



## **Complaints Process - Frequently Asked Questions**

### **What is the role of a Building Control Body?**

With regards to our role as the statutory Building Control Body, It is important to note that we are not responsible for the compliance of the work with the building regulations. The duty to comply remains, at all times, with the person carrying out the work and ultimately with the owners of the property. The appointment of a Building Control Body is a legal requirement, and the purpose of that body is to ensure, as far as is this is reasonably possible, that the building work complies with the requirements of the regulations. We issue a final certificate at the completion of the project, and the certificate states that it is “evidence, but not conclusive evidence” that compliance with the regulations has been achieved. The wording in the certificate is prescribed by the Government and not ourselves.

The function of a Building Control Body is not one of project or contract managing the “quality” of the building works; it is limited to the minimum standards of health and safety etc. described in the regulations.

We do not approve works on site; our role is to undertake reasonable checks and where possible identify issues of compliance. These inspections of work are recognised as being by no means exhaustive by the government’s own guidance on the performance of building control bodies, hence the evidentiary nature of the final certificate.

In terms of procedural standards; the timescales in the delivery of our service and the number of inspections undertaken as shown above are wholly in line with our terms and conditions and the Government’s Building Control Performance Standards.

Source of the three extracts below: MHCLG Approved: Manual to the Building Regulations 2020

### **Constructing and altering buildings**

The people who construct and alter buildings should be suitably competent and skilled in order to satisfy the requirements of the Building Regulations.

### **Responsibility for compliance**

Receiving a completion certificate or final certificate is not a complete guarantee of compliance with the Building Regulations. The legal meaning of the certificate is that it is ‘evidence but not conclusive evidence’ of compliance. The building control officer or approved inspector will not have checked every piece of building material and how it has been fitted or every aspect of submitted documents. It is the responsibility of those carrying out building work to comply with the Building Regulations. The building control body will inspect the work on site at appropriate stages, but you cannot rely on this as the only method of ensuring that the work complies with the Building Regulations. The responsibility for ensuring compliance rests with the people carrying out the work.

**For example**, a building has just received the final certificate or completion certificate, but the roof is leaking. The fact that the roof leaks is the builder’s or building designer’s problem and not the building control body’s



problem. However, the building control body may point out problems either with the design or construction at any stage up to granting the final certificate or completion certificate.

### **Court Hearing**

Where building work does not comply with the Building Regulations, the person who did the work may be taken to court.

### **What matters are considered complaints:**

1. Failure to provide a service at the right time or to the standard expected of the service
2. Failure to fulfil statutory responsibilities
3. Failure to implement a decision
4. Failure to comply with the Building Control Performance Standards
5. Failure to abide by the CICAIR Code of Conduct for Approved Inspectors
6. Dissatisfaction with an answer to a query or a response to a request for a service
7. Failure to follow the Approved Inspectors agreed policy or procedures
8. Failure to take proper account of relevant matters in coming to a decision
9. Discourtesy or unacceptable behaviour by a member of staff
10. Harassment, bias or unfair discrimination

### **Matters that are not considered complaints:**

1. A Building Regulation technical assessment
2. Misunderstanding or dissatisfaction with the minimum standard set by the Building Regulations
3. A decision of an Approved Inspector where regulatory powers are being exercised
4. Unsubstantiated criticisms of the scope or context of the Approved Inspector service
5. Criticisms of quality of workmanship (outside Building Regulation requirements for materials and (workmanship) or building warranty items
6. Criticisms which constitute a disagreement with, or a refusal to accept, a rule of law which the Approved Inspector is applying
7. Complaints and/or claims made against the Warranty where the building control complaints process has not been exercised
8. Criticism of decisions made by the planning authority

### **What specific areas are not considered the role of Building Control Bodies therefore not constituting a complaint?**

Guidance on the role of a Building Control Body is provided by the Approved Inspectors licensing body (CICAIR). The guidance states that it is **not** the role of building control to provide:

1. Quality control of the works;
2. A 'clerk of works' service which monitors every stage of the construction process
3. A service to offer contractual protection between the person who carried out the work and the person responsible for it
4. Provide a guarantee of compliance with the Building Regulations. The appointment of a Building Control Body does not remove the obligation of the person carrying out the work to achieve compliance.

### **Is there case law with regards to the liability of Building Control Bodies ?**

Approved Inspectors, in undertaking their statutory function, have a total defence against negligence by virtue of the House of Lords decision in **Murphy v Brentwood DC [1991]**, namely that a building inspector is not generally liable for the cost of repairing a building which is defective due to a breach of the building regulations.

The following two recent cases involving Approved Inspectors have failed to make inspectors responsible for building defects or non-compliances with the building regulations:



- 1) In *Zagora Management Ltd and others v Zurich Insurance plc and others (2019) in the High Court* the court dismissed a purchaser's stated reliance on a Final Certificate in the conveyance of a new dwelling.
- 2) In *Lessees and Management Company of Herons Court v Heronslea Ltd and others (2018) in the Court of Appeal*, the judge struck out a claim against an approved inspector for alleged breach of section 1(1) of the Defective Premises Act 1972.

### **Where can we achieve mediation?**

We would encourage you to undertake mediation with Total BC, with either of the following bodies.

The Royal Institute of Chartered Surveyors, "in the event of a dispute between the parties, either party can apply to the President of the RICS for the appointment of an Independent Dispute Resolver" or call the Dispute Resolution Service on 020 7334 3806.

<http://www.rics.org/uk/join/member-accreditations-list/dispute-resolution-service/application-forms-for-drs-content-page/>

**Or**

CEDR: Centre for Dispute Resolution:

<https://www.cedr.com/solve/dispute-resolution-services/>

### **What are my options following dissatisfaction with a technical decision?**

If notifiable work has not commenced and you are of the opinion we have misinterpreted the requirements of the Building Regulations the determination process will be open to you. If notifiable work has already commenced the determination process is not available to you.

If you feel the requirements of the Building Regulations are too onerous or do not apply to your situation you can make a request to the Local Authority to dispense or relax the requirement. If the Local Authority refuse your request you can appeal to the Secretary of State.

#### **England:**

Ministry of Housing for Communities and Local Government

Eland House

Bressenden Place

London

SW1E 5DU

Telephone: 030 3444 0000

Website: [www.communities.gov.uk](http://www.communities.gov.uk)

Guide to determinations and appeals under the Building Act 1984 Sections 16(10)(a), 39 and 50(2) of the Building Act 1984

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5978/1877971.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5978/1877971.pdf)

#### **Wales:**

FAO Colin Blick

Building Regulations

Welsh Government

Rhydycar



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**How do I refer my unresolved complaint to the license body CICAIR and what is their definition of a complaint?**

Construction Industry Council Approved Inspectors Register Definition of a Complaint (2017):  
*A complaint is any expression of dissatisfaction about the performance of an Approved Inspector related to its building control services, delivery or actions where a response or resolution is expected from an individual or a group.*

[www.cic.org.uk/services/complaints.php](http://www.cic.org.uk/services/complaints.php).

Laura Russell: [cicairstaff@cic.org.uk](mailto:cicairstaff@cic.org.uk)

Tel: 0207 399 7403

CICAIR

26 Store St

London

WC1E 7BT

Website link: <http://www.cic.org.uk/services/complaints.php>

**What are the possible outcomes of a complaint?**

1. An apology, if appropriate.
2. A written explanation by a representative of Total Building Control.
3. A review of our procedures to improve within the area of the complaint if our processes can be improved.
4. A review with staff to assist in preventing any future complaints of the same nature.

Yours sincerely,



Andrew Ofomah  
For and on behalf of Total Building Control Limited  
Corporate Approved Inspector

