# Cladding & Building Safety Website Frequently Asked Questions

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# 1. Remediation works and associated costs

### What is cladding?

The term cladding, in its most common usage, refers to the outer skin(s) applied to a high rise building to increase thermal energy efficiency, and/or to improve aesthetics while not adversely affecting weather resistance. The cladding element is non-load bearing, which means it is not structurally integral to the building itself.

Cladding can either be fitted to an existing building of traditional masonry construction or can be incorporated into the design of a brand new building.

### What is cladding ‘remediation’? Why is it needed?

Remediation means the repair or removal of cladding that could pose a danger to residents.

Remediation can be required for a number of reasons. Cladding systems can consist of rain screen 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 be an integral part of the wall of a more recent block.

In a fire, the cavity gap 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) at various points in the cladding system.

Remediation is necessary 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, i.e. 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.

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

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

Work initially focused on buildings over 18 metres with the same type of dangerous cladding as Grenfell Tower – Aluminium Composite Material (ACM).

In 2019, The Government asked local authorities to begin a data collection exercise to identify all high-rise residential buildings in both private and social or council rent sector with ACM cladding.

In January 2020, the Government announced that the threshold for the ban on combustible materials would be lowered to 11 metres (approximately 4 storeys high) but did not announce any funding for fire safety defects other than cladding, such as replacing balconies and fixing fire-stopping and cavity barrier issues.

In January 2022, the Government reconsidered this advice and expanded the focus of its remediation programme to include residential buildings between 11m and 18m tall.

In February 2022, the Government announced tough new measures that will force industry to pay to remove cladding and protect leaseholders have been unveiled by Secretary of State for Levelling Up; Michael Gove. The Government continues to work 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.

**What types of cladding are considered dangerous?**

Shortly after the Grenfell fire in 2017, remediation initially focused on buildings with ACM cladding. The Government began a programme of testing on ACM cladding, to determine whether it was still dangerous if combined with different types of insulation. Results, published in 2019, found that most combinations failed this testing and were still dangerous.

In 2018, the Government banned the use of combustible materials on any part of the outside of buildings over 18m.

**How many buildings are affected in England?**

According to Government's data release for November 2021**,** 477 buildings over **18 metres tall** are identified as having **ACM cladding** in England.

Of these, 160 are social sector residential buildings, 222 are private sector residential buildings, and 56 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.

In total, the Government estimates that there are 79,000 residential buildings that are **11 metres or taller** in England. This equates to 1.27 million leasehold flats, of which at least 839,000 are believed to be in buildings with some form of unsafe cladding.

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 Agent suggest that 274,000 flats are in homes with dangerous cladding – this may equate to over 650,000 people.

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

We believe that the widespread existence of cladding defects is a result of regulatory and industry failure. This view is support by the Local Government Association (LGA) and by cladding campaigners.

Since Grenfell, there has been an ongoing debate about who is responsible for such widespread cladding defects, including whether Government guidance has been clear enough and whether fire safety testing processes of cladding has been robust enough.

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. You can read the first report of the Grenfell tower inquiry here.

## 2. Progress on cladding remediation

### What is the building safety programme?

The Government's Building Safety Programme (BSP) is led by the Department for Levelling Up Housing and Communities (DLUHC) The Building Safety Programme

(BSP) was established following the Grenfell Tower disaster in July 2017 and aims to 'make sure those residents in 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 reform the system. The Government has subsequently published a Building Safety Bill and is setting up a new Building Safety Regulator.

**What is Fire Safety Act 2021?**

The Fire Safety Act 2021 was enacted at the end of April 2021. The Fire Safety Act is also designed to provide a foundation for secondary legislation which won't require another Act of Parliament, based upon the recommendations made from the Grenfell Tower Inquiry. Extra measures may include responsibility for lift inspections, the reviewing of evacuation plans and fire safety instructions to residents.

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'.

**What remediation has been carried out to date across England?**

The Government's latest data release (end of March 2022) states that:

- **94%** (448) of all identified residential and public owned over 18m tall have either completed or started remediation work to remove and replace unsafe ACM cladding – an increase of two buildings from October
- **100%** (160) of social sector buildings have either completed or started remediation. Of these, 159 (99%) have had their ACM cladding removed
- **88%** (199) of private sector buildings have either completed or started remediation. Of these, 180 (79%) have had their ACM cladding removed.
- **£27.5 million** of funding has been approved from the Waking Watch Relief Fund, covering 323 buildings and an estimated 25,000 leasehold dwellings.

The Department for Levelling Up, Communities and Housing (DLUHC) originally aimed to complete all remediation on buildings, with ACM cladding by the end of 2021, but has not yet clarified a new target date.

DLUHC does not currently have a target for the remediation of buildings with unsafe non-ACM cladding.

**What is the Building Safety Fund (BSF) Leaseholder and Resident Service?**

This Service gives residents access to online information on your building's status in the BSF application process. It's one of the practical steps being taken to:

- improve transparency: updated information will be published on the Service on the third week of every month so you can track the progress of your building's BSF application.

- provide reassurance: leaseholders will not be liable for the cost of removal and replacement of dangerous cladding.

  Residents can access the service via the following link:
  https://www.buildingsafety-fund-status.communities.gov.uk/

Residents will need to type in the **unique building code** exactly as it is written. This is available from your building's responsible entity. If you live in social housing, your responsible entity is your local authority or housing association. If you live in private housing, examples of responsible entities include:

- freeholder
- head leaseholder
- private sector building owner or their agent
- right-to-manage company, or
- registered provider of social housing such as a local authority or housing association.

**What remediation has been carried out in Newham?**

*For Council blocks:*

As of March 2022, Newham Council has completed remediation on all identified council blocks over 18m tall that used ACM cladding.

Newham Council have begun work on seven additional tall blocks that have non-ACM (HPL) cladding.

*For Privately owned blocks:*

While we have supported the private sector to identify buildings with ACM or other unsafe cladding, remediation on those blocks is the duty of the private landlord or developer.

We are aware of **256** private residential tall blocks in the borough. As of April 2022, ACM cladding has been removed, where part of the main external wall system on 15 tall blocks. Private tall block owners in Newham have also received Government funding to begin work on 50 tall blocks with non-ACM cladding issues.

**How much does cladding remediation cost?**

Enormous costs have arisen in relation to cladding remediation and broader fire safety measures, which fall into three camps:

Firstly, the LGA estimates the cost of cladding removal at around £2 million per block, though some costs have been quoted as high as £100,000 per flat.

However, total costs include more than just the cladding – fire and rescue services require a range of interim fire safety measures to be put in place in buildings with unsafe cladding before remediation is complete. 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').

The Government 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 month per building, depending on the number of individuals and hours covered. These estimates show that it is usually cheaper to install an alarm system than to employ a waking watch.

The Government launched a Waking Watch Relief Fund to cover the cost of replacing waking watches with alarm systems that applies to private sector buildings over 18m in England only. More recently, the Department for Levelling Up, Housing and Communities launched a £27m fund for fire alarms in buildings with a waking watch.

Thirdly, cladding remediation works might uncover further fire safety issues in a building, such as inadequate firebreaks, problems with insulation, or inadequate fire doors. The National Audit Office has found that cladding inspection has revealed significant flaws in many cases. Estimates suggest the cost of all remediation work could reach up to **£15bn.**

**How much has Newham Council spent on cladding remediation so far?**

Cladding remediation on tall council blocks with ACM cladding has cost **£5.6m**, of which **£3.6m** was provided by the Government.

The Council is investing a further **£15.4m** to complete remediation on tall council blocks with non-ACM dangerous cladding.

The Council has submitted further applications to the Building Safety Fund for leaseholder costs in relation to four council tall blocks with non-ACM cladding. If successful, this will provide funding relief for the leaseholders to pay for the cost of cladding replacement.

**Is current funding enough?**

Campaigners, councils, leaseholders and Parliamentary Committees have criticised the existing funding as not enough to solve the cladding issues nationwide.

While the Government now seeks to make developers pay for the expected **£4bn** cost of cladding remediation, many are concerned that the funding remains on a **first-come-first-served basis**, which could exclude people who have not acted quickly enough (e.g. by being held up in legal challenges) but who may still be living in high-risk buildings.

Funding also remains limited to **buildings taller than 18m** and only covers work **started after March 2020**, and excludes council landlords unless it is considered so expensive to justify the council's funding plans.

Existing funding also currently cover the costs of cladding remediation only, excluding any additional fire safety issues. 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, without including the **77,500** buildings between 11 and 18 metres.

### Who should pay for cladding remediation?

In January 2022, the Government reset its position by saying that developers and the companies at fault for installing unsafe cladding should pay for remediation. The Department for Levelling Up, Housing and Communities has pledged to restore "common sense" to the market by pushing the industry to agree a plan of action to fund estimated **£4bn** remediation costs nationally.

DLUHC has also committed that leaseholders living in their own flats will not face any costs to fix dangerous cladding.

Proposed amendments to the Building Safety Bill will prohibit leaseholders in midrise and tall blocks above 11 metres, from being charged any money for cladding remediation work.

For non-cladding work, the new law will seek to make developers and cladding manufacturers pay. It will then move on to freeholders, where they have the means to do so (i.e.; pension/investment funds).

If neither of these routes provide the full sum of money required to fix the block or where the freeholder is a social landlord who did not build the block, caps on costs will apply and leaseholders can be billed for non-cladding fire/building safety works. But these costs will be capped at £10,000 nationally and £15,000 in London paid over 5 years. See link https://www.gov.uk/government/news/government-to-protectleaseholders-with-new-laws-to-make-industry-pay-for-building-safety

### What were the House of Commons recommendations on Building safety remediation and funding?

You can access here the House of Commons report;**;https://publications.parliament.uk/pa/cm5802/cmselect/cmcomloc/1063/report.html** published on 11th March 2022 with recommendations to government who have two months to respond.

The report summary highlights:

On 10 January 2022 the Secretary of State for Levelling Up, Housing and Communities announced that the Government would protect leaseholders from the costs of building safety remediation. Instead, the Government would make the industry pay for any remaining faults. The Secretary of State has since asked residential property developers and construction product manufacturers to contribute to a fund for remediating faulty cladding on buildings 11–18m high. He has also

asked developers to fund and undertake remediation works on buildings they played a part in developing. On 14 February the Government, through proposed amendments to the Building Safety Bill, set out how it would enshrine in law its protections for leaseholders and its powers to penalise industry players who do not cooperate. The Government's proposals would exclude landlords from the protections for leaseholders, except those who only own one other property besides their residence. They would also introduce of a cap on costs for leaseholders for remediating non-cladding defects of **£10,000 nationally and £15,000** within London.

**What is the Government's latest approach?**

The Government latest update on new approach is set out in recent May 22 publication: Building safety: remediation and funding - government response to the Select Committee reports following the Levelling Up, Housing and Communities Select Committee published report on cladding remediation in April 2021. Since that report the Government has made radical changes to its approach to building safety. This response sets out the Government's position and responds to both remediation reports from the Select Committee. Below are the the key recommendations and the government's response:

***Protecting leaseholders from future costs***

***Recommendation:*** *The Government should scrap the cap on non-cladding costs for leaseholders. (Paragraph 14)*

***Government Response:***

*We have delivered robust protections for leaseholders, completely reversing the legal presumption that leaseholders are automatically responsible, with uncapped and unlimited liability, for all costs associated with historical building safety defects. These protections are significant and far-reaching.*

*Our protections will ensure that many leaseholders pay nothing at all. First, leaseholders are fully protected from costs associated with the removal of unsafe cladding. Where a developer has signed up to our developer pledge, they will fix non-cladding defects – as well as cladding defects – in their own buildings, and their leaseholders will pay nothing. If a building owner is, or is linked to, the developer, that building owner will be liable for the costs associated with non-cladding defects, and their leaseholders will pay nothing. If the building owner or landlord is not linked to the developer but has the wealth to meet the non-cladding costs in full, their leaseholders will pay nothing. And if a leasehold property is valued at less than £175,000, or £325,000 in London, the leaseholder will pay nothing.*

*Where the building owner or landlord is not at fault – where they have no link to the developer who created these defects – and do not have the wealth to meet the remediation costs in full, and only in this situation, leaseholders may be asked to contribute towards non-cladding defects; these contributions are subject to the fixed caps. It is important that the Government takes a proportionate approach where there is no clear party that needs to pay in full. In these circumstances capped leaseholder contributions will help to make sure the necessary remediation works take place. This will allow banks to lend on properties, reduce leaseholders' insurance premiums and crucially, ensure affected buildings are made safe for all living in them.*

***Recommendation:*** *We do not agree with the Government's proposal that only buyto-let landlords with one other property should be included in the statutory protections for leaseholders. Should the Government continue to treat buy-to-let landlords differently to other leaseholders there are other options available to exclude wealthy property tycoons from the protections without making landlords of more modest means liable, such as basing eligibility on the value of the company that owns the properties, or on the landlord owning a higher number of rental properties. We recommend that the Government publish an impact assessment of these options before undertaking a course of action. The Government should also publish an impact assessment on how its current proposals to exclude buy-to-let landlords with fewer than one other property could affect the progress of remediation. (Paragraph 15)*

***Government Response:***

*Our policy is fundamentally designed to protect leaseholders living in their own home (including those who have moved out and sublet, and shared owners). All buy-to-let landlords, regardless of their UK property portfolio size, will always be covered for their principal home. We engaged with Parliamentarians and other interested parties on this issue, to make sure that our proposed measures produce a fair outcome for those affected by the cost of historical remediation. We listened carefully to a range of views, and as a result extended the number of protected properties from two to three. This means that leaseholders living in their own home and those with up to three UK properties in total will be protected.*

*In addition, all leaseholders (including those with large buy-to-let portfolios) will be protected from all historical building safety remediation costs where the building owner or landlord is – or is connected to – the developer.*

***Recommendation:*** *Our preferred option would be for the Government to table amendments to the Building Safety Bill to ensure that all leaseholders in buildings of any height have statutory protection from future costs for remediating historic building safety defects, both cladding and non-cladding. (Paragraph 16).*

***Government Response:***

*Our assessments have shown that there is no systemic fire safety issue in buildings below 11 metres. The fire safety risk for these buildings are far lower than those in taller buildings, and where there are concerns identified these low-rise buildings need little or no remediation to make them safe. Often, lower-cost mitigations are more likely to be proportionate than full-scale remediation. That is why the scope has been set at above 11 metres or five storeys.*

*Leaseholders in buildings below 11 metres continue to have access to protections from costs through warranties and will be able to utilise the new redress measures that the government has introduced through the Building Safety Act to seek compensation from those responsible for the construction of their homes.*

*Recommendation: Instead of its piecemeal method of funding remediation according to building height and type of defect, the Government should implement our previously recommended Comprehensive Building Safety Fund. The fund should cover the costs of remediating all building safety defects on buildings of any height where the original "polluter(s)" cannot be traced. Overseas owners of affected properties should not be eligible for any funds for remediation. (paragraph 17).*

***Recommendations from 2021:*** *The Government should establish a Comprehensive Building Safety Fund for full remediation works of affected buildings. In allocating funds from the Comprehensive Building Safety Fund, the Government should move away from the current height- and product-based approach and should instead take a holistic, risk- and evidence-based approach that prioritises occupants who are most at risk. To support that approach, the Government should consider establishing a more formal process for identifying and prioritising risk holistically and report back to the Committee on the best way to achieve this, along with the evidence (paragraph 19).*

*We call for a Comprehensive Building Safety Fund that:*

- *applies to all high-risk buildings of any height, irrespective of tenure;*
- *covers all fire safety defects, including combustible insulation; and*
- *covers all associated costs (paragraph 20).*

*The Comprehensive Building Safety Fund should be fully funded by Government and industry, and the Government should establish clear principles regarding how the costs should be split between the two. Total contributions should not be capped, given that, as we have already highlighted, the full scale of remediation needed is not yet fully known (paragraph 21).*

*The Government should abolish the loan scheme. We reiterate our call on the Government to re-establish the principle that leaseholders should not pay anything towards the cost of remediating historical building safety defects. Instead, as we have stated, costs should be fully met by the Comprehensive Building Safety Fund, to be funded by Government and industry (paragraph 29).*

***Government Response:***

*We believe that establishing a "Comprehensive Building Safety Fund" as the Committee recommends would drive unnecessary remediation works to the*

*detriment of leaseholders. The Government is advocating a proportionate approach to building safety. This will deliver a safe level of risk management, whilst preventing unnecessary, expensive works that would be disruptive for people living in the buildings in question.*

*The recommendation would also have likely negative impacts on the wider housing market by removing the incentive to undertake work only in proportion to risk and thus exacerbating incorrect perceptions of risk. The Government is working closely with industry to restore market and leaseholder confidence by rebuilding and supporting the housing market, so it responds proportionately to risk, especially for lower and medium rise buildings.*

*The Government's approach to cladding remediation prioritises the safety of all residents and leaseholders according to the risk of loss of life and structural damage that a fire could pose, based on expert advice which consistently shows that the height of a building is a key factor. Our approach to supporting unsafe cladding remediation therefore aligns with the new building safety regime that ensures a proportionate approach to managing building-safety risk is balanced against costs to industry and the taxpayer.*

*We have provided £5.1 billion for the remediation of unsafe cladding in building over 18 metres, which will ensure that high-rise buildings can be made safe.*

*It is right that we have focused grant funding on the tallest buildings – this is in line with longstanding independent expert advice on which buildings are at the highest risk – because the risk to multiple households is greater when fire spreads in buildings of this height. Cladding remediation also typically represents the highest costs.*

*It is generally easier to tackle fires in lower-rise buildings and easier for residents to evacuate if fire does spread. We do understand that a minority of buildings may need remediation to remove and replace unsafe cladding where other mitigations and fire protection measures are not sufficient.*

*We agree with the Committee that it is fundamentally unfair that innocent leaseholders, who have worked hard and made sacrifices to get a foot on the housing ladder, should be landed with bills they cannot afford, to fix problems they did not cause.*

*We have been in intensive talks since January with the home-building sector to come forward with proposals on how it will take responsibility for fixing unsafe buildings built over the past 30 years. Over 40 of the largest residential developers have now agreed to a pledge to:*

- *take responsibility for all necessary work to address life-critical, fire-safety defects on buildings 11 metres and over that they had a role in developing or refurbishing, and*
- *withdraw any such buildings from the Building Safety Fund and Aluminium Composite Material (ACM) Fund and reimburse funding approved from those funds for such buildings.*

*In addition to the commitment made by firms to fix buildings they have played a role in developing in the last 30 years we will establish a new 11-18m cladding remediation scheme through which to fund work on buildings where a responsible developer cannot be identified. The new scheme will be funded by expanding the scope of the Building Safety Levy to raise an additional estimated £3 billion, providing the necessary funds to address cladding issues on these remaining buildings.*

*We believe this is the fairest approach to ensure a broad range of firms involved in residential property development pay towards addressing the problem whilst continuing to protect leaseholders from these costs.*

*The Government recognises that it is not right that leaseholders should be the first port of call for the funding of non-cladding remediation and we have made it clear in the Building Safety Act 2022 that, where the freeholder of a building is, or is associated with, the developer, or where the freeholder has sufficient resources, they should pay for all remediation work needed to address non-cladding. Where the freeholder is not linked to a developer they will only be able to pass on costs to leaseholders where they have a net worth of less than £2 million per in-scope building and have first exhausted all other available options.*

*We do not agree with the recommendation that overseas building owners should not be eligible for remediation funding. This would delay remediation by preventing buildings with overseas owners and complex ownership structures from undergoing remediation, which would delay the building being made safe.*

***Data and wider impacts of cladding crisis***

***Recommendation:*** *The Government must publish, within two months, all available data on the number of buildings of all heights with historic building safety defects—cladding and non-cladding—including data it has received from developers and manufacturers. (Paragraph 21).*
***Recommendation from 2021 report:*** *We reiterate our recommendation from our June 2020 report that in the same way as it has done for buildings with ACM cladding, the Government should publish a monthly data release on the number of buildings with non-ACM cladding and other serious fire safety defects awaiting remediation. This data release should also explicitly include buildings between 11m and 18m as well as buildings 18m and above. (Paragraph 10)*

***Government Response:***

*We are committed to publishing information in data releases as soon as it is appropriate to do so. We currently publish a monthly data release on progress with remediation of unsafe ACM cladding. We also publish a monthly update on the progress of buildings through the Building Safety Fund and provide quarterly updates on Building Safety Fund funding.*

*All new analysis is published in the release when it has been appropriately quality assured. The principle underpinning the monthly release is transparency of highquality analytical outputs to inform decision making and the public, in line with the Code of Practice for Statistics.*

*We separately publish monthly data related to the progress of the Building Safety Fund (covering remediation of unsafe non-ACM cladding on buildings 18 metres and above) – including the number of applications approved and the amount of funding allocated.*

*We have published on 16 May the findings of a data collection on the estimated prevalence of 11-18 metres residential buildings with external wall systems that require remediation or mitigation, and the estimated costs of remediation and mitigation.*

*Further analysis and data related to the Building Safety Fund, external wall systems on high-rise residential buildings data collection will be published in due course.*

*Data collections are currently being undertaken in these areas, and the data is being analysed. We continually review the information we hold and publish all appropriate information when ready, which includes undertaking appropriate quality assurance.*

***Recommendation from 2021:*** *We ask the Government to report back to this Committee with its assessment of the impact of fire safety remediation on the wider housing market. The Government should ask the Prudential Regulation Authority to assess the impact of fire safety remediation on banking capital ratios. (Paragraph 44).*

***Government Response:***

*We have withdrawn the consolidated advice note (CAN) the interpretation of which had driven an overly risk-averse and cautious approach to building safety. We have also supported the publication of the BSI's new PAS 9980 guidance for assessing risk in external walls which provides a methodology for more proportionate and consistent assessment of risk. Our expectation is that industry will now make far greater use of sensible mitigations, such as sprinklers and fire alarms, in place of unnecessary and costly remediation work. This will help restore confidence to the housing market.*

*In 2021, the Prudential Regulation Authority engaged with banks and building societies to understand more about their exposure to residential blocks of varying heights with identified, or risk of, cladding or fire safety issues. This was with a view to assessing financial risks to lenders and their capital provisions. Since then, the Government's leaseholder protection measures have fundamentally changed the way in which fire safety building remediation is approached and will reduce risk for mortgage lenders by confirming that leaseholders will not pay to fix unsafe cladding.*

***Who should pay?***

***Recommendation:*** *Government should identify all relevant parties who played a role in the building safety crisis, such as product suppliers, installers, contractors, and subcontractors. It should legally require them, as it has done for developers, to (i) contribute payment to put right any individual faults in which they played a part and (ii) contribute to collective funding for building safety remediation—ideally our recommended Comprehensive Building Safety Fund. So that efforts to identify responsible parties do not delay remediation works, the Government should, where necessary, fund works upfront and recoup its costs. (Paragraph 29).*
***Recommendation from 2021:*** *The developer levy and tax should be extended and should serve as an additional contribution to the Comprehensive Building Safety Fund, in line with principles to be set out by the Government, as we have recommended, about how the full funds for remediation should be split between industry and Government. The Government should also consult with all relevant stakeholders to design the Gateway 2 developer levy in such a way so that costs are not passed onto house buyers, including housing associations (paragraph 32).*

***Government Response:***

*The Government agrees with the Committee's recommendation that those responsible for building safety defects should be made to contribute to the costs of remediation. Alongside its negotiations with developers the Government has been engaged in discussions with various product manufacturers to ensure that industry contributes to the costs of remediation.*

*As construction products manufacturers have not made a reasonable commitment, we will do whatever it takes to make sure that construction product manufacturers are held to account through the powers established in the Building Safety Act. The department's new Recovery Unit will pursue firms that have failed to do the right thing, including through the courts.*

*We have created a power in the Act to make regulations that would allow the Secretary of State to compel construction products manufacturers, their authorised representatives, importers and distributors ('economic operators') to contribute towards the cost of remediation works where construction products they have supplied have caused or contributed to dwellings being unfit for habitation.*

*These regulations would enable the Secretary of State to serve a costs contribution order on an economic operator following successful prosecution for non-compliance with construction product regulations. The order will specify the amount that they will be required to pay towards the cost of remediation works. The order may also require them to contribute to the cost of building assessments carried out as part of this process.*

*Alongside this measure, we have also created a power to make regulations to enable the Secretary State to take an alternative route via the courts. The Secretary of State will be able to apply to a court for a costs contribution order to be made against an economic operator. The grounds on which the court may make such an order would be the same as those for a costs contribution order made by the Secretary of State.*

*Through ensuring that industry is held accountable for its mistakes, this will encourage compliance with strengthened regulatory requirements for construction products.*

*The Government will continue to fund cladding remediation through the Building Safety Fund for buildings above 18 metres, as well as providing funding for 11-18 metre cladding removal through the building safety levy.*

*We note the Committee's recommendation that the government should consult on the impacts of the building safety levy on housing provision. The government launched a consultation, which closed on 15 October 2021 to seek views on the design of the levy and gain evidence of possible impacts on housing supply and regeneration and the housebuilding industry. We are considering the feedback we have received, as well as the impact of the changes to the levy and will update in due course.*

***Recommendation:** The Government should remove VAT on building safety activity. (Paragraph 30)*

***Government Response:***

*The Government is committed to supporting leaseholders and ensuring essential works are taken forward. The supply of fire safety equipment, under qualifying circumstances is already eligible for VAT relief when provided alongside the construction and renovation of residential or charitable buildings. The cost of replacing cladding can also already be zero rated if it is tied to the initial construction of the building and the cladding is shown to be defective.*

*Although it would be possible to apply a reduced or zero rate of VAT to the renovation or repair of private dwellings, it would not be possible to limit such a rate to repairs of specific items or elements. The reduction would therefore extend to all renovations and repairs, and if we were to expand the reduced rate that is already available, it would come at an estimated cost to the Exchequer of at least £3.75 billion per year.*

*There is also no guarantee any savings made via VAT recovery on building and renovation work would be passed on to leaseholders – as the primary beneficiaries would be product manufacturers, contractors, and developers rather than leaseholders. Given the other elements the Government is taking forward, in particular the legislative protections introduced as part of the Building Safety Act, we do not believe that further VAT relief represents the most effective way of protecting leaseholders.*

*Tax policy is a matter for HM Treasury Ministers and tax issues are considered by the Chancellor as part of the annual fiscal process. All tax issues are regularly kept under review.*

***Recommendation:*** *The Government should ask the Financial Conduct Authority to publish an analysis to illustrate on an annual basis since the Grenfell fire how the level of pay-outs by insurers for fire safety claims in medium and high-rise buildings compares with the increase in premiums for buildings insurance for medium and high-rise buildings. (Paragraph 31).*
***Recommendation from 2021:*** *The time has come for the Government to consider setting a deadline for the insurance industry to act. If that deadline is not met, the Government should intervene to require industry to resolve the problem of eyewatering building insurance premiums. (Paragraph 40).*

***Government Response:***

*On 28 January, the Secretary of State called on the Financial Conduct Authority (FCA) and the Competition and Markets Authority (CMA) to review buildings insurance premiums for people living in medium and high-rise blocks of flats.*

*Although the initial request for a review came from the Department, the scope of the review will be defined by the FCA as the independent regulator of the financial services sector. The FCA are focusing their attention on areas where they observe unfair or unexplained prices for leaseholders.*

*The FCA has met with Chief Executives of key insurers and insurance brokers to explain their expectations for engagement in the review and affirm their regulatory expectations. The FCA is currently collecting data on market conditions to inform their review, and we understand that the FCA and CMA will provide recommendations in summer 2022.*

***Recommendation:*** *Product manufacturers found to have been criminally responsible for defective products extending back 30 years must be legally required to automatically replace faulty materials free of charge, including compensating others who have already paid to replace the materials in question. (Paragraph 32).*
***Recommendation from 2021:*** *We also ask the Government to consider how others, including product manufacturers and suppliers, can contribute to the costs of fire safety remediation, in line with principles set out by the Government about the proportion of costs to be met by industry (paragraph 33).*

***Government Response:***

*The Building Safety Act introduces a range of provisions related to construction products. These are intended to require construction products companies to contribute towards the cost of putting right building safety defects that they have contributed to causing.*
*First, we are introducing a new cause of action that will provide an additional route for redress. It will enable a party who has suffered a loss to bring civil claims against manufacturers or suppliers of construction products that are defective, mis-sold, or in breach of existing construction product regulations. If these products have been incorporated in a dwelling, and they have caused or contributed to a dwelling being unfit for habitation, then relevant parties will be able to seek compensation.*

*We are also creating a power in the Act to make regulations that would allow the Secretary of State to make a costs contribution order or apply to the court for an order to be made, to require construction products manufacturers, their authorised representatives, importers and distributors ('economic operators') to contribute towards the cost of remediation works. The Secretary of State would be able to use this power following a successful prosecution for non-compliance with construction products regulations, where the relevant product has caused or contributed to dwellings being unfit for habitation.*

*Cladding and insulation manufacturers are yet to accept their share of responsibility and come forward with a proposal. We will do whatever it takes to make sure that construction product manufacturers are held to account through the powers in the Building Safety Act. We are establishing a new Recovery Unit that will pursue firms that have failed to do the right thing, including through the courts. Other powers will also be carefully considered to make sure that there are significant commercial and reputational consequences for those firms that have not stepped up.*

***Recommendation:*** *The Government must take steps to hold overseas developers and other relevant foreign firms to account. When it is appropriate to do so, the Government should set out the actions it has taken. (Paragraph 33)*

***Government Response:***

*Where they are responsible for the development of in scope buildings, the Government has engaged with overseas developers and firms as part of its negotiations with industry to provide a funded solution for the remediation of unsafe cladding in England. Non-UK firms such as Ballymore have been engaged with this process for buildings that they are responsible for in the UK and have made the commitments expected.*

*The measures set out in the Building Safety Act 2022 provide the Secretary of State with the powers to establish a scheme will be used to identify responsible actors who have committed to rectifying building safety defects and improving wider building safety. For those who have not committed to this, the Secretary of State also now has powers to prohibit developers from commencing new development where*

*planning permission has been granted and to block developers from obtaining building control sign-off. Those powers can be exercised where a firm operates in England, regardless of ownership structures. In terms of construction product companies, firms that have any element of overseas ownership, or sources products from overseas, cannot be treated any less favourably than UK domiciled firms or products, in accordance with the UK's international trade agreements.*

*The Building Safety Act 2022 also confers on the High Court the power to extend relevant liabilities, including liabilities under the Defective Premises Act 1972, from the original company which incurred the liability to companies associated with it, though a Building Liability Order. The High Court may choose to apply a Building Liability Order to a company based overseas if it is an associated company, which would be enforced in the normal manner.*

***Recommendation from 2021:** [Waking Watch Relief Fund] Funding should be extended—either through the relief fund or through the Comprehensive Building Safety Fund—to cover all interim fire safety costs in all high-risk buildings (as defined by our recommended risk-based approach), including those below 17.7 metres (paragraph 36).*

***Government Response:***

*The Government recognises that the costs of prolonged interim measures can be a significant burden on leaseholders. That is why, in January 2021, we launched the £35 million Waking Watch Relief Fund to install common fire alarm systems in highrise residential buildings where the fire safety strategy has moved from 'stay put' to 'simultaneous evacuation'. As of 31 March 2022, data on the progress of the Waking Watch Relief Fund shows that £27.5m funding has already been provided or has been approved covering 323 buildings, 224 buildings have completed their alarm installation. The data currently shows that, by fitting an alarm, leaseholders are expected to save on average £166 per month.*

*On 27 January 2022, we launched the Waking Watch Replacement Fund which made a further £27 million available to fund fire alarms in all buildings, regardless of height or cladding status, where a Waking Watch is in place at leaseholders' expense. We will publish data on the fund shortly. Government is providing over £60m of funding to protect leaseholders from the continued burden of costly Waking Watch measures. Public funding must incentivise the right behaviour. The installation of alarms is consistent with industry led guidance and best practice. We are using public funding to end the reliance on Waking Watch measures in as many buildings as possible so that as many leaseholders as possible can be free of these costs.*

*The Government's view is that Waking Watch measures should be used only exceptionally and where the risk in a building is such that the only alternative is the evacuation of the building. Where Waking Watch is used it should be in place for the shortest possible period, for example the time taken for an alarm to be installed. The expert guidance published by the National Fire Chiefs Council provides a clear rationale as to why alarms must be installed quickly, and significant Government*

*funding has been made available to provide for this. There is no excuse for building owners to keep imposing the prolonged and excessive costs associated with Waking Watch measures on leaseholders, and we will be setting out measures to discourage inappropriate use of waking watches.*

***Costs already paid out***

***Recommendation:*** *The Government should collect and publish data on the costs paid out by leaseholders since the Grenfell fire and the costs that leaseholders have not yet been billed for. It would have had to collect data on the amount paid out for its proposed cap on non-cladding costs, so the administrative burden is not a reason not to. (paragraph 39)*

***Government Response:***

*This information has not been collected systematically by the department, and the department does not have plans to collect this information from leaseholders.*

***Recommendation:*** *The Government should table new amendments to the Building Safety Bill to ensure that, where the "polluter(s)" still exist, industry players must compensate leaseholders for remediation and interim costs already paid out and must pay for works that have been started or specified. In line with principles already set out by Government, where the original polluter no longer exists or cannot be identified, funding for building safety remediation—ideally our recommended Comprehensive Building Safety Fund—should cover the costs of compensating leaseholders for costs already paid out, including interim measures and exorbitant rises in insurance premiums. (Paragraph 40)*

***Government Response:***

*The Building Safety Act makes it a legal requirement for building owners to exhaust all other routes to fund essential building safety work before passing any costs onto leaseholders. We have been in intensive talks since January with the homebuilding sector to come forward with proposals on how it will take responsibility for fixing unsafe buildings built over the past 30 years.*

*As well as making clear that no qualifying leaseholder in a building over 11 metres or five storeys will have to pay for the costs of remediating defective cladding, the Building Safety Act 2022 requires that where the freeholder or landlord of a building is, or is associated with, the developer or where they have sufficient resources, they should pay to fix all historical safety defects, including non-cladding defects and interim measures.*

*While the Government will not repay leaseholders for the costs of work already undertaken the caps for leaseholder contributions to non-cladding costs in building above 11 metres will take into account costs that leaseholders have already incurred for remediation or interim measures. As such where leaseholders have already*

*contributed to the costs of remediation it is highly unlikely that they will face for any further costs.*

*Leaseholders will also be able to utilise the Government's new measures expanding the Defective Premises Act and our measures relating to construction product manufacturers to recover costs from those responsible.*

***Impact on social housing***

***Recommendation:*** *Social landlords must have full access to funds for building safety remediation—ideally our recommended Comprehensive Building Safety Fund. (paragraph 49). Recommendation from 2021: Social housing providers should have full and equal access to Government funds for remediation, whether through the existing Building Safety Fund or our proposed Comprehensive Building Safety Fund. Our proposed Comprehensive Building Safety Fund would cover all necessary remediation, including relating to non-cladding fire safety defects, but if the Government does not accept this recommendation and continues to fund only cladding-related works, it should:*

- *update the Building Safety Fund contract to make clear that funding does not need to be in place for non-cladding remediation works in order for any recipient to access funding for cladding remediation works; and*
- *engage with relevant stakeholders to ensure that any confusion regarding this issue is resolved (paragraph 22).*

***Government Response:***

*Social housing providers have access to the £400m Social Sector ACM Cladding Remediation Fund for the removal and replacement of unsafe ACM cladding systems. Social housing providers were also eligible for the Building Safety Fund for other combustible cladding types provided they could demonstrate during the registration process that the costs of remediation were unaffordable or a threat to their financial viability. They can also submit claims to the Building Safety Fund for the proportion of eligible works which would otherwise be chargeable to residential leaseholders through service charges in their buildings, in line with the Government's commitment to protect leaseholders from costs.*

*Further details about eligibility, including registered providers of social housing' eligibility, for the 11-18 metres Remediation Fund will be made available as soon as possible.*

***Recommendation:*** *Social housing providers must be exempt from the Building Safety Levy and any other taxes or levies connected to building safety remediation. Social housing providers must be exempt from requirements to fund and undertake necessary remediation on buildings they played a role in developing where they were the customer of a developer. (Paragraph 50)*

***Government Response:***

*We are already considering an exemption from the levy for affordable housing as a whole, which includes social housing, housing for rent or sale at least 20% below market rent or sale rates, shared ownership, and rent to buy. This is because the Government recognises that applying a levy to affordable housing would increase the cost of developing affordable housing and is therefore likely to disincentivise supply. We will consult on the levy; possible exemptions will be considered as part of that consultation and a final decision will be made once it is complete and responses have been analysed. Where residential property is developed by a non-profit registered provider of social housing or its subsidiaries, this will be out of scope of the Residential Property Developer Tax, which is based on profits.*

*Social housing providers that are freeholders/landlords will be required to meet all non-cladding remediation costs where they are – or have links to – the developer, or where costs exceed the leaseholder cap. It is not our default expectation that they will have to fund in-scope remediation works from their own resources; we want them to be able to pursue those responsible for defective work. That is why we are bringing forward an ambitious toolkit of measures to allow those responsible for defective work to be pursued, including a cause of action relating to product manufacturers and the provisions enabling associated companies to be sued.*

***Recommendation:*** *The Government must commit to protecting the Affordable Homes Programme at its current level should it fail to recover sufficient funds from industry. (paragraph 51)*

***Government Response:***

*The Government is confident that funding from industry will cover the cost of remediation of unsafe cladding in buildings between 11-18 metres. Our negotiations with the industry at the start of this year have resulted in leading housebuilders committing to making their buildings safe, covering a large section of the market. Industry will contribute the remainder of the money though an increase in the Building Safety Levy. The Government will not be required to provide funding for the remediation of unsafe cladding beyond that which it has already committed.*

*The Government recognises that that some social landlords face significant building safety costs, and that they are having to balance their existing budgets to support this which could have an impact on the development of affordable homes. That is why the Government has committed up to £400 million to fully fund the removal and replacement of unsafe ACM cladding systems on buildings over 18 metres that are owned by registered providers of social housing. The Government has also committed to meet the cost of removing other types of unsafe cladding on social sector buildings over 18 metres where a registered provider's financial viability would otherwise be threatened.*

***Recommendation from 2021:*** *In addition to our recommendation that social housing providers should have full and equal access to the Building Safety Fund, preferably our proposed Comprehensive Building Safety Fund, the Government should:*

- *ensure that social housing providers have full and equal access to the waking watch relief fund; and*
- *carry out and publish an impact assessment on the knock-on effects of fire safety remediation on maintaining existing social homes and building new social homes (paragraph 47).*

***Government Response:***

*The Government has provided over £60 million to protect leaseholders from costly Waking Watch measures. Government funding under the Waking Watch Relief Fund and, latterly, the Waking Watch Replacement Fund incentivises the installation of common fire alarm systems in high-rise residential buildings where the fire safety strategy has moved from 'stay put' to 'simultaneous evacuation'.*

*The aim of the Fund is to protect leaseholders, but a Registered Provider of Social Housing can claim for the proportion of the alarm installation costs that would have been charged to leaseholders where the Registered Provider has had a Waking Watch prior to installing the alarm system (and where the costs of the outgoing Waking Watch were charged to leaseholders).*

*We expect that where necessary most Registered Providers, as responsible building owners, will have taken responsibility for the installation of a common alarm system in line with the guidance published by the National Fire Chiefs Council. We also expect that most Registered Providers will have done so without recourse to charging leaseholders. Where they have passed on costs the fund provides protection to affected leaseholders.*

*The Government has no plans to publish an impact assessment on the effects of fire safety remediation on maintaining and building social homes, but we will continue to have regular discussions with social housing landlords about this. We recognise that some social landlords face significant remediation costs, and we appreciate that they will need to balance their existing budgets to support this.*

***Guidance on Building Safety***

***Recommendation:*** *In addition to the Secretary of State's commitment to update us on the coverage of the professional indemnity insurance scheme, the Government must ensure that there is professional indemnity insurance cover for those conducting PAS 9980 assessments—whether as an extension of the scheme for external wall assessors or as a separate scheme. We ask the Government to monitor and report back to this Committee with its assessment of the impact of the introduction of PAS 9980 on the numbers of buildings that need to be inspected and remediated. We also ask the Government to report back to the Committee with its estimate of the number of currently qualified fire risk assessors and how this will increase in the coming months. (Paragraph 60).*

***Government Response:***

*The Government remains committed to setting up a state-backed professional indemnity insurance scheme for assessors undertaking EWS1 forms.*

*We recognise that the demand for qualified professionals to undertake fire risk appraisals to PAS 9980 standards may increase and is taking steps to better understand the market. The Home Office has recently completed a survey of the fire risk assessor sector to better understand the extent of the sector's capacity and competence, including in relation to external wall appraisals. This does not cover the entire fire safety sector, or all those who can undertake external wall appraisals to PAS 9980 standards but should indicate whether further actions are necessary.*

*The department has carried out an early assessment of the number of buildings between 11-18 metres that would require remediation if assessed under more proportionate guidance.*

*The Government has provided funding to RICS to train up to 2,000 assessors to undertake EWS1 assessments to PAS 9980 standards. To date, over 1,000 candidates have enrolled on the programme.*

***Recommendation:** The evidence we received clearly indicates that it should be the regulator—and not building owners—who decides whether a building needs a fire risk assessment. As such, we recommend that the Building Safety Regulator decides whether a building needs a fire risk assessment; sets the standard that a building need to meet; sets out the methodology for undertaking assessments; and provides a review process which enables consistency of decisions. (Paragraph 63).*

***Government Response:***

*Responsibility for conducting fire risk assessments sits with the Responsible Person under the Fire Safety Order. These assessments can be audited by fire and rescue services who can take enforcement action should it be required. As the person accountable for the fire safety of the building it is appropriate that the Responsible Person should be the individual who determines the need and timing of fire risk assessments for their buildings.*

*As part of the new higher-risk regime for buildings, Accountable Persons for high-rise residential buildings will be required to create and maintain a safety case. The safety case will form part of an application for a Building Assessment Certificate. The duties placed on Accountable Persons in the Building Safety Act include a requirement to carry out an assessment of building safety risks, including the spread of fire. As part of the Building Assessment Certificate application process, the Building Safety Regulator will assess if relevant duties are being complied with and issue a Building Assessment Certificate if they are satisfied this is the case.*

*If the relevant duties are not being complied with the Building Safety Regulator can carry out enforcement action. The Act also provides the Building Safety Regulator*

*with a power to direct an Accountable Person to undertake an assessment of building safety risks.*

*It would not be appropriate for the Building Safety Regulator to determine the requirements for fire risk assessments for all building. It will be focused on the higher-risk regime of buildings over 18 metres, as evidence is clear that the risk to multiple households is greater when fire spreads in buildings of this height.*

***Health and Wellbeing***

***Recommendation:*** *In the absence of PAS-79 guidance, which was withdrawn in August 2021, it is imperative that the British Standards Institute publishes its new standard as soon as possible. We urge the Government to report on its consultation on Personal Emergency Evacuation Plans at the earliest opportunity. (Paragraph 6).*

***Government Response:***

*The development of any new PAS guidance is a matter for the British Standards Institution to consider and as such the Government is unable to comment on this.*

*As Lord Greenhalgh stated at the Third Reading of the Building Safety Act in the House of Lords on 4 April, the Government will publish its response to the PEEPs consultation alongside the commencement of the Fire Safety Act 2021 in May 2022, as soon as practical after the pre-election period.*

***Recommendation:*** *We repeat our previous calls for further mental health support for those affected by the building safety crisis.*
***Recommendation from 2021:*** *The Government should work with local authorities to ensure that affected residents have access to the physical and mental health support they need. The Government should make it an explicit requirement that the information that the "accountable person" is required to share with residents includes signposting to support services for residents worried about their safety, financial situation, and physical and mental health. In the interim, the Government itself should supply this information to residents. (Paragraph 50)*

***Government Response:***

*We recognise that the building safety crisis has had a negative effect on many residents; leaseholders, who are blameless, have been shouldering a desperately unfair burden and for some this has had an adverse impact on their mental health.*

*Government is working to make sure that all people, regardless of their residential situation, get the help and support they need with their mental health.*

**Which developers who have signed up the Building Safety Repairs Pledge?**

As at 4pm 12 May 2022, 45 developers have signed a pledge committing to remediate life critical fire safety works in buildings over 11 metres that they have played a role in developing or refurbishing over the last 30 years in England.

This list can be accessed here for further updates: List of developers who have signed building safety repairs pledge - GOV.UK (www.gov.uk) and the 12th May 2022 list includes:

**Developers who have agreed to a pledge:**

- Allison Homes, Avant, Ballymore, Barratt, Bellway, Berkeley, Bewley,
- Bloor, Cala, CG Fry, Churchill Retirement, Countryside,Crest Nicholson
- Croudace, Davidsons, Fairview, Galliard Homes, Gleeson, Hill Group
- Hopkins Homes, Inland Homes, Jelson, Keepmoat Homes, Tilia
- Lioncourt Homes, London Square, Lovell, Mactaggart & Mickel
- McCarthy Stone, Miller Homes, Morris Homes, Persimmon, Redrow
- Robertson, Rowland Homes, Shanly Homes, St Modwen, Story Homes
- Strata,Taylor Wimpey, Telford homes, Vistry Group, Wainhomes
- Weston Homes William Davis

***What does this pledge mean?***

*Developers making this commitment have also agreed to reimburse any funding received from government remediation programmes in relation to buildings they had a role in developing or refurbishing.*

*These agreements were reached following constructive discussions with developers and the Home Builders Federation and will protect leaseholders from the costs of remediation of life-critical fire safety defects.*

*Each developer will be expected shortly to sign a legally binding contract reflecting these pledges and inform leaseholders in affected buildings how they will be meeting their commitments.*

*The work does not stop here. The government is fully committed to ensuring those responsible pay to fix the problems they created. We have initiated discussions with further developers with a view to signing the pledge and we will continue to pursue those who played a role in developing unsafe buildings.*

*Unlike the approach taken by responsible developers, cladding and insulation manufacturers have not delivered. The Secretary of State wrote to the Construction Products Association on 13 April 2022 and warned he will do whatever it takes to hold them to account.*

## Assessing the external wall fire risk in multi-occupied residential buildings

### What is PAS 9980:2022?

PAS 9980 is a new government code of practice for the fire risk appraisal of external wall construction and cladding of existing multi-storey and multi-occupied residential buildings.

With the publication of PAS 9980 2022 in January 2022, the Government has withdrawn the **consolidated advice note** and advised that it has been wrongly interpreted and has driven a cautious approach to building safety in buildings that are safe which goes beyond what the Government's considered necessary. PAS9980 provides a new methodology for the fire risk appraisal and is intended for use by competent fire engineers and other competent building professionals tasked with advising on the fire risk of external wall construction of existing blocks of flats. The government intends for the key outputs of this appraisal to be useful to those who make decisions based upon the outcome of the FRAEWs. This will include:

Building control bodies, Building owners/landlords and others with functional responsibilities for management of the external wall and cladding under a building's lease, Building surveyors, Contractors, engineers, Fire and rescue authorities, Insurers, Local housing authorities, Managing agents or facility managers, valuers and mortgage lenders.

### What will PAS 9980:2022 be used for?

It provides a methodology for appraising and assessing the scope for, and risk from, fire spread via external wall construction and cladding on existing blocks of flats. Its use can:

- Inform a building's fire risk assessment
- Enable consistent training in carrying out FRAEWs and thus facilitate more entrants into the profession

### What does PAS 9980:2022 cover?

It gives recommendations and guidance on undertaking a fire risk appraisal of external wall construction and cladding of an existing multi-storey, multi-occupied residential building. A fire risk appraisal of external wall construction and cladding is described in this PAS as a fire risk appraisal of external walls (FRAEW).

The purpose of an FRAEW is to assess the risk to occupants from a fire spreading over or within the external walls of the building, and decide whether, in the specific circumstances of the building, remediation or other mitigating measures to address the risk are considered necessary.

The PAS applies where the risk is known, or suspected, to arise from the form of construction used for the external wall build up, such as the presence of combustible materials. The outcome of an FRAEW is intended to inform fire risk assessments (FRAs) of multi-storey, multi-occupied residential buildings and other types of building, including student accommodation, sheltered and other specialised housing

and buildings converted into flats, where the evacuation strategy will be similar in nature to a purpose-built block of flats.

**PAS 9980:2022** also gives recommendations and guidance in relation to the competence of those completing FRAEWs.

# 3. Enforcing remediation

### What enforcement options do I have?

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.

Government guidance from November 2018 sets out that local authorities have the power to enforce remediation by the owners of buildings with unsafe cladding under the Housing Act 2004. Under the Fire Safety Act 2021, fire and rescue services can also take enforcement action in relation to cladding systems.

To date, enforcement action is underway against at 43 buildings nationally as shown on page 31 with ACM cladding.

### If I choose an enforcement route, what should I expect?

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

If a council 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 council has the power to carry out work itself and recover costs from the building owner.

However, cost recovery can be difficult in practice because:

- the freeholder might be difficult to identify
- the freeholder or intermediate leaseholder might seek to recover their own costs through increasing the service charge to leaseholders
- 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.

While enforcement can help to speed up remediation – either by encouraging building owners to do the work themselves, or by allowing councils to take on responsibility – it will not necessarily prevent costs from being passed on to leaseholders.

# 4. Impact on residents

**How has this impacted leaseholders?**

Leaseholders have suffered an extreme emotional and financial impact because of cladding issues.

Leaseholders are often legally liable for the costs of cladding remediation, as well as the cost of interim measures. The uncertainty around cladding has also meant that many leaseholders have been unable to sell their flats.

A survey by UK Cladding Action Group in 2020 found that nine out of 10 residents have reported worsening mental health because of worries about their safety, and about the significant financial pressures 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 and End Our Cladding Scandal.

**How has this affected renters or council tenants?**

Tenants have also suffered significantly from fire safety issues, particularly 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 sent to emergency accommodation, disrupting families and lives for weeks or months at a time.

In addition, where the council owns buildings, councils have experienced significant financial pressures caused by meeting the costs of remediation, which puts pressure on funding for planned major capital works or repairs and delays urgent improvements promised to residents.

# 5. Issues with selling flats

### Will cladding remediation affect whether I can sell my flat?

Yes. It is likely that selling your flat will require proof that there are no combustible materials on the external walls of your property – i.e. that there are no issues with unsafe cladding. This is most often done through the External Wall Systems 1 (EWS1) survey, which must be conducted by a chartered surveyor.

Mortgage lenders have made clear that they will require assurance of cladding safety (usually through an EWS1) before providing loans for potential buyers.

The Royal Institute of Chartered Surveyors (RICS) has published guidance on valuing properties with cladding to help valuers understand when an EWS1 form may be required.

### What is the External Wall Systems 1 (EWS1) survey?

The EWS1 survey is a standardised process for investigating external wall systems developed by the building industry and the Royal Institution of Chartered Surveyors (RICS) in December 2019 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 or a safety certification – it is a commercial requirement by lenders undertaken by a RICS approved inspector as a condition of mortgages.

### How does PAS 9980 work alongside the EWS1 form. How will they be used, which takes precedence and why?

PAS 9980 is not intended as an alternative to the EWS1 form, which is for valuation purposes and is administered by RICS. However, if the likes of RICS and others wish to refer to the PAS in the future that is a matter for themselves to consider.

### Is the EWS1 process causing problems?

A number of problems are arising with the EWS1 process.

While the Government and RICS have been clear that EWS1 surveys should only be required for buildings 18m tall or taller, there have been reports of lenders asking for the survey to be conducted on other buildings. The Government estimates that EWS1 certificates are required for fewer than 1 in 10 mortgages.

There is also a significant shortage of surveyors available to conduct EWS1 surveys at the scale required. With more than 90,000 residential buildings taller than 11m in England, there are only 291 assessors currently qualified to conduct these surveys, causing severe delays in obtaining EWS1 surveys and leaving many flat owners stuck, unable to sell.

The Government and industry set a target of training 2,000 assessors by the end of 2021, but there are reports that this target has been missed.

Another significant issue is obtaining property insurance, with some reports that leaseholders have seen their premium payments increase by 400%. The Government has ordered a review of the market, which it says is currently failing.

**How can I get 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 cases of companies fraudulently claiming to provide EWS1 surveys. Always check with building management or your freeholder before paying for an EWS1, and report any such cases to Action Fraud.

**How much does an EWS1 survey cost, and who should pay?**

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

The cost depends on the block, but has been estimated at between **£10,000** and **£50,000** per block.

Only the freeholder can order an EWS1 survey. If they agree to order the survey, there are several options available for covering the cost:

- The freeholder could pay outright. Where the freeholder is a council or local authority, this can prove more complicated as they would need to use taxpayer funds to cover the cost.
- The freeholder could pay outright, and charge leaseholders for the cost on an ad hoc basis.
- The freeholder could pay and add the costs to the regular service charge due from all leaseholders. However, council or local authority freeholders would also have to consider whether it is right to charge all leaseholders if only a few wish to sell their flats.
- The freeholders could charge only the leaseholders hoping to sell for the cost of the survey – this may be very difficult for those individual leaseholders.

**If I get an EWS1 survey, will I definitely be able to sell my flat?**

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.

**How can I pursue legal action?**

You should **always** consult a solicitor with expertise in property and construction law before taking any legal steps. You can also seek guidance from Citizens Advice, or from leaseholder advice services. Some options are set out here.

When considering legal action, you may want to ask a solicitor to help you consider:

- How to identify who should bring a claim of this nature and whom it may be brought against,
- How to establish the relevant facts and understand how the particular cladding/defect came to be installed and whether it matches the specification for your building,
- How to examine the particulars of your lease, freehold, and management company agreement,
- Whether you may have a claim under the Defective Premises Act 1972, • How to review the NHBC/Zurich/Checkmate warranty issued for your flat. The **NHBC**, which is responsible for providing building **warranties** on 90% of the country's new build homes confirmed in 2019 that it now accepted claims on some developments across the UK that were found to have aluminium composite material (ACM) **cladding**. You can read more advice here.

**Have there been any legal cases related to cladding?**

Some recent cases relating to blocks of apartments with combustible cladding and fire safety issues:

- Naylor v Roamquest Ltd [2021] EWHC 567 (TCC),
- Manchikalapati and others v Zurich Insurance plc (t/a Zurich Building Guarantee & Zurich Municipal) and others [2019] EWCA Civ 2163,
- Zagora Management Ltd and others v Zurich Insurance plc and others [2019] EWHC 140 (TCC),

Individual leaseholders affected by cladding problems should contact a solicitor for legal advice.