End Our Cladding Scandal Campaign

Written Evidence to the LUHC Inquiry on Building Safety: Remediation and Funding

We are the End Our Cladding Scandal campaign team, a resident-led campaign, and a collaboration between resident groups from across the United Kingdom Inside Housing, Grenfell United – first formed in early 2019 and relaunched alongside the Sunday Times' Hidden Housing Scandal campaign in September 2020[1].

Further detail about us can be found at https://endourcladdingscandal.org/about-us/.

[1] https://www.thetimes.co.uk/article/carey-mulligan-and-marcus-mumford-back-campaign-over-unsafe-flats-pxlwx25mb

What is your assessment of the Government's announcements on 10 January 2022 regarding building safety?

"Most importantly, leaseholders are shouldering a desperately unfair burden. They are blameless, and it is morally wrong that they should be the ones asked to pay the price."

Michael Gove, 10th January 2022

The announcement on 10th January was long overdue and clear recognition of the failure of the Government's approach to resolve this scandal since the tragic events at Grenfell Tower nearly five years ago. The Secretary of State has recognised that leaseholders are blameless, and it is morally wrong that we are the ones being asked to pay the price – yet, despite the Government's announcements and proposed amendments, we are still to be forced to pay. This is still desperately unfair, and it is still morally wrong.

As things stand, we are still far from a clear, comprehensive, and fair solution that truly protects the innocent victims of this crisis. A crisis that has always been a collective state and industry failure. A crisis caused by the Government ignoring repeated warnings of the weak and inadequate regulatory system over many years. A crisis that enabled developers to do what they wanted and focus on profits over safety through value engineering. A crisis for which innocent leaseholders should not be forced to pay a penny to make good. A crisis that has already ruined years of our lives and life savings and threatens to continue to do so for many more years to come.

There is now a reset in the approach and that is down to the Secretary of State; however, we have seen over the years how positive noises have never been successfully converted into action on the ground that provides the certainty we so desperately need – certainty that we can move on with our lives, certainty that we will not be made to pay for the dereliction of duty by the Government, the civil service and industry.

Whilst there may appear to be progress to the outside observer, there remains a distinct lack of clarity on exactly how the revised approach is to work in practice. As just one example, the reported £4bn fund for mid-rise buildings is evidently still only an estimate of potential costs to resolve issues in those buildings rather than actual committed funding.

After the Grenfell tragedy, the Government wasted years politely asking building owners and developers to do the right thing and it is clear that the new approach is still in the process of being fleshed out with there only being an indication of plans for a clear fully funded plan of action due in early March. Therefore, it continues to be impossible to assess the announcements from 10th January properly and with the required fullness of detail particularly on implementation and work in practice.

What we can say with more conviction is that the context of the Grenfell Tower Inquiry hangs over the Government's impetus to resolve this crisis as soon as possible. Prior to Grenfell, clear warnings on the weakness of the building regulatory regime over the years were missed, or wilfully ignored, after the Knowsley fire in 1991, the Garnock Court fire in 1999, the Edge building in Manchester in 2005, and the Lakanal House fire in 2009.

Successive governments, and the civil servants who were, and it seems still are, in charge of the regulations, were fully aware of the inadequacies of the UK's "Class 0" fire standard and how combustible materials could achieve this classification, yet no action was taken[2].

This was all within the context of a deregulatory landscape that persisted for decades and increased exponentially with the formation of the coalition Government in 2010 and Prime Minister David Cameron's "Red Tape Challenge" in April 2011[3].

In recent weeks, we have also seen how the Building Research Establishment, in place to investigate gaps in regulations revealed by real world fires was "hobbled" by the Government with a restriction on recommending policy changes introduced in October 2012[4].

Our concern persists that the ongoing revelations of the inquiry and the forthcoming likely damning evidence to be given by former government ministers and officials are playing a material part in the current urgency to deliver a comprehensive solution.

However, to-date, all potential solutions only bring further questions and real concerns over gaps or leaseholders being arbitrarily ruled out of help. Put simply, the announcements on 10th January, and the planned amendments, are still clearly nowhere near sufficient to bring about a fair and morally correct end to this crisis and provide the certainty needed. It is more likely the announcement will bring years of uncertainty for leaseholders.

Whilst Mr Gove and his team may now be directly engaging the people whose lives have been ruined for years, it is particularly frustrating for us that a number of his recent announcements are what we have called for since our campaign began in early 2019 and, particularly, since our relaunch in September 2020. We believe that steps forward are now finally being made but we are unable to forget the way in which we have been ignored and mistreated for close to five years – years of our life that none of us will ever get back.

[2] Cladding: Panels failed fire tests 13 years before Grenfell - BBC News

[3] https://www.gov.uk/government/news/letter-from-the-prime-minister-on-cutting-red-tape

[4] https://www.insidehousing.co.uk/news/news/government-contractually-prohibited-fire-investigation-group-from-recommending-policy-changes-74218

Do the announcements go far enough, and what, if anything, is missing?

The main thing that is missing is true, robust, and simple statutory protection from all costs to remediate external and internal fire safety defects for all leaseholders in all buildings of all heights and all tenures.

Our view remains that until this is the case the Government has deliberately chosen to derelict its duty – a position we thank the LUHC Select Committee for holding for some years and urging the Government to recommit to, in its November 2020 Pre-legislative Scrutiny of the Building Safety Bill[5], and the reiteration of this simple fair principle in the April 2021 Cladding Remediation – Follow-Up Report[6], the latter of which has not yet received a government response. The Select Committee's call for a Comprehensive Building Safety Fund was one we repeated to the Government at a meeting in May 2021[7].

As we have said directly to Mr Gove, resolving this crisis has always been a choice – a choice the Prime Minister, the Secretary of State for Housing and the Chancellor have always been able, but refused, to make. Mr Gove is talking tough, and it seems the recent government amendments may begin to support these strong words – unfortunately, innocent leaseholders remain unprotected, trapped in limbo and fearing for our futures.

We agree with the general position of Mr Gove's 10th January letter to the developers – it is indeed neither fair nor decent that innocent leaseholders should be landed with bills we cannot afford to fix problems we did not cause – we ask that Mr Gove now moves to avoid all doubt and philosophical discussions about definitions of affordability by protecting all leaseholders from all costs.

We have seen many attempts to divide and conquer – first pitting leaseholders against taxpayers and now live-in leaseholders against landlord leaseholders. It is high time for the games and political posturing to cease.

As we have noted, it is difficult if not impossible to say what is missing based on both the January announcements and the updates since then due to the complexity and how it may work in reality. Based on the latest available information, including the proposed amendments tabled on 14th February, we can say the following:

- As the Government has known for some years, what started as a cladding scandal has becomes a building safety crisis – this is recognised by Michael Gove but the proposed solution of a cap on non-cladding costs, many of which appear related to non-compliant elements of buildings, remains a desperately unfair approach. The focus appears to be on providing certainty to the broken housing ladder rather than true and moral certainty to leaseholders. Is it fair that innocent victims of this crisis are the ultimate backstop for non-cladding costs, even if the intention is for these to be capped?

[5] https://committees.parliament.uk/publications/3605/documents/35262/default/

[6] https://committees.parliament.uk/publications/5702/documents/56234/default/

[7] https://endourcladdingscandal.org/wp-content/uploads/2021/06/EOCS-meeting-with-LG-26-May-2021-Detailed-notes-Final-1.pdf

- Is the Government truly comfortable with choosing to make victims pay thousands of pounds to fix issues we played no part in creating while developers, contractors, building control and manufacturers are let off the hook? How is this in any way fair? While these may seem small sums to ministers, £10,000 (or £15,000 in London) is still an enormous amount to ordinary people across the country, particularly as we are living in a cost-of-living crisis with food price rises and soaring energy costs. Have Boris Johnson, Michael Gove and Rishi Sunak spent any time considering how this approach contradicts the lofty aims of the levelling up agenda? In some cases, this cap will amount to more than the deposit leaseholders scraped and saved to become a homeowner in the first place.

  The intention now appears to be that leaseholders are now the last, rather than the first (and only) port of call to pay fire safety bills[8].

  If the Government is so certain that only a small number of leaseholders would be forced to pay for non-cladding remediation, then perhaps it would be right for the Government to act as the backstop in place of leaseholders.

- There is still a lack of clarity on how the apparent additional funding may interact with the existing Building Safety Fund and the woefully inadequate way in which it is operating. As always, clarity of what happens on the ground is much-needed – the devil is always in the detail and there needs to be a true grip on this crisis from the start: from certainty of risk assessment and prioritisation to ensuring grant funding is put to work at true pace with works not simply being inflated because money is available. We should be able to move forward with certainty that once works are done this crisis will not simply be repeated a few years down the road. The can must stop being kicked every year or so. The buck must no longer be passed about.

- There is an unfair attempt to demarcate between leaseholders who live in their flat and those who might be landlords – opting to set another arbitrary limit on who will be helped is discriminatory and wilfully ignores the many ordinary people who might well have more than two properties. Limits on funding are still in place including the decision to remove the proposed cap on properties valued over arbitrary levels, a decision that will impact numerous properties in London.

- How will the complex limitations the Government is setting on protecting leaseholders impact the pace of remediation given projects will need funding to commence? To this, there remains no answer – only confusion and fear.

  We ask the Secretary of State to corroborate the stated aims of his revised approach and ensure there is forward funding of required works so they can commence at pace, recovering costs through any necessary means and committing the Government to take the place of leaseholders as the ultimate backstop.

- There remains no help for people in buildings below 11m – without grant funding wherever required, the housing ladder will continue to be broken. The arbitrary height threshold for grant funding has simply been moved lower. It must be moved further and / or replaced with a truly sophisticated assessment of holistic building risk – no building, no resident should be left behind.

[8] https://www.thetimes.co.uk/article/one-in-five-cladding-scandal-victims-on-medication-or-off-work-due-to-stress-kzhzmbz8m

- The Building Safety Charge appears to have been put in the bin where it belongs. **This must also be the case for the over-engineered and wholly unnecessary Building Safety Manager.** The planned regimes have clearly been designed by those with vested interests, such as the Building Safety Alliance, and / or those in the civil service who have no understanding or lived experience of being a flat leaseholder. The Government's proposals only serve to entrench the unfairness of life as a leaseholder – this is particularly perverse given the stated aims of leasehold reform and the move to ensure leaseholders can finally call themselves homeowners.

- Our position is reinforced by the manner in which resident-managed buildings appear to continue to be treated in the same way as offshore freeholders with all such parties being lumped together as "building owners". We fear the impact on Residential Management Companies, Right-To-Manage Companies and Enfranchised buildings has not been considered at all in this apparent generalisation.

  We ask the Government to ensure there is clear and distinct separation between the above resident-led entities and the institutional freeholder community.

- The Government has also chosen to continue to allow the building insurance market failure to persist. Further roundtables may be held with the Financial Conduct Authority finally talking tough; however, timescales for a just solution remain vague. In February 2021, James Dalton, Director of General Insurance Policy, suggested a public/private partnership to share risk could be considered "as it has been in other circumstances before"[9]; however, the Government continues to refuse to even consider this morally decent solution, despite claiming the incidents of fires in residential buildings are decreasing.

  Continuing to rely on meetings alone with the opaque building insurance industry will not deliver a fair solution that truly helps leaseholders at any real pace – we ask the Government to put a stop to the blame game with the insurers and work on a risk-sharing arrangement with the insurance industry.

- There is still no real justice. Justice would be a restoration to our circumstances before our lives were blighted by this nightmare. True justice and fairness would mean that we would be recompensed for the thousands of pounds that we have been forced to pay over the years, on waking watch, soaring insurance, and forced remediation while the Government has tried, and failed, to produce a solution that works.

  As the Chair of the Public Accounts Committee said in September 2020[10]: "The government has repeatedly made what turn out to be pie-in-the-sky promises – and then failed to plan, resource, or deliver. The deadly legacy of a shoddy buildings regulation system has been devastating for the victims and survivors of Grenfell but is leaving a long tail of misery and uncertainty for those whose lives are in limbo. The Government must step up and show that it will put a stop to the bickering over who is responsible, who's going to pay for the remediation – and just put this right."

[9] https://www.abi.org.uk/news/blog-articles/2021/02/combustible-cladding-and-insurance/

[10] https://committees.parliament.uk/committee/127/public-accounts-committee/news/118990/pac-condemns-badly-missed-target-to-make-thousands-of-grenfellstyle-cladding-homes-safe/

- True justice would mean that leaseholders in the Skyline building in Manchester, forced into life-changing loans despite Robert Jenrick knowing their predicament and deliberately deciding with the civil service to rule them out of funding, would be freed from their penury. True justice would mean ordinary people such as Hayley Tillotson, forced into bankruptcy due to an inability to pay for fire safety measures, would be fully recompensed.

  Does the Government recognise this simple notion of fairness? If it does, and if leaseholders paying is truly deemed to be morally wrong, **we ask that the Operational Date for protections is set as 14th June 2017, and this is allied with a Statutory Compensation Scheme for innocent victims of this scandal.**

  Our team is willing to continue the constructive discussions with Mr Gove and his team; however, our position remains unchanged: **innocent leaseholders must finally be protected - justice must be done and seen to be done**.

  "It is now down to this government to evidence that it knows the right, moral and fair thing to do to protect leaseholders from all costs to remediate defects for which they are not responsible. Anything less continues to an unacceptable abdication of responsibility."[11]

[11] https://publications.parliament.uk/pa/cm5802/cmpublic/BuildingSafety/memo/BSB15.htm

What are the potential impacts of the announcements? In the case of negative impacts, how can they be addressed?

Again, the true and full impacts, positive or negative, cannot be assessed properly or in isolation given this revised building safety strategy is still being thrashed out by the Government. We fear that it may be overly ambitious to have a fully costed plan in place for all leaseholders in buildings over 11m, by early March.

Complex amendments have been, and are continuing to be tabled, at the Committee Stage in the House of Lords – our concern is that the clearly required scrutiny, by both Houses, will not be able to take place due to the rapid timescales that appear to be being imposed for the Building Safety Bill.

The Government said the Fire Safety Bill was not the correct legislation to address issues on remediation costs, pointing to the Building Safety Bill as where those protections would be implemented. The Government must finally show good faith and not force legislation through Parliament without sufficient time for peers and MPs to consider all amendments.

Uncertainty is writ large over all announcements so far. How can these, and all, negative impacts be addressed? By there simply being legislation in the Building Safety Bill that truly protects us. This was highlighted by Sir Mike Penning on 19th January 2022[12]:

> *"We do not need to reinvent the wheel. We have already done it with the mesothelioma Bill. Originally, we gave the victims 80% of the compensation that they would have got through the courts. Eventually, we gave them 100%. This House was unanimous in its support of the Bill as it went through its stages. It was probably one of the easiest Bills that I have taken through the House—apart from having to pronounce mesothelioma, which, to this day, still troubles me, as Members may have notice.*
>
> *This is an option that I have mentioned to the Minister before. I have said that his civil servants can come and talk to me, or to anybody at the Department for Work and Pensions who took that legislation through. I am more than happy for that to happen. Sadly, though, no one has talked to me about this—I am gently looking towards the civil servants in the Box, which I am not meant to do. This is a great opportunity to right a wrong that we can see coming down the line here."*

If the Government wishes to hold true to the revised approach, and be truly fair to leaseholders, one way to address potentially negative impacts would be to follow the precedent set by the Mesothelioma Act 2014 and write one simple piece of legislation that says all leaseholders will be protected from all costs to remediate historical building safety defects.

[12] https://www.penning4hemel.com/parliament/sir-mike-penning-calls-insurance-levy-fund-fire-safety-work-high-rise-buildings

"We are seeking to avert additional costs in the future. It will be difficult for us to make good all the injustices that have been visited on his constituents and others."

Michael Gove, 10th January 2022

Each announcement made by the Government over the years has deliberately ruled out help for leaseholders who have been forced to pay thousands of pounds over the years, whether on waking watch, insurance costs or forced remediation. As noted, leaseholders at Skyline Central 1 in Manchester were forced into life-ruining loans of over £20,000[13] despite the previous Secretary of State being fully aware of the predicament they were in with threats of losing their homes hanging over their heads if they did not enter into that forced loan arrangement. Sadly, there are other buildings and ordinary people who have been forced to do the same.

To-date, both of the announcements on funding common alarms to mitigate, though not always fully remove, the requirement for on-site foot patrols have also deliberately ruled out innocent leaseholders who have been forced to pay due to leasehold law.

Innocent ordinary people, such as Hayley Tillotson, have been forced to enter bankruptcy due to fire safety costs. Mr Gove may say that it will be difficult to make good all the injustices that have been visited on leaseholders - we understand it may be difficult, but it is by no means impossible.

Allied with the Government recommitting to the principle of leaseholders not paying to remediate historical building safety defects to provide true certainty, we repeat that the Government must go further and set an operational date of 14th June 2017 for protections and implement a Statutory Compensation Scheme. This would be the only morally decent way to ensure innocent leaseholders are not left having had to pay a penny for costs they played no part in causing.

[13] https://www.dailymail.co.uk/news/article-10436099/Government-paid-10m-cladding-advice-consultancy-firm-sued-130m.html

How might the announcements affect the wider objectives of the Department for Levelling Up, Housing and Communities, including the building of affordable housing?

As always, in our direct experience over the years, there seems to be a battle between DLUHC, and HM Treasury hidden from public view. The buck passing that we experience on the ground, where building control blames the developer, and the developers say they met building regulations at the time persist at macro level between governmental departments, while leaseholders are left stranded in the middle.

On 7th January 2022, a letter from Simon Clarke, chief secretary to the Treasury, stated that building safety must be prioritised over supply with DLUHC budgets being a backstop for funding up to £4bn with "trade-offs" noted in the letter[14]. The letter, whilst not signed by Chancellor Sunak, appears to reconfirm the notion that the Chancellor has washed his hands of committing any further funding to resolve this national crisis.

Because of this action by the Chancellor, we recognise that affordable housing budgets may now appear to be under threat. However, we must state here that Housing Associations could and should clearly do more to act as the charitable organisations they claim to be and help innocent victims of this crisis, a position that is fully evidenced and detailed in our new "Dereliction of Duty: How Housing Associations failed leaseholders trapped in the building safety crisis" report available at https://endourcladdingscandal.org/building-safety-crisis/new-report-shows-housing-associations-have-failed-leaseholders/.

We understand that we live in straitened times with a burgeoning national debt, but we contrast the Chancellor choosing to ignore our November 2020 letter to him[15], the repeated denials by HM Treasury officials to meet us over the years, and the ongoing refusal to consider further help with the billions foregone by the Exchequer over the years through taxpayer-backed schemes, such as Help-to-Buy, SDLT relief, or the zero-rating of VAT on construction of new buildings, all with debatable results other than increasing developer share prices, board remuneration and dividend payments, as detailed in our July 2021 response to the Residential Property Developer Tax consultation[16].

In October 2021, Robert Jenrick said he was now able to speak more freely and that he had fought a battle for a number of years, but the Treasury and the government were not willing to increase grant funding. **We ask whether Mr Gove would confirm that the battle between DLUHC and HMT is now over, and he is unable to make the argument for additional funding from the Treasury and has accepted the Chancellor's position of affordable housing budgets potentially being affected.**

[14] https://www.civilserviceworld.com/professions/article/dluhc-budget-is-backstop-for-goves-4bn-cladding-package

[15] https://twitter.com/EOCS_Official/status/1330189999602618375?s=20&t=vha8SsqEGey-V1DczWn67Q

[16] https://endourcladdingscandal.org/posts/eocs-response-to-hmt-consultation-on-rpdt/

What would you like to see in the funding arrangement to be agreed with industry?

Any funding arrangement agreed with industry must:

1. Ensure all leaseholders are protected from all costs to remediate historical building safety defects, regardless of where the defect sits, the height of the building, the tenure, and notwithstanding whatever entity initially constructed the building.

2. Be prioritised based on holistic building risk assessment.

3. Be operationalised at true pace, with site-set up commencing on the ground in weeks.

4. Operate an independent process by which to verify works are proportionate, remediate or mitigate any safety defects and are signed off as long-lasting with an actionable warranty upon completion should any future such crisis reoccur.

5. Have clear and auditable deadlines with progress reports to Parliament on a monthly basis.

6. Have meaningful punishments in law for industry participants who do not do the right thing and participate in the proposed scheme.

Summary: Our Asks

Successive governments (and the same civil servants in charge of building regulations) have allowed the UK's regulatory system to remain inadequate, weak, and gameable despite repeated warnings over the decades including reports after fires.

Following the Grenfell catastrophe, the Government and its Expert Panel moved to clarify fire safety and assessment in residential buildings, with the January 2020 Consolidated Advice Notes trapping residents in all buildings of all heights. Since that date, the genie has been out of the bottle in respect of the assumed and identified unsafe nature of the residential built environment in the United Kingdom – the removal of the Consolidated Advice Notes is unlikely to alleviate the requirements to assess fire spread in residential buildings due to the Fire Safety Act and the use of PAS9980 does not seem as if it will be of the benefit the Government hopes[17].

Over the years, the Government approach has been piecemeal and disjointed[18] – this must cease, and a comprehensive solution must be delivered at real pace.

To remedy this crisis and bring about a truly fair and moral end to this living nightmare, we repeat our key Asks:

There must be simple, true, and robust statutory protection from all costs to remediate external and internal fire safety defects for all leaseholders in all buildings of all heights and all tenures. The Government must look to the precedent set by the Mesothelioma Act 2014 and create one simple piece of legislation that protects all leaseholders.

The Government must take the place of leaseholders as the backstop in the proposed non-cladding "waterfall" solution.

There must be no demarcation between leaseholders of any type, whether those who are owner-occupiers or landlords based on an arbitrary figure of the flats leased.

There must be forward funding of required works, so they can commence at pace, with costs recovered through any necessary means by the Government allowing leaseholders to move on.

The Operational Date for protections must be set as 14th June 2017. This must be allied with a Statutory Compensation Scheme for all innocent victims of this scandal who have been forced to pay thousands of pounds in the last five years.

The Government must work to ensure there is full and clear separation between resident-led "building owners", such as Right-To-Manage companies, Residential Management Companies and Enfranchised buildings, and major institutional freeholders.

The role of the Building Safety Manager must be drastically revised to the benefit of leaseholders or removed altogether from the Building Safety Bill.

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[17] https://www.insidehousing.co.uk/insight/insight/this-is-going-to-go-badly-pear-shaped-what-will-pas-9980-mean-for-the-building-safety-crisis-74004

[18] https://www.insidehousing.co.uk/insight/insight/the-post-grenfell-building-safety-crisis-a-timeline-69377

Full consideration must be given to a public/private building insurance risk-sharing partnership – timescales for a solution to soaring insurance premiums must be provided and adhered to.

The Secretary of State should confirm whether he has accepted the Chancellor's position or whether he is willing to make the argument for additional building safety funding from HM Treasury.