

Building Safety Update paper

Purpose of report

For information.

Summary

This report updates members on the LGA's building safety related work.

Recommendation

That the Board note the update

Actions

Officers will take action as directed

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Building Safety Update Paper

Remediation

Progress

1. [MHCLG statistics](#) show that the pace of ACM remediation continues to be slow – 257 buildings (56% of all identified buildings) had had their ACM removed by the end of October. At the end of April 2019 remediation was complete in 22 per cent of buildings, now it is 44 per cent. Of the 202 buildings that had completed work by the end of last month, 22 finished in September and 13 in October. 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.
2. Of the 155 social sector residential blocks with ACM, 90 have completed work, 61 have begun work and 4 have yet to begin. In the private sector 53 have completed, 83 have begun and 75 have yet to begin. In addition, 42 Student blocks have completed with 8 underway and 4 yet to begin.
3. These figures are placed in a very worrying context by the data on non-ACM remediation. MHCLG has now begun publishing statistics on [applications to the non-ACM remediation fund](#). The headline figures are that 2784 buildings have registered for the fund. While many of these buildings may turn out to be ineligible, it is worth contemplating that having remediated 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). A recent [Sunday Times](#) article suggested work would take 150 years at the current rate and estimated that 'about 700,000 people are still living in blocks of flats taller than 18m wrapped in dangerous materials'.
4. Approximately a quarter of residential blocks over 18m appear to have dangerous cladding systems. There are estimated to be around 8 times as many blocks between 11 and 18m high. If so, a 'failure rate' of 5 per cent would more than double the number of buildings affected (although the 11-18m half of the total buildings would involve fewer flats and fewer residents).
5. The LGA remains concerned about a number of other building safety issues, in particular the compartmentation in timber-framed buildings of modern construction and the extent to which owners of large panel system buildings are aware of the nature of those buildings (in particular whether owners appreciate the need to check the effectiveness of any strengthening work carried out after the Ronan Point disaster (particularly where gas is installed) and , the durability of the construction). There appears to be no definitive list of LPS buildings.

Financial issues for residents

6. While safety is the most obvious problem facing residents whose buildings have potentially combustible cladding systems it is only one of several:

6.1. Interim measures cost. In many blocks with combustible cladding, fire service inspections have led to a requirement for interim measures, usually involving a change from a stay put policy to one of simultaneous evacuation using either an alarm system or a waking watch patrol. In private blocks the costs of these are imposed on leaseholders.

6.2. 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 |
| Median monthly Waking Watch cost | England | London | Rest of England |
| Per building | £11,361 | £15,641 | £10,929 |
| Per dwelling | £137 | £256 | £116 |

6.3. NFCC has recently issued updated guidance on simultaneous evacuation, which emphasises the need to consider the installation of common fire alarms rather than waking watches.

6.4. Mortgage blight. In January the Government and the Royal Institute of Chartered Surveyors introduced the EWS1 form which was ‘was designed following Government advice regarding external wall systems on buildings above 18m and was created to ensure buildings over 18m tall could be assessed for safety to allow lenders to offer mortgages’. Councils are receiving requests from leaseholders (Camden’s statement may be of interest). There are widespread reports of owners who cannot sell, remortgage or staircase due to their inability to get an EWS1 form.

- 6.5. Mortgage lenders have been requesting EWS1 forms in respect of buildings under 18m. The [Expert Panel's Consolidated Advice Note](#) published in January has been blamed for this development, because it stated that ACM is dangerous on building of any height and that 'remedial actions may be required in buildings below 18m where there is a risk to the health and safety of residents'. The government issued a [supplement](#) to the Consolidated Advice note in November 2020, which appears to be aimed at reducing the need for EWS1 forms. However, the spread of demand for EWS1 forms may well have taken place anyway as lenders sought to ensure that they did not make loans against property that was liable to burn down. In any case, the Expert Panel's advice was correct.
- 6.6. The Government [announced](#) on 21 November that EWS1 forms would no longer be required for buildings without cladding systems. In fact they have never been *required* on these buildings, although there have been some requests for them in relation to such buildings either in error or because there was uncertainty over whether a building had cladding; it is unclear how the new arrangements solve this problem.
- 6.7. The essential problem with the EWS1 form is the shortage of surveyors who are both competent to make judgements about external wall systems and can obtain professional indemnity insurance to do so. The Government has [announced](#) nearly £700,000 of new funding to increase the number of fire risk assessors. This is most welcome, but will obviously take a very long time to deliver a solution.
- 6.8. [Insurance costs](#). Some buildings have seen insurance costs increase by as much as 800 per cent in a year, with a reluctance among companies to be the sole provider of insurance.
- 6.9. [Remediation costs](#). The law allows the cost of remediation to be passed on to the leaseholder. The HCLG select committee suggests that the £1bn non-ACM Building Safety Fund (BSF) will only cover 800 buildings implying a cost of around £1.25m per block. Individual leaseholders have been hit with 5-figure bills for remediation.
- 6.10. The BSF is being operated on a first-come-first-served basis and is likely to cover only about one third of cases. Councils are struggling to access it and the Ministry has been clear that the fund is not really aimed at social housing (although it is supposed to cover costs that might fall on leaseholders in socially-owned blocks). The LGA raised this issue in its spending review submission. The Spending Review made no changes to the BSF.
7. The HCLG select committee [reported](#) on the progress of cladding remediation in June. The key points of the report were
- Remediation is moving too slowly

- The £1bn fund (see above) will not be enough to cover the costs of remediation and will need to be increased to cover all fire safety defects in buildings under 18m as well as those over 18m
 - Interim fire safety measures should also be funded
 - Those responsible for the building safety crisis should ultimately contribute to meeting the bill.
 - The External Wall Fire Review (EWS1) process is not working and the Government should provide a better system
 - The Government must ensure that residents in affected buildings are offered support by the NHS to cope with the physical and mental health toll of living in a potentially dangerous building.
8. The Public Accounts Committee [reported](#) on the progress of remediation at the end of September. Its recommendations are listed below with the Government [response](#) in brackets:
- 8.1. within six months MHCLG should:
- 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 (the Government aims to do so by Spring 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 (Government intends to do so from February 2021).
- 8.2. within three months MHCLG should:
- 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 (the Government claims it is unable to do so 'under the timeframe proposed because applications and registrations for non-ACM cladding removal are still being processed'); and
 - 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 (Government agreed to do so).
- 8.3. MHCLG should work 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 us by the end of 2020 setting out progress on this and on its wider data

collection (Government rejected this saying that an NFCC/CQC MoU will be rolled out next year. It agreed to update the committee on 11-18m EWS data collection in Spring 2021).

- 8.4. MHCLG should write to us 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 (Government agreed to do so in December).
 - 8.5. MHCLG should 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 us within three months setting out its assurance that these processes are operating effectively (the Government agreed but has set a target implementation date of May 2021).
 - 8.6. MHCLG should, 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 (the Government agreed to do this in December 2021 – it is worth noting that the home office needs to do this as part of its preparation for the Fire Safety Bill's commencement)
9. The LGA's [response](#) to the report urged the Government to act on its recommendations without delay.

Costs of remediation

10. The chief barrier to remediation appears to be the cost. If government refuses to fund remediation, freeholders may fail to act either because there is no commercial case for it or because they cannot afford it (especially where the freehold is collectively owned by leaseholders). Attempting to pass the cost on to leaseholders may not help the freeholder because the leaseholders probably cannot afford it and the money will not be recoverable. Pursuing compensation claims, if practical (which it probably is not for leaseholders), will be a lengthy process, so the cost needs to be met before the conclusion of any case if leaseholders are to avoid massive insurance and interim measures costs.
11. This is a matter of concern to councillors in their role as community representatives but also has specific negative implications for councils, which face the possibility that former

homeowners will present as homeless, buildings will remain dangerous for years or be left empty, possibly abandoned by both residents and freehold owners.

12. The LGA first raised the need to consider this issue with MHCLG in the autumn of 2017 and has been pushing for the Government to meet upfront costs for well over two years, arguing that ministers should then pursue compensation from those responsible.
13. In July 2020, alongside the launch of the Building Safety Bill, which included proposals to allow leaseholders to be charged for building safety costs, 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. In October, Mr Wade told the HCLG committee that this work was still at a very early stage.

Enforcement

14. The process of identifying the claddings systems on blocks over 18m relies on data collection exercise by local authorities which is now 80-90 per cent complete. We currently have no data on the proportion of buildings with non-ACM dangerous cladding that are council-owned.
15. This data is being passed to fire and rescue services under the supervision of the Fire Protection Board (on which the LGA is represented). FRSs then establish which buildings need to be audited for fire safety purposes and hope to complete this process by the end of 2021. Audits may result in enforcement action or interim measures.
16. The focus of enforcement efforts to date has tended to be on ACM-clad buildings but this is likely to change in 2021. Until the Building Safety Regulator is established (which will not happen in 2021) enforcement takes place under the Housing Act by council environmental health teams or under the Fire Safety Order by FRSs...
17. The passing of the Fire Safety Bill will strengthen the ability of FRSs to take action under the Fire safety Order but it will not be a magic bullet and the large number of buildings involved means that both fire services and councils will need to take action – as well as working together to ensure that action is coordinated. The LGA is discussing how to achieve this with HCLG, the Home Office and NFCC.
18. Pressure for action is likely to come in two forms:
 - a) Buildings where either the owner or the cladding system is unknown. Both the FRS and the local housing authority have powers to obtain information from the owner. It will be important to avoid either duplication or delay while enforcing authorities argue over who should proceed first and to ensure information is shared between enforcing authorities.

- b) Buildings where the government is unwilling to fund necessary remediation. In these cases both councils and FRSs can issue an improvement notice which sets a deadline for remediation of the cladding system and carries penalties if not complied with (the deadline has to be reasonable); but only councils have powers to carry out works in default. Prohibition of buildings tends to be seen as an absolute last resort.²⁸

- 19) As members will recall the LGA is hosting the Joint Inspection Team (funded by MHCLG) to support councils to use their enforcement powers under the Housing Act and the Housing Health and Safety Rating System.
- 20) The team has resumed inspections following a hiatus caused by covid 19 and has recruited its full complement of staff. It is inspecting roughly two buildings a month, twice the previous rate. Its work is continuing under the current lockdown.
- 21) The LGA is discussing the future of the JIT beyond March 2021 with MHCLG.

Reform

Fire Safety Bill

22. The Fire Safety Bill has now passed from the Lords back to the Commons. The Lords inserted a Government amendment offered in concession to the LGA's concerns about the effect of the Bill. This is not expected to be rejected by the Commons.
23. 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, including stock-holding councils) 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.
24. 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.
25. The potential consequences of this are:
- 25.1. responsible persons (including councils) may be unable to fulfil their obligations under the Bill
 - 25.2. a demand/supply imbalance drives up the cost of assessments, adding to the burden on the housing revenue account and/or the taxpayer

- 25.3. 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.
- 25.4. 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.
26. 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 did not accept 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 put forward an alternative designed to achieve the same ends through statutory guidance based on a risk-assessment tool aims to ensure that the highest risk buildings are assessed first.
27. The LGA will be involved in devising this guidance but a number of unknowns remain:
- The number of buildings likely to fall into different categories of risk
 - 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)
 - Whether insurers will be more willing to provide PII in future.
 - Exactly how much control any form of guidance can give us over the order in which buildings are assessed.
 - How much use the FRS will make of the new powers and what effect this will have on the speed of remediation
28. 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'.
29. In addition, the Lords inserted other amendments to the Bill, requiring the implementation of some findings of the Grenfell Tower inquiry (which are likely to come in under the Building Safety Bill) and preventing freeholders from passing on costs under the FSO to leaseholders. These are not supported by the Government.

Fire Safety Consultation

30. The LGA responded to the Government's consultation on proposals to:
- 30.1. strengthen the Regulatory Reform (Fire Safety) Order 2005 and improve compliance

- 30.2. 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
- 30.3. strengthen the regulatory framework for how building control bodies consult with Fire and Rescue Authorities and the handover of fire safety information.

31. Some of these proposals have significant implications for stock-holding councils (such as the frequency with which fire doors and lifts are inspected and proposals related to evacuation plans). The response was circulated to lead members, other relevant lead members and the Grenfell Task and Finish Group for comment and approval before submission.

Building Safety Bill

- 32. The Building Safety Bill has been subjected to pre-legislative scrutiny by the HCLG select committee.
- 33. The Bill establishes a building safety regulator within the HSE to
 - 33.1. Implement the new, more stringent, regulatory regime for higher-risk buildings.
 - 33.2. Oversee the safety and performance of all buildings.
 - 33.3. Assist and encourage competence among the built environment industry, and registered building inspectors.
- 34. The implementation of the new regime will see the HSE, councils and fire services form a new, close relationship as council building control services and fire services deliver the regime for higher-risk buildings (Environmental Health services may also be involved). It leaves the HSE and local regulators to work out the practical details, but places all three under a duty to cooperate and gives the HSE the power to direct councils and fire services. The latter power is to be used only in exceptional circumstances and the Bill provides safeguards to prevent it becoming a default option.
- 35. In practice the regime for higher-risk buildings is expected to involve multi-disciplinary teams not dissimilar to the Joint Inspection Team which LGA currently hosts.
- 36. The LGA's evidence to the committee argued that, subject to the necessary secondary legislation being passed and sufficient funds provided - the Bill provides the strong regulatory system needed to deliver an effective system of building safety. Nevertheless the LGA has expressed the following concerns:
 - 36.1. The difficulty of funding building safety measures without bankrupting leaseholders.
 - 36.2. The conflict between the new building safety system and the Government's planning white paper.
 - 36.3. The scope of the Bill, the speed at which its scope can be expanded and the constraints on its expansion.

- 36.4. How the charging provisions in the Bill will work and set-up costs for the Building Safety Regulator.
 - 36.5. The alignment of this Bill with the Fire Safety Bill.
 - 36.6. The adequacy of the product safety provisions.
 - 36.7. The limited removal of competition in building control
37. Lord Porter gave [evidence](#) to the committee on behalf of the LGA on 21 September.
38. The committee's [recommendations](#) reflect the LGA's concerns to a large extent. The key recommendation being that the Government protect leaseholders and recommit to meeting the costs of the historic building safety defects.
39. The Committee also recognised the need to end the ability of duty holders to pick their own building control body and urged ministers to commit to a firm timetable for expanding the scope of the Bill, sharing our view that height is a poor determinant of risk.

Improvement activity

- 40. The HSE is expected to undertake a significant comms effort over the next two years to prepare local authorities for their expanded role in enforcing the Bill and their new responsibilities as stock-holders.
- 41. The Bill will strengthen the role of local authority building control in relation to high rise buildings but as it stands retains the problem of competition from Approved Inspectors. Building Control will also have an enhanced, but as yet unspecified role in inspection and enforcement of the 'occupation phase' in a building's life.
- 42. The building safety Regulator will become a statutory planning consultee, probably in June next year.
- 43. The enforcement role of environmental health is not expected to change, although the HHSRS will be reviewed.
- 44. Landlords will have significant new duties, ranging from ensuring better engagement with residents to maintaining a golden thread of information about a building – which could be particularly challenging in relation to some older blocks.
- 45. The HSE is very keen to engage with the sector and we are facilitating this. Although we have a very good relationship with the HSE, the scale of reform and its complexity make engagement a challenge.
- 46. The LGA and Local Authority Building Control are represented on the Joint Regulators Group, an HSE-chaired body advising on policy and implementation, which has been working on the issue for a couple of years.

47. A Charges Legislation Cross Cutting Working Group has been established, which is looking at our concerns over how the charging and cost-recovery mechanisms in the Bill will work.
48. Officers are monitoring the pace with which the HSE is introducing some elements of the new system

Implications for Wales

- 37 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

- 38 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

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