

EOCS meeting with Lord Greenhalgh (detailed notes)

Wednesday 26 May 2021 17.00-18.45

Chair: Lord Greenhalgh

Participants: EOCS groups, representatives of New Providence Wharf and MHCLG officials.

1. Agree previous meeting minutes and ensure future meeting minutes fit for purpose

We welcomed notes being provided after many months of requests to ensure there was an accurate record of meetings with actions. We noted the draft minutes that had been provided and that we had returned them with a number of amendments.

We asked Lord Greenhalgh (LG) whether the meeting could be recorded. This request was rejected.

We noted that the agenda had been set to ensure LG / MHCLG provided responses to all queries that had previously been and were continuing to be raised without definitive answers. It was agreed that MHCLG would either respond to all items in the agenda during the meeting or provide responses when collating the meeting notes.

(Status: awaiting final minutes)

2. New Providence Wharf (NPW) – Update, Confirmation of Government position, and Feedback from Residents

We stressed that it was important to ensure NPW residents had the opportunity to discuss their position with the Government, particularly as the Secretary of State had not met them when he visited the site following the fire.

We noted that this situation was emblematic of the issues faced across the country, where there is some funding but not enough to remediate properly and make buildings fully safe without leaseholders having to pay thousands of pounds. The Developer (Ballymore) in this case had refused to help properly and all the Government appeared to have attempted was to write letters to Ballymore asking them to progress the work.

We noted that this issue has the potential to occur again and again, and it should be taken as a warning of a potentially serious and life-threatening incident. It seemed largely due to luck, the action of the emergency services, the time of day and residents warning each other that no fatalities had occurred.

LG noted that all levels of government had been supporting developers to remediate their buildings and where they were not complying, the Government had written letters, “named and shamed” them and, in the case of Ballymore, had held meetings with them.

We noted that this may be the case, but it had not led to any firm action “at pace” and the Government should not simply rely on naming and shaming, as that had proven to be an ineffective tactic.

The first NPW resident spoke of his experience sitting on floor 14 of NPW. His wife and children had left the apartment on the school run, two minutes later he got a call from his wife and children who were in the lift and told him that the building was on fire and to get out.

He had not heard any fire alarms, so he started banging on doors to alert others, and he and another resident helped a neighbour with children to evacuate.

London Fire Brigade advised residents to use the fire escape on the stairs and the resident was thrown back 2 metres because of black smoke. "It was the most uncomfortable moment, not knowing if we would get out alive." He listed what he understood as failures at the building including the fire alarms, the smoke extraction systems in the stairwell and the apparent failure of the waking watch to properly evacuate as they seemed to be using clipboards to bang on doors to assist the evacuation.

Two and a half weeks on from the fire, he has brought his wife and his children back to the flat, with no hope or certainty that they will be safe. They are still waiting for the report from London Fire Brigade. He stated that it was not fair that they are being left in this situation, that he wants to see real change after years of broken promises and he will fight to help achieve this.

The second NPW resident said: "Your teams are well aware that we have rogue developers, and we cannot hide behind waking watch to fix this issue. We need people to be safe." The resident could not understand why developers were allowed to continue developing and being awarded public contracts if they are responsible for unsafe buildings.

The third NPW resident said: "We are living in fear daily. I have an eight-year-old daughter who is terrified to go to sleep. Our children are scared." The resident said that she doesn't think the Government is taking a hard enough line and there was not enough activity. None of the developers were taking this seriously and there needed to be proper penalties and firm action taken.

LG expressed sympathy for the NPW residents and said that the experience must have been harrowing. LG advised that Ballymore was engaged in September 2020 and Govt were pushing them to start work, which had only just commenced this month (after the fire). LG stated that Ballymore was not the 'norm' and this was an exceptionally difficult building and developer. LG advised to wait for the formal investigation into the fire by the London Fire Brigade. He noted there were two routes of law that could be pursued, whether housing legislation or the powers invested in the Fire Service.

We argued that the situation NPW residents were in was very much the norm as this is what they, and residents, were experiencing across the country with developers continuing to rely on the BSF funding work as well as the pitiful limitation periods in place to allow leaseholders to actually take any action.

LG said that he recognised Govt has a duty to act but the legal framework was weak and it was not straightforward to hold developers to account with the statute of limitations being a common reason / excuse given by the developers.

We noted that LG had advised that the limitation period in the Defective Premises Act was being reviewed at the last meeting; in fact, he had discussed it with the Housing, Communities & Local Government Select Committee on 18 May 2020, and there had been positive noises but no action, for example in the draft Building Safety Bill. We queried whether any extension to the DPA would actually help in terms of applying retrospectively to existing buildings – ultimately, the issue was also what was actually allowed under the inadequate building regulations vs what would actually be deemed malpractice.

LG advised that there are many complex strands to work through and the Government can be very slow to make announcements, but we should watch this space to see what emerges before the Summer recess (22 July).

3. Clarification of reasons for refusal of HM Treasury officials to attend these ongoing meetings – to include confirmation of actions taken to ensure Treasury would hear our voices, as well as Bishop of Manchester request to Lord Greenhalgh on 19 May 2021.

We noted the history, of how LG had promised the Bishop of Manchester, in the House of Lords on 24 March, that he would do his best to get HM Treasury officials around the table. This had been followed by two months of vague promises and emails advising this was in train, only to be followed by the provision of a general “public enquiries” email address by LG’s private secretary.

LG advised that he did not have the convening authority to force HM Treasury to meet with us, but his understanding was that HM Treasury would be willing to discuss the Developer Levy with the resident groups.

We said that it was not simply the proposed Developer Levy that required discussion, and the building safety crisis was an issue that had the capacity to cause a systemic crisis.

LG said HM Treasury was a separate department to MHCLG and he was unable to do any more to ensure a meeting was arranged.

We repeated our disappointment at one Government department blaming the other (i.e. MHCLG saying HMT would not provide more than the allocated funds) but HMT refusing to join any co-ordinated and constructive meeting to hear the voices of residents and work towards a proper, fair and all-encompassing solution.

4. Update from MHCLG (BSF and WWRF):

LG advised that the MHCLG Lead was not able to join the meeting and his colleague would provide an update on the items in the agenda. A short summary was then provided by MHCLG.

a. Update on BSF

- i. **Application Stages & Funds Allocated**
£359m as at 30/04/2021 – 685 (as per the MHCLG release for 30/04/2021)
We noted that this provided full context to the Government’s initial plans to commit £1bn by the end of March 2021.
LG advised that they were not far off that amount based on the information he had available to him.
- ii. **Update on current guidance to reflect £3.5bn funding – are the details available yet? If not, what are the timescales for these to be announced?**
MHCLG advised that an update on the guidance for the additional funding would be announced in due course.
We pressed for a definitive timeline.
MHCLG advised that this should be soon but could provide no firm details.
We noted that the language used in all meetings never provided any form of certainty and the vagueness of the responses and timescales were not acceptable.

iii. Ongoing lack of clarity on BSF height threshold

MHCLG advised that there was no lack of clarity, and the funding parameters were contained within the July 2020 prospectus. MHCLG appeared to contradict the information that they had just given on whether the additional funding would require updated guidance or would reflect the BSF parameters. We provided a real-world example of a development that had initially been refused funding due to being below the arbitrary height threshold but, due to publicity in Parliament and the media, the buildings that had previously been ruled out of help had now been included as they were deemed to be above six storeys.

We asked for clarity whether the height definition used by RICS, where the ground floor is classed as a storey, had led to the above change in funding offered. MHCLG was unable to provide any response to this query and advised that we should wait for the updated guidance.

iv. Current BSF Deadlines – 30th June for full applications & 30th September for works to commence on site – confirmation of Government view on how realistic these are.

We noted that the end of June deadline, which had already been moved once, was impending and the situation in December, where deadlines were pushed back at the very last minute, should not be repeated as this caused residents a lot of stress and anxiety.

We queried whether there was really any point of simply shifting the deadline back six months and this was particularly relevant given the very slow pace of funding decisions being made by MHCLG. We repeated the issues around capacity of both experts and contractors to fulfil the BSF requirements and that the Government needed to review its full approach and the way these impossible deadlines were causing further issues with the increased strain on capacity.

LG / MHCLG advised that the deadlines were under constant review.

We asked LG to stop simply blaming building owners, who had rushed to register in the June-July 2020 timeframe, but were not in possession of building information.

We noted that this was one of the findings of Dame Hackitt, and was the reason for the creation of the golden thread, so it was not really appropriate to try to avoid blame because of the process that the Government had run in respect of the BSF.

We noted that there was still a complete lack of visibility and transparency for applications once they entered the MHCLG 'black hole' and this was causing untold amounts of stress and anxiety. We queried whether any lessons had truly been learned from the ACM Fund issues, given the Government seemed to be saying the BSF process had been revised to account for the issues experienced with that Fund.

LG responded that a section of building owners were simply not engaging in the process, and that MHCLG was prepared to help those buildings, but they were not responding when MHCLG was following up.

v. Current requirement to remediate cavity barrier issues behind non-combustible wall covering versus Government refusal to fund.

We noted the apparent contradiction between the initial BSF guidance and the actual funding decisions being made on the ground, particularly with regard to the definition of what constitutes an “unsafe non-ACM cladding system”. We repeated that either a building had an unsafe non-ACM cladding system, and should receive funding, or the cladding system was deemed safe and would not require remediation.

We raised the understanding that brickwork cladding systems had recently received funding for remediation and requested confirmation of whether this was an issue with flammable insulation or cavity barriers.

MHCLG repeated the general and high-level information that had previously been provided without specifically answering the detail of the point that had been raised.

- vi. Update on funding for Kingspan K15 remediation regardless of external wall covering material

We asked for clarity on whether buildings over 18m, that had unsafe and fraudulently certified K15 insulation, would be funded.

The MHCLG response was vague and appeared to suggest funding would only be provided for cladding systems where the cladding was deemed combustible and that the presence of K15 behind non-combustible cladding would not be funded.

- vii. Confirmation of when the BSF monthly data release will reflect the ACM Fund release structure.

We asked when the BSF data release would mirror the fullness of the information provided in the ACM Fund monthly release, and that this was a recommendation of the Housing, Communities and Local Government Select Committee.

MHCLG responded that this was under review and would be progressed in due course.

b. Formal request for **Comprehensive Building Safety Fund** and for the Government to create a Working Group with all relevant stakeholders.

We outlined the need for a Comprehensive Building Safety Fund, as per the recommendation of the Housing, Communities and Local Government Select Committee, and for the Government to finally tackle the building safety crisis properly and effectively:

- i. We noted that £5.1bn is taxpayer money and should be managed effectively. We further noted the proposed £2bn levy, which was deemed to be insufficient, would go towards paying down the £5.1bn so, in effect, the funding was now only at the level the Government had estimated would be required a year ago, in evidence to the Select Committee by Neil O'Connor on 18 May 2020.
- ii. We advised that high-level analysis of the post-tender costs being received were in excess of 25-50% of pre-tender cost appraisals – in our view, this was largely due to the way in which the BSF was being run and the timescales given, with no real management of demand, despite LG's previous comments this year.
- iii. We noted that supply had tightened dramatically, both in respect of the professionals who were able to assess the buildings or the contractors available, with associated professional indemnity insurance issues and no real clarity on if / when there would be a sufficient number of fire engineers to complete the full EWS1 form. We noted that the number of fire engineers had previously been advised as close to 300 when it was actually closer to 200, and the RICS training programme would be unlikely to

satisfy the actual demand. Allied to the lack of progress on the Govt-backed Professional Indemnity Insurance scheme, the current impasse was only set to continue.

- iv. We stated that the Government must finally take control and that it was insufficient for the Government to continue to do the bare minimum and leave ending this crisis up to industry as that strategy had clearly failed, as evidenced by the current mess of relying on the RICS collateral valuation assessment to assess life safety in buildings.
- v. We repeated that there was still no proper risk-prioritisation of buildings with the zero-risk approach, to remove and replace everything, still in effect. The Government was pinning its hopes on PAS 9980 but this was still not a holistic and proportionate approach to building risk and there were far too many innocent people being ruled out of funding due to arbitrary parameters.
- vi. We said the Consolidated Advice Notes, issued in January 2020, had trapped millions of people in unsellable and potentially unsafe flats, and the confusing Supplementary Advice Note, issued in November 2020, had not had the desired effect as the genie was out of the bottle in terms of the poor built environment in this country.
- vii. We reminded the Government that it had not collected the much-needed data on buildings under 18m, despite the vague promises of a pilot scheme by Chris Pincher, last year. We noted the simple point that any funding requirement would and should be driven by an accurate picture of the actual issue, but the Government was continuing to avoid the true scale of this crisis through the attempt to get the flat sales market moving with the unfair and unworkable loan scheme for medium-rise buildings.
- viii. We repeated that the Government was not managing public funds at all effectively and continuing in this manner would only cause the funding requirement to escalate given the numerous strains on capacity that had been noted. We again urged Lord Greenhalgh to properly review the approaches taken in both Australia and Scotland to ensure there was finally a coordinated and holistic approach to assessing all buildings, and that they had funding to remediate or add risk mitigation, where required.
- ix. We further noted that the Consolidated Advice Notes, issued in January 2020, had caused millions of people to be trapped in unsellable / potentially unsafe buildings and, despite the confused Supplementary Advice Note, issued in November 2020, there was still very much a zero-risk approach as fire engineers were likely concerned over their liability / insurance, and would advise full remediation of all buildings, regardless of height, actual issue, or associated risk.
- x. We noted that a true risk-based approach, including advising risk mitigation where appropriate, would potentially help bring the overall funding requirement down materially, and that mitigation such as sprinklers / fire suppression systems / alarms could be implemented in buildings rather than full remediation.
- xi. We requested the Government to finally listen and create a Comprehensive Building Safety Fund and form a Working Group to fully tackle the Building Safety Crisis – in our view, such a Fund was long overdue and, alongside a formal Working Group containing all relevant stakeholders, on a similar basis to the approach in Scotland, this should finally lead to some progress in properly tackling this issue, and that this was a much better and more sensible approach than the currently disjointed and piecemeal strategy that had been adopted.
- xii. We noted that Lord Greenhalgh may simply defer to the Secretary of State but that, due to his career, he had a long-standing and close relationship with the Prime Minister, and the gravity of this situation needed the Prime Minister to now step in.

c. Formal request for all minutes and emails relating to Government Expert Panel meetings to include any and all 'expert advice' on risk prioritisation.

Awaiting a response by email.

d. Update on Government estimate of overall remediation costs for all high-risk (to include low and medium rise) buildings of all tenures.

Awaiting a response by email.

e. Update on MHCLG 'looking at most effective ways of delivering BSF funds' – to include detail and timescales.

No response other than this is still being looked at. Awaiting a response by email.

f. Update on exploring of 'alternative ways' to securely get information to leaseholders re BSF applications – to include detail and timescales.

MHCLG advised that this had been progressed but there were GDPR concerns over how the information would be shared. MHCLG advised that this was ongoing.

g. Confirmation of 'ways to lengthen and strengthen statute of limitations' – promised very soon by the Minister at previous meeting. To include timescales and applicability to existing buildings.

See above notes under item 2 New Providence Wharf.

h. Update on still unaddressed funding agreement / contract concerns:

- i. Response to email initially sent on 27th January and forwarded again on 1st March.
- ii. Resultant delays in Building Owners signing BSF agreement and remediation work taking place.

We asked when the agreement issues, which had been raised numerous times by both the resident groups, politicians, freeholders and managing agents would be addressed, as these were now causing remediation work to be delayed. We asked when the template agreement would be published in the interests of transparency.

There was no firm response from MHCLG in this respect other than a promise to take this away and reply to the email(s) on this subject – this was the same response given at the March and April meetings when this matter had been raised / chased then.

i. Current Government reliance on RICS guidance as form of building risk assessment – implications in respect of future incidents of fire.

No formal response.

j. Update on WWRF following NFCC meeting on 13th May:

- i. Number of Applications & Funds Allocated – in total and from each Council.
- ii. Formal request to reopen WWRF to reflect demand – in both over and under 18m buildings.

MHCLG advised that the Waking Watch Relief Fund had been opened – this was to spend funds that had not been allocated in the initial round. The funding was expected to be at least £2m and all applications were to be made directly to MHCLG, which was administering the remaining funds.

The WWRF was open for another four weeks from the day of the meeting.

We requested the position if a WW was implemented after the deadline – MHCLG said that this was something they would review.

5. Update from MHCLG Insurance Lead:

a. Insurance: Update on ABI BIBA Roundtable and Actions taken since 11th March, **to include next roundtable dates**

- i. Does the Government accept that there has been a market failure? Is the Government intending on intervening due to this failure or is it to be left to the industry? What further action has been taken to resolve this issue? What are the timescales for a fair resolution?

LG insisted that the issues being experienced were not signs of market failure. We queried whether a building being unable to obtain any insurance at all over many months was a market failure, as this was the position one of the group leads was in. LG accepted that this meant the market had failed.

- ii. Update on Robert Jenrick and John Glen meeting with Insurance companies and brokers on 29th April 2021 – to include confirmation of Michael Wade's current involvement.

MHCLG repeated vague statements on how ABI was working on a solution and that there was also a proposal being worked on by ARMA. We enquired why the initial ARMA proposal had been rejected – as we had noted at the previous meeting and the ABI roundtable, the actual solution, of Government agreeing to pay out over a certain level for instances of fire, was sensible and would be logical given the numerous announcements of the declining number of fires.

LG / MHCLG were unable to give any clear responses to this point.

- iii. Update on training of additional professionals to complete EWS1 checks - to include number deemed competent to assess buildings **now** – still outstanding.
- iv. Update on state-backed Professional Indemnity Scheme announced in February 2021 – still outstanding.

MHCLG advised that it was working with lenders and UK Finance and BSA to move lenders along to help encourage them to adopt the RICS guidance. MHCLG had followed up with the surveyor on the case study that we had sent across, which showed that Nationwide was clearly not adopting the RICS guidance.

MHCLG responded that it was asking for data.

We noted that this was becoming a circular discussion and we, as well as other parties, had provided MHCLG with a raft of data evidencing the market failure for approaching a year, with no firm progress on resolving this issue that was causing serious pain.

We reiterated that it was farcical for MHCLG to continue to ask for data and to avoid intervening to help expedite a solution, particularly as the seriousness of this issue could not be avoided any longer.

6. Update from MHCLG BSB Deputy Director:

a. Update on Building Safety Bill and timescales for legislation to come before Parliament - to include delay in responding to HCLG Select Committee Scrutiny due by 21st January 2021.

MHCLG advised that the BSB was being worked on and details would be provided in due course.

b. Update on Loan Scheme details – repayment terms, practical workings, i.e., full detail on how the loan scheme will not affect property values or credit ratings. **Explicit confirmation of timescale for implementation** to clarify position advised, at previous meeting, on loan mechanism to be implemented alongside Building Safety Bill.

LG/MHCLG advised that this was being worked on “at pace” and there was a lot of communication with parties such as credit ratings agencies to ensure a person’s credit rating would not be impacted.

We noted that the loan scheme was clearly unworkable and a deeply unfair way in which to tackle the issue of unsafe buildings below 18m. We noted that one building in Greater Manchester had just received estimates of c.£93k per leaseholder and that this building was under 15m. We also mentioned another building, where the email from the Managing Agent said that service charges would be collected to pay for remediation as there was no clarity on when the £50pm loan scheme would be implemented, and the agent had said the law required it to proceed with fire safety work.

We requested LG / MHCLG to issue a template letter that could be provided to freeholders and agents to help ensure people would not be charged obscene amounts prior to the loan scheme being in place.

LG promised to write a letter to each freeholder / managing agent that was pressing on with remediation to urge them to not recharge this to leaseholders prior to the loan scheme being announced.

c. Update on Building Safety Charge mechanism within BSB and veracity of ‘central estimate’ of £200 charge per annum.

The BSC mechanism was under review and the BSB Impact Assessment was to be updated with more accurate cost data.

d. Update on MHCLG team consideration of taking account the vast sums of funds leaseholders have already had to pay due to the building safety crisis.

No firm response other than this is still being considered.

e. Update on shared ownership considerations and unfairness of 100% of costs being passed to such leaseholders.

We reminded LG of the statements made by both Robert Jenrick and him on how they were very aware of the unfairness of the situation shared-ownership leaseholders were in. LG/MHCLG provided no firm detail on considerations that were being made in respect of shared owners.

f. Update on establishment of residents’ group across Building Safety Programme.

MHCLG advised that this was ongoing.

7. Other issues

- a. 2020 Consultation – Risk Prioritisation in Existing Buildings – awaiting Government response.
- b. 2020 Consultation – Ban on Use of Combustible Materials – awaiting Government response. To include confirmation of explicit Government acceptance of use of combustible materials in “medium rise” buildings.
- c. Update on PAS9980 (External Wall Construction) and interpretation alongside (currently withdrawn) PAS 79-2:2020
 - a) Will this lead to the sophisticated, holistic assessment of (internal and external) building risk, as per the Secretary of State’s comments to Parliament on 20th January 2020?
 - b) Personal Emergency Evacuation Plans
- d. Government data collection – collation of data for over 18m buildings through BSF and Building Risk Review and update on pilot scheme for under 18m buildings, to include timescales.
- e. Government data collection – collation of data for over 18m buildings through BSF and Building Risk Review and update on pilot scheme for under 18m buildings, to include timescales.

No response to the above as the meeting had exceeded the allotted time of an hour and a half. We requested formal answers to any of the above outstanding questions to be provided by LG/MHCLG within the meeting’s notes.