

Building Safety Update

Purpose of report

For information.

Summary

This report updates the Safer and Stronger Communities Board on the LGA's work around building safety since its last meeting, and includes details of the announcements made by MHCLG in January and the implications/next steps for the LGA.

Recommendation

That the Safer and Stronger Communities Board note and comment on the LGA's building safety related work.

Action

Officers to incorporate the Board's views in the LGA's ongoing building safety related work.

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Building Safety Update

Background

1. Since the last meeting of the Board, the LGA has continued to support the work of councils and fire and rescue authorities to address the range of fire safety issues that have been identified with residential buildings following the fire at Grenfell Tower in June 2017.
2. The Secretary of State for Housing, Communities and Local Government made a statement on 20 January announcing a range of measures to improve building safety, details of which are set out later in the report.

Remediation

Progress

3. Progress continues to be made in carrying out remediation to the 155 social sector residential blocks with combinations of aluminium composite material (ACM) cladding and insulation that have been found not to meet the building regulation standards (four blocks previously thought to be in scope have now been identified as not being in scope). The statistics published by the Ministry of Housing, Communities and Local Government (MHCLG) on 13 February 2020 show that, as of 31 January 2020, remediation has finished on 69 of these blocks.
4. Of those which have not yet been remediated, work has started on 75 of these blocks (and the cladding has been removed on 33 though remediation work is not complete), and a further 10 have plans in place or plans are in development. Funding for the remediation of 140 of these 155 buildings is provided from the Government's social sector ACM cladding removal fund, and it is expected funding will be sought to remediate the additional social housing block recently identified as having ACM. Remedial works for the remaining 14 buildings are being funded through existing funds and litigation action.
5. The latest statistics from MHCLG show there are 200 private high-rise residential buildings with ACM cladding, an increase of 3 since December 2019. Remediation work has been completed on 25 of these high-rise private residential buildings. 175 buildings are yet to be remediated; of these, 32 have begun remediation, 100 have a plan in place, and 43 have plans in development.

Fire Protection Board

6. The Fire Protection Board (FPB) wrote out to both chief fire officers and Fire and Rescue Authority chairs in November asking fire and rescue services to establish whether duty

holders were taking appropriate measures to mitigate risks from ACM cladding in buildings over 18 metres in height that have yet to be remediated.

7. The letters also asked Fire and Rescue Services (FRSs) whether they had plans in place to deal with a fire in the relevant buildings.
8. All FRSs have now responded to this letter except Greater Manchester and London, which were given an extended deadline of 31 March, due to the large number of buildings involved. Greater Manchester Fire and Rescue Service and the London Fire Brigade expect to meet this deadline. All other FRSs met the 31 January deadline (although three FRSs had extended deadlines in relation to additional buildings that had been identified during the exercise).
9. The exercise has produced several positive results in terms of moving forward safety work in relation to ACM-clad buildings. One FRS is taking enforcement action in relation to premises where it was not satisfied with the duty-holder's arrangements, and several buildings have been added to the list of ACM buildings.
10. Issues have also been uncovered in relation to buildings which were not thought to have been remediated but which now appear to have been. This is being investigated.
11. The FPB is also undertaking work to meet the commitment made by the Secretary of State for Housing, Communities and local Government that all residential properties over 18m would be inspected or assured for fire safety by the end of 2021.
12. In discussion with the FPB, the Home Office is preparing a business case in relation to £10 million worth of funding for FPB activity supporting this commitment in 2020-21.
13. Following the announcement that the Health and Safety Executive (HSE – more detail is set out later in the report) will be the building safety regulator and is establishing the shadow regulator, the HSE has joined the membership of the FPB to ensure work is joined up.

Funding

14. Following the Government's decision in May 2019 to provide funding for the owners of private high-rise residential buildings with ACM cladding to remediate them, building owners have been able to apply for funding from September 2019. These applications can be: to seek confirmation that the building will be eligible for funding; to seek initial funding to tender for the work to remediate the ACM and then develop a full cost application; and, to submit an application for the full cost of remediating the ACM on the block.

15. As of 31 January 2020, 93 private residential buildings were in scope of the government's funding programme. Of these 89 have submitted an application, with funding already approved for five buildings. Of the buildings not in scope of the fund the developer or freeholder has committed to pay for the remediation of 77 buildings and 23 buildings are covered by a warranty claim. It is unclear what will happen to fund the remediation of seven buildings.

Joint Inspection Team

16. Although building owners may have expressed an intention to remediate, not all have made fast enough progress in developing their plans to satisfy the MHCLG Secretary of State. Having indicated he would 'name and shame' building owners not making enough progress in remediating their buildings, MHCLG named five companies that have yet to begin the tender process to remove ACM cladding from their buildings, and said that if they do not act swiftly the department would work with councils to bring the necessary enforcement action.
17. As members will recall the LGA is hosting the Joint Inspection Team to support councils use their enforcement powers under the Housing Act 2004 and the associated Housing Health and Safety Rating System. The team has so far supported six local authorities to carry out inspections of buildings prior to taking enforcement action following a full site inspection on a small number of buildings, and has provided initial advice to a number of others. A number of improvement notices have been issued by the local authorities that have been supported by the team. In some cases the building owner is challenging the improvement notices, and hearings at the first-tier tribunal in relation to them are likely to be heard in April or May.

Data collection on external wall systems

18. In July 2019 councils were asked by MHCLG to collect data on the external wall systems on all high-rise residential buildings in England. MHCLG's current estimate is that there are 11,300 residential buildings over 18 metres in height, of which 6,100 are in the private sector and 5,200 are social housing blocks. Collecting information on these buildings is underway, but it is a considerable task, and councils have been provided with additional funding to assist in the data collection process. The LGA and London Councils have been discussing with Home Office and MHCLG officials what else might be done to assist councils in this exercise, which is due to be completed before the end of the month.

Building Safety Announcement

19. On 20 January the Secretary of State for Housing, Communities and Local Government, Robert Jenrick made a [statement](#) promising 'the biggest change in building safety for a generation.'

20. Alongside the statement, the government published:

- 20.1. a [call for evidence](#) seeking views on the assessment and prioritisation of fire safety risk
- 20.2. a [Response to the Grenfell Tower Inquiry phase one report](#)
- 20.3. a [Consolidated advice note for building owners](#)

21. The statement represents success for LGA lobbying on a number of issues, detailed below, notably the move towards a risk-based approach to regulation rather than height-based, and the requirements around sprinklers in new buildings.

Statement

22. The two key points of the statement were that progress on remediation needs to accelerate and that the reform of building safety needs to be extended to buildings under 18m.

23. On remediation, the Statement promised:

- 23.1. the appointment of an independent construction expert to review remediation timescales and identify what can be done to increase the pace in the private sector.
- 23.2. the naming and shaming from February of owners who are not acting to remediate their buildings, which took place at the end of the month.
- 23.3. that MHCLG will be working with the relevant local authorities to drive enforcement where necessary.
- 23.4. further measures in the Fire Safety Bill (see below).
- 23.5. further details of support for leaseholders to be set out in due course. These are currently being considered with the Treasury.

24. On longer-term reform, the statement included the following specific commitments:

- 24.1. A new building safety regulator will be established (initially in shadow form) in the Health and Safety Executive within weeks.
 - 24.2. Dame Judith Hackitt will chair a board to oversee the transition to this new regime.
 - 24.3. The first national chief inspector of buildings will be recruited.
25. A named individual will be criminally liable for the safety of each building and the new regulator will be given whatever funds are necessary to ensure it succeeds. Many

MHCLG civil servants working on reform ‘will, in due course, transition to the new regulator’.

26. The Secretary of State further announced that the Government intends to lower the height threshold for sprinkler requirements in new buildings from 30 meters to 11 metres (details will be released this month). He also announced the intention to lower the 18 metre height threshold of the combustibles ban to at most 11 metres and also launched a [call for evidence](#) seeking views on the assessment and prioritisation of fire safety risk in buildings, ahead of commissioning research on the topic.
27. The LGA has previously supported the lowering of the height at which the requirement to install sprinklers applies and has pushed the Government to base fire safety regulation on risk rather than crude height measurements. The recent spate of fires in buildings slightly below 18m has strengthened the case for such an approach. Relevant work relevant to such an approach is already being carried out under the aegis of the Fire Protection Board and the Joint Regulators Group.
28. The LGA has also previously called on the Government to impose a requirement to install sprinklers in existing buildings, taking a risk-based approach, to avoid the creation of a two-tier safety standard, and to fund retrofitting in council-owned blocks. The statement made no reference to retrofitting and the Secretary State did not answer when questioned about it by a Labour backbench MP.

Fire Safety Bill

29. The Secretary of State announced that the Fire Safety Bill announced in the Queen’s Speech in December would be introduced shortly. We anticipate it being introduced this Spring, followed by secondary legislation before Summer recess, but we do not expect it to become law until the Autumn.
30. The Bill will have two core functions:
 - 30.1. to clarify that external wall systems and the fire doors to individual flats in multi-occupied residential blocks fall within the scope of the Regulatory Reform (Fire Safety) Order 2005. This is intended to make it easier for the FRS to take enforcement action where landlords do not act to remediate dangerous cladding or inadequate fire doors.
 - 30.2. to provide the basis for secondary legislation that delivers the recommendations of the Grenfell Tower Inquiry Phase One Report.
31. Some further detail was provided in the [Government Response to the Grenfell Tower Inquiry Phase One Report](#). Although the response does not tell us a great deal that we did not know, it specifically refers to owners sharing information with the fire service on external wall systems (EWS), clarifying that the FRS can enforce where remediation has not taken place and where owners have not assessed the risk posed by their EWS. It

goes on to suggest that owners take action now rather than waiting for the legislation to be in place. The LGA has lobbied for these outcomes.

Consolidated Advice Note

32. The [Consolidated advice note \(CAN\)](#) supersedes more than twenty previous advice notes published by MHCLG based on advice from the Expert Panel.
33. The CAN arguably amounts to a requirement to remove dangerous cladding on buildings under 18m (as well as over) in order to comply with the Fire Safety Order. It does so by emphasising the building regulations over the guidance on them in Approved Document B, the requirement to have a Fire Risk Assessment for buildings of any height and by arguing that EWS that contains combustible materials 'may not meet an appropriate standard of safety and could pose a significant risk to the health and safety of residents'.
34. In addition it states that building owners should follow the CAN's advice without delay and not wait for further advice or new legislation.
35. It sets out a hierarchy of dangerous cladding and responses to it (including that when owners find dangerous cladding they should tell the FRS):
 - 35.1. Category 3 ACM (and similar metal composite material, MCM) is a significant fire hazard on any building of any height. It should be removed and remediated as soon as possible.
 - 35.2. Category 2 ACM (and MCM) plus foam insulation is a notable fire risk on buildings over 18m or of any height with residents who need significant assistance with evacuation. It too should be remediated as soon as possible.
 - 35.3. High Pressure Laminate cladding (HPL) class C and D would not meet the building regulation requirements on buildings over 18m. It should be remediated as soon as possible. Owners of buildings below 18m in height with class C and D HPL panels should also consider the risk from fire spread.
 - 35.4. There is no evidence that when any HPL panels are combined with combustible insulation they meet the requirements of the building regulations. Where a building has HPL panels and combustible insulation the owner should immediately seek professional advice and take appropriate remedial action.
 - 35.5. The owners of all residential buildings over 18m, or of any height where there are residents who need significant assistance with evacuation, should check their EWS (and all other owners should consider whether they need to).

36. This is interesting both for the gradation and because it contains a de facto definition of vulnerable residents and defines residential buildings as including hospitals and mixed use where there is more than one dwelling.
37. The CAN also contains the department's advice on fire doors.
38. The advice in the CAN and the prospect of clarity around the inclusion of cladding systems in the FSO should assist and is clearly designed to assist FRSs in taking action around cladding issues. However, we understand that MHCLG does not see this as meaning that councils should reduce their efforts to deal with dangerous cladding under the Housing Act.

Implications for Wales

39. Building regulations and fire and rescue services are devolved responsibilities of the Welsh Assembly Government, and the main implications arising from the recommendations of the Hackitt Review and the government's response to it are on building regulations and fire safety in England. However the Welsh government has announced that it will be making the changes recommended in the report to the regulatory system in Wales, and the LGA has been keeping in contact to ensure the WLGA is kept informed of the latest developments in England.

Financial Implications

40. Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by MHCLG. Other work arising from this report will continue to be delivered within the planned staffing budget, which includes an additional fixed term post in the safer communities team to support the LGA's building safety work.
41. The reform of buildings safety will have financial implications for both councils and fire services as regulators and councils as stock-holders.
42. The Fire Protection Board is developing a business case for the £10 million of funding the Secretary of State has previously offered for assurance work around cladding.

Next steps

43. Officers will take forward the LGAs lobbying on issues such as retrofitting automatic fire suppression systems, funding for remediation and reform of the building safety system in line with existing LGA policy positions, subject to any views members may have.