

BUILDING REGULATIONS ADVISORY COMMITTEE FOR ENGLAND (BRAC)

**MINUTES OF THE THIRD MAIN MEETING IN 2012 HELD ON THURSDAY 11 OCTOBER,
10AM AT DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT (DCLG),
MEETING ROOM SFP 1, 2 & 3, GROUND FLOOR, ELAND HOUSE, BRESSENDEN
PLACE, LONDON, SW1E 5DU**

PRESENT

A list of those present is at **Annex A**.

ITEM 1: WELCOME AND INTRODUCTION

- 1.1 Members, officials and observers were welcomed to the third main BRAC meeting of 2012. The Chair reported that this will be Professor Jeremy Watson's, last BRAC meeting before he stands down as Chief Scientific Adviser in November. Also mentioned Tracey Cull will be leaving the Civil Service after more 22 years service including the last 9 years in Building Regulations and Standards Division.

ITEM 2: APOLOGIES FOR ABSENCE

- 2.1 Apologies were received from three members, Keith Bright, Andrew Eastwell, and from Andrew Shipley.

ITEM 3: MINUTES OF THE SECOND 2012 MEETING HELD ON THURSDAY 14 JUNE AND MATTERS ARISING

- 3.1 The minutes of the last main Committee meeting were agreed with the following corrections:

- *No corrections were identified*

- 3.2 Matters arising:

- *All actions closed except for establishment of short term group Behaviour Change which will report back at next main BRAC meeting* **Action BRAC**

ITEM 4: GREEN DEAL

[PRESENTATION]

- 4.1 Joanna Warner (JW) from DECC, Joint Head of Green Deal Accreditation Frameworks presented to BRAC a presentation providing an update on the Green Deal from a policy perspective, including a high level overview on how it is progressing, a broad timetable and its accreditation and assessments.

- 4.2 The main points raised by BRAC were:

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- BRAC asked whether additional training was required for a rdSAP assessor to become a Green Deal assessor. DECC confirmed it was and training was available.
- BRAC queried if you have bought a property and an EPC was done, would you have to pay for another certificate. DECC confirmed that the existing one could be used.
- BRAC questioned how well the Green Deal model works for tenants, in particular BRAC expressed concern that landlords could off load the improvement cost on tenants, although it was acknowledged that tenants could save on bills. It was also noted that landlords could also off load the costs of meeting the minimum energy efficiency standards required in 2018 through Green Deal. BRAC were also concerned that overall the tenant pays but has no contractual link to the Green Deal. In regard to commercial tenants BRAC considered it to be very complex and it considered Green Deal was unlikely to penetrate leasehold or multi-tenancy markets. DECC responded that Green Deal was a framework and not a subsidy programme and it would be up to the market to use it or not, and acknowledged that it would not work for everyone.
- BRAC asked whether the benefits that Green Deal could bring to properties had been discussed with RICS but DECC could not confirm this. Linked to this BRAC considered that there appears to be little appetite in RICS for reflecting Part L improvements in the values of properties.
- BRAC made some suggestions as to how Green Deal could be further promoted. This included examples of local authorities promoting Green Deal to local chambers of commerce and trade associations. BRAC also suggested that Competent Persons Schemes could potentially act as a referral system for Green Deal if some subsidy was provided.

4.3 It was agreed that the presentation should be emailed to all BRAC members. **ACTION DCLG**

ITEM 5: UPDATE ON COMPETENT PERSONS SCHEMES

[BRAC (12)P21]

5.1 DCLG presented paper 21 which updated BRAC on competent person schemes including the recent application process for new or extended self-certification schemes. This included a summary of how the system has evolved since it was first established and asked BRAC for its views on the model and whether any changes need to be made.

5.2 BRAC made the following comments:

- BRAC questioned the accuracy of the estimate in paragraph 6 of the paper that 2.5 - 3.0 million building jobs are currently self-certified under CPS. BRAC considered this was more likely to be the number of installations that fall under the Building Regulations rather than actual building jobs. BRAC also expressed concern with the final sentence in paragraph 6 which stated that the 'consumer benefits from lower prices as building control charges are not payable'. DCLG clarified that the compliance charge is lower for competence person's scheme than equivalent building control charge.

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- Taking account of Green Deal and Government may wish to extend CPSs. Why don't we recommend a proper regulated model to do it properly.
- BRAC also raised concern about multiple skills and competent persons schemes, it was considered that where you can define work and interfaces and limits of their skills you get more robust schemes. It was felt that this has worked well to date but an eagerness to support Green Deal means things are moving into more challenging areas. For example in an existing dwelling it is not just about the ability of person to install a product (e.g. insulation) but the need to consider the overall impact of that installation and any potential unintended consequences. Humidity with insulation may result in problems with indoor air quality, mould growth and is the installer competent to make those risks assessments.
- DCLG commented that whenever there is use of wall insulation there needs to be a survey/assessment and guarantees would be in place for remedial work.
- BRAC considered there was a need for an over-riding assessment or framework where competent persons schemes are extended to cover multiple areas.
- BRAC concluded that it is broadly supportive but expressed a cautionary note on unintended consequences and competence of technical risk needs to be considered (e.g. at over insulating).

ITEM 6: COMPETENT PERSONS SCHEMES – FIT FOR PURPOSE? [BRAC (12) P22]

6.1 Emma Clancy, BRAC Member, presented paper 22 on a combination of facts and views to stimulate debate about the operation, validity and performance of Competent Person Schemes (CPS).

6.2 The main points raised by BRAC were:

- Concern about multiple trades and Competent Persons Schemes was raised again, in particular concern about the blurring of trades. Emma Clancy responded that multiple trades was the way that some schemes were moving and there was likely to be more consolidation of schemes in the future but concerns should be addressed by standards within the schemes and changing of licensing will insist on improvements.
- BRAC expressed concern that UKAS safeguards relate to scheme operators and not the person carrying out the work or installation, and that UKAS is not a building skills assessor and that maintenance of competence over time needs to be addressed. DCLG noted that UKAS also looks at conditions of authorisation which looks at whether scheme operators assess members against standards, and it can also subcontract in those with technical skills if necessary. Emma Clancy also pointed out that UKAS checks what scheme operators say they do which includes skill assessment testing.
- BRAC considered the tightening up of conditions was valuable but felt there was a need for clear objectives against which Competent Persons Schemes could be tested and suggested that 'purpose' or 'statement of intent' should be introduced.
- BRAC suggested manual to the Building Regulations would be a good idea and this should include how the process works and how competent persons schemes fit into this.

COMPETENT PERSON SCHEMES AND GAS SAFE REGISTER [BRAC(12)P30(P)]

6.3 The paper was provided for information only but BRAC considered that it needed to be discussed. The main points raised by BRAC were:

- BRAC expressed concern that the Gas Safe Register does not sit within a Competent Persons Scheme. BRAC suggested that there was a need to explore the fundamental differences between the Gas Safe Register and Competent Person Scheme. It was also noted that the Planning Portal identifies the Gas Safe Register as a Competent Persons Scheme.
- BRAC questioned whether Gas Safe Register is continuously monitoring or auditing their members.
- BRAC noted that in evidence to the DCLG Select Committee that the Gas Safe said only half the number of gas-fired boilers installed are notified. BRAC asked whether this could be an indication that the scheme is not working well and questioned whether the other notifications are missing.

6.4 DCLG responded that the Health and Safety Executive (HSE) would be willing to speak to BRAC about these concerns. DCLG understand that the Gas Safe Register is required to monitor their members and HSE would be able to provide more detail on this. DCLG acknowledged that the Gas Safe Register is not bound by conditions of authorisation but the Capita scheme is. However, there is a commitment for the Gas Safe Register to comply voluntarily with DCLG's new conditions of authorisation by June 2014, as outlined in paragraph 6 of the paper.

6.5 It was agreed that HSE to be invited to a forthcoming BRAC main meeting and a fuller paper provided on the Gas Safe Register. Planning Portal to be contacted to query its entry on the Gas Safe Register.

ACTION DCLG

ITEM 7: PROPOSED BUILDING AND APPROVED INSPECTORS (AMENDMENT) REGULATIONS INCLUDING UPDATE ON THE BUILDING CONTROL SYSTEM

[BRAC (12) P23]

7.1 DCLG presented paper 23 which updated BRAC on the content of the proposed Building and Approved Inspectors (Amendment) Regulations 2012 that will implement most of the deregulatory changes proposed in the 2013 consultation and transposition of the new requirements of the Energy Performance of Buildings Directive. Alan Crane gave an oral report back on the Building Control System working group findings.

7.2 The Building Control System Working Group met on 4 October 2012 and discussed three proposals:

- (i) **Service Plans.** The Working Party supported the principle of a 'service plan' but considered it was the wrong term to use. There was support for guidance and broad frameworks but not for templates. The Working Group thought there should be an agreement between parties supported by guidance. It was also considered that guidance should go to all building control bodies and not just the public sector.
- (ii) **Appointed Persons.** This proposal was not supported by the Working Group as it could not see the justification for it or what additional value it

would provide to consumers above that already supplied by building control bodies. It was noted that CIC intend to run a workshop on appointed persons.

- (iii) **Enforcement:** Working Group considered there was still a need for Stop Notices to deal with rogue traders and there was broad support for Compliance Notices. Proposals to remove limits on fines (currently capped at £5,000) was welcomed but it was felt there was a need to better educate Magistrates on the use of powers.

10 7.3 BRAC had the following comments:

- BRAC considered that the enforcement proposals were in theory a useful measure to have in place but in practice BRAC questioned whether local authorities would actually use them as there would be a high risk of challenge and claims for costs.
- It was noted that the use of enforcement notices by trading standings is not always comparable with building standards.
- Where a stop notice is issued it can usually start a dialogue.

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7.4 DCLG intends to meet with the Ministry of Justice and Department of Business Innovation & Skills on use of civil sanctions and will reconvene the Working Group again in early in the new year. DCLG will refer BRAC's views on Appointed Persons to Ministers.

ITEM 8: UPDATE ON THE 2013 REVIEW ON PROPOSED TECHNICAL CHANGES TO THE BUILDING REGULATIONS [BRAC (12) P24]

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8.1 DCLG presented paper 24 which informed BRAC about the progress of the proposed technical changes to Building Regulations as part of the 2013 Review and the timetable for the implementation of changes. The presentation included updates on Part B (Fire Safety), rationalisation of approved documents K/M/N, access statements, Changing Places and amendments to approved documents A (Structure) and C (Site preparation and resistance to contaminants and moisture). Annexed to the paper was the latest draft of the approved document to support Regulation 7 and BRAC's views were sought on the new introductory text, which is likely to be used across all new approved documents.

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8.2 BRAC had the following comments:

- BRAC questioned why the draft of Regulation 7 removed references to the environmental impact of building work. DCLG responded that it had stripped away text in Approved Documents that DCLG does not regulate for but this kind of information could be included in a Frequently Asked Questions (FAQ) document. Work on FAQ documents was already in train.
- It was noted that BRAC's previous comments about the size and clarity of diagrams in Approved Documents had been taken into account.
- Concern was expressed that Approved Document M has been diminished.
- BRAC asked for an update on a circular on the use of withdrawn standards. DCLG responded that this is in discussion with the advisory group.

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- BRAC requested to be sent details of the Local Acts repeals. **ACTION DCLG**
- No comments were made about Part C.

**ITEM 9: REPORT BY TECHNICAL WORKING PARTY FOR THE PART L
(CONSERVATION OF FUEL AND POWER) 2013 REVIEW [BRAC (12) P25]**

9.1 DCLG, along with the Chair of the Part L technical working party, presented paper 25 which updated BRAC on the report by the technical working party on proposed changes to Part L of the Building Regulations and findings from its meeting on 20 September. It covered consultation analysis and post consultation developments on proposals for performance standards, compliance and metrics for new homes, and performance standards for new non domestic buildings and for work to existing buildings.

9.2 BRAC made the following comments:

- BRAC noted that some other issues are not covered in the paper, for instance thick wall / wider cavities have implications for construction details.
- BRAC discussed the timing of any proposed changes to Part L and specifically whether October 2013 was a sensible delivery date. There was no unanimous decision on this, it was considered that a 6 month lead in time would be OK for major builders but not for smaller builders. Timing was not considered to be as big an issue for Part L on non-domestic buildings as for housing.
- BRAC questioned whether SAP would be updated to meet an October deadline as it felt that it is not possible to write simplified guidance until fully functioning versions of SAP was available. DCLG responded that SAP is likely to be in a better position as it had to be updated for Green Deal.

9.3 DCLG said that consequential improvements were still under discussion with Ministers and so proposals had not been considered by the Part L technical working party. DCLG asked for BRAC's views on consequential improvements as previously there had been mixed views. BRAC responded that there was not a general support for consequential improvements for boiler or window replacement but there was broad support for it on extensions.

**ITEM 10: REPORT BY TECHNICAL WORKING PARTY FOR THE PART P (ELECTRICAL
SAFETY – DWELLINGS) 2013 REVIEW**

[BRAC (12) P26]

10.1 DCLG, along with the Chair of the Part P Technical Working Party, presented to BRAC a report by the technical working party on proposed changes to Part P (Electrical Safety – Dwellings) of the Building Regulations. It also covered the Working Party's review the draft 2013 edition of Approved Document P, likely changes to regulations and next steps.

10.2 It was noted that the Working Party meeting had been productive meeting, and considered the proposal to amend part P was the preferred option. Main changes were to reduce amount to notifiable work; unregistered installers to have work tested; lower building control charges and AD reformatted and slimmed down.

10.3 BRAC made the following comments:

- In regard to third party inspection role there are some risks and limitations, therefore would need to keep an eye on it. It was noted that the removal of kitchen could be perceived as a backwards step for consumer safety and protection.
- Exclusion of external electrical work is a concern. DCLG responded that external electrical work would be notifiable if it was part of a new circuit.

ITEM 11: LOCAL STANDARDS REVIEW

[PRESENTATION]

11.1 DCLG gave a presentation on the work being taken forward on the review of local standards. The work has flows John Harman's review of housing standards and the Red Tape Challenge. **ACTION DCLG** circulate Harman Report to BRAC.

11.2 The work is in two parts, the first is a review of local housing standards building on the Harman report that will look at opportunities for the simplification of standards. The work will be broken down by theme and will consider existing standards such as the Code for Sustainable Homes, Secured by Design, Lifetime Homes. The outcome will be the development of a robust, evidenced based policy framework for enabling local authorities and communities to apply additional local building standards which are cost effective in terms of the overall impact on the viability of development.

11.3 The second will an overarching, more fundamental review of building regulations and associated rules. A 'Contestable Panel' has been established to take this forward:

- Andy Von Bradski;
- Dave Clements;
- Paul Watson;
- Kirk Archibald

The broad remit of the Panel will be as a 'critical friend' to the standards review group.

11.4 The terms of reference of both reviews are now in place. Both reviews will report by late spring/summer and will be followed by a consultation.

11.5 DCLG explained the process would be managed sensibly and it does not mean that the work on the 2013 review of the Building Regulations will not continue.

11.6 BRAC had the following comments:

- BRAC commented that the Contestable Panel were all practitioners involved the current systems and therefore not diverse enough. It was suggested that if fundamental change was to be considered then the Panel should involve those unconnected to the building industry who could bring fresh ideas and view points, perhaps taking someone from another industry that have reviewed complex systems.

- BRAC was also intrigued that Ministers wants another group to advise him on building regulations.
- DCLG responded that Ministers wanted the Contestable Panel to introduce external challenge rather than use existing mechanisms but BRAC may want to input and make its own representations. It was noted that Peter Caplehorn would be part of the Standards Review Panel.
- BRAC questioned why the wider construction sector was not being considered as part of the review as house building only makes up 14% of the sector. DCLG responded that the focus of the review will be on new build homes as it is aprt of the strategy to free up housing supply and improve growth.

11.7 BRAC commented that it was yet to meet the new Minister with responsibility for Building Regulations. DCLG agreed to organise a meeting between BRAC and the Minister and/or for the Minister to attend the next main BRAC meeting. **ACTION DCLG**

ITEM 12: BRAC STRATEGY DAY 2012 – FORWARD THINK [DISCUSSION]

12.1 The BRAC Deputy Chair held a discussion on the BRAC Strategy Day which will be held at BRE, Watford on the 9th November. The theme for the Strategy Day will be Trends, Trouble and Treats.

- Trends to include: (i) Building Information Modelling (BIM) and on how it may effect regulation; and (ii) Low Carbon - "Is low carbon something we can all live with?"
- Troubles to include: (i) Green Deal; and (ii) regulation base and how European legislation impacts in UK
- Treats to include: Olympics delivery and Legacy, showed construction industry at its best, delivering on time and to budget and the need for new ways of making this happen in the future..

12.2 Further details on agenda and details of Strategy Day to be circulated w/c 15 October
ACTION Peter Caplehorn / DCLG.

12.3 It was noted that the next Think Tank would be 6 December 2012.

ITEM 13: TRIENNIAL REVIEW OF BRAC

[BRAC (12) P27]

13.1 DCLG presented an information paper on the principles and process by which DCLG is required to review on a three year cycle its non-department public bodies (NDPBs). BRAC has been identified for such a review commencing in quarter 3 of 2012/13.

13.2 BRAC members were informed it was the first review since DCLG reviewed all NDPBs. It will look at whether BRAC is robust, challenging and inclusive, show value for money.

13.3 BRAC members told that their input to the review would be welcomed, in particular suggestions on ways to improve efficiency, governance and how to ensure BRAC

remains relevant and effective. Feedback from BRAC into the Review would be requested in due course.

**ITEM 14: UPDATES FROM NORTHERN IRELAND, SCOTLAND AND WALES
ADMINISTRATION**

[BRAC (12) P28]

- 10 13.1 Scotland and Wales observers provided an oral update on regulations and standards in their administrations as detailed in paper 28.

ITEM 14: ANY OTHER BUSINESS

- 20 14.1 DCLG drew to BRAC's attention on the recent conviction and jailing of a builder (George Collier) for manslaughter by gross negligence following the tragic death of a 3 year old child (Meg Burgess) by the collapse of a masonry wall in north Wales in 2008. It was noted that this could result in renewed calls for free standing walls to be included in the Building Regulations. This was covered in paras 74-79 of the Section 1 of the 2012 Building Regulations consultation which stated that although there are no plans to bring these walls under control through the Building Regulations, the issue and alternative approaches would be kept under review and sought contributions of further evidence. No new evidence was submitted although support for regulation was given by a couple of respondents. DCLG understands that the family has raised the issue with the media and should BRAC be contacted for comment from the media members should first contact DCLG officials before responding. .

30 **BRAC Secretariat**
Building Regulations and Standards Division, DCLG
October 2012

PRESENT (for all or part of the meeting)

BRAC Members

Neil Cooper	Chair
Peter Caplehorn	Deputy Chair
Emma Clancy	Member
Alan Crane	"
Nick Cullen	"
Clifford Fudge	"
Adrian Levett	"
David Mitchell	"
Neil Smith	"
Paul Timmins	"
Stephen Wielebeski	"
John Tebbit	"
Trevor Haynes	"
Tracy Aarons	"

DCLG Officials

Bob Ledsome	Deputy Director, Building Regulations and Standards Division, DCLG
Anthony Burd	Head of Technical Policy, BRSD
Stephen Porter	BRSD, DCLG
Paul Decort	"
Ian Drummond	"
Steven Kelly	"
Guy Bampton	"
Montaz Muqiuth	"
Sandra Simoni	"
Shayne Coulson	"
Peter Watt	"
Anthea Nicholson	"
Simon Brown	"
Ken Bromley	"
Audrey Burth	BRAC Secretariat, BRSD

Observers

Bill Dodds	Building Standards Division (BSD), Scottish Government
Seamus McCrystal	Department of Finance and Personnel, Northern Ireland
Francois Samuel	Welsh Government