

Building Assessment Certificates

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BSR and BAC – where we are now

- All the public / dutyholder facing parts of BSR are now live
- Started directing Building Assessment Certificate (BAC) applications
 - Have directed 1440 buildings to apply – only a tiny number have not applied
 - First decision went out last month (BAC given)
- Improved guidance on Gov.uk / criteria used to assess BAC applications published via industry stakeholders
- This is a new regulator, a new system – there have been challenges

What a BAC is – and isn't

- A Building Assessment Certificate (BAC) is a document given by BSR if:
 - When it assesses compliance with specific legal duties, it is satisfied those duties have been met at that time
- The BAC application / assessment is a snapshot of compliance, but duties are ongoing
- BAC is not a guarantee of safety or of ongoing compliance with legal duties
- The Act only covers spread of fire and structural failure – BSR is not assessing other risks as part of a BAC application
- Other legislation – e.g. Fire Safety Order and Housing Act – remains in place

Recap of requirements under Part 4 of the BSA

All APs	<ul style="list-style-type: none">• Assess building safety risks (s.83)• Manage building safety risks (s.84)• Keep information about the building – the golden thread (s.88)• Provide information (s.89)
PAPs - AP duties plus:	<ul style="list-style-type: none">• Register the building (s.77)• Provide Key Building Information (s.89 / regulations)• Apply for a building assessment certificate (BAC) when directed to by BSR (s.79)• Display the most recent BAC in a prominent position (s.82)• Prepare safety case report (s.85)• Notify BSR if the report is revised (s.86)• Establish a mandatory occurrence reporting system (s.87(5))• Prepare residents' engagement strategy (s.91)• Establish a complaints system (s.93)

More detail on the duties in the 2 sets of Regulations relating to Part 4: [2023/907](#) and [2024/41](#)

When / how to apply and what to submit #1

Remember: the duties are in force and ongoing – you should have / be working on your safety case report, residents' engagement strategy etc. already – don't wait until you are directed to apply

- BSR started to direct PAPs to apply in April 2024
- PAPs will be directed to apply; they cannot nominate themselves
- Once directed, the PAP has 28 days to submit the BAC application
 - Failing to apply when directed (without a reasonable excuse) is an offence
- Applications will be submitted via a portal on gov.uk
 - When directed, you will receive a reference number to allow you to start the application
 - Provide information and upload documents

When / how to apply and what to submit #2

- Latest safety case report (SCR)
- Residents' engagement strategy (RES)
- Specified information about your mandatory occurrence reporting (MOR) system
- Statement confirming all APs have supplied relevant information and documents to others (residents, other APs etc)
- Information required by the regulations – mostly auto-populated from information already held
- Other documents?

Early learning / pitfalls to avoid

- Although very few PAPs have not applied, quality of applications has varied
- Key challenges for dutyholders include
 - Most are familiar with fire but less familiar with structure – plus concerns over surveys etc.
 - Making a demonstration rather than listing the measures in place
- Pitfalls to avoid
 - Don't assume your fire risk assessment will be all you need to meet the duty under S.83
 - Don't submit hundreds of extra documents with your application – BSR will contact you if it needs further information
 - Make sure your residents' engagement strategy is specific to the building and takes into account the needs and preferences of that group of residents
 - High-rise residents are a diverse population, and some have additional needs
 - Those needs are also diverse – one size does not fit all
 - Engagement / consultation is a 2-way process – it isn't just telling people what you are going to do

Assessment process – including the role of multi-disciplinary teams

- Assessed by a multi-disciplinary team (MDT):
 - BSR Regulatory Lead, fire assessor and structural assessor
 - Safety case report – all 3 three assessors
 - Residents' engagement strategy / information about the mandatory occurrence reporting system – BSR Regulatory Lead only
- Desk-based assessment – site visits are not a routine part of the assessment
- If the MDT cannot get the assurance it needs from the documents submitted, it can:
 - Ask for further information / specific documents
 - Arrange a call / meeting (likely remote) to discuss issues
 - In some instances, visit the building – by appointment and focussing on specific issues, not a general inspection

Proportionality and “all reasonable steps” #1

- Every building is different – a “one size fits all” approach is neither possible nor proportionate
- BSR is a proportionate and pragmatic regulator – and will assess BAC applications in a proportionate way
- The measures that APs need to have in place and the level of detail required in the demonstration in the safety case report should be proportionate to the risks in that building
- Similarly, the complexity of the management arrangements should be proportionate to both the complexity of the building and the size and resources of the AP / PAP – it just needs to be fit for purpose

Proportionality and “all reasonable steps” #2

- “All reasonable steps” is similar, but not identical, to familiar terms such as “so far as is reasonably practicable”
- All buildings are different – what is reasonable in one case may not be in other, similar, cases and vice versa
- BSR has drafted an approach that identifies a number of factors that APs (and BSR) should consider when determining ‘all reasonable steps’
- Evidence relating to each factor will tend either towards or against a demonstration of ‘all reasonable steps’
- Overall, it’s a balance between cost (in the widest sense) and benefit – between what’s possible, and what’s reasonable in that particular case

Proportionality and “all reasonable steps” #3

- Before we look at factors that may help determine what ‘all reasonable steps’ is, we need to say what it isn’t
 - It is not just saying the building was 'built to standard in 19XX'
 - But it does not mean every building has to be brought up to the standards relevant if it was built today
- Won’t be the same for all buildings – cannot be prescriptive
- Just because something is possible, does not automatically mean it is reasonable – it will depend on the circumstances

Proportionality and “all reasonable steps” #4

Tending <i>against</i> a demonstration of ‘all reasonable steps’	Factor	Tending <i>towards</i> a demonstration of ‘all reasonable steps’
Absence of expected measures for this type / age of building	Presence of expected measures	Presence of expected measures for this type / age of building
Lack of assurance that existing measures are effective / maintained	Assurance existing measures are effective	Assurance that existing measures are effective / maintained
Action not taken on legacy issues or process started but lack of progress and / or lack of (consideration of) interim measures	Legacy issues	Legacy issues identified / action taken. If still ongoing, timescales reasonable / delay explained. Interim measures identified and implemented
No consideration of aspects not to current standards OR failure to identify / take additional reasonable steps and / or justify steps not taken	Aspects not to current standards	Aspects not to current standards identified/assessed. Reasonable additional steps taken (or planned) Reasonable justification for any steps not taken
Additional measures not considered, identified but not implemented / no plan to do so, or considered but rejected without reasonable explanation	Consideration of additional measures	Additional measures considered, identified and either implemented or planned. Where possible measures rejected, reasonable explanation provided
Not considered / identified / implemented Inadequate plan for replacing interim measures OR missed deadlines for long-term solutions	Interim measures	Interim measures identified / implemented Clear, timebound plan for replacing interim measures with long-term solutions
No / limited evidence of arrangements for ongoing management of building safety risks OR information provided but lack of confidence in implementation	Management arrangements	Convincing evidence of robust management arrangements and confidence they are being implemented, monitored and reviewed

What is BSR assessing – safety case report – BSR assessor

- Criteria in several sections:
 - Description and basic information
 - Risk Assessment, Description of Building Safety Risks and Steps Taken
 - Safety management system (SMS)
 - Emergency arrangements
- Most criteria relate to specific information in the report
- Some criteria are more general, and ask the assessor to make a judgement on whether the relevant legal duties have been met
- Where there is more than one AP for a building, the safety case report will need to include information relating to all of them not just what the PAP has done

What is BSR assessing – safety case report – fire assessor

- Criteria in several sections:
 - Basic information about the building
 - Building safety risk assessment
 - Compartmentation
 - Specific prevention and protection measures
 - Management arrangements
- Most criteria relate to specific information in the report
- Some criteria are more general, and ask the assessor to make a professional judgement on whether information provided demonstrates that APs have taken all reasonable steps to manage building safety risks
- Where there is more than one AP for a building, the safety case report will need to include information relating to all of them not just what the PAP has done

What is BSR assessing – safety case report – structural assessor #1

- Structural assessment should be proportionate to the risk of the specific building
- Key elements for the PAP to show are, that they:
 - Have undertaken a suitable and sufficient assessment of the risks from structural failure, proportionate to the risks of that building
 - Understand how their building is constructed to the extent needed to meet the requirements of the next two bullet points
 - Understand its current structural condition. This will be proportionate to the risks. Relevant factors will include age of the building and construction methods
 - Have arrangements in place to monitor, manage and / or mitigate the risks of structural failure. Again, this will be proportionate to risks

What is BSR assessing – safety case report – structural assessor #2

- Criteria in several sections – some always assessed, some depending on the type of building
- Always assessed
 - Basic information about the building
 - Building safety risk assessment
 - Arrangements for managing ongoing structural integrity
- Conditional criteria
 - Large panel system (LPS) Buildings – only used for LPS buildings
 - Current structural condition of the building – not used for very new buildings with no history of issues where “basic information” section criteria met or N/A
- Most criteria relate to specific information in the report
- Some criteria are more general, and ask the assessor to make a professional judgement on whether information provided demonstrates that APs have taken all reasonable steps to manage building safety risks

What is BSR assessing – residents' engagement strategy

- Criteria for this assessment follow the detailed requirements in the Act and Regulations
- The BSR Regulatory Lead will assess whether the required content is there and appears reasonable

What is BSR assessing – mandatory occurrence reporting system

- Criteria for this assessment follow the detailed requirements in the Regulations
- The BSR Regulatory Lead will assess whether the required information has been provided

Outcomes #1

- If BSR is satisfied that all the relevant legal duties have been met, it must give a building assessment certificate
 - You have a legal duty to display the certificate in a ‘conspicuous position’ in the building
- If BSR is not satisfied that all the relevant legal duties have been met, it must refuse the application
 - If it is refused BSR will tell you why
 - If what’s wrong can be remedied promptly, BSR may issue a notice telling you what to do and when by – if you do what is required by the due date, BSR can then give the BAC rather than refuse the application
- If the application is refused, BSR may take enforcement action to ensure what’s wrong is put right
 - This could be a letter or a compliance notice depending on what is wrong and how serious it is
- Once you have done what any letter required / complied with any notices, you will be directed to apply again for a BAC

Outcomes #2

- Refusal of a BAC application does not automatically mean a building is unsafe
- The decision on whether to give or refuse a BAC is based on whether APs are meeting specific legal duties
- Some of those duties do not directly affect the day-to-day management of building safety risks
 - E.g. if the residents' engagement strategy did not contain what it had to, BSR would have to refuse the application, but that doesn't mean the building is unsafe
- Even if BSR identifies more the (P)AP can do, the (P)AP will often be able to manage the risk in the meantime by putting interim measures in place
 - This allows them time to put permanent measures in place

Questions

