

Building Safety Fund

for addressing life safety fire risks associated with cladding in high rise buildings (England only): Fund application guidance for eligible buildings registered from June 2020

Social Sector Grants (residential leaseholder costs) Guidance

July 2020 – updated December 2022

Department for Levelling Up, Housing and Communities



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Department of Levelling Up, Housing and Communities
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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Introduction

The government announced the Building Safety Fund (BSF or Fund) in the Budget on 11 March 2020, to fund the remediation of unsafe cladding systems on high rise residential

buildings.

The BSF will meet the cost of addressing life safety fire risks associated with cladding on high rise residential buildings where building owners (or other entities legally responsible for making buildings safe) are unwilling or unable to afford do so. The fund is part of the wider Building Safety Programme whose objectives to ensure that residents of high-rise buildings are safe – and feel safe – in their homes now, and in the future.

This guidance is for applicants to the BSF from Responsible Entities (also referred to as the Applicant in this guidance) from the social sector to address the fire safety risk caused by unsafe cladding systems on high-rise residential buildings that **applied for funding through the Grant Claim Form between the opening of the Fund on 1 June 2020 and the close on 30 June 2021.**

This guidance is providing information about the Fund and how Registered Providers of Social Housing (RPs) Applicants can apply for the equivalent to the proportion of the Full Works and Costs (FWC) figure relating to any planned works that in the absence of the protections afforded by the Building Safety Act would otherwise be capable of allocation to residential leaseholders¹ (whether market or shared ownership²) or commercial leaseholders (operating businesses from commercial units in the building).

Important: any potentially eligible building without a funding solution that was not previously registered still has an opportunity to access funding. New applications to the BSF will be required to provide a Fire Risk Appraisal of External Walls (FRAEW) completed to PAS 9980:2022 standards. Separate guidance for new applications to the BSF from July 2022 is available at: [insert link]

If you have not provided sufficient evidence to determine the eligibility for at least one cladding system on your building, you will have until **30 September 2022** to provide this evidence. This is required to proceed using the original BSF technical requirements regarding the removal and replacement of unsafe cladding systems.

This may include:

- Original specifications or drawings
- As-built drawings
- The operation and maintenance manual for the building
- The Regulation 38 package of fire safety information
- A survey of the cladding system carried out by a building surveyor or fire engineer
- Photographic evidence of the materials (including product labelling where available) as installed in the external wall system

¹ Funding will not be available where residential units in the Building are leased to another social housing provider where those units are let on a week to week or month to month basis and no service charges are recoverable on a through put basis. However, where it is the case that another social housing operator in the building has let units on a long lease basis that permits it to recover service charge on a through put basis funding will be provided.

² As defined in section 7 of the Leasehold Reform, Housing and Urban Development Act 1993.

You do not need to submit multiple pieces of evidence, unless separate products and materials are identified in separate reports.

Registrants who do not provide sufficient evidence by this date will be required to provide a FRAEW completed to PAS 9980:2022 standards and re-apply to the BSF using the separate guidance for new applications from July 2022.

Further information on the option to use PAS9980:2022 for existing registrants and Applicants can be found in this guidance.

Fund Overview

The government announced the Building Safety Fund in the Budget on 11 March 2020, to fund the remediation of unsafe cladding systems on high-rise residential buildings. The Fund was open to registrations between 1 June 2020 and 30 June 2021.

This Fund will cover all reasonable eligible costs³ for the works required to address life safety fire risks associated with cladding on high-rise residential buildings in England.

Funding will be provided to the Responsible Entity for each building as the organisation responsible for the remediation of cladding on the building. The Responsible Entity is the organisation that has the legal obligation or right to carry out the remediation works. The Responsible Entity is referred to as the Applicant in this guidance.

Additionally, funding will be provided to social sector applicants who have demonstrated during registration that the costs of remediation are unaffordable or a threat to financial stability. DLUHC will ensure the Regulator of Social Housing is notified and invited to comment, it may be necessary for the Department to contact you directly to discuss.

Fund objectives

The objectives of the Building Safety Fund are that:

- the historical life safety fire risks associated with cladding on high-rise residential buildings is addressed quickly and proportionately so that residents in those homes are safe.
- leaseholder and resident communication and engagement on the project is effective;
- projects are delivered on time and to budget; and
- cost recovery from those responsible for the installation of cladding is maximised.

The Building Safety Act

The Building Safety Act received Royal Assent on 28 April 2022 and will come into force on 28 June 2022. The Act includes measures to protect qualifying leaseholders from the

³As assessed by the Cost Consultant appointed by the applicant on behalf of itself and DLUHC, or by our Delivery Partners who will assess your application to the BSF.

costs of cladding remediation. It will also implement a number of policies aimed at improving the regulation of building safety in England.

We will continue to make funding available via the Fund for buildings which meet the eligibility criteria in this guidance, and other existing funding programmes. This includes funding for works that leaseholders would formerly have been obliged to pay for under their lease terms but who now qualify for protection from cladding remediation costs (as the holder of a qualifying lease⁴) under Schedule 8 of the Building Safety Act.

Developer Pledge

On 10 January 2022 the Secretary of State for Levelling Up, Housing and Communities set out his approach to resetting building safety in England. This established the principle that leaseholders must be protected and that the industry responsible should pay to fix the problems it created.

On 13 April, the Department announced that leading residential developers had pledged to remediate life critical fire safety defects in buildings over 11 metres that they have played a role in developing or refurbishing over the last 30 years in England. As of 12 May 2022, 45 developers have signed the pledge⁵. Developers making this commitment have also agreed to reimburse any funding received from government remediation programmes in relation to buildings they had a role in developing or refurbishing.

The Department will write to any Applicants where the original developer of their building has signed the pledge. This will include confirming where a developer has agreed to fund the necessary remediation and/or mitigation works to address life critical fire safety defects, as recommended by an FRAEW carried out according to PAS 9980 methodology and other industry standards relevant to ensuring the building meets a life critical safety standard. As a result of these commitments, unless the Department has already awarded full funding to a project, the Department will not expect to award funding to buildings covered by a developer pledge commitment.

The Department will pursue those who played a role in developing unsafe buildings: it has taken powers through the Building Safety Act to hold industry to account; and has established a dedicated Recovery Unit that will identify and pursue companies that fail to do the right thing.

Proportionality and the introduction of PAS 9980:2022

The Publicly Available Specification developed by the British Standards Institution named PAS 9980:2022, contains recommendations and guidance tailored to the risks posed by fire spread over external walls; and provides tools for a competent person to carry out a Fire Risk Appraisal of External Wall construction (FRAEW). PAS 9980:2022 sets out steps that can be taken to identify and assess risk factors as well as mitigation

⁴ See definition at para 119 of the Building Safety Act ss. (2) (a) – 2(d).

⁵ <https://www.gov.uk/guidance/list-of-developers-who-have-signed-building-safety-repairs-pledge>

steps that might improve the risk rating of a building via a holistic and fact-based assessment of a building's construction.

PAS 9980:2022 will support a risk based proportionate approach and will help guide responsible entities on the approaches they should take to ensure the fire safety of external walls. For this reason, the BSF will also use recommendations and advice provided by external wall assessors in an FRAEW in its funding decisions.

The use of PAS9980:2022 by Applicants to inform the scope of works is not permitted where works have started on site. An FRAEW will not be accepted for these projects.

Where your full funding application has been approved, you should not submit an FRAEW and continue to follow the original BSF technical requirements, which requires the removal and replacement of unsafe cladding systems. If ineligible works to the external wall of your building are causing a delay to eligible works being performed, please contact your delivery partner.

The use of PAS9980:2022 inform the scope of works is optional for all other Applicants. If you are considering the option to undertake an FRAEW, you should consider whether an FRAEW may be a more appropriate approach to assessing the work needed to make your building safe, and the likely impact on the costs and timescales of the project. You will also need to discuss the options and decisions with your building's residents. You will not be able to revert to using the original technical eligibility criteria should you choose to undertake an FRAEW.

Guidance on PAS 9980:2022 Assurance, including how we will review an FRAEW and what we will require to be included in your FRAEW in order to make a funding decision is available [here](#).

Guidance for Responsible Entities on PAS 9980:2022 FRAEW assessments, including how to get an assessment and how to ensure an assessor is qualified is available [here](#).

Scope of the Fund

Funding will be available for high-rise buildings (18m or above with a 30cm tolerance) with cladding where the Applicant can prove that it holds a qualifying legal interest in the building (being the correct Responsible Entity for DLUHC payment purposes and responsible for implementing appropriate and effective remediation solutions). It will also need to be proven from public records that there is at least one lease of a single unit of residential accommodation within the building that:

- (a) was granted on market terms⁶
- (b) requires the property to be used exclusively for residential purposes occupation; and
- (c) was granted on a date prior to 11 March 2020 at a premium and which was granted originally with a term (i.e period) of not less than 21 years.

⁶ Shared ownership leases would qualify but leases of units owned by social housing providers that let them on a week to week or month to month basis to fulfil their social housing function would not.

All the above criteria need to be met to be a **Qualifying Lease**

For these buildings, funding will be available for the full eligible costs of the project subject to the assessment of a full application. Buildings which have previously been confirmed as meeting the Fund's legal eligibility criteria will remain eligible without further assessment.

Funding for mixed use residential and commercial developments will be accepted. Funding will not be available for:

- Buildings with cladding systems in scope that had been committed to, or where work had started on site, prior to the Budget announcement on 11 March 2020.
- other non-residential buildings, for example Hotels, Hospitals, and buildings where there are no residential leaseholders [except social sector financial viability applicants]
- buildings developed as part of a Private Funding Initiative (PFI) scheme⁷.
- buildings under 18m in height (allowing for a 30cm tolerance).

Fund structure and administration

DLUHC is the responsible department and the decision-making body for the Fund. DLUHC caseworkers will draw on specialist expert legal and cost consultancy support to help assess applications.

In addition, DLUHC will make available expert specialist support for applicants who need additional support to plan their remediation project. You should discuss with your DLUHC caseworker if you believe you would benefit from this support. DLUHC strongly encourages, and may in specific circumstances require, applicants with limited experience planning major works to make use of this support from an early stage to help plan and deliver their project.

The BSF will make available funding for full works and costs - which will only be made available once you have completed a full application, been approved as eligible and signed the Grant Funding Agreement

Your building being deemed eligible is not confirmation that you will get full cost funding as per the application. Applicants should therefore be aware that they may potentially be proceeding at risk until the point that the award of full funding has been confirmed by DLUHC.

⁷ We will not put funding into a PFI scheme because the purpose of having a housing PFI arrangement is that the private sector bears the risk of these costs and to intervene would trigger a reclassification into the public sector.

Driving the pace of remediation and enforcement

It is essential that the fire safety risk caused by unsafe cladding is addressed as quickly as possible to ensure that residents are safe and feel safe in their homes. Full applications for the Building Safety Fund must therefore be submitted without delay. We expect responsible entities to ensure they set out and follow a realistic but ambitious project delivery timetable, and to keep their DLUHC caseworker fully informed about any changes to those timetables.

The Government supports local authorities and fire and rescue services in the use of their enforcement powers against buildings with fire risks associated with cladding. DLUHC regularly shares data from the Building Safety Fund on the progress of applications with local authorities and fire and rescue services. Where projects are not progressing quickly enough, DLUHC will work with local authorities and fire and rescue services in their considerations of appropriate enforcement action.

Buildings that are 11-18m in height

There will be a separate fund to mitigate risks from, unsafe cladding on mid-rise residential buildings that are 11-18m in height where a responsible entity can demonstrate that other options to cover costs are unavailable, e.g., via warranties or by the developer. This fund has not yet opened for applications and further information will be published in due course

When and how to apply for funding

Applicants can appoint a representative to lead their application day to day and this may be a managing agent or the project manager leading the works. Even where a representative is appointed to lead the application, the grant funding agreement must still be signed by the Responsible Entity. The Applicant should be aware that the commitments given in the GFA will apply to it exclusively and if it chooses to appoint a representative to act on their behalf the Applicant should be confident that the representative is aware of and will meet the Department's requirements.

The full application process will involve legal, and project related due diligence to ensure that the Applicant holds a qualifying legal interest in the Building and is therefore the correct responsible entity for DLUHC payment purposes and to task with implementing appropriate and effective remediation solutions. DLUHC will make decisions on the approval of applications.

As part of the application assessment, we will estimate the total eligible costs for each building benchmarked against industry cost data. We will use this to check the reasonableness of your costs as part of our assessment process throughout your project's lifecycle.

Significant work will be needed to get you to a point where you can go out to tender your project, including scoping the project, appointing a professional team, and developing a works specification.

You will need to answer questions about your legal eligibility to receive funding as the Responsible Entity, the ownership structure of the building in question and the legal provisions in the relevant lease document. You will also need to answer questions about the building itself. We will carry out due diligence on the information you provide before providing any funding for full support for the remediation works.

No further applications will be accepted as per this guidance from 30 June 2021.

Evidence requirements

Any social housing provider that intends to submit a claim for funding will need a project that is within the scope of the Building Safety Fund.

You will need to answer questions about your suitability to receive funding as the Responsible Entity for the Building (based on the legal eligibility criteria for access to the Fund set out in this guidance) and the ownership structure of the Building.

You should answer all the questions in the Grant Claim Form and make sure you provide all required documents to your DLUHC caseworker via email to BSFsocalsector@levellingup.gov.uk

DLUHC caseworkers and their legal advisors will assess the provisions of a nominated lease document to ensure that there is a Qualifying Lease present in the records for the Building held at Land Registry and to confirm that the legal eligibility requirements have been satisfied. You will also need to answer questions about the building itself. We will carry out due diligence on the information you provide before providing any funding for full support for the eligible remediation works and reserve the right to reject an application if it fails to meet the criteria set out in this guidance.

We will require that evidence is available to support the information certified in the claim form. We **recommend** the following:

- Original specifications or drawings.
- As-built drawings.
- The operation and maintenance manual for the building.
- The Regulation 38 package of fire safety information.
- A survey of the cladding system carried out by a building surveyor or fire engineer.
- Photographic evidence of the materials (including product labelling where available) as installed in the external wall system.
- PAS 9980:2022 FRAEW (if opting to continue your application using this assessment)

The grant claim must be prepared and authorised by separate individuals. As stated above we will require the submission of multiple pieces of evidence to substantiate the claim. Where separate products and materials are identified in separate reports, we expect that you have this evidence readily available.

Where the height of the building also needs to be verified, we would expect supporting information regarding the height of the registered building(s) in line with the requirements set out in the Prospectus to be available on request. This can be either original drawings showing its dimension or a measured building survey. This is the same standard of evidence as will be required in private sector.

Progressing your application

Significant work will be needed to get you to a point where you can go out to tender your project, including scoping the project, appointing a professional team, and developing a works specification. You must not appoint any party who was involved with the original works which are now being addressed by the BSF, without notifying your delivery partner first.

You can only submit a full costs application once you have gone out to tender or otherwise confirmed market costs and have a preferred contractor to carry out the remediation works. At that point you will be able to provide the required cost breakdown and answer the full works and costs related questions.

Your application will be assessed based on the information you provide. We will compare submitted costs against our benchmark, or this information will be sent to the Delivery Partner's cost consultant for review. If they are above the defined threshold of the benchmark, we will need to do further work and ask to follow up questions. It remains your responsibility to produce the required information as quickly as you can so we can progress your application.

When we assess your full application, we will consider a range of factors including:

- whether Applicant details match publicly held records,
- whether the Applicant is either required (via obligations owed to the leaseholders) to conduct any planned remediation works (whether or not these are chargeable to leaseholders) or entitled to do so either via its ownership of the building or rights provided to it by the lease documents (for example in the case of a named manager in the leases),
- whether there is a Qualifying Lease present in the building's online records at Land Registry,
- the FRAEW done to PAS 9980:2022 methodology (if applicable)
- confirmation of appointment of your competent professionals⁸,
- confirmation of the competence of your chosen contractor
- whether your costs are for eligible works and are reasonable,

⁸ "Competent Professional" relates to someone who meets the following criteria: is qualified in their field; is a member of a profession body, holds Professional Indemnity Insurance; is knowledgeable and has significant experience relevant to work specific technical aspects involved; is aware of the current state of knowledge in their field; and has accumulated sufficient experience to be recognised as having a successful track record. This criteria is not limited and there may be more considerations that may need to be had in certain circumstances; it is for Applicants to exercise their discretion when deciding if additional criteria needs to be met by a certain individual or company for it to be considered a "Competent Professional". It should be noted that simply having worked in a field, been involved in a field for a limited amount of time, or having an intelligent interest in it does not, by itself, make a person a competent professional.

- when you will start on site or execute the 'Works contract'⁹,
- how you will monitor progress and evaluate costs,
- obtaining all statutory approvals including planning permissions,
- your forecast starts and practical completion dates,
- the efforts you have made to recover costs.

It is important to start your application as soon as possible. If your application is assessed as missing required information, your DLUHC caseworker will help you to rectify this. It is your responsibility to gather all the required information.

Self-certification

The BSF process requires you to self-certify any evidence you will use in support of your application. You will be required to sign a declaration stating that what you are submitting is true and accurate to your knowledge. We acknowledge that costs will be based on returned tender prices which may vary.

In order to verify the amount of funding being claimed, we will expect any calculations made regarding costs to be included in the claim form. Costs should be calculated as: total cost of remediation chargeable under normal policies apportioned in the usual way across eligible leaseholders.

In order to provide this reassurance to DLUHC, you will need to put in place processes that capture the evidence needed to enable you to self-certify. The processes should help you confirm that suitable management of the works is in place, and the remediation works will be completed correctly in accordance with the BSF requirements.

Your contractor must ensure that all non-conformances or defects are reported and demonstrate to your project manager that they have been satisfactorily resolved. We require you to make sure your contractor implements and confirms a system for the provision of evidence at all points throughout the works as part of their management and project administration arrangements. This could include a job-centric checklist, such as an inspection and test plan, that will be used to record the progress of the works. Once the works are complete, a certificate should be signed between you and the contractor to confirm that the works have been completed to the required standard outlined in the Fund Requirements.

Any contingency funding provided by the competent professional must be identified in the grant claim form. The Department will expect that the Statement of Grant Usage identifies the total eligible expenditure against the claim, including contingency. Over payments will be recoverable by the Department.

Where extra guidance is needed for social housing providers, for example should you need assistance/advice if you are not confident in their assessment of materials, we will make this available.

⁹ For the avoidance of doubt, this means when all parties to such a Works Contract formally agree and sign the final agreed version of that Works Contract.

What we will fund

You will be able to claim funding equivalent to the value of work that leaseholders would be obliged to pay for under their lease terms but who now qualify for protection from cladding remediation costs (as the holder of a qualifying lease) under Schedule 8 of the Building Safety Act.

For applications where a FRAEW done to PAS 9980:2022 methodology has recommended action to address fire safety risks posed by unsafe cladding, we will fund reasonable capital costs¹⁰ associated with these works on high-rise residential buildings.

For applications where a FRAEW is not required we will fund reasonable capital costs for eligible works that are necessary to remove and replace unsafe cladding systems on high-rise residential buildings.

For both of these types of application, we cover a wide range of direct project costs to address the fire safety risks passed by unsafe cladding systems including:

- Works directly related to the removal and replacement of unsafe cladding systems¹¹.
- (if applicable) Works directly related to remediating unsafe cladding systems and mitigating measures, where recommended by an FRAEW (e.g., installation of sprinkler systems, smoke alarms, etc.).
- Access, where apportioned appropriately and directly related to eligible works (e.g., scaffolding, mast climber etc.),
- Removal and disposal of existing unsafe cladding,
- Replacement materials,
- Labour and reasonable on-costs to the contractor.
- Reimbursing costs of an FRAEW (if applicable)
- Professional team fees in respect of qualifying items.¹²
- Managing agents' fees in respect of administering qualifying expenditure.
- Extraordinary technical requirements which incur extra costs essential to but not normally associated with removing and replacing unsafe cladding systems may be included. DLUHC will consider such requests for funding against relevant evidence.
- Legal costs incurred in connection with a successful cost recovery action¹³.

Reasonable costs must be informed by an industry standard approach to specification and procurement of works, having regard to cost benchmarks established from comparable projects. Higher than expected costs will be challenged and will be subject

¹⁰ For the purposes of this Fund, capital costs are those identified in IAS 40 (Investment Properties) for properties held to earn rentals or for capital appreciation, or IAS 16 (PPE) for properties occupied by the owner or lessee or used in production or supply of goods or services or for administrative purposes.

¹¹ System of one or more components that are attached to, and might form part of the weatherproof covering of, the exterior of a building.

¹² Apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs.

¹³ The GFA requires applicants to take reasonable steps (where it is possible to do so) to recover remediation costs from a prior building owning, developer or cladding installer. Where an applicant is successful in a cost recovery action the Department accepts that any legal costs incurred in achieving that outcome should be deducted from any settlement monies produced prior to distribution, provided that such costs have been properly and reasonably incurred and DLUHC reserves its rights in this regard.

to further scrutiny, and the level of grant may be reduced.

What we will not fund

For applications where a FRAEW assessment has been undertaken we will not fund any works that go beyond the recommended remedial or mitigative works to address the fire safety risks posed by unsafe cladding systems, even where these works may be planned to be undertaken at the same time.

For applications where FRAEW is not required we will not fund any works which are not directly related to the removal and replacement of unsafe cladding systems, even where these works may be planned to be undertaken at the same time.

For example:

- wider redecoration, renewal, and general maintenance,
- the replacement of windows or other elements,
- internal works or any other remediation (if not part of an FRAEW recommended works),
- maintenance, repair, or renewal costs, and
- Balconies (where these are not integral with the cladding, or if not part of the FRAEW recommended works.).

Examples of further circumstances where we will not provide funding, where a FRAEW has not been undertaken, include, but are not limited to:

- other structural works which are not directly related to the remediation of cladding systems,
- other necessary fire safety works which are not related to an unsafe cladding system,
- interim measures such as waking watches. (The Fund is designed to address the fire safety risk caused by unsafe cladding so that interim measures and their costs are no longer necessary.),
- operational running or maintenance costs of measures installed using the Fund. Responsible entities should consider the ongoing costs and maintenance of the measures being funded and consult leaseholders on the related costs that may arise in the future for the purpose of maintenance or replacement,
- professional team fees in respect of non-qualifying works,
- managing agents' fees in respect of administering non-eligible works,
- costs associated with any legal claims applicants may bring against third parties such as their competent professionals or chosen contractors, for example.

Reasonable costs will be informed by an industry standard approach to specification and procurement of works, having regard to cost benchmarks established from comparable projects. Higher than expected costs will be challenged and will be subject to further scrutiny and the level of grant may be reduced.

Third Party Leaseholders

Funding will not be available where residential units in the Building are leased to another social housing provider where those units are let on a week to week or month to month basis and no service charges are recoverable on a through put basis. However, where it is the case that another social housing operator in the building has let units on a long lease basis that permits it to recover service charge on a through put basis funding will be provided.

Cost recovery

As set out above, a number of major residential developers have signed a pledge committing them to remediate life critical fire safety works in buildings over 11 metres that they have played a role in developing or refurbishing over the last 30 years in England. Developers making this commitment have also agreed to reimburse any funding received from government remediation programmes in relation to buildings they had a role in developing or refurbishing.

Where the developer who built or refurbished the building subject to the application is not funding the fire safety works and where the building owner (or other entities legally responsible for making buildings safe) are unable to do so then the Building Safety Fund will cover all reasonable eligible costs to address the fire-safety risks caused by an unsafe cladding system.

However, you are required to demonstrate that you have taken all reasonable steps to recover the costs of addressing the fire safety risk caused by the unsafe cladding from those responsible through insurance claims, warranties, legal action etc. We will ask for information regarding such steps and may seek further information to satisfy ourselves of the position.

You may be able to recover costs from those responsible for historical defects on your building if construction was complete on or after 28 June 1992. This is because the Building Safety Act has extended the limitation period of the Defective Premises Act 1972 (DPA) to 30 years. Further information is in section 135 of the Act and its associated Explanatory Notes: legislation.gov.uk/en/ukpga/2022/30/section/135/enacted. If work was completed at any time in the 12 months after 28 June 1992, you have until 27 June 2023 to initiate proceedings, otherwise, the thirty-year limitation will apply.

Where you do successfully recover damages relating to addressing the fire safety risk caused by unsafe cladding the government will require building owners to pay to government any amounts recovered which relate to this up to the amount provided through the fund. The payments to government may be less any unrecovered legal fees that have been incurred when cost recovery efforts are successful.

We will not seek to recoup amounts recovered in litigation or settlement which do not relate to addressing the fire safety risk caused by unsafe cladding. Where building owners have already recovered damages, they should deduct relevant amounts in their

applications and provide an explanation as to how this has been calculated. You can show these deductions as part of the 'other requirements' entries in the full works and costs spreadsheet.

DLUHC does not rule out seeking an assignment of relevant rights of action where it considers it would be appropriate to do so.

Building Regulations

Building work carried out on a building must meet the requirements of the Building Regulations, including minimum standards for fire safety and energy efficiency.

Regarding energy efficiency standards, remedial works should adequately account for any changes in thermal bridges which may occur as a result of the work and maintain or enhance the thermal performance of the remediated area, where technically and economically feasible.

However, you may also wish to consider if there is an opportunity to use the remediation project as a low-cost way to implement further energy efficiency measures that go beyond the current minimum requirements of the Building Regulations. Implementing other low-cost energy efficiency measures at the same time as remedial works may save you further cost and resource in the future. However, this is not mandatory and will not be considered as a condition of receiving funding.

Further information on how to ensure optimal energy performance can be found in the following guides:

General guidance for external wall insulation

- i. BR262: Thermal insulation – avoiding risks.
- ii. INCA Technical Guide – Best Practice Guide External Wall Insulation
- iii. European Guidelines For External Thermal Insulation Composite System Application (with UK Addendum)

General guidance for calculating and avoiding thermal bridging risks

- i. BRE IP 1/06 Assessing the effects of thermal bridging at junctions and around openings
- ii. BR497: Conventions for calculating linear thermal transmittance and temperature factors
- iii. FB61: Reducing thermal bridging at junctions when designing and installing solid wall insulation
- iv. INCA Thermal Bridging Details
- v. INCA External wall insulation specification for weathering and thermal bridge control

Payment profile

After 28 July 2022 where funding approval has already been provided via a Funding Approval Letter, Applicants will continue to receive full funding as one payment on completion of the Grant Funding Agreement.

Where funding approval has not yet been provided, eligible applications will be paid in 2 instalments as below following completion of the revised Grant Funding Agreement:

- c.80% at Full Works and Costs (start on site or when entering into a works contract) as a direct proportion of the eligible full works and costs and
- c.20% when you have achieved practical completion and provided final accounts

Cost variations are applicable where required at practical completion and final accounts as set out below.

Following approval of your full application, you will receive a letter confirming approval from DLUHC, which you can use as proof of funding in principle to help you execute the Works contract. A separate section in this guidance sets out the process for variations.

Regardless of the payment schedule used, for funding to be paid you must ensure that payments by you to your Advisors and works contractor are made only in respect of work completed. Arrangements which are not industry standard under which consultants or the contractor, are paid upfront ahead of completing works are not acceptable within the fund.

Variations

You are required to manage the total eligible costs of your project within the grant awarded. We appreciate that circumstances could change. Costs may increase because of unforeseen overruns or variations to contract scope. You will need to submit an application for variations to maximum grant sums to your DLUHC caseworker. If a variation to the maximum grant sums is approved, DLUHC will confirm this in writing to the Applicant.

After 28 July 2022 where funding approval has already been provided via a Funding Approval Letter, cost variations are applicable where required only at practical completion and final account stage by way of a Deed of Variation. If cost variations are being sought, you will need to retain information to evidence that the cost variations only relate to the works permitted for grant funding and / or works required to facilitate the same. This should be available on request.

Where funding has not yet been approved cost variations are applicable when compared to original tendered costs only at practical completion and final accounts stage as part of the 2nd stage payment as outlined in "Payment Profiles". If cost variations are being sought, you will need to retain information to evidence that the cost variations only relate to the works permitted for grant funding and / or works required to facilitate the same. This should be available on request.

To note: where funding has been approved and full payment made as per the signed Grant Funding Agreement, no cost variations can be made.

Due to the objectives of the Fund, variations in grant sums may be permitted for the following reasons:

- To comply with statutory requirements (e.g., building regulations, town planning, CDM regulations etc.).
- To replace qualifying unsafe cladding from areas not previously identified.

If variations occur for any other reason, it is unlikely they relate directly to the objectives of the Fund and are unlikely to qualify for additional funding.

Construction contracts vary in the placement of liability in relation to variations. The cost variation will only be permitted if the liability for the variation is yours and not the Contractor's.

Consultants, such as designers, will have responsibilities under their professional appointments. If the additional project costs have arisen through inadequate performance of a consultant's duties under their appointment, then these sums may be recoverable through the relevant consultant or their Professional Indemnity Insurance (PII). In this instance additional grant sums will not be made available.

Within industry standard construction contracts, the party responsible for valuing variations will usually be named within the contract. In addition to the named party's contractual responsibilities, it is advisable that the same entity be responsible for submission of applications for variations in grant sums on your behalf as nominated representative.

The party responsible for submission of the application will need to provide details of the cost variations and how they have been calculated. Costs could be related to:

- Professional fees;
- Construction costs;
- Site setup and preliminaries; or
- A combination of the above.

We will rely on your cost consultant to undertake rigorous checks on all costs. The cost consultant should ensure sufficient information is retained to provide evidence to support the application. We will not ask to see this information at the point at which a variation is submitted but may do so in future.

You will be required to either provide or keep on file the description of works from a competent professional, explaining how the additional works have arisen, the extent and why they relate to the total eligible cost for works to address the fire safety risk caused by the unsafe cladding. If required, you will be requested to provide any further information or documents.

As such you will be required to either provide or keep on record a cost report from a competent professional (such as a cost consultant), costing the works, including a breakdown of the additional funding request relating to the total eligible costs of works to address the fire safety risk caused by unsafe cladding.

Once eligible for funding, if further assistance is required, DLUHC caseworkers will work with you to access the Applicant (Client) Side Support to help with your project. As a government department that gives out public funds, we are mandated to manage these funds and services prudently, hence there may be a need to provide project level advice to help a building owner get their project back on track.

Your payment details

Payment of the full grant funding will either be made directly into the responsible entity's bank account in one payment or in two stages as outlined above. Further information on the payment date will be provided on approval of your claim and completion of the Grant Funding Agreement.

For Housing Associations, where the Department does not hold the necessary account information, you will be required to complete a SAP7b form. The SAP7b form will ensure that we are able to set you up as a vendor on our systems to ensure that payments can be made.

A completed SAP7b form will be a requirement for all Housing Associations that would like access to the Fund. Without one, grant payments cannot be made. SAP7B's can be provided at any time, it may take up to 6 weeks to verify your bank details and enable payment.

Subsidy Control

Subsidy control rules for the BSF are changing due to the implementation of the Subsidy Control Act. The BSF will no longer be subject to capping on the amount of financial assistance an economic actor within an eligible building can benefit from. Previously, in compliance with the subsidies chapter of the UK-EU Trade and Co-operation Agreement (TCA), the maximum amount of de minimis financial assistance which an enterprise (previously economic actor) in an eligible building could be awarded was 325,000 Special Drawing Rights (approximately £335,000) over a three-year fiscal period.

The BSF is being established (for the benefit of existing and new applications from July 2022) as a subsidy scheme which removes any de minimis cap and the need to obtain subsidy declarations from enterprises. The subsidy cap will stop being applied for any application which is approved for full funding after 28 July 2022 as part of other changes which are being introduced on this date.

In order to meet subsidy transparency requirements, DLUHC is required to publish the details of any Applicant which receives more than £100,000 of funding under the Fund (including cumulatively) on the subsidy transparency database (the **Subsidy**

Database)¹⁴. Applicants will be the recipient of subsidy on behalf of leaseholders in their building in order to make the building and residents safe. The details published are:

- Amount of subsidy received
- Company name
- Company Registration Number
- Company size (based on the number of employees)
- Whether the company is a provider of goods or services
- Region
- Sector

These details will be published when the final funding amount is confirmed at the end of the project.

For applications where full funding was approved **before** 28 July 2022, previous subsidy control rules will apply to this funding amount. This includes telling leaseholders who are economic actors that they must retain their completed subsidy declaration and any notification sent to them as to the quantity of their award for at least 3 years and declare BSF grant in the future if asked to do so. The revised approach to subsidy control described above, including the removal of the de minimis cap, will apply to cost variation requests for eligible works (see Variations).

VAT

Supplies of remedial work are usually liable to VAT at the standard rate as the works are not normally eligible for VAT relief. The cost of replacing cladding can be eligible for VAT relief if the replacement meets the criteria of snagging. Further information on the conditions of snagging can be found in the Construction VAT Manual VCONST02600 and paragraph 3.3.3 of VAT Notice 708.

For further guidance on VAT on remedial works, please refer to HMRC's publications on gov.uk^{15 16}.

These supplies may also be subject to the Construction Domestic Reverse Charge when made on or after 1 March 2021¹⁷.

Open book access

The BSF processes follow the Government's approach to open book contract management. These help DLUHC maintain a clear line of sight between the cost requirements for eligible works compared to the DLUHC funds granted. A low cost, minimal open-book approach is applied, which provides us with assurance that value for

¹⁴ <https://searchforuksubsidies.beis.gov.uk/>

¹⁵ <https://www.gov.uk/guidance/buildings-and-construction-vat-notice-708>

¹⁶ <https://www.gov.uk/hmrc-internal-manuals/vat-construction>

¹⁷ <https://www.gov.uk/guidance/vat-reverse-charge-technical-guide>

money is being achieved, as required by Managing Public Money for Government grant schemes.

As such you will need to upload and submit the relevant supporting documents, we have requested via email to your DLUHC caseworker at BSFsociaalsector@levellingup.gov.uk. We require you to keep on record any other documents that you have confirmed you have obtained so they are available when requested. The GFA requires that DLUHC and appointed third parties are given access to required information and documentation.

During works:

The DLUHC have the right to request from you cost details and any supporting documentation. The Fund will retain specialist support (e.g., legal, commercial, technical advisors) who will have the same open book access rights as those delegated by the DLUHC to Delivery Partners.

After completion:

A sample of projects may be randomly selected or targeted for potential government audit activities (e.g., NAO value for money studies). You will be responsible for providing your own resources for these audits, and as such it is recommended that you allow for this potential scope within your consultants' appointments. The funding of such activity is not an eligible cost.

Practical Completion

At the point of practical completion for your project, you will provide evidence of sign off from your competent professionals and building control.

DLUHC caseworkers may engage their cost consultants to work with you when settling final accounts. You will be given a list of documents which your competent professionals must provide to you at the point of practical completion. We recommend you ensure the contractual arrangements with your competent professional include an obligation for these documents to be provided to you on request.

Where Delivery Partners encounter complexities in settling final accounts at practical completion, they will seek direction from DLUHC's funding approval board.

Where you believe that practical completion has been achieved but this has not yet been certified by your professional team and/or building regulations final certification has not been provided, the Department will not be liable to make any final balancing payments until such time as the relevant certification has been provided. In these circumstances the Applicant should liaise with its contractor to ensure that any part of the works requiring remedial action is satisfactorily addressed so that a full sign off position can be produced.

Competent Professional

You are required to use competent professionals on your project. We will rely on the information they produce as evidence of the accuracy of your answers in the application.

We also require your competent professionals to sign-off project works and all relevant documentation. The expression 'competent professional' relates to someone who:

- is qualified in their field,
- is a member of a professional body,
- holds Professional Indemnity Insurance,
- is knowledgeable and has significant experience relevant to work specific technical aspects involved,
- is aware of the current state of knowledge in their field, and
- has accumulated sufficient experience to be recognised as having a successful track record.

Simply having worked in a field or having an intelligent interest in it does not, by itself, make a person a competent professional.

While due weight will be given to an opinion offered by the applicant's competent professional, for example in signing off the grant funded works, it will not necessarily be conclusive of the issue. Further enquiry may still be needed for DLUHC to be fully satisfied on a material point.

Planning and Building Control

As part of any application, local authorities and building control Departments should be contacted in order to facilitate timely completion of design and development work and an early start on site.

Keeping Residents informed

The Government expects responsible entities to ensure that high-rise buildings, with unsafe cladding, are made safe as quickly as possible and at no charge to leaseholders.

As a minimum, DLUHC requires responsible entities to provide regular updates to residents at the following BSF milestones, and at any time upon their request:

- Documentation submitted
 - Including if further information is required
- Eligibility outcome
 - Including if an appeal will be made and the outcome
- Application submitted
 - Including progress management and completion of stages 1 and 2
- Project procurement
 - Including relevant timescales and potential causes of delays
- Outcome of application
 - Including receipt and signing of the Grant Funding Agreement
- Commencement of works
 - Including an estimated start on site date and end date
- Works completed

In addition, the 'Building Safety Fund (BSF) Leaseholder and Resident Service' gives residents access to online information on where their building is in the application

process: <https://www.building-safety-fund-status.communities.gov.uk>

Residents have a Service access code, provided directly by DLUHC or through their responsible entity. This should not be shared. This Service provides status updates and does not replace the above-mentioned regular engagement that responsible entities should have with residents.

Leaseholders can get specialist advice to understand their rights through the Leasehold Advisory Service (LEASE). Although leaseholders should contact their responsible entities with queries about their specific building, LEASE may act as a point of contact for leaseholders with general questions about their leases, rights or the BSF.

More information on LEASE, including how to contact them, is available on their website: <https://www.lease-advice.org/>.

Finally, the [Building Safety Act 2022](#) includes provisions on engagement with leaseholders and residents, set out under Section 91. We will update this section of the guidance as provisions come into force.

Where can I find further information and support?

If you are a leaseholder or resident with an enquiry, please contact: BSFLeaseholderEnquiries@levellingup.gov.uk

How to make a complaint

If you have a complaint, please use the following link:

<https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities/about/complaints-procedure>

Further information: Legal due diligence

Your submitted information will be checked by Delivery Partners' case worker teams. They are there to help you resolve straightforward issues with the application. It remains your responsibility to provide all the required information, which must be accurate.

If necessary, your application will be triaged by the Delivery Partners through our expert support lines to help you deal with more complex issues. If your application requires this support, then it might take longer to sign off as completed. Your application will undergo initial legal due diligence carried out by the Delivery Partner Legal Advisors. This involves checking your details and obligations as the Responsible Entity.

Role	Assessment
You	<p>You will nominate a residential property in your building which has been let on lease terms that you are confident meets the following criteria and provide such other information or documentation that is required to allow the Fund appointed Legal Advisors to confirm that:</p> <ul style="list-style-type: none"> • the unit assessed is residentially occupied; and • the unit lease requires the property to be used exclusively for residential occupation; and • the unit lease was granted before 11 March 2020 for a term of no less than 21 years <p>(together a 'Qualifying Lease').</p> <p>The Legal Advisors appointed by the Fund will conduct a review of these.</p>
Legal advisers	<p><u>Eligibility</u></p> <p>Leaseholders Our Legal Advisor will review the lease relating to property nominated by you. This is to verify that there was at least one residential leaseholder in the Building that holds a Qualifying Lease at the point of the BSF being announced. This may create the need for you to revise the application by providing further information and re-submit.</p> <p>Ownership structure Our Legal Advisor will verify that you as the Applicant are the correct contracting party (i.e. the Responsible Entity) or highlight the position to us where this is different.</p> <p>The Legal Advisor will review your title details and include a short form legal summary to accompany the Application.</p>