

20 January 2022

Building Safety Update

Purpose of report

Decision/discussion

Summary

This report updates members on developments around building safety work.

Recommendation

That members note the paper.

Action/s

Officers to incorporate members' views into our ongoing building safety work.

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**Safer and Stronger Communities
Board**

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Building Safety Update

Fire Protection Board

1. The Fire Protection Board (FPB) was established in 2019 with a task of overseeing the Building Risk Review (BRR). The BRR fulfilled a ministerial commitment to have the fire service inspect or assure every residential building over 18m by the end of 2021. It was always recognised that this was a challenging task, especially in London – and one made more complicated by the inaccurate data available on building locations and numbers.
2. Nevertheless, the fire service completed the task on time, which is a considerable achievement, making an important contribution to resident safety and collecting a significant amount data. The LGA has worked closely with the National Fire Chiefs Council, the Home Office and the Department of Levelling Up, Housing and Communities (DLUHC) to support this work through the FPB.

Secretary of State statement

3. On 11 January, Secretary of State Michael Gove made his long-awaited ‘reset’ [statement](#) on building safety. The statement set out four principles, listed below with the relevant policy decisions:
4. **A proportionate approach to building safety.** This refers to the Government’s belief that some landlords are either getting overly risk-averse fire risk assessments (from assessors who are afraid of being sued) or over-reacting to fire safety defects and imposing waking watches unnecessarily.
5. To prevent this
 - 5.1. the Government has withdrawn its Consolidated Advice Note and the BSI has published [PAS 9980 Fire risk appraisal of external wall construction and cladding of existing blocks of flats](#). The Government expects this to produce less of a pass/fail approach and a more proportionate one. PAS 9980 encourages a risk-based approach to assessing external wall systems rather than a compliance based approach referring to building regulation guidance and the Secretary of State clearly hopes this will promote his view that ‘medium-rise buildings are safe, unless there is clear evidence to the contrary’.
 - 5.2. The Secretary of State threatened to ‘take the power to review the governance of the Royal Institution of Chartered Surveyors’, which he appears to see as supporting a disproportionately risk-averse approach.
 - 5.3. The Secretary of State called for ‘far greater use of sensible mitigations, such as sprinklers and fire alarms, in place of unnecessary and costly remediation work’. Our understanding is that the Building Safety Fund will be adapted to enable its use to pay for such measures, something the LGA has argued for consistently.
 - 5.4. Before Easter an indemnity scheme will be brought in for those conducting surveys on external wall systems. This is expected to encourage a less risk-averse, more

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proportionate approach (our understanding is that the indemnity will apply to those doing EWS1 surveys, NOT to those conducting fire risk assessments under the Fire Safety Order). This seems to be a significant move as the lack of Professional Indemnity Insurance has been a significant issue in recent years, although the failure to cover fire risk assessments may be an issue.

- 5.5. The Government will audit EWS1 assessments 'to ensure that expensive remediation is being advised only where it is necessary to remove a threat to life'. To get an idea of the scale of audit required, DLUHC figures from seven major lenders show that between April and September last year an EWS1 form or equivalent was required by lenders for 8 percent of 55,000 mortgage valuations for flats in the UK.
6. **Protect leaseholders.** This part of the speech got the most attention. The key pledge was that no leaseholder in a building over 11m (4 storeys) high will have to pay to fix cladding problems. The LGA has long called for this.
7. As a consequence, the loans scheme for leaseholders in 11-18m blocks, announced last year has been scrapped.
8. While this is welcome news there are a number of caveats:
 - 8.1. The announcement does not cover non-cladding fire safety issues. When pressed on this point, the Secretary of State said he would extend the time limit in which leaseholders can sue developers for defective work from the 15 years in the current version of the Building Safety Bill (itself an extension from the seven years in the Defective Premises Act, DPA) to 30 years. The LGA has previously questioned whether this approach will work as the DPA has seen little use in the past.
 - 8.2. The number of affected buildings in the 11-18m range is unknown.
 - 8.3. The commitment that leaseholders don't have to pay in flats over 11m only applies to 'leaseholders living in their own homes', not to those sub-letting.
 - 8.4. It is unclear whether the protection afforded to leaseholders will be extended to social housing providers, although, answering a question from Clive Betts MP, the Secretary of State suggested he wanted to avoid a negative impact on social housing. The LGA's [response](#) to the statement emphasized the injustice of leaving social housing tenants and those on the housing waiting list to pay for the failings of the industry, by allowing costs to fall on the housing revenue account.
 - 8.5. Where will the money come from (see below)?
9. Leaseholders will also be helped by
 - 9.1. lower insurance premiums which Lord Greenhalgh will work with the Insurance Industry to achieve.
 - 9.2. protecting leaseholders against forfeiture and eviction as a result of cladding issues (in statute, we understand).
 - 9.3. expanding the waking watch relief fund to cover flats below 18m.

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- 9.4. providing leaseholders with better information on remediation to leaseholders (this will be very welcome).
10. **Polluter pays.** Much attention in the run up to the speech was devoted to a [letter](#) from the Chief Secretary to the Treasury emphasising that there would be no new money from the taxpayer.
11. The Government wants to force developers to pay rather than leaseholders. The Secretary of State has [written](#) to ‘the residential property developer industry’ telling it to come up with some proposals (worth £4bn) by March or the Government will take action. This action will certainly include removing their right to participate in Government schemes such as help to buy and the existing developer levy and tax proposals, but Gove implied it will also include possible legal action and further tax.
12. If this approach fails to produce the requisite funds, the implication appears to be that DLUHC’s budget will bear the cost.
13. **Hold to account those who have put lives at risk.** In addition to the demand that the industry as a whole meets the additional cost of fixing buildings under 18m, the Secretary of State warned: ‘those who sought to profiteer from the consequences of the Grenfell tragedy: we are coming for you. I have established a dedicated team in my Department to expose and pursue those responsible. We will begin by reviewing Government schemes and programmes to ensure that, in accordance with due process, there are commercial consequences for any company that is responsible for this crisis and refusing to help to fix it.’

Going Forward

14. Taken together, the announcement delivers many of the measures the LGA called for in its [position statement on leaseholder costs](#) a year ago: leaseholder protection, including for those in blocks under 18m; resolution of any professional insurance barriers to industry capacity, establishment of a residential building safety equivalent to Flood Re and ‘a task force to take forward legal action against those responsible for the cladding crisis’.
15. Nevertheless there remain concerns over:
- 15.1. The impact on the housing revenue account and on housing associations if the industry fails to deliver more compensatory funding
 - 15.2. The ability of the Government to rectify any refusal by the industry to pay
 - 15.3. The capacity of the industry to deliver remediation
 - 15.4. The continuing supply of new unsafe buildings
 - 15.5. The funding and delivery of the new regulatory system
 - 15.6. The pace of remediation, given that the process of remediating buildings with ACM cladding is still not complete.
 - 15.7. The impact of non-cladding costs on leaseholders if the amendments to the DFA prove ineffective

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- 15.8. The continuing lack of firm proposals on some of the pledges made (for example insurance costs)
- 15.9. Continuing delays to the commencement of the Fire Safety Act and uncertainty over the delivery of the Grenfell Tower recommendations (the Act would be commenced 'shortly' the Secretary of State said).
16. We expect that DLUHC will want councils and fire services to step up enforcement action is support of remediation, including on buildings in the 11-18m range. The LGA has invited members to get in touch if they need support and reminded them of the existence of the Joint Inspection Team which exists to support these efforts
17. To support councils and fire services in this work the LGA is engaged on a number of activities previously reported to the Board:
 - 17.1. Hosting a document - *Principles for effective regulation of Fire Safety in purpose-built blocks of flats* - drawn up by sector experts led by the LGA and NFCC, to assist council private sector housing enforcement and the fire service to work together to inspect and enforce in relation to dangerous cladding. The text was completed in December last year and the document is in the process of being uploaded onto the LGA website.
 - 17.2. Commissioning case studies of joint working. These will be commissioned by the time of the meeting and should be published by the end of March.
 - 17.3. Discussing the funding of the Joint Inspection Team next year with DLUHC with a view to significantly expanding it. This is overseen by the JIT Programme Board.
 - 17.4. Supporting the provision of a data system to bring together the information on buildings over 18m in a way that supports effective enforcement. LGA and NFCC have made the case to DLUHC for this resource to be developed as a priority and the response has been positive. A report will be going to the Fire Protection Board later this month.
 - 17.5. Liaising with DLUHC who are planning to write to councils raising issues about Large Panel System buildings. This work has not progressed since the last report.
 - 17.6. Preparing plans for sector led improvement in 2022-3 and delivering existing SLI plans. A Leadership Essentials course aimed at Housing portfolio holders will be delivered at the end of February.

Implications for Wales

18. 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

19. None for LGA.

Next steps

20. Officers to take forward any actions.