
## 1. Developers & Funding Schemes

### a) Developers

There are ongoing issues both with the major developers who have been asked to sign the pledge and those who have not despite all benefiting from generous taxpayer funding and schemes over many years.

**Experiences**

1. Despite signing the pledge some months ago, there has been a wildly inconsistent approach by the major developers with few following through on the commitments that they have announced that they have made. Industry actors now wish to delay signing contracts until a new prime minister is in place.

2. Many leaseholders feel abandoned by the Government as it has only asked a portion of developers to sign up to the pledges.

**Challenges**

1. There is ongoing pushback from the developers who have signed up to the pledge to enter into the legally binding contract. We understand that the latest reasons given for this are the developers fearing "betterment" and / or open-ended commitments; however, these appear to be nothing more than delaying tactics given the intention and terms of the Developer Remediation Contract. We welcome the news that your officials are working all hours of the day to finalise the contract - what is the firm deadline for the contract to be in final form and will this be by the end of August?
   What decisive action will be taken where developers continue to refuse to fix their buildings?

   We understand that the developers will be obliged to enter a contract with the Responsible Entity at individual buildings as per para 6.4 of the draft Self Remediation contract. The terms of the draft contract may specify that this should be "based on an industry standard form of contract"; however, we are concerned that the lack of an available template contract format will mean that there are delays in the contract negotiation process and potentially varying outcomes at buildings. We ask that the department helps ensure that there is a consistent approach by providing a standard contract for Responsible Entities.

2. We would welcome clarity on the position where the developer has not been asked to make the buildings they developed safe – we have provided several examples of those developers to the department in our meetings this year. Will there be the long promised "Phase 2" or is the Government now implicitly relying on interested parties using the new Orders to hold those developers to account?

**b) Funding Schemes**

A comprehensive solution is still needed for all buildings, of all heights, and for both external and internal issues. We are still some way off this given the range of schemes that are, and will be, in operation.

**Experiences**

1. Developer Remediation:

In addition to the above, there has been a clear impact on and delay to ongoing works where the developer is taking over. The developers will always focus on their bottom line over our safety.

2. Reopened Building Safety Fund (BSF):

The previous iteration of the BSF has operated at a glacial pace. Many residents have waited for news for over two years since registrations opened with funding decisions often leading to an appeal. The allocation of funds may have passed £1bn but the actual disbursement is still at low levels, and these are often only for pre-tender works. There is insufficient clarity on how the re-opened BSF has been made fit for purpose.

Applicants are also now being given a "choice" where full funding has been approved or on-site works started. Freeholders will clearly opt for the new FRAEW criteria route given that costs are now due to fall onto them rather than leaseholders. Delays will only be exacerbated. There are also ongoing issues with signing the BSF contracts despite previous announcements of breakthroughs on this by the Government.

3. 11m-18m orphan buildings – the only information that we have on when this scheme will be in operation is "in due course".

4. There remains a woeful lack of building-specific information.

5. Living in buildings while construction work takes place – the lives of residents who are forced to live through remediation must be considered fully and action taken to mitigate the pain of what is, in effect, living on a building site.

**Challenges**

1. Turning developer contracts into work on the ground at true pace. The focus of the Government on proportionality and the use of the PAS 9980 standard means that work is now delayed as the previous risk assessments, many gathered as long ago as 2020, are now superseded.

   "Life-critical fire-safety defects" will still be open to interpretation. The Government's stated premise has always been that, where a developer has entered the remediation contract, leaseholders will be protected from all cladding and non-cladding costs – how will the Government ensure this happens to consistent and transparent standards which provide certainty that no further fire safety works will be required at a future point?

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

2. We understand that Homes England is to now have the power to make funding decisions. We reiterate our concerns on Homes England's decision making and it having the resource required. How can we be certain that history will not repeat itself?

   Will the latest iteration of the BSF Grant Funding Agreements now be signed by the freeholders so work can begin?
   There are ongoing issues with non-cladding costs still not being eligible for BSF/Orphan Schemes. We understand that the department recognises this but how will this be reflected in the funding that is made available so that there is certainty on full remediation of all defects and buildings are not simply made "half-safe"?

3. What are the timescales for the 11m-18m orphan buildings fund? The developers are pushing back on the estimated £3bn levy to fund this scheme. We welcome Mr Clark's recent comments on there being "no backsliding" and we request that a formal policy announcement is made to this effect to ensure the wheels are set in motion and cannot be undone.

There is potentially a serious impact of the leaseholder protections on work taking place, i.e. the capped costs for qualifying leaseholders and lower-bound flat value thresholds as well as the annual limit on service charges that can be raised to pay for remediation. The long-standing issue of where funds for all works required will come from should the "building owner" be unable to pay has still not been addressed. This is especially pertinent in cases where a waking watch and / or evacuation management is required, as explained to officials at previous meetings.

Commercial leaseholders are ruled out of funding above the Subsidy Control levels. Where they can pay, they are using their legal teams to delay contributions and where they cannot, their businesses, often small entrepreneurial companies, are under serious threat.

We repeat our concerns over the inconsistent and unfair effects of the flat value multipliers with properties of the same current value in the same building being deemed to be of different values by the multiplier calculation adopted. A Council Tax type-banding for properties is clearly a fairer approach.

4. The leaseholder checking tool is a start. The goal must be that the BSF Leaseholder and Resident Service is in operation for all buildings and facts are specific to leaseholders in those buildings. We met with Katherine Hartup to feed back on the Service in April and followed this up at the Residents' Voice Advisory Group meeting in May. We have repeated our express request for there to be one Service portal for all leaseholders and residents that provides building information regardless of scheme in one place. We ask that this is progressed over the coming weeks and months.

5. There must be an end-to-end Code of Practice for those buildings where works are taking place. This needs support from DLUHC, the Home Office and the Health & Safety Executive. There are several areas that could be improved including: true consultation and two-way engagement prior to work commencing ensuring a clear communication strategy; the use of netting rather than sheeting must be mandated; and issues relating to security of the site must also be given sufficient consideration.

   We note the ongoing research being undertaken by Dr Jenny Preece at the UK Collaborative Centre for Housing Evidence on experiences of remediation in the building safety crisis and we ask that DLUHC review the findings once published. We have also met with the Considerate Constructor's Scheme to discuss the work taking place to develop best practice where remediation takes place.

## 2. Lending Issues

**Experiences**

1. The Government intends that the recent UK Finance, Building Societies Association and RICS statement will unlock the market. We hope this to be this case; however, our experience over the years tells us that more work needs to be done to give those welcome statements effect on the ground. We understand that lender processes must be reviewed and then communicated to staff; however, as it stands, lending remains in stasis with those that have signed up to statement still basing lending decisions on EWS1 form provision.

   Lending will only begin to get going in practice when there is the certainty of the relevant schemes being up and running and operating as designed.

2. It is, admittedly, early days for the Leaseholder and Landlord's Deeds of Certificate. The guidance that has been produced is a useful start but the complexity of the protections and different scenarios as well as not all leaseholders being deemed as qualifying, due to the political decisions that were taken, means further and clearer guidance is much needed.

**Challenges**

1. Ensuring all mortgage providers have the full details of buildings in the various schemes. The varying protection offered under the schemes will likely lead to a two-tiered valuation system with those lucky enough to be in buildings in the Developer Remediation Scheme potentially protected from all costs but those in the other schemes suffering from a reduction in value due to the way the protections have been designed.

   There are still issues around valuations, for example, what we understand to be a mooted "desirability factor" where works are to take place. The Royal Institution of Chartered Surveyors has announced that it has "begun the initial process of consulting with valuers, lenders, Government, fire engineers, conveyancers and other key stakeholders to develop" this guidance and a public consultation will follow. It is disappointing that RICS continues to exclude leaseholders from their initial processes – decisions about our lives and futures continue to be made without our being able to input at the same stage as industry.

2. Both Leaseholder and Landlord (private and Housing Association) Certificates will clearly be key to the lending process. There must be transparency and robustness of the information provided by the Landlord, e.g. on group net wealth. Will there be any auditing undertaken by the Government to proactively mitigate against fraud, whether in relation to the contribution condition or the developer test?

   We thank DLUHC's officials for sharing the previous draft guidance prior to publication to enable us to provide feedback on its use and language. We have now received the draft FAQs on the

Deed of Certificate and, as requested, we will revert on this shortly. It is helpful that this engagement continues to enable us to raise the concerns and areas of complexity shared directly with us, in this case in respect of what constitutes evidence in a range of scenarios, particularly for shared owners.

Given the long-term impact of this crisis, other issues will need to be addressed with lenders, namely around the length of the 'consent to let' period for leaseholders who have no choice but to let their flats. What products are to be available when the initial CTL agreement expires? Another issue is that facing leaseholders on 'Help to Buy' who cannot redeem their loan as they are unable to find a "specialist valuer", as per the latest Homes England policy. In the context of increasing interest rates, these issues need to be addressed with UK Finance, RICS and Homes England.

## 3. Pursuit of Individuals & Firms that do not do the right thing

**Experiences**

1. Holding relevant parties to account is vital – this has been left to leaseholders for too long with limited success.

   There may be welcome new Orders, but these are untested at the First-Tier Tribunal and there is an urgent need for the Government to ensure the Recovery Strategy Unit is fully operational.

2. We welcome the clarification previously received on Residential Management and Right to Manage Companies being included in the protections. These entities have duties as Responsible Persons, so Freeholders / Superior Leaseholders are continuing to dodge responsibility despite the leaseholder protections coming into force.

**Challenges**

1. We understand that the Recovery Strategy Unit has been "up and running" for some months and we request timescales for the Recovery Strategy Unit to be fully operational.

   It may be that direct interventions by the Secretary of State and the department could lead to a domino effect in respect of responsible building owners, or at least those who recognise their brand and reputation is important, finally doing the right thing. We remain concerned that there is a cohort of rogue institutional freeholders that will continue to avoid and evade their responsibilities and liabilities unless forced to do so.

   There must 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. We welcome the recognition of this at the meeting.

   We reiterate the issue noted previously of how freeholder's legal costs at the FTT are passed to leaseholders – this must be ended.

   We are also now seeing building owners selling titles to attempt to remove themselves from their liabilities. Examples of this have been provided to your officials by email including a major institutional freeholder pleading poverty despite being part of a wider well-capitalised group.

   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? The current position is that the focus on developers, and pursuit of directors of now-liquidated SPVs means that contractors are refusing to do the right

thing given the lack of direct contract with leaseholders. Where contractors are engaging, or at least seeming to engage, there are restrictions on work and liability waivers demanded. At the meeting, it was recognised that this leaves many leaseholders in limbo so any clear guidance that will help ensure buildings are made safely quickly would be extremely helpful for these such cases.

We welcome the confirmation from Mr Clark that we could meet Graham Cundy, Head of the Recovery Strategy Unit, and we look forward to the proposed dates for this.

2. We welcome the note on the recently published Frequently Asked Questions, which explicitly states that "the Building Safety Act moves the financial liability to landlords and building owners, and protects qualifying leaseholders". However, we have also seen freeholders continuing to say they have no obligations even after the leaseholder protections have come into force. There must be a clearly defined process and specific guidance for RMCs and RTMs given ongoing Responsible Person duties.

## 4. Building Insurance

**Experiences**

This is another longstanding and painful issue that seems little closer to resolution after a number of years. We have provided unambiguous evidence of the market failure and building insurance data has been presented to the Government a number of times. A meeting was held with the Association of British Insurers, the British Insurance Brokers' Association and Lord Greenhalgh in March 2021 (see here) and we reported these issues to the Financial Conduct Authority and the Competition and Markets Authority in May 2021 (see here), but we have seen no progress. The Government continues to resist the simple solution of a risk-pooling scheme that would mitigate the exorbitant premiums.

Added to this, there is the clear unfairness of insurance premiums not being included in the non-cladding capped costs for qualifying leaseholders and a further layer of unfairness is the 12% Insurance Premium Tax we are forced to suffer on top of the escalating premiums and extortionate commissions.

There may be small steps forward with the Financial Conduct Authority's report, but this is now overdue despite the previous Secretary of State's deadline of the end of July for the report. The FCA may now move to ban or cap commissions or implement rules on leaseholders being able to access information, but will the recommendations actually help reduce premiums immediately and as substantially as needed?

**Challenges**

The ABI has said that it is "working with insurance industry, government and FCA to identify options to help leaseholders until the necessary remediation work has been completed" but there is no clarity on what that will mean in practice. Necessary remediation work can and will take years to complete so what will be done to help ordinary people suffering these harmful costs in the interim?

Will there be an industry reinsurance mechanism that materially reduces the costs we are forced to pay, or will the Government now finally intervene to share the risk given the acknowledged responsibility for the inadequate regulatory regime that has caused premiums to soar? The Government must grip this issue and stop relying on the hope of an industry solution; that approach has failed so far. The FCA recommendations are unlikely to do anything to help recover the thousands of pounds we have paid in the last five years.

We firmly believe that the ability for leaseholders to procure our own insurance is vital.

We thank you for your offer to meet again once the FCA publishes its report. As the report is now overdue, we ask that you please secure a deadline from the FCA for the release of the report. Our view is that there are two avenues, the first being the issue of extortionate and secretive commissions and the second being risk-sharing so that premiums are reduced – we ask that policies are formally announced on both to clearly benefit leaseholders by the end of August.

## 5. Waking Watches / Waking Watch Relief & Replacement Funds

**Experiences**

1. Ministers have acknowledged waking watches as a "rip-off" measure. There is little to no value in staff patrolling buildings other than as liability reducing exercises by freeholders. Unfortunately, due to the unfit-for-purpose guidance of the National Fire Chiefs Council, fire risk assessors and engineers are bound to advise the implementation of a waking watch with fire and rescue services often threatening prohibition of buildings if these are not implemented immediately even with the recent "first of its kind" judgement against these enforcements.

2. Evacuation management is still mandated in many cases after the installation of communal alarms.

3. There has been an unacceptably slow pace of distribution of communal alarm funding.

**Challenges**

1. There is the continued forced imposition of waking watches and evacuation management across the country. Our firm view, as detailed in our recent email, is that the Home Office Secretary of State can and must issue clearer guidance on these practices under Article 50 of the Fire Safety Order.

2. There should also be the scope to remove evacuation management through the installation of fully addressable alarms, monitored by an alarm receiving centre allied with site staff or residents performing this task, if still deemed necessary.

3. The pace of distributing funds must be speeded up. This aligns with the simple moral premise of any building deemed unsafe being provided funds for an alarm immediately. The January 2022 Waking Watch Replacement Fund has been initiated for buildings of all height – to a certain extent, this could help mitigate issues in those buildings under 11m where people are still excluded from help.

## 6. Ordinary people still ruled out of help

**Experiences**

All leaseholders are innocent and equally blameless - it is unfair to deliberately choose which to protect in law. We welcome your comments that one of the principles underpinning action to resolve unsafe buildings is that leaseholders must be protected.

1. Leaseholders in buildings under 11m are still being forced to pay for remediation whether based on previous risk assessments or PAS 9980.

2. Leaseholders with more than three properties are unfairly deemed to not qualify for help with a number of the ordinary people that the leaseholder protections should have protected having invested in property for their retirement as explained to you by one of our team, who is a non-qualifying leaseholder, at the meeting.

3. Leaseholders in enfranchised buildings are excluded from the protections. A consultation has been promised but there has been no further news on when that will take place.

**Challenges**

1. Buildings under 11m have been constructed using unsafe materials including the same cladding that was on Grenfell Tower; however, they and others in equally unsafe buildings are ruled out of help. There are additional issues with unfit internal compartmentation that means fire will spread easily between flats and floors.
   A person should feel safe and secure in their home, but this simple right has now been replaced by one that is the ability to exit a building before it burns to the ground. The Government has repeatedly promised to look at such buildings on a case-by-case basis; however, this is not happening to the required extent. With the Fire Safety Act 2021 due to come into force early next year, buildings of all heights will be required to be assessed for the risk of fire spread – we have spent some years campaigning to reduce the previously arbitrary height threshold on funding help from 18m, but this has only been lowered to a new arbitrary limit of 11m. We repeat that all leaseholders are blameless and there must be better and more concrete help.

2. Thus far, the Government has chosen to limit help to those with three properties or fewer based on political optics rather than truly doing the right thing to resolve this collective state and industry failure. Many non-qualifying leaseholders will not be able to pay for remediation. Pensioners who have already suffered ongoing interim measure and insurance costs will have no option but forced sales to cash buyer. If the principle is that all leaseholders must be protected then serious consideration must be given to the decision to limit qualification to those with fewer than three properties or, at the very least, to ensure the first three properties benefit

from the leaseholder protections. This would be a fairer and more rational approach to that which has currently been taken.
There must be appropriate consideration of joint ownership of leases – it continues to be grossly unfair that a married couple may own a total of six properties separately but only three jointly to be deemed to be qualifying leaseholders.

3. Enfranchised properties – we fear that a consultation will do little to help quickly. We ask the Government to please clarify how many enfranchised buildings there currently are. Prolonging resolution of this issue will mean the current broken and feudal system of leasehold will simply perpetuate. We understand that enfranchised buildings have applied and continue to be able to apply to the Building Safety Fund and it should not be beyond the wit of the Department to ensure that leaseholders who have enfranchised receive the same protections as those deemed to be qualifying.

## 7. Issues affecting Shared Owners

Shared ownership leaseholders urgently need a set of policy responses to ensure they can move on. The disproportionate impact of this crisis on this cohort should be addressed directly as many are struggling with costs that are unmanageable.

The flagship government scheme was set up to provide a "step on the housing ladder" for those who cannot afford a mortgage on the open market. The scheme includes some very negative aspects - e.g. shared owners who own as little as 25% are expected to pay 100% of the ground rent and service charge for their flats, including maintenance costs - but in addition, as outlined in our Dereliction of Duty report , housing associations have failed to provide the support needed to this group of leaseholders. While the Government encouraged housing associations to grant shared owners the right to sublet for example, conditions are extremely strict and those who do sublet because they cannot sell, often can only do so at a loss and face significant bureaucracy.

Worryingly, we are now hearing from shared owners who have been left with no option but to sell their properties on the open market below the official valuation. Housing associations do not cover any share of the loss in value meaning shared owners face debt even when they manage to sell as they are forced to pay the difference.

It is critical that appropriate policy responses are provided to ensure that these shared ownership units, classed as 'affordable homes' continue to house those least able to buy a home on the open market. We welcome the Welsh Government's initiative to buy back properties from leaseholders and recently urged the Mayor of London to also fund buy back of shared ownership properties, which could then be converted to affordable rent or social rent by housing associations. In the context of an unprecedented cost of living crisis, this would help impacted shared owners and could provide much needed affordable homes quickly to thousands of people in England. This would help house people much faster than any development programme in the current climate where labour shortages and raw material price inflation are ramping up construction costs.

Therefore, we ask the Government, as well as housing associations, Homes England and local governments to look to allocate funding to a major buyback scheme to ensure all those who have moved, or need to move, for whatever reasons, are able to sell their share back to their housing association, and that those who instead want to stay in their homes but cannot afford to, are given the option to reverse staircase entirely and switch to affordable rent. It is unfathomable that shared owners are currently facing bankruptcy and losing their homes because of a crisis they are not responsible for.