

DLUHC responses to EOCS questions following 3rd August 2022 SoS meeting

Developer Contracts

Q1. What is the firm deadline for the contract to be in final form and will this be by the end of August?

A. We are in active discussions with developers and are making rapid progress to finalise the contracts in light of the comments we have received since the draft contract was published, and we are grateful for EOCS's engagement on the draft contract. Once finalised, we will expect developers to sign swiftly.

Q2. What decisive action will be taken where developers continue to refuse to fix their buildings?

A. There will be commercial consequences for developers who refuse to sign up to the remediation contract. Those who do sign will be required to report periodically on progress and will be held accountable for their performance. The contract will require that leaseholders are kept informed throughout the remediation process, and we have no doubt that leaseholders will also play a role in holding developers to account.

Q3. Will the department provide a standard template to cover the proposed contracts between the Responsible Entity and the Participant Developer?

A. We have specified the key clauses that should be included in such a contract. Given the range of different circumstances (e.g. the varying ownership interests and also the varying scale of projects), we don't think it's possible or appropriate to specify a single form of contract. This is an area where industry bodies could perhaps be encouraged to collaborate in sharing templates that work well.

Q4. Will there be an industry negotiation "Phase 2"?

A. 14 further developers have come on board since the pledges were originally announced in April, and we continue to talk to a number of developers who have not yet signed. Even where developers are not in scope of the pledge, we expect them to do the right thing to remediate buildings they have developed. Where appropriate, our Recovery Strategy Unit will pursue developers who are not doing the right thing. The RSU will use any means necessary, including the courts.

Funding schemes

Q5. "Life-critical fire-safety defects" are open to interpretation. What is the government doing to deliver consistent and transparent standards which provide certainty that no further fire safety works will be required at a future point?

A. Life-critical fire safety defects (in relation to external walls or otherwise) underpins the industry pledge and the reopened Building Safety Fund.

In the case of external walls, we have made it clear that a Fire Risk Assessment of External Walls (FRAEW), following the PAS9980:2022 methodology, determines what is needed to make a building life-safe. These FRAEWs are carried out by competent professionals and focus on works being proportionate to the fire risk. All remediation is about providing a permanent solution and the removal of expensive interim measures. As a safeguard, a follow-up FRAEW will be undertaken at the end of the remediation works project to ensure that recommendations made under the original FRAEW have been implemented.

In the case of internal works, we are working to determine what standards can be referred to in the contract as providing a suitable basis for determining which works will be needed to make the building life-safe.

Q6. When will the independent dispute resolution process, with leaseholder representation, be in operation?

A. We are working to scope a dispute resolution process that may be required and will continue to engage with residents and leaseholders as this develops.

Q7. What reassurances can be provided that Homes England are equipped to make funding decisions?

A: Homes England will be fully equipped to make funding decisions that take all relevant factors into account, including the need to ensure that all affected buildings are brought to life safety standard, quickly, completely and consistently. DLUHC is working with Homes England to ensure that the agency has the right capacity and systems in place to deliver this. As part of this, Homes England will ensure that the needs of residents and leaseholders are factored in.

Decision making will continue to follow the FRA methodology and the BSF methodology.

We are committed to creating a fund to allow remediation work to happen. Therefore, HE are not operating within a capped environment.

HE have plans in place for dialogue with residents and their representatives and we are happy to facilitate that dialogue. HE are also currently procuring external support in order to establish a digital platform for running the scheme.

Q8. Will the latest iteration of the Building Safety Fund Grant Funding Agreements now be signed by the freeholders so work can begin?

A: The Department has been engaging with freeholders, representative bodies and managing agents on the development of a revised Grant Funding Agreement which reflects, amongst other things, changes brought about by the implementation of the Building Safety Act. The Department has also issued public guidance which has addressed many of the concerns raised by freeholders in relation to the legislative changes. This agreement is now available to be used on BSF applications. Given the comprehensive nature of the engagement undertaken, it is our strong expectation that applicants will enter into Grant Funding Agreements without further delay.

Q9. How will funding be made available so that there is certainty on full remediation of all defects and buildings are not simply made “half-safe”?

A. The Department is making funding available via the Building Safety Fund and Medium Rise Scheme to pay for all works recommended to address life-critical fire safety defects recommended by a Fire Risk Assessment of External Walls conducted to PAS 9980 standards. With regard to non-cladding defects, where these fall outside of the Department’s funding schemes, there is a clear route for funding these works set out in the Building Safety Act.

Q10. What are the timescales for the 11m-18m Medium Rise Scheme (MRS)?

A. We are planning a phased opening of the 11-18m funding scheme and will announce further details in due course.

Q11. When will there be a formal policy announcement made on the building safety levy?

A. The Building Safety Levy is one of the ways we will ensure that the burden of paying for fixing historic building safety defects does not fall on leaseholders or taxpayers. The Building Safety Act gives the Secretary of State the power to make payment of the levy a requirement within the building control process. Details of how the levy will work will be consulted on and then set out in secondary legislation in due course.

Q12. Will there be a single service portal for all leaseholders and residents that provides building information for all buildings, and facts are specific to leaseholders in those buildings, regardless of scheme?

A. There is currently a secure service portal for all leaseholders and residents living in buildings in the Building Safety Fund process. Those responsible for buildings also have access to the system and can provide access details to residents. With the process of BSF changing to incorporate some buildings with Aluminium Composite Cladding (ACM), and the move towards opening the Mid-rise Remediation Scheme (11-18m buildings), we are working to make sure leaseholders have access to the information they need more generally including considering whether the portal should be expanded and developed further. As part of this work, we are exploring how more detailed information can be shared as we are aware some leaseholders are still not getting full updates from responsible entities. Once our scoping exercise is completed this Autumn, we will reengage with EOCS on our next steps. We will announce further detail on the launch of the Mid-rise Remediation Fund shortly.

Q13. Will the department ensure an end-to-end Code of Practice for those buildings where works are taking place?

A. We have asked the Considerate Construction Scheme to help develop best practice on cladding remediation, including balancing legal and safety requirements for wrapping and scaffolding with resident wellbeing and security. We will proactively communicate with you further on our work in these areas so that you are both updated and have the opportunity to input your views.

We are also aware that communication and engagement are lacking from some BSF applicants through our conversations with you, leaseholders and residents, and also through our correspondence channels.

The BSF team continues to highlight its expectations on communications and engagement (as set out in BSF Policy Guidance). Additionally, it has now published new information on gov.uk (a dedicated leaseholder and residents support page) and new FAQ information on the LEASE website (published end July).

<https://www.gov.uk/guidance/find-support-as-a-leaseholder-or-resident-of-a-building-in-the-building-safety-fund-bsf-process>

<https://www.lease-advice.org/faq/what-is-the-building-safety-fund> (FAQs on BSF appear throughout the site)

We are now actively reviewing our communications on what leaseholders and residents can do if BSF applicants fail to fulfil their obligations; and also developing enforcement activity where applicants continue to fail to engage and communicate. We will share information with you and this work will be usable across our schemes. To date, much of the emphasis has been on failure to carry out actual remediation work. We're shifting this emphasis to include communications on remediation work.

Members of your group, and correspondents with the Department have highlighted the significant disruption that remediation projects can cause to residents and negatively affect their welfare.

Q14. Will DLUHC review the findings of Dr Jenny Preece at the UK Collaborative Centre for Housing Evidence on experiences of remediation in the building safety crisis?

A. We are grateful for you sharing this important work with us and welcome research into the experiences of residents and leaseholders throughout the remediation process. We will ensure we review the findings thoroughly and seek to speak to Dr Preece and colleagues about what they have learned.

We remain committed to ensuring residents are considered throughout the remediation process and welcome any insights into how we can improve the experience for residents. As such, we have recently begun a research project to better understand how we can integrate the needs of residents of all tenures throughout the remediation programme.

Lending issues

Q15. Will Government audit information provided by landlords to mitigate against fraud, whether in relation to the contribution condition or the developer test?

A. The Regulations already require evidence to be provided as to group wealth, including company accounts, and must be signed by both the landlord and either a chartered accountant or finance director confirming their accuracy. This sign-off

ensures professional sanctions can be sought if inaccurate information is provided, which could lead to disqualification. It is also a criminal offence (fraud by false representation) for both the company and the individual signing if they knowingly or recklessly providing a false statement as part of a certificate.

Q16. Given the long-term impact of this crisis, what products will be available to leaseholders who have no choice but to let their flat when the initial Consent To Let (CTL) agreement expires?

A. The exact products available to customers are determined by the individual lending policies of banks and building societies. Where Consent to Let is available as a product feature and subletting requests are made, lenders seek to understand borrowers' circumstances and lenders' decisions are related to their individual commercial risk and appetites. However, the Department expects that lenders should make every effort to approve any subletting requests, including extensions, from leaseholders impacted by building safety defects. We have made this clear to lenders.

Q17. What is government doing to help leaseholders in the 'Help to Buy' scheme who cannot redeem their loan as they are unable to find a "specialist valuer", as per the latest Homes England policy?

A. If a customer is not able to find a valuer then they are asked to contact the scheme mortgage administrator (Target) and provide them evidence from three qualified valuers confirming that they are not willing to provide a valuation for their home. The case can then be escalated in order to identify an appropriate valuer.

We are determined to provide protection for leaseholders in this situation and are working closely with Homes England to find solutions and ensure cases are dealt with as quickly as possible.

Q18. How will the department ensure that mortgage providers hold true to their public statements to recommence lending where buildings are in recognised government schemes or there is evidence of a qualifying lease certificate?

A. We are working with the industry to quickly operationalise the changes committed to by major lenders on July 15th. We expect that signatories to the July statement will amend their lending policies as soon as is practicable and we are working closely with them to ensure this is taking place.

Pursuit of individuals and firms that do not do the right thing

Q19. Please provide timescales for the Recovery Strategy Unit to be fully operational.

A. The Department has established a Recovery Strategy Unit (RSU) to pursue companies and individuals who have failed to do the right thing and pay to fix the building safety issues they created. The Secretary of State announced the appointment of Graham Cundy to lead a team to recover funds from the sectors

involved in building safety on 13 June 2022. There is also going to be a meeting scheduled between EOCS and RSU in September 2022.

Q20. Will there be precedents set for use of Remediation Orders and Remediation Contribution Orders at the First-Tier Tribunal (FTT) with the Government using its weight to ensure these are as wide-ranging as possible?

A. It is for the courts, not the Government, to decide whether a Remediation Order or Remediation Contribution Order is made.

Q21. Are there plans to end freeholder's legal costs at the First Tier Tribunal being passed to leaseholders?

A. Leaseholders may be liable to pay the legal costs of their landlord regardless of the outcome of a legal challenge - even if they win the case. This may depend on the terms set out in their lease. This can lead to leaseholders facing bills that are higher than the charges they were seeking to challenge in the first place. It can also deter leaseholders from taking their concerns to a tribunal.

The Government remains committed to ensuring leaseholders are not subject to any unjustified legal costs and can claim their own legal costs from their landlord.

Q22. Where a developer does not exist, what is the process that should be undertaken? For example, where special purpose vehicles have been used, is the advice to pursue those directors? Can the Orders be used in the courts to ensure contractors do the right thing or through the DPA, which would be a lengthier course of action?

A: The Building Safety Act makes clear that leaseholders are no longer the first port of call to fix fire safety defects and shifts the liability to those who created the defects. Where the developers cease to exist or cannot be found, costs can be passed on to leaseholders but these will be subject to contribution caps for qualifying leaseholders as outlined in Schedule 8 of the Building Safety Act. Where remediation costs exceed the fixed caps, building owners must pay the shortfall. In such situations, the leaseholder protections set out how building owners and landlords must split the costs of remediation.

Q23. Some freeholders continue to say they have no obligations even after the leaseholder protections have come into force. Will government produce guidance for Resident Management Companies and Right To Manage (RTMs) given ongoing Responsible Person duties?

A. The Building Safety Act makes it clear who is liable for fixing historical building safety issues. In the first instance, those responsible for creating historical building safety defects will be legally required to pay to remediate them – any building owner or landlord that is or is linked to the developer must meet the costs to remediate their building in full and for all leaseholders. If no landlord is responsible in this way, then landlords with a net worth of more than £2 million per relevant building owned by them will be unable to pass costs on to qualifying leaseholders.

Leaseholders who have a right to manage (RTM) or who have formed a resident management company (RMC) and whose building has a third-party freeholder will benefit from the leaseholder protections in the Building Safety Act 2022 in the same way as any other leaseholder. The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 provide for RTMs and RMCs to be able to apportion and recover historical safety remediation costs from relevant landlords in accordance with the Act and regulations. Freeholders and other landlords who fail to comply with the Act will be in breach of the law.

Government has issued a call for evidence on how best leaseholders in collectively enfranchised and other similar cases can be protected from the costs associated with historical building safety defects. Residents can find the call to evidence here: <https://consult.levellingup.gov.uk/building-safety/leaseholder-owned-buildings-11m-or-5-storeys-cfe/>, and the deadline for responses is 14th November. The call for evidence will allow the Government to understand better the position regarding leaseholder-owned buildings with historical defects and identify whether further measures are appropriate to address specific circumstances in which leaseholders may unintentionally be exposed to disproportionate costs.

Q24. The Financial Conduct Authority (FCA) may now move to ban or cap commissions or implement rules on leaseholders being able to access information. How will the recommendations help reduce premiums immediately and as substantially as needed?

The Financial Conduct Authority (FCA) study shows that in the majority of buildings insurance procurements, commissions form at least 30% of the total premium cost, with commissions ranging between 10% and 62%. In more than half of cases, managing agents and freeholders receive 50% or more of the commission given to brokers. The Secretary of State has written to the British Insurance Brokers' Association (BIBA) making clear that this unfair practice must cease as a matter of urgency and we await a proposal from BIBA on how they will address commissions and reform the industry culture that has led to this unacceptable practice.

Any action to constrain commissions will have a meaningful impact on the eventual premium price and the Secretary of State supports the work of the FCA in further reviewing commissions.

We are reviewing the FCA's recommendation to improve transparency of buildings insurance for leaseholders, which the FCA has stated will in turn pressure firms to improve their practices around product selection and remuneration.

Q25. What will be done to help protect leaseholders from insurance costs while remediation work is taking place?

In response to the FCA, who called for the insurance industry to develop and implement a risk-pooling solution within 2 months, the Secretary of State is committed to taking action on high premiums. The Building Safety Minister is meeting with the ABI and FCA in w/c 10 October to discuss an industry proposal to bring down premiums for buildings with fire safety risks. Further announcements on this critical work will follow in due course.

The improvements brought by the Building Safety Act, Waking Watch Replacement Fund and by the government remediation funds should be impacting premium costs and we will continue to press insurers to price premiums fairly and appropriate to the level of risk, in line with the commitments in their statement.

The Government has negotiated with industry through the Association of British Insurers (ABI) to commit to reduce premiums where buildings have completed remediation or a PAS 9980-compliant external wall assessment has shown a reduction in risk. The ABI have also committed to waive any mid-policy cancellation fees should a building wish to change insurers once remediation has been completed. You can read their statement here: <https://www.abi.org.uk/news/blog-articles/2022/08/fire-safety-update-on-insurance-industry-work-to-support-affected-leaseholders/>

Q26. Will there be an industry reinsurance mechanism that materially reduces the costs leaseholders have to pay, or will the Government intervene to share the risk of premium increases?

A. We have been working with the Association of British Insurers (ABI) and the British Insurance Brokers' Association (BIBA) to develop an industry-led pool. A buildings insurance pool would see insurers share the risk associated with fire safety defects between themselves to reduce the individual risk to each insurer, with the aim of reducing premiums.

We expect the ABI and BIBA to provide an update for the Government, Financial Conduct Authority and residents of multiple-occupancy buildings in September. We will review the industry response and assess all potential avenues to see premiums are reduced.

Waking Watch

Q27. Will the government issue guidance on Waking Watch practices under Article 50 of the Fire Safety Order?

A. On 18 August the National Fire Chiefs Council (NFCC) published revised Simultaneous Evacuation Guidance (SEG). The SEG provides advice for Responsible Persons to support a temporary change from a 'stay put' strategy to a 'simultaneous evacuation' strategy in purpose-built blocks of flats where significant building defects have been identified. The Government's view is that Waking Watch and Evacuation Management Staff should only be used exceptionally and where the risk presented by a building makes their use absolutely necessary. For example where, absent these measures, the alternative would be to evacuate the building. We continue to work closely with the Home Office and NFCC on activities to reduce any unnecessary use of Waking Watch and other interim measures.