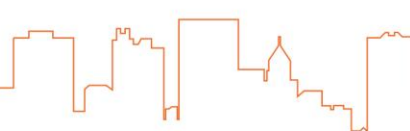
# “Prescribed Principles”

- The principles should not be considered in isolation
- They provide “**layers of protection**”
- They require all of us to consider safety in an “**Holistic**” manner
- With numerous **protective and preventative barriers**
- Cannot rely upon **short-term, old & outdated approaches**

*“They provide a framework, often referred to as a “**hierarchy of controls,**” to identify and implement practical and procedural measures to reduce risks and deliver safe outcomes.”*

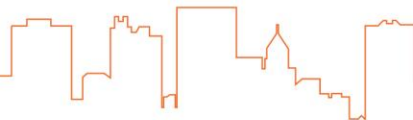


# "Prescribed Principles"



## “Prescribed Principles”

- Principles are **ordered from the most to least effective**, but they **interact with each other** and are **mutually supportive**.
- For example,
  - a safety feature which combats risks at source may provide collective safety, and
  - will need to be tested and maintained over time to remain effective.
- **“Relying on a single prevention or mitigation measure will not provide the multiple layers of protection necessary.”**



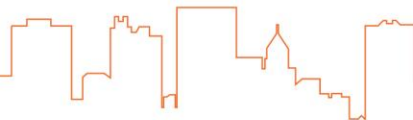
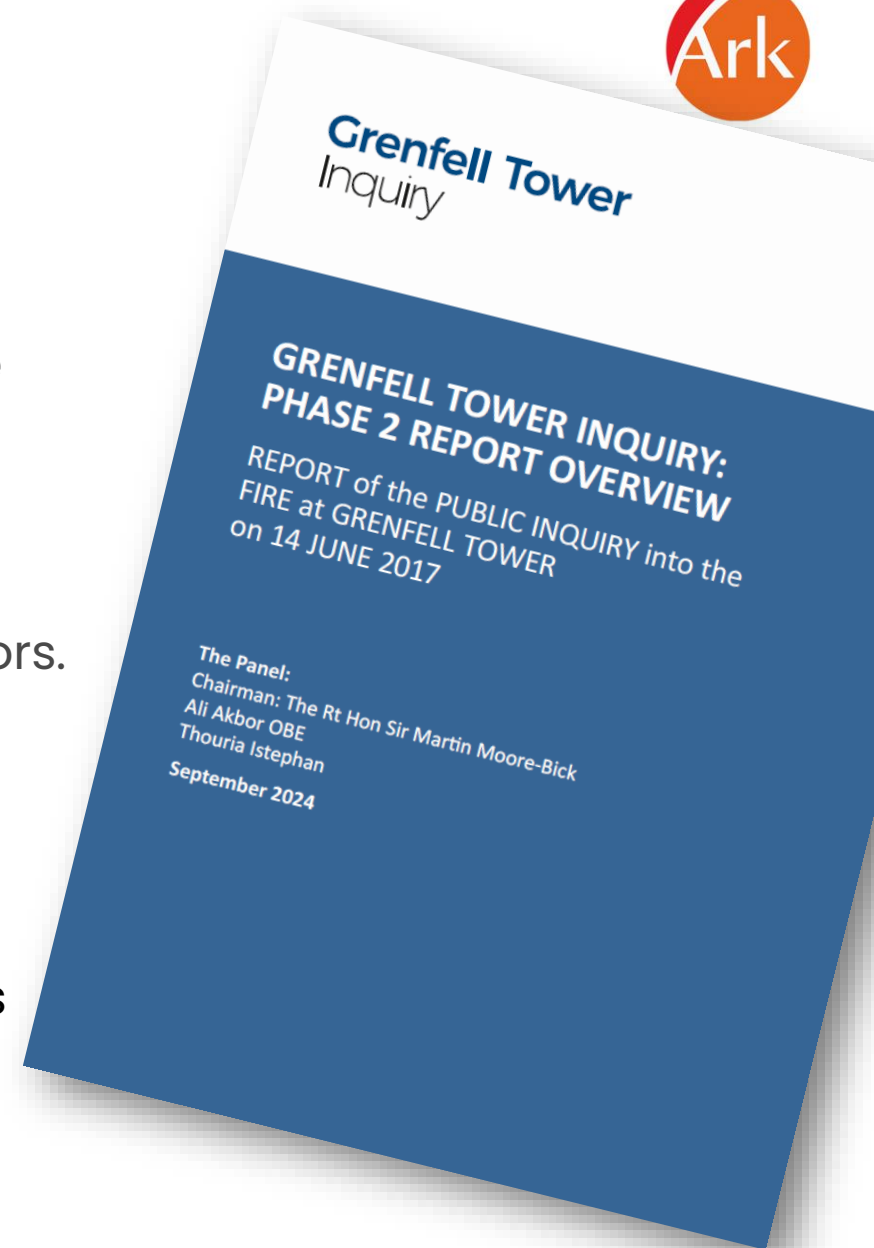




# Fire Risk Assessors and Assessments

The Grenfell Tower Inquiry : Phase 2 report recommends

- The new Building Safety Regime applies to buildings where there is a presence of **vulnerable people** – rather than the arbitrary height criteria.
- The Government establish a system of **mandatory accreditation** to certify the competence of fire risk assessors.
- The Government set new **standards for qualification and CPD** for fire risk assessors.
- The use of **PEEP's** and **Person-Centred Fire Risk Assessments (PCFRA)** for all vulnerable persons – this has been further enhanced by the proposed draft BS 9792.



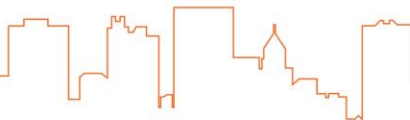
# Consequences

- Increased risk of **liability** to organisations / senior managers / consultancies / facilities managers as well as individual consultants / staff as well?
- Risk of high fines and/or imprisonment for safety breaches
- **Penalties:**
  - breach of FSO (failure to have suitable and sufficient risk assessment – Article 9) – punishable by unlimited fine
  - breach of BSA – punishable by an unlimited fine and up to 2 yrs imprisonment
    - personal liability (punishable by an unlimited fine and up to 2 yrs. imprisonment) if an officer (a director, manager, or company secretary) consents or connives in the commission of an offence by that organisation (or attributable to their neglect)



# 3 things you really need to know about the changing climate in residential FRA's

- 1. New regime, New requirements, New approach** – things have changed – and will be changing yet more over the coming years – Section 156 has / will have a major impact on the **coverage, contents and style** of your FRA, amends the FSO and applies to all buildings not just residential.
  - The level of detail in your FRA now has to **cover the what, the where and the why** to be “suitable and sufficient.” its time to review
- 2. The Type of FRA will depend upon what you are using it for – BSA requires a “Whole Building” Approach**
- 3. The new “Prescribed Principles” affect how you manage risk – you now have to consider fire risk in a holistic manner**
  - We all have to adapt to the changes and adjust the way we do things – **we cannot just do things the way we used to.**
  - **competence** is key





# Contact

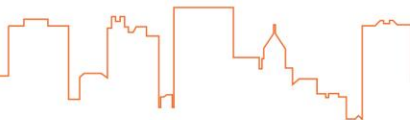
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# IWFM Experiential Route to CIWFM

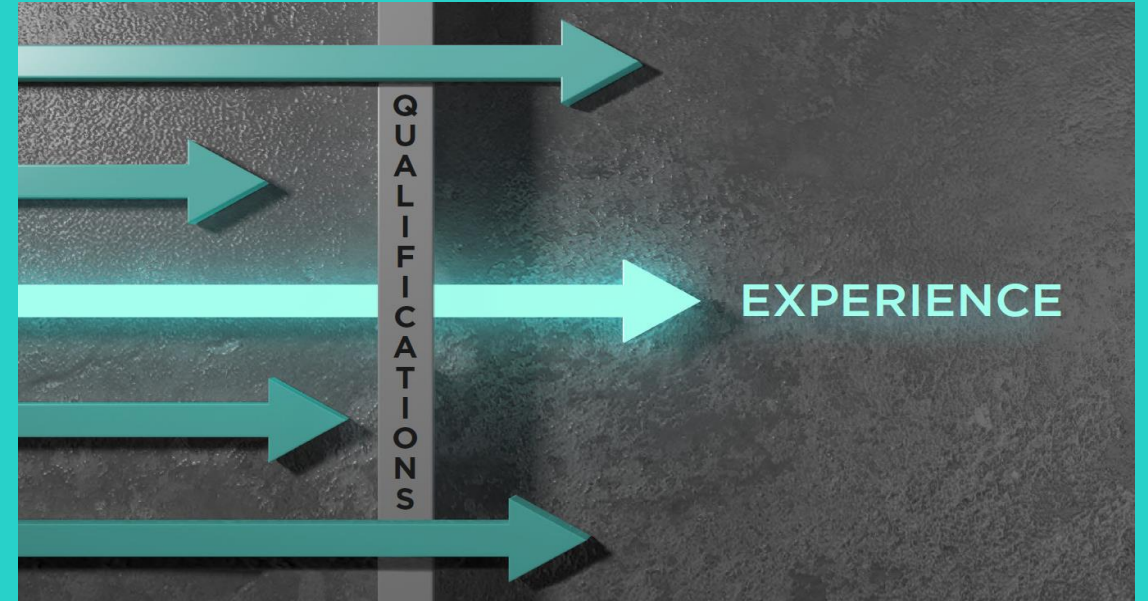
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