

12 November 2020

Building Safety update

Purpose of report

For discussion.

Summary

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

Recommendation

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

Action/s

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

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Building Safety update

Summary of events since the previous meeting

1. Since the Board'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. The Joint Inspection Team has continued inspections. The [Building Safety Bill](#) has been subject to pre-legislative scrutiny by the Housing Communities and Local Government Select Committee (HCLG). The [Fire Safety Bill](#) has passed its committee stage in the Lords and the officer-level task and finish group looking at the timing of the Bill's commencement has advised ministers. The LGA has responded to a [consultation](#) on measures to be included in secondary legislation under the Fire Safety Order, including the implementation of recommendations from the Grenfell Tower Inquiry.

Remediation

Progress

2. [MHCLG statistics](#) show that the pace of remediation of high-rise residential buildings with aluminium composite material (ACM) cladding continues to be slow – 52% of ACM-clad buildings have had the ACM removed (although not all of these have had work completed). At the end of April 2019 remediation was complete in 22 per cent of buildings, now it is 41 per cent. Of the 189 buildings that had completed work by the end of last month, 22 finished in September. This is an improvement on recent months, reflecting both the increased pressure from the Minister and the resumption of work that had stopped as a result of Covid-19.
3. The Joint Inspection team is now conducting two inspections a month. Its work is continuing under the current lockdown.
4. A number of case conferences have been held with councils in London that have blocks which are yet to begin remediation. There have also been two London cladding summits. The focus has been on meeting the Minister's target that all remediation work should begin by the end of the year.
5. Of the 155 social sector residential blocks with ACM 84 have completed work, 64 have begun work and 7 have yet to begin. In the private sector 47 have completed, 80 have begun and 80 have yet to begin. In addition, 41 Student blocks have completed with 9 underway and 4 yet to begin.

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6. These figures are placed in a very worrying context by the early data on non-ACM remediation. MHCLG has now begun publishing statistics on [applications to the non-ACM remediation fund](#). The headline figures are that 2,784 buildings have registered for the fund. While many of these buildings may turn out to be ineligible because they are under 18 metres in height or for other reasons, it is worth contemplating that having remediated fewer than 200 ACM buildings in three years or so, this could represent over 30 years' work at the current rate of progress (the comparison is unfair, but illustrative).

Updated NFCC guidance on simultaneous evacuation

7. On 1 October the National Fire Chiefs Council (NFCC) launched updated [guidance on simultaneous evacuation](#), which:
- 7.1. advises consultation with residents and leaseholders to explore cost/benefit options.
 - 7.2. emphasises the need to consider the installation of common fire alarms where measures are now, or are likely to be in place for the longer term.
 - 7.3. provides a clear distinction between waking watch and evacuation management as separate roles.
 - 7.4. emphasises that residents can carry out waking watches and/or evacuation management duties so long as they are appropriately trained.
 - 7.5. It also provides new definitions:
 - 7.5.1. Short-term: the time required to formulate a longer-term remediation plan, as soon as practically possible and no longer than 12 months; and
 - 7.5.2. Temporary: non-permanent measures implemented to mitigate an unacceptable risk in a building, as an interim measure, adopted for the safety of residents while works to rectify the identified fire safety failings are carried out.

Waking watch data

8. On 16 October MHCLG published [data on waking watch costs](#). The key point made is that alarm costs are lower than waking watch costs. A case study is cited in which 'three Waking Watch quotes received all exceeded the cost of installing a wired alarm system within 6 weeks and a wireless alarm system within 7 weeks'. Table One is reproduced below:

Table 1: Average monthly Waking Watch costs per building and per dwelling, England

Mean monthly Waking Watch cost	England	London	Rest of England
Per building	£17,897	£20,443	£15,279
Per dwelling	£331	£499	£179

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Median monthly Waking Watch cost	England	London	Rest of England
Per building	£11,361	£15,641	£10,929
Per dwelling	£137	£256	£116

9. While this report is welcome, it is not yet clear whether it has resulted in any appreciable benefits for residents, for example through residents persuading landlords, or landlords deciding for themselves, to take the most cost-effective approach to interim measures.
10. There has been no discernible progress in addressing the plight of leaseholders who are unable to obtain EWS1 forms, nor has there been any word from Government on any further assistance to leaseholders whose buildings do not qualify for the Building Safety Fund.

Fire Protection Board

11. As members will recall, the Home Office has established the Fire Protection Board, membership of which includes the LGA and the National Fire Chiefs Council.
12. The Board is now overseeing a wider programme of reviewing the risk in non-ACM clad buildings over 18m. This work is currently on target to be complete by the end of 2021

Public Accounts Committee Report

13. The Public Accounts Committee [reported](#) on the progress of remediation at the end of September. The LGA submitted written evidence.
14. The committee has recommended that MHCLG should:
- 14.1. 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.
 - 14.2. within three months:
 - a) 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; and

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- b) write to the Committee, 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.
- 14.3. working with the Care Quality Commission and local authorities, should make it a priority for its forthcoming data collection exercise to identify any care homes below 18 metres which have dangerous cladding. The Department should write to the Committee by the end of 2020 setting out progress on this and on its wider data collection.
- 14.4. write to the Committee within three months, setting out what specific steps it will take to provide greater transparency for residents throughout the application and remediation process, and how it will ensure that building owners meet a standard of service in communication with residents.
- 14.5. ensure that cross-sector work to resolve issues with the External Wall Fire Review process progress at pace. As part of this cross-sector work, the Department must ensure that professionals can acquire indemnity insurance, and leaseholders are not facing escalating insurance premiums. The Department should write to the Committee within three months setting out its assurance that these processes are operating effectively.
- 14.6. within the next three months, assess the capacity of specialist fire safety skills within the sector and set out what the impact is on delivery of its timetables for the removal and replacement of unsafe cladding. It should include in this assessment options to tackle the skills shortage so that this does not become a barrier to remediation work continuing at pace
15. The LGA's [response](#) to the report urged the Government to act on its recommendations without delay

Reform

Fire Safety Bill

16. The Fire Safety Bill has now passed its committee stage in the Lords. The Bill clarifies that external wall systems (EWS, cladding) and front door fire doors are covered by the Regulatory Reform (Fire Safety) Order 2005 (FSO). Among the consequences of this are that responsible persons (RPs) under the FSO must include EWS and fire doors in fire risk assessments (FRAs) and the fire service can potentially take enforcement action where the EWS is unsafe.
17. Once the Bill commences, RPs will need to review their FRAs. During the passage of this Bill through Parliament it has become clear that there is likely to be a significant shortage of assessors to carry out these reviews, because many of those qualified to conduct normal fire risk assessments do not have the specialist skills necessary to include the external wall system in a risk assessment and because insurers are reluctant to provide Professional Indemnity Insurance (PII) cover for this sort of work.

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18. The potential consequences of this are:

- 18.1 responsible persons (including councils) may be unable to fulfil their obligations under the Bill.
- 18.2 a demand/supply imbalance drives up the cost of assessments, adding to the burden on the housing revenue account and/or the taxpayer.
- 18.3 if owners with sufficient resources pay the higher cost to get all their buildings assessed irrespective of the risk to residents, high risk buildings with less well-off owners will be left at the back of the queue – and that queue could last for years.
- 18.4 delays in obtaining FRAs could compound the problems caused by the inability of residents to obtain EWS1 forms and the consequent effects of this on mortgage applications – even in buildings that have safe cladding systems.

19 The Government has recognised that this problem exists and established a task and finish group to look at how best to commence the Bill. The LGA laid an amendment reflecting the advice that Group gave to ministers at the committee stage of the Bill. Although the government has not accepted the amendment (because it contained the requirement to provide an Approved Code of Practice which in turn would require a consultation process that would delay the Bill), it has promised to meet Lord Porter to discuss the issue and has said it is listening to the LGA's concerns.

20 It is hoped that the Government will concede the need for statutory guidance through an approach that does not delay the Bill. However, a number of unknowns remain:

- 20.1 The number of buildings likely to fall into different categories of risk.
- 20.2 The number of assessors available to undertake the work (this is further complicated by the question of whether any assessors can undertake the work and whether some may be able to work with surveyors who can assess EWS).
- 20.3 Whether insurers will be more willing to provide PII in future.
- 20.4 Exactly how much control any form of guidance can give us over the order in which buildings are assessed.
- 20.5 How much use the FRS will make of the new powers and what effect this will have on the speed of remediation

21 As the LGA's proposal of the amendment made clear 'a balance will have to be struck between commencing the Bill as soon as possible, so that the fire service can use its powers, and assessing the disparity between the number of fire risk assessments that will need be reviewed and the capacity of the fire risk assessment industry to do so. Parliament needs to make this judgement'.

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Fire Safety Consultation

22 The LGA responded to the Government's consultation on proposals to:

22.1 strengthen the Regulatory Reform (Fire Safety) Order 2005 and improve compliance.

22.2 implement the Grenfell Tower Inquiry Phase 1 Report recommendations that require a change in law to place new requirements on building owners or managers of multi-occupied residential buildings, mostly high rise buildings.

22.3 strengthen the regulatory framework for how building control bodies consult with Fire and Rescue Authorities and the handover of fire safety information.

23 The response was circulated to the Board's lead members, other relevant lead members and the Grenfell Task and Finish Group for comment and approval before submission.

Building Safety Bill

24 The Building Safety Bill has been subjected to pre-legislative scrutiny by the HCLG select committee. The Minister gave evidence to the committee on 19 October and touched on most of the areas where the LGA has expressed concern.

25 The Minister said there were still some complex issues to be ironed out before the Building Safety Bill was introduced to Parliament in relation to cost recovery from leaseholders, who would have to meet some costs of remediation.

26 The LGA had raised the cost of the work implied by the Building Safety Bill to leaseholders in evidence it submitted to the committee.

27 Lord Greenhalgh told the inquiry that the Government wanted to protect leaseholders where possible, but there had always been an expectation that some costs would fall on leaseholders. The challenge was how to make that affordable. One committee member asked for reassurance that the Bill would not be introduced to Parliament until the Government had found a solution to protect leaseholders. Lord Greenhalgh said the Bill would not have an easy passage through Parliament without that, so its endeavour was to achieve that before the Bill's introduction.

28 In July 2020, alongside the launch of the Building Safety Bill, which included proposals to allow leaseholders to be charged for building safety costs (see Annex to this paper), the Government appointed Michael Wade to work with leaseholders, and the finance and insurance industries to test and recommend funding solutions to protect leaseholders from unaffordable costs of fixing historic defects, ensuring that the burden does not fall on tax payers and develop proposals to address insurance issues around building safety. Mr Wade has worked in the insurance industry since 1975 culminating in

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his appointment in 2013 as the Crown Representative for Insurance at the Cabinet Office to advise the UK Government on insurance and reinsurance risks.

- 29 The LGA representatives on the Joint Regulators Group have been expecting to hear from Mr Wade at its last two meetings, but have been told the work is still at the scoping stage. Mr Wade told the HCLG committee's pre-legislative inquiry that this work was still at a very early stage: its remit was to look at these costs, unblock the finance arrests and ensure the costs to leaseholders were affordable. He was working closely with the Treasury and external advisors.
- 30 The Minister acknowledged that the planning white paper called into question the operation of Gateway One of the new regime for new buildings and held out the possibility that this could be preserved in the new planning regime. However, he downplayed concerns that Permitted Development has undermined building safety, a subject Fire Services Management Committee recently raised in a letter to him.
- 31 Lord Greenhalgh indicated he did not want to see the scope widened too quickly and does not appear to have referred to the fact that a simple 18m+ definition of height brings many safe buildings into scope. Hopefully the Committee will appreciate this point in its report. He felt it would be appropriate to put on the face of the Bill those factors which the regulator would be asked to consider when expanding the scope of the legislation in future.
- 32 The Minister said it would take all of next year for the Bill to pass through the House, and a further year would have to be allowed for the system to bed down. He went on to say that five years was a reasonable period to allow a new regulatory system to bed in before independent review. However, he was open to the idea of parliamentary scrutiny in the meantime.
- 33 The Minister and his officials were questioned on the competencies of building managers, the system for regulating them and the possible reluctance of insurers to insure them.
- 34 The Minister said that the fire safety and building safety regimes would not always overlap completely and accountability would not always fall on the same person. He believed that a culture of transparency was the most important thing in avoiding confusion for residents.
- 35 The Committee's report is expected before the end of November.
- 36 The LGA has been invited to join a Charges Legislation Cross Cutting Working Group by MHCLG. We have yet to see the terms of reference, but this Group is understood to

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be looking at our concerns over how the charging and cost-recovery mechanisms in the Bill will work.

- 37 Officers are monitoring the pace with which the Health and Safety Executive is introducing some elements of the new system.

Improvement activity

- 38 Officers have assisted in the arrangements of a round table for council chief executives on the requirements of the new regime and hope to continue this work.
- 39 Officers are working on advice to councillors to assist in advising constituents with cladding issues.

Implications for Wales

- 40 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

- 41 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

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