

Enforcement to be reckoned with

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Enforcement of Building Regulations has declined significantly over the past decade. Anna Thompson looks at the reasons

In January, the question of infrequent use of Building Regulations enforcement tools was raised in a letter from Clive Betts, the chair of the [Commons Communities and Local Government Committee](#), to Dame Judith Hackitt, after the [interim report of her independent review](#) into the Building Regulations and fire safety was published.

Betts [wrote](#) :

'you highlighted concerns regarding the partial privatisation model in the building control system, where there are both local authority building control inspectors and private-sector approved inspectors.

'As you noted, there are concerns around the independence of [the latter] and their inability to take enforcement action, while local authority inspectors could be reluctant to take formal enforcement action due to the cost of pursuing cases through the courts. We urge you to continue your focus on this issue in the second phase of the review and are keen to hear your recommendations in this respect.'

It has always been the case that prosecutions are relatively rare, but why is that? Are approved inspectors unwilling for projects to revert to local authorities because they would get a reputation for being pernickety? Are local authorities having difficulties taking cases to court where they have not carried out the initial building control? Or, as a profession, have we become better at helping clients comply with regulation? Has manufacturers' and service providers' input meant that compliance is the positive result of better design, specification and purchasing?

There has always been an issue with the fuzzy definition of terms in the [Building Act 1984](#) as well, particularly for existing homes. 'The person carrying out the work' is the homeowner, but they rarely have a good understanding of how to choose or identify a competent contractor, or how to judge the quality of their work.

This means that even though homeowners may support the successful prosecution of a contractor by a local authority, there is no guarantee that the work will be rectified. Fortunately, issue of a formal section 36 notice by a local authority building control surveyor tends to result in the work being put right by the contractor before the process escalates.

Competent person schemes

[LABC](#) is looking at all aspects of compliance and enforcement, including [Competent Person Schemes](#). In January 2015, LABC and the Association of Consultant Approved Inspectors published a joint in-depth study of [Part P of the Building Regulations](#), which LABC Chief Executive Paul Overall summarised as follows:

'Overall, LABC views Competent Person Schemes as successful, bringing order to massive numbers of small projects that have repetitive elements. While there is a background level of issues and complaints, overall these are at a lower level than they would otherwise be, and contractors are paying part of the cost of monitoring standards.

'It's not perfect and uncertificated cash work goes on, as does poor work and fraudulent certificates, but all at a level that is much lower and at a cost of resolution that is probably lower too. So for government policymakers, the status quo is probably acceptable.'

LABC Director of Technical Policy Barry Turner has more recently welcomed the positive discussions on compliance at meetings of the [Hackitt Review's Regulation and Guidance Working Group](#) , and called for stronger government action on regulatory enforcement.

Prosecutions

Research carried out on behalf of the [Local Government Association](#) in 2017 showed the scale of the problem ? the number of prosecutions under the Building Regulations has been falling and is now roughly a quarter of what it was 10 years ago.

The reasons for this are clear, as the courts have failed to fine perpetrators sufficiently to deter them and also failed to award prosecuting authorities sufficient costs. The survey showed it cost an average of ?10,750 for a local authority's building control team to bring an enforcement prosecution to court, while the average award was just ?670. Similarly, average fines were slightly more than ?5,100, while perpetrators were estimated to gain by more than ?12,000 even once fines were taken into account.

'It's time for the government to make clear to the courts they should get tough with the tiny minority in the industry who don't comply with the regulations and standards,' [Turner argues](#) .

'Taking large property holders, big developers and contractors to court simply doesn't hurt them. Sanctions and penalties need to be increased and applied by the courts, and we need to be awarded full costs'.

On reversions from approved inspectors the picture has changed ? but probably not for the right reasons, as Paul Overall comments.

'For years, the LABC network barely had a handful of reversions. Last year this changed but not, I think, because approved inspectors became more willing to report non-compliance. [Instead, it's] because the [Construction Industry Council Approved Inspectors Register](#) (CICAIR) improved the quality management of 'unfinished' projects and insisted that final certificates must be issued in a timely manner. This forced approved inspectors to do something ... to pass their audit.'

He explains that, needing to finalise projects, approved inspectors had to start referring these back to councils to close the file when building owners refused them access or would not put work right, for instance. 'This is unfortunate,' Overall continues,

'because it has simply dumped their problem on local authorities. LABC will focus on this issue through the Building Control Alliance and CICAIR this year. Enforcement should be about compliance standards and not just cleaning up system failures.'

There has always been an issue with the fuzzy definition of terms in the Building Act 1984

LABC surveyors are still trained in enforcement, with refresher courses for experienced surveyors as well as modules at the LABC 'boot camp' for new starters and trainees. This prepares them to investigate and subsequently give evidence in enforcement cases where prosecutions might occur.

All professional building control surveyors should have knowledge of the Building Act 1984 and the relevant time constraints for prosecution plus the [Police and Criminal Evidence Act 1984](#) , including its rules on admissibility of evidence, codes of practice and cautions.

They should also know how to plan and structure an investigation, interview witnesses and defendants, write witness statements, collect evidence to ensure they don't fall foul of the [Regulation of Investigative Powers Act 2000](#) , prepare a prosecution report, brief a legal team and give evidence in court.

This admissible evidence should also be collected by approved inspectors and shared with local authority teams in the event of a reversion, if we as a profession are to remain credible and implement the Hackitt Review's eventual outcomes.

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Further information

- This feature is taken from the [RICS Building control journal](#) (June/July 2018)
- Related categories: [Building control](#)