Building Safety update

Purpose of report

For information.

Summary

This report updates members on the LGA’s building safety work since the Commission’s last meeting. Home Office officials will be in attendance at the meeting to provide an update on commencement of the Fire Safety Act and the introduction of regulations implementing recommendations from phase one of the Grenfell Tower Inquiry.

Recommendation

That members note the update.

Action/s

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

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Building Safety update

Remediation

*Progress*

1. [MHCLG statistics](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010327/Building_Safety_Data_Release_July_2021.pdf) show that by the end of July 2021, 93% (441) of all identified high-rise residential and publicly owned buildings in England had either completed or started remediation work to remove and replace unsafe Aluminium Composite Material (ACM) cladding (97% of buildings identified in December 2019). 18 new buildings have been identified in 2021.
2. Progress remains slow. Only one building completed work in July and one in August.
3. Three social sector residential buildings have yet to begin remediation; these buildings had not been identified as having ACM at the start of the year. They are not council-owned.
4. 657 buildings have been approved to apply for remediation funding under the BSF and 85 have begun work, out of 2820 registrations. Over 1,000 have either been withdrawn or deemed ineligible, the remainder are still being assessed.
5. One of the buildings with interim measures and ACM cladding, New Providence Wharf, experienced a serious fire on 7 May. The lead members of the Fire Services Management Committee and the NFCC Chair wrote a [joint open letter](https://www.local.gov.uk/responsibility-check-your-premises-fire-safety-measures) to responsible persons reminding them of their duties in response to the fire in August.

*Joint Inspection Team*

1. The Joint Inspection Team’s funding has been approved for 2020-21 and signed off by the LGA Board. The Indemnity has also been finalised and extended to cover non-ACM cladding. The 2020-21 programme of work includes significant training for councils. This should help to maximise its impact.

*Fire Protection Board*

1. The Building Risk Review programme overseen by the Board, remains ahead of its target schedule to ensure all residential buildings over 18m have been assessed or inspected by the end of 2021. Although a number of new buildings have been discovered as a result of the review, it is still anticipated that the work will be complete by the end of the year.

*Waking watch relief fund*

1. Data on the fund is set out in **annex 1**

*Written Ministerial Statement*

1. On 21 July the Housing Secretary published a [written ministerial statement](https://www.gov.uk/government/speeches/proportionality-in-building-safety) setting out the conclusions of a small group of experts on fire safety that he had asked to ‘to consider the evidence and advise me on steps that should be taken to ensure that a more risk-proportionate approach is taken to fire safety in blocks of flats’. The recommendations of this group’s [report](https://www.gov.uk/government/publications/independent-expert-statement-on-building-safety-in-medium-and-lower-rise-block-of-flats/independent-expert-statement-in-building-safety-in-medium-and-lower-rise-blocks-of-flats) were:
	1. EWS1 forms should not be a requirement on buildings below 18 metres.
	2. In the small number of cases where there are known to be concerns these should be addressed primarily through risk management and mitigation.
	3. There should be a clear route for residents/leaseholders to challenge costly remediation work and seek assurance that proposals are proportionate and cost effective.
	4. Government should work with the shadow Building Safety Regulator to consider how to implement an audit process to check that fire risk assessments are following guidelines, not perpetuating the risk aversion we are witnessing, in some instances, at the present time.
	5. Fire risk assessors, and lenders should not presume that there is significant risk to life unless there is evidence to support this. This would ensure that they respond only to the evidence and adopt a far more proportionate and balanced approach.
2. The Government also announced that it would be taking additional steps ‘to ensure a proportionate response to risk’, including:
	1. Development of a new more risk-proportionate guidelines for fire risk assessors, including PAS9980. The Consolidated Advice Note, the product of the need for reliable safety information in the period following the Grenfell Tragedy will shortly be retired.
	2. Launching a government-backed professional indemnity insurance scheme for qualified professionals conducting external wall system assessments.
	3. Working with the National Fire Chiefs Council to re-emphasise the scope of the simultaneous evacuation guidance, the temporary nature of waking watches and the alternative proportionate fire safety interventions to be considered before implementing a waking watch, particularly in buildings below 18m.
3. The LGA has long argued for a more proportionate approach to remediation, calling for landlords to be allowed to take a cost-effective approach to ensuring residents are safe – for example installing sprinklers where this can be done more cheaply than remediating for safety issues if – and only if – it delivers safety. In this respect the Governments move away from insisting that every last piece of flammable cladding must be removed is a welcome one.
4. However, the approach the Secretary of State set out is open to criticism in that it appears to suggest that because fires are rare, the risk of a cladding fire can be effectively ignored under 18m – even though some serious fires have occurred in buildings under 18m in recent years. It is also open to the criticism that it could lead to confusion as the expert report states nothing in it contradicts the Consolidated Advice Note (CAN), which said that ACM cladding should be removed from any building irrespective of height, yet in seeking to discourage the requirement for EWS1 forms under 18m the Written Ministerial Statement gives the impression that cladding need not be examined in these buildings.
5. The Government has now announced it intends to withdraw the CAN before PAS 9980 is ready. We have told officials that the government needs to make it clear what guidance exists for duty holders who are required to review their risk assessments by the Fire Safety Act.
6. Since late last year the LGA has argued for better join up between environmental health teams that might take action on buildings with dangerous cladding systems, council services in general and fire and rescue services. To this end, a working group was established by the Fire Protection Board that has drafted a protocol for joint working that should become available shortly. The LGA may be asked to host this protocol.
7. In August MHCLG wrote to local authorities about enforcement. The letter is annexed separately. The message we have been told the letter sought to convey is that the Secretary of State wants to see local authorities and fire services working together to accelerate remediation, albeit in a proportionate manner (i.e. in a way that does not inflame the EWS1 issue). To this end the Joint Inspection Team has been funded to offer training to councils.

**Reform**

**Fire Safety Act**

1. The Fire Safety Act is expected to commence in mid-October. Following lobbying from the LGA (and the NFCC) the Home Office has agreed that it will not commence ahead of the completion of work on the Building Prioritisation Tool (but see the reference to CAN above).
2. We also expect regulations implementing recommendations from phase one of the Grenfell Tower Inquiry to be laid in October, although they will not come into effect immediately. LGA officers are working with member authorities to ensure the Home Office understands the processes that need to be undertaken in the transition to implementation of these regulations. The LGA continues to push MHCLG for an answer as to whether the costs associated with these measures will receive new burdens funding but have still not had an answer.
3. The position around the CAN and PAS9980 and the timetable for implementing the new requirements pose potentially conflicting challenges to fire service enforcement strategies.
4. The Home Office has been invited to provide an update on the Act commencement and the regulations at the meeting.

**Building Safety Bill**

1. The Bill passed its second readding in the House of Commons before the summer recess and is at Commons committee stage, where the LGA gave oral evidence on 9 September.
2. The key messages set out below are taken from the written evidence LGA officers are drafting to send to the committee and which are in the process of being signed off at the time of writing.
3. These messages reflect previous submissions the LGA has made, including the evidence submitted to the select committee’s pre legislative scrutiny (which has since reported) and the second reading briefing. It also reflects the views of fellow stakeholders: Councils with ALMOS Group, Local Authority Building Control; London Councils; National Fire Chiefs Council and National Housing Federation.

*Key messages*

1. Government should pay up-front remediation costs and seek to claim as much back as possible either from those directly responsible or from the private developer industry.
2. Any protection for leaseholders against remediation costs should also cover social housing providers.
3. The costs imposed on councils as landlords by the Bill and by fire safety reform need to be covered by new burdens funding.
4. The scope of the higher-risk regime is too narrow, and height is too crude a basis for it. A better approach would be:
	1. For new buildings: The Gateways that will be created under the Bill’s amendments to the Building Act 1984 should apply to all major works, including for buildings under 18m where the local authority remains the building control authority.
	2. For existing buildings – adapt the Building Prioritisation Tool that has been developed for the Fire Safety Act to identify the higher risk buildings.
5. Alternatively, we want:
	1. A timetable to expand the Bill’s scope to below 18m on the face of the Bill.
	2. All new care homes and hospitals to be covered by the Gateway system, not just those over 18m.
6. In addition, the Bill should be amended to require any permitted development that results in a building that would be in scope of the Building Safety Bill if newly constructed, passing through all three Gateways with the Building Safety Regulator (BSR) as building control authority.
7. The Bill does not provide sufficient clarity on the duties of Accountable Persons and the siting of those duties within complex ownership structures. The provision of increased detail on the role and duties of Accountable Persons by the Government will facilitate effective and expedient transition to any new system.
8. The regulator must give Accountable Persons adequate time to implement the new system and provide appropriate guidance.
9. Imposing the developer levy on councils would leave council tenants paying for the failings of private developers. If the Levy is imposed on social providers, their ability to deliver the improvements and additions to the housing stock that the Government requires will be put at risk.
10. An effective construction product safety system must deliver real consequences for the owners and managers of companies that miss-sell products. The product safety system in the Bill must provide a national prosecution funding resource, a single national test system, adequate officer training, effective links to building control and effective deterrents against miss-selling and misuse.
11. Competition in building control needs to end for major works in residential buildings of all heights.
12. The Building Safety Regulator should be required to use local authority resource in the first instance on the face of the Bill to protect the significant investment in building control teams local authorities will be required to make because of the Bill.
13. The Government needs to invest in the necessary skills to ensure the new regime is effective and to allow reimbursement charges to be set locally

Implications for Wales

1. 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

1. 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

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

**Annex One – Waking Watch Relief Fund application data (July 31 2021) (**[**source**](https://www.gov.uk/government/publications/waking-watch-relief-fund-data-as-of-31-july-2021/waking-watch-relief-fund-data-as-of-31-july-2021)**)**

| **Title** | **1st application window** | **2nd application window** | **Total** |
| --- | --- | --- | --- |
| No. of applications | 213 | 60 | 273 |
| No. of buildings | 298\* | 70 | 368\* |
| No. of successful applications\*\* | 157 | 22 | 179 |
| No. of successful buildings\*\* | 235\* | 29 | 264 |
| No. of rejected applications\*\* | 30 | 28 | 58 |
| Amount of funding approved\*\* | £19.8m | £2.7m | £22.5m |
| Mean Waking Watch cost per dwelling per month\*\*\* | £113 | - | - |
| Median Waking Watch cost per dwelling per month\*\*\* | £77 | - | - |

\*GLA are continuing to assess buildings and data is not yet complete for applicants in London.
\*\*Not final figures as assessment is still ongoing.
\*\*\*Excluding GLA figures due to missing data; also; some missing data in Greater Manchester; currently excludes 2nd tranche MHCLG. Within the data provided there is a large range of Waking Watch costs with some high outliers. Therefore, both the mean and median are included in the table as large outliers can skew the mean but have little impact on the median.