

18 November 2021

## **Building Safety Update**

### **Purpose of report**

Decision/discussion

### **Summary**

This report updates members on the key developments around building safety work not covered in the previous paper.

### **Recommendation**

That members agree the proposal in paragraph 9 and comment on the work programme.

### **Action**

Officers to incorporate members' views in to the LGA's building safety work going forward.

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## Key updates

### Remediation

#### Progress

1. [MHCLG statistics](#) show that by the end of September 2021, 94% (445) 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 at 31 December 2019). 18 new buildings have been identified in 2021.
2. Progress remains slow. Four buildings completed work in September, only one building completed work in July and only one in August.
3. All social sector residential buildings have begun remediation; including three recently identified.
4. The Building Safety Fund was set up last year to pay for the remediation of non-ACM cladding on private buildings. [Statistics to the end of September](#) show that 2,820 owners have registered, covering 3,175 buildings.
5. The registration process is a form of pre-approval. Of the 2,820 registrations 2,348 had been reviewed. Of these, 689 were proceeding to an application for funding (covering an estimated 65,000 homes), with a further 373 being reviewed and 183 where the applicant needs to provide additional information. 477 have been deemed ineligible, in 472 cases the owner has not responded to requests for more information and 626 have been withdrawn. 165 full applications have been approved and 318 are at pre-tender stage.
6. Progress is slow. Only 9 registrations were reviewed in September and only £172 million has been spent to date, with £637.5 million allocated. It is also not smooth. [Inside housing reports](#) that one block that was granted funding has subsequently had it removed. In [another case](#) earlier this year the height of a building appears to have changed to leave it eligible for funding.
7. The fund also covers the costs that social providers would otherwise pass on the leaseholders. 222 applications have been made. So far 28 have been rejected, 8 withdrawn and 49 approved. The rest are still under consideration.

#### Inspection and enforcement

8. The LGA has been asked to host a document drawn up by sector experts led by the LGA and National Fire Chiefs Council (NFCC) on how council private sector housing enforcement and the fire service can work together to inspect and enforce in relation to dangerous cladding. This is important work given that the Health and Safety Executive

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(HSE) will not begin considering safety cases in existing buildings until April 2024 at the earliest and will take at least five years to complete the process.

9. The document offers non-statutory advice for our members on effective joint working. It does not offer advice to residents or duty holders. The Grenfell Task and finish Group has agreed that the LGA should host this document subject to legal advice.
10. The LGA has funding to commission case studies in relation to this joint working.

#### Recent decant

11. The recent decanting of a large panel system (LPS) block in Bow (Clare House) raises issues about whether more needs to be done to raise awareness of potential issues with LPS blocks and how best to manage decants and their impact on local authorities who have to rehouse those forced to leave their homes.
12. In response the LGA has written to councils to remind them of the need to ensure that the structural history of any large panel system buildings is known, and that their condition and continued structural integrity are understood and monitored.

#### **Building Safety Bill**

13. The LGA submitted written and oral evidence to the Public Bill Committee (PBC) considering the Building Safety Bill.
14. The LGA drafted two amendments to support the aims set out in our evidence. These are at annex one and annex two.
15. Separately the LGA's Housing Team has submitted a response to the consultation on the Levy to be imposed on developers to pay for cladding remediation (and had already responded to the related [Residential Property Developer Tax](#) proposal). Our Levy response has not been published yet.

#### **Fire Safety Act**

16. The Home Office has not commenced the Act as yet and therefore has not laid regulations delivering the Grenfell Tower inquiry phase one recommendations. We do not yet know when the Act will commence.

#### **Implications for Wales**

17. 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.

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**Financial Implications**

18. None for LGA.

**Next steps**

19. Officers to take forward any actions.

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## **Annex One – Levy amendment**

### **Text:**

In Clause 57, after

*105(c)(4) The regulations may contain exemptions, for specified descriptions of person.*

Insert new sub section

*(5) The regulations must exempt applications or specified descriptions of relevant applications made by or on behalf of registered social landlords for the provision of social housing as defined by the Housing and Regeneration Act 2008 ([section 68](#))*

### **Effect:**

This clause prevents the Levy on applications for building control approval in respect of higher-risk buildings introduced by clause 57 from being imposed on social housing.

### **Rationale:**

The Levy introduced by this clause is specifically designed to meet building safety expenditure. This expenditure is not the ongoing costs of the new building safety regime, which is met through the Building Safety Charge. Instead, the levy is designed to cover the cost of government support for the remediation of unsafe cladding. This support is provided to leaseholders in buildings with unsafe cladding systems, either through the building safety fund or through a system of low-cost loans for buildings under 18m the details of which have yet to be announced. For the most part this support is not available to social landlords, other than to alleviate costs they might otherwise pass on to leaseholders. With the exception of buildings with ACM cladding, social landlords have been denied access to these funds and for councils these remediation costs therefore fall on the Housing Revenue Account and must be recouped either through rent increases or by diverting funds away from improvements to council housing or the provision of new council housing. If the Levy is imposed on councils it will increase the cost of building or refurbishing social housing or increase rents, yet the benefits to funds will not be available to the tenants who would otherwise have benefitted from lower rents or better housing.

Imposing this levy on councils means council tenants will be subsidising the failures of private developers and paying the cost both of remediating council housing and private housing.

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## **Annex 2 – Gateway Amendment**

### **Amend Section 32**

**After section 11 (6) of the amendment to schedule 1 of the Building Act 1984 (building regulations), insert:**

*1J*

*where any regulations made under this schedule make any provision about the procedure that may or must be followed in relation to any work on any building for which the regulator is the building control authority, then*

- (a) the same provisions apply to any other building containing two or more dwellings.*
- (b) the building control authority for any building for which the regulator is not the building control authority shall be the local authority in whose jurisdiction the building is situated.*

#### **Effect:**

This amendment amends the section of the Bill that allows regulations to be made that will require buildings in the higher-risk regime to pass through Gateway 2 and Gateway 3.

These Gateways allow the Building Safety Regulator (BSR):

- to prevent construction beginning if it is not satisfied with the designs of the building (Gateway 2) and
- to prevent occupation if it is not satisfied with the construction (Gateway 3).

The effect of the amendment would be to ensure that if these Gateways are introduced for buildings over 18m, they would in fact apply to all multi-occupied residential buildings.

For the buildings outside the higher-risk regime, the local authority would be the building control authority, not the BSR.

The amendment has the added benefit of removing competition in building control for multi-occupancy buildings. Approved Inspectors could be commissioned to do the work by local authorities where capacity constraints render this necessary and would be free to advise private developers.

#### **Explanation**

The LGA understands that the Health and Safety Executive (HSE) does not wish the BSR to regulate lower buildings because it feels it does not have the capacity. This would create a two-tier system and we are not convinced that the Government will ever expand the higher-risk regime to include more buildings.

While we agree that the capacity does not currently exist to expand the regime in relation to existing buildings, we believe that local authority building control could cover the operation of the Gateway system at all heights below 18m, thereby ensuring that in new buildings at least no two-tier system emerges.