

## LUHC COMMITTEE ENGAGEMENT EVENT: BUILDING SAFETY INDUSTRY ROUNDTABLE

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## Overview

On 20 February 2023, the Committee held a roundtable event to follow up on its previous work on building safety. We heard from: builders, chartered surveyors, developers, freeholders, insurers, landlords, leaseholders, managing agents, local government, product manufacturers, and social housing providers. There were 13 participants in total. The aim of this session was to hear about how building safety remediation is progressing and to identify any blockers that stakeholders may be experiencing. Outlined below is a summary of the key themes discussed.

## Waterfall of liability

### 10 *Leaseholders in the waterfall*

The Committee was told that the waterfall approach to liability has made some positive changes. However, every attendee present recognised that leaseholders are not at fault and should not be liable to pay for remediation work. Leaseholder attendees said that “the main problem is that leaseholders are in the waterfall at all”.

### *Qualifying and non-qualifying leaseholders*

The Committee heard that distinguishing between qualifying and non-qualifying leaseholders was a specific fault of the waterfall approach to liability. Participants explained how differentiating leaseholders into categories has caused problems for residents and has impacted the pace at which remediation work could be done. One attendee said: “when you’ve got unqualified leaseholders in that cascade, you’ve potentially got a problem that can’t be resolved.”

The Committee was told that in the context of the waterfall, landlords are essentially leaseholders. Private landlords who own more than three dwellings in the UK have non-qualifying leases. We heard that this caused problems. One problem identified was that private landlords with non-qualifying leases have “unlimited liability following them around”, meaning they are struggling to sell and re-mortgage their additional properties.

We also heard that there could be consequences for housing blocks if private landlords with non-qualifying leases have multiple dwellings in one building. If the landlord cannot afford remediation for all the flats, they own they are potentially “holding up the entire system”.

### 35 *Stakeholder groups included in the waterfall*

Participants debated over which stakeholder groups should be included in the waterfall of liability. Several attendees agreed that “there are not enough parties that are in the waterfall”. We heard that building control, insurers, construction product manufacturers, and contractors should be liable because there are “clear numerous facets of liability”. Another participant said: “[we] are looking to see whether the Housing Secretary will come good on some of the comments he made

right at the beginning [of the building safety crisis] about everyone taking the strain”.

5 Conversely, another participant said: “the liability has been assigned to the very people who were not responsible for creating this problem”. The participant demonstrated his point with a hypothetical example:

10 “If there is a problem with Mercedes cars and they have to be recalled, and that was going to prove very expensive. It’s a bit like saying, “well don’t worry about it, Mercedes, we’ll get Hertz rental company to pay for it”.

## Standards and regulations

### *What classifies as a "safe" building?*

15 The Committee heard that there is ambiguity over what classifies as a “safe” building. An attendee labelled this classification as “a moving target”. We were told that remediation “was all centred on the cladding”, but participants said that to make buildings safe the focus needs to include remediation of non-cladding defects. One participant suggested that the industry should take “a holistic approach to remediation”, meaning that the focus is not just on cladding but the compartmentalisation of buildings.

20 However, we heard that remediating internal defects was proving to be a challenge “because there wasn’t an equivalent to PAS9980, which is for external walls, for internal compartmentalisation”. The Committee was told that previous standards for remediating internal defects had been withdrawn. One participant said: “two parts have been withdrawn [from the PAS79-2 standard] because of the controversy about PEEPs [Personal Emergency Evacuation Plans]”.

### *Developer Contract compared to the Building Safety Act*

30 We heard that there is a “gap between what developers are required to do under the pledge [now contract] and what is actually required by the Building Safety Act.” The Developer Contract requires developers to remediate “life-critical fire-safety defects” which is a different standard to what is outlined in the Building Safety Act—a “building safety risk”. It was suggested that developers could be remediating buildings to a different standard than “what the future regulator will be requiring”.

### *Developer remediation and lack of oversight*

40 Buildings must have their external wall systems remediated to the PAS9980 standard. The main problem identified was that there is not sufficient oversight over developers to check whether they are remediating buildings properly. We heard that this is because there is a limited number of PAS9980 inspectors available and because “developers [are] having their own assessors” conduct checks.

The Committee was given an example of how different assessors gave different valuations of the same remediation project:

5 “We have one example of a building where the RMC [Residents Management Company] got a survey done under PAS9980 and it said that £3 million worth of work was required. The developers also had a survey done on that same building using their own surveyor which said £200,000 worth of works need to be done to the building.”

10 The participant who gave the example suggested that “an independent assessment would be far more preferable if we want to instil confidence to residents”.

### *Suggestion for a model of remediation*

15 The Committee heard that there was an appetite for a remediation strategy to be introduced. A participant said “a Government agreed model specification” would be welcomed. The participant explained that the model could be “one that people use [but] they don’t have to apply it directly in every case because it might not necessarily work”.

20 Another attendee referred to a previous Government scheme that made prefabricated homes built in the post-war period mortgageable, under right-to-buy, saying that a similar scheme could be devised. He explained that this scheme was a “toolkit approach to actually fixing the homes”. We heard that this scheme resulted in contractors fixing buildings to a standard where “the insurance was provided, and the mortgage lenders accepted this, and everyone could move  
25 forward”.

## **Funding for remediation**

### *Building Safety Fund*

30 The Committee heard how stakeholders are experiencing different problems with the Building Safety Fund. One issue raised was that stakeholders may not have enough money to cover the costs that are not covered by the Building Safety Fund. One participant warned: “liabilities here that are not covered by the Building Safety Fund will perhaps fold, which will actually put the issue back onto residents”.

### *The Building Safety Fund application process*

35 Several participants told us that the application process for the Building Safety Fund was slow. An attendee shared an example of this with the Committee. He said:

40 “It takes a long time to put all the paperwork together to get the application in. It then took 2 months for [the Department] to reply and then they came back with a few minor queries, administrative queries. So, [the applicant] fixed that and sent it

back, and it then took another 3 months for anybody to reply again. This went on for over a year”.

5 We heard that the application process being slow has caused delay to remediation work happening and has made funding remediation more difficult. We heard funding remediation has been made more challenging because in the time that the applications are being resubmitted and reprocessed, the original prices agreed by contractors to do the remediation works then become out of date and often become more expensive.

### 10 *Funds raised by developers*

Developers present shared their concerns about being the only actors in the industry that have contributed to the funding of remediation to date. One participant said that “UK home builders are willing to play their part”. However, he said that “what is happening now [has] become extremely unfair”. We were told 15 that developers are estimated to contribute approximately £8 billion to remediation in total.

We heard concern about how these contributions could affect SME developers. We were told that the Developers’ Contract is a particular cause of concern as SME 20 developers are “looking to see how they can sign it, but they are struggling because the future of their business depends on it, and they simply don’t have the money.”

### *Contributions from the supply chain*

Some attendees referred to the Secretary of State’s commitment to seek financial contributions from the industry, not just from one group. One participant told us 25 that the industry is still “yet to see what is going to be done with regards to overseas developers, [and] the supply chain including product manufacturers and others”.

### *Suggested alternative funding methods*

#### *Forward funding*

30 Attendees suggested alternative funding measures that could be adopted by Government to help accelerate remediation. The first suggestion was that the Government should provide the necessary funding for remediation upfront, then should focus on liability and cost recovery afterwards. One participant said: if Government “get forward funding in there first [...] that will get the buildings made 35 safe”.

#### *Building Safety Industry Fund (BSIF)*

The second suggestion we heard was for a “Building Safety Industry Fund” (BSIF) which would act as a “tax on industry”. A participant, proposing the BSIF, explained that it would be an additional levy put on everyone in the supply chain to 40 contribute 0.4% of their revenue as a tax over and above £10 million. He said that

this would help to protect SMEs as it would only be applied to “businesses that have a decent to sizeable revenue”. The participant told us that this suggestion “could create somewhere between £3-4 billion extra” to fund remediation.

### **Impact on social housing**

#### **5 *Issues with the Building Safety Fund resulting in social housing tenants paying***

The Committee heard that social housing providers are only eligible for the costs that would be passed onto leaseholders from the Building Safety Fund, meaning that the sum of money they qualify for is "directly proportionate to the number of leaseholders living in any of these sites". However, we were told that social housing providers receive no financial support to cover social housing tenants, consequently these tenants end up paying for remediation. A participant warned that this is going to impact communities, other services, and affordable housing supply in the future.

15 We were also told that social housing providers have had to withdraw applications to the Building Safety Fund because the process was taking such a long time that they were at risk of losing the prices they had negotiated with contractors".

### **Impact on local authorities**

#### ***Impact on housing revenue accounts (HRA)***

20 The main problem we heard was that local authorities are struggling to fund remediation, in addition to other demands, solely out of their housing revenue accounts. These demands included to deliver net-zero, fix damp and mould issues, and build new housing. Since this is all being funded out of one pot of money, we heard that remediation work, repairs, and investment in affordable homes has  
25 slowed.

The participant also shared that the public sector “do[es] not get as much help and support as the private sector” in accessing the Building Safety Fund.

#### ***Local authorities lacking capacity and specialised staff***

30 Another problem identified during the session was that councils are struggling to recruit staff with the specific knowledge or qualifications needed to carry out necessary inspections of buildings. We heard that there is competition for people with expertise across the industry, and because of this the public sector is struggling to recruit as they cannot offer the same financial incentive. A participant  
35 explained: “anyone who wants to make any money out of building control tends to go and work in [the private sector], so it’s quite hard to get staff for local authority building control”.

## Delays to remediation

### *Developer pledgees*

5 Another concern shared was that even if all the 49 developer pledgees signed the contract, their contribution “only covers a small percentage of the buildings that actually need work [...] it is something like 15%”.

### *Lack of understanding of the building regulations*

10 Some participants told us that another cause for delay is a lack of understanding of building regulations. One participant broke down this lack of understanding into three criteria: design, materials, and workmanship. He explained that in each criterion “there’s been a lack of understanding of the building regulations in terms of the functional requirements”. The participant referred to the Grenfell Inquiry to explain the lack of understanding of regulations:

15 “it was pretty clear that the building control surveyor from the local authority [...] just had no knowledge of the way that that building needed to come together when it was being refurbished and that was played out pretty clearly at the inquiry”.

### *The certificate processes*

Participants told the Committee that the landlord and leaseholder certificate processes are inefficient and are delaying remediation.

#### 20 *Leaseholder certificates*

25 One participant reported that their company is “finding that 75% of leaseholder certificates that are being returned are being completed incorrectly”. We were told the main reason for this was because leaseholders are struggling to execute the certificate as a deed. Another participant suggested that leaseholders should be sent out pre-completed forms, so it need only be witnessed to execute the deed. We were told that this would solve the problem with leaseholder certificates.

#### *Landlord certificates*

30 The Committee heard that there are two main problems with the landlord certificate process. Firstly, that they are not being completed correctly. One participant shared that he had “seen a dozen [landlord certificates] where the statutory definitions have not been applied correctly [and] the relevant documents have not been provided.”

35 Secondly, that the process for completing a landlord certificate was cumbersome and inefficient. We heard that landlords’ certificates are often 500 pages long and that “the first [certificate] is taking around 25-30 hours to prepare”. We were told that this process is impacting the remediation of many buildings as a landlord certificate is required for every building over 11 metres.

*Lack of clarity: number of buildings that need remediation and how much remediation will cost*

The Committee heard that stakeholders would like further clarity on the scope and cost of remediation. One participant said that “there’s 12,500 [buildings] over 18 metres, there’s roughly 77,000 [buildings] 11 to 18 metres potentially in scope”.  
 5 However, we were told that the industry “never quite know which figures to believe” and is ultimately unsure about “how many [of these buildings] need remediation”. It was also pointed out that there are “hundreds of thousands” of buildings under 11 metres with defects that are out of scope.

10 **Challenges around insurance**

*Insurance for leaseholders*

We were informed about the significant increase in insurance premiums and how this has affected leaseholders. We heard an example of how a participant’s insurance increased by 450% going from £220 a year to £1,100 a year. A  
 15 leaseholder explained that the additional financial burden from increased insurance premiums was a strain on individuals’ finances and was contributing to anxiety and other mental ill health problems.

Furthermore, the Committee heard how insurance has impacted the prospects of  
 20 leaseholders being able to mortgage their homes. A participant explained that mortgage lenders are apprehensive to lend on buildings that are not fully insured or are not insured. The reason for the buildings not being insured or fully insured is that the insurers are themselves sceptical of the lenders’ valuations of properties, which they fear to be based on inaccurate or outdated surveys.  
 25 Consequently, we were told that leaseholders become trapped in their homes and are having to pay “increasing mortgage rate costs because [they] can’t re-mortgage”. This is in addition to insurance, cost of living, and utility bills as well.

*Insurance for buildings*

We heard that the gap in standards between the Building Safety Act and the  
 30 Developers’ Contract has impacted the insurability of buildings. The Committee was told that if remediation is done to a life safety standard, as per the Developer Contract, rather than to a building safety standard as outlined in the Building Safety Act then it will be “very hard for insurers” to insure buildings because they can “still can burn down”.

35 An attendee from the insurance industry recognised that insurance costs need to be brought down and shared that his organisation are looking into ways to do that.

*Professional Indemnity Insurance (PII)*

The Committee was alerted to various problems regarding PII. The main issue we  
 40 heard is that qualified assessors “cannot get the PII to do the work”, so necessary inspections on buildings cannot happen. Where they can get insurance, premiums



are too high. We were told that assessors can apply to the EWS1 PII scheme and get a premium. But participants stated that “the take up has not been great because the premiums are just too high”.

- 5 One attendee explained that the Building Safety Act requires a Fire Risk Assessment of the External Wall (FRAEW) where necessary on buildings, as per the terms of the PAS9980 standard. Therefore, Homes England need people to carry out FRAEW assessments, not EWS1 forms. He said: “the Treasury needs to put their hands in their pockets and underwrite a FRAEW assessment as opposed to just doing the EWS1 PII form”, because “the EWS1 form will fade away over time”.
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The idea of Government intervention to accelerate assessors getting PII was welcomed by all participants.