

# Fire safety of cladding systems – supporting residents

Briefing for ward members

# Introduction

Since the Grenfell Tower disaster in June 2017, a number of problems have emerged relating to the fire safety of cladding systems on residential buildings.

The Government, councils, and building owners in the social and private sectors have been engaged in work to remediate these issues.

This has had a significant financial and emotional impact on residents of affected buildings, particularly where these residents are long-term leaseholders who may be legally liable for remediation costs.

This Local Government Association (LGA) briefing is aimed at ward councillors supporting residents in their local areas. It explains the background to the cladding scandal, highlights issues facing residents, and sets out ways in which councillors might support them.

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# Introduction to the cladding scandal

## What is the building safety programme?

The Government's Building Safety Programme (BSP) is led by the Ministry for Housing, Communities, and Local Government (MHCLG). It was established following the Grenfell Tower disaster in July 2017, and aims to 'make sure that residents of high-rise buildings are safe – and feel safe – now and in the future'.

The BSP includes several work programmes, including a new regulatory framework for building safety to introduce reform of the system. The Government has subsequently published a Building Safety Bill and is setting up a new Building Safety Regulator.

In the shorter term, the programme also includes a large-scale programme to identify and remediate buildings with unsafe cladding – this is the work most relevant to the current 'cladding scandal'.

## Remediation works and associated costs

### **Which buildings are within the scope of the cladding remediation programme?**

The scope of the cladding remediation work programme has increased over the years since the Grenfell Tower fire.

Work was initially focused on buildings over 18 metres with the same type of dangerous cladding as Grenfell Tower – Aluminium Composite Material (ACM). Shortly after the Grenfell fire, the Government wrote to local authorities and other social landlords to ask them to identify whether social sector buildings were clad in this material. It also began a programme of testing on ACM cladding, to determine its combustibility in combination with different types of insulation. Most combinations failed this testing.

Later that year, local authorities were asked to begin a data collection exercise to identify all high-rise residential buildings in the private sector with ACM cladding.

The Government is now working with local authority regulators, industry bodies and building owners to ensure that buildings identified as having unsafe ACM cladding are remediated. It publishes a monthly summary of progress.

In light of concerns about other types of potentially dangerous cladding, the Government announced in 2017 that it would expand its testing programme to a wider range of materials. The results of these tests were published in July 2019.

In October 2018, the Government banned the use of combustible materials on any part of the outside of buildings that are over 18 metres. It followed this with an Advice Note, Advice note 14, in December 2018, requiring building owners to confirm that there were no combustible materials on the external walls of their properties.

These steps collectively expanded the scope of remediation work to buildings above 18 metres with all types of combustible cladding systems.

The scope was expanded further in January 2020, when the government announced that the threshold for the ban on combustible materials would be lowered to 11 metres (although this has yet to be implemented). At the same time, it published a document consolidating all of its previous advice notes. This document stated that 'External walls of residential buildings should not assist the spread of fire, irrespective of height. It is important therefore to understand both the materials used in the external wall consultation and whether the entire system has been designed, installed, and maintained appropriately. This is applicable to building owners of buildings irrespective of height'.

Despite these developments, the Government-led remediation programme is only focused on buildings with dangerous cladding above 18 metres. However, they – and in particular, the January 2020 Advice Note - have had implications for residents in a wide range of buildings, as detailed below.

### **Why is cladding remediation needed?**

Remediation can be required for a number of reasons. Cladding systems can consist of rainscreen panels on a metal or wooden frame, behind which are a cavity and then insulation. This system may be overlaid on an existing building's exterior or an integral part of the wall of a more recent block.

In a fire, the cavity can act as a chimney and so barriers are installed (usually of a reactive material that leaves a gap for ventilation but closes in the event of a fire). Barriers are also found at various points in the cladding system.

Remediation is necessitated where the cladding system is dangerous. This may involve removing the cladding itself, or the insulation, or both, or it may involve remediating defects in the cavity barriers (missing or wrongly-installed).

In the years since Grenfell other problems have emerged, such as inadequate fire stopping in buildings with timber frames which also require remediation. These problems are usually breaches of compartmentation, ie the process by which the design and construction of a block prevents fire in one flat from spreading out of that flat before the fire service can arrive to deal with it.

### **How many buildings are affected?**

According to the Government's October data release, 460 buildings over 18 metres have been identified as having ACM cladding. Of these, 155 are social sector residential buildings, 211 are private sector residential buildings, and 54 are student accommodation.

The Government also estimates that there are 1,700 buildings over 18 metres in height, with unsafe non-ACM cladding, which may equate to almost 321,000 people living in affected buildings.

However, the basis of these estimates is unclear – they may be based on analysis carried out by insulation manufacturer Rockwool, which limited its analysis to construction data between 2013 and 2018.

Alternative estimates from the Association of Residential Managing Agents suggest that 274,000 flats were in homes with dangerous cladding – this may equate to over 650,000 people.

More broadly, the Government has identified 12,500 residential buildings over 18 metres. It also estimates that there are a further 77,500 buildings between 11 metres and 18 metres – a total of 79,000 buildings.

This equates to 1.27 million leasehold flats in blocks taller than 11 metres. Of these, at least 839,000 are in buildings with some form of cladding.

### **Why are there cladding defects on so many buildings?**

The LGA's position is that the widespread existence of cladding defects is a result of regulatory and industry failure.

Approved Document B contains the government's official explanation of how to meet the fire safety requirements set out in the statutory building regulations. Since the Grenfell fire, there has been an ongoing debate as to whether this document required cladding to be of 'limited combustibility', or whether a lower standard could be applied.

There is also a debate about whether the cladding fire safety testing process set out in Approved Document B is robust enough – in many cases, the dangerous cladding on buildings was certified as being compliant through 'desktop studies', which take data from materials previously tested to make a judgment about whether a new combination of materials would pass if it were tested.

Potential issues with the regulations came to light following the 1999 fire at Garnock Court in Scotland, and the 2009 fire at Lakanal House, a council-owned tower block in London, both of which involved flammable cladding. However, changes to the building regulations had not yet been made by the time of the Grenfell fire in 2017.

As a result, the use of dangerous cladding became widespread amongst developers seeking to reduce the costs of housing delivery or refurbishment.

The current phase of the Grenfell Tower Inquiry is exploring and revealing the shortcomings of the regulatory system, confusion within the industry, and the deliberate acts to exploit that confusion that may have contributed to the current crisis.

## **What remediation has been carried out to date?**

The clearest data is available in relation to buildings with ACM cladding.

The Government's October data release showed that, of the 460 buildings with this cladding, remediation work had started on 363 (79 per cent). To date, 257 of these buildings have been made safe, with their cladding having been removed, and – in some cases – replaced.

Progress has been swiftest in the social sector – of the 155 buildings with ACM cladding, remediation is fully complete on 90, and cladding has been removed on a further 36.

In the private sector, 53 of the 211 buildings have fully completed remediation. A further 11 await final sign-off of works, and four have had unsafe cladding removed.

However, 203 buildings still have unsafe ACM systems.

Progress with remediation has been slower than anticipated, primarily due to difficulties in working with private sector building owners. The Government's initial target for remediating high-rise buildings with ACM cladding was June 2020. Its target is now the end of 2021.

MHCLG does not currently have a target for the remediation of buildings with unsafe non-ACM cladding. The Housing, Communities and Local Government Committee recently recommended that this work be carried out by June 2022.

## **Which costs have arisen?**

Enormous costs have arisen in relation to cladding remediation.

Firstly, the costs of cladding remediation itself – the LGA estimates these at around £2 million per block, or £20,000 per dwelling.

Secondly, the cost of interim fire safety measures, required by the fire and rescue service in buildings with unsafe cladding pending remediation. These usually involve a switch from asking residents to stay in their flats if there is a fire that does not directly affect them ('stay put') to telling them to evacuate in the event of a fire anywhere in the building ('simultaneous evacuation').

MHCLG has estimated that a common interim measure, waking watches, (overnight patrols to evacuate residents in case of fire) can cost between £12,000 and £45,000 per week per building, depending on the number of individuals and hours covered. These estimates show that it is almost always cheaper to install an alarm system than to employ a waking watch.

Thirdly, cladding remediation works might uncover further fire safety issues in a building: the National Audit Office has found that cladding inspection has revealed significant flaws in many cases. This has created a second set of remediation costs.

As detailed below, legal liability for these costs is complex, and often falls to individual flat leaseholders. The Government has made funding available to try and reduce the cost of cladding remediation specifically.

## Who is liable for remediation costs?

Legal liability for remediation costs is extremely complex.

The buildings within the scope of the Government's remediation programme are high-rise residential buildings. Of these, over 95 per cent are flat dwellings, where freeholders own shared or common parts of buildings, and flat leaseholders contribute towards the costs of looking after buildings through their service charges. Their obligations are set out in individual leases.

Through these leases, leaseholders may be legally liable for the costs of remediation works carried out on their building.

However, this depends on the drafting of individual leases, which is highly inconsistent. The First Tier Property Tribunal hears challenges from leaseholders over the terms of their leases, and has so far ruled in several individual cases that leaseholders are responsible for paying for the costs of remediating cladding, and for interim fire safety measures. It is likely that in future cases, leaseholders will be found liable to repay.

However, leaseholders have struggled in practice to fulfil these obligations, and the Government has stated that private sector building owners and landlords are morally responsible for removing cladding and bearing the costs of remediation.

This might also present practical difficulties: the freehold of a building does not typically have a large value, as most of the value is held in the leases. This can create difficulties for freeholders seeking to use the building as security for additional borrowing.

Where the building owner is a local authority, the council may be subject to a fiduciary duty to recharge long leaseholders, rather than meeting costs through the Housing Revenue Account.

In addition, ownership arrangements in residential buildings can be highly complex. For example, the freehold might be owned by an investor, by the flat leaseholders jointly, or by a small number of the leaseholders in a given building.

If the freehold is owned by an overseas investor, there may be an intermediate leaseholder between the freeholder and individual flat leaseholders. This can make it very difficult to identify or contact the freeholder.

Finally, in many buildings, freeholders may not have legal responsibility for looking after the building – this might lie with a management company, which does not own the building. Again, this management company might be owned by all, or a subset of, leaseholders.

The Government has encouraged flat leaseholders to seek legal action against building developers. Where a building is less than six years old and has cladding or building defects, leaseholders may be able to take action under the Defective Premises Act. Where buildings are less than 10 years old, residents may also be able to claim against their building warranty scheme. However, residents may find that

claims take a long time to process, and will need individual legal advice to judge the success of a potential claim.

### **Which enforcement options are available?**

The Government has previously stated that private sector building owners and landlords are responsible for remediating unsafe cladding on buildings. As part of its efforts to apply pressure on building owners, the Government is supporting local authorities to take enforcement action against the owners of unsafe buildings.

In November 2018, the Government amended the operating guidance on the Housing Health and Safety Rating System, to clarify that local authorities have powers to enforce against the owners of buildings with unsafe cladding under the Housing Act 2004. It has also provided £1 million in funding for a Joint Inspection Team, hosted by the LGA, to help local authorities with enforcement action.

To date, enforcement action has been, or is being taken, against at least 57 buildings with ACM cladding. In addition, the Fire Safety Bill, once it is passed in 2021, will make it clear that fire and rescue services can take enforcement action in relation to cladding systems.

However, enforcement against the ‘building owner’ can be highly complex. Under the Housing Act, the building owners is defined as the freeholder, intermediate long leaseholders, and any leaseholders with leases of terms than more than three years remaining.

If the local authority takes enforcement action under the Housing Act, they will typically serve an Improvement Notice, which requires works to be carried out within a specified timescale. If the person served – the building owner – has not carried out the required remedial work, the local authority has the power to carry out work itself at the expense of the person served.

In practice, cost recovery is difficult:

- the freeholder might be difficult to identify
- the freeholder or intermediate leaseholder might not have assets, and might seek to recover their own costs through the leaseholder service charge
- the freehold might be jointly owned by flat leaseholders
- the legal responsibility for maintaining and repairing the internal and external common parts of a building – including the cladding – could lie with third-party or resident-owned management companies and in these cases, the freeholder will have no power to undertake works, and no entitlement to recover costs through the service charge.

In previous tribunal cases, courts have found that the improvement notice should be directed towards the resident-owned management company, which had the powers to carry out remediation works.

In summary, enforcement can help to speed up remediation – either by encouraging building owners to carry out works, or by allowing councils to take on responsibility for remediation. However, it will not necessarily prevent costs from being passed onto flat leaseholders.

### **What has been the impact on leaseholders?**

Leaseholders have suffered an extreme emotional and financial impact as a result of cladding issues.

As detailed above, they are often legally liable for the costs of cladding remediation, which can be £20,000 per dwelling, as well as the cost of interim measures.

In addition, many leaseholders seeking to sell their flats have found that mortgage lenders impose a £0 valuation, leaving them unable to sell. More information on this is in the section on ‘issues with selling flats’.

A recent survey by campaign group UK Cladding Action group has found that nine out of 10 residents have reported worsening mental health as a result of worries about their safety, and about the significant financial pressures which they face.

Leaseholders have been increasingly vocal about these pressures, and in many cases have mounted highly public campaigns through groups such as the UK Cladding Action Group.

### **What has been the impact on other residents of affected buildings?**

Often, affected buildings are occupied by both leaseholders and tenants. Whilst the main legal liabilities fall to leaseholders, tenants have also suffered significantly from fire safety issues.

In many cases, tenants could be experiencing poor mental health, caused by the stress of living in an unsafe building. In some cases, the discovery of fire safety issues has led to buildings being evacuated, with residents decanted to emergency accommodation. This disruption has a significant human cost.

In addition, where buildings are owned by the local authority, councils have experienced significant financial pressures in meeting the costs of remediation. These costs will typically be met through the Housing Revenue Account, which is subject to numerous other pressures, including planned major works and repairs programmes.

As a result, councils may be making difficult decisions about which capital works to prioritise, leading to delays in repairs and improvements promised to residents.

### **What is the Government position on leaseholder liability?**

The Government’s position on leaseholder liability has been inconsistent.

Since the Grenfell Tower fire, successive ministers have assured that leaseholders would and should not have to pay for remediation works, and that it was the responsibility of building owners to make buildings safe.

For example, following a tribunal ruling in 2018, which found that leaseholders in two Manchester blocks were legally liable for remediation costs, the Government stated

that there was a 'moral imperative' for private sector landlords to pay for the removal of cladding.

The current Secretary of State for Housing, Communities and Local Government, Robert Jenrick, stated in July 2020 that "the Government are clear that it is unacceptable for leaseholders to have to worry about the cost of fixing historic fire safety defects in their buildings that they did not cause".

However, in its pre-legislative scrutiny of the forthcoming Building Safety Bill, the Housing, Communities and Local Government Committee have highlighted that the Government's commitment has since shifted to protecting leaseholders from 'unaffordable' costs only. This change in emphasis is reflected in the provisions set out in the Bill, as outlined below.

### **How will leaseholder liability change in the future?**

The forthcoming Building Safety Bill establishes a building safety charge payable by long leaseholders, to contribute towards the costs of managing building safety which will arise from the new regulatory framework. The Bill proposes that this will be separate from the leaseholder service charge.

However, the Bill has been criticised for permitting leaseholders to be charged for the cost of remediating historical safety defects, which may have pre-dated their occupation, and which may have been in line with regulations at the time that work was completed.

The proposals have also been criticised for separating the Building Safety Charge from the standard service charge, and consequently 'removing many of the existing protections under existing leasehold law', such as the obligation to consult leaseholders on charges over £250.

In addition, case law from previous service charge disputes heard by the First Tier Tribunal will not apply, meaning that many disputes will need to be heard and tested in court. This risks increasing the number of lengthy legal disputes in the initial years of the Bill's implementation.

The LGA's position is that leaseholders should not be left to cover the costs of historic, systemic building safety failures and that these should be met in the first instance by the Government, which should then pursue those responsible for the problem – developers, product manufacturers and contractors.

### **What funding has been made available for remediation?**

Following a significant amount of public pressure, including lobbying from the LGA, the Government has made a total of £1.7 billion available towards the removal and replacement of unsafe cladding on high-rise residential buildings.

This funding is intended to speed up remediation by avoiding lengthy legal battles over liability, and to protect leaseholders from the cost of remediating buildings.

The first tranche of funding for remediation was announced in May 2018 – £400 million to replace ACM cladding on buildings over 18 metres in the social housing sector.

The Government followed this in May 2019 with £200 million of funding for remediation of ACM cladding on high-rise buildings in the private sector.

The guidance for the fund was published in July 2019 and as of 31 October 2020, 94 building owners had submitted an application for funding, with 43 applications approved. Of the buildings outside the scope of the funding, the freeholders of 87 buildings have committed to covering costs, and a further 21 freeholders have made successful warranty claims.

Finally, in the March 2020 budget, the Government announced a £1 billion remediation fund, to support the remediation of unsafe non-ACM cladding in buildings over 18 metres.

### **Is remediation funding adequate?**

The £1 billion Building Safety Fund has been criticised as not being adequate. The Government itself estimates that the total costs of cladding remediation on 1700 affected buildings will be between £3 billion and £3.5 billion. This funding will be distributed on a first-come-first-served basis, rather than on the basis of risk, and there are concerns that this cut-off will be challenged by leaseholders, either through judicial review or legal challenge against landlords who did not apply quickly enough.

There are also concerns around exclusions from the fund: funding is limited to buildings above 18 metres, covers work started after March 2020 only, and excludes local authority landlords unless 'remediation costs threaten the financial viability of the provider of the Housing Revenue Account'.

In addition, the fund will cover the costs of cladding remediation only, excluding any additional fire safety issues uncovered in the process of remediation, and any 'interim measures' used to make a building safe pending remediation, such as fire alarms. The Housing, Communities and Local Government Select Committee has estimated that all fire safety defects in buildings over 18 metres would cost up to £15 billion to remediate. This estimate does not include the 77,500 buildings between 11 and 18 metres.

Early results suggest that a large number of applications will be refused. MHCLG figures show that of 447 applications which had provided sufficient information by 25 September, 65 registered buildings are proceeding with a full application and 73 have been shown to be ineligible and withdrawn by registrants (the rest of the 447 were being considered and a further 2,337 applications had yet to provide sufficient information).

### **What options are available for covering costs?**

The Government has urged building owners not to pass on the costs of remediation. However, this is legally not enforceable, and, as detailed in previous sections, practically difficult.

The Government has also encouraged leaseholders to take legal actions against freeholders, or to pursue costs through insurance claims and warranties. However, in practice, establishing liability may be difficult, and will take a very long time, leaving leaseholders to pay for interim measures in the meantime.

The LGA's position is that Government should fund a recovery programme in the housing sector, with the developers of inadequate buildings required to pay their share of the costs. This was supported by the Housing, Communities and Local Government Select Committee in their pre-legislative scrutiny of the Building Safety Bill:

“It seems self-evident that responsibility for funding remediation works lies jointly with the industry and the Government. Whilst we welcome the assurances that the Government is looking at potential financing options for recovering costs, in the short term we see no alternative to the Government itself footing much of the bill.”

The Committee proposed that in the longer-term, funds should be recovered from construction companies, architects, suppliers, and approved inspectors, as well as freeholders and developers.

## Issues with selling flats

### **What is the External Wall Systems 1 survey?**

As detailed in the previous section, the Government has issued a series of Advice Notes to building owners, setting out their responsibilities for ensuring that buildings are safe.

Advice Note 14, published in December 2018, required building owners to confirm that there were no combustible materials on the external walls of their properties, or to carry out a large-scale test showing that the materials used complied with building regulations.

Following this Advice Note, increasing numbers of leaseholders seeking to sell or remortgage their flats began to receive £0 valuations from mortgage lenders, pending evidence that the external wall systems on buildings met the required criteria. An increasing number of mortgage applications were rejected, due to lenders' concerns that high-rise blocks represented poor security, and that occupiers would be liable for remediation costs.

Issues increased after the Government published its consolidated advice note in January 2020, which required all building owners to investigate their external wall systems, irrespective of building height.

The building industry, led by the Royal Institution of Chartered Surveyors (RICS), responded by developing a new, standardised process for conducting investigations into External Wall Systems – the EWS1 survey. This was agreed in December 2019, and aims to provide a consistent way for lenders to assess whether flats meet building safety criteria.

The process involves a fire safety assessment by a suitably qualified professional, which must be commissioned by the building owner. Following the survey, building owners are given an EWS1 certificate, which can be provided by flat owners to prospective lenders. This certificate is valid for five years.

The survey is not a statutory requirement, but a commercial requirement by lenders as a condition of mortgages.

### **What issues are arising around the EWS1 process?**

The implementation of the EWS1 process has been subject to several issues.

#### **1. Scope**

The scope of the EWS1 process is unclear. The RICS guidance states that the process only applies to residential buildings above 18 metres.

However – and particularly since the publication of the Government’s consolidated Advice Note in January 2020 – leaseholders have reported lenders asking for EWS1 forms on smaller blocks.

#### **2. A shortage of surveyors**

The RICS guidance requires EWS1 surveys to be carried out by suitably qualified professionals. There is a shortage of such professionals, with only 291 assessors currently qualified. As detailed in the previous section, it is estimated that there are 90,000 residential buildings over 11 metres in England.

In addition, there are reports that these surveyors find it difficult to obtain professional indemnity insurance.

This is creating significant delays in obtaining EWS1 surveys.

### **How has the Government responded to issues?**

The Government has previously stated that the EWS1 survey is a lender requirement, and that they were working with RICS and lenders to address some of the issues. This includes work to develop an online data-sharing portal to facilitate the sharing of information from EWS1 assessments.

On 21 November 2020, the Government announced that it had reached an agreement with RICS, and lender representatives UK Finance and the Building Societies Association, that owners of flats in buildings without cladding would no longer need an EWS1 form to sell or re-mortgage their property.

In an accompanying statistical analysis, the Government estimated that, of the 90,000 buildings greater than 11 metres in height, one third did not have external cladding, and therefore were assumed not to need an EWS1 process. This equates to 431,000 leasehold dwellings, leaving 839,000 flats which will require the certificates.

The Government also announced funding to train more qualified EWS1 assessors, meaning the number of assessors will increase by 2000 within six months.

At the same time, the Government issued a supplementary note to the January 2020 consolidated advice note, stating that professional judgement should be exercised in relation to a building’s safety, and that not all combustible materials will need to be removed from buildings.

These developments collectively have the potential to limit the scope of the EWS1 process and speed up assessments. However, they have been criticised by UK

Finance and the Building Societies Association, who have stated that they had not agreed to being named in the Government's announcement. These bodies collectively represent almost 300 lenders.

These bodies are concerned that intrusive surveys will be required in order to accurately judge whether a building has cladding. In addition, there are concerns that the announcement does not address wooden balconies, which constitute a fire risk and may be present on blocks without cladding.

As a result, EWS1 certificates may still be required by lenders for a wider range of buildings.

### **How can leaseholders obtain an EWS1 survey?**

EWS1 surveys involve intrusive inspection of external wall systems. As these form part of the common parts of a building, only freeholders can commission EWS1 survey reports. This can create difficulties, for example where the freeholder is difficult to identify or refuses to conduct the survey.

The Leasehold Knowledge Partnership, which campaigns on behalf of leaseholders, has reported instances of leaseholders paying companies claiming to provide EWS1 surveys on their behalf. Where councillors are aware of these companies, they should be reported to Action Fraud.

### **Who pays for an EWS1 survey?**

EWS1 surveys are not a statutory requirement, but a lender requirement where individual leaseholders wish to sell or remortgage their flats.

This has created difficulties in determining who should bear the costs, which can be as high as £10,000-£50,000 per block.

There are several options available:

- Leaseholders may be liable for the costs of the survey through their service charge, as the survey is a means for freeholders to demonstrate that their buildings are compliant with government guidance. However, councils with housing stock should consider whether the costs of the survey should be passed onto all leaseholders in instances where only a few leaseholders wish to sell their flats.
- Charge relevant leaseholders only for the cost of the survey – this may be very difficult for those individual leaseholders.
- The freeholder could pay for the EWS1 survey and release it to leaseholders on an ad hoc basis, recharging those leaseholders.
- The freeholder could bear the costs of the EWS1 survey – where the freeholder is a council, however, charging the cost to the Housing Revenue Account could result in a breach of their fiduciary duty.
- The freeholder could refuse to provide the EWS1 survey.

### **Will getting an EWS1 survey enable leaseholders to sell their flats?**

Not necessarily. There are five possible results from an EWS assessment – A1, A2, A3, B1 and B2.

B1 and B2 ratings apply where combustible materials are clearly present. A B1 rating indicates that no further remediation work is needed. A B2 finding, however, indicates that remedial work will be needed to improve fire safety.

In an August 2020 survey by the Leasehold Knowledge Partnership, 89 per cent of leaseholders surveyed were told that remedial works were required before their mortgage application could progress. 86 per cent of sites had B2 ratings.

As detailed in previous sections, carrying out these works can be extremely costly, with legal liability often falling on flat leaseholders.

### **What issues are leaseholders experiencing in relation to insurance?**

In addition to difficulties in obtaining mortgages, the owners of some blocks have also experienced difficulties in securing buildings insurance. Where insurance is in place, the premiums might have increased significantly.

The Government has stated that decisions concerning insurance are commercial decisions, and that building owners should engage with insurance providers as early as possible to ensure correctly priced insurance cover.

# The role of the local authority in building safety

Local authorities play a vital role in making sure that buildings in their local areas are safe, and that residents feel safe. The Grenfell Tower disaster – and the many issues which have emerged since the fire – have highlighted these roles. It is now more important than ever that councils play an active part in ensuring that their local places are safe and enjoyable places to live.

Many councils are building owners and landlords – the council may own housing stock, or may lease stock from the private sector, before sub-leasing to individual tenants.

In these cases, councils are subject to duties to keep building safe. The Regulatory Reform (Fire Safety) Order 2005 imposes duties on the ‘responsible person’ to implement appropriate fire safety measures to minimise the risk to life from a fire. This includes a duty to carry out regular fire risk assessments on buildings, and to keep these assessments up to date. The Order is enforced by Fire and Rescue Services.

As registered providers of social housing, local authority landlords are also regulated by the Regulator for Social Housing in relation to the Consumer Standards, which include duties relating to health and safety.

Local authorities also play a vital role as building safety regulators. For example, where fire and rescue services share a boundary with an upper tier council, the council is the fire and rescue service. This means it will have enforcement powers under the Fire Safety Order.

Another important piece of legislation is the Housing Act 2004, which gives local housing authorities powers to enforce against poor housing conditions. It includes a system for assessing housing conditions – the Housing Health and Safety Rating System (HHSRS) – which the local housing authority must use when enforcing standards. Environment Health Officers are the agents who enforce this Act.

In November 2018, the Government amended the operating guidance on the HHSRS to clarify that local authorities have powers to enforce against the owners of buildings with unsafe cladding under the Housing Act.

## The Building Safety Bill

This Bill, introduced following the Grenfell Tower disaster, will introduce sweeping changes to the building safety regulations. Its aim is to 'put in place new and enhanced regulatory regimes for building safety and construction products, and ensure residents have a stronger voice in the system.' It will likely be passed in 2021, and could be fully implemented by 2023.

The new regulations will apply to new or substantially refurbished residential buildings over 18 metres in height, with a gradual roll-out to other residential buildings.

Responsibility for the safety of these buildings will lie with the new role of duty-holder during the construction stage, and accountable person during occupation. The Accountable Person will also have to listen to and respond to residents' concerns, ensuring that they have access to safety information about their building, and to a robust complaints process.

The Accountable Person will typically be the building owners – they will be legally liable for the safety of their buildings. Where the building owner is a company, any director, manager or other similar officer will be liable alongside the company itself.

In the local authority context, this means that many elected members, local authority managers, and officers working for arms-length management organisations, will need to know how to handle the council's responsibilities and understand their liabilities.

The Bill will also introduce a new Building Safety Regulator, which will be responsible for overseeing the safety of all buildings, directly regulating the safety of higher-risk buildings, and improving the competence of all those involved in the construction and management of higher-risk buildings. This regulator will sit within the Health and Safety Executive, but the regulator will be able to request that local authorities support its work – for example, by providing staff or sharing information – and it will have the power to direct them to do so.

Local authority planners, building control, environmental health officers, health and safety professionals, and fire authorities, will all be required to contribute to the Regulator's work.

For the first time, local authorities, including individual senior managers, will be criminally responsible and legally liable for the safety of higher-risk buildings. Failures or poor performance by local authority regulators, such as building control, could be referred to the regulator for interventions. Building control teams will also have to regularly demonstrate ongoing competence, performance, and standards.

In practice, many councils will be taking a broader approach to building safety, going beyond the scope of the Bill and considering residents' safety in all of their buildings.

## The Fire Safety Bill

In parallel with the Building Safety Bill, the Government has also introduced the Fire Safety Bill. This will amend the Fire Safety Order 2005, to place a legal requirement on building owners to inspect cladding, balconies, windows, and fire doors in blocks of flats. All existing residential buildings over 11 metres will be covered by the new regulations.

# The role of the ward councillor

As a ward member, you are a vital link between your community – including residents and partner agencies – and your council. You help to deliver services and support locally, and contribute to the quality of life for your constituents, including how safe they feel in their homes.

There are many practical ways for you to fulfil this role:

- You can assess whether there is general satisfaction with the council's work on building safety (and that of its partner agencies) and whether local people believe they are receiving a quality response.
- You can speak with confidence on behalf of your communities when building safety issues affecting them are debated, or decisions need to be taken.
- You can promote partnership working between public, private and third sector organisations on building safety. You can also promote action by individual residents in response to recognised community needs.
- You can support community calls for action and promote self-help by residents' groups, by understanding their aims, aspirations, views, and tactics.
- You can champion the work of community groups which are acting in residents' interests and reduce conflict between residents and the council.
- You can encourage your scrutiny committee to investigate significant building safety concerns which may not be priorities of the council cabinets or committees with responsibility for building safety.

The Lyons inquiry into local government, which reported in 2007, identified four roles for members – all of which can be applied to the frontline role of ward members around building safety:

- **engager** – working with local groups to understand preferences and influence decisions
- **advocate** – speaking up for your local community and challenging political and managerial decisions
- **mediator** – reconciling different views in the area and explaining hard decisions that have to be made by the council
- **political entrepreneur** – supporting and generating social networks, engaging people in civic and public life, promoting community action to solve problems

# Top tips on how to help residents affected by building safety issues

This section sets out some ideas for how you, as a ward member, can support residents who are concerned about building safety issues. It primarily deals with issues relating to leaseholder service charges, and the EWS1 survey process.

It is not a comprehensive list, and throughout the section there are prompts and exercises to support you to apply these ideas to your local context.

## 1. Understand that there is no easy resolution

As you will have gathered from this briefing, issues with dangerous cladding are extremely widespread, with millions potentially affected. Many of these issues are historic, with their roots in regulatory failure and industry shortcuts.

You will also know that determining who is legally liable for the huge costs of remediation is extremely complex, but that in most cases, it may be the resident leaseholders.

Finally, you will know that the EWS1 process has affected many leaseholders in buildings with and without cladding, that obtaining a timely survey can be outside the council's control, and that surveys, once carried out, might reveal more issues needing costly remediation work.

All of this means that leaseholders are facing an extremely difficult situation, for which there's no easy solution. You must be prepared to support residents on a case-by-case basis, and, ultimately, to have difficult conversations with residents.

## 2. Understand your local context

You might be approached by many residents about cladding-related issues. Understanding your local context can be helpful to contextualise residents' concerns and identify potential solutions:

- How many buildings in your local area are over 18 metres, or 11 metres?
- How many of these buildings have some form of cladding on them?
- Are any potentially affected buildings owned by the council, or are there any buildings where the council acting as an intermediary leaseholder between the freeholder and residents?
- How many are owned by housing associations, and by private organisations? Are there any organisations which own a lot of local buildings? What relationship does the council have with these organisations?
- What steps has your council taken so far to remediate or survey its own stock?

### **3. Ask the right questions to find a resolution**

Residents might approach you with concerns about the safety of their building. Leaseholders might have additional concerns about their service charge liabilities, and – if they are trying to sell or remortgage their flat – about obtaining an EWS1 certificate.

As a ward member, you play a role in directly advocating for residents to their landlords. You also play an important role in influencing your council's response to building safety issues.

To do this, and to effectively support individual residents, it's important to work with them to understand the facts of their particular case:

- Who is the landlord?
- Who is responsible for managing the building, ie the landlord, or a management company?
- Which building do they live in?
- How old is this building?
- How tall is it?
- How many leaseholders live in the building?
- How has remediation work on that block progressed?
- Has the building owner applied for government remediation funding? If so, where does the project sit in the application process?
- Are any interim measures in place in the building? Which options have been explored for reducing the cost of these interim measures?

This is important information which you can use to provide advice or influence the relevant building owner. With the resident's consent, you could also pass the information onto the members of your council who are responsible for housing stock and housing regulation.

### **4. Support leaseholders to reduce their costs**

One of the main concerns for leaseholders in relation to building safety issues is the financial impact – cladding remediation can cost up to £20,000 per dwelling, and leaseholders may be legally liable for these costs.

Some options exist for reducing the financial burden on leaseholders – you should work through these with residents on a case by case basis. It's important, however, to remember that many of these options are outside the council's control and could take years to come to fruition.

- If the building is over 18 metres, has the landlord applied for any of the government's building safety funding? If so, where does the project sit in the application process?

- Is the leaseholder likely to be liable for remediation costs? LEASE is a government-funded service which can provide free initial advice on leasehold law.
- The Government has encouraged flat leaseholders to seek legal action against building developers. Where a building is less than six years old and has cladding or building defects, leaseholders may be able to take action under the Defective Premises Act. Where buildings are less than 10 years old, residents may also be able to claim against their building warranty scheme. Has the resident asked their landlord why they think the residents should not be able to take an action? Has the resident sought legal advice?
- Has the council explored enforcement action against the building owner? If so, how will it recover its costs?
- Have the residents explored ways to reduce the cost of interim measures? The National Fire Chiefs Council recently published guidance stating that, with adequate training, leaseholders could carry out their own waking watch patrols. In one block in Bromley, this has resulted in the leaseholders halving their monthly waking watch bill to £14,000. MHCLG has also published recent analysis showing that installing a fire alarm system is cheaper in the medium term than waking watches.

### **5. Support leaseholders to obtain an EWS1 certificate**

As detailed in this briefing, many leaseholders seeking to sell or remortgage their flats are finding that lenders have imposed a £0 valuation, pending a satisfactory EWS1 certificate. In this situation, leaseholders will be very keen to obtain a survey.

It's important to understand that EWS1 certificates are not a legal requirement on building owners, but a commercial requirement by lenders on individual leaseholders. If a certificate isn't currently available, you should work with the landlord (who may be your council) to ensure that information from that building's Fire Risk Assessment is available to residents.

It's also important to understand that leaseholders can't directly commission an EWS1 survey – as it's an intrusive survey of the common parts of the building, only the freeholder or block management company (if applicable) has the right to start the EWS1 process.

The Leasehold Knowledge Partnership, which campaigns on behalf of leaseholders, has reported instances of leaseholders paying companies claiming to provide EWS1 surveys on their behalf. Where councillors are aware of these companies, they should be reported to Action Fraud.

Finally, you should remember that in most cases, EWS1 surveys have found defects in buildings which require further remediation work. It's important to manage leaseholders' expectations about what the survey will achieve, and to remind them that they may be liable for the costs of any work subsequently needed.

To help the leaseholder obtain an EWS1 certificate, you can ask the following questions:

- Who is the landlord?
- How tall is the building?
- Does it appear to have cladding on it, or balconies?
- Has any remediation work been carried out to date?
- How many leaseholders live in the block?
- How many of them need an EWS1 certificate, and why?
- Depending on the answers, some potential responses are outlined below.

#### **a. Your council is the freeholder**

If your council owns the building, it might be responsible for carrying out an EWS1 survey. You should ask relevant members and officers whether they have an agreed policy for carrying out surveys and recharging residents.

It might be the case that the council has a policy of providing these certificates – you should find out:

- which blocks are covered by the policy – eg only blocks over 18 metres, or only blocks which have some form of cladding
- how the council is covering the cost of these surveys – it might be recharging all leaseholders through the service charge, recharging only the leaseholders who have requested the survey, or paying for the survey itself.

As outlined in this briefing, there are many difficulties in finding a surveyor, and in deciding a ‘fair’ way to pay for the EWS1 survey. If, for example, the council is only recharging leaseholders who have requested a survey, you might find that the costs are a very high barrier for residents.

It might also be the case that your council has decided not to provide EWS1 surveys. For example, it might have already prioritised remediation work on the basis of risk and might not want this prioritisation to be disrupted by the results of the EWS1 survey.

Where getting a survey is impossible or impractical, you should work with residents, local partner organisations, and your council colleagues to try and find a resolution. This might involve gathering enough information from your residents to convince the council to change its EWS1 policy. It might also involve lobbying for wider changes to the EWS1 process. We’ve given more information on this in later sections.

#### **b. Your council is an intermediate leaseholder between the freeholder and residents**

In some cases, the council might be acting as ‘head leaseholder’, whereby it leases part or all of a building from the freeholder, and sub-lets individual dwellings to tenants or leaseholders.

Again, as freeholders (or the block management company) are responsible for the common parts of a building, the council may not have the legal right to commission an EWS1 survey. However, some councils have reported cases where the freeholder has asked the council to commission the survey on its behalf. This will be a decision for the council.

### **c. The building is not owned by the council**

The landlord could be a housing association or private company. In these cases, it's important to find out who the landlord is, and which building is in question.

You should also find out how many leaseholders are in the building, how many need an EWS1 certificate, and whether any remediation work has already been carried out. This will help you to make a case to the relevant landlord to obtain an EWS1 certificate.

Note that in some cases, actual management of the building might have been delegated by the freeholder to a management company. Where the residents have exercised their Right to Manage, this company could be owned by all or some of the residents. You should find out more about how the building is owned and managed to ensure that you're involving the right parties.

Again, it's important to manage leaseholders' expectations – either because the freeholder might refuse to provide a certificate, or because the survey could uncover costly defects.

## **6. Engage with your constituents proactively**

Engaging with communities is a vital part of supporting residents to feel safe in their homes. Doing so can help them, and you, to shape effective solutions to addressing local building safety issues.

If your council is a landlord, it will have a residents' engagement strategy, and the need for consultation and communications on building safety may have been integrated into this. It may also have a separate communications plan for building safety issues.

You will be on the front line of working with residents who are concerned about building safety. As a community leader, you are best placed to understand the challenges they are facing, and by working closely with communities and a variety of local organisations, you can help to decide how best to respond to any building safety issues.

The particular strengths and knowledge that you bring to the engagement process are:

- an understanding of your ward – the demographics, the key concerns, and the way that building safety work programmes are currently being delivered
- the representation of local voices – you are a channel of communication between the communities you serve and the council, representing the views of others and speaking up for the unheard
- communicating and influencing skills – you can help to ensure that the views of local people are taken into account when decisions are made by the council or outside bodies, or when building safety issues are reported in the media.

Consider the following questions to help you plan your engagement with your communities:

- If your council is a landlord, does its residents' engagement strategy include points on consultation, engagement and communications on building safety issues?
- Does your council have a separate communications plan for building safety issues?
- Do these plans include actions for ward members? If so, how are you currently delivering these? If not, how could ward members become a stronger part of the council's building safety communications plan?
- Are there any estates or blocks where residents have been particularly affected by cladding issues? Do these blocks have residents' groups or associations? What arrangements are in place, or could be in place, for ward members to engage and consult with these groups?
- Which local forums have been set up by the council or local residents to discuss building safety concerns? How can you ensure you engage with these?
- How do you generally access and consult your ward on local issues of concern? How could you introduce a discussion on building safety to these meetings?
- Have there been any recent consultations with residents on building safety issues? What channels exist for you to consult your constituents, eg surveys or community newsletter feedback.

In addition to these points, there are now many regional and national-level campaign groups which have been set up by leaseholders and other residents, which focus on concerns about cladding and unsaleable flats.

You might wish to engage with these groups, both to understand concerns at a regional or national level, and to feed in the experiences of your own local community.

## **7. Empower residents**

You should also ensure that your residents are aware of any local or regional groups, so that they can engage directly – this could help to empower local residents and build 'social capital' in your community by:

- acting as an important source of information
- providing peer support to residents in stressful circumstances
- providing a means for residents to engage in collective action, which could influence change at the national level.

It's important that residents in a block or estate – whether they are tenants or leaseholders – are encouraged to work together. While the different groups are experiencing slightly different concerns, all residents will be concerned about the safety of their block, and may be able to influence their landlord more effectively when working as a collective.

## **Regional and national campaign and support groups**

UKCAG [ukcladdingactiongroup@gmail.com](mailto:ukcladdingactiongroup@gmail.com)

BrumLAG [wearebrumlag@gmail.com](mailto:wearebrumlag@gmail.com)

Leeds Cladding Scandal [leedscladdingscandal@hotmail.com](mailto:leedscladdingscandal@hotmail.com)

Liverpool Cladiators [liverpoolcladiators@gmail.com](mailto:liverpoolcladiators@gmail.com)

Manchester Cladiators [manchester.cladiators@gmail.com](mailto:manchester.cladiators@gmail.com)

SouthamptonCAG [sotoncladding@outlook.com](mailto:sotoncladding@outlook.com)

London Cladding Action Group <https://twitter.com/LondonCAG>

Leasehold Knowledge Partnership – a campaign group which supports leaseholders on cladding issues as well as broader leasehold issues

<https://www.leaseholdknowledge.com>

LEASE (The Leasehold Advisory Service) – a government-funded agency which provides free initial advice on leasehold law <https://www.lease-advice.org>

As well as practical support, these groups can also provide emotional support. Many residents are experiencing worsening mental health as a result of building safety issues, and the subsequent financial concerns.

Where appropriate, you might wish to signpost residents to organisations which can provide mental health support.

## **Some mental health support organisations**

Rethink Mental Illness

<https://www.rethink.org/help-in-your-area/support-groups/>

Mental Health Foundation

[www.mentalhealth.org.uk](http://www.mentalhealth.org.uk)

Mind

[www.mind.org.uk](http://www.mind.org.uk)

Samaritans

[www.samaritans.org](http://www.samaritans.org)

SANE

[www.sane.org.uk/supportforum](http://www.sane.org.uk/supportforum)

Turn2Me

<https://turn2me.ie>

## 8. Influence your council

As ward members, you are a vital link between the council and your community, and you can help to make sure that residents' voices are taken into account when your council makes decisions.

Consider the following questions to help you plan your engagement with the council:

- Which committee or portfolio member is responsible for housing management in your council? What about housing regulation?
- Who are the senior officers in charge of building safety (housing management or housing regulation) in your council?
- What arrangements are in place for ward members to feed information into these structures, or to these individuals?
- How can you reflect feedback, ideas, or evidence from your ward to decision-makers in your council?
- How can you be involved in influencing and setting the building safety priorities for your ward?
- What arrangements are in place for you to receive building safety information relevant to your ward from council officers or portfolio holders?
- How do you find out about what's worked in other local areas experiencing similar issues?

You might also decide that you would like to contribute to the scrutiny of building safety delivery in your council. Councils' scrutiny committees gather evidence on issues affecting local people and can influence the policies and decisions made by the council and other organisations involved in delivering public services.

They can help to:

- improve what the council does by focusing on the outcomes and outputs of its building safety work programme
- improve how the council operates by reviewing its strategies, objectives, and service delivery
- hold decision makers to account and assess whether the council is making a difference to residents' safety
- review performance management arrangements to ensure that they are robust and effective
- review policy development to ensure that the council is focused on issues of greatest local concern.

Ward members can contribute effectively to this scrutiny process given their role as community leaders and can challenge to make sure that the council is responding to the building safety issues raised by communities.

It's important to consider whether an issue can be resolved informally by working with decision-makers before referring the matter onto a scrutiny committee.

## **9. Influence wider policy and practice**

As set out in this briefing, many of the building safety issues affecting residents are national issues, which may have their roots in government policy or regulations. It's therefore important to work with a wide range of partners to help local voices feed into the national decision-making process.

You will have important insights from your engagement with your community or council, which could help you to demonstrate the scale of the issues to decision-makers, or to highlight the negative impact on local people:

Consider the following points:

- How can you help to evidence the impact of cladding issues on local residents?
- What links do you have with organisations that are lobbying the government on building safety issues, eg. the LGA, the National Housing Federation, Local Authority Building Control
- How can you engage with your local MP to ensure that residents' concerns are raised in parliament? How can you work with your MP to directly influence local landlords to carry out remediation work or an EWS1 certificate?
- How is your council lobbying government on building safety issues, and how can you feed into this lobbying work, eg responses to parliamentary select committees

# Further information

House of Commons Library: [Building Safety Bill 2019-2021](#)

House of Commons Library: [the External Wall Fire Review Process](#)

House of Commons Library: [Leasehold high-rise flats – who pays for fire safety work?](#)

Housing, Communities and Local Government Committee, [Pre-legislative scrutiny of the Building Safety Bill](#)

Housing, Communities and Local Government Committee: [Cladding – progress of remediation](#)

Public Accounts Committee, [Progress in remediating dangerous cladding](#)

Leasehold Knowledge Partnership – [Cladding scandal archives](#)

Building Safety Programme: [Waking watch costs](#)

Building Safety Programme: [estimates of EWS1 requirements on residential buildings in England](#)

Inside Housing, [Timeline: the three years since Grenfell](#)

Inside Housing, [Fact check: how many people live in buildings with dangerous cladding?](#)

Inside Housing, [the Paper Trail: the Failure of Building Regulations](#)

National Audit Office: [Investigation into remediating dangerous cladding on high-rise buildings](#)

University of Oxford Law Faculty, [Building Owners and the cladding problem](#)

LGA – [building a safer future consultation response](#)





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