

# Safety case principles for high-rise residential buildings

## Response to consultation by the Health and Safety Executive

22 October 2021

### Summary

- The Health and Safety Executive (HSE) has issued draft guidance setting out the principles underpinning the Building Safety Case, and Safety Case Report, that will be required in respect of all higher-risk buildings when the Building Safety Bill becomes law.
- The draft guidance is timely and important, setting out key considerations about the form and function of the Safety Case and the Report. It is recognised that it does not cover every aspect, and that further guidance will be issued in due course.
- The HSE recognises that further guidance will be needed and the National Housing Federation (NHF) suggests that this should cover, in particular, complex buildings, the costs of developing a safety case, and the role of third parties such as consultants and the emergency services.
- The NHF also calls for more clarity about the role of Fire Risk Assessments in developing a safety case.
- The new legal duties created by the Building Safety Bill will apply in all sectors where higher-risk buildings exist: not just local authorities and housing associations, but the for-profit private property sector as well. Given the very diverse nature of landlords involved, it will be a major challenge for the regulator to bring all sectors into compliance with the new regulatory regime.
- The NHF recommends that further guidance should make use of case studies to show how landlords in different sectors have addressed building safety issues, and we shall be happy to facilitate dialogue between the HSE and housing associations who may be able to contribute such studies.
- This can take place in the context of the very constructive and positive dialogue that we have already established with HSE.

## Introduction

The NHF is the voice of England's housing associations. Our housing association members are not-for-profit social landlords that provide homes and support for around six million people. They are driven by a social purpose: providing good quality housing that people can afford.

Nothing is more important to housing associations than the safety of their residents. Since the tragic fire at Grenfell Tower in June 2017, building and fire safety has become a key national and political priority. Housing associations have been working to assess their buildings for safety risks and take urgent action where required.

The Building Safety Bill, currently before Parliament, establishes a new regulatory regime for residential buildings defined as 'higher-risk'. A key part of this regime is the requirement for a Safety Case to be developed in respect of every such building, and for a Safety Case Report to be submitted to the new Building Safety Regulator.

The HSE, as the body who will be responsible for the Building Safety Regulator, has published draft guidance on the principles underpinning the Safety Case for higher-risk buildings. This also includes consideration of the Safety Case Report.

While the HSE rightly points out that the exact nature of the statutory requirement is not known at this stage as the Bill is still before Parliament and may be amended, it is nevertheless very helpful to have so clearly set out the HSE's current thinking about the form and function of the Safety Case and Safety Case Report.

A particular challenge for the Building Safety Regulator, as new requirements come into effect, is the great range of landlords and other entities on which new responsibilities will fall. They will range from social landlords – local authorities as well as housing associations – to private sector property owners of all kinds. The many different bodies will have varied widely in their approach to building safety, engagement with residents, and general management of the property. It will be a major undertaking to ensure that all these different entities are brought into compliance with their new legal duties.

We suggest that an important means of achieving this will be to identify and disseminate existing best practice in key areas. Given the varied nature of the bodies involved, it is likely that current practice will be very uneven, but we have indicated to HSE our willingness to help identify best practice within the housing association sector on which HSE may wish to draw in seeking to achieve consistency across all sectors in terms of compliance with the new regime. And we acknowledge that housing associations are likely, in their turn, to benefit from exposure to best practice found elsewhere.

## Case studies

The current draft contains a number of short illustrative quotes from social landlords about the way they are addressing building safety issues. As the HSE, (or Building Safety Regulator), issues further guidance, we suggest it would be helpful to build on this approach by including fuller case studies showing how building owners are approaching safety, either in general or in some specific aspect. These case studies could be drawn from any sector, but we will be happy to work with the HSE to identify housing associations that might contribute.

Case studies of this kind would be welcomed by landlords in all sectors. We suggest that where possible, they should illustrate a range of successful approaches, to demonstrate that there is not necessarily a single 'best' way of approaching any particular issue; on the contrary, approaches are likely to vary according to the nature of the landlord and of the building in question.

## Role of Stakeholders

We agree with the draft guidance that “Residents, developers, other stakeholders such as property insurers, and building users may also have an interest in the potential role of safety cases in ensuring building safety”.

Indeed, many of our members have already been active in engaging with stakeholders on safety issues, and we should be glad to facilitate dialogue between them and HSE and Building Safety Regulator about the approaches they are taking. We hope this will be of value in supporting policy development to encourage effective stakeholder engagement across all sectors.

We also agree about the value of the Safety Case Report in informing other parties, particularly (but not limited to) residents, about building safety issues. We agree that the Safety Case Report should be expressed in ways that make it accessible to a wide audience.

## Scenario planning

The guidance stresses how important it is for landlords to think through possible scenarios for fire or structural failure: in the words of the guidance

- What could go wrong?
- How could it go wrong?

These scenarios are essential in building the safety case.

Many of our members have already been undertaking this exercise and their experience suggests that it is very helpful to engage the emergency services.

Scenario planning is another area where case studies would be very useful, and we are confident that our members will be in a position to help with this.

## Complex buildings

We recognise that at this early stage in the development of the new regime, it is understandable that the HSE has not addressed the special challenges presented in case where the building itself, or its ownership structure, or both, are unusually complex. The guidance acknowledges, however, that “more complex buildings and ownership arrangements will mean that there are more issues you will need to think about as you build your safety case”.

We agree, and we welcome the indication that HSE will produce further guidance on this point. We would point out that some of our members have practical experience with complex buildings, and the challenges they pose, and we should be happy to put them in touch with HSE, in order to support the HSE in developing policy and future guidance in this challenging area.

## Timescales

The guidance indicates that members should start preparing now for the safety case regime. We agree: housing associations (as well as landlords in other sectors) are aware of the broad scope and structure of the new regulatory regime and are actively planning for it. However, this is necessarily based on the landlord’s own assessment of where the priorities lie, and it will be helpful to move as soon as possible to a clearer set of legal and regulatory expectations about how the transition to the new regime will be managed.

The introduction of the new regime is a huge undertaking and it imposes great demands on landlords, on building safety professions and on the regulator: as a simple matter of practicality in terms of resources and capacity, some element of prioritisation will be needed. We urge the HSE to develop guidance on the transition to the new regime and we are keen to continue dialogue with the HSE about the best approach to this issue and how a transition scheme can support landlords in planning their work so that they implement the new regime as efficiently and effectively as possible.

## Costs and 3rd party support

The draft guidance does not address some practical issues about the development of a safety case, such as the costs of doing so and the potential involvement of third parties (individuals or organisations) to create and manage safety cases. We think it is important that future guidance by the HSE (or Building Safety Regulator) address these issues, and we should be glad to share with HSE the thinking of some of our members who have been actively considering these issues.

## Role of Fire Risk Assessments

We are concerned at the suggestion on page 11 of the draft guidance that a Fire Risk Assessment might consider only the likelihood that a fire will start, and not the risk that it might spread. It is our understanding, particularly in view of the recent changes to the Fire Safety Order, that a Fire Risk Assessment should address both these considerations. It is essential that building owners should feel able to rely on Fire Risk Assessments in preparing the safety case, so we urge the HSE to clarify its guidance on this point.

## Further guidance

The draft refers (on page 14) to alternative sources of guidance, such as British Standards, industry good practice and/or guidance from regulators and industry bodies. It would be useful to include in the final version an appendix or glossary listing helpful examples.