

Building Safety with Womble Bond Dickinson

October 2023



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Sweeping changes, on a scale never seen before, are being made across the entire building regime.

The wide-spread effects of these wholesale changes are shaking the entire industry to its foundations. The impact is being felt across the construction, real estate, regulatory, financing, and insurance sectors. All stakeholders are affected, whether they are developers, contractors, consultants, owners, landlords, tenants, funders, insurers, or the many other interested parties in these areas.

Never has it been so vital to keep ahead of the fast pace of changes to the law, to stay fully informed of new industry guidance and practice, and to be acutely aware of future developments racing over the horizon.

Our teams at Womble Bond Dickinson have kept on top of these changes and developments since the Grenfell Tragedy of 2017. We have been advising private and public sector clients across a range of issues, whether in relation to the design period, construction stage, or occupied phase of buildings, particularly higher-risk buildings. Our lawyers regularly share their valuable insights in the industry press and speak publicly at events to share their expert knowledge.

The final changes to the building safety regime are yet to be cemented, and the dust is still settling on new legislation which has fallen into place over the last few years, months and even weeks. Our lawyers have been keeping a close eye on the shifting landscape, to give our clients the best advice possible, to update that advice quickly as new laws and guidance become available, and to help clients plot a course through these challenging and uncertain times.

With around 120 partners and 450 lawyers based in eight offices in key locations across England and Scotland, our lawyers work closely across teams to deliver a seamless service, advising on whichever stage of its lifecycle a development or building is at, and handling our clients' matters discretely, delicately and deftly.

Our internal **Building Safety Steering Group** meets regularly to scrutinise legal and industry developments and share insights and intel so that we can provide our clients with fully-rounded, informed, and commercially practical advice. The Group is made up of members of our Construction and Engineering, Real Estate, Residential, Planning, Property Litigation, Regulatory (Enforcement and Compliance), Insurance, and Projects and Procurement Teams.

“I believe that we have a real opportunity to [achieve radical and lasting change], and to create a system in which everyone will have greater confidence. At the high end of this ambition this country can lead the world in developing a robust and confidence-building approach to the built environment and improving construction productivity.”

Dame Judith Hackitt, Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final Report May 2018

Building Safety and you

Building safety is a vast and evolving area, and understanding this extensive topic is challenging for all concerned.

To assist, we have a **Building Safety Hub**. Here, you will find our latest updates to the industry, including articles, factsheets and other materials on:



Read on for more information about our various teams and how they can help you in relation to building safety advice and services that you may need.

Construction and Engineering

Our Construction and Engineering Team is one of the largest full-service construction and engineering teams in the sector, offering our clients both transactional and disputes services. They advise on major projects from inception to completion, and throughout the operational phase – including front-end contract strategy, project documentation, risk management, and all forms of dispute resolution.

Building safety has been high on their radar since 2017, as has (building) information management and innovation (including modern methods of construction) both of which are affected by building safety.

The changes facing the construction industry are all-pervasive, with the Building Safety Act 2022 coming into force, the periods of liability for some claims extending from 6 to 30 years retrospectively, and the introduction of a raft of Regulations, including on higher risk buildings (HRBs), registration of HRBs, the extension and strengthening of the building control regime, and the introduction of key building information. New overseeing bodies have been created in the form of the Building Safety Regulator, Construction Products Regulator, and New Homes Ombudsman. And key challenges for the industry lie in the new Golden Thread, Gateways, Dutyholder regime, second staircases, and construction products rules, all of which will impact the sector significantly.

The uncertainty around all of these issues can be daunting.

“The overall knowledge and experience of the team is unrivalled”

Legal 500 2023

How the team can help

Our team can assist clients in a number of ways in relation to transactional or dispute resolution advice arising out of the Building Safety Act 2022 or on building safety generally – whether they are developers, employers, government and public bodies, local authority building control, retailers, building owners, management companies, contractors, consultants, lenders, investors, insurers or have an interest in properties or projects in a different capacity). This includes:

- Advising on the terms of construction contracts and other construction project documents in terms of risk and building safety
- Undertaking due diligence for property and finance transactions
- Advising on remedial works strategies, agreements, and claims
- Updating on potential liabilities for Principal Accountable Persons and Accountable Persons
- Advising on the Golden Thread requirements. The Team’s lead contact, Simon Lewis, is a member of the BAC Golden Thread Working Group, helping to develop Regulations and Guidance in this area
- Pursuing or defending claims under the Defective Premises Act 1972
- Advising on the effect of changes to statutory limitation periods (now increased to up to 30 years retrospectively in some circumstances)
- Addressing sector specific enquiries, such as the role of architects under the new building safety regime
- Providing guidance on the New Homes Ombudsman and New Home Warranties
- Advising on changes to the building control system
- Responding to construction and cladding products queries
- Working hand-in-hand with our Insurance Team on insurance-related claims.

The Team regularly publishes articles and insights about building safety in the construction industry press, and is frequently invited to speak at events, conferences and webinars on this topic.

Key contacts

Lead contact



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Simon Lewis: “provides an excellent service, with good understanding of the contractual issues. Clear and concise advice is provided quickly and responsively” **Chambers and Partners 2023**

Ian Atkinson: “Always delivers an excellent, professional service, on time and to budget. He responds quickly, efficiently and knowledgeably to all additional queries and issues.” **Chambers and Partners 2023**

Michelle Essen: “She is praised by market observers for being a hard-working ‘efficient and pleasant’ construction practitioner” **Chambers and Partners**

Sarah Wales-Canning: “Has been very diligent about meeting the client’s requirements and giving us the best guidance” **Chambers and Partners 2023**

Amy Hodge: “She is quick to understand our appetite for risk and apply her legal knowledge to provide a recommendation of the best way forward” **Chambers and Partners 2023**



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Real Estate

Our Real Estate Team of over 230 lawyers in the UK has the breadth and depth of experience needed to assist you with all of your real estate needs and to guide you through the entire real estate cycle, including where building safety is concerned.

Many of the industry's most trusted corporate occupiers, developers, investors, fund and asset managers, REITs, landlords, tenants, and real estate lenders across the UK turn to the Team to for support and advice on their real estate projects.

How the team can help

Ways in which the team can assist clients include:

- Advice and guidance of the limitations imposed by the Building Safety Act 2022 (BSA 2022), and the practical effect this may have on the planning, construction and certification stages of projects and constraints on the sales environment
- Legal, contractual and commercial advice when acquiring or disposing of a Higher Risk Building (HRB) or 11m to 18m buildings and developing strategies that provide protection. By way of example, this might include:
 - enhanced due diligence with a BSA 2022 focus
 - assessing Seller or Developer compliance with legislation
 - imposing appropriate warranties or other protections in sale documentation
 - clear obligations in contracts involving an HRB, to deal with Building Safety Regulator (BSR) consultation and engagement and securing the necessary statutory consents
 - ensuring that all documents and materials relevant to the Golden Thread are transferred at completion
 - additional protection via wider collateral warranty or third party right protections
 - advice as to trigger points for completion
 - commercial advice around industry requirements, Building Safety Levy, Developer Pledge Interaction, and New Build Home Warranty changed requirements

- Portal-based solution for the retention of building documents
- Landlord Certificates – providing advice and support in the context of preparing certificates
- Leaseholder Deed of Certificate – providing advice and support regarding certificates produced by leaseholders, their validity, next steps, and whether the leaseholder concerned holds a qualifying lease such that protection can be validly claimed
- Advice on potential litigation threats and dealing with actual litigation under the BSA 2022 in the form of Remediation Orders and Remediation Contribution Orders
- Registration of HRBs and assessment of who the relevant Principal Accountable Person (PAP) is, from a possible range of Accountable Persons (APs), noting that the deadline for registration of an existing HRB was 30 September 2023 and failure to do so is an offence
- Advice and assistance as to who is the Relevant Landlord (involving an analysis of lease documents to check for obligations relating to repair) for the purposes of the BSA 2022
- Advisory assistance in relation to the appropriateness of service charge costs taking into account the leaseholder protections embedded in the BSA 2022
- Advising lenders on the requirements of the BSA 2022 for development and investment loan transactions.

Our Planning and Infrastructure Team has recently won Planning Law Firm of the Year 2023 at the Planning Awards as a result of it acting on a series of high-profile schemes in sectors ranging from residential, rail and road infrastructure, and energy.

WBD has a 35 strong Planning and Infrastructure team which is one of the largest in the UK and ranked in the top ten nationally by leading industry publication Planning 2023.



Key contacts

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"Response time and efficiency, going above and beyond" **Legal 500 2023**

"WBD is my go-to solicitor firm for the difficult jobs, due to the experience and strength in depth of resource. They understand the market and the people within it" **Chambers and Partners 2023**

"Tom is a very good operator who is very pragmatic and very commercial" **Chambers and Partners 2023**

"Andrij Jurkiw is very good. He has lateral thinking and is experienced enough to know what to do" **Chambers and Partners 2023**

"The team are not only incredibly knowledgeable and experienced, but they are also pragmatic and commercially minded" **Chambers and Partners 2023**

"Good range of services with reasonable pricing – a one-stop shop for real estate finance requirements." **Legal 500 2023**

Enforcement and compliance

Our national Health and Safety Team is recognised as a leading team of health and safety lawyers, having been involved in most of the major cases in the UK over the last 20 years. They form long-standing relationships with clients helping them to proactively control risks, maintain compliance and avoid incidents as well as provide advice in relation to prosecutions, inquiries and enforcement action.

The team is experienced in advising in respect of fire and building safety matters having represented a number of organisations facing enforcement action.

How the team can help

Matters that we can advise clients on include:

- Investigations and prosecutions by regulators relating to health and safety and fire safety matters
- Appeals against statutory notices
- Obligations upon dutyholders including those upon Responsible and Accountable Persons
- Reporting requirements relating to building safety matters
- Statutory duties upon parties under existing stakeholder structures
- Internal investigations relating to building and fire safety compliance issues
- Corporate governance policies and procedures.

Jon Cooper: “He is an absolute star performer”
Chambers and Partners 2023

“**Jon Cooper** remains the guru regulatory lawyer, in particular in health and safety Law. He has recruited an exceptional team” **Legal 500 Hall of Fame**

“**Ashley Borthwick** is hard working, responsive and provides very sound advice” **Legal 500 2023**

“We would give a special mention to **Jon Cooper** and **Ashley Borthwick** who have an excellent track record and unrivalled knowledge in this area of law. They always deliver clear and actionable advice in a cost effective and prompt manner. They are our go to lawyers in this space”
Legal 500 2023

“First class offering, team willing to go above and beyond to help client, fast, pragmatic advice demonstrating a real understanding of not just the specialist area but also the business needs of the client” **Legal 500 2023**

“Regulatory legal advice at the highest level is hard to find. This team are exceptional not only in their approachability and pragmatism but also the results achieved” **Legal 500 2023**

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Banking & Finance

Our Banking and Finance team regularly advises banks and other financial institutions on a wide cross-section of lending transactions, including corporate finance, real estate finance, public sector finance, asset finance and asset based lending. We also provide support to borrowers in connection with complex banking and security documentation and commercial lending structures.

How the team can help

Our real estate finance practice regularly advises lenders in relation to new development loans and investment facilities secured against a wide range of real estate assets.

Increasingly, we have advised lenders on the risks to security and enforcement relating to building safety issues, and are able to assist funders in navigating the regulatory requirements of the new Building Safety Act.

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“**John** is an effective team leader who is attuned to clients’ commercial interests”
Chambers and Partners 2023

“**Tom Caplen** – stand-out partner. Client focused, dedicated to excellence and delivers succinct legal advice in plain English”
Legal 500 2023

“I’m very impressed with the speed of response”
Chambers and Partners 2023

“Very commercial and understand our business drivers, easy to deal with and able to get to the root of the issue in very straightforward terms”
Legal 500 2023

John Connor: Winner, Legal 500 Finance Award (Regional) (2015)

Insurance

Having served for decades as a trusted insurance law firm, we have a wealth of experience working with clients of every size to settle litigation, transactional and regulatory matters within the busy insurance sector. Our wide client base has allowed our insurance solicitors to amass invaluable experience in a number of specialities.

In particular, our construction insurance specialists have particular experience in the defence of building safety related claims against contractors, developers, architects and specialist sub-contractors in an area which is being particularly impacted by the recent legislative changes.

How the team can help

We act for a large number of composite and London market insurers advising on the defence, mitigation and coverage of professional negligence claims against developers, contractors, architects and other construction professionals. We are experienced in defending building safety related claims and claims under the Defective Premises Act 1972.

Examples of how we can assist our clients include the following:

- We advise on the defence and mitigation of design-related claims
- We have a particular specialism in assisting construction professionals to mitigate claims relating to fire safety, including the negotiation of remedial works schemes with associated settlement agreements
- We work closely with our Construction and Engineering Team colleagues to ensure the provision of a seamless service, from the instigation of a claim to the conclusion of the remedial works contracts and settlement
- We advise insurers on the application of cover in relation to building safety related claims.

Lead contact



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Hannah Cane: “thoughtful, dynamic individual ... Great team player and strategist” **Legal 500 2023**

“WBD bring a high quality approach for a sensible fee...They are very sensitive to the client’s commercial needs and tailor their approach according to the sums at stake” **Legal 500 2023**

“WBD has great strength in depth in professional negligence work, and is admired for its expertise by peers undertaking similar insurance-backed defendant work” **Legal 500 2023**

“Womble Bond Dickinson have a pragmatic and sensible approach to dealing with professional negligence matters. The team have the necessary technical expertise together with the relevant commercial acumen required to obtain great results for its clients. The team are friendly, approachable and a pleasure to deal with all the while maintaining high professional standards” **Legal 500 2023**

Local Government

The increasingly complex legislative and regulatory environment of fire and building safety is not without challenge for local authorities, who play a multi-faceted role by reason of their distinct duties in the context of their many functions.

These include planning and building control, housing and health and safety enforcement, not to mention as landlords and developers or development partners. The introduction of the Building Safety Act 2022 only reinforces the need for local authorities to ensure that they have in place effective governance arrangements to facilitate the proper discharge of their evolving duties.

Our Local Government Group, which includes two former local authority Deputy/Monitoring Officers, offers significant experience in undertaking complex governance advisory work for local authorities. This work has entailed advising on the effective management of potential conflicts of interest for local authorities, including in the context of fire and building safety.

Our team works closely with colleagues, including in our Construction and Engineering, Enforcement and Compliance and Real Estate teams, to ensure that our governance expertise and sector specialism underpins the fire and building safety advisory work we undertake for our local authority clients.

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“Womble Bond Dickinson (UK) LLP’s local government team is part of a wider national public sector offering that is particularly well known for its work in procurement, real estate, planning, regulatory work and complex litigation.” **Legal 500 2023**

Scotland

Building and fire safety laws and regulations in Scotland differ to those in England – for example, the Building Safety Act 2022 has limited application in Scotland and the Fire Safety Act 2021 does not apply there at all – because Scotland has its own building safety laws and regulations.

There are also practical differences when it comes to applying Scottish and English laws and regulations.

It's crucial to have the right advice on important matters like building and fire safety. Fortunately, our Construction and Engineering Team in our Edinburgh office are on hand to provide you with just that.

“Partner **Lisa** heads up the construction and engineering practice in Scotland, specialising in dispute resolution for a wide variety of public and private sector clients”
Legal 500 2023

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