



Department for Levelling Up, Housing & Communities

Lee Rowley MP

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Mr Clive Betts MP
Chair, Levelling Up, Housing and Communities
Committee
House of Commons
Palace of Westminster
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5th June 2023

Dear Clive,

Thank you for inviting me to appear before the LUHC Select Committee on 20 March and for giving me the opportunity to explain how the Government has made, and continues to make, progress in tackling building safety.

This letter responds to yours of 18 April. Following the Secretary of State's letter to you of 25 April concerning the Responsible Actors Scheme, I understand that this addresses all the outstanding questions that you have put to the Department.

1. Medium-rise scheme pilot

You asked about the new approaches and technologies being used for the medium-rise scheme and for a copy of the published methodology used to estimate numbers eligible for the scheme.

Previous HMG building safety programmes were put together at pace in response to the Grenfell Tower Fire. Homes England has designed the Cladding Safety Scheme over a longer timeframe, building on and improving earlier schemes in a number of ways in a digitised user-facing package. This includes scope for more rapid delivery and improved access to information for leaseholders and residents, who will have enhanced data on payment approvals as their buildings are fixed. The new system will allow users to better progress and track multiple applications from start to finish within a single platform, which was not possible with earlier HMG schemes to the extent it is intended to be now. The scheme also brings improved up-front guidance and support for applicants in a more user-friendly online application, which has been tested and refined during the ongoing pilot. Other user-led improvements include bringing applicants through the grant funding agreement earlier in the process, to reduce process delays and improve procurement and cost controls within finalised contracts. The new data platform will allow Homes England to analyse data more quickly (in real time) and identify trends and areas for improvement, as well as achieving data management cost efficiencies. New digital systems also provide a vehicle for Homes England along with its service administrator to automate checks and routine communication to applicants, ensuring more consistent support and fewer separate processes and hand-offs. This technology currently being piloted will be vital for a scheme that is expected to involve more than 5,000 buildings.

Our estimate of the number of medium-rise residential buildings in England with external wall systems that present a life-safety fire risk is based on findings extrapolated from a sample of buildings. The estimates and the full methodology underpinning them are published on GOV.UK, and I have enclosed a copy for the committee.¹

You may also find it useful to have further information about the progress of the pilot, which we launched in November. The freeholders of 72 medium-rise buildings, selected on the basis that they are at the highest risk of the rapid spread of fire, were initially invited to take part; a further 550 have since been invited to test our ability to scale the scheme up. Homes England has also launched an online tool to help future applicants collect and prepare the necessary data. In the course of the pilot, we have switched to approaching the responsible entity for the building rather than the freeholder, which we have found more effective, and improved communications to applicants. These and other lessons will mean the full scheme is more effective when it opens later this year. We hope to be able to announce more about the full opening soon.

2. Buildings in scope of the Developers' Contract

You asked for the number of buildings that the Department is aware of that will not be remediated by developers who have signed the remediation contract with the department. There has never been a single register at any point in our lifetime. We do not have comprehensive data on the total number of 11m+ buildings in England that have fire safety defects. The developers who have signed the developer remediation contract have between them committed to remediate or pay to remediate at least 1,100 buildings that are known to be unsafe. This number may increase over time if further buildings with issues are identified, and as additional developers sign the contract as the statutory Responsible Actors Scheme takes effect. Developers who have signed the remediation contract are obliged to provide us with quarterly data on the progress of remediation, which we will share with the committee. In addition, the Department regularly publishes the following data:

- the remediation of high-rise (over 18m) residential and publicly owned buildings with unsafe aluminium composite material (ACM) cladding systems; and²
- the remediation of high-rise residential buildings with unsafe non-ACM cladding systems via the Building Safety Fund.³

In addition to this, officials remain in discussion with further developers who are making progress towards signing the contract.

It is also the intention of government to expand the forthcoming Responsible Actors Scheme to cover all developers who have developed buildings over 11 metres with life-critical fire-safety defects and therefore should be responsible for fixing them.

3. Responsible Actors

You asked me to set out the Department's position on groups that are responsible for making buildings safe. We will not rule out pursuing any actor or individual who is in breach of the Building Safety Act. The powers in the Building Safety Act give us particular legal avenues over developers, contractors, construction product manufacturers and freeholders.

We have been clear that we expect construction product manufacturers, in particular, to contribute to the costs of remediation; responsibility clearly lies more widely, and includes to differing extents

¹ <https://www.gov.uk/government/publications/estimating-the-prevalence-and-costs-of-external-wall-system-life-safety-fire-risk-in-mid-rise-residential-buildings-in-england>

² <https://www.gov.uk/guidance/aluminium-composite-material-cladding#acm-remediation-data>

³ <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#building-safety-fund-registrations-private-sector-and-social-sector>

those responsible for manufacturing, marketing, selecting, supplying, or using defective construction products.

We are disappointed at the failure of construction product manufacturers to make redress or even to acknowledge the extent of their liability. I would encourage building owners, developers, contractors and others to consider using the powers that we introduced through the Building Safety Act to seek redress. We will look closely at any recommendations from the Grenfell Tower Inquiry relating to this sector. We are assessing options for further legislative changes; no options are off the table.

You also asked the Secretary of State, in your letter of 6 February, about the Department's plans to ensure construction product manufacturers contribute to the cost of remediation, and how the Recovery Strategy Unit will hold them to account. You will appreciate that I cannot disclose details of active cases that the Unit is pursuing: in some cases, entities are yet to become aware that they are the subject of investigative or other action, and we do not want to make that public; in other cases, settlements which may have been reached may have terms prohibiting certain disclosures. As we discussed when I appeared before the committee, we would be happy to facilitate a personal briefing to the committee from the director of the Unit. Legal and commercial considerations mean such a briefing would have to be *in camera*.

4. Clarification on the Responsible Actors Scheme

You asked for further information about sites that are owned by developers that are ineligible for the Responsible Actors Scheme. I think you meant to refer to developers that are eligible, but that are either not permitted to join because they do not sign the remediation contract, or whose membership is revoked for failing to perform their obligations under the contract. I have answered in that light, but please let me know if that is not the case.

If a developer has commenced work on a site at the point where the prohibitions are applied, the developer will not be able to be granted building control sign-off, except for a limited exception to protect innocent residential purchasers who have exchanged contracts. Developers could choose to sell the sites to competitors for completion; we would hope they would choose to sign and abide by the remediation contract.

Our hope and expectation is that we will rarely, if ever, be forced to use these powers, and that if we do use them, then the strong incentive for the developer to move back into compliance would reduce the risk that building sites fall into disrepair to a tolerable level. We have also included in the regulations provisions to make sure that critical work on occupied buildings (such as remediation to make a building safe) can still go ahead and be granted building control sign-off. Beyond this, it is for developers to make sure that they comply with their legal and moral responsibilities, and I am confident that most or all will do so.

5. Support for social housing providers

You asked about the steps we are taking to support social housing providers with remediation costs, and for the department's current estimate of remediation costs. The financial forecasts submitted to the Regulator of Social Housing in June 2022 by private registered providers (RPs) that own and/or manage more than 1,000 homes (summarised in the Global Accounts published by the Regulator in January) indicated that approximately 10% of the five-year forecast spend on repairs and maintenance relates specifically to building safety works. While we expect this to provide a reasonable indication, it is just a sample. We are in discussion with representative bodies and individual providers that will allow us to improve estimates of total costs across the sector.

The Department is committed to ensuring that those in social housing are protected, and to that end has allocated £400 million to support RPs to remove and replace unsafe ACM cladding on buildings over 18m. RPs are also able to receive funding from the Building Safety Fund where their

leaseholders would otherwise have been charged, or where their own financial viability is jeopardised. We will provide access to funds for medium-rise buildings on the same basis. Exactly as with other freeholders, social housing providers also benefit from the developer remediation contract, where relevant, and the range of tools created or enhanced in the Building Safety Act that allows them to pursue those parties responsible for unsafe buildings.

6. Clarification on the commitment DLUHC has received from mortgage lenders

You asked for further information about our discussions with lenders on protecting mortgaged leaseholders who are found to be in breach of their lease for non-payment of service charges relating to remediation. The Department has investigated and has not found evidence from either the First-tier Tribunal or lenders that leaseholders were facing forfeiture proceedings for the non-payment of service charges following the protections introduced in the Building Safety Act, which established a new regulatory and costs regime. The Act and our funding schemes have increased confidence to the extent that major lenders have committed to lend on affected properties that are covered by the leaseholder protections or government remediation schemes, putting leaseholders in a significantly better position than they were.

In the instances where leaseholders can be asked to contribute, they remain subject to the normal statutory processes and protections and lender forbearance. There are detailed and robust legal procedures that must be followed by a landlord and lender when taking forfeiture or possession action. I would, of course, urge the committee to share any specific examples of forfeiture and possession taken place because of building safety costs and we will absolutely pursue them with vigour.

Thank you again for writing in on these important matters and my best wishes to the Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Lee', is centered on the page.

LEE ROWLEY MP

Encs.