

Can a managing agent or FM provider be an accountable person or principal accountable person?

This is a frequent question at the moment. This may be because the client or landlord is asking their supply chain to pick-up these dutyholding roles on their behalf, or perhaps because agents/FM service providers are looking to develop a new 'service line' for prospective clients.

The principal accountable person and accountable person dutyholders are defined by in Section 72 and 73 of the Building Safety Act 2022 [the Act].

Section 72(1) of the Act (subject to the additional provisions of subsections 2 to 6) defines an accountable person [AP] for a higher-risk building as:

- a) *a person who holds a legal estate in possession in any part of the common parts e.g. a landlord; or*
- b) *a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts e.g. Residents Management Company [RMC], Right to Manage Company [RTM].*

Section 73 of the Act (subject to the explanation in subsection 2) defines a principal accountable person [PAP] for a higher-risk building as:

- a) *in relation to a building with one accountable person, that person;*
- b) *in relation to a building with more than one accountable person, the accountable person who:*
 - i. *holds a legal estate in possession in the relevant parts of the structure and exterior of the building, or*
 - ii. *is within section 72(1)(b) because of a relevant repairing obligation (within the meaning of that section) in relation to the relevant parts of the structure and exterior of the building.*

Section 72(6) of the Act states that “a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing”;

Fundamentally, with a very few exceptions, a person or organisation is either an AP or a PAP or they are not. While an AP or PAP may ask another organisation to help them discharge their duties, they cannot however pass on the role to anybody else.

Where a Managing Agent or FM service provider can be an AP or a PAP

There are a few situations where a Managing Agent or FM service provider may be either an AP or a PAP. This would occur where the managing agent or FM provider:

- a) owns all or part of the building;
- b) owns all or part of the building and is responsible in the lease for managing and maintaining all or some of the common parts of the building.
- c) is named in a Tripartite Lease as being responsible for the management and maintenance of all or some of the common parts of the building. This could include responsibility for the

common parts and the structure of the building or just the common parts with the structure and cladding retained by the landlord.

Special Measures Manager

There are also circumstances where control will be removed from a PAP. These are set out in Section 102 and Schedule 7 of the Act which provides for the appointment of a special measures manager, to undertake duties under Part 4 of the Act in place of an accountable person, and makes further provision in connection with that appointment.

The building safety regulator [BSR] (the HSE) may apply to the property tribunal for an order in relation to an occupied higher-risk building (a “special measures order”).

A special measures order is an order appointing a person to be the manager (a “special measures manager”) for the building to carry out the functions of all accountable persons for the building.

A special measures order may also appoint the manager to carry out any function as a receiver in relation to commonhold building safety assessments.

The tribunal may make a special measures order if satisfied that there has been a serious failure, or a failure on two or more occasions, by an accountable person for the building to comply with a duty imposed on that person under, or under regulations made under, Part 4 of the ACT.

Building safety director

The Government included provisions in Section 111 of the Act to enable resident-led organisations who are accountable persons to appoint a professional director to support them in meeting their duties under Part 4 of the Act. Resident-led organisations include resident management companies (RMCs) and right to manage companies (RTMs).

The detail of this appointment is subject to secondary legislation which the Government is currently consulting on.

Section 161(4) of the Building Safety Act 2022 provides that where a RMC or RTM company appoints a paid building safety director, all unpaid officers of the company will be relieved of their personal criminal liability for any offences committed under Part 4.

Building Registration

A principal accountable person will be permitted to designate an agent to submit a registration application for a higher-risk building on their behalf, providing that when the application is submitted the agent confirms they have the authority to make it.

Where an agent is appointed by a PAP they will act as the point of contact for the BSR in connection with the application.

Where an agent is appointed the legal requirement to register the building is not however transferred or delegated to the agent. Where the PAP appoints an agent to complete the application and it not submitted in time, it is the PAP who commits the offence, not the agent.

The agent will be required to confirm the accuracy of the contents of the application on behalf of the PAP. Knowingly or recklessly providing false or misleading information to the Building Safety Regulator is an offence and both the agent and the PAP can be prosecuted for their failure in this regard.

Summary

A person or organisation can only be an AP or PAP if they fall within the definitions set out in Sections 72 and 73 of the Act.

An AP or PAP may ask another person or organisation to help them discharge their duties, they cannot however pass on the role to anybody else.

The BSR can apply to the property tribunal for an order appointing a person to be the special measures manager for the building to carry out the functions of all accountable persons for the building.

The tribunal may make a special measures order if satisfied that there has been a serious failure, or a failure on two or more occasions, by an accountable person for the building to comply with a duty imposed on that person under, or under regulations made under, Part 4 of the Act.

Where RTM's or RMC's are an AP or PAP, Section 111 of the Act will, when enacted, permit them to appoint a 'building safety director', for a building safety purpose.

A PAP will be permitted to designate an agent to submit a registration application for a higher-risk building on their behalf however PAP's duties in relation to registration are neither transferred nor delegated to the agent.

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