



Ministry of Housing,
Communities &
Local Government

Rt Hon James Brokenshire MP

Secretary of State for Housing, Communities and
Local Government

**Ministry for Housing, Communities and Local
Government**

2 Marsham Street

London SW1P 4DF

Melanie Dawes CB

Permanent Secretary

**Ministry for Housing, Communities and Local
Government**

2 Marsham Street

London SW1P 4DF

Tel: 0303 444 2785

psmelaniedawes@communities.gsi.gov.uk

www.gov.uk/mhclg

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Dear James,

**REMEDICATION OF PRIVATE SECTOR RESIDENTIAL BUILDINGS CLAD WITH UNSAFE
COMBUSTIBLE ALUMINIUM COMPOSITE MATERIAL (ACM)**

1. As we approach the second anniversary of the tragic fire at Grenfell Tower on 14th June 2017 you have made clear your deeply felt concern for residents who remain in private sector residential buildings clad with unsafe combustible Aluminium Composite Material (ACM).

The nature of the problem

2. Despite a significant programme of work led by the department since 2017, progress to remove and replace combustible cladding on private sector buildings has been slow. So far, of the 174 private sector residential buildings which we have identified with non-compliant ACM cladding, in only 18 cases has remediation started. While for a further 118 buildings some sort of plan is in place, progress to turn plans into action is slow. In 38 cases the owner is refusing to remediate altogether.

3. Too many private sector building owners have failed to see the serious nature of the situation. Some have been uncooperative and unwilling to let local authorities take the necessary samples to test their cladding. In some cases, it has taken more than 12 months to complete tests on individual buildings. Even when cladding has been found to be unsafe, freeholders have been slow to recognise that they need to act.

4. This position is in marked contrast to the social sector, where 85% of buildings have either started or completed remediation, and plans are in place for all the remaining 15%. The funding made available by the Government in April 2018 has clearly helped to accelerate progress. However, social sector landlords were much quicker than private sector freeholders to recognise and identify the problem that they faced.

5. For every private sector residential building with ACM, interim measures (such as fire wardens) are in place to ensure that risks are reduced to a level that means residents can remain in their homes. These mitigations have been signed off by local Fire and Rescue Services. However, interim measures are expensive, and require constant maintenance and vigilance. They still leave many residents fearful and uncertain about the safety of their home.

6. Both you and the Prime Minister have also been clear that you do not believe that leaseholders should pay to replace cladding that was in breach of building regulations and should not have been put up in the first place. For 22 buildings, warranties have protected the leaseholders. But in the vast majority of buildings there is no relevant warranty or insurance policy and under the terms of the leasehold contracts, legal liability for the cost of the work appears to rest with the leaseholder. The few court actions that have taken place have confirmed this contractual position.

7. In some cases developers and building firms have, while not accepting liability, offered to pay for remediation, recognising the exceptional nature of the situation. Despite these welcome gestures of goodwill, there are still 64 buildings where either the funding position is currently unclear or leaseholders are definitely not protected from the costs of remediation. The Department estimates that in over 40 of these unprotected buildings, the cost of remediation will be over £5,000 for each home. In some buildings costs could run to tens of thousands of pounds.

8. For these remaining buildings, the lack of a funding solution is now the main barrier to achieving swift progress to secure public safety. The companies which own freeholds typically do so for their value as long-term, low-yield investments. Short of taking drastic legislative action, we have no means to compel them to undertake remedial work at their own financial risk. They are therefore reliant on up-front contributions from leaseholders before work can proceed. As a result we find

ourselves in a situation where the understandable reluctance, and in some cases inability, of leaseholders to pay is now the main obstacle to further action.

Finding a solution

9. You are clear that your aims are:

- to speed up the pace of remediation in private sector residential buildings with ACM cladding, so that people can be safe and feel safe in their own homes;
- to prevent leaseholders from having to pay for something which has happened through no fault of their own, as a result of an exceptional, and widespread, failure across the industry;
- to ensure that funding is recovered from those who are found to be liable.

10. Over the past few months the Department has explored multiple options for addressing this problem. You have concluded, based on the Department's analysis and advice, that the only option that will meet these aims is for the Government to offer grant support to building owners to pay for remediation in the private sector, as it has already done in the social sector. As for the social sector scheme, this grant would be conditional on building owners, wherever possible, seeking compensation from those who were responsible as the building was erected.

11. As Accounting Officer, I need to be mindful of the public accounting rules as set out in *Managing Public Money*. The social sector remediation fund which you announced in May 2018 met these rules, because the nature of the sector, including the Government's regulation of key aspects such as rents, meant that the necessary remediation work would otherwise have crowded out housebuilding and/or other planned maintenance. The Value for Money test was therefore met.

12. However, the normal public accounting rules do not easily provide for the exceptional circumstances of this case. A fund to support leaseholders involves a transfer of resources from the general taxpayer to private individuals and companies. The analysis the Department has done, in line with the Green Book, shows that the public benefits of the scheme do not outweigh the costs of this transfer. The distributional impact is likely to be slightly regressive since leaseholders, on average, have incomes higher than those of the general population. As such the proposal does not meet the normal tests of Value for Money.

13. The Department has explored the alternative of loan funding for leaseholders. You have concluded, on the basis of official analysis, that this would not be effective in delivering your objectives. As well as leaving leaseholders ultimately liable for the costs of recladding, it would not speed up remediation in the way that you want to see.

Because we cannot compel anyone to accept a loan, a loan scheme does not quickly put in place a complete funding solution for any individual building.

14. Other options to restrict the costs to the Exchequer such as means-testing the grants suffer the same drawbacks. Options to limit the costs through excluding certain freeholders from the scheme would make the policy more novel and certainly more contentious and once again would limit our ability to deliver your objectives. You have also considered more interventionist approaches, such as legislating to protect existing leaseholders, or compulsory purchase of the relevant buildings. These raise very significant concerns in relation to property rights; are not necessarily any lower cost for the Exchequer; and do not lend themselves to a fast solution.

15. And from the perspective of *Managing Public Money*, because none of these options remove the cost to the Exchequer entirely, they would still present a challenge on Value for Money grounds.

Managing the risks of repercussion

16. I have concluded that it is not possible to reconcile a grant scheme with the principles of *Managing Public Money*. However, there are clearly strong wider public policy reasons why you may wish to go ahead. Above all, there is an imperative to ensure public safety in the face of known and serious risks from ACM cladding. As described in paragraph 7 above, it is clear that the lack of a funding solution is now the main barrier to achieving this. And there are strong arguments of moral principle in favour of protecting leaseholders in these exceptional circumstances.

17. However, it is important to ensure that sufficient steps are taken to ensure that the scheme does not create a precedent whereby leaseholders – or freeholders – expect the Government to stand behind failures in the construction or maintenance of residential buildings in future. In the language of *Managing Public Money*, we need to have mitigations in place to prevent this scheme from being repercussive.

18. You are clear that the grant fund for remediation of ACM cladding will not be repeated in other circumstances. The Government is also taking very significant steps to reform the system for the future. These include:

- the implementation of reforms to the entire building safety system, as recommended by Dame Judith Hackitt which, when introduced, will significantly increase transparency for residents and enforcing authorities;
- exploration of options to increase the prevalence of insurance and warranties, as part of the implementation of the Hackitt reforms;

- reinvigorating commonhold as an alternative tenure to leasehold, including additional provisions to ensure that commonhold associations have the appropriate financial plans to respond to an emergency; and
- exploration of reforms to service charges to include consideration of mandatory sinking funds so that unforeseen costs of maintaining a building are accounted for and are transparent to leaseholders.

Conclusion

19. There are strong public policy reasons for your proposed course of action, which you have decided following comprehensive official advice. Above all, your aim is to make sure that every resident can be confident that their home is safe, and to achieve this as quickly as possible.

20. However, because the scheme is not in line with the rules of *Managing Public Money*, I will require your written direction to proceed. I will then ensure that all necessary steps are taken to carry it out without delay. I will also alert the Comptroller and Auditor General, who will inform the Public Accounts Committee. It will then be for the Committee to decide whether to investigate the matter further, for example by holding a hearing in Parliament.

Yours,

Melanie Dawes

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