HAWKSWELL KILVINGTON
Specialist Construction Solicitors

Construction Briefing

Liability for RAAC: will your defence crumble?

There are three key points raised in this article:

1. There is ongoing potential for significant structural deficiencies in reinforced autoclaved aerated concrete (RAAC) which saw widespread use in the construction of buildings between the 1950s and 1990s, many of which were municipal buildings including schools and hospitals.

2. The effect of the Limitation Act 1980 is likely to preclude historic liability for the specification, design and construction of buildings using RAAC, although it is feasible the Building Safety Act 2022 may apply to extend this limitation period in the context of residential buildings.

3. More contemporary liability may arise regarding building owners and occupiers as well as the professionals engaged to undertake surveys of buildings where the existence of RAAC or defects of the RAAC are not identified or fail to be managed or rectified in time, or at all.

What is RAAC?

RAAC is a lightweight and cheaper alternative to conventional reinforced concrete and was used from the 1950s to early 1990s in both load bearing and non-load bearing functions. Being aerated and lacking coarse aggregate it is structurally different to the typical reinforced concrete we are familiar with seeing in structures and buildings, with (for example) only a fraction of normal structural concrete's compressive strength.

What problems arise from the use of RAAC?

There are multiple known potential problems that may manifest over time that are caused by either or a combination of:

- Performance defects (such as the corrosion of reinforcement over time)
- Manufacturing defects
- Construction defects

The Institution of Structural Engineers (ISE) indicate that these multiple problems (which may have effect in unison) could give rise to different modes of failure, some of which could be sudden with material risk of injury or fatality.

Why is this now in the news?

The construction industry has been aware of problems arising from the use of RAAC for many decades and there are extensive reports of RAAC roof planks being replaced due to structural deficiencies as far back as the 1980s, with industry guidance on the management of RAAC provided and updated throughout the 1990s and subsequent decades.

Given the prevalence of RAAC across hundreds of municipal buildings including schools, hospitals and court buildings, and as the risk of failure is likely to increase with time, this issue has potential to be a significant problem for owners and occupiers across the UK.

This is clearly not a new issue and specific alerts were raised following a roof collapse at a school in 2018; however, the issue has seen more widespread publicity following a further incident over the summer and concerns that the risks arising from RAAC are greater than previous guidance

suggested, with hundreds of schools now being surveyed, giving rise to significant school closures.

Historic liability

Given the construction of buildings using RAAC will have taken place between the 1950s and early 1990s, the applicable limitation periods for those engaged in specifying, designing and constructing those buildings will have long since passed.

One exception to this may be the extended limitation period of 30 years for claims under the Defective Premises Act 1972 implemented by the Building Safety Act 2022 coming into force. Whilst the latter was implemented in the context of the fire safety issues arising from the historic cladding, its effect applies more broadly to other defects in the design and construction of residential buildings.

Contemporary liability

There are two key areas of liability that may arise from these circumstances. First, the proper management of buildings containing RAAC. There is well established guidance on the management of RAAC that owners and occupiers of buildings containing RAAC should be aware of; given the absence of a central register of buildings containing RAAC, there has also been a recent increase in surveys of buildings with potential to contain RAAC.

Second, those undertaking surveys will need to be suitably qualified and experienced professionals (such as structural engineers) with sufficient knowledge of this issue bearing in mind examination of RAAC is likely to require a degree of specialist knowledge. The Institution of Structural Engineers, for example, note certain testing methods used on traditional concrete to check for reinforcement condition are not appropriate to RAAC construction.

Remediation or replacement

The question of full replacement or interim rectification will prove to be key, with various factors to be considered, including safety risk, cost and the realities of remediation, particularly in municipal buildings such as hospitals where decanting patients and staff may prove impractical.

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