



BRIEFING PAPER

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Leasehold high-rise blocks: who pays for fire safety work?

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Summary

Following the Grenfell Tower fire in June 2017, the Government established a Building Safety Programme with the aim of “ensuring that residents of high-rise residential buildings are safe, and feel safe from the risk of fire, now and in the future.”

At 31 January 2021, 461 high-rise residential buildings and publicly owned buildings had ACM cladding systems unlikely to meet Building Regulation guidance. Of the 461 identified blocks, 132 blocks were yet to be remediated.

Remediation work is complex, and the associated costs are significant. The question of who is responsible for paying for remedial works has been described as “a legal quagmire” and is at the forefront of debates about how quickly the necessary work can be carried out and the financial implications for some residents, particularly those living in privately owned blocks.

Funding to remove ACM cladding

On 16 May 2018, the Government announced that it would meet the reasonable cost of the removal and replacement of unsafe cladding by councils and housing associations. Although the Government argued that the cost of remediation work should not fall on individual leaseholders in affected private blocks, not all developers/freeholders responded positively to these calls. On 9 May 2019, James Brokenshire, then-Secretary of State at the Ministry of Housing, Communities and Local Government (MHCLG) announced that the Government “will fully fund the replacement of unsafe aluminium composite material (ACM) cladding on high-rise private residential properties where building owners have failed to do so.” The deadline for submitting applications was 31 December 2019. The expectation was that ACM cladding would be removed by June 2020 in all but exceptional cases. At 31 January 2021, 100% of social sector buildings and 84% of privately owned buildings had started or completed remediation of ACM cladding.

Funding to remove non-ACM combustible cladding

In the March 2020 Budget, the Government announced that it would provide £1 billion in 2020 to 2021 “to support the remediation of unsafe non-ACM cladding systems on residential buildings 18 metres and over in both the private and social housing sectors.” The registration process for the Building Safety Fund opened on 1 June and closed on 31 July 2020. Applications for funding are only being considered from building owners, freeholders or responsible entities who registered. The deadline for submitting funding applications was initially 31 December 2020, but on 17 December the Government announced an extension to 30 June 2021.

Additional funding for cladding removal February 2021

On 10 February 2021, Robert Jenrick announced additional funding of £3.5 billion for the removal of combustible cladding on high rise blocks of 18 metres and above. Where cladding needs to be removed from lower and medium rise blocks, the Government intends to develop a long-term low interest loan scheme under which “no leaseholder will ever pay more than £50 a month towards the removal of unsafe cladding.” The loan scheme will apply to blocks between 11 and 18 metres.

Ongoing issues

The Housing, Communities and Local Government (HCLG) Select Committee highlighted several issues in its June 2020 report [Cladding: progress of remediation](#). They spanned the following areas:

- The adequacy of available funding. The Public Accounts Committee (September 2020) said “The Department is not fully funding the replacement of forms of dangerous cladding which are different from that used on Grenfell Tower”.
- Exclusions from the Building Safety Fund for non-ACM cladding removal. For example, funding is not available where work was committed to or started before 11 March 2020.
- The lack of assistance in tackling other fire safety defects and interim measures (e.g. waking watch costs).
- The impact on leaseholders who are facing rising costs and are unable to sell their homes. The Committee described the physical and mental toll on affected leaseholders as representing a public health crisis.

The [Government response](#) (September 2020) made clear the expectation that building owners should bear some of the cost of making their buildings safe. Michael Wade, senior advisor to the Cabinet Office, was appointed to “work on identifying options for financing historic remedial works that are not covered by the £1.6billion funding.”

HCLG Committee published [a report on its pre-legislative scrutiny of the draft Building Safety Bill](#) on 24 November 2020. The Committee was critical of the Government’s apparent shift in emphasis from saying that it would be unacceptable for leaseholders to pay for historic safety defects, to a suggestion that leaseholders should be protected from “unaffordable costs”. The Committee called on the Government to provide necessary funding upfront given the urgency of the work, and for action to be taken to ensure those responsible contribute to the cost. Concerns were raised about provisions in the draft Building Safety Bill which would introduce a Building Safety Charge. The Committee believes the charge would:

...permit leaseholders to be charged for the cost of remediating historical safety deficiencies for which they were not responsible, which may have pre-dated their occupation, and regardless of whether at the time of any earlier work the building complied with prevailing safety requirements.

The Committee called for amendments to the charge to ensure it cannot be levied to cover the cost of rectifying historic defects. In the meantime, a new clause was added to the *Fire Safety Bill 2019-21* in the House of Lords which would prohibit the passing on of the cost of remedial fire safety works to tenants or leaseholders. The Bill is scheduled to return to the Commons for the consideration of Lords amendments on 24 February 2021.

The National Audit Office (NAO) published the report of its [Investigation into remediating dangerous cladding on high-rise buildings](#) in June 2020 which highlighted issues with the time taken to complete remediation; a lack of information on the number of care homes with combustible cladding; difficulties building owners would face in trying to recover monies via legal action; and administrative challenges associated with the Building Safety Fund.

The Public Accounts Committee (PAC) published [Progress in remediating dangerous cladding](#) on 16 September 2020 in which it criticised the pace of progress; the proposed means of allocating funding under the Building Safety Fund; and the lack of “a clear rationale” for the size of the fund:

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The £1 billion fund will meet only around one-third of the estimated £3-£3.5 billion costs. The Department says it will distribute its funding on a 'first come, first served' basis, but could not say how it would sort applications in rank order, nor could it guarantee that funding would be prioritised according to financial need.

The Government accepted a number of the PAC's recommendations in its [response](#) published in November 2020. As noted above, additional funding of £3.5 billion was announced for remediation of cladding on high-rise blocks on 10 February 2021. On [1 February 2021](#) the Commons voted in favour of a Labour motion calling for additional funding and support for leaseholders (Conservative Members abstained):

That this House calls on the government to urgently establish the extent of dangerous cladding and prioritise buildings according to risk; provide upfront funding to ensure cladding remediation can start immediately; protect leaseholders and taxpayers from the cost by pursuing those responsible for the cladding crisis; and update parliament once a month in the form of a written ministerial statement by the Secretary of State.

Motions tabled on opposition days are not considered to be binding on the Government.

The additional £3.5 billion in funding has been welcomed but leaseholders and commentators point out that it will not address all outstanding issues, for example:

- There is no funding for non-cladding related remedial works although a myriad of building safety issues has been revealed following inspections. HCLG Committee said that addressing all fire safety defects in every high-rise or high-risk residential building could cost up to £15 billion. This compares with total Government funding to date of £5.1 billion.
- There is no assistance for blocks under 11 metres requiring cladding remediation work.
- There are questions about the operation and impact of the proposed low interest loan scheme. Leaseholders in eligible blocks of between 11 and 18 metres are concerned that a loan scheme does not fulfil the commitment that they should not have to pay for the necessary works. The [Government response](#) to the HCLG Committee's report on cladding remediation said:

The Government is clear and unwavering in its view that it is unacceptable for leaseholders to have to worry about the cost of fixing historic safety defects in their buildings that they didn't cause.

This paper considers progress in implementing remediation works and issues raised by landlords and residents. The final section provides brief information on the position in Wales, Scotland and Northern Ireland.

Affected long leaseholders should seek professional legal advice and assistance. The [Leasehold Advisory Service](#) and the [Leasehold Knowledge Partnership](#) (which also acts as the secretariat for the All-Party Parliamentary Group (APPG) on leasehold reform) are potential sources of advice. The LKP has a dedicated email address: cladding@leaseholdknowledge.com.

1. Who owns the affected blocks?

The Ministry of Housing, Communities and Local Government (MHCLG) releases a monthly Building Safety Programme bulletin which contains data on progress in identifying high-rise residential buildings with unsafe cladding combinations. The [February 2021 bulletin](#) notes that, at 31 January 2021, 461 high-rise residential buildings and publicly owned buildings had ACM cladding systems unlikely to meet Building Regulations buildings".¹ 156 of the affected buildings are social housing blocks owned/managed by a local authority or housing association, while 213 are privately owned residential blocks. Of the remaining blocks with ACM cladding 54 are student accommodation; 29 are hotels; and 9 are publicly owned schools and health buildings. 18 blocks were awaiting confirmation of their cladding status.

Of the 461 buildings, **204 high-rise residential and publicly owned buildings were yet to be remediated**. Of these, 169 buildings had started remediation and 5 were vacant.²

2. Latest Government Position on Building Safety

In the Queen's Speech December 2019, the Government announced an intention to introduce a *Building Safety Bill* that would "Put in place new and enhanced regulatory regimes for building safety and construction products, and ensure residents have a stronger voice in the system." A *Fire Safety Bill* was also announced that would "Implement the relevant legislative recommendations of the Grenfell Tower Public Inquiry Phase 1 Report" and "Put beyond doubt that the Fire Safety Order will require building owners and managers of multi-occupied residential premises of any height to fully consider and mitigate the risks of any external wall systems and fire doors." The [Government's background briefing notes on the Queen's Speech 2019](#) provide more detail.

The *Fire Safety Bill 2019-21* was introduced in the House of Commons on 19 March 2020 and received its Third Reading in the House of Lords on 24 November. It is now subject to Ping Pong.³ Consideration of Lords amendments is scheduled for 24 February 2021. All stages of the Bill and its current version can be accessed on the [Parliament website](#). There is a Library briefing paper on the Bill: [Fire Safety Bill 2019-2020](#).

¹ MHCLG, [Building Safety Programme: monthly data release – January 2021](#), 11 February 2021

² Ibid.

³ Ping Pong refers to the to and fro of amendments to Bills between the House of Commons and the House of Lords.

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On 20 January 2020, the Secretary of State for Housing, Communities and Local Government, Robert Jenrick, [made an oral statement to the House](#) on building safety highlighting:

- the establishment of a new building safety regulator,
- likely proposals to change sprinkler requirements,
- a consultation on lowering the level for banning combustible material on external walls,
- publishing updated and consolidated advice for building owners,
- clarified advice on ACM panels and fire doors,
- comments on the speed of remediation in high rise buildings with ACM and wider funding for cladding issues.

On 17 March 2020 the Minister for Housing, Christopher Pincher, responded to a PQ on the timetable for introducing building safety measures.⁴ The consultation response was subsequently published on 1 April 2020: [A reformed building safety regulatory system: summary of responses to the Building a Safer Future consultation](#). The [Draft Building Safety Bill](#) was published on 20 July 2020 and was subject to pre-legislative scrutiny by the Housing, Communities and Local Government Select Committee. [The Committee's report and recommendations on the draft Bill](#) were published on 24 November.⁵

Covid-19

On 27 March 2020 the Government published [guidance](#) which said that progressing the remediation of high-rise buildings with unsafe cladding remained a priority:

The government's view is that this work is critical to public safety. To support this, the Housing Secretary, Mayors and local leaders have made a pledge to support vital building safety improvements continuing during the pandemic.⁶

The National Audit Office's (NAO) June 2020 summary report, [Investigation into remediating dangerous cladding on high-rise buildings](#), noted:

Early signs are that the effects of COVID-19, and public health measures taken to limit its impact, have slowed down the recent pace of remediating unsafe buildings.⁷

⁴ [Building Regulations and Fire Safety Independent Review: Written question – 27545](#), 17 March 2020

⁵ HC 466, [Pre-legislative scrutiny of the Building Safety Bill](#), Fifth Report of 2019-21, 24 November 2020

⁶ MHCLG, [Remediation and COVID-19: Building Safety update](#), updated 19 May 2020

⁷ NAO, [HC 370. Session 2019-21](#), 19 June 2020, para 13

3. Blocks owned by social landlords

3.1 Leaseholder liability?

When major works are carried out on blocks owned by social landlords there is no additional cost to be met by secure and assured tenants.

Long leaseholders in these blocks *could* be liable to pay a contribution towards the cost of the works depending on the wording of their lease agreements. As a rule, lease agreements will provide for the recovery of the cost of major works from long leaseholders; this can result in individuals facing some substantial bills, e.g. for roof or lift replacement. More information can be found in the Library briefing paper: [Leaseholders in social housing: paying for major works \(England\)](#).

In the aftermath of Grenfell, the Government made repeated references to a commitment by social landlords not to recover the cost of remedial works associated with cladding safety from long leaseholders:

Just as social landlords are not seeking to pass on costs for cladding remediation, in the private sector we believe that the morally right thing to do is for landlords to not pass these costs onto leaseholders.⁸

David Orr, then-CEO of the National Housing Federation (NHF), the representative body of housing associations, responded to this saying:

As freeholders of leasehold properties, our members have legal responsibilities as part of their leases and are therefore legally entitled to recoup the reasonable costs through service charges.⁹

Furthermore, housing associations with charitable status may be prohibited from covering the cost on behalf of leaseholders due to legal restrictions on the use of charitable funds.¹⁰ The NHF, in response to the 10 February 2021 announcement of additional funding (see section 5) said:

We are still very concerned about the impact of covering remediation costs on social housing providers and their residents; people who are so far forgotten in this crisis and for whom there is no funding. Not-for-profit social housing providers estimate they will have to spend in excess of £10bn to make all their buildings safe. This money is being diverted away from providing services and maintaining the homes of people in the lowest incomes in this country as well as building new affordable homes for those in need.¹¹

Some social landlords *have* sought to recover a proportion of the cost of associated fire safety works from their long leaseholders. For example, the London Borough of Wandsworth (LBW) resolved to retrofit sprinklers in all its blocks of 10 storeys or higher and obtained legal

⁸ [Flats: Safety: Written Question: HL4910](#), 5 February 2018

⁹ HC Deb 21 December 2017 c455WH

¹⁰ [NHF FAQs for Leaseholders](#) [accessed on 11 February 2021]

¹¹ NHF, [Our response to Robert Jenrick's building safety funding announcement](#), 10 February 2021

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advice to the effect that the cost, estimated to be around £3,000 to £4,000 per unit, would be recoverable:

Legal advice has been received that the cost of these works would be recoverable from leaseholders by way of service charges and the sprinkler systems would be maintained by the Council. Of the 6,401 properties that would benefit from the installation, 2,358 are leasehold. There are 1,315 resident leaseholders and 1,043 leaseholders living away from their property.¹²

A further LBW report prepared by the authority's Director of Housing and Regeneration, referred to the council's fiduciary duty to recharge long leaseholders:

The Council is of the view that if works are necessary and chargeable under the terms of the lease **then the Council is under a strict fiduciary duty to recharge** and that meeting leaseholders' contributions from the Housing Revenue Account (HRA) or the General Fund is likely to be challengeable.¹³

LBW resolved to refer the decision to recharge long leaseholders to a First-Tier Tribunal (FTT):

In recognition of concerns raised by some leaseholders over the proposed works, the report recommends that the Council makes a proactive application to a First Tier Property Tribunal to ensure that the leaseholders' voice is listened to and to seek a clear decision on the Council's ability to undertake the works.¹⁴

Applications to strike out the case were submitted by leaseholders. On 18 December 2019 the Tribunal upheld the leaseholders' application. The Tribunal found that LBW was not entitled to ask for a blanket determination and said if council wished to proceed it would have to consider each block of flats individually. Full details and associated correspondence on the case can be found on [LB Wandsworth's website](#).

There has been limited reference to the potential for authorities to be challenged for breach of their fiduciary duty where no attempt is made to recover contributions from long leaseholders if the leases in question allow for this. During a Westminster Hall debate on fire safety and cladding on 6 March 2018, Andy Slaughter made the point that not charging leaseholders in social housing blocks for fire safety works meant that "ultimately the money for them will come from tenants."¹⁵ This is less of an issue in light of the Government's decision to fund certain remedial works in the social housing sector (see below).

3.2 Government funding to remediate ACM cladding

Background to the funding announcement

The question of whether the Government would make additional funding available to assist social landlords in carrying out fire safety work was controversial up to the point at which Government

¹² LBW, Paper 17-269, September 2017

¹³ LBW, Paper 18-12, 2018, para 5

¹⁴ Ibid.

¹⁵ [HC Deb 6 March 2018 c83WH](#)

announced that it *would* meet the reasonable cost of the removal and replacement of unsafe cladding by councils and housing associations. The cost has been estimated at £400 million.

When pressed on this issue the Government *initially* said:

My Department has made clear that it considers that building owners should take responsibility for funding fire safety measures including replacement of dangerous cladding. Government will consider financial flexibilities for local authorities who need to undertake essential fire safety work to make a building safe.¹⁶

Brent Council wrote to the Secretary of State in July 2017 – the council's stock was not affected by ACM cladding, but a decision had been made to undertake further fire safety works in high rise blocks at an estimated cost of £10 million. Brent's letter outlined the potential impact of funding the work on its planned and reactive repairs service:

The funding of these improvements needs careful consideration. The Council will reach its Housing Revenue Account (HRA) borrowing cap for capital purposes in 2018/19. You will already be aware that your department's policy of reducing social housing rents by 1% per year until 2020 has put councils' HRAs under considerable strain - the cost of this policy change in Brent is in aggregate £23.3m to 2020. The impact of your department's, policy on high value voids will also increase that pressure. The Council does not believe that social housing tenants should have to pay for these improvements to the stock through a deprioritisation of both planned and reactive repair and maintenance works. For example, £10m equates to 40 new homes or the replacement of 4000 boilers. As such, the Council resolved to request the Government to provide the direct financial support to meet the costs incurred. This letter acts as our official request.¹⁷

The then-Secretary of State wrote to local authorities and housing associations on 26 July 2017 saying:

Where a local authority has concerns about funding essential fire safety measures, they should approach us as soon as possible to discuss their position.

Where works are necessary to ensure the fire safety of a building, we will ensure that lack of financial resources will not prevent them going ahead. It would not include general improvements or enhancements to buildings which go beyond this.¹⁸

During a Westminster Hall debate on leasehold reform on 21 December 2017, the then-Shadow Secretary of State for Housing, John Healey, called on the Government to fund some of the costs social landlords were facing.¹⁹

The point was repeatedly made by Members during the Westminster Hall debate on 6 March 2018, that the installation of combustible cladding had arisen due to a failure of the regulatory system and that that it should not be left up to tenants, via their rent payments, nor long leaseholders via service charges, to meet the cost of the necessary

¹⁶ [High Rise Flats: Fire Prevention: Written Question – 127874](#), 27 February 2018

¹⁷ [Brent Council's letter to Sajid Javid](#), 13 July 2017

¹⁸ *Inside Housing*, "[Javid responds to councils on fire safety funding](#)", 27 July 2017

¹⁹ [HC Deb 21 December 2017 c490WH](#)

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remedial work.²⁰ On 10 May 2018, the Guardian reported that 44 MPs had written to the Secretary of State calling on the Government to release cash to fund remedial fire safety works.²¹

Government funding announced (May 2018)

On 16 May 2018, the Government announced that it would meet the reasonable cost of the removal and replacement of unsafe cladding by councils and housing associations. The estimated cost is £400 million:

The fund follows the government's offer last year of financial flexibilities to assist local authorities with essential fire safety work. From conversations with social sector landlords, it has become apparent that they are having to take decisions about how to prioritise important services, repairs and maintenance work and investment in new homes.

The government has listened to their concerns, discussed the issue in Cabinet, and decided that, although social landlords have made good progress on replacing unsafe cladding, it is right to provide further support. It is therefore today announcing additional funding for the social sector. It recognises the tough decisions that are being made to carry out fire safety work as well as the potential impact on other services.²²

[Guidance](#) on applications for funding was published by MHCLG in July 2018. *Inside Housing* reported that the funding was coming from the Affordable Homes Programme:

The cash will come out of the current Affordable Homes Programme, the next programme in 2021/22 will be boosted by the same amount to compensate.²³

The funding **does not** cover works other than the removal and replacement of unsafe cladding:

The government will also continue to provide financial flexibilities to councils for other essential fire safety measures and is directing local authorities to take cladding-related issues into account when carrying out reviews of housing conditions in their areas.²⁴

The first funding allocations were announced on 17 October 2018 for 12 local authorities and 31 housing associations.²⁵ The press release contained information on the allocation process.²⁶

The funding announcement in May 2018 was welcomed by social landlords, although some questioned the £400 million estimate. Landlords also questioned whether the funding would be made available for works already in progress²⁷ – this was addressed in a letter

²⁰ [HC Deb 6 March 2018 c78WH](#)

²¹ Guardian, "[MPs urge government to release cash for removal of Grenfell-like cladding](#)", 10 May 2018

²² Ministry of Housing, Communities and Local Government (MHCLG), [Press Release](#), 16 May 2018

²³ *Inside Housing*, "Government will use grant to fund cladding replacement," 16 May 2018 [subscription required]

²⁴ Ministry of Housing, Communities and Local Government (MHCLG), [Press Release](#), 16 May 2018

²⁵ [MHCLG Press Release, 17 October 2018](#)

²⁶ Ibid.

²⁷ *Inside Housing*, "Government will use grant to fund cladding replacement," 16 May 2018 [subscription required]

sent by the Secretary of State to housing associations and published in *Inside Housing*.

We are therefore providing this funding so that they can continue to provide these essential services while also making your buildings safe. I can confirm that grant funding will be available for the remediation of ACM cladding systems which have failed large-scale tests on residential social housing buildings over 18m owned by local authorities and housing associations.

This will not be means tested, and will be available regardless of whether work has been started, completed or not yet started, so that building owners do not have to worry about the cost of work displacing other activities.

Because we are providing this funding to social sector landlords, we want them to go further in taking a low risk approach to fire safety. We will therefore be asking them to replace the unsafe cladding on their buildings with non-combustible materials which meet A1 and A2 standards in order to be eligible for the funding.

We will then fund reasonable costs associated with the removal and replacement of cladding, such as access, scaffolding, materials and labour. We will also continue to offer local authorities financial flexibilities for other essential work.²⁸

The [Government's response](#) to the Housing, Communities and Local Government (HCLG) Select Committee's report: [Building regulations and fire safety: consultation response and connected issues](#) (July 2019)²⁹ said that the social sector was expected to complete remediation "other than in a small handful of exceptional cases" by the end of 2019.³⁰

Based on the January 2021 Building Safety Bulletin, 65 social sector residential buildings are yet to be remediated but work has started on all 65.³¹ The Social Sector ACM Cladding Remediation Fund had approved £269 million of funding for the removal and replacement of unsafe ACM at 31 January 2021.³² Remediation works on 16 social sector buildings are being funded "through a combination of existing funds and litigation action".³³

The Government now expects all ACM cladding on high-rise blocks to have completed remediation works by the end of 2021.³⁴

3.3 Funding to remediate non-ACM cladding (March 2020)

During the March 2020 Budget, the Government announced that it would provide £1 billion in 2020 to 2021 "to support the **remediation of unsafe non-ACM cladding systems on residential buildings 18 metres and over in both the private and social housing sectors.**"³⁵

The initial target was for ACM cladding to be removed from social sector blocks by the end of 2019. The current expectation is for remediation to be complete by the end of 2021.

²⁸ *Inside Housing*, "[Landlords can use cladding funding to pay for completed works](#)", government says," 29 May 2018 [subscription required]

²⁹ [HC 2546, Seventeenth Report of 2017-19](#), 18 July 2019

³⁰ [CP 184, October 2019](#), p7

³¹ MHCLG, [Building Safety Programme: monthly data release – January 2021](#), 11 February 2021

³² *Ibid.*

³³ *Ibid.*

³⁴ [Written question: High Rise Flats: Insulation – 100371](#), 15 October 2020

³⁵ MHCLG, [Remediation of non-ACM buildings](#), updated 1 June 2020

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In order to access funding social landlords had to establish that they were “unable to pay”, leading landlords to question whether they would benefit from the fund.³⁶ [Specific guidance on applying to the fund](#) for social landlords was published in July 2020. Online claims initially had to be submitted by 31 December but on 17 December the Ministry announced an extension of the deadline to 30 June 2021.³⁷

The [Government response](#) to the Housing, Communities and Local Government Committee’s June 2020 report,³⁸ made clear the expectation that **building owners should bear some of the cost of making their buildings safe.**³⁹

Associated issues with the fund are discussed in section 6.1 of this paper.

4. Privately owned blocks

4.1 The initial Government response

In June 2018, the Government appointed a Ministerial taskforce to oversee a programme of remediation in the private sector. The Government called on freeholders to cover the cost of the necessary works and provided additional funding for the Leasehold Advisory Service:

The Secretary of State has made clear that building owners should do all they can to protect leaseholders from costs relating to interim measures and cladding remediation – either funding it themselves or looking at alternative routes such as insurance claims, warranties or legal action.

It is important that leaseholders are able to access specialist advice to understand their rights. The Secretary of State announced on 4 December that the department is providing additional funding to the Leasehold Advisory Service (LEASE), an arm’s length-body which provides free initial legal advice to leaseholders, to advise on fire safety issues.

The department is keeping the situation under review.⁴⁰

In October 2018, the then-Housing Minister advised:

The Secretary of State has recently written to all private sector building owners who are currently committed to passing costs to leaseholders, and to those who are yet to make clear their plans to remediate their buildings, or their intention to pass on costs.

These letters set the expectation that there is a moral imperative for private sector landlords to do the right thing and remove unsafe cladding quickly and not leave leaseholders to cover the cost. We have made clear that we have ruled out no options if

³⁶ [Remediation of unsafe non-ACM cladding systems on residential buildings](#), letter to stakeholders from Neil O’Connor, Director of Building Safety at MHCLG, 6 April 2020

³⁷ MHCLG, [New £30 million Waking Watch Relief Fund announced](#), 17 December 2020

³⁸ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020

³⁹ [CP 281, 8 September 2020](#), para 17

⁴⁰ [High Rise Flats: Written Question: 126695](#), 8 February 2018

industry, individual building owners, or developers do not come forward with their own solutions.⁴¹

The suggestion that freeholders should meet the cost was described as “unrealistic” by some. For example, the following observations were recorded on the [Nearly Legal housing law website](#):

- The current owners of some blocks may not have been responsible for commissioning the ‘flawed’ work – on this basis they may be reluctant to fund the necessary works.
- Some private landlords may not be able to fund the works. For example, a lessee-owned freehold vehicle (e.g. a nominee purchaser post-enfranchisement) may struggle to raise the finance given that the capital value of the building is primarily in the long leases.
- Traditional private landlords hold a freehold reversion in order to generate an income stream and not to fund substantial works “where the benefit is, on any view, at least shared with the leaseholders.”⁴²

During the Westminster Hall debate on 6 March 2018, Robert Neill referred to the fiduciary duty owed by directors of commercial companies to their shareholders and the fact that this could represent a conflict for those considering who should meet the cost of fire safety works.⁴³ Several Members speaking in the debate mentioned the moral duty on freeholders the Minister had referred to, pointing out that “a moral duty is not legally enforceable.”⁴⁴ Responding to the debate, the then-Minister, Dominic Raab, said:

In the private sector, of course, the allocation of responsibility depends on the terms of the leasehold arrangements, as qualified by general law. The determination of the legal position will obviously need to be settled ultimately by a court. Proceedings are under way in the constituency of the hon. Member for Croydon North, as I am sure he knows. I took the point that my hon. Friend the Member for Hendon (Dr Offord) made: that it cannot be right for a Minister to pre-empt or prejudge the legal determination of a relationship, where it is not only spelled out in the leasehold arrangement, but qualified by general law.

In some cases, the costs fall, in practice, to landlords or building owners; it may be clearer in some leases than in others. Where the costs do not fall to landlords or building owners as a matter of strict law, we continue to urge those with responsibility to follow the lead of the social sector. We urge those private companies to do the right thing, and not to attempt to pass the costs on to residents. They can meet some of those costs—hon. Members asked about this—through alternative routes such as insurance claims, warranties or legal action. It is rightly for them to pursue those avenues. They have the financial means, the relationship—legal or otherwise—and the wherewithal to do so. The Secretary of State and I have been clear about that in direct conversations, including with those who own the property in the constituency of the hon. Member for Croydon North. Where building owners are

⁴¹ [PO 174629, 9 October 2018](#)

⁴² [An air of unreality](#), 4 December 2017

⁴³ [HC Deb 6 March 2018 c80WH](#)

⁴⁴ *Ibid.*

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seeking to pass on remediation costs to leaseholders, it is important that leaseholders are able to get specialist advice. The Government have provided free legal advice and support through a range of measures, including the Leasehold Advisory Service, or LEASE—a free and tailored service.⁴⁵

The Government reportedly threatened further enforcement action against companies passing on the cost of the works; fines and bars from accessing other Government schemes were also possible courses of action.⁴⁶ An article in *The Times* suggested that this approach could face legal challenge as it would “cast doubt over the legitimacy of legal contracts” in the UK.⁴⁷ The Housing, Communities and Local Government Select Committee conducted an inquiry into building regulations and fire safety which reported in July 2018. The Committee remarked that “during our public evidence session with the then Minister of State for Housing, it was not clear what additional options were available to the Government to intervene”.⁴⁸ The Committee referred to leasehold/freehold arrangements as “a difficult and complex legal situation” and said it was “unclear what more [the Government] can do to compel private building owners to act or whether they should be liable for this work in the context of the ambiguity of the current guidance for external surfaces.”⁴⁹ The Committee concluded:

...that the Government conduct an urgent review into responsibility and liability of such buildings to ensure the necessary work can be carried out for the safety of residents, which is paramount. The Government should then produce further subsequent guidance for building owners.

While it is encouraging that an insurance company has recently accepted a claim to pay for remedial work on a private sector development in Greenwich, nevertheless, more needs to be done now to ensure that unsafe cladding is removed urgently. *To avoid any further delay, we propose that the Government introduces a low-interest loan scheme for private sector building owners, to ensure that remedial work is carried out as quickly as possible and that costs need not immediately be passed on to leaseholders.*

As we indicated earlier, we believe it would be unfair for private sector building owners or long leaseholders to be made liable for the costs of remedial work if the building fully complied with the building regulations at the time of construction or if the work was signed-off by Local Authority Building Control. In such circumstances, the cost of remedial work should fall to the Government.⁵⁰

The Government response was published in September 2018, on the specific points raised above, the Government said:

In the private sector more and more firms are doing the right thing and replacing cladding themselves without the costs falling to leaseholders. The Government will consider what further steps

⁴⁵ Ibid., cc102-3WH

⁴⁶ *Guardian*, “[Landlords told to remove Grenfell-style cladding or face action](#)”, 10 September 2018

⁴⁷ *The Times*, “[Dispute over plan to make landlords fund re-cladding](#)”, 20 October 2018

⁴⁸ HCLG Committee, [HC 555](#), 18 July 2018, para 82

⁴⁹ Ibid., paras 84-87

⁵⁰ Ibid.

may be appropriate as part of the detailed analysis of the consultation responses and the wider reforms proposed by the Independent Review.

[...]

The Government has been clear that building owners are legally responsible for ensuring residents' safety. They must undertake remediation action where potentially dangerous ACM cladding has been used and we have said that they should do all they can to protect leaseholders from incurring costs, either funding it themselves or looking at alternative routes such as insurance claims, warranties or legal action.

We are not persuaded that a review into responsibility for buildings is necessary; and would be concerned about the further delay that it could introduce into the process. We have written to the relevant building owners to remind them of their responsibilities and to highlight that, where building owners do not take action, local authorities have extensive enforcement powers to ensure that required remediation is undertaken. We welcome Mace's decision to cover the full costs of recladding two blocks at its Greenwich Square Project in south-east London. We also welcome the decision of developers such as Barratt Developments, Legal & General, Taylor Wimpey and Peabody to pay for work to remove cladding. We call on others to follow their example.

We have met leaseholders to understand their concerns, and industry to discuss the barriers to remediation and to work on solutions for individual building owners who cannot resolve building remediation themselves. We do not rule out any options if industry, individual building owners or developers do not come forward with their own solutions. Our new minister-chaired taskforce will be charged with ensuring that remediation plans are put in place swiftly across all private sector buildings with ACM cladding systems.⁵¹

On 24 January 2019, Kit Malthouse responded to a PQ on leaseholder charges:

We understand that leaseholders in Heysmoor Heights have been protected from a substantial proportion of the overall remediation costs due to a warranty claim being accepted. However, we continue to set our strong expectation that leaseholders should be protected from all remediation costs. We have written to, and continue to engage with, individual building owners to reiterate this expectation.⁵²

In response to an [adjournment debate](#) on the removal of ACM cladding from private blocks led by Rushanara Ali on 29 April 2019, Kit Malthouse acknowledged that remediation work on these blocks had made slow progress:

In the social sector we are making good progress. In the private sector, progress is slower; I absolutely admit that. We need to do something to speed that up, and we hope to increase the pace quite soon. Discussions are ongoing.⁵³

⁵¹ [Cm 9706](#). September 2018, paras 13 and 34-36

⁵² [Written question – 210545, 24 January 2019](#)

⁵³ [HC Deb 29 April 2019 c97](#)

4.2 Liability: a complex legal picture

At 31 January 2021 there were 139 privately owned residential blocks with ACM cladding that were yet to be remediated.⁵⁴ Work had started on 104 of these blocks.

Flats in the affected residential blocks are owned on a long leasehold basis. As with long leaseholders in blocks owned by social landlords, long leaseholders *could* be liable to pay a contribution towards the cost of the remedial works depending on the wording of their lease agreements.

In January 2018 the Association of Residential Managing Agents (ARMA) warned that leaseholders could face fire safety bills “in the tens of thousands”. ARMA proposed that the Government should provide interest-free loans to leaseholders to cover the cost of the work to avoid safety being compromised by delays in removing ACM cladding.⁵⁵

During the aforementioned Westminster Hall debate on 21 December 2017, the then-Shadow Secretary of State for Housing suggested the establishment of a Government-backed loans scheme for private landlords:

They could consider, for instance, a Government-backed loans scheme for private landlords who genuinely struggle to cover the costs themselves. The Government could also consider a similar condition that might help to address the concerns the Minister has heard from some of my hon. Friends about the position of leaseholders in private high-rise blocks. In any case, I ask the Minister to reflect carefully on the points that have emerged in the debate, linked to the work required after Grenfell Tower, and early in the new year to make a clear statement on what the Government will do to try to deal with the concerns for leaseholders with both private landlords and social landlords.⁵⁶

During the debate on 6 March 2018, Robert Neill made the point that interest-free loans would still place a burden on leaseholders:

I understand that interest-free loans have been suggested, but a lot of these people are already suffering, so how will they repay the capital? I am glad that additional funding has been made available to the Leasehold Advisory Service, but again, that does not address the underlying situation. A failure of regulation is a failure of governance, whoever was in government at the time, so ultimately the Government need to stand behind those affected, rather than expecting the costs to be picked up by individuals who did nothing and had no control over what happened.⁵⁷

One block that attracted media attention is Citiscape in Croydon which is managed by Firstport on behalf of Proxima Properties. The estimated cost of removing and replacing the cladding on this block was reported to be between £1.8 and £2 million. Reports said that this could result in leaseholders facing average bills of £21,000 depending on the size of

⁵⁴ MHCLG, [Building Safety Programme: monthly data release – January 2021](#), 11 February 2021

⁵⁵ *Inside Housing*, “[Leaseholders across the country could face fire safety bills in the tens of thousands](#)”, 18 January 2018 [subscription required]

⁵⁶ [HC Deb 21 December 2017 c490WH](#)

⁵⁷ [HC Deb 6 March 2018 c80WH](#)

their flats. Firstport referred the question of the recoverability of the cost from leaseholders to a First-Tier Tribunal (Property Chamber). On 13 March 2018, the Tribunal ruled that the cost *was* recoverable from the block's leaseholders.⁵⁸ However, on 19 April 2018, Barratt Developments, the original developers of the block, told leaseholders that they would cover future and backdated costs relating to employing a fire warden and the removal and replacement of unsafe cladding from this building.⁵⁹

Subsequently, some other companies committed to covering the cost of the work. Kit Malthouse, then-Housing Minister, referred to these firms in response to a PQ in October 2018:

Ministers have been very clear that in the private sector it is the responsibility of the building owner, or responsible person, to fund the measures necessary to ensure the safety of residents and must do all they can to protect leaseholders from additional costs. **We are encouraged by those in the sector, such as Barratt Developments, Mace, Legal & General and Taylor Wimpey, who are doing the right thing and taking responsibility, and we expect others to follow their lead.**⁶⁰

Inside Housing reported that the property management company in charge of New Capital Quay in Greenwich, a block which has similar cladding to that of Grenfell Tower, had launched a legal challenge against the National House-Building Council (NHBC) on the basis that the cladding complied with the building regulations in force at the time of construction and was signed off by the NHBC in their building control role.⁶¹ In July 2018, *Construction News* reported that the NHBC had accepted the claim following an investigation. The estimated cost is between £25 and £40 million.⁶² In November 2018, the CEO of NHBC, Steve Wood, confirmed to *Inside Housing* that claims on a "defined number" of developments had been accepted.⁶³

The question of who might be responsible for the cost of remedial works is further complicated where defects are identified with the installation of cladding. For example, *Inside Housing* reported on a block in Salford where surveys revealed inadequate fire breaks in cladding panels which could give rise to a liability under the leaseholders' warranties.⁶⁴ As with blocks in the social sector, as investigations have progressed issues with fire stopping, compartmentalisation and fire doors have come to light.

⁵⁸ *Inside Housing*, "[Leaseholders lose appeal over cladding removal costs](#)," 14 March 2018 [subscription required]

⁵⁹ MHCLG, [Press Release](#), 20 April 2018

⁶⁰ [PO 174629, 9 October 2018](#)

⁶¹ *Inside Housing*, "[NHBC faces liability claims for dangerous cladding on tower blocks](#)", 29 January 2018 [subscription required]

⁶² *Construction News*, "[NHBC to pay for Grenfell-style cladding removal](#)," 10 July 2018

⁶³ *Inside Housing*, "[NHBC to cover costs on more developments with Grenfell-style cladding](#)," 6 November 2018 [subscription required]

⁶⁴ *Inside Housing*, "[Fire safety: the leaseholder issue](#)", 2 March 2018 [subscription required]

4.3 Government funding announced for private ACM blocks (May 2019)

On 9 May 2019, the then-Secretary of State, James Brokenshire, announced that the Government *would* “fully fund the replacement of unsafe aluminium composite material (ACM) cladding on high-rise private residential properties where building owners have failed to do so.”⁶⁵ £200 million was made available.⁶⁶

In a [statement to the House of Commons](#), James Brokenshire expanded on the expectation that building owners should pursue claims to recover the cost of the works and said that the funding would be conditional on the work being completed within a set period:

The fund does not absolve industry from taking responsibility for the failures that led to the ACM being wrongly put on buildings. As a condition of funding, we will stipulate that building owners must pursue warranty and insurance claims and any appropriate action against those responsible for putting unsafe cladding on the buildings, with moneys to be repaid to the Government.

We will write to all potential fund applicants by the end of next week to start engaging them in preparation for formal applications. We will also make funding conditional on the building owner or responsible person agreeing a contract to start remediation works within a set period. We will provide further details on the application process; I urge those who intend to apply to start developing ACM remediation proposals and costings so that applications can be made and processed promptly.⁶⁷

In response to questions from the Shadow Housing Secretary at the time, John Healey, he confirmed that the £200 million was not new money:

We intend to manage funding for the policy through our existing significant programme budgets. To put that in context, if the full amount were used, it would represent something like 3% of this year’s financial programming. We will keep the House updated through the supplementary estimate. The size of the new fund is informed by the public sector fund’s utilisation and drawdown, by the financial support that has been provided by some of the developers and builders, and by the insurance that has been activated for a number of the buildings.⁶⁸

Members questioned whether the level of funding would be sufficient:

As I have said, the £200 million represents an estimate of the cost, based on the existing experience of remediation—some of the work that has already been done—and taking account of instances in which developers, or insurance, are already in place. It is there to provide capital support.⁶⁹

The Secretary of State clarified what the funding would cover:

⁶⁵ MHCLG, [Government to fund and speed up vital cladding replacement](#), 9 May 2019

⁶⁶ Ibid.

⁶⁷ [HC Deb 9 May 2019 c687](#)

⁶⁸ [HC Deb 9 May 2019 c690](#)

⁶⁹ [HC Deb 9 May 2019 c692](#)

The fund is intended to provide capital support for the removal of ACM cladding systems, including insulation, as well as the removal and disposal of existing cladding, replacement materials and labour. As part of the process of writing to building owners and of the subsequent work, we will specify that in greater detail to give reassurance.⁷⁰

The [Private sector ACM cladding remediation fund: prospectus](#) was published on 18 July 2019. The then-Secretary of State, James Brokenshire, said:

My expectation is that, other than in exceptional circumstances, building owners should complete remediation within six months of agreeing a plan, by June 2020.⁷¹

The Government now expects all ACM cladding on high-rise blocks to have completed remediation works by the end of 2021.⁷²

The National Audit Office's (NAO) June 2020 summary report, [Investigation into remediating dangerous cladding on high-rise buildings](#), comments on the 'value for money' aspects of the fund:

The Department assessed its fund to remediate private sector buildings as not being value for money, but was clear it provided other benefits. The Department modelled a counterfactual 'do nothing' approach in which, in the absence of funding, private building owners would remediate their buildings themselves by March 2030 as part of general maintenance. Up to 2030, the Department assumed that up to one-half of these buildings would continue to have 'waking watches' (overnight patrols to evacuate residents in case of fire); this was calculated as costing less than the £200 million in public funding for private sector remediation, which therefore did not appear to be value for money. The Department was, however, clear that by accelerating remediation in this sector, the fund would deliver significant non-monetisable benefits, including reduction in fire risks, improvements to residents' mental health and increases in affected property values (paragraph 2.13).⁷³

Applications for Private Sector ACM funding: progress

As previously noted, the Government published guidance on the funding application process: [Private sector ACM cladding remediation fund: prospectus](#) in July 2019 with applications opening on 12 September 2019. The deadline for applications was the end of December 2019.⁷⁴

The [January 2021 bulletin](#) states:

As of 31 January 2021, 99 buildings were in scope for the Private Sector Remediation Fund, a decrease of one since the end of December. Of these, 94 have submitted an application, four are preparing an application and the remaining building has recently been confirmed as having unsafe ACM cladding. 67 applications have been approved for funding of full costs (an increase of three

⁷⁰ [HC Deb 9 May 2019 c691](#)

⁷¹ [Building safety – ACM Cladding: Written Statement](#), 18 July 2020

⁷² [Written question: High Rise Flats: Insulation – 100371](#), 15 October 2020

⁷³ NAO, [HC 370, Session 2019-21](#), 19 June 2020, para 13 (summary report)

⁷⁴ MHCLG, [Building Safety Programme: monthly data release – January 2021](#), 11 February 2021

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since the end of December 2020) and four applications for full costs have been submitted. A further nine applications have been approved for funding of pre-contract support but are yet to submit an application for full costs. Overall, there have been 30 applications approved for precontract support.

The government has made £200 million available for the remediation of unsafe ACM on private sector residential buildings 18 metres or over. As of 31 January 2021, the Private Sector ACM Cladding Remediation Fund has approved £143 million for the removal and replacement of unsafe ACM.

[...]

Of the 114 private sector buildings not in scope for the Fund, 108 buildings have started or completed remediation (95% of all private buildings not in scope of the Fund). Of these, 65 have fully completed remediation and 23 have had their ACM cladding systems removed, including six buildings that have completed works and are awaiting building control sign off.⁷⁵

In January 2020 *Inside Housing* reported that MHCLG had written to all building owners "to reiterate their responsibility in keeping residents safe"⁷⁶ The Government confirmed an intention to "name building owners where remediation has not started to remove unsafe Aluminium Composite Material (ACM) cladding from their buildings."⁷⁷ A construction expert was appointed to "review remediation timescales and identify what can be done to improve pace in the private sector".⁷⁸

In February 2020, the Government [published a list of corporate entities](#) that had indicated that they were taking on responsibility for the remediation of unsafe ACM cladding, but where at least one of their buildings did not yet have a plan in place. The list is being updated periodically and was most recently updated on 11 February 2021.

The HCLG Select Committee report, [Building regulations and fire safety: consultation response and connected issues](#) (July 2019), questioned the adequacy of the funding for private sector blocks and the Government's definition of who should be responsible for administering the funding for remediation:

There is considerable concern from managing agents that the Government's definition of who should be responsible for the administration of funding for the remediation of buildings with dangerous cladding could see many managing agents walking away from their buildings due to the significant contractual and financial risks. The Government should clarify that it is the building owner, the freeholder, who should retain full responsibility for remedial works that are to be paid under the Government's scheme.⁷⁹

The Committee also called on the Government to fully fund the removal and replacement of any combustible cladding from any high-rise or

⁷⁵ Ibid.

⁷⁶ *Inside Housing*, "Government writes to building owners after cladding deadline missed", 22 January 2020 [subscription required]

⁷⁷ [MHCLG Press Release](#), 20 January 2020

⁷⁸ Ibid.

⁷⁹ [HC 2546, Seventeenth Report of 2017-19](#), 18 July 2019, para 38

high-risk building.⁸⁰ The Government response was published in October 2019:

The government has consistently made clear that building safety is the responsibility of the building owner and we have, through the Independent Expert Advisory Panel, provided clear advice on the steps building owners should take to ensure the safety of non-ACM cladding systems.⁸¹

4.4 Building Safety Fund to remediate non-ACM cladding (March 2020)

When the funding announcement for ACM blocks within the private sector was made, the UK Cladding Action Group and Manchester Cladimators reportedly referred to the “abandonment” of residents in buildings with dangerous non-ACM systems, such as high-pressure laminate cladding.⁸²

Inside Housing Magazine’s [End Our Cladding Scandal campaign](#) published an open letter to the Government saying:

We need the government to set up a fund to pay for all unsafe residential homes to be made safe, both inside and out and including non-ACM systems. This must not be provided as loans, which would simply saddle leaseholders with debt. We need this fund to be tied to a commitment to complete the work within two years. We need those who have spent their life savings on interim measures to be recompensed. And we need all of this to be announced by June 14 this year – the second anniversary of Grenfell.⁸³

Subsequently, in the March 2020 Budget, the Government announced they would provide £1 billion in 2020 to 2021 “to support the **remediation of unsafe non-ACM cladding systems on residential buildings 18 metres and over in both the private and social housing sectors.**”⁸⁴

MHCLG published [research](#) conducted by the Building Research Establishment (BRE) into the fire performance of non-ACM cladding materials on 2 April 2020.

The [prospectus](#) for the Building Safety Fund was issued at the end of May 2020. The prospectus advised that the registration process would open on 1 June and close on 31 July 2020. Applications for funding would only be considered from building owners, freeholders or responsible entities who had registered. The initial deadline for submitting funding applications was 31 December 2020.⁸⁵ On 17 December 2020 an extension of the deadline was announced:

Demand for this fund has been significant, receiving over 2,700 registrations since opening. My Department has been working at

⁸⁰ Ibid., para 47

⁸¹ [CP 184, October 2019](#), p8

⁸² *Inside Housing*, “Leaseholders warn against ‘cladding lottery’ after government announces fund”, 9 May 2019 [subscription required]

⁸³ *Inside Housing*, “New cladding fund will come out of existing MHCLG budgets, Brokenshire confirms”, 9 May 2019 [subscription required]

⁸⁴ MHCLG, [Remediation of non-ACM buildings](#), updated 1 June 2020

⁸⁵ MHCLG, [Building Safety Fund – Remediation Prospectus](#), May 2020

pace and with building owners to process these registrations and ensure that as many buildings as possible can access the fund—a task that has been made challenging by the failure of many buildings to provide basic eligibility information.

It has become clear that many building owners will be unable to complete applications by our intended deadline of 31 December 2020, adding to the concerns of many leaseholders. To address this, I have announced that building owners will now have until 30 June 2021 to complete their applications.

This means that hundreds more buildings will be remediated and thousands of residents will be protected from costs. We are also making good progress on applications already received and expect many more to be agreed before Christmas.⁸⁶

MHCLG published [Building Safety Fund: registration statistics](#) on 17 December 2020.

The announcement of the Building Safety Fund was welcomed by stakeholders. Remaining concerns are addressed in section 6 below.

5. Additional funding announcement 10 February 2021

On 10 February 2021, Robert Jenrick announced “an exceptional intervention” aimed at “providing certainty that leaseholders in high-rise residential buildings will face no cost for cladding remediation works.”⁸⁷

There were several strands to the announcement:

- **An additional £3.5 billion in funding** “to pay for the removal and replacement of unsafe cladding for all leaseholders in high-rise residential buildings of 18 metres and above, or above six storeys, in England.
- **A long-term loan scheme for leaseholders** in blocks of between four and six storeys (11 to 18 metres) which require cladding remediation work. This low interest scheme will mean “no leaseholder will ever pay more than £50 a month towards the removal of unsafe cladding, many far less.”⁸⁸

During the debate on the announcement, the Secretary of State provided more information on the loan scheme:

For buildings of between four and six storeys, where the risk is much lower, leaseholders will have the opportunity, if they wish—there will be no compulsion—to take advantage of the financing scheme. That loan scheme financing arrangement will sit with the building, not with the individual. It will not affect the individual’s personal credit rating, and it should not have a material impact on the value of their property. It will be akin to paying somewhat

⁸⁶ [HCWS685](#), 17 December 2020

⁸⁷ [HC Deb 10 February 2021 cc329-48](#)

⁸⁸ *Ibid.*

more on their service charge every month. As I say, it will be capped at £50 a month, which is similar to the average service charge. Of course, in many buildings the service charge is already far in excess of that.⁸⁹

The Secretary of State said he expected the measures to provide confidence to lenders:

...we expect all the major banks and building societies to strongly support today's intervention, which will provide greater certainty to the market and help to restore the effective lending, purchasing and selling of properties as soon as possible.⁹⁰

Further comment on the loan scheme can be found in section 6.6 pages 37-38.

He was asked **if the funding would be open to local authority and housing association landlords** and replied:

We have been working very closely with local authorities since the start of this issue in the immediate aftermath of the Grenfell tragedy. I have engaged repeatedly with the National Housing Federation, which has done excellent work in this regard. We did provide funding to help support them. We are focusing the funding that we have provided on those housing associations or local councils that cannot fund this themselves, either through their own reserves or their ability to borrow. Most housing associations can do that, but there will be a small number that cannot. Of course there are choices at every turn, and that, in itself, will have consequences and make it harder for those housing associations to invest in more affordable and social housing, or other important aims that they and I share, like making buildings more energy-efficient to meet our climate obligations. That is the difficult situation that we find ourselves in.⁹¹

The National Housing Federation has said "We understand the new funding will be available to housing associations on the same terms as the Building Safety Fund."⁹²

There was a suggestion that **concessions will be made for shared owners** who, under the terms of their lease agreements, may be liable for the full cost of remediation works despite not owning 100% of their homes:

I am also acutely aware of the challenges faced by shared owners, and we will make particular provision to protect them so that they do not have to meet disproportionate costs with regard to cladding remediation.⁹³

The announcement covered how costs would be recovered from developers:

- **A 'Gateway 2' developer levy will be introduced via the forthcoming Building Safety Bill:**

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² NHF, Building Safety Updates, 12 February 2021

⁹³ [HC Deb 10 February 2021 cc329-48](#)

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The proposed levy will be targeted and will apply only when developers seek permission to develop certain high-rise buildings in England, helping to ensure that the industry takes collective responsibility for historical building safety defects. In introducing the levy, we will continue to ensure that the homes our country needs get built and that our small and medium-sized builders are protected.⁹⁴

- **A new tax will be introduced for the UK residential property development sector in 2022.**

This will raise at least £2 billion over a decade to help to pay for cladding remediation costs. The tax will ensure that the largest property developers make a fair contribution to the remediation programme in relation to the money they make from residential property, reflecting the benefit that they will derive from restoring confidence to the UK housing market. The Government will consult on the policy design in due course.⁹⁵

Comment on the new funding and other measures is included in section 6 of this paper.

⁹⁴ Ibid.

⁹⁵ Ibid.

6. Ongoing issues

6.1 Exclusions from the Building Safety Fund

Work committed to or started before 11 March 2020

The [prospectus](#) for the Building Safety Fund set out what the fund would **not** cover:

- remediation work on buildings with non-ACM cladding systems in scope that had been committed to, or where work had started on site, prior to the Budget announcement on 11th March 2020.
- other non-residential buildings, for example Hotels, Hospitals and buildings where there are no residential leaseholders.
- buildings under 18m in height (allowing for a 30cm tolerance as set out below)⁹⁶

The realisation that funding assistance would not be available where work started before 11 March was greeted with dismay by some long leaseholders. Remediation work on the Skyline Central building in Manchester began in 2019 after long leaseholders accepted loans from the freeholder to meet the cost of the work of between £17,000 and £27,000. The residents reportedly described their exclusion from the fund as “arbitrary” and “unfair”. They reportedly launched a legal challenge against the decision.⁹⁷

Social landlords: financial viability requirement
Submissions to the Housing, Communities and Local Government (HCLG) Select Committee inquiry, [Cladding: progress of remediation](#) (published 12 June 2020) expressed concern over whether social landlords would benefit from the fund. This is based on a letter received on 6 April 2020 in which Neil O’Connor, Director of Building Safety at MHCLG said:

We know many building owners in the social sector are already rightly prioritising and taking forward this remediation work. We expect them to continue with this action so we can prioritise this funding for those who cannot afford the cost, which is creating a barrier to remediation and building safety.⁹⁸

The [Prospectus](#) goes on:

...the Department will only fund works where remediation costs threaten the financial viability of the provider or the Housing Revenue Account. For local authorities, this will require a declaration from a section 151 officer at registration phase. Registered Providers (Housing Associations) will be required to

⁹⁶ MHCLG, [Building Safety Fund: Registration Prospectus](#), May 2020, p6

⁹⁷ *Inside Housing*, “Leaseholders launch legal battle against government over ‘unlawful’ exclusion from £1bn Building Safety Fund”, 11 June 2020 [subscription required]

⁹⁸ [Remediation of unsafe non-ACM cladding systems on residential buildings](#), letter to stakeholders from Neil O’Connor, Director of Building Safety at MHCLG, 6 April 2020

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provide a business case to the Department setting out their financial position and options. The Regulator of Social Housing must be notified as soon as possible.⁹⁹

The prioritisation of fire safety work in the absence of additional funding is likely to have an impact on other areas of social landlords' activities, including investment in new affordable housing development and capital investment in improving the housing stock.

The HCLG Committee was critical of the number of exclusions from the fund, particularly the potential exclusion of social landlords:

In particular, it would be entirely wrong for social landlords to be prohibited from accessing the Building Safety Fund. If local authorities and social housing providers are forced to pay for remediation works from their own budgets, this would have a very detrimental impact on the number of affordable homes they are able to build and to the maintenance and refurbishment of existing buildings, while putting an upward pressure on social rents. The Government must ensure that social housing providers have full and equal access to the Building Safety Fund.¹⁰⁰

The [Government response](#), published on 8 September 2020, said that social landlords had not been excluded from the fund and went on:

The Government will not be funding the majority of remediation work in the social sector. However, we have confidence in local authorities' and housing associations' ability to carry out and finance remediation work.¹⁰¹

The NHF has said "We understand the new funding [£3.5 billion announced on 10 February 2021] will be available to housing associations on the same terms as the Building Safety Fund."¹⁰²

Blocks below 18 metres in height

Pressure on the Government to extend funding to cover remediation of blocks under 18 metres in height with combustible cladding grew after the Independent Expert Advisory Panel issued revised guidance for owners of multi-storey/multi-occupied buildings in January 2020, which says:

ACM cladding (and other metal composite material cladding) with unmodified polyethylene filler (category 3) presents a significant fire hazard on residential buildings **at any height** with any form of insulation.¹⁰³

January 2020 also saw the launch of a consultation into the combustible cladding ban which included proposals to lower the 18 metre height threshold to at least 11 metres. Consultation closed on 25 May 2020; responses are being analysed.¹⁰⁴

⁹⁹ MHCLG, [Building Safety Fund: Registration Prospectus](#), May 2020, p6

¹⁰⁰ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 25

¹⁰¹ [CP 281, 8 September 2020](#), para 24

¹⁰² NHF, Building Safety Updates, 12 February 2021

¹⁰³ MHCLG, [Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings](#), January 2020

¹⁰⁴ MHCLG, [Review of the ban on the use of combustible materials in and on the external walls of buildings including attachments: a technical consultation](#), January 2020

The NHF, LGA and London Councils, amongst others, reportedly called on the Government to meet the costs of remediation work on buildings under 18 metres in height after publication of the Expert Panel's revised guidance.¹⁰⁵ Local authorities warned that additional borrowing freedoms announced at the end of October 2018 could be taken up with additional fire safety works, rather than on delivering new homes.¹⁰⁶

The HCLG Committee received evidence which pointed out that two high profile fires in 2019 at The Cube in Bolton and at Samuel Garside House in Barking, involved buildings below 18 metres in height. The Committee's June 2020 report highlighted a previous recommendation to Government **that a fund should be established which applies to all high-risk buildings – of any height.**¹⁰⁷

The [Government response](#) (September 2020) said:

On the scope of the Fund, Dame Judith Hackitt recommended that Government should focus public funding on remediating unsafe cladding systems from high rise residential buildings. We agree with her advice: our support is focused on cladding systems because unsafe cladding acts as an accelerant to fire spread, and higher rise buildings are the least likely to safely evacuate in the event of a fire spreading via external cladding.¹⁰⁸

The Government has been pressed on this matter. The Housing Minister defended the 18 metres threshold in response to a PQ on 18 November 2020:

In developing the Building Safety Fund, the Government considered the view of experts, including Dame Judith Hackitt, who support setting the Fund's height eligibility criterion at buildings 18 metres and above. This reflects the exceptional fire risk that certain cladding products pose at that height. There will be a small degree of flexibility to allow the fund to cover buildings that have been built just under the 18 metres threshold.¹⁰⁹

On 9 October 2020 the Housing Minister said a pilot data collection project had been started in respect of blocks between 11 and 18 metres in height:

We have started a pilot data collection project for 11 to 18 metres buildings to produce a prevalence estimate and to inform the design of a wider national 11 to 18 metres data collection exercise. This work will provide information on how local authorities, other building owners and external partners can work together to collect this data, and the resource implications for this. Development of this work, its scope (including the Euroclass classification) and coverage is currently in design. Further details on this work will be provided in due course.¹¹⁰

¹⁰⁵ *Inside Housing*, "Calls for funding as government pushes for removal of Grenfell-style cladding from all buildings", 23 January 2020 [subscription required]

¹⁰⁶ *Inside Housing*, "Sector warned that fire safety costs could eat up HRA cap windfall", 26 June 2019 [subscription required]

¹⁰⁷ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 23

¹⁰⁸ [CP 281, 8 September 2020](#), para 18

¹⁰⁹ [Written Question: Building Safety Fund – 91949](#), 18 November 2020

¹¹⁰ [Written Question: Housing Insulation – 98287](#), 9 October 2020

6.2 Deadline for Building Safety Fund submissions

The timescale for submissions was thought to be tight. When questioned on the possibility of an extension, the Housing Minister, on 24 November, said:

MHCLG has since publicly committed to keeping these timeframes under review as we continue through the application process.¹¹¹

The National Audit Office concluded that administration of the Building Safety Fund could be challenging:

Administration of this new scheme may present significant challenges, given the resource-intensive demands of managing the existing social sector and private sector schemes, which are just over half as big.¹¹²

The Government subsequently agreed with the Public Accounts Committee's recommendation to:

b) write to us, outlining its assessment of the risks to public money of committing all £1 billion of the Building Safety Fund by the end of March 2021, and how it will monitor and mitigate these risks.¹¹³

As previously noted, on 17 December the Government announced an extension to the deadline for applications to 30 June 2021.¹¹⁴

6.3 Exclusions from the additional £3.5 billion (10 February 2021)

During the debate on the announcement several Members **questioned the decision to restrict the additional funding to blocks over 18 metres**. For example, Ellie Reeves said:

In my constituency I have a number of buildings that are below 18 metres. Today's announcement means that leaseholders of these buildings will still need to foot the bill, and the offer of loans is small comfort to my constituents, many of whom are already struggling.¹¹⁵

As with exclusions from the Building Safety Fund, Robert Jenrick justified the focus on high-rise buildings based on "expert advice" which "says that we should focus our attention on the buildings where there is a higher risk".¹¹⁶ As previously noted, the outcome of a technical consultation into the combustible cladding ban which included proposals to lower the 18 metre height threshold to at least 11 metres is still awaited. Consultation closed on 25 May 2020.¹¹⁷

¹¹¹ [Written Question: Building Safety Fund – 115486](#), 24 November 2020

¹¹² NAO, [HC 370, Session 2019-21](#), 19 June 2020, para 21

¹¹³ [CP 316, November 2020](#), p11

¹¹⁴ [HCWS685](#), 17 December 2020

¹¹⁵ [HC Deb 10 February 2021 cc329-48](#)

¹¹⁶ Ibid.

¹¹⁷ MHCLG, [Review of the ban on the use of combustible materials in and on the external walls of buildings including attachments: a technical consultation](#), January 2020

Funding will be restricted to cladding remediation and so will not assist with associated fire safety works. Caroline Ansell asked:

Although we are focusing today on cladding, what further work will be done to help those leaseholders facing costs in relation to other fire safety defects—fire breaks, fire doors and those necessary works that can be very costly too—which were also exposed in the wake of the Grenfell tragedy?¹¹⁸

Robert Jenrick replied:

Some of those works will need to be done, taking a proportionate, risk-based approach, where there is a true risk to life, so that the bill for the leaseholders is not disproportionate. We also, of course, want to see the building owners step up and pay for those works. Where there has been poor workmanship, the building owner needs to take responsibility, and we will continue to do everything we can to support leaseholders to pursue those claims.¹¹⁹

The National Audit Office's [Report - Investigation into remediating dangerous cladding on high-rise buildings](#) (June 2020) records MHCLG as knowing that "only in a minority of cases would it be financially justifiable for building owners to bring legal action to recover money."¹²⁰

6.4 Inadequate funding?

The Public Accounts Committee (September 2020) said "The Department is not fully funding the replacement of forms of dangerous cladding which are different from that used on Grenfell Tower."¹²¹ The Committee called on the Government to:

...publish its impact assessment of the safety risks and financial impacts on private leaseholders and social landlords (including knock-on impacts on house building and maintenance of existing stock) arising from only funding a fraction of the estimated costs of replacing non-ACM cladding from high-rise blocks.¹²²

The Government rejected this recommendation saying:

The government is unable to implement the Committee's recommendation under the timeframe proposed because applications and registrations for non-ACM cladding removal are still being processed.¹²³

On 18 May the Minister, Lord Greenhalgh, told the HCLG Committee that officials had provided a "rough figure" on the number of high-risk buildings with flammable non-ACM cladding of "around the 1,700 mark."¹²⁴ **He confirmed that the cost of remediation would be considerably more than the £1 billion on offer.** Neil O'Connor, Director of Building Safety at MHCLG, said:

¹¹⁸ *ibid*

¹¹⁹ *Ibid.*

¹²⁰ NAO, [HC 370, Session 2019-21](#), 19 June 2020, para 19

¹²¹ PAC, [HC 406, Session 2019-21](#), 16 September 2020, para 2

¹²² *Ibid.*

¹²³ [CP 316, November 2020](#), p11

¹²⁴ [Oral evidence: Cladding: Progress on Remediation, 18 May 2020, Q22](#)

There are various estimates around, as the Minister said. We have tried to estimate ourselves what the demand for this fund might be. The Minister mentioned that we have a working assumption that there may be around 1,700 buildings over 18 metres with unsafe types of cladding out there. **The cost of fully remediating all of that may be as much as £3 billion or £3.5 billion.** These are very rough estimates that we are making at this stage. It will only be once we get the fund open and get building owners coming forward with details of their buildings that we will understand the full potential.¹²⁵

The Government announced an additional £3.5 billion in funding on 10 February 2021

The Committee concluded:

It is clear that the new £1 billion Building Safety Fund will not be sufficient to remediate all 1,700 buildings with combustible non-ACM cladding above 18 metres. Last year, we called for funding for buildings with non-ACM cladding and so the Building Safety Fund announced at the Budget is very welcome. However, £1 billion is only likely to be sufficient for 600 buildings; a third of the number the Government accepts are at the highest risk.¹²⁶

The [Government response](#) to the Committee's report (September 2020) reiterated the expectation that building owners should bear some of the cost of making their buildings safe.¹²⁷ However, the additional £3.5 billion announced on 10 February 2021 appears to align with estimates for meeting the full cost of remediating cladding issues on buildings over 18 metres provided to HCLG Committee by Neil O'Connor on 18 May 2020.

6.5 Paying for additional fire safety measures and interim costs

As previously noted, **the funding available is exclusively for the removal and replacement of cladding.** Long leaseholders are concerned about the cost of interim safety measures, such as waking watch fire marshals, and other defects identified by surveys.

As time has passed it has become clear that the remediation of combustible cladding represents only part of the cost of ensuring fire safety in blocks of flats. A myriad of building safety issues has been revealed following inspections for which no additional Government funding has been forthcoming to date. A survey of 30 of the largest housing associations by *Inside Housing* resulted in seventeen responses. The respondents had reportedly spent more than £463 million on fire safety measures since June 2017.¹²⁸ These additional costs are leading social landlords to reconsider their development plans.¹²⁹

On 27 November *Inside Housing* reported on two blocks in Salford where residents have received estimates of between £50,000 to

¹²⁵ [Oral evidence: Cladding: Progress on Remediation, 18 May 2020, Q35 \[emphasis added\]](#)

¹²⁶ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 21

¹²⁷ [CP 281, 8 September 2020](#), para 17

¹²⁸ *Inside Housing*, "Cladding scandal: the spend so far", 30 October 2020 [subscription required]

¹²⁹ *Ibid.*

£100,000 to rectify fire stopping and cavity barrier issues, and a “build base defect”. Cladding on both blocks was found to be compliant.¹³⁰

Inside Housing Magazine’s [End Our Cladding Scandal campaign](#) called for:

- A firm timescale of no more than two years for the work to be carried out.
- **Residents to be reimbursed for the interim fire safety costs incurred, and funding for necessary internal fire safety measures identified by a competent fire risk assessor.**

Evidence submitted to the HCLG Committee by leaseholders referred to surveys uncovering numerous fire safety defects. There are also issues with leaseholders gaining access to information about the standard of fire safety arrangements within their blocks. **The Committee recommended that the Government should fund all fire safety defects:**

We believe that there is no reason to fund the remediation of some fire safety defects but not others. Our view is that funding will need to be increased to address all fire safety defects in every high-rise or high-risk residential building—potentially costing up to £15 billion.¹³¹

Recognising that this would represent a significant financial outlay, the Committee considered how the burden might be spread:

Those who are responsible for this crisis should be made to contribute. For each affected building, the Government should actively seek to recover funds from the construction companies, architects, suppliers of faulty products, approved inspectors and any others who are found to be responsible for fire safety defects.

Consideration should also be given to how the remaining burden for funding should be shared. The Government should undertake a review of proportionate taxes on freeholders, developers and others to help fund these remedial works. This should include consideration of a temporary levy linked to the sale of new-build properties, as has been proposed by some industry stakeholders.¹³²

The Committee also called for an investigation of fire safety measures by the Competition and Markets Authority (CMA):

We now call on the CMA to investigate these “usurious” charges for interim fire safety measures, as part of its ongoing work into the leasehold sector.¹³³

The [Government response](#) (September 2020) said:

The Government is clear and unwavering in its view that it is unacceptable for leaseholders to have to worry about the cost of

The announcement of 10 February 2021 included reference to a new developer levy and a new tax for the UK residential property development sector in 2022 but it appears that this will go towards the cost of cladding remediation only.

¹³⁰ *Inside Housing*, “Leaseholders facing £100,000 remediation bills despite compliant cladding”, 27 November 2020 [subscription required]

¹³¹ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 35

¹³² *Ibid.*, paras 44-45

¹³³ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 71

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fixing historic safety defects in their buildings that they didn't cause.¹³⁴

However, there is no additional funding for this work. Instead the Government pointed to:

- The responsibility of building owners/responsible person to ensure building safety and do what they can to protect leaseholders from unaffordable costs.
- Freeholders should use their own resources, pursue warranty claims and insurance claims and take legal action. The National Audit Office's [Report - Investigation into remediating dangerous cladding on high-rise buildings](#) (June 2020) records MHCLG as knowing that "only in a minority of cases would it be financially justifiable for building owners to bring legal action to recover money."¹³⁵ Issues include the cost of legal action outweighing the cost of remediation work; cases that are time-barred; and defendants that no longer exist or are insolvent.
- Additional funding for the Leasehold Advisory Service "to enable them to help people understand the rights and obligations in their lease."
- The appointment of Michael Wade, senior advisor to the Cabinet Office to:

...work on identifying options for financing historic remedial works that are not covered by the £1.6billion funding. We must remove barriers to fixing historic defects and identify financing solutions that protect leaseholders from unaffordable costs; but we must also ensure that the bill does not fall on tax-payers. We will update on any further measures required before the final Building Safety Bill is introduced to Parliament.¹³⁶

Waking watch fire marshals

Leaseholders have been asked to meet the cost of 'waking watch' fire marshals. These marshals are installed in affected blocks to provide additional fire safety protection pending the removal and replacement of ACM and other combustible cladding. A First-Tier Tribunal decision concerning the recoverability of these costs from long leaseholders was issued on 24 January 2018. The Tribunal in this case found that the costs were recoverable based on the wording in the lease agreements.¹³⁷ Giles Peaker of Anthony Gold Solicitors and the specialist housing law website, Nearly Legal, commented:

The wording of similar clauses will be stress tested in a manner that these usually uncontroversial and untested clauses have not seen before.¹³⁸

More information on the case and its implications can be found on [the Leasehold Advisory Service's website](#).¹³⁹

¹³⁴ [CP 281, 8 September 2020](#), para 30

¹³⁵ NAO, [HC 370, Session 2019-21](#), 19 June 2020, para 19

¹³⁶ [CP 281, 8 September 2020](#), paras 30-36

¹³⁷ [E & J Ground Rents No.11 LLP various leaseholders of Fresh Apartments, Salford](#)

[Fire Safety - Who pays?](#) 4 February 2018

¹³⁹ [The use of wardens and recovery of costs from leaseholders](#), January 2018

On 16 October 2020, MHCLG published [Building Safety Programme: Waking Watch costs](#). The purpose of the research was to provide information on the costs faced by leaseholders. It included cost data on the installation of fire alarm systems which can reduce the need to rely on waking watch marshals. The Minister for Building Safety previously said that this data would put a “spotlight of transparency on the disparity of costs” and would lead to a reduction in charges.

On 17 December 2020, **Robert Jenrick announced a £30 million waking watch relief fund:**

Research undertaken and published by my Department has illustrated clearly the excessive costs some leaseholders are facing to fund interim safety measures such as waking watches. Such excessive costs are a national scandal, and it is right that we step in to support leaseholders in this position.

That is why today I have announced a new £30 million fund for leaseholders in England to pay for the installation of fire alarm systems in high-rise buildings with cladding, removing or reducing the need for costly interim safety measures such as waking watches. Our research suggests that this will save individual leaseholders an average of £137 per month and collectively over £3 million per month.

This step is supported by the National Fire Chiefs Council, who have been clear in their updated October guidance that building owners should move to install common fire alarms as quickly as possible to reduce or remove dependence on waking watch.

The fund will open in January, but importantly, will also provide immediate, emergency support to Wicker Riverside apartments in Sheffield to ensure that the 35 evacuated families should be able to return to their homes before Christmas. They were told to evacuate after the building failed fire safety tests.

This intervention will help worried leaseholders by providing financial support and delivering a better, long-term fire safety system in their buildings.¹⁴⁰

Applications to the fund opened to all eligible private sector buildings in England, except in Greater London, and to all eligible social sector buildings regardless of location on 31 January 2021. The Greater London Authority will determine when applications can be made, this date will be no later than 22 March 2021.¹⁴¹

6.6 Paying for historic defects: the draft Building Safety Bill and the Fire Safety Bill

Section 6.5 refers to the appointment of Michael Wade to work on identifying options for financing historic remedial works that are not covered by Government funding. On 30 November 2020 the Housing Minister said:

The Government has asked Michael Wade to accelerate work with leaseholders and the financial sector to develop proposals to

¹⁴⁰ [HCWS685](#), 17 December 2020

¹⁴¹ MHCLG, [Waking Watch Relief Fund Guidance](#), 31 January 2021

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protect leaseholders from unaffordable costs of remediating historic defects. The Government is determined to remove barriers to fixing historic defects and identify financing solutions that protect leaseholders from unaffordable costs; but we must also ensure that the bill does not fall on taxpayer. It is likely our solution will be a combination of options as there is no one quick fix. We will update leaseholders as soon as we can, and before the Building Safety Bill returns to Parliament.¹⁴²

The [Draft Building Safety Bill](#) was published on 20 July 2020 and was subject to pre-legislative scrutiny by the Housing, Communities and Local Government Select Committee. [The Committee's report and recommendations on the draft Bill](#) were published on 24 November.¹⁴³

The Bill's purpose is to put in place a new building safety regime which will prevent safety defects occurring in new builds in the future. The Bill is also aimed at addressing historic defects "by requiring safety case reviews and reasonable improvements."

Clauses 88 and 89 of the draft Bill would introduce Building Safety Charges, the [Explanatory Notes](#) describe the purpose of clause 89:

This clause inserts new sections (17G to 17X) into the Landlord and Tenant Act 1985 concerning building safety charges payable by tenants under long leases of dwellings in high risk buildings. These establish the concept of a new 'building safety charge' to facilitate transparent recovery of costs incurred by landlords in putting in place building safety measures. The charges which will be separate from the service charge, so that costs incurred on building safety measures will be readily identified and accounted for. [para 668]¹⁴⁴

On publication of the draft Bill the [Secretary of State issued a Written Statement saying](#):

The draft Bill proposes a new building safety charge, which will give leaseholders greater transparency around costs incurred in maintaining a safe building. We want these to be fair and proportionate, which is why I have deliberately included numerous powers in the Bill that will enable us to limit the building safety costs that can be re-charged to leaseholders.

This is a topic that we are particularly committed to developing further throughout the process of scrutiny and as the Bill is finalised for introduction.¹⁴⁵

During oral evidence sessions [Lord Greenhalgh told the Committee](#) that the Building Safety Charge is not about historic costs:

Ben Everitt: We are confirming, then, that the historical repairs are separate to the ongoing building safety.

¹⁴² [Written Question: Housing: Insulation – 119404](#), 30 November 2020

¹⁴³ HC 466, [Pre-legislative scrutiny of the Building Safety Bill](#), Fifth Report of 2019-21, 24 November 2020

¹⁴⁴ [Bill CP 264 – EN, para 688](#)

¹⁴⁵ [HCWS391, 20 July 2020](#)

Lord Greenhalgh: It is a separate issue. The building safety charge is about looking forward prospectively.¹⁴⁶

This issue has been probed in subsequent PQs, for example:

Andy Slaughter: To ask the Secretary of State for Housing, Communities and Local Government, pursuant to the Answer of 10 November 2020 to Question 110299, whether the work that Michael Wade is developing on protecting leaseholders from unaffordable costs will seek to replace the Building Safety Charge in the Building Safety Bill.

Christopher Pincher: The proposed Building Safety Charge has been designed to ensure that the costs leaseholders pay for building safety measures are transparent and reasonable. We envisage this will include ongoing costs, such as those for the Building Safety Manager, and powers for the Secretary of State to exclude specific costs from being re-charged.

My department is working on proposals to protect leaseholders from unfair costs caused by historic building safety defects.¹⁴⁷

Michael Wade was questioned on progress during the HCLG Committee evidence session on 19 October 2020. He said:

Michael Wade: It is a very early stage at the moment, but we are looking at all manner of potential financing options, working closely with the Treasury and external advisers. You will forgive me, I hope, if I avoid anything specific today because it is very early stages, but I am very happy to come back at a later stage with more details, once I have them.

The remit is to try to look at these costs, unblock the finance arrest, as it were, and ensure that the costs to leaseholders are affordable. In that sense, I am looking at all options that might be available. I am working closely with the Treasury. I am also working closely with external advisers on the financial side, in the financial sector, which is my background. I suspect there is a degree of frustration in the sense that I have to say there is not a lot to report to you today but, of course, I want to come back to you as soon as you would wish me to, once I have better information.

I am guided by the basic principle that we need somehow to create a structure where these costs are affordable for leaseholders and there is a sense of fairness felt at the end of it. In the meantime, of course, that structure needs to speed up the works and to unblock the arrest of works, because that is what will bring back the value for leaseholders in their leases, where they are currently trapped and where mortgage providers are not able to offer mortgages in the way they have in the past. Opening up the market, restoring values and a sense of fairness for leaseholders is my guiding instruction.¹⁴⁸

On 10 February 2021 the Government announced that a long-term low interest loan scheme would be introduced for long leaseholders in blocks requiring cladding remediation between 11 and 18 metres. Payments will be capped at £50 per month. This could be the outcome of Michael Wade's work.

Subsequently, **on 10 February 2021 the Government announced the creation of a long-term low-interest loan scheme for long leaseholders** in blocks requiring cladding remediation between 11 and 18 metres. Payments will be capped at £50 per month.¹⁴⁹ Members

¹⁴⁶ [HC 446, Oral Evidence – Q253](#), 19 October 2020

¹⁴⁷ [Written Question: Housing: Insulation – 116419](#), 17 November 2020

¹⁴⁸ [HC 446, Oral Evidence – Q235](#), 19 October 2020

¹⁴⁹ MHCLG, [Government to bring an end to unsafe cladding with multi-billion pound intervention](#), 10 February 2021

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questioned how loans would assist long leaseholders who are “already struggling” and asked:

What does the Secretary of State say to my constituents who were promised that leaseholders would not have to pay for a crisis they did not cause?¹⁵⁰

In response, Robert Jenrick suggested that in many cases concerning low/medium rise blocks the cladding will not need to be removed:

I go back to the point that I have tried to make repeatedly: in many, many cases it will not need to be done because we want surveyors and the industry to take a proportionate, risk-based approach that takes true account of the risk to life in those properties, which for most leaseholders, mercifully, is very low.¹⁵¹

In January 2020, when publishing a call for evidence on the assessment and prioritisation of risks associated with external wall systems within existing buildings, the Secretary of State said:

For many years, we have relied on crude height limits with binary consequences, and it is clear to me that this approach to assessing risk does not reflect the complexity of the challenge at hand. I have concluded that we need a better, more sophisticated system to underpin our approach. Height will remain a significant and material factor, but it will sit alongside a broader range of risk factors. I am therefore today commissioning leading experts in the field to develop, as quickly as possible, a sophisticated matrix of risk that will replace the historic system and underpin our approach to future regulatory regimes.¹⁵²

The call for evidence closed on 25 May 2020; [the responses are being analysed.](#)

Giles Peaker of Anthony Gold solicitors commented on the potential impact of the loan scheme:

What this will mean in practice of course is that a leaseholder looking to sell an impacted lease will be asked by buyers to discount the sale price to at least part and probably all of the value of the loan repayments, even - or particularly - if those £50 per month payments might be over a period of 80 years or so (which is eminently possible on some of the non-cladding charges that have already been demanded). Plus, how does this work if the repayment term is longer than the lease?¹⁵³

Clauses 88 and 89 are controversial. HCLG Committee describe the effect as to:

...permit leaseholders to be charged for the cost of remediating historical safety deficiencies for which they were not responsible, which may have pre-dated their occupation, and regardless of whether at the time of any earlier work the building complied with prevailing safety requirements.¹⁵⁴

The Committee’s report on the draft Bill notes that during the process of pre-legislative scrutiny “Nothing aroused nearly so much anger or

¹⁵⁰ [HC Deb 10 February 2021 cc329-48](#)

¹⁵¹ Ibid.

¹⁵² [HC Deb 20 January 2020 c24](#)

¹⁵³ [Nearly Legal Housing Law: News and Comment](#), 12 February 2021

¹⁵⁴ HC 466, [Pre-legislative scrutiny of the Building Safety Bill](#), 24 November 2020, para 22

upset in the evidence to our inquiry”¹⁵⁵ and, “Quite simply, no one besides the Government thinks the leaseholder should pay.”¹⁵⁶

The Committee was critical of the Government’s apparent shift in emphasis from saying that it would be unacceptable for leaseholders to pay for historic safety defects, to a suggestion that leaseholders should be protected from “unaffordable costs”.¹⁵⁷ The Committee questioned the Housing Minister on a definition of affordable costs in this context – the final report concludes:

The Minister failed in oral evidence to satisfactorily define “affordable”, suggesting only that it implied any costs that did not bankrupt a person. Leaving aside the question of whether “affordable” could ever signify anything meaningful in this context, we are disappointed that the Government could countenance the idea of a single leaseholder being bankrupted by these provisions, as implied by the words “as far as possible”.¹⁵⁸

The Committee called on the Government to amend the draft Bill to ensure that the Building Safety Charge cannot be levied to cover the cost of rectifying historic defects:

The Government must recommit to the principle that leaseholders should not pay anything towards the cost of remediating historical building safety defects, and, in order to provide leaseholders with the peace of mind they deserve, amend the Bill to explicitly exclude historical costs from the building safety charge.¹⁵⁹

The Committee further recommended that if an amendment to protect leaseholders from charges for remedying historic defects is not forthcoming, “at the very least” they should have longer than 28 days within which to pay the charge and consultation requirements should only be dispensed with “exceptional circumstances.”¹⁶⁰

The Committee received conflicting evidence on the merits of establishing a Building Safety Charge as distinct from a service charge and concluded:

The Government should provide for recovery of ongoing building safety costs through existing service charge provisions while improving the transparency of such charges, preferably by implementing the Committee’s previous recommendations for standardised forms for service charge invoices. The building safety charge should be reserved only for any leases without a service charge and should be treated as a service charge for the purposes of leaseholder protection.¹⁶¹

¹⁵⁵ Ibid.

¹⁵⁶ Ibid., para 23

¹⁵⁷ Ibid., para 27

¹⁵⁸ Ibid., para 27

¹⁵⁹ Ibid., para 32

¹⁶⁰ Ibid., para 43

¹⁶¹ Ibid., para 54

The Fire Safety Bill 2019-21 seeks to amend the *Regulatory Reform (Fire Safety) Order 2005* and is expected to result in greater clarity over responsibility for fire safety in buildings containing more than one home. On 17 November 2020 a new clause was added to the Bill in the House of Lords which would prohibit the passing on of the cost of remedial fire safety works to tenants or leaseholders:

Prohibition on passing remediation costs on to leaseholders and tenants

(1) The owner of a building may not pass the costs of any remedial work attributable to the provisions of this Act on to leaseholders or tenants of that building.

(2) Subsection (1) does not apply to a leaseholder who is also the owner or part owner of the freehold of the building.¹⁶²

The Bill is scheduled to return to the Commons for the consideration of Lords amendments on 24 February 2021.¹⁶³ [Additional amendments](#) have been listed in the meantime which also seek to restrict the recoverability of costs relating to historic fire safety works from long leaseholders.¹⁶⁴ For more information see the Library paper on the Bill: [Fire Safety Bill 2019-2021](#).

Consideration of Lords amendments to the Fire Safety Bill is scheduled for 24 February 2021.

6.7 Unsaleable flats

On 10 February 2021, when announcing additional funding for cladding remediation on high-rise blocks and a new long-term low interest rate scheme for leaseholders in low/medium rise blocks requiring cladding remediation, Robert Jenrick said this would reassure the market and restore effective lending:

The announcement that we have made today and the work that the Chancellor and I have done with each of the major retail banks, which strongly support the intervention, give much greater confidence to lenders, surveyors and insurers to re-enter the market, to bring down those premiums, to lend against these buildings and to enable the market to move forward again. This will take time and there is more to be done, but I think we will see the market moving forward now in a way that it has not done in recent months.¹⁶⁵

The Building Societies Association (BSA) and UK Finance issued a joint statement welcoming the additional funding and saying:

This will improve the position for many leaseholders currently facing very substantial remediation costs and assist lenders to meet their responsibilities on affordability, which is a key part of any lending decision. When we have seen the full details of the announcement, we will be able to examine the implications for all leaseholders affected by cladding issues.¹⁶⁶

¹⁶² [HL Deb 17 November 2020, c1398-9](#)

¹⁶³ Progress of the Bill can be tracked on the [Parliament.UK website](#).

¹⁶⁴ [Notices of CCLA Amendments as at 11 February 2021](#)

¹⁶⁵ [HC Deb 10 February 2021 cc329-48](#)

¹⁶⁶ [BSA and UK Finance joint statement following MHCLG's announcement on cladding](#), 10 February 2021

Mortgage Finance Gazette reported Kate Davies, executive director of the Intermediary Mortgage Lenders Association (IMLA), as saying “with estimated costs likely to exceed £15 billion, there needed to be more of ‘giant leap’ to address this ‘awful’ issue swiftly and effectively” and:

That may sound like a huge amount – but just to put it into context – banks collectively paid out over £55 billion in compensation to victims of PPI mis-selling – which cannot be condoned, but which did not pose a risk to lives or property.¹⁶⁷

External Wall Fire Review Process (EWS1)

Leaseholders in blocks with ACM and other types of cladding have experienced problems in selling their homes and re-mortgaging. Over 2019 mortgage providers began to require assurances about the safety of external wall systems as a condition of approving mortgage applications. There was concern that flats in high-rise blocks would not represent good security and that owners could be liable for remediation costs. Surveyors took the view that flats in blocks without a certificate showing compliance with Advice Note 14 had a value of £0 or significantly less than the asking price. An increasing number of mortgage applications were rejected; sales started to fall through.

These issues intensified following the publication of new advice on 20 January 2020 telling building owners of **all** multi-story and multi-occupied buildings to undertake investigations into external wall systems and fire doors to determine whether they represent a health and safety risk to residents.

In response, the Royal Institution of Chartered Surveyors (RICS) led a cross-industry working group to consider best practice in the reporting and valuation of tall buildings within the secured lending arena with a view to agreeing a new standardised process.

The EWS1 process was agreed by the industry in December 2019 – it is described as an “industry-wide valuation process which will help people buy and sell homes and re-mortgage in buildings above 18 metres (six storeys).”¹⁶⁸ **The EWS1 form is not a statutory requirement.**

Although devised as an industry solution to ‘unstick’ the market for flats in high-rise blocks, it has brought other problems to the fore. For example:

- There are delays in conducting surveys due to a lack of qualified, insured surveyors.
- The cost of surveys, which can be high, may be passed onto residents.
- Some mortgage lenders responded to [Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings](#) (January 2020) by requesting an EWS1 on buildings *lower* than 18 metres in height. In turn, this put further pressure on the process.

¹⁶⁷ *Mortgage Finance Gazette*, “[‘Not enough’: Industry verdict on £3.5bn cladding fund](#)”, 11 February 2021

¹⁶⁸ [RICS website](#) [accessed 12 February 2021]

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- There are reports of the insurance industry being reluctant to offer Professional Indemnity insurance to professionals completing EWS1 forms.

HCLG Committee took evidence on this issue and, in its June 2020 report, described the EWS1 scheme as “well intentioned” but observed, based on evidence received, “it has not been working in practice”.¹⁶⁹ The Committee called on the Government to “take full control” and put a fairer and faster process in place:

Reforms could include a relaxation of the rules on who is able to undertake these surveys, clarification of which buildings should fall within scope and more guidance to ensure the correct prioritisation of buildings. The Government should provide necessary funding to ensure that all affected buildings are surveyed within the next 12 months, so residents are not forced to wait years before they are able to sell their properties or obtain new mortgages.¹⁷⁰

[On 21 November the Government announced](#) measures to improve the application of the EWS process to help long leaseholders:

- An industry agreement such that owners of flats in buildings without cladding would no longer need an EWS1 form to sell or re-mortgage.
- [Supplementary guidance](#) to enable surveyors “to take a more proportionate approach and reduce the number of buildings where an EWS1 assessment is needed.”
- Almost £700,000 to train more assessors, “speeding up the valuation process for homeowners in cases where an EWS1 form is required.”
- A commitment to explore ways “to address ongoing concerns around the availability of professional indemnity insurance”.¹⁷¹

Also on 21 November, MHCLG published [Building Safety Programme: estimates of EWS1 requirements on residential buildings in England](#) which is described as an “indicative analysis on the cladding coverage of residential buildings and the number of leasehold dwellings in those buildings.”

On 8 January 2021 [RICS launched a consultation exercise](#) on guidance intended “to help by providing valuers with clear criteria to help them decide on whether an EWS1 form may be required or not”. The guidance proposes criteria defining the buildings in which it is less likely that expensive remediation work affecting value will be required. This would allow valuers to make a reasonable assumption about valuing properties in these buildings without requesting an EWS1 form from the building owners.¹⁷² Submissions were accepted up to 25 January. It is expected new guidance will be published in Spring

¹⁶⁹ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 85

¹⁷⁰ Ibid., para 91

¹⁷¹ MHCLG, [Government steps in to help homeowners caught up in 'EWS1' process](#), 21 November 2020

¹⁷² [RICS Press Release](#), 8 January 2021

2021.¹⁷³ Robert Jenrick referred to the consultation exercise on 10 February 2021:

The Government endorse its work to ensure that assessors have a stronger basis on which to make good, proportionate judgments about valuation risk. Lenders have welcomed the progress on that guidance, which will help to ensure that more than half a million leaseholders in blocks of flats over 11 metres will not need a separate EWS1 assessment to get a mortgage.¹⁷⁴

The BSA and UK Finance issued a joint statement saying:

We also welcome the progress made on the new RICS guidance for valuers and provided the new guidance, once it is complete, has clear support from MHCLG and the Institution of Fire Engineers, are hopeful it will provide greater certainty to home movers, leaseholders and building owners and reduce the number of buildings requiring an EWS1.¹⁷⁵

Insurance premiums

The HCLG Committee also took evidence on the difficulties faced in obtaining building insurance on affected blocks and, in cases where insurance can be obtained, on the high cost of premiums. The Committee recommended:

The Government should act as an insurer of last resort for buildings unable to obtain insurance. For other buildings, the Government should underwrite a percentage of the insurance on any affected high-rise and high-risk buildings where premiums have increased by more than 50% in the last two years, to reduce costs for residents.¹⁷⁶

The [Government response](#) (September 2020) said:

The Government is aware of the suggestion that a reinsurance or pooling model may be part of a policy solution to some of the insurance challenges relating to Building Safety. To date, Government is only aware of buildings insurance being a challenge for a very small percentage of high-rise residential buildings, with little evidence to date of a wider systemic or long-term issue in obtaining buildings insurance. However, the Government fully recognises both the distress that such a situation causes residents as well as the potential capacity reductions in the insurance industry that could potentially further exacerbate cases.

In publishing the draft Building Safety Bill, the Government has made it clear that it intends to address insurance issues related to building safety. This will include consideration of the challenges some high-rise residential buildings are experiencing in obtaining affordable buildings insurance cover. This will be taken forward as part of the Government's commitment to ensure that leaseholders are protected from unaffordable costs relating to historic repairs to the building in which they live.¹⁷⁷

¹⁷³ Ibid.

¹⁷⁴ [HC Deb 10 February 2021 cc329-48](#)

¹⁷⁵ [BSA and UK Finance joint statement following MHCLG's announcement on cladding](#), 10 February 2021

¹⁷⁶ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 80

¹⁷⁷ [CP 281, 8 September 2020](#), paras 57-58

On 10 February 2021, several Members raised the issue of excessive building insurance premiums. Responding, Robert Jenrick said:

There is a challenge here, because, as with the lenders, the insurers are faced with assessing a new and heightened level of risk. None the less the Association of British Insurers now needs to step up and take a proportionate risk-based approach. As I have said repeatedly, the risk to life in buildings is, mercifully, very low, with the tragic exception of the events of 2017. Insurers should be pricing that risk correctly and not passing on those costs or even profiteering on the backs of the leaseholders. Both myself and my hon. Friend Lord Greenhalgh who leads on building safety have engaged repeatedly with insurers and we will do so again.¹⁷⁸

6.8 Targets for completing the work

Targets initially set for completing the remediation work on high rise blocks were not met. The Government has faced criticism for the slow pace of remediation. In May 2020 the Minister for Building Safety spoke to the HCLG Committee of “an ambition” for all high rise ACM buildings to be remediated by the end of 2021.¹⁷⁹

The HCLG Committee called for an “urgent national effort to remediate all affected buildings” and for the Government to:

...set a realistic target...that all buildings of any height with ACM cladding should be fully remediated of all fire safety defects by December 2021. Buildings with any other fire safety defect, including non-ACM cladding, should be remediated before the fifth anniversary of the Grenfell Tower fire in June 2022.¹⁸⁰

One of the ways in which the Committee thought that remediation could be moved forward was through “more extensive use of Compulsory Purchase Order (CPO) powers, to take direct ownership of the freehold of buildings with serious fire safety defects.”¹⁸¹ The Committee also supported the establishment of a new national body:

...whose sole purpose is to purchase the freehold and manage the remediation of buildings with serious fire safety defects. This new body should step in where overburdened local authorities are unable or unwilling to act. The valuation of buildings under CPO should consider the cost of remediation and this should be deducted from any financial consideration paid to the building owner. Consideration of legislative changes should be included in the forthcoming Building Safety Bill. Any residential building where works have not commenced by December 2020 should be subject to a CPO by this new body.¹⁸²

In June 2020 the National Audit Office reported:

¹⁷⁸ [HC Deb 10 February 2021 cc329-48](#)

¹⁷⁹ [Oral evidence: Cladding: Progress on Remediation, 18 May 2020, Q30](#)

¹⁸⁰ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 55

¹⁸¹ *Ibid.*, para 59

¹⁸² *Ibid.*

The Department currently estimates that all buildings within scope of its funding schemes will be remediated by mid-2022, with more than 95% completed by the end of 2021.¹⁸³

The [Government response](#) to the Committee's June 2020 report pointed to the use of other enforcement measures by local authorities and went on:

...no local authority has yet seriously considered use of Compulsory Purchase Order (CPO) powers – the process for these can take over two years and which have made them a less attractive option to ensure pace.

[...]

...We have written to those who have not started work, and to the relevant local authorities and fire and rescue services, making clear our expectation that remediation works will have started by the end of 2020 and completed during 2021. However, we have not ruled out any options, including CPOs, if the pace of remediation remains too slow.¹⁸⁴

The Public Accounts Committee, in September 2020, said it was unacceptable that hundreds of residential blocks still had ACM cladding on them and called on MHCLG to, within six months:

- a) be working with the new Building Safety Regulator, begin vigorous enforcement action against any building owners whose remediation projects are not on track to complete by the end of 2021; and
- b) begin publishing monthly updates of projected completion dates for all remaining high-rise buildings with ACM cladding, to increase transparency of progress without identifying individual buildings.¹⁸⁵

The Government agreed with recommendation a) with a target implementation date of April 2021:

The Building Safety Regulator has already been established in shadow form within the Health and Safety Executive (HSE), and although it does not yet have enforcement powers (which are subject to legislation), the government agrees and has been supportive that existing regulators should use enforcement action whenever appropriate, to ensure building owners remediate.¹⁸⁶

Projected completion dates are expected to be included in monthly data releases from February 2021.¹⁸⁷

The Government estimates that buildings in scope for funding schemes will be remediated by mid-2022 with 95% complete by the end of 2021.

¹⁸³ NAO, [HC 370, Session 2019-21](#), 19 June 2020, para 12

¹⁸⁴ [CP 281, 8 September 2020](#), paras 43-45

¹⁸⁵ PAC, [HC 406, Session 2019-21](#), 16 September 2020, p5

¹⁸⁶ [CP 316, November 2020](#), p10

¹⁸⁷ *Ibid.*, p11

7. Local authority enforcement powers

In the wake of the Grenfell Tower fire, it became apparent that the Housing, Health and Rating System (HHSRS) [Operating Guidance](#) did not specifically cover the assessment of cladding, and predominantly focused on assessing the risk of hazards within *individual dwellings*, rather than assessing the common parts of buildings, including the building exteriors.

In November 2018, MHCLG published an [addendum](#) to the Operating Guidance to provide guidance on the assessment of high-rise residential buildings with unsafe cladding:

It supplements the Hazard Profile for Fire as given in the HHSRS Operating Guidance (see Profile 24, pages 150 to 155) and should be read and used in conjunction with that Operating Guidance. While the addendum deals specifically with high-rise residential buildings (those 18 metres high and over) with such cladding, some aspects will be relevant for other issues relating to the exterior of a building, or to other residential buildings containing flats or apartments.¹⁸⁸

An authority taking enforcement action would usually seek to recover their costs so enforcement action would not necessarily relieve leaseholders of a requirement to meet the cost of the works under the terms of their lease agreement. However, the Government said that financial support may be available to authorities seeking to use enforcement action and carry out remedial work to tackle private blocks with unsafe cladding.

The [Government response](#) to the Committee's June 2020 report said that the threat of enforcement action had been sufficient to drive forward progress in some cases.¹⁸⁹ Authorities are being supported by a Joint Inspection Team established by the Department. The November 2020 bulletin records enforcement activity:

Enforcement action has been, or is being, taken against at least 57 buildings with ACM cladding (and, in many other cases, the threat of enforcement action has been effective in triggering building owners to act). This includes 18 buildings with Joint Inspection Team support. 31 of the 57 cases of enforcement are against buildings currently yet to start remediation. Of the 57 cases, at least 16 improvement notices, 9 hazard awareness notices, and 5 prohibition orders have been served.¹⁹⁰

In February 2020, the Government [published a list of corporate entities](#) without a plan in place for remediating unsafe ACM cladding in line

¹⁸⁸ HC 1744, [HHSRS Operating Guidance Addendum](#), November 2018

¹⁸⁹ [CP 281, 8 September 2020](#), para 43

¹⁹⁰ MHCLG, [Building Safety Programme: monthly data release – November 2020](#), 17 December 2020

with a commitment given in October 2019.¹⁹¹ The list was last updated on 12 February 2021.¹⁹²

8. Views on who should pay and how

Section 6.6 of this paper refers to the HCLG Committee's concern about an apparent shift in Government emphasis from it being unacceptable for leaseholders to pay for remediation of historic safety defects, to a suggestion that leaseholders should be protected from unaffordable costs. The Committee's June 2020 report called for the funding of remediation "to reflect where the blame lies". The Committee took the view "that residents are in no way to blame" and should bear "none of the cost of remediation".¹⁹³

The Committee called on the Government to provide necessary funding upfront given the urgency of the work, and for action to be taken to ensure those responsible contribute to the cost:

For each affected building, the Government should actively seek to recover funds from the construction companies, architects, suppliers of faulty products, approved inspectors and any others who are found to be responsible for fire safety defects.¹⁹⁴

The Committee also suggested an approach to making up any shortfall:

Consideration should also be given to how the remaining burden for funding should be shared. The Government should undertake a review of proportionate taxes on freeholders, developers and others to help fund these remedial works. This should include consideration of a temporary levy linked to the sale of new-build properties, as has been proposed by some industry stakeholders.¹⁹⁵

As previously noted, the [Government response](#) referred to the building owner/responsible person's duty to protect leaseholders from unaffordable costs and to Michael Wade's work in this area.¹⁹⁶ The National Audit Office's [Report - Investigation into remediating dangerous cladding on high-rise buildings](#) (June 2020) records MHCLG as knowing that "only in a minority of cases would it be financially justifiable for building owners to bring legal action to recover money."¹⁹⁷

The Committee reiterated the need for upfront Government funding in its report on pre-legislative scrutiny of the draft Building Safety Bill (November 2020):

¹⁹¹ [CP 184, October 2019](#), p7

¹⁹² Accessed on 12 February 2021.

¹⁹³ HC 172, Housing, Communities and Local Government Committee, [Cladding: progress of remediation](#), Second Report of Session 2019-21, 12 June 2020, para 43

¹⁹⁴ *Ibid.*, para 44

¹⁹⁵ *Ibid.*, para 45

¹⁹⁶ [CP 281, 8 September 2020](#), paras 30-37

¹⁹⁷ NAO, [HC 370, Session 2019-21](#), 19 June 2020, para 19

We continue to believe that residents should not bear any of the costs of remediating historical building safety defects and are deeply concerned by the Government's failure to protect them from these costs. We are especially disturbed by its commitment to protecting them only from "unaffordable costs". It would be unacceptable and an abdication of responsibility to make them contribute a single penny towards the cost of remediating defects for which they were not responsible.¹⁹⁸

The Government must announce, before they publish the Bill, its proposals for funding all historical building safety remediation works. These proposals should impose no costs on leaseholders and explicitly acknowledge that in the short term the Government must foot the bill, until such time as mechanisms for cost recovery have been developed. We also urge the Government to explore the options for reform of the law preventing building owners with no contractual remedy claiming against developers for defective construction more than 6 years old which has not caused damage. The New South Wales legislation offers a possible model.¹⁹⁹

Options considered by the APPG on 10 December 2020

The All-Party Parliamentary Group (APPG) on Leasehold and Commonhold Reform considered two presentations at a meeting on 10 December 2020 concerning how remediation works might be paid for. The presentations are briefly summarised below.

Michael Wade

Michael Wade explained how he is approaching work on identifying options for financing historic remedial works not covered by the £1.6 billion in Government funding. He stressed he was not setting out Government policy and that final decisions on who meets the cost of remedial works are for politicians to make.

His work has led him to focus on a 'per building approach'. At the outset, it is not possible to know with certainty the cost of the works involved. Therefore, he is interested in a loan concept to facilitate the execution of the work to get to a point where the sum involved is known. Repayment of the loan would be spread over the long-term with a low rate of interest to make it affordable. At this point, with a known cost, the question would turn to *who* should pay whether it be leaseholders, freeholders, developers, insurers or government.²⁰⁰

Dean Buckner²⁰¹

Dean Buckner is a Leasehold Knowledge Partnership trustee and former Bank of England economist. The starting point of his proposal is that leaseholders cannot afford to pay for the remediation of historic defects. The following are identified as entities who should pay:

On 10 February 2021 the Government announced a long-term low interest scheme repayable by long leaseholders in low/medium rise blocks. See sections 5 and 6.6.

¹⁹⁸ HC 466, [Pre-legislative scrutiny of the Building Safety Bill](#), Fifth Report of 2019-21, 24 November 2020, para 31

¹⁹⁹ *Ibid.*, para 39

²⁰⁰ [Link to the APPG zoom meeting on 10 December 2020](#) [accessed on 22 December 2020] see also, *Inside Housing*, "Government advisor developing long-term loans proposal to fund building safety work", 10 December 2020 [subscription required]

²⁰¹ His team members in developing the proposal include Lucy Brown-Cortes and Liam Spender.

- **Developers:** on the basis that they are “culpable: they designed and built buildings which are not fit for purpose” and “must be incentivised to prevent the construction of buildings with major safety defects”.²⁰²
- **Freeholders:** “If leases in blighted buildings are valueless, so are the freeholds. The freeholders stand to benefit from improvements to the building, therefore they should bear some of the costs of improvement.”²⁰³
- **Non-resident foreign buyers.**

The proposal would involve the creation by Government of a Special Purpose Vehicle with power to collect a levy. The levy would be the means through which remediation costs are met in the long term and would come from the following sources:

We propose that the government should consider: (a) a developer levy; (b) increasing the non-resident foreign buyer tax; (c) a freeholder ground rent levy and (d) tax credits for cladding remediation.

To make the proposal tax neutral, (and mindful that the government is facing an unprecedented peace time deficit), we propose that a Special Purpose Vehicle be set up by the Government, in order to transform the variable income stream from the annual levy into a perpetual instrument with fixed coupon payable back to the Government. Rather than a liability, the Vehicle would thus be an asset to the Government.²⁰⁴

Comparisons are drawn with levies introduced in other countries.²⁰⁵

The proposal includes match-funding from the Government of £4.25 billion to create a remediation pot of £13.75 billion.

A developer levy; a new tax on the UK residential development sector; and a loan scheme

As noted in section 5, on 10 February 2021 the Government announcement included details of how costs will be recovered from the development industry:

- **A ‘Gateway 2’ developer levy will be introduced via the forthcoming Building Safety Bill:**

The proposed levy will be targeted and will apply only when developers seek permission to develop certain high-rise buildings in England, helping to ensure that the industry takes collective responsibility for historical building safety defects. In introducing the levy, we will continue to ensure that the homes our country needs get built and that our small and medium-sized builders are protected.²⁰⁶

²⁰² [Dean Buckner’s presentation slides and a summary of the proposal](#) [accessed 22 December 2020] see also, *Inside Housing*, “Former Bank of England economist outlines proposal to fix cladding crisis without billing leaseholders”, 11 December 2020 [subscription required]

²⁰³ [Dean Buckner’s presentation slides and a summary of the proposal](#) [accessed 22 December 2020]

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ [HC Deb 10 February 2021 cc329-48](#)

- **A new tax will be introduced for the UK residential property development sector in 2022.**

This will raise at least £2 billion over a decade to help to pay for cladding remediation costs. The tax will ensure that the largest property developers make a fair contribution to the remediation programme in relation to the money they make from residential property, reflecting the benefit that they will derive from restoring confidence to the UK housing market. The Government will consult on the policy design in due course.²⁰⁷

Long leaseholders in low/medium rise blocks (11 to 18 metres) will have an option of applying for a long-term low interest rate loan to cover the cost of cladding remediation work. The loan will be attached to the building and repayments will be capped at £50 per month. Comment on the loan scheme can be found in section 5 and 6.6 pages 37-38.

State of Victoria Australia: funding model

Following a 2014 fire in 23-story Lacrosse Tower, Melbourne, the Victorian State Government took several steps. The Victorian Building Authority carried out an audit to identify combustible material on buildings in Melbourne:

A state-wide cladding audit has examined all residential apartments, hotels and student accommodation of three storeys or more – as well as hospitals, schools and care facilities of more than two storeys. This involves:

- Identification and assessment: buildings are inspected on site and an expert panel risk-assesses it and makes recommendations to manage the risk which may include an emergency order. If necessary, an evacuation order will be issued.
- Emergency work undertaken: emergency work may involve additional smoke alarms, the immediate removal of cladding from around exits, turning off electrical cables which run through the cladding, and other measures. All Australian buildings already have fire alarms and sprinklers.
- Rectification planning: a building notice is issued, which requires owners to justify why the cladding does not need to be removed. This is assessed by a special court, the Building Appeals Board.
- Building work undertaken: a building order is issued and the work is carried out.
- Works completed: work is completed, inspected by officials and the building order is cancelled if they are satisfied.
- Funding: the state government has also introduced powers to step into owners' shoes to pursue builders for compensation through the courts. A new levy will be charged for building permits which will also contribute. Funding will be prioritised for the most at-risk buildings.²⁰⁸

²⁰⁷ Ibid.

²⁰⁸ *Inside Housing*, "The cladding crisis Down Under: what we can learn from the response to Grenfell in Australia", 22 November 2019 [subscription required]

Owners corporations were able to apply for funding towards the cost of cladding removal. Full details are provided in this guide: [Cladding rectification funding guidelines](#).

The cladding rectification levy

In order to partially fund the grants available for the removal of combustible cladding, the Victorian State Government amended the levy payable on building permits by developers:

Amendments to the *Building Act 1993* in the *Building Amendment (Cladding Rectification) Act 2019* will provide for the building permit levy to include an additional cladding levy component. This component is known as the cladding rectification levy. These amendments will commence on **1 January 2020**.²⁰⁹

The levy is expected to raise \$300 million (representing half of the \$600 million funding announced) over five years from 1 January 2020. The levy does not apply to all building permit applications. For more information see [Cladding Rectification Levy FAQs](#) and [Cladding rectification levy to commence on 1 January 2020](#).

9. Devolved administrations

9.1 Wales

On 22 May 2018, the then Housing and Regeneration Minister, Rebecca Evans, [announced](#) £3 million in capital funding to enable Newport City Homes to replace cladding on three tower blocks with ACM cladding in the city.

The National Assembly for Wales Equality, Local Government and Communities Committee conducted an inquiry into fire safety in privately owned high rise blocks in Wales which [reported](#) in November 2018. The Committee considered uncertainty over who would pay for remedial works on these blocks and recommended:

Recommendation 13. We recommend that the Welsh Government liaises with the UK Government to identify any common approaches that can be taken in relation to addressing concerns about the cost of remedial work and leaseholders being held liable.²¹⁰

The Welsh Government [responded to the report in December 2018](#) – on liability for payment for the works they said:

In respect of your comments on liability for remediation costs, I am pleased to report that the completed and planned removal and replacement of Aluminium Composite Material cladding in Wales has been, and is being, funded by developers or building owners, rather than by individual leaseholders.²¹¹

²⁰⁹ [Cladding rectification levy FAQs](#) [accessed 4 December 2020]

²¹⁰ National Assembly for Wales Equality, Local Government and Communities Committee, [Fire safety in high-rise buildings \(private sector\)](#), November 2018

²¹¹ Welsh Government, [Review of Fire Safety in High Rise buildings](#), 21 December 2018

On 3 September 2020, the Welsh Government updated its [position statement on Building safety](#). The statement outlined reforms the Welsh Government intended to consult on. The reforms build on the work set out by Welsh Government's Building Safety Expert Group in their report [Road Map to Safer Buildings in Wales](#). The Group's remit was to identify the parameters of a Welsh response to the issues raised by the Hackitt Review. The Welsh Government published its [Building Safety White Paper](#) on 12 January 2021. Submissions are invited up to 12 April.

On 23 October 2020, the Minister, Julie James, issued a [detailed Written Statement](#) which set out ongoing work on funding models to address historic defects:

To address these issues, we are considering funding models that allow us to ensure work is carried out to make these buildings safe, help prevent leaseholders from facing the full burden of the costs and ensure funding is contributed from other sources.

We are also considering which defects the funding should cover. There is funding available in England to remove cladding but we know this does not go far enough. Providing funding to replace cladding, which may cover up what are often more complex and problematic issues does not solve the problem or make these buildings safe. That is why in Wales we want our plans to include other defects such as compartmentation, and more proactive measures such as the installation of sprinklers.²¹²

On 11 February 2021 *Inside Housing* reported that Julie James had written to Robert Jenrick to seek clarification on a number of aspects of the 10 February announcement.²¹³

9.2 Scotland

Different building regulations operate in Scotland. The Scottish Government's factsheet on ACM cladding in Scotland (updated 23 October 2018) states:

Are we sure the cladding systems in social housing high rise tower blocks in Scotland are not the same as that used in Grenfell Tower?

Yes, all 32 Scottish local authorities reported that no local authority or social high rise domestic properties in Scotland have been extensively clad in ACM.

What about the cladding systems in private high rise domestic tower blocks in Scotland – are these also being checked?

Yes, all local authorities completed checks on private sector properties. 31 local authorities have reported to that no privately owned high rise domestic properties have ACM in their cladding system. Glasgow City Council has confirmed a private high rise development in Glasgow has extensive ACM cladding. Interim mitigation measures are in place and the cladding is scheduled to be replaced.

²¹² [Written Statement: Building Safety Funding in Wales](#), 23 October 2020

²¹³ *Inside Housing*, "Welsh government urgently seeking clarification over cladding announcement", 11 February 2021 [subscription required]

What if my building has small amounts of ACM?

The UK Government in consultation with their Independent Expert Advisory Panel published revised guidance for building owners on 28 September 2018 covering high rise domestic buildings that have small amounts of ACM cladding. This [guidance note](#) provides advice to building owners, their professional advisers and fire and rescue services when considering whether it is safe to leave small or partial amounts of Aluminium Composite Material (ACM) cladding on a building.

Does guidance from the UK Government apply in Scotland?

Whilst the Ministry of Housing, Communities and Local Government guidance applies to England, the same general principles of the guidance should be applied in Scotland. The legislation applicable in Scotland includes the Housing (Scotland) Act 2006, The Fire Safety (Scotland) Regulations 2006, The Building (Scotland) Regulations 2004 and the supporting guidance contained in the Technical Handbooks.

What about small amounts of other combustible materials on my building?

The UK Government in consultation with their Independent Expert Advisory Panel published guidance for building owners on 17 October 2018 covering spandrel panels, window panels and infill panels on external walls of high rise domestic buildings. This [guidance note](#) provides advice to building owners, their professional advisers, and fire and rescue services.

What about other types of cladding – how do we know these are safe?

Scottish building regulations state that cladding and insulation on high rise domestic buildings since 1 May 2005, and cladding and insulation added to existing high rise domestic buildings since 1 May 2005, should be made of non-combustible materials or a cladding system that has met stringent fire tests. External cladding on high rise domestic buildings built before 2005 had to meet a Class 0 classification which was the most demanding anti-flame spread classification at that time.

The UK Government in consultation with their Independent Expert Advisory Panel issued a guidance note on 17 October 2018 covering external wall systems that do not incorporate Aluminium Composite Material. This [guidance note](#) provides advice to building owners, their professional advisers, and may also be used by fire and rescue services.²¹⁴

The Scottish Government has established a [Ministerial Working Group on Mortgage Lending and Cladding](#). Following the creation of the Building Safety Fund in England, Scotland received capital consequentials of £97.149 million:

Decisions have not yet been taken on the distribution of funds in Scotland. These will be informed by evidence being provided through the Mortgage Lending and Cladding Ministerial Working Group and work with other partners and organisations following

²¹⁴ Scottish Government Factsheet [ACM cladding in Scotland: questions and answers](#) [accessed on 4 December 2020]

the good example set by Taylor Wimpey, who have already committed to fully remediating two buildings in Glasgow.²¹⁵

9.3 Northern Ireland

An Independent Reference Group which looked at [Fire Safety in Housing Executive Tower Blocks](#) (January 2018) found that no blocks had ACM cladding similar to that used on Grenfell Tower.²¹⁶

²¹⁵ Scottish Government, [UK Cladding Fund allocation to Scotland: FOI release](#), 12 November 2020

²¹⁶ Independent Reference Group, [Fire Safety in Housing Executive Tower Blocks](#), January 2018,

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