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House of Commons
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Dear Chair,

I am writing to follow up on your Committee's recent oral evidence session with the Minister for Local Government Building Safety. While you were unable to attend the session, I trust Mr Blackman standing in as your deputy has provided you with a summary of the session.

The RFA is grateful for the scrutiny the Committee has consistently applied to the Government around building safety and for broaching important topics in this area – including the gap between the developer remediation contracts and the Building Safety Act 2022.

Since the Committee's session, the Government has announced details of the Responsible Actors Scheme, which will see a larger pool of developers pursued to remediate unsafe buildings they are responsible for. The RFA welcomes the certainty of funding that the scheme will provide to more leaseholders in unsafe buildings and looks forward to reviewing the relevant regulations to be laid later in Spring.

Until then, however, I felt it was important to convey the RFA's thoughts on the Committee's oral evidence session to you and to address lingering points that will be important for the Government to consider in order to fix the building safety crisis.

On the broader discussion of the 'polluter pays' principle, the Government referred to freeholders in the same vein as developers, continuing its refusal to acknowledge that professional freeholders with no links to 'polluters' are innocent parties in this crisis. The blame for the crisis lies squarely with developers, cladding manufacturers and those responsible for watered down building regulations and safety standards. Freeholders – who never designed nor constructed the buildings – are no more to blame than leaseholders, given both parties bought their properties in good faith and it is inaccurate and irresponsible of the Government to claim otherwise.

Furthermore, despite having acknowledged there is a clear difference between the standard prescribed in the Building Safety Act 2022 and the longform remediation contracts, the Department stated during the session that it would "expect" there to be alignment between the two. Although the monitoring process outlined by the Department will be important for freeholders looking to hold developers to account in delivering upon the pledge, this lack of alignment could lead to unnecessary delays and hurdles in remediating unsafe buildings.

Given the Government is looking to make up for the regulatory failings that precipitated this crisis, absolute clarity is needed in setting out the safety standards it expects of developers who took advantage of a loose regulatory regime to construct and sell unsafe buildings in the first place.

Despite having pledged to implement a polluter pays principle during the passage of the Building Safety Act 2022 (BSA) – and despite having accepted the outcome of the Grenfell Tower Inquiry (from which freeholders were not assigned any liability) – the Government is insistent on pursuing the flawed 'waterfall' model contained within the BSA.

This does not guarantee the funding necessary to fix unsafe buildings and causes delay to remediation works while alternative sources required to plug those gaps are investigated, often via time-consuming legal action. The Minister even acknowledged during the session that the Government does not know how many buildings between 11 and 18 metres will require remediation, yet it is willing to apportion an unspecified liability onto professional freeholders, where the original polluter cannot be located.

Given the new Responsible Actors Scheme will only apply to buildings where a developer can be located, there will continue to be a portion of 'orphaned' medium-rise buildings where freeholders will have to engage in a lengthy litigation process to pursue those responsible, with leaseholders left in limbo, facing higher insurance premiums and little certainty around when their building will finally be safe.

The Government is currently piloting a Medium-Rise Scheme to remediate these blocks where a responsible developer cannot be located. The Government are yet to publish the eligibility criteria and the application process for the full scheme. Clarity is needed urgently on this, but without an idea of the scale of the problem, it is likely the scheme will fall short of what is needed.

If you would like to discuss any of the above in further detail, or have any questions for our organisation, the RFA would be glad to provide any further information as necessary.

Yours sincerely,

Mick Platt
Director, Residential Freehold Association

