

Building Safety update

Purpose of report

For discussion.

Summary

This report updates lead members on the LGA's building safety related work since its last meeting.

Recommendation

That Fire Commission note and comment on the LGA's building safety related work.

Actions

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

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Building Safety update

Background

1. Since the Commission's last meeting the LGA has continued to work with the Ministry of Housing Communities and Local Government (MHCLG) and the Home Office to support building safety reform and the remediation of dangerous buildings. Work on both fronts has been disrupted by Covid 19, the latter to a significant extent. Two significant developments have taken place in that a new minister Lord Stephen Greenhalgh has been appointed to a joint position in the Home Office and MHCLG to oversee fire and building safety and the Fire Safety Bill has been published and has passed its second reading in Parliament.

Remediation

Progress

2. Progress continues to be made in carrying out remediation to the 154 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 (an additional block was identified with ACM in October 2019). The [statistics](#) published by the Ministry of Housing, Communities and Local Government (MHCLG) in April show that on, as of 31 March 2020, remediation has finished on 70 of these blocks. Of those which have not yet been remediated, work has started on 75 of these blocks and a further 9 have plans in place. Funding for the remediation of 139 of these 154 buildings is provided from the government's social sector ACM cladding remediation fund (launched on 16 May 2018 to help remediate social sector residential buildings) and one more is expected to apply. Remediation works for the remaining 14 buildings are being funded through a combination of existing funds and litigation action.
3. The latest statistics from MHCLG show that remediation work has been completed on 25 private high-rise residential buildings with ACM. A further 182 buildings are yet to be remediated; of these, 41 have begun remediation, 99 have a plan in place, and 41 have plans in development. There is still 1 private high-rise residential building where no plan is in place. As at 31 March 2020, 94 buildings were in scope for the Private Sector Remediation Fund and 90 of them had submitted an application. The remaining four buildings are preparing an application - these had exceptional circumstances or had only recently been identified. Of the buildings not in scope for the Fund, the developer or freeholder committed to pay for remediation of 82 buildings and 23 were accepted under a warranty claim.
4. There are 16 buildings for which the cladding status is awaiting confirmation.

5. Remediation work has slowed to a significant extent since the introduction of measures to combat Covid 19. Apart from issues around whether work can be conducted safely, there are difficulties in workers reaching sites safely. Work paused on 70 per cent of remediation sites although a number have since restarted. It is believed that over half remain closed despite pledges from ministers and mayors that work should continue.
6. The Government has appointed Dr David Hancock to review ACM remediation and Faithful & Gould, to provide additional programmed management capability. They will 'identify blockers and ... seek solutions to Covid-19 impacts, including on labor and supply, through engagement with individual remediation projects'. Dr Hancock leads the Government Construction Team and chairs the Government Construction Board for the Cabinet Office and Infrastructure and Projects Authority.

Fire Protection Board

7. As members will recall from the last meeting, the Home Office has established the Fire Protection Board, which has now completed a Building Risk Review exercise, to establish the effectiveness of interim measures at buildings with ACM cladding and whether the relevant fire and rescue service (FRS) had plans in place to deal with a fire in the relevant buildings. All FRSs have now responded to this letter and a report will go to the Minister.
8. 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.
9. Issues have also been uncovered in relation to buildings which were not thought to have been remediated but which now appear to have been and other disparities in data. This is being addressed.
10. £10m of funding has been made available to support the work of the Board, both centrally through NFCC and in fire and rescue services, in addition to funding announced in the budget to support protection. The Board is developing a programme of work designed to increase the pace of inspection across all high-rise residential buildings.
11. 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.
12. It is worth noting that there has been at least one case where Covid-19-related concerns have led to the withdrawal of a waking watch. This is an ongoing issue.

Joint Inspection Team

13. Although building owners may have expressed an intention to remediate, it remains to be seen whether all of them will follow through on that intention. MHCLG are keen that paid progress is made with remediation. While consideration has been given to the use of the powers fire and rescue services have under the Fire Safety Order 2005 until changes are made to the Order (which are discussed further under the building and fire safety legislation announced in the Queen's Speech), councils are better placed to take enforcement action under the 2004 Housing Act. As members will recall, the LGA is hosting the Joint Inspection Team to support councils use their enforcement powers under the Housing Act and the Housing Health and Safety Rating System.
14. The team has so far supported local authorities to carry out seven 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 this month, probably towards the end of it.
15. The team is being funded by MHCLG for a second year and is recruiting staff currently. Inspections by the JIT have effectively been halted by Covid 19, irrespective of staffing turnover. Issues include PPE, accommodation for the team and the ability of host councils to participate. The intention is to recommence inspections as soon as the current recruitment process allows and PPE and accommodation are available.

Data collection on external wall systems

16. 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. The importance of this work was highlighted by the fire in November at the student accommodation block, the Cube, in Bolton (even though this building was just below the 18 metre threshold), which involved an as yet unidentified form of high pressure laminate cladding. Collecting information on these buildings is a considerable task, and councils have been provided with additional funding to assist in the data collection process. The LGA and London Councils are currently discussing with Home Office and MHCLG officials what else might be done to assist councils in this exercise, and what opportunities the new legislation being brought forward offers to gather the information on what is on the side of high-rise residential buildings. MHCLG had hoped that the exercise would be complete by 31 March 2020, although it was recognised that for some councils with large numbers of blocks this

would be a challenge. Approximately 50 per cent of data had been collected by that date and while work continues and is regarded as a priority by MHCLG, it has been impacted by Covid19 issues.

Non-ACM funding

17. The government announced a £1bn fund for the removal of non-ACM cladding for the remediation of dangerous non-ACM cladding as part of the budget in March.
18. On 2 April MHCLG published the results of tests carried out on non-ACM cladding materials which indicated the dangerous nature of most High Pressure Laminate, all metal composite material and some timber cladding systems.
19. On 6 April MHCLG [wrote to stakeholders](#), giving more detail on the funding. The LGA was not given sight of the letter beforehand. It stated that:
 - The fund is for cladding remediation on buildings over 18m only (although some ambiguity remains as to whether buildings just under the 18m threshold may receive some funding).
 - The fund is for private sector leaseholders and social sector landlords who are unable to pay. Social sector building owners who have already begun 'prioritising and taking forward' remediation will not be able to reclaim the funds.
 - There will be no more money and 'other fire safety risks, including those on lower-rise buildings, ... will not be funded by Government'.
 - Funding is conditional on pursuing warrantee claims etc.

MHCLG 'aim to publish the prospectus for the new fund this month and open for registrations soon after.'

20. This announcement represents a victory for the LGA, which had been calling attention to the scale of the financial threat to leaseholders and the need to act on non-ACM cladding for well over two years beforehand (as had residents' groups). Nevertheless, the Government's insistence that it will not meet the bill in full if it rises beyond £1bn and the reluctance to fund council remediation are issues on which we will continue to press for improvement.

Reform

Building Safety Announcement

21. 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. Alongside the statement, the government published a call for evidence seeking views on the assessment and prioritisation of fire safety risk; a Response to the Grenfell Tower Inquiry phase one report and a Consolidated advice note for building owners

22. The key point of the statement was that reform of needs to be extended to buildings under 18m, a shift towards a risk-based approach the LGA has been pushing for.
23. As promised in the statement the HSE has become the new building safety regulator (initially in shadow form) and Dame Judith Hackitt will chair a board to oversee the transition to this new regime. The promised first national chief inspector of buildings has yet to be recruited.
24. The statement also promised that 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'.
25. 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 (we hope 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. The LGA has [responded to the latter](#) and will respond to the former, having 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.

Consolidated Advice Note

26. The [Consolidated advice note](#) (CAN) supersedes more than twenty previous advice notes published by MHCLG based on advice from the Expert Panel.
27. 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'.
28. In addition it states that building owners should follow the CAN's advice without delay and not wait for further advice or new legislation.
29. It sets out a hierarchy of dangerous cladding and responses to it (including that when owners find dangerous cladding they should tell the FRS):

- 29.1. 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.
 - 29.2. 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.
 - 29.3. 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.
 - 29.4. 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.
 - 29.5. 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). 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.
30. The CAN also contains the department's advice on fire doors.

Fire Safety Bill

31. The Bill has two core functions:
- 31.1. 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.
 - 31.2. to provide the basis for secondary legislation that delivers the recommendations of the Grenfell Tower Inquiry Phase One Report.
32. 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.

33. The Bill has now passed its second reading in the House of Commons. The LGA [briefed](#) MPs for the debate. While the LGA welcomed the Bill, we raised a number of concerns:

33.1. The Bill could lead to significant costs for local authorities as housing stockholders. Despite officers' requests the Impact Assessment was not published until after the debate and this document has increased our concern. Discussions with councils suggest that the cost of including cladding systems in fire risk assessments is much higher than the Home Office realises.

33.2. Disparities between the Fire Safety Order's concept of a Responsible Person and the proposals for an Accountable Person and a Building Safety Manager contained in the Government's response to the [Building A Safer Future consultation response](#) could confuse duty holders and cause complexity in regulation. Subsequent discussions with officials have not eased these concerns, in particular because it now appears that the Building Safety Bill will not legislate to ensure that mixed use buildings had a single accountable person.

33.3. The Government needs to ensure that there are enough trained professionals to carry out the new-style fire risk assessments. There is a chronic shortage of fire engineering expertise in the UK at present. The Government needs to act now to set up degree, conversion and apprenticeship schemes to address this – without more fire engineers the FSB may fail. These concerns have subsequently intensified as a result of discussions with professional bodies and NFCC. There is a risk that the government could require assessments that simply cannot be obtained. We have raised these concerns with officials who accept this risk needs to be managed.

33.4. Similarly, we are concerned at the impact the Bill could have on insurance costs and have raised this with officials who are managing the risk.

33.5. The Government should not make councils and other freeholders responsible for issues beyond their control. The FSB makes duty-holders responsible for fire doors, even if they are owned by leaseholders. Requiring councils to inspect fire doors is likely to prove unworkable and extremely costly. We have raised this with officials and have drawn some recent relevant case law to their attention.

33.6. Minister need to clarify if existing fire risk assessments are still valid. There are half a million fire risk assessments in social housing and redoing them all in short order would be very expensive and logistically challenging. We understand this is

not the Government's intention, but it would reassure councils if that was stated in Parliament.

33.7. We have various concerns about the practicalities of some of the recommendations of the Grenfell Tower Inquiry that are to be added to the FSB via secondary legislation, which is to be subject to a consultation in coming months.

Response to Building a Safer Future consultation

34. On 2 April, the Government published a number of documents including [a summary of responses to the consultation](#), [its response](#) and [impact assessments](#).
35. The response defines the scope of the new regime as 'all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first)'. This is expected to add approximately 1500 buildings to the number in scope. The fact that this height trigger would still not capture the Cube student residence in Bolton, which suffered a fire last November with near-fatal consequences involving an as yet unidentified form of high-pressure laminate cladding, helps make the point that height is an ineffective measure of risk.
36. The response contains several points the LGA has lobbied for:
- 36.1. The higher-risk regime can expand over time, potentially bring buildings under 18m into scope (although we would prefer a more sophisticated approach than simply lower the height trigger)
 - 36.2. there will be a transition period for existing in-scope buildings. This is important given the scale of work that will be involved in some buildings and the shortage of appropriate skills in the UK
 - 36.3. new buildings will come under the regime at the planning stage if they are over 18m rather than 30m as originally proposed.
 - 36.4. building owners cannot chose their building control regulator for buildings in scope. The response states that 'the skills, expertise and capacity of local authority building control will provide the main support for the new regulator and be complemented by Approved Inspectors where required'.
37. However, the relationship between the new regulator and local authority building control and local fire and rescue services remains unclear.
38. Crucially the response admits that the Government has still not worked out how to make the proposals affordable, in particular for leaseholders and in respect of the employment of a Building Safety Manager. Sets out what duties residents will be under not to endanger others in their block. However, nothing is said about utility companies who might breach compartmentation while installing services etc.

Approved Document B

39. Following a consultation last year and the ministerial announcement in April, we anticipate that the height at which sprinklers will be required in new buildings will be lowered to 11m late this month and changes will also be made requiring improved wayfinding signage to assist firefighters.
40. The lowering of the sprinkler height is the successful outcome of a long period of lobbying by the LGA, in particular the Fire Commission and FSMC and the NFCC.
41. The Government is delaying a requirement for evacuation alert systems in high-rise buildings. The LGA called for this delay, as the proposal had not been properly thought through.

Action on mortgages for properties in high-rise residential buildings

- 42 The LGA remains concerned at the continuing insurance issues faced by leaseholders in blocks that have dangerous cladding (or where leaseholders cannot prove they do not have dangerous cladding) and the difficulties faced by surveyors seeking insurance to demonstrate that cladding is safe. On 2 April the Government announced that:
- 42.1 An industry group has been set up to design a data-sharing portal so that lenders and leaseholders can access the information needed to proceed with sales and re-mortgaging for buildings 18 meters and over, building on the introduction of a new process to support valuation through an 'EWS1' form. (the form that says what the external wall system is)
- 42.2 The Royal Institution of Chartered Surveyors is leading efforts to devise an approach to apply 'reasonable and proportionate valuation judgement' to buildings under 18 meters.
- 42.3 The government has also announced measures to support construction professionals who have experienced challenges in accessing adequate Professional Indemnity Insurance and support for fire engineers who are advising on the safety of high-rise and other complex buildings

Ongoing work

Joint Regulators Group

- 43 As members will recall from previous meetings, MHCLG has been progressing development of policy and legislative options for implementation the new building safety regulatory framework through the Joint Regulators Group. This work has continued following the Covid-19 outbreak, but some meetings have been postponed. The Bill timetable has not yet been extended however and we anticipate that it will be subject to

pre-legislative scrutiny, possibly by the housing select committee before the summer recess.

- 44 The LGA will be submitting evidence to the HCLG select committee inquiry into cladding and responding to a consultation on lowering the height threshold for the ban on combustible cladding

Implications for Wales

- 45 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

- 46 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.

Next steps

- 47 Officers to continue to support the sector's work to keep residents safe and reform the buildings safety system, as directed by members.