



By email

3rd February 2022

Dear Residential Property Developer,

GOVERNMENT APPROACH TO AGREEMENT ON BUILDING SAFETY

Thank you for your engagement to date. I promised a further letter offering more detail on our approach and next steps.

Data request of 11m+ buildings

I am grateful for the returns that have been submitted. If you have not yet sent your return by the stated date, can you do so as soon as possible; all data returns must be received by 7th February.

We will be analysing the data to better understand the buildings you will be undertaking to remediate against the overall size of the residual pool of 11-18m buildings that will need to be remediated via a central fund. We will look to share further information once this process is complete.

I would be grateful if you could start creating a fuller return with all 11m+ buildings that you have developed so that we can match these against our database of buildings that need remediation where we do not have developer information. We would be grateful for this information by 7th February. Thank you for your continued rapid engagement on this work, which helps us better to understand the overall remediation demand and the scale of contributions being made and required.

As part of this process we will share information on relevant buildings within existing funding programmes to agree how developers can take responsibility. Details on individual buildings will be shared with you, starting this week.

Commitments expected from developers

We wish to ensure that those developers who are committed to making a full contribution do so on a level playing field, with a clear and transparent set of commitments that developers will be expected to make. We envisage that those who meet these commitments will be recognised as the responsible actors in this market.

We will therefore be taking steps to codify the commitments that developers will be asked to make, centred on the two fundamental propositions of the government's approach, as the Secretary of State set out at his first roundtable. First, developers must commit to

remediating those buildings which they themselves played a role in developing or refurbishing. Second, they must provide financial contributions towards a fund which will cover the costs of all other 11-18m buildings with critical life cladding safety defects.

On that basis we envisage that these developer commitments must include the following key points. We intend that these commitments will be sought from all developers in scope of these negotiations, and when agreed will be legally binding.

- a commitment to prompt remediation of historical defects that are already identified or are discovered in future in buildings the developer or persons associated with it has had a role in developing;
- regular reporting on pace and transparency of work;
- compliance with agreed controls and frameworks on the proportionality of the work to be undertaken;
- contribution to a 11-18m remediation fund for those buildings where direct remediation has not occurred or cannot occur; and
- evidence of senior officers and managers being fit and proper persons to undertake major scale development with lasting social and economic impact;
- suitable processes to audit, assure, and review membership, including consequences of joining and conditions of admission for new entrants.

We attach to this letter a key features document which sets out a proposed method for codifying these commitments.

We are open to discussions on how best to develop these commitments, and welcome your views as we develop the mechanics of the scheme further. We particularly welcome your views on:

- the best way of apportioning contributions between participants;
- how contributions should be apportioned over time and related back to demand;
- how best to operationalise and structure the fund; and
- how best to ensure a proportionate approach to work, focussed on critical life safety to the benefit of residents.

Those who agree to fulfil the commitments set out will continue to enjoy the benefits of the Government's services and support on financing, procurement, planning, building control, housing investment, and industry development and leadership. Those who are unwilling to meet these criteria will not, and the Secretary of State has made clear he is willing to explore taking further steps to ensure the only participants in this market are those who have committed to resolving this crisis.

Please could you submit any views on the key features set out in the attached document by close 9th^h February.

Wider industry action

In common with our approach to developers, we are engaging with product manufacturers around their contributions to resolving this problem.

We are keen to publicly acknowledge in mid-February the commitments developers and product manufacturers have made to undertake remediation of any building they have played a part in developing. As part of that announcement, we would also like to reassure leaseholders that those developers who sign up to the arrangements and who are themselves the freeholder will not initiate forfeiture proceedings against leaseholders with respect to charges or costs associated with carrying out remediation works.

We would be happy to engage on this proposition on a bilateral basis, but would welcome your thinking on this opportunity for transparency in the context of your wider returns for 9th February. Thank you for your continued engagement.

Yours &c.,



RICHARD GOODMAN
Director-General – Safer and Greener Buildings

COMMITMENTS FROM DEVELOPERS: KEY FEATURES DOCUMENT

*We expect to set out a set of conditions which will be applicable to all developers in scope of these negotiations, and expect these to inform the commitments that developers are expected to make in this process ("**Developer Conditions**"). These may be supplemented by legally binding developer-specific annexures to the Developer Conditions that will be entered into between DLUHC and individual developers.*

The purpose of these conditions is to deliver safe housing by requiring participants in the scheme to, among other things:

- make financial contributions to cover the cost of Remediation Works in relation to cladding defects on all residential and mixed-used Buildings; and*
- fund and undertake all necessary Remediation Work in relation to Buildings which a developer played a role in developing or refurbishing.*

This document does not constitute a formal or binding offer, agreement, agreement in principle, agreement to agree, decision or commitment on the part of either Party. These features are still in draft form and are not HMG policy. The terms set out are subject to change and may be revised in their entirety.

General provisions

General provisions	
Parties:	<ul style="list-style-type: none"> • DLUHC; and • each legal entity which: (i) generates or expects to generate profit from the development of residential land in excess of £[10] million per annum or on average per annum over a time period to be specified in the Developer Conditions; and (ii) elects to join the scheme (each a “Developer”, and together the “Developers”). <p><i>Appropriate anti-avoidance provisions will be included in the Developer Conditions.</i></p>
Duration:	<p>From the commencement of the commitments made (henceforth, the point at which this scheme begins) and agreed with developers until the completion of all Remediation Work.</p> <p><i>Note:</i></p> <ul style="list-style-type: none"> • <i>“Remediation Work” will be defined in the Developer Conditions, but it is expected to be defined by reference to: (i) all necessary remediation of Buildings which a Developer played a role in developing or refurbishing (in relation to self-remediation work); and (ii) all cladding defects on residential and mixed-used Buildings 11-18 metres in height (in relation to the Remediation Fund).</i> • <i>Completion of all Remediation Work is expected to occur as quickly as possible after commitments are made to complete these works but we recognise it could occur over a number of years depending on the number of buildings identified as requiring remediation. There will therefore not be an overarching fixed time period for all Remediation Works; rather timelines for individual Developers to complete relevant works will be agreed on a bilateral basis.</i>
Scope:	<p>Participants in this scheme are to, among other things:</p> <ul style="list-style-type: none"> • make financial contributions to cover the cost of Remediation Works in relation to cladding defects on all 11-18m residential and mixed-used Buildings; and • fund and undertake all necessary Remediation Work in relation to Buildings which a Developer played a role in developing or refurbishing.
Buildings:	<p>All buildings over 11 metres that require Remediation Work and have been built or refurbished within the last 30 years prior to the commencement of the scheme (“Buildings”).</p>

	<i>The scheme may include a schedule setting out a list of, among other things, Buildings that need remediation. This list will be supplemented from time to time as further developers comply (or not) with the scheme in accordance with the “Compliance” provision below.</i>
Suitability:	Participants in the scheme must demonstrate that senior officers and managers are fit and proper persons to lead major development with significant safety, consumer, social, economic and environmental consequences.

Developer remediation

Developer remediation	
Remediation Developers:	Developers (as defined above) who have had a role in the development or refurbishment of Buildings in the 30 years prior to the commencement of the scheme that require Remediation Work (each a “ Remediation Developer ”, and together the “ Remediation Developers ”).
JVs and SPVs	The Developer Conditions may include appropriate provisions to address the allocation of costs incurred in relation to Remediation Works in the context of JV and SPV structures, although the Developer Conditions will not be considered to be met unless there is a pathway for the remediation of all relevant Buildings.
Obligation:	<ul style="list-style-type: none"> • The Remediation Developer is to investigate and address the Remediation Works without delay. • The Remediation Developer is to bear the cost of the works and all costs arising therefrom, so the leaseholders do not have to contribute. • The Developer Conditions will make provision to establish the scope and standards of necessary work, with an assurance, audit and review framework (see below).
Duty to inform:	<p>Each Remediation Developer will report periodically to DLUHC on:</p> <ul style="list-style-type: none"> • the progress of its Remediation Works; • the timeline for completing its Remediation Works; and • steps taken to identify further Buildings that require Remediation Works to be carried out. <p>The accuracy and completeness of such information will be subject to periodic, formal attestation by the directors of the relevant Remediation Developer.</p>

Transparency:	The Developer Conditions will contain provisions regarding the publication of Developer-specific information on progress and quality of its Remediation Works.
Audit and verification:	The Developer Conditions will contain appropriate audit and verification provisions to ensure that: <ul style="list-style-type: none"> • information supplied is complete, true, accurate and not misleading; and • Remediation Works have been completed to a satisfactory standard, and with due speed.
Consultative committee:	A consultative committee will be established to be available to be consulted on the operation of the scheme.

Remediation Fund

Remediation Fund	
Purpose:	A fund will be established (into which Developers will contribute) (the “ Remediation Fund ”) to fund grants for eligible Remediation Works, plus additional items specified in the “Amount” provision below.
Quantum:	The aggregate amount to be contributed to the Remediation Fund by all participant Developers in the scheme will be expected to cover: <ul style="list-style-type: none"> • the cost of carrying out all Remediation Work (excluding the costs attributable to those Buildings to be remediated by the Remediation Developers); • reimbursement of HMG expenditure made out of existing funds (i.e. the Building Safety Fund and ACM Funds) for work which would, under this scheme, fall within the ambit of a Remediation Developer; • operating costs of the Remediation Fund and the scheme.
Contributions:	The mechanics for each Developer’s contribution to the Remediation Fund will be set out in the Developer Conditions, but it is expected that: <ul style="list-style-type: none"> • an initial amount (a “float amount”) will be specified by DLUHC to cover the first year of the operation of the scheme; • contributions will be made annually by Developers (subject to intra-year special contributions, if required);

	<ul style="list-style-type: none"> the sizing of each Developer’s contributions each year (or intra-year, as applicable) will be based on its historical profits or other market metric (to be defined); and the amount each Developer is to contribute will be a forward-looking amount, specified by DLUHC each year (or intra-year, as applicable).
Audit and verification:	The level of declared profit by each Developer will be subject to: (i) annual attestation by the directors of that Developer; and, if required (ii) independent audit and verification.

Delivery on commitments

Compliance with Developer Conditions	
It is expected that DLUHC will track the progress of developers against the commitments they make in line with the Developer Conditions, and that the cohort of developers committed to fulfilling the Developer Conditions may be dynamic. Therefore:	
Compliant:	<p>The Developer Conditions will be judged to apply to, and be met by those developers that:</p> <ul style="list-style-type: none"> (i) satisfy the criteria of a “Developer”; and (ii) commit to fulfil the Developer Conditions.
Non-compliant:	<p>Developers who:</p> <ul style="list-style-type: none"> (i) no longer satisfy the criteria of a “Developer”; or (ii) elect to withdraw their commitment to fulfilling the Developer Conditions; or (iii) are ejected by DLUHC because of material or persistent non-compliance with the Developer Conditions; or (iv) are ejected by DLUHC on account of breach of anti-avoidance provisions, <p>will cease to be compliant in this scheme. Save in respect of (i), such a Developer will be subject to the obligations/restrictions in accordance with their failure to meet their commitments.</p>

Other provisions

Other provisions	
Information:	<p>Developers will be required to provide information to DLUHC (for example, in accordance with the “Duty to inform” provision above).</p> <p>The directors of each Developer will represent and warrant that such information is true and complete to the best of their knowledge and belief (having made reasonable enquiries) upon entry of the Developer into the scheme, and throughout the duration of their participation in the scheme.</p>
Governing law and jurisdiction:	<p>Any claim or dispute arising out of or in connection with the scheme (whether contractual or non-contractual), will be subject to the exclusive jurisdiction of the courts of England and the governing law in relation to such matters will be, English law.</p>