

14 January 2021

## **Building Safety update**

### **Purpose of report**

For discussion.

### **Summary**

This report updates the Safer and Stronger Communities Board 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**

### **Remediation**

#### *Advice*

1. Just before Christmas the LGA published advice for councillors on [supporting residents who have been affected by cladding issues](#).

#### *Progress*

2. [MHCLG statistics](#) show that the pace of Aluminium Composite Material (ACM) cladding remediation continues to be slow – 267 buildings (58% of all identified buildings) had had their ACM removed by the end of October 2020. At the end of April 2020 remediation was complete in 22 per cent of buildings, now it is 46 per cent. Of the 213 buildings that had completed work by the end of November, 22 finished in September, 13 in October and 11 in November. 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.
3. Of the 156 social sector residential blocks with ACM, 90 have completed work, 64 have begun work and 2 have yet to begin. In the private sector 62 have completed, 88 have begun and 63 have yet to begin. In addition, 43 Student blocks have completed with 10 underway and 1 yet to begin.
4. 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’.

#### *Data collection on external wall systems (EWS), mortgage and insurance issues*

5. In July 2019 councils were asked by MHCLG to collect data on the external wall systems on all high-rise residential buildings in England. Although the exercise is not yet complete, it has reached a stage where [estimates of the number of buildings with little or minimal](#) cladding have been published. These estimates were drawn up to show proportions of housing stock that does not need an EWS1 form.
6. In January 2020 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’](#). However introduction of the EWS1 form has resulted in widespread reports

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of owners who cannot sell, remortgage or staircase due to their inability to get an EWS1 form.

7. Although conceived as only being used in relation to high-rise residential buildings over 18m, mortgage lenders have since its introduction been requesting EWS1 forms in respect of buildings under 18m. The [Expert Panel's Consolidated Advice Note](#) 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.
8. 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 ('brick slip' cladding, which may conceal flammable insulation is not necessarily easy to distinguish from solid brick; render may cover a wall or flammable insulation); it is unclear how the new arrangements solve this problem.
9. Apparently as part of its efforts to reduce the requests for EWS1 forms the government has issued [supplementary advice](#) to the Expert Panel's [Consolidated Advice note](#) of January 2020. The LGA has raised concerns about the potentially confusing nature of this advice with the Minister.
10. 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.
11. 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. The Sunday Times has provided examples as follows:
  - 11.1 a development in west London, which was built with flammable aluminium composite material (ACM) and timber cladding, saw the premium rise from £130,000 last year to £690,000 this year. The previous insurer, who used to cover the whole development, will now only cover 50 per cent, with the rest of the cover provided by a combination of four firms. Service charges had increased by nearly £1,000 p.a.;

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- 11.2 an east London development has seen insurance for two-bedroom flats up from £273 to £677;
- 11.3 a development in Manchester has seen premiums for two-bedroom apartments rise from £200 to £800 a year. The block was uninsured for a month;
- 11.4 research by the Association of Residential Management Agents shows the biggest rise in insurance was at a block in Peckham, southeast London, where last year's premium of £34,000 went up to £300,000 this year — a rise of 782 per cent.

*Public Accounts Committee*

12 The Government has [responded](#) to the Public Accounts Committee [report](#) on the progress of remediation, which was published at the end of September 2020. Set out below are the recommendations from the Committee with the Government's response in brackets:

12.1 within six months the Ministry of Housing, Communities and Local Government (MHCLG) should:

- a) be working with the new Building Safety Regulator, to 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).

12.2 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 (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 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 (Government agreed to do so).

12.3 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

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

12.4 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).

12.5 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 (the Government agreed but has set a target implementation date of May 2021).

12.6 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 (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).

#### *Fire Protection Board (FPB)*

- 13 The Building Risk Review programme overseen by the Board remains on track to ensure all residential buildings over 18m have been assessed or inspected by the end of 2021.
- 14 The LGA is seeking clarity over the extent to which the funding from MHCLG and the Home Office during 2020-21 to provide a protection uplift, implement Grenfell Tower Inquiry findings and support the FPB's work will continue into 2021-22.

#### *Joint Inspection Team*

- 15 As members will recall, the LGA is hosting the Joint Inspection Team (JIT) to support councils to use their enforcement powers under the Housing Act and the Housing Health and Safety Rating System. The LGA is discussing the future of the JIT with MHCLG with a view to the possible expansion of both its size and remit (to cover buildings with non-ACM cladding)

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- 16 The team is currently inspecting roughly two buildings a month, although the risk assessment of work is currently being reviewed as a result of the developing Covid-19 pandemic.

#### *Waking Watch*

- 17 The government has announced a new £30 million [fund](#) to pay for the costs of installing an alarm system in buildings with unsafe cladding. Common Alarms systems will enable costly Waking Watch measures to be replaced in buildings waiting to have unsafe cladding removed. The LGA and NFCC are involved in discussions as to how this fund will operate. The sum available is unlikely to cover the demand for alarms.

### **Reform**

#### *Building Safety Bill*

- 18 The Housing Communities and Local Government (HCLG) Select Committee has reported on the Building Safety Bill. The committee's [recommendations](#) reflect the LGA's concerns to a large extent. The LGA had expressed the following concerns:
- 18.1 The difficulty of funding building safety measures without bankrupting leaseholders.
  - 18.2 The conflict between the new building safety system and the Government's planning white paper.
  - 18.3 The scope of the Bill, the speed at which its scope can be expanded and the constraints on its expansion.
  - 18.4 How the charging provisions in the Bill will work and set-up costs for the Building Safety Regulator.
  - 18.5 The alignment of this Bill with the Fire Safety Bill.
  - 18.6 The adequacy of the product safety provisions.
  - 18.7 The limited removal of competition in building control.
- 19 The committee called for the Government to:
- 19.1 ensure costs are not passed on to leaseholders.
  - 19.2 ensure Gateway one is not undermined by expansion of permitted development.
  - 19.3 indicate its intention to review the scope and set a timetable for doing so a firm and to consider the vulnerability of residents in the review.
  - 19.4 publish with the Bill the details of the charging regime that the regulator will operate to fund its regulatory functions, where cost recovery is practical, and commit unequivocally to ringfenced central funding to cover the cost of functions for which cost recovery will not be possible.

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- 19.5 publish statutory guidance alongside the Bill outlining how it expects accountable persons and responsible persons to co-operate in practice. In the long term, we recommend that the Government review the operation of the two regimes with a view to rationalising and simplifying the legislation.
- 19.6 publish with the Bill its proposals for improving the product testing regime and recommended that the Government provide for the publication of test failures and re-run tests and for the establishment of an independent and unified system of third-party certification in order to introduce greater transparency and rigour into the regulation of construction products.
- 19.7 remove dutyholder choice entirely from the building control system and replace it by a system of independent appointment.
- 20 MHCLG is required to respond to the committee's report by the end of this month.

#### *Fire Safety Bill*

- 21 The Fire Safety Bill has now passed from the Lords back to the Commons and entered ping-pong.
- 22 The Lords inserted a Government amendment offered in concession to the LGA's concerns about the effect of the Bill. This promises statutory guidance to accompany commencement, which if followed protects duty-holders from enforcement action.
- 23 As far as our long-held concerns about the impact of the Bill given the shortage of fire risk assessors are concerned, the next stage is the framing of this guidance. The Home Office will be chairing a group including the LGA, NFCC and Fire Sector Federation to oversee the production of the guidance and the risk-assessment tool it depends on.
- 24 The guidance will be aimed at the fire service, building owners and risk-assessors.
- 25 Devising the tool is a task that requires technical expertise but is entirely doable, the difficult part is how to ensure that across the building stock as a whole, the highest priority buildings get assessed first. This would be true even the following were known (which they are not):
- 25.1 The number of buildings likely to fall into different categories of risk
- 25.2 The number of assessors available to undertake the work
- 25.3 Whether insurers will be more willing to provide PII in future.
- 26 In the circumstances the best we can do is probably:

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- 26.1 to use deadlines to set expectations;
- 26.2 to ensure the guidance can be amended quickly if things go awry;
- 26.3 to encourage Government to improve the information it has in relation to the variable above. In this context it is worth bearing in mind that MHCLG has promised to get back to the Public Accounts Committee in December in relation to its recommendation that the Government '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'.
- 27 The Lords also inserted three other amendments. We expect these amendments to be opposed by the Government which should mean that they are overturned in the Commons and the Bill returns to the Lords. As a result, the Bill's commencement has slipped back. It can be expected two months after Royal Assent.
- 28 The estimated commencement date has slipped from February to March as a result.
- 29 Work will be necessary to ensure that enforcement activities under the Bill are aligned with those undertaken by councils under the Housing Act. Discussions on how best to achieve this are likely to take place in the next few months.

#### *Letters to Minister*

- 30 The lead members of the Fire Services Management Committee wrote to Lord Greenhalgh, the Minister for Fire and Building Safety, to ask that officials discuss with the LGA measures to ensure that extension of Permitted Development Rights does not undermine fire safety. We have yet to receive a reply. However, the government has introduced a requirement for a developer seeking to extend an existing building, which is 18 metres or more in height, by adding one or two storeys, to provide a report from a chartered engineer or other competent professional confirming that the external wall construction of the existing building complies with the Building Regulations to the local planning authority.
- 31 Last month we wrote to the Minister raising the need for action on large panel system buildings, Reinforced Autoclaved Aerated Concrete and raising our concerns about the [supplementary advice](#) to the Expert Panel's [Consolidated Advice note](#) of January 2020.

#### **Implications for Wales**

- 32 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

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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**

- 33 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**

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