

23 June 2022

Building Safety update

Purpose of report

For discussion.

Summary

This report aims to update members on the LGA's building safety-related work since the last Board meeting.

Recommendation

That members note and comment on the LGA's building safety related work.

Action/s

Officers to take forward the actions set out in paragraphs 42-44 of the report.

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Building Safety update

Background

1. Since the Board's last meeting, the Building Safety Bill has received Royal Assent, the Fire Safety Act has commenced and the LGA has continued to work to support remediation.

Remediation

2. The LGA has already published [case studies](#) and a document on [principles of effective regulation](#) and has worked closely with Department of Levelling Up, Housing and Communities (DLUHC) officers and the National Fire Chiefs Council (NFCC) to promote joint working in this area, including through webinars that have reached over 600 council and fire service staff and through the work of the Joint Inspection Team which DLUHC funds.
3. Two related pieces of work are underway:
 - 3.1. The DLUHC-led group Remediation Partners continues to work on a framework to support remediation, based on proposals for regional meetings between Fire and Rescue Services (FRSs) and local authority environmental health teams in line with the Principles for Effective Regulation document. These regional meetings are expected to be based on the NFCC regions. The initial focus of activity is expected to be 'missing buildings', i.e. those with interim fire safety measures which have not applied for funding to begin remediation.
 - 3.2. Discussions are under way with DLUHC and NFCC to support a coordinated audit of risk within medium-rise residential buildings (11-18m).
4. While it is clear that there are a number of buildings under 18m that present a risk to life as a result of the failure of the regulatory system over twenty years and the irresponsible behaviour of some industry actors, we do not have accurate data on the true extent of this problem; nor do we know how widespread the over-provision of waking watches may be.
5. The LGA and NFCC therefore support the principle that we should improve our knowledge in this field. However, both organisations have conveyed to DLUHC that existing regulatory frameworks are not designed to prohibit excessively risk-averse behaviour, and it is unrealistic to think that a programme of inspection by either fire service or council regulators will be able to eliminate it, especially given the absence of powers to do so and the uncertainty around personal emergency evacuation plans (PEEPs).
6. LGA officers have sought a clear steer from Government on when those parts of the Building Safety Act that relate to funding for remediation can be expected to commence (see below), and what their impact will be, and have stressed the need for the Government to set out clear expectations in regard to enforcement action.
7. [DLUHC statistics](#) from April 2022 show that only 12 buildings eligible for the Building Safety Fund have started work on site since the March update and 4 have reached

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completion. LGA officers have identified a risk that the current pace may be slowing due to uncertainty around when parts of the Act relating to funding will commence.

8. The Joint Inspection Team has secured funding for the next two years which will see it expand significantly. In effect it will triple in capacity by the end of this financial year.

Building Safety Act

9. The Act received Royal Assent last month. There are a significant number of pieces of secondary legislation that will need to be passed in order to set up the new Building Safety Regime. There are also a number of questions we need to continue to ask.
10. **What will the impact be of the provisions protecting leaseholders on the ability to pay for remediation?** We are seeking clarification from officials on the impact of the Act and associated measures. In particular it is currently unclear what will happen in blocks where there is no warrantee and no successful claim against the developer and the cost of remediation is too great to be covered by leaseholders within the cap. In theory the freeholder is expected to pay, but that is unlikely if the sum is large as freeholds are not particularly valuable; moreover, the freeholder will in many cases be the leaseholders acting collectively.
11. With no distinction between developers and councils, the Act could leave councils liable for the costs of buildings merely because they are on council land. It also fails to commit to cover the remediation costs of social landlords, exposing the housing revenue account, and limiting councils' ability to provide homes for those most in need and to improve social housing.
12. Another concern here is that the government wants councils and fire services to take enforcement action to drive remediation; this is not going to work if there is no funding available to pay for remediation. There is a specific need for funding in the next few years to increase skilled capacity in local authority building control and in the fire service.
13. We still do not know whether councils will be hit by the Levy or the extent to which councils will be treated as liable freeholders simply because they own land a building is on.
14. The leaseholder protection measures in the Act (sections 116 to 125 and Schedule 8) will be commenced on 28 June (2 months after Royal Assent). Officers will update our advice to members on [supporting residents who have been affected by cladding and other building safety issues](#) to take account of these provisions. DLUHC has provided a summary of their effect:
 - 14.1. Measures will require that historical safety defects in any building above 11 metres or five storeys owned by the developer who built or refurbished it, or by a landlord associated with that developer, must be fixed by them.
 - 14.2. Building owners and non-resident landlords with a net worth of more than £2 million per in-scope building must not pass on any costs relating to historical safety defects to qualifying leaseholders.
 - 14.3. Qualifying leaseholders are those who reside in their own property or have no more than three UK properties in total. The protections will apply to qualifying leaseholders if their property is in a building over 11 metres (or five storeys).

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- 14.4. The protections transfer to subsequent buyers when the property is sold.
- 14.5. Qualifying leaseholders will be protected from all cladding remediation costs.
- 14.6. Qualifying leaseholders whose property is valued at less than £325,000 in Greater London and £175,000 elsewhere in England will also be protected from all costs associated with non-cladding defects and interim measures.
- 14.7. Any contribution that will be required from qualifying leaseholders for non-cladding defects and interim measures (including waking watch costs) will be firmly capped and spread over ten (increased from five) years. This will ensure that the majority of leaseholders will have to pay no more than £10,000 (£15,000 in Greater London) over ten years.
- 14.8. Costs already paid out in the last five years – including interim costs such as waking watch – will count towards the cap, but leaseholders will not be reimbursed for costs already paid.
- 14.9. DLUHC are seeking to spread the cost of decades of malpractice equitably across the system and ensure above all that the most vulnerable leaseholders are protected.
15. **Will councils and fire services be adequately funded?** The funding for councils and NFCC to expand building control and fire service competence and capacity to meet the requirements of the new regime has been agreed at £41 million. It will be essential to ensure the programme of work developed for the Building Safety Regulator (BSR) is proportionate to the capacity this funding provides.
16. **Will the cost recovery arrangements work in practice?** LGA is waiting for a meeting on this organised by DLUHC to be reorganised as it was postponed.
17. **How effectively will the Act be aligned in operation with the Fire Safety Act?** An important issue here is that FRS staff may attend inspections of high-rise residential buildings as part of a Building Safety Regulator multi-disciplinary team, work for which cost recovery funding is available. In doing so they may come across issues that require addressing under the Fire Safety Order, work which cannot be covered by cost recovery. This work would not have been done in the normal course of events, because inspecting this building would not take place under the Integrated Risk Management Plan (IRMP). As a result, resource will be diverted from work prioritised under the IRMP to work that does not meet that test. While this is unlikely to matter in individual cases, in some areas the sheer volume of work that may arise in this way could have implications for delivery of IRMP. The LGA and NFCC continue to seek to influence the Health and Safety Executive's (HSE's) setting-up of the new regulator to ensure this alignment takes place. The LGA has related concerns on around the impact of BSR demands on the business-as-usual activities of local building control teams.
18. **What will be the impact of continued competition in Building Control in relation to buildings under 18m?** We hope to work with Local Authority Building Control (LABC) to monitor this. The Government has already accepted that allowing developers to choose their own regulator has undermined the regulation of building safety by disincentivising effective regulation. It has therefore removed that right in relation to buildings over 18 metres. The LGA does not recommend the continuation of this flawed model in relation to buildings under 18 metres.

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19. **Will the BSR develop an effective system of safety cases and safety case review?**
We are working with HSE, NFCC and LABC to support the development of safety cases.
20. **The effectiveness of the product safety regime is still unclear.**

Fire Safety Act

21. The [Act](#) commenced on 18 May. This was followed by regulations implementing most of the recommendations made by phase one of the Grenfell Tower inquiry. This was announced in a [written ministerial statement](#). The NFCC has published an [FSA page](#) and [a series of FAQs](#) on both the Act and the regulations on its website and the Home Office has provided some [guidance](#).
22. The Act requires responsible persons to consider the need to update their fire risk assessment to take account of external wall systems. A [Fire Risk Assessment Prioritisation Tool](#) was launched alongside commencement. Its purpose is to inform Responsible Persons of how urgent the need to review their Fire Risk Assessment is, in order to spread out demand for the limited resource of fire risk assessors.
23. Following commencement of the Act, the Home Office has laid regulations delivering the recommendations of the Grenfell Inquiry Phase One. These will come into effect in January 2023. These regulations will require Responsible Persons to share various items of information with Fire and Rescue Services, including:
- 23.1. Details of the materials and design of the external wall systems, including the level of risk posed and mitigations in place
 - 23.2. Floor plans (including the location of essential fire-fighting equipment) and a single page building plan
 - 23.3. Details of any lifts for use by firefighters and fire-fighting equipment which are out of order for a period of longer than 24 hours
24. A full list of regulations and a set of fact sheets explaining them is available on the [Home Office website](#). Guidance will follow.

PEEPs

25. The regulations do not include Personal Emergency Evacuation Plans or Evacuation Plans.
26. The recommendations of the Grenfell Tower Inquiry Phase 1 report included the following:
- e) (...) that the owner and manager of every high-rise residential building be required by law to prepare personal emergency evacuation plans for all residents whose ability to self-evacuate may be compromised (such as persons with reduced mobility or cognition).
 - f) (...) that the owner and manager of every high-rise residential building be required by law to include up-to-date information about persons with reduced mobility and their associated PEEPs in the premises information box.

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27. The Government ran a consultation on the Phase One recommendations which included a proposal to implement PEEPs and subsequently ran a second consultation on the subject. This closed on 19 July 2021 and alongside a [response](#) to the second consultation, a third [consultation](#) has now been published on 18 May containing new proposals, including a proposal called Emergency Evacuation Information Sharing (EEIS).
28. The latest consultation proposes that Responsible Persons of buildings with a simultaneous evacuation policy in place (rather than a stay put policy) are **required** to:
 - 28.1. ask residents to make themselves known to the Responsible Person for their building if they think they would need support to evacuate in the event of a fire
 - 28.2. offer a Person-Centred Fire Risk Assessment (PCFRA) checklist (example found [here](#)) and connect them with a home fire safety visit from the local Fire & Rescue Service. This should consider whether there is something present (or lacking) in the common areas that hinders the individual's ability to self-evacuate. There would be no requirement to act on the conclusions of that process.
29. Responsible Persons would also be **required** to provide Fire & Rescue Services with up-to-date information on where these residents live within the building.
30. No obligations about PEEPs are proposed for Responsible Persons (RP) in buildings that do not have interim fire safety measures. This falls short of what the Grenfell Tower Inquiry recommended and what the Equalities Act requires of social landlords as we understand it.
31. The Home office is also seeking examples of existing PEEPs for residential buildings, agreed between resident and the RP, that provide for evacuation from a building, that at least partially:
 - 31.1 avoids the staffing up of buildings to enact the PEEPs.
 - 31.2 avoids the liability issues for RPs and third parties who are enacting the PEEPs such as friends or neighbours.
 - 31.3 avoids the safety issues in enacting them e.g. the blocking of stairwells.
32. The Government are also setting up a working group the LGA called for in our consultation response that will look at how neighbour assistance would work (i.e. how neighbours will help disabled residents evacuate in the event of a fire).
33. There is much in the proposal that reflects the LGA's response to the second consultation, which drew attention to the practical difficulties of enabling someone who cannot self-evacuate to leave a building without the assistance of the fire service. Nevertheless, it is important to stress that the LGA has always argued that in buildings with a simultaneous evacuation policy there must be measure in place to allow everyone to evacuate. This is also the position of the National Fire Chiefs Council.
34. Members will be aware that the LGA recently shared with its members legal advice on the requirements on social landlords in respect of Personal Emergency Evacuation Plans under the Equalities Act. This advice was in effect that social landlords had a duty to

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identify disabled residents, consider their evacuation needs and make reasonable adjustments. The LGA advised its members to seek their own legal advice on this matter.

35. As this issue impacts on the fire service in particular, the LGA position was discussed with FSMC lead members, who agreed as follows:

35.1. The LGA does not support the proposal in the consultation set out above at paragraph 28 because it does not require the responsible person to act and have a plan on how the resident would evacuate in the event of a fire.

35.2. This would arguably transfer responsibility from the duty-holder to the fire service. While rescue is a back-up option, which is facilitated by EEIS, it cannot be **the first and only option** in a block with Simultaneous Evacuation. In addition, this policy would in our view be unlawful under the Equalities Act if adopted by a local authority.

35.3. The LGA has called for the Home Office to meet its duty under Article 50 of the Fire Safety Order and provide appropriate guidance to social landlords, covering duties under Equalities Act as well as any fire regulations.

35.4. Under the Equalities Act social landlords have a duty to disabled residents in all blocks, not just those with simultaneous evacuation. The proposals being consulted upon place no duties on responsible persons in stay-put blocks, but this would not remove the duty on social landlords.

35.5. The proposed group to discuss neighbour assistance is welcome but should be able to explore the issue of PEEPs more widely. The Home Office has indicated that this is acceptable, but it would like to start with neighbour assistance.

Improvement

36. A Building Safety Leadership Essentials Event is being held in person at Warwick University on Tuesday, 18th October – Wednesday, 19th October 2022. To book a place contact Grace Collins Grace.Collins@local.gov.uk

37. A Portfolio Holder Fire Safety Update webinar is being held virtually on Tuesday, 5th July 2022. The Home Office will be providing an update on the Fire Safety Act and associated regulations; the development of the new building safety regulator; and other implications of the Building Safety Act. The LGA will provide an update on disabled evacuation arrangements and LPS buildings.

38. As part of the improvement grant funding agreement with DLUHC, the LGA has committed to:

38.1. Run webinars on building safety following the Building Safety Bill getting Royal Assent and the commencement of the Fire Safety Act, along with additional resources provided to councils through case studies and publications.

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- 38.2. Delivery of the building safety political leadership programme (Leadership Essentials) to housing portfolio holders.
- 38.3. An E-learning module available to officers and elected members to inform them about councils' duties as one of the regulators supporting the Building Safety Regulator.
- 38.4. Work in partnership with HSE to support their programme of engagement with local authorities in areas with High Rise Buildings.

Implications for Wales

39. The Fire Safety Act came into force in Wales in [October 2021](#). The new regulations passed under the FSO only apply in England. 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

40. Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by DLUHC. 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 community's team to support the LGA's building safety work.
41. The cost of developing PEEPs under the Equalities Act is impossible to quantify as we do not currently know what would be considered reasonable measures.

Next steps

42. Officers to take forward improvement work as set out in paragraphs 36-38.
43. Subject to any further comments from members, the LGA will pursue the arguments in paragraph 35 when responding to the consultation and in responding to the consultation on a new edition of the *Fire Safety in Purpose-built Blocks of Flats* guide.
44. Officers to continue to support the sector's work to keep residents safe and reform the building safety system, as directed by members.