End Our Cladding Scandal meeting with Vistry Group – April 2024

Assessment programme almost complete, but only 30% of works started

When we first approached Vistry, towards the end of 2023, the Department of Levelling up, Housing and Communities (DLUHC) had recently published its first quarterly report on developer remediation progress, up to 31st October 2023, based on self-reporting by developers plus internal information from the government's remediation funding schemes.

At that stage, a relatively low 41% of Vistry's relevant buildings appeared to have an assessment, compared to an average of 72% amongst all participant developers. The rate at which remediation was found to be required also seemed to be one of the highest amongst their peers, but the pace of work was slower than average, with 96% of buildings identified for self-remediation not yet having started work on site.

By the time the second quarterly report on developer remediation progress, up to 31st January 2024, was issued by DLUHC in late March 2024, Vistry's position had improved quite significantly – although that was partially due to better data collection and reporting by DLUHC. We were aware from speaking to several developers that there had been inconsistencies in how some questions had been interpreted in the first iteration of DLUHC's data survey, and it seems as if clearer question framing may have improved the data accuracy this time around.

Although it was two months out of date by the time of our meeting, the publicly available data showed:

• **289 relevant buildings** (over 11 metres) had been identified within scope of the developer contract.

• **273 buildings had been assessed (94%)**. This seemed to be a huge leap forward in the quarter (+154 buildings), although Vistry attributed approximately two-thirds of this progress to under-reporting in the prior quarter, which should have shown around 80% of buildings had already been assessed, not 41%.

• **109 buildings were confirmed to require remediation work (40% of those assessed)**. This is close to the industry average of 37% and, with few buildings left to assess, this should be almost final. We understand that most buildings are in London and Southeast England, with smaller numbers in other locations such as Manchester and Southampton.

• **99 buildings were expected to be directly self-remediated**, with a further 10 to be remediated via government schemes and then reimbursed.

• **69 buildings identified for self-remediation had not started work on site (70%)**. Although performance on this measure had improved in the quarter, the low proportion of starts still indicates a slower pace of work than Bellway, Barratt, Taylor Wimpey and Crest Nicholson (the other large developers that currently have comparable or greater numbers of buildings requiring self-remediation). However, these companies are all substantially behind Vistry in relation to the pace of their assessment programme.

• **A further 48 buildings had plans to start by 2024/25 (70% of buildings not yet started)**. But plans can clearly slip – as the vast majority of buildings that were slated to start in the prior quarter had not done so (13 out of 14). We were advised that in total 40 projects (more than 40 buildings) are expected to start on site this year, including wider group activity outside the scope of the developer contract.

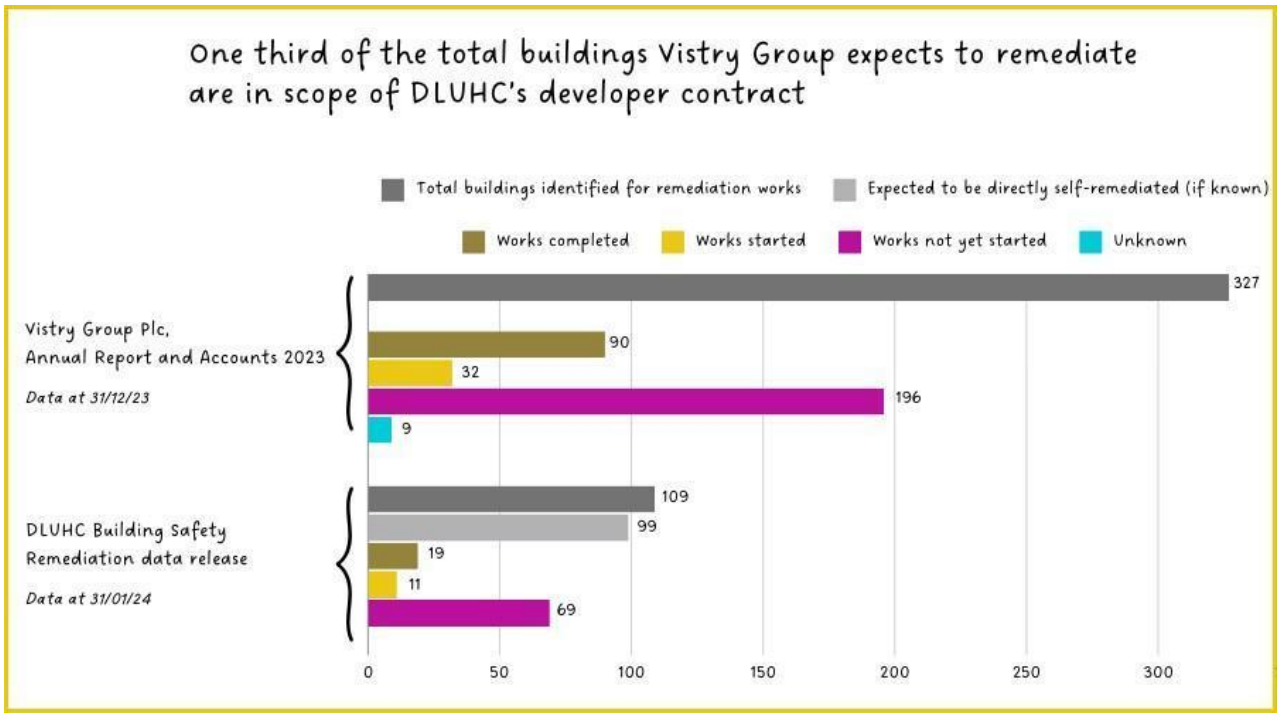
• **27 buildings had planned completion dates of 2026/27 or later**. This remains a concern, as leaseholders' and residents' lives will remain on hold here for at least another two years.

But – and this is a significant but – the data reported by DLUHC should come with a large caveat for anyone seeking to understand the total impact of Vistry Group's remediation programme.

Only one third of buildings the Group will remediate are in scope of the developer contract

Vistry Group's annual report for the year ending December 2023, published on 15th April, shortly after our meeting, states that a total of **327 buildings** have been identified for fire safety remediation works.

On page 15, it notes: *"Of the 327 buildings identified, work has been completed on 90, works are ongoing on 32 sites and we are engaged in the remediation process with a further 196 buildings."*



Vistry explained the key reason for the vast difference between these two sets of numbers is because the Group is also remediating buildings where it acted in a contractor role, not as a developer – and these remain outside the scope of the developer Self-Remediation Terms (SRT) which DLUHC reports on. DLUHC's data is for England only so it also excludes a handful of buildings in Wales, but this only has a small impact.

Most commonly, Vistry acted as a contractor on buildings developed by housing associations, where there is a mix of remediation work being undertaken by Vistry directly and/or claims to reimburse the works. Those buildings will be accounted for in DLUHC's reporting, as part of the social housing dataset – but for a user of the report, there is no visibility that the source of funding and/or commitment to carry out the works on these social housing buildings rests with a developer such as Vistry Group.

If developers acted as contractors, buildings are not covered by the Developer Remediation Contract

The distinction between acting as a contractor and acting as a developer can be important, as the former is not within the scope of the government's developer remediation contract – although Building Liability Orders are available to take action against contractors in the High Court.

In Annex 1 of the developer remediation contract, the definition of a building in scope includes, amongst other things, that *"a [Participant Developer] Group Company played a role as a developer or refurbisher (but not as a contractor)"* and *"a PD Group Company will not be considered to have played any such role where*

the role of the PD Group Company in the development or refurbishment was solely as a contractor undertaking construction works, with no entitlement to any proceeds in excess of arms-length contracting fees for the Original Works."

After a serious fire in Wembley in January 2024, which appeared to spread quickly to multiple properties due to the cladding, media coverage highlighted that residents and their MP had been raising concerns about the cladding for three years, but nothing had been done to remove it. Residents in neighbouring blocks have also been in contact with us in recent weeks. Their safety fears have naturally been heightened by the recent fire and they are frustrated at being moved back into their homes, as there is still no clear plan or communication about when their homes will be made safe.

In a statement at the time of the fire, the housing association, Octavia Housing, was quoted in the media saying, *"[There are] ongoing negotiations with the developer and our insurer as part of an arbitration process."* However, Vistry pointed out that they were the primary contractor, not the developer in this case – a point that was noted in some media coverage, but few would have realised the difference this makes. Vistry would not comment to us on the specifics of the case, but said they were in frequent talks with Octavia and that good progress was being made.

Incidents like this are thankfully rare. But they show that being "in negotiations" or even having "plans in place" counts for very little when dangerous cladding – or other construction defects that enable fire to spread rapidly – remain on people's homes. Fire won't wait, and it is clear that lengthy delays to remediation work can have serious consequences.

"Meaningful starts" to try to beat delays under the new BSR

Vistry's annual report notes that their remaining remediation spend is expected to be phased relatively evenly over the next four to five years. When we asked about any factors that might put timelines at risk, the directors particularly highlighted the transition to a new Building Safety Regulator (BSR) from April 2024 and the lack of guidance around new processes. The extent to which planning approvals, gateway submissions and building control may be impacted is still unknown – but concerns have been rumbling across the industry that an 8-week process for planning approvals could become 20-22 weeks.

Vistry had met the BSR's Head of Operations a few days prior to our meeting and were able to share an update. The BSR's recruitment was said to be on track, it had not received the influx of planning applications that might have been expected, and some assurance had been offered that timescales could be much closer to "normal" than many in the industry had feared. For example, some live applications were taking about 12 weeks. In response to concerns that there may not be enough inspectors registered to practise by the deadline, the HSE's director of building safety had also recently announced some extended transitional arrangements for the registration of building control inspectors in England.

One consequence of the concerns about the impact of the BSR on timescales for works is that we had received several reports from developments around the country about a "meaningful start" taking place on their site before the new BSR came into effect – with just enough activity to demonstrate that work had "started," before works were paused again.

Leaseholders at a Vistry development in East London had shared video footage of scaffolding which had been temporarily placed outside a small number of flats, and they it would be removed soon. They were concerned that this kind of activity was just for show, possibly to evade more stringent controls under the new regulator, and that works would immediately pause – leaving them to wait, again, for work to genuinely start. At this development, there is still no contractual agreement and permissions are still needed (the site backs onto a railway) before works can start in earnest.

Vistry insisted that "meaningful starts" were not just a token gesture, as three balconies had been replaced at this site (however, the leaseholders dispute this). We were advised that this site's agreement should be in place very soon, with a "best case scenario" of works starting by the end of next month. Before we had a chance to mention it, Vistry proactively acknowledged that communications around the "start" should have been better, but information had been provided to the managing agent with three weeks' notice.

Another "meaningful start" had taken place at a Vistry development in Southampton, where leaseholders had raised concerns with us about cladding works being repeatedly delayed – having originally been due for completion by April 2024. Although the detailed design is still to be refined, Vistry described this contract as "ready for signing."

They added that "meaningful starts" had taken place on a total of four projects, had been agreed with responsible entities in each case and in their view, would have a net positive result by potentially avoiding much longer timelines. We can see the benefit of this, although it is important to communicate well and not raise, and then dash, the expectations of leaseholders and residents – who have already been waiting for several years. We hope that works will be able to start soon at each of these sites without a long lapse.

Securing contractual agreements with building owners

In our previous meetings, many other developers had highlighted that their remediation timelines had been affected by challenges negotiating access agreements with some building owners. Vistry's team did not emphasise this as a prominent issue – perhaps partly because we were meeting their company a few months later than others and therefore more situations are already resolved.

They noted that progress with building owners had been "very varied" and in general, agreements had tended to be reached more easily with leaseholder Right to Manage (RTM) companies and smaller or lesser-known building owners, compared to some larger institutional freeholders. But we were also informed that Vistry had been the first major developer to navigate an agreement with Estates & Management (E&M), which acts as the freeholder's appointed agent for hundreds of relevant buildings in scope of the developer contract.

We were interested to understand how best practice is being captured and shared amongst the 55 developers that are signatories to the developer remediation contract, as "Participant Developer Feedback" is an explicit clause in the developer contract, but there is no formal process being orchestrated by either DLUHC or the Home Builders Federation. Information is shared with DLUHC case officers and Vistry's team mentioned that talking to others in the industry meant that "we all know the sticking points." But every developer has its own access licences and individual works contract, and agreements with building owners are seen as being "commercially sensitive."

Vistry has monthly meetings with DLUHC, but although the Department has offered to help mediate in any difficult negotiations with responsible entities, they say that they have not needed to accept the offer so far.

Vistry described some freeholders as trying to take the opportunity to "push their luck" and push beyond the terms agreed in the developer contract – and they emphasised that building owners and other parties will still have statutory rights to pursue other claims outside the developer contract if they wish to do so. This seemed slightly at odds with concerns raised with us by leaseholders at an East London development. At their site, they fear the scope of work may not cover all alleged breaches of the building regulations, but Vistry had initially wanted to include a contract clause that remediation work would be a "full and final settlement of any claim under the Building Safety Act." Vistry clarified that they include such a clause where they can, but if there is any pushback from any party then they will remove it.

"No serious disputes" so far

We asked Vistry how they are managing any latent defects and were advised that they come to an agreement on a case-by-case basis as "it will depend on what [they] find during the works, and whether it is creating a safety issue or not." We were given an example in St Albans, where latent defects discovered during works were addressed at the time, "because we didn't want to have to go back [at a later date]."

When we asked about the company's approach to dispute resolution, whether in relation to building assessments or the scope and quality of remediation works, Vistry insisted that there had been "no serious issues so far." If there are any concerns over a PAS 9980 assessment, they suggested that the two fire engineers from each side would have a discussion, and a more formal peer review would be used as "a last resort" if an agreement could not be reached. Vistry described their approach as "not precious either way" about which party's opinion prevails.

Insurers "have not understood" the PAS 9980 standard of remediation

The scope of works proposed under the developer self-remediation contract is a frequent concern that lands in our inbox from leaseholders. If combustible materials and other defects remain unremediated because they are judged to be compliant with the "more proportionate" PAS 9980 standard, this does not purely cause concern about a potential safety risk. It can also have significant and ongoing implications where other stakeholders, such as building insurers or mortgage lenders, do not accept the verdict.

At a Vistry building in Hertfordshire, building insurance charges in excess of £4,000 per flat have recently landed on leaseholders' doormats. This has explicitly been linked to insurers' concerns that the scope of work may be too limited to remedy all defects. In addition, property sales are repeatedly falling through here, because lenders will not approve mortgages. We understand that DLUHC has written to both the developer and managing agent regarding this case.

In Vistry's view, the managing agent and insurers "had not understood" their communications, which they insist had not advised that combustible materials would remain on this particular building, but had stated that the building would be remediated to the PAS 9980 standard – and, as a general principle, it may be possible for combustible materials to remain in place if they are compliant with the PAS 9980 standard. Vistry is liaising with the Association of British Insurers (ABI) to try to address the issue raised by this case.

Similarly at the aforementioned East London development, insurance costs have rocketed from under £100k to £780k and may remain elevated if not all defects are remediated. Vistry has pointed out to the leaseholders here that insurance increases are not part of the developer's responsibility under the terms of the government contract; they also advised us that they had been in direct contact with the broker in this case, aiming to "increase the broker's understanding" of the PAS 9980 standard.

Vistry advised us that they have communicated with ministers on the issue of excessive insurance costs and that they will keep up pressure on the Government to resolve this problem. From their perspective, developers have "stepped up" to contribute to the costs of the building safety crisis and the Government had promised to make all other stakeholders "play their part" too, but that is not happening yet.

We, too, are continuing to urge the Housing Minister and the Secretary of State to step up and address the ongoing market failure in the building insurance industry. Meanwhile, we have long warned DLUHC that the standard of remediation under the developer contract could leave many leaseholders just as trapped and unable to move on with their lives as they were before remediation. As the housebuilding industry and insurance industry stand their ground over their definitions of an acceptable standard of remediation, it is the blameless leaseholders caught in the middle who will continue to pay excessive charges year after year.

Protecting leaseholders in buildings under 11 metres

Buildings under 11 metres are not in scope of the developer contract, however several serious fire incidents since Grenfell, including at a Countryside development in Romford, have demonstrated that in some cases low-rise buildings can be high-risk and "some will be life-critical," as was explicitly recognised by Michael Gove when he updated Parliament on the developer contract in March 2023. In the small number of cases to date where DLUHC audits have found that remediation is required in buildings under 11 metres, the Department is in conversation with building owners and developers about funding solutions that protect leaseholders.

At one development in Essex, where four buildings under 11 metres have had a Fire Risk Appraisal of External Walls (FRAEW) audited by DLUHC, we understand from leaseholders that Vistry is engaging in its own investigations to determine if there is a need to undertake any remedial works.

We asked Vistry if they identified any buildings under 11 metres where remediation is required – here or elsewhere – what approach they would take to ensure leaseholders have the same kind of protection that those in taller buildings have under the self-remediation contract. For example, this includes a commitment to use independent and competent assessors and contractors, a qualifying assessment being completed at conclusion of the works for quality assurance, and the right for DLUHC to conduct an audit.

Vistry's team noted that a similar question had been raised by other stakeholders, but at this stage they could only mention a commitment to commission an EWS1 assessment after any works have completed. Even for taller buildings, this is not a requirement which has been placed on developers under the Self-Remediation Terms (despite the continuing difficulty of selling a flat without an EWS1).

No difficulties with mortgage lending are being reported

We were informed that in the early days of the building safety crisis, Vistry had taken active steps to support leaseholders who were unable to sell or remortgage, by referring them to Halifax (HBOS) on a request basis, because the group's newbuild business had links to the lender and it had promised to help.

However, they are no longer doing this and were under the impression that by providing "comfort letters" to leaseholders, which confirm that a building is covered by the developer remediation contract, there would no longer be any difficulty accessing mortgages, due to the commitment made by the lending industry 15 months ago.

When we described that mortgage lending is still very inconsistent, that lenders often ask for additional information such as start and end dates for remediation works, and that data published by DLUHC shows that EWS1 forms are still required on the same proportion of flats as they were three years ago, Vistry said that they try to provide indicative dates for works in their comfort letters, and that they no longer receive any feedback from leaseholders that homes are unmortgageable or unsellable.

If you are a leaseholder in a Vistry building and affected by this issue, we would encourage you to share your experience with the company.

Communication with leaseholders and residents

In our survey in October 2023, leaseholders from a range of Vistry buildings in East London, Bristol and Southampton had rated communication timeliness as **1.3 out of 10** and communication quality **1.4 out of 10**. This was slightly below the average survey scores of 1.5 for both measures. Some of the concerns raised with us were:

• *Poor communication, impossible to get any update on anything, unresponsive.*

• *Still no clarity on timescales if or when remediation works will occur.*

• *Cladding works were due to begin in September [but were repeatedly delayed]…. We now have no timescales whatsoever.*

• *The remediation firm are cowboys and have created more problems due to unfinished works.*

• *Attempts to hide building safety work in the service charge and waking watch still billed to leaseholders.*

• *Three years of stress and anxiety chasing us for waking watch payments and refusing to remove fire related costs from our service charge.... We have no choice but to try to sell via auction as the service charge is so high, we still have a B2 rating, and no schedule of works or idea when this situation will be over. During the infrequent meetings we have had about this with the agent they were aggressive and rude to us all…. It has truly been the worst three years of our lives.*

One of the obligations on developers under the remediation contract is to establish effective processes to keep residents informed about progress towards meeting their remediation commitments, and in the first instance communications would usually be via the building owner (or their official managing agent). However, as DLUHC's Resident Factsheet outlines, if this does not happen, the developer is required to share the information with leaseholders, residents, occupiers and other users directly. Although Vistry had not previously considered seeking direct access for communications, they suggested their Resident Liaison Officer could look into it in cases where communications are not reaching leaseholders and residents reliably or in a timely way.

We were also advised that as remediation approaches, Vistry will communicate more regularly with leaseholders and residents, at least quarterly, and this includes a presentation before starting works on site. They noted some examples of recent or upcoming meetings and felt that if our survey were repeated now, it would show there had been some improvement in communication over recent months.

A dedicated building safety inbox has also been set up, buildingsafety@vistrygroup.co.uk, so that any leaseholder or resident who is having difficulty getting communication via their managing agent can make direct contact with the developer. This is signposted on Vistry Group's website and can be shared by other parties such as DLUHC or EOCS. They advised us that emails usually receive an acknowledgment within 24 hours and typically receive a more substantive response in around 7 days. We agreed to collate and share details of specific cases that had been drawn to our attention in the last quarter and have asked Vistry to follow up any concerns with the relevant buildings directly.

Vistry's team proposed regular meetings with our campaign team throughout the year, which we hope leaseholders and residents in their buildings will see as a positive sign that your concerns and feedback will have an opportunity to be heard.