



Ministry of Housing,
Communities &
Local Government

Private Sector ACM Cladding Remediation Fund

Full Fund Application Guidance

July 2019

Ministry of Housing, Communities and Local Government



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Private Sector ACM Cladding Remediation Fund

Introducing the fund

The government is committed to ensuring that residents are safe and feel safe in their homes. We are clear that all buildings with unsafe¹ Aluminium Composite Material (ACM) cladding systems² must be remediated so that residents can have peace of mind. Unsafe ACM cladding represents an unparalleled fire risk and is not safe, and this is why the government is taking action.

Interim measures are in place to keep residents safe in all unsafe ACM-clad buildings, but ultimately this cladding must be replaced. We expect building owners and responsible entities - that is, those organisations which have a legal responsibility for the repair, condition and safety of the building, and which have a legal right to recover the cost through the service charge - to act promptly to ensure that their buildings and residents are made safe in the longer term by removing and replacing unsafe cladding systems as swiftly as possible while ensuring that remediation works are carried out effectively and safely.³

To address the lack of action taken by private building owners, the government announced that around £200 million⁴ will be made available to remove and replace unsafe cladding from high-rise⁵ private residential buildings. The Private Sector ACM Cladding Remediation Fund will cover the cost of the replacement of unsafe ACM cladding on high-rise private residential properties in England. Funding will be provided to responsible entities who will be responsible for remediation, but the fund will be for the benefit of leaseholders who would otherwise incur the cost through service charge arrangements.

The government acknowledges that some private building owners and developers have acted swiftly and already fully funded the remediation of unsafe cladding themselves, thereby avoiding the need to access the fund and saving taxpayers' money. The public will expect building owners to honour any outstanding commitments to pay for and carry out remediation works as quickly as possible.

This guidance document sets out the scope and eligibility criteria for the fund, against which applications will be assessed. It describes which costs are covered, the eligibility criteria, how the fund works - including important rules on State Aid – how to apply and the timetable for submitting applications.

¹ 'Unsafe' means those cladding systems that have been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017.

² The fund-related definition of 'cladding system' is included in the section below; *What costs are covered by the fund?*

³ Information on interim measures and remediation can be found at:

<https://www.gov.uk/government/publications/updated-interim-safety-advice-for-building-owners>

<https://www.gov.uk/government/publications/information-note-for-landlords-and-building-owners-of-tall-residential-buildings-with-acm-cladding>

⁴ <https://www.gov.uk/government/news/government-to-fund-and-speed-up-vital-cladding-replacement>

⁵ To be eligible for the fund, the height of the building needs to be measured as 18.00m or above using the approach set out in Fire Safety: Approved Document B, Volume 1, p66, diagram C1. This can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806690/Approved_Document_B_fire_safety_volume_1_dwellinghouses.pdf

How much money is available?

Grant funding will be available to cover all reasonable costs for the remediation of unsafe ACM cladding on residential buildings over 18m in height and in private ownership. From initial information provided by building owners and local authorities, and from the experience of operating the Social Sector ACM Cladding Remediation Fund, the government estimates total costs at around £200m.

Eligibility criteria

The fund will be available for the benefit of leaseholders in residential buildings over 18m in height who would otherwise have an obligation to meet the cost of cladding remediation by virtue of provisions in their leases.

To be eligible for the fund applicants will need to confirm that they are replacing unsafe ACM cladding with materials of limited combustibility that have been classified as European Class A1 or A2-s1,D0.⁶

We will expect building owners to actively identify and pursue all reasonable claims against those involved in the original cladding installations, and to pursue insurance and warranty claims where possible. Successful claims will require some or all of the proceeds returned to government. Building owners therefore need to be mindful at all stages in the remediation process of the opportunities to secure and retain documentary evidence that could support such claims.

Applications for buildings comprising mixed residential and commercial use will be within scope.

Responsible entities, including engagement with leaseholders

Applications can only be made by the responsible entity, and as a condition of funding responsible entities will enter into a funding agreement on terms acceptable to MHCLG. A responsible entity may be the building freeholder or head leaseholder or a management company who has primary responsibility for the repair of the property. A management company which is not the responsible entity will still be able to apply and manage the application as an agent for the responsible entity.

We expect responsible entities to inform all leaseholders and residents that they will be applying for funding. Responsible entities should also inform leaseholders and residents of the nature of the works they intend to carry out and should provide regular updates to leaseholders and residents on the progress of their funding application and remediation works. As a minimum we expect responsible entities to provide updates to leaseholders at the following key milestones:

- Application submitted
- Outcome of application received
- Commencement of works (with an estimated completion date)
- Works completed.

⁶ A1 or A2-s1,d0 as classified in accordance with BS EN13501-1:2007+A1:2009

Responsible entities should also make leaseholders aware that they can access specialist advice for help to understand their rights through the Leasehold Advisory Service (LEASE). Although leaseholders should contact their responsible entity with queries about their specific building, LEASE will act as the point of contact for leaseholders with questions about the fund. The government has allocated additional funding to LEASE to provide independent, free, initial advice to leaseholders on building safety issues to ensure they are aware of their rights and are supported to understand the terms of their leases. More information on LEASE, including how to contact them for advice, is available here: <https://www.lease-advice.org/>

The Ministry of Housing, Communities and Local Government (MHCLG) has written to all responsible entities known to be affected following the announcement of the fund. Responsible entities should, therefore, already be in contact with MHCLG through the Building Safety Programme. **If responsible entities have not notified MHCLG of buildings that fall into this specification, they should do so immediately by emailing towercaseworkteam@communities.gov.uk**

Unsafe ACM cladding

The fund will cover the removal and replacement of unsafe ACM cladding systems. 'Unsafe' means those cladding systems that have been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. Full details are set out in the consolidated advice note⁷ published by the Building Safety Programme on 5 September 2017.

The following will be used as evidence that unsafe ACM cladding needs remediating: either a copy of the Building Research Establishment's (BRE) screening test result for a sample of the cladding from the building; documentary evidence that the type of ACM matches the specification of ACM cladding which failed the government's BS8414 tests; or the local authority having notified MHCLG that unsafe ACM cladding has been confirmed.

Exclusions

The fund will not be available for:

- non-residential buildings.
- buildings under 18m in height.
- non-ACM cladding systems or other structural works which are not directly related to the remediation of unsafe ACM cladding systems.
- buildings where a warranty claim for the full costs of remediation has been accepted.
- costs which would not otherwise be recovered from residential leaseholders through the service charge provisions in their leases⁸.
- buildings owned by social sector landlords who should instead apply for funding from the Social Sector ACM Cladding Remediation Fund⁹.

⁷ <https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing>

⁸ For example, hotels, hostels, purpose-built student accommodation uses, private rental sector (PRS) uses and PFI contracts are not eligible.

⁹ <https://www.gov.uk/government/publications/social-sector-acm-cladding-remediation-fund-application-guidance>

State Aid

State Aid is any advantage granted by public authorities through state resources on a selective basis to any undertaking (i.e. any entity engaged in an economic activity) that could potentially distort competition and trade in the European Union (EU). It is important that the government complies with EU State Aid rules to avoid distorting competition. Any payment made by the government which is subsequently found to be unlawful State Aid would need to be repaid. We will provide further guidance on State Aid (including template declarations) before the fund opens.

Any grant allocated from the fund will be paid for the benefit of the leaseholders who would otherwise need to meet the qualifying costs through their lease service charge provisions. State Aid rules apply to any payments under this fund for the benefit of any leaseholder who is an 'undertaking'. This includes commercial leaseholders and owners of Buy To Let properties.

State Aid to any undertaking under this fund is being provided as *de minimis* aid under EU Regulation 1407/2013 (De Minimis Aid Regulation) as published in the Official Journal of the European Union on 24 December 2013.¹⁰ The maximum amount of public funding (from all UK sources, including central and local government) that can be provided to one undertaking under the De Minimis Regulation is €200,000 over a three-year fiscal period. The three years are the current and two previous fiscal years.

Payments out of the fund which are not to undertakings (e.g for the benefit of individuals who hold the lease in their private capacity only) do not amount to State Aid.

For buildings where there are no leaseholders, or where the provisions of the leases do not provide for these costs to be covered by leaseholders, the costs of remediation work should be covered by the responsible entity. Applicants who are building owners not applying on behalf of leaseholders may still be considered for payments from the fund, but any State Aid to such undertakings will be considered under the *de minimis* rules and they may be only entitled up to a maximum of €200,000 under the fund for all properties for which they apply, which may not cover all the remediation work required.

Each leaseholder should complete a declaration (i) to determine whether they are an undertaking and, if so, (ii) the amount of *de minimis* State Aid they have received during the previous two fiscal years and this fiscal year. All declarations for a building should be completed before we can provide any grant funding for that building. We will require applicants to gather and submit these on behalf of their leaseholders. Therefore, active engagement from leaseholders is required to ensure these payments can be made without unnecessary delay.

Applicants are responsible for collecting State Aid declarations from all their leaseholders. Applicants should be aware, and guidance will be provided to support this, that if any funding payments result in the provision of unlawful State Aid, then we will be obliged to recover the value of such funding.

¹⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352 24.12.13, p1.

What costs are covered by the fund?

The following table summarises the costs covered by the fund.

Eligible items covered by the fund	The fund will <u>not</u> cover
<p>Works directly related to the replacement of unsafe ACM cladding systems¹¹ including:</p> <ul style="list-style-type: none"> • access (e.g. scaffolding, mast climber etc) (only where apportioned appropriately directly related to qualifying works). • removal and disposal of existing ACM cladding. • replacement materials. • labour and reasonable on-costs to the contractor. 	<p>Works which are not directly related to the remediation of unsafe ACM cladding systems even where these 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, maintenance, repair or renewal costs.</p> <p>Other necessary fire safety works which are not related to an unsafe ACM cladding system.</p> <p>Operational running costs, including those associated with interim measures</p>
<p>Professional team fees in respect of qualifying items (*apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs)</p>	<p>Professional team fees in respect of non-qualifying items.</p>
<p>Managing agents' fees in respect of administering qualifying expenditure (*apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs)</p>	<p>Managing agents' fees in respect of administering non-qualifying expenditure.</p>

Eligible costs will be those costs which could be attributed to the capital costs¹² of the project. Ongoing revenue costs, such as the cost of interim safety measures, are not eligible. The fund will provide a grant to cover the 'reasonable' cost of eligible items only. Reasonable costs will be informed by an industry standard approach to specification and procurement of works having regard to 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.

Extraordinary technical requirements which incur extra costs essential to but not normally associated with removing and replacing unsafe cladding systems may be included. MHCLG will consider such requests for funding and will assess them applying the same criteria applied to the initial application.

We encourage applicants/responsible entities to assess the extent of any additional work required to make buildings safe from a fire safety perspective and to have a plan in place for funding and carrying out these works.

¹¹ A cladding system includes the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding system includes the weather-exposed outer layer or 'screen, fillers. Insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants.

¹² 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.

How the fund works

The guiding principle of the fund is to increase the pace of remediating unsafe ACM cladding on high-rise residential buildings. It does not remove the existing responsibility for building safety and repairing obligations from responsible entities.

We will assess eligibility in two stages:

- Stage one will quickly verify that the building, its leaseholders and the responsible entity is within scope of the fund.
- Stage two will commence once an in-principle agreement to proceed is in place. This stage will evaluate the proposed solution and costs, undertake due diligence, and check that all State Aid declarations are in place.

Where funding is approved, work should be carried out at pace. The government will not be assuming procurement responsibilities or providing a list of approved contractors. In line with the purpose of the fund, compliance with statutory consents/Building Control approval will also need to be demonstrated at key points. However, we expect work on site to start as soon as possible after funding has been approved.

Where works have already started but are not yet completed, we will assess applications for funding based on the same criteria as applications for funding where works are yet to start. For applications which are approved, we will provide funding equivalent to the value of the qualifying works already completed, as evidenced by the certificate signed off under the building contract and will continue to provide funding as the project progresses as described above.

Applications for funding where works have already completed will also be assessed using the same criteria. Subject to State Aid rules and the qualification requirements set out in this prospectus, we will provide funding for the costs of remediation of unsafe ACM cladding once we receive evidence of building control sign-off.

If leaseholders have already paid for the remediation of unsafe ACM cladding through the service charge, whether for work that has been completed or has yet to be started, the funding agreement will require the applicant to reimburse leaseholders (or the relevant sinking fund) for an amount equivalent to the benefit they will receive following a successful application for funding.

VAT

Snagging (or the correction of faults) is often carried out after the building has been 'completed'. Provided the replacement cladding forms part of the original construction and the person requesting the cladding had an interest in the building during the construction works, then the replacement cladding may qualify for the zero rate as snagging. This work may form part of a building contract with zero-rated VAT. If applicants require advice on whether their replacement cladding meets the criteria of snagging and so is eligible for VAT at zero rate, they can write to the HMRC Clearance Team.¹³

¹³ <https://www.gov.uk/guidance/non-statutory-clearance-service-guidance> - see Annex D.

Pre-contract support

We will consider applications for advance funding to enable applicants to get to the point at which they have a construction contract in place and thus clarity on the scope of works proposed, the costs thereof and the level of support from the fund which is sought. These applications will need to meet the fund's initial diligence criteria.

This may take the form of funding for surveys, design, planning and procurement costs etc. Where this is the case applicants will still need to provide full details of the ownership and management arrangements in respect of the blocks themselves in order to apply. Cost and works details will then be provided when a successful tender is received, and an assessment will take place as set out above before confirming the level of qualifying support for the remediation works themselves.

If the applicant does not proceed with the works or their application turns out to be ineligible, we will recoup the value of this initial funding and will seek an indemnity to cover this.

Full support

Separate applications will need to be made per building as we expect building owners to have carefully considered the right solution for each building. We will consider additional applications where costs overrun (see below).

Where pre-contract support isn't required, applicants can request full support for the cost of remediation works after a successful tender, including reasonable and proper pre-contract costs.

Once approval is confirmed the grant amount will be fixed. Legitimate increases in the scope and cost of work required will be considered and will be assessed in accordance with the criteria set out above, including State Aid rules. However, we expect applicants to make arrangements which minimise the risk of this happening, for instance by scoping and specifying works adequately, going through a competitive process to award a contract and appointing a competent contractor using industry-recognised contractual agreements. Arrangements which place an undue level of risk with the client – and in turn the funder – will not be acceptable. Responsible entities must take all opportunities to ensure work is covered by supplier warranties, which help protect leaseholders from future costs.

In the event of costs incurred or expected exceeding those which have been agreed, the following will apply:

- The applicant must notify MHCLG and submit a separate application for additional funding.
- MHCLG will consider applications for funding where:
 - There is a legal obligation which requires a change in the scope of works to replace the unsafe ACM cladding.
 - Work on site uncovers that the unsafe ACM cladding is more extensive than originally tendered for, or that the scope of works must change and become more costly.
- In all cases, MHCLG reserves the right not to provide further funding beyond that agreed. Any risk of cost increases therefore resides with the applicant.

Where additional funding is provided, this is subject to the same State Aid conditions under

which the funding agreed has been provided.

Applicants/responsible entities are responsible for assembling any funding package necessary in order for works to go ahead, of which resources from the fund may only be a part. A first payment for construction work under the fund will only be made when the re-cladding work has commenced on site.

We will carry out a reasonable and proportionate amount of diligence in order to safeguard public money concerning:

- the ownership and management arrangements of individual blocks.
- the service charge obligations of leaseholders.
- the scope and cost of proposed cladding remediation works and the contractual arrangements to deliver remediation.

The scope of due diligence is limited to supporting the purpose of the fund and building owners should not rely on it to highlight any design, construction or other related issues that remain the building owner's responsibility to address.

We will benchmark costs with MHCLG-derived cost information and external benchmarks. Where costs are outside our expectation we may request additional supporting information.

Payments will be made as cash grants and will be made on the basis of monthly valuations of work carried out on site, with an appropriate degree of due diligence, mirroring industry standard practice. Following Practical Completion we will withhold a final payment which will be made on completion of the defects liability period.

On site progress tracking and draw down of funds

We will check progress against certificates from the building contractor monthly. To ensure work is undertaken to expected standards, and with a particular focus on fire safety, we expect appropriate quality assurance measures and safety checks to be in place on site. All building control bodies appointed for remediation projects supporting the fund must take into account relevant advice issued by MHCLG.

Further reassurances on building safety will be required from responsible entities where works take longer than expected. Periodic on-site inspections will be carried out.

Cost recovery

Building owners will be expected to take all reasonable steps to recover the cost of replacing the unsafe ACM cladding from those responsible. At the application stage we will ask for information regarding such steps and may seek further information to satisfy ourselves of the position. Where building owners do successfully recover damages relating to the removal and replacement of unsafe ACM cladding the government will expect building owners to pay to government any amounts recovered which are referable to the removal of the unsafe ACM cladding up to the amount provided through the fund.

We will not seek to recoup amounts recovered in litigation or settlement which do not relate to the removal and replacement of unsafe ACM cladding. Where building owners have already recovered damages they should deduct the relevant amounts from applications and provide an explanation as to how this has been calculated.

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

Enforcement

If a responsible entity does not apply and refuses to remediate a high rise building with unsafe ACM cladding, we expect local authorities and fire and rescue services to take enforcement action. We have established the Joint Inspection Team, which includes experts in environment health, building control and fire safety, to support local authorities to assess buildings under the Housing Health and Safety Rating System and thereafter with enforcement action under the Housing Act 2004.

How and when to apply for funding

Applicants can register now with the MHCLG casework team. They will help you with the documentation you will need to demonstrate your eligibility.

Applicants can start working through this guidance and compiling information now and, where possible, begin designing the works needed. We expect an online portal to go live as soon as possible at which point responsible entities will be able to upload the information required.

Responsible entities can start to apply now based on cost estimates if they have not yet incurred actual costs. They will then have to confirm or amend the information as required to enable payment.

We want to make payments as soon as possible, so **applications can be made from today and will remain open until the end of December 2019**. We expect all responsible entities of eligible buildings with unsafe ACM cladding to apply and will consider appropriate action as described above where this does not happen.

Where there are exceptional mitigating circumstances for responsible entities being unable to meet the applications deadline, they should inform MHCLG and it will be at the application board's discretion whether to grant an extension.

Where can I find further information and support?

If you would like to discuss your application further, please contact us at psrapplication@communities.gov.uk

Although leaseholders should contact their responsible entity with queries about their specific building, LEASE will act as the point of contact for leaseholders with questions about the fund. If you are a leaseholder with an enquiry, please contact the Leasehold Advisory Service (LEASE) via <https://www.lease-advice.org/>

Annex A – Information required

This will be set out comprehensively via the application portal but will broadly cover:

- Verification of residential leaseholders and obligations
- Verification of contracting party and obligations
- State Aid declarations
- Building details
- Cladding details – initial and replacement; testing etc.
- Proposed works and costs together with supporting documentation
- Contracting route and contract details together with supporting documentation
- Other required fire safety work

In addition to supporting documentation on tenders and tender prices we will require a cost breakdown as follows:

Cost Description	Total project costs (£) – i.e. if ‘project’ is for multiple blocks and/or works over and above replacement cladding	Total eligible for MHCLG funding (£) – i.e. costs of in scope work to the one block which is the subject of this application	Total of grant support applied for (£)
Access (eg scaffolding or mast climber)			
Removal of defective material in the cladding system			
Replacement of defective material of the cladding system			
Abnormal costs			
Professional fees – pre-tender stage			
Professional fees – post-tender stage			
Irrecoverable VAT			
Preliminaries			
Contingencies			
Overheads and profit			
Client costs			
Total	Calculated	Calculated	Calculated

You will also be required to provide details of the Client Money Account into which we will make grant payments. You will be requested to provide evidence that the account is either registered under the Client Money Protection Scheme (CMPS), (*Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018*)

or

If you do not have a Client Money Account registered under the CMPS, provide details of a Trust Fund held for the benefit of leaseholders into which we will make grant payment with evidence that this complies with the requirements of Section 42 of the Landlord and Tenant (LTA) Act 1987.