

Association of Consultant Approved Inspectors (ACAI) Independent Review of Building Regulations and Fire Safety – Initial Response

Introduction

1. The **Association of Consultant Approved Inspectors (ACAI)** increases awareness and understanding of private sector building control as a professional service valued by industry, Government and wider society.
2. We represent **over 90% of all accredited building control bodies (BCBs)**, whose professional and competent service is underwritten by insurance, and regulated by **Construction Industry Council Approved Inspector Register (CICAIR)** a body designated by the Secretary of State over a fixed-term, five-year period during which an independent audit is undertaken at least once.
3. The following document reflects ACAI's initial response to Dame Judith Hackitt's **Independent Review of Building Regulation and Fire Safety (the Review)** which was published on 17 May 2018. The ACAI provided multiple written responses, participated in one of the final working groups, and met on several occasions with Dame Judith throughout the Review's development.
4. Proposals and issues raised in here constitute the first stage of our response to the **Ministry for Housing, Communities and Local Government's (MHCLG)** implementation group. The ACAI is willing to proceed as an active participant as the Government looks to act on the Review's findings.

Overview

5. The ACAI welcomes the overall aims and spirit of the Review to create a safer, clearer system of building regulations, following the tragic disaster at Grenfell Tower in June 2017. We support most of the recommendations made in the Review, including those related to residents' voice; products; and procurement and supply, which will improve safety throughout the life of a building.
6. The ACAI supports Dame Judith's analysis that there is a need for a culture shift in the construction industry. We support all efforts to improve the performance and professionalism of the industry through best practice, clarity of responsibilities and more stringent enforcement of regulations.
7. Despite being an active participant throughout the Review's undertaking, the ACAI was surprised to see the final report recommend that Duty Holders should not be able to choose between **Approved Inspectors (AIs)** and **Local Authority Building Control (LABC)** on **high-risk residential buildings (HRRBs)** of 10-storeys or higher and all other multi-occupancy buildings, relegating the role of AIs on these developments to client optional consultative positions only (recommendation 2.11). We believe that this will cause further confusion in the system and will not lead to the delivery of safe buildings.
8. The AI system in its current form has been around for over 30 years and has evolved into a highly competent, effectively resourced and externally audited system through CICAIR. We absolutely reject the Review's assessment that some BCBs including AIs accept sub-standard

work because of potential future working relationships, and have found no evidence for this outlined in the Review (paragraph 2.41).

9. There are many examples in other industries where private sector service delivery is successfully incorporated into the regulatory system including the Automotive Industry (MOTs), the Aviation Industry (Airworthiness Checking) and the Maritime Industry (Boat Safety Certificates)
10. Restricting the role of AIs in the building control process in approving new and refurbished buildings would significantly undermine building safety. There are several key reasons for this, including:
 - 10.1 **Reduced capacity** – AIs currently play an integral role in the building control process. The most recent Building Control Performance Standard Key Performance Indicator returns show that AIs deal with in excess of **120,000 applications a year across all building types**. Removing AIs from the approval process for certain building types will put more pressure on publicly-funded LABCs who may not have the capacity to increase their workload at a time when the Government is committed to increasing the number of new homes across England.
 - 10.2 **Reduced competency** – AIs provide much needed expertise for the approvals process. Complaints to CICAIR are extremely low and have ranged between 5 and 13 per year over the last four years (a maximum of 0.01%). Even taking figures of number of complaints received directly by AIs from the performance indicator returns the number would be 368 (0.3%) for 2017. These are the lowest in the Building Control industry. None of these related to HRRBs. The Review itself recognises the contributions of AIs (paragraph 2.43).
 - 10.3 **Reduced choice** – On a fundamental level, restricting choice and competition in the approval process will reduce the dynamism of the sector, cause delays and will not improve building safety. As the Review acknowledges (paragraph 2.41) the last 22 years, we have seen incremental improvements in standards, skills and training as a direct result of increased competition. Below we introduce the concept of controlled competition.
 - 10.4 **Barrier to Development** – The ACAI believes the implementation of the recommendations regarding the building control system could prove a significant barrier to development as it introduces more bureaucracy and a number of pinch points. The flexibility of the private sector and high levels of service delivery recognised in the review will be essential to reducing this impact.
11. Therefore, in spite of the many positive recommendations made by the Review, the ACAI believes that the negative effects will not help to achieve the Review's intended outcomes. There remains significant work to be done to design a **clear, effective system for ensuring safe buildings** which utilises the **capacity, capability and resources of both AIs and LABCs**.
12. We do not believe the intention was to exclude the expertise and resources of AIs from the system, but we believe this to be the consequence. This response reflects this view.
13. The following sections outline in some detail our views on how to deliver safe building by improving the existing system, identifying how a new system could effectively separate building control service delivery from the regulatory and enforcement function. While we don't believe it would deliver safer buildings, they also assess how the Review's specific recommendations could be made to work better.

Detail

14. This section sets out some preliminary suggestions on a process for the delivery of building control services and the enforcement of regulations which **work within the existing system of competition**. The ACAI believes this will effectively use the resources available within the existing building control industry to deliver safer buildings.
15. The simplest and most cost-effective way to achieve the outcomes the Review seeks would be to retain and fully align the existing dual system of building control. This should be done with a number of improvements including:
 - 15.1 A single regulator should be introduced for all building control bodies, public or private. The ACAI recommends CICAIR for this role, given its 20 years' experience as a designated body.
 - 15.2 The introduction of **controlled competition** by:
 - 15.2.1 The introduction of a separate register of building control bodies competent to deal with HRRBs. This could be extended to other building types as necessary.
 - 15.2.2 The BCB should only be appointable by the Duty Holder via a standard form of contract which clearly defines roles and responsibilities. This should be based on the legal principles of the Party Wall Act so that the BCB's duty is to the building and the building regulations in a similar way to that which the party wall surveyor has a duty to the wall.
 - 15.2.3 The duty holder must appoint the BCB prior to Gateway 1 and cannot replace them without mutual agreement.
 - 15.3 Introducing more robust guidance on the levels of site supervision via the building control performance standards.
 - 15.4 The introduction of a Local Body comprising the Local Authority and the Fire and Rescue Services (FRS) primarily to regulate buildings in use. They could also become a robust consultation body replacing or supplementing the current FRS consultation process and a repository for safety information at each of the Gateway Stages.
 - 15.5 The Government should assess ways to tighten up Regulation 38 so that clearly defined fire safety information should be submitted and signed off by a BCB under Gateway 3. This would clarify responsibilities and simplify enforcement.
16. We believe that the intent of the recommendations made around the building control system was to separate the building control service delivery from the regulatory process this is a view we have long held. This could be achieved by implementing the recommendations 13.1 to 13.4 above and establishing the JCA or a similar body as follows.

Enforcement: role of the JCA

17. We accept in principle the Review's recommendation that the Government should set up a regulator and enforcement body. This would be particularly beneficial regulating buildings in use.

18. However, we envision a different process to that outlined in the Review with regards to new build and refurbishment, seeing the role of the separate regulators:
- 18.1 As a regulator and enforcer working with BCBs or verifiers as necessary.
 - 18.2 As a settler of disputes between duty holders and BCBs, include ruling on informal enforcement cases.
 - 18.3 As a repository for information at each Gateway stage.
 - 18.4 As a consultative body with powers to oversee the compliance process using the Gateway system and to confirm permissions to move between Gateways. It would have an assurance approach to the Gateways, accepting the competence of the BCB, verifier or AI as evidence of compliance.
19. The regulator would perform this regulator function across the whole building control process, providing the 'golden thread' identified in the Review.
20. A system of local regulatory bodies could be established, primarily to regulate buildings in use. It could also be a consultee within the building control process. We believe this would deliver safer buildings and be a relatively cost neutral solution.
21. Additionally, while we believe they would not achieve the reviews intended outcomes, if the intent is to try and make the Review recommendations work, then making the advisory role of AIs mandatory would underpin the competency needed to deliver safe buildings. We would still strongly recommend that the recommendations made above regarding controlling the choice and the role of the separate regulator be incorporated.

Competency and future role of the BCB

22. Competency within the building control system is something raised in the report. We would reference the CICAIR Competency matrix as a starting point but believe that specific competencies for HRRBs would be appropriate.
23. The ACAI also believes that the role of the BCB needs to evolve into an assurance role ensuring that Duty Holders have appropriate systems and competencies in place to deliver safe buildings. This would include assuring adequate provision for site supervision and product specification and management.

Conclusion

24. The ACAI has been pleased to be involved with the Review since its formation last year. This includes multiple meetings with Dame Judith, attendance of a Summit meeting in January 2018, several written submissions with recommendations, and participation in the Design, Construction and Refurbishment Working Group.
25. However, some of the Review's recommendations have come as a great disappointment to the ACAI, particularly around the role of AIs. As outlined above, we believe that the Review's recommendation to restrict the role of AIs on HRRBs will reduce capacity, competency and competition in the building control process, and increase pressure on under resourced public

sector groups. Fundamentally, this will make the building control process less, not more, safe and is likely to introduce a significant barrier and delay to essential developments.

26. Accordingly, we have presented three options above which we believe could help to address some of the issues identified by the Review. This includes building on the existing dual system by aligning the roles and responsibilities of local authority inspectors and AIs, introducing a new system that effectively separates the service delivery and regulatory functions.
27. While we don't believe safer building would be the result we build on Dame Judith's recommendations by making the advisory role of AIs mandatory on HRRBs to make the most of their expertise and resources.
28. The ACAI looks forward to continuing its work with the Government as it looks to assess the recommendations set out in the Review. We remain determined to play our full part in ensuring that the wider industry takes greater responsibility for safety throughout the process of designing, developing and maintaining safe buildings.