



Ministry of Housing,  
Communities &  
Local Government

# Building Safety Fund for the remediation of non-ACM Cladding Systems (England only)

Fund Application Guidance

July 2020

Ministry of Housing, Communities and Local Government



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July 2020

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# Building Safety Fund for the remediation of non-ACM cladding systems (England only)

## Introduction

The Building Safety Fund (BSF) is opening for applications from 31 July 2020.

This guidance is for applicants to the BSF for grants to remediate unsafe non-Aluminum Cladding Material (ACM) cladding systems on high-rise residential buildings that:

- registered their expression of interest between 01 June -31 July 2020
- have been fully assessed at Registration, and
- have been invited to apply because their building is eligible.

The government published the Registration Prospectus<sup>1</sup> for the BSF on 26 May 2020. The prospectus includes guidance on the remediation of non-ACM buildings.<sup>2</sup>

As an Applicant to the BSF, we require you to inform all leaseholders and residents that you will be applying for funding. You should also inform leaseholders and residents of the nature of the works you intend to carry out and should provide them with regular updates on the progress of your funding application and remediation works. As a minimum we require you to provide updates to leaseholders and residents at the following key milestones:

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

The BSF is part of the wider Building Safety Programme the objectives of which are to make sure that residents of high-rise buildings are safe – and feel safe – now, and in the future.

We will use the information you provide to assess your application. We have put in place support to help you through this process. Our Delivery Partners, Homes England and Greater London Authority will be your primary contact. You have a responsibility to submit a correctly completed application as soon as possible. A poorly completed full application will result in delays or potentially no award of grant.

## Fund overview

This Fund will cover reasonable eligible costs for the removal and replacement of unsafe non-ACM cladding systems on high-rise residential properties in England. Funding will be

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/887452/BSF\\_Non-ACM\\_Cladding\\_Prospectus.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887452/BSF_Non-ACM_Cladding_Prospectus.pdf)

<sup>2</sup> <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

provided to the Responsible Entity for each building. The Responsible Entity is the organisation that has the legal obligation or right to carry out the remediation works and the right to legally recover the costs from leaseholders as service charge. The Responsible Entity (referred to as the Applicant in this guidance) may be the building freeholder or head leaseholder or a management company or Right To Manage (RTM) company who has primary responsibility for the repair of the property.

The fund will be for the benefit of leaseholders in the private sector who would otherwise incur the costs through service charge arrangements. Applicants from the social sector, will need to have demonstrated during registration that the costs of remediation are unaffordable or a threat to financial stability.

Applicants from the social sector intending to claim grant associated with leaseholders in social sector buildings should refer <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#social-sector-grants-leaseholder-costs-guidance>. Those Registered Providers and Local Authorities who have registered with the scheme due to financial viability concerns will be contacted directly. These cases will be discussed with you individually and taken forward on their merits. Registered Providers must have notified the Regulator of Social Housing.

## **Fund objectives**

We describe the difference we want to make with our funding through a set of objectives. All projects we fund should achieve these objectives:

- protect residents through increasing pace in building safety by removing and replacing unsafe non-ACM cladding systems,
- improve Leaseholder communication and engagement, deliver projects on time and budget,
- encourage cost recovery from those responsible.

## **Fund structure and administration**

The Ministry of Housing, Communities and Local Government (MHCLG) is the responsible department and the decision making body for the Fund. We are working with the Greater London Authority (GLA) in London and Homes England (HE) outside London to administer the fund as Delivery Partners. The GLA and HE will draw on specialist expert legal and cost consultancy support to help assess your application.

In addition, MHCLG will also make available expert specialist support for Applicants who need additional support to plan their remediation project. You should discuss with your respective delivery partner if you believe you would benefit from this support. If your delivery partner confirms this support will be of benefit, they will forward your request to the relevant support team. There is an Applicant (Client) Side Support Charter that governs this assistance. You will receive the charter upon initial contact by the Applicant (Client) Side Support, who will explain to you their role in the process.

This guidance will tell you more about the BSF, how it will work and what applicants can expect during the application process.

## **Driving the pace of remediation**

As set out in the registration prospectus, the £1bn funding under the BSF is available in the

financial year 2020/21. Therefore each time funding is approved by MHCLG, in accordance with the different types of funding listed below, sums will be allocated from the £1bn until the total funding is spent. This is to encourage building owners to move quickly to begin remediation projects.

Furthermore, successful Applicants are required to manage the total eligible costs of their project within the grant awarded. We appreciate that circumstances could change, as costs may increase because of unforeseen overruns or variations to contract scope. The process for submitting an application for variations to maximum grant sums is described in this document. However, the approval of variations is also dependent on funds still being available within the Building Safety Fund.

The following different types of funding are available,

- Pre-Tender Support funding, where needed - which will only be made available once you have completed the first stage application, been approved as eligible and signed the Short Form Funding Agreement for Pre-Tender Support.
- Full Cost funding - which will only be made available once you have completed a full application, been approved as eligible and signed the Grant Funding Agreement
- Social Sector Grant Claims (including for those where financial viability is challenged) - which will only be made available once the relevant form has been completed and funding approval has been granted

In relation to the above, we will not distinguish between different applications when allocating funding, provided they are eligible. However, your building being deemed eligible following registration, or being approved for Pre-Tender Support, is not confirmation that you will get full funding. 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 MHCLG.

If the funds are fully allocated, applicants will be notified that no further funding is available. It is therefore important that at every step you provide the information we require to progress your application as quickly as possible.

MHCLG will inform you of the outcome of the registration process. Following which, Delivery Partners will invite you to apply on their application portals. If you have already registered but have not yet received a final decision regarding your technical eligibility, please continue to read this guidance and prepare your information in parallel to put yourself in the best position to apply if your building's technical eligibility is determined.

To maximise the amount you receive from the fund you must be able to submit a full cost funding application by 31 December 2020, including a construction tender price. Projects must start on site by 31 March 2021 i.e. the Applicant must have entered into a signed Works contract<sup>3</sup> and the Main Contractor must have taken possession of the site and started to deliver this contract.

The Department will keep demand for the Fund under review and will publish regular updates regarding the allocation of funding against the budget available.

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<sup>3</sup> Means the contract for the delivery of the remediation project with the main contractor.

## Leaseholder and resident engagement

This document summarises how we require you to keep leaseholders and residents informed and how we will communicate and engage with you.

Additionally the [Leaseholder Feedback Form](#) was provided so leaseholders can get in touch with MHCLG if they have concerns about the remediation of their buildings. It is possible that leaseholder concerns may be followed up with you through your contact with Delivery Partners and the Project Management Office (PMO).

You 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 you with queries about their specific building, LEASE may act as a point of contact for leaseholders with questions about their leases.

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>.

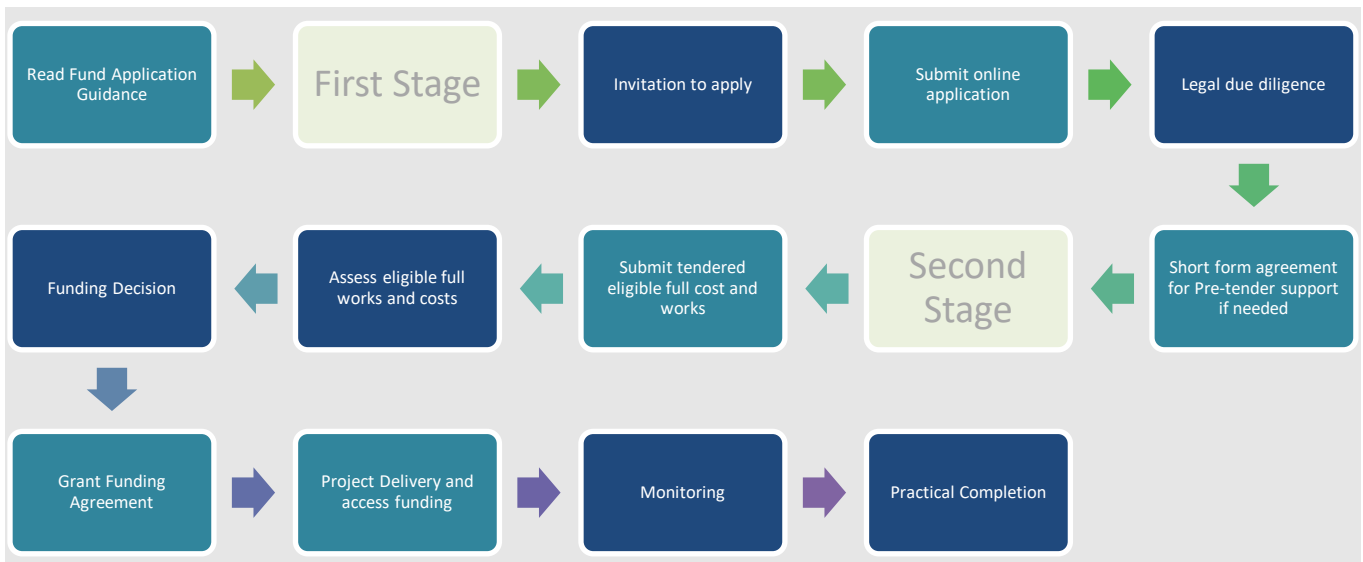
Delivery Partners are your primary contact and will provide their contact details during the application process.

## When and how can I apply for funding?

Applications are open for buildings in the private and social sectors, and can only be made by the Responsible Entity for the building. 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.

Our application process is designed over two stages; First Stage and Second Stage. Application portals will open for both stages on 31 July 2020.

This is a summary of the journey of your application.



As part of the registration phase 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 can apply for 'pre-tender support' if you need funding to get to this stage. Pre-tender support will only be provided if you have passed registration, passed the initial legal due diligence and the project cannot progress without this support. Pre-tender support will be limited to 10% of the estimated cost of work.

You will therefore 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 pre-tender support or full support for the remediation works.

If you do not proceed with the works within three months of receipt of pre-tender support or your full application turns out to be ineligible, we reserve the right to recoup the value of this initial pre-tender funding from you. Where pre-tender support helps to progress a project, but a full costs application is not subsequently received, we will not seek to recoup this funding except in the special circumstances set out in the short form funding agreement.

You can only submit a full costs application once you have gone out to tender 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. You must be able to submit this level of detail, based on a tender price, by 31 December 2020.

Whether you need pre-tender support or not, you should start your application as soon as possible after you are invited to apply so that we can proceed with the necessary first stage due diligence. This will give you the comfort that you, as Applicant, are in principle eligible for funding.

## **What we will fund**

We will fund reasonable capital<sup>4</sup> costs for eligible works that are necessary to remediate unsafe non-ACM cladding systems on high-rise residential buildings.

We cover a wide range of direct project costs including:

- Works directly related to the replacement of unsafe non-ACM cladding systems<sup>5</sup> including:
  - Access, where apportioned appropriately and directly related to qualifying works

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<sup>4</sup> 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.

<sup>5</sup> 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.



- (e.g. scaffolding, mast climber etc.),
- Removal and disposal of existing non-ACM cladding,
- Replacement materials,
- Labour and reasonable on-costs to the contractor.
- Professional team fees in respect of qualifying items.<sup>6</sup>
- Managing agents' fees in respect of administering qualifying expenditure.<sup>7</sup>
- 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 against relevant evidence.

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

### **What we will not fund**

- Works which are not directly related to the remediation of unsafe non-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,
  - Balconies (where these are not integral with the cladding).
- Other structural works which are not directly related to the remediation of unsafe non-ACM cladding systems.
- Other necessary fire safety works which are not related to an unsafe non-ACM cladding system.
- Operational running costs, including those associated with interim measures such as waking watches. (The Fund is designed to support remediation at a greater pace so that interim measures and their costs are no longer necessary.)
- Professional team fees in respect of non-qualifying items.
- Managing agents' fees in respect of administering non-eligible works.
- Costs which would not otherwise be recovered from leaseholders through the service charge provisions in their leases<sup>7</sup>.

### **Cost recovery**

You are required to demonstrate that you have taken all reasonable steps to recover the costs of replacing the unsafe non-ACM cladding from those responsible through insurance claims, warranties, legal action etc. At the application stage we will ask for information regarding such steps and may seek further information to satisfy ourselves of the position.

Where you do successfully recover damages relating to the removal and replacement of unsafe non-ACM cladding the government will require building owners to pay to government any amounts recovered which relate to the removal and replacement of the unsafe non-ACM

<sup>6</sup> Apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs.

<sup>7</sup> For example, hotels, hostels, purpose-built student accommodation uses, private rental sector (PRS) uses and PFI contracts are not eligible. Will not apply to Registered Providers who meet financial tests

cladding 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 the removal and replacement of unsafe non-ACM 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.

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

### **How we assess your application**

You should answer all the questions in the application form and make sure you upload all required documents. If there is additional information you believe we should be notified of you should use the 'free text boxes' at the end of each section.

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

- whether Applicant details match publicly held records,
- your legal relationship to leaseholders and whether they are obliged to pay service charge,
- your compliance with State Aid rules,
- confirmation of appointment of your competent professionals,
- whether your costs are for eligible works and are reasonable,
- when you will start on site or execute the 'Works contract',
- how you will monitor progress and evaluate costs,
- obtaining all statutory approvals including planning permissions,
- your forecast start and practical completion dates,
- the reasonable 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, our Delivery Partners and support lines will help you to rectify this. It is your responsibility to gather all the required information.

### **Payment profile**

Funded projects will be paid in instalments.

Scenario 1: Projects which do not require pre-tender support will be paid in two installments of:

- c.80% at Second Stage Full Works and Costs (enter into a Works contract), and
- c.20% when you have achieved practical completion

Scenario 2<sup>8</sup>: Projects which require pre-tender (pre-works contract) support:

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<sup>8</sup> The actual percentage amount will require some adjustment depending on the levels of pre-tender support provided, which will be known at the time that the Grant Funding Agreement is prepared.

- We will consider giving you up to c.10%] of the total eligible costs we estimate at registration for your project. This is covered by the Short Form Fund Agreement.
- Two further payments covered by the Grant Funding Agreement of:
  - c.70% for the Stage 2 Full Works and Costs (enter into a Works contract), and
  - c.20% at Practical Completion.

Following approval of your full application, you will receive a letter confirming approval from MHCLG, 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.

## State Aid

It is important that the government complies with State Aid rules. State Aid is any advantage granted by public authorities through providing state resources on a selective basis to any Undertaking<sup>9</sup>. Any payment made by the government which is subsequently found to be unlawful State Aid would need to be repaid.

To comply with State Aid rules we are taking advantage of the State Aid de minimis regulation<sup>10</sup> to fund remediation works. Payments out of the fund which are not for the benefit of Leaseholder Undertakings (e.g. for the benefit of individuals who hold a lease of property as their principal dwelling / main residence) do not amount to State Aid.

We expect most leasehold owners of blocks of flats will not be Undertakings and not subject to State Aid restrictions.

In the case of any leaseholders who are Undertakings, and where the de-minimis regulation applies, this allows small amounts of State Aid (less than €200,000 over 3 consecutive fiscal years), to be granted to a single Undertaking. On this basis, in relation to each Leaseholder Undertaking, we will check the information and documentation provided by you as our agent against the amount available to that Undertaking under the de minimis regulations (see 'State Aid' guidance – page 17). Using that information and documentation we will carry out State Aid calculations so that anyone Undertaking does not breach the €200,000 threshold for de minimis State Aid.

When you apply to the fund, as our agent, you take on the responsibility to write to all your leaseholders informing them of the State Aid rules. This process does not need to delay progress on other aspects of your application or works. We will provide you with the templates which you must use to undertake the following:

- Ask leaseholders to state if they consider they are Undertakings.
- Ask leaseholders, who identify as Undertakings (or you know or reasonably suspect to be

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<sup>9</sup> An entity in any legal form whatsoever which is engaged in an economic activity in competition with other operators. In this guidance we refer to Leaseholder Undertakings.

<sup>10</sup> 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. Full guidance on State aid rules can be found at <https://www.gov.uk/government/publications/state-aid-the-basics>.

Undertakings<sup>11</sup>), to declare any other de minimis aid they have received during the current and previous two fiscal years before the BSF grant is provided. This will be done by completing and returning to you the State Aid declaration template.

- Inform all Leaseholders Undertakings explicitly that funding under the BSF will qualify as State Aid under the de minimis regulation and they must declare this in any future declarations.

You should tell Leaseholders Undertakings they must keep records of the benefit received under the BSF for a minimum of three years. We only require you to collect declarations from those leaseholders who identify themselves as Undertakings, and any whom you reasonably know or suspect to hold Undertaking status, following reasonable assessment of the leaseholders within your Building. You should upload these declarations together with the Undertakings Summary Schedule which must include those leaseholders you know or believe to be Undertakings via the online applications portals.

Once you have uploaded the signed declarations to the portals operated by our Delivery Partners, they will retain a copy of all submitted declarations for the purpose of record keeping in compliance with the de minimis regulation.

You will be required to sign a declaration confirming the information provided about these Undertakings is full, accurate, complete and complies with the requirements of this guidance, State Aid guidance and the Undertakings Summary Schedule. You should note if any of your leaseholders are found to have received unlawful state aid (because the de minimis regulation has not been complied with, for example), we will be required to recover these monies directly from the leaseholder. The funding agreement contains powers to recover sums from you if your self-certification responses turn out to be incorrect.

We have set out this process in further State Aid guidance which you can access here: <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#state-aid-guidance-and-declaration>.

## **VAT**

Snagging (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 is therefore eligible for VAT at zero rate, they can write to the HMRC Clearance Team.<sup>12</sup>

## **Enforcement**

Where projects are not progressing quickly enough, we will work with local authorities and fire and rescue services, including through the fire protection board, to ensure that they are considering enforcement action in relation to any un-remediated unsafe high-rise building.

Remediating unsafe non-ACM cladding systems swiftly will avoid the need for further action,

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<sup>11</sup> We expect you to review the information you hold about your leaseholders to identify any which you believe are Undertakings and ensure they complete the necessary declaration.

<sup>12</sup> <https://www.gov.uk/guidance/non-statutory-clearance-service-guidance> - see Annex D.

including enforcement action. Local authorities have enforcement powers under the Housing Act 2004, which can include prohibition notices. The Fire Safety Bill, which is currently before parliament, will put beyond doubt that fire and rescue services' enforcement powers can also be used in relation to unsafe external wall systems.

## Further guidance

We have other information on our website to help you manage and develop your project.

The following are essential reading for all projects:

[Registration Prospectus](#) 

[Building Safety Fund Stakeholder Update 6 April 2020](#) 

## The Application Process

### Access to online Fund Application Portals

There are two fund application portals, one for London administered by GLA and another for outside of London administered by HE. Portals will open from Friday 31 July 2020.

Applicants will be given access to the relevant application portal. This access will be included in the communication to Applicants when you are invited to apply by the Delivery Partners following completion of technical due diligence at registration.

### Self-certification

The BSF process requires you to self-certify<sup>13</sup> a number of critical aspects concerning your project and application. You are required to self-certify on the online application form to confirm, for instance, that the works will comply with the Fund Requirements outlined in Annex A. As a further example, you are also required to certify that all parties contracted to you to deliver remediation have complied with the requirements of their respective contracts.

In order to provide this reassurance to MHCLG 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.<sup>14</sup> 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.

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<sup>13</sup> Self-certification is the process whereby the Applicant provides assurance (with recourse to Third Parties) that they and their supply chain have complied with all requirements of their contractual obligations to MHCLG for the remediation of the unsafe cladding.

<sup>14</sup> <https://www.newcivilengineer.com/>

The Grant Funding Agreement will require you to warrant that your confirmations to the self-certification statements are correct and accurate.

### Competent Professional

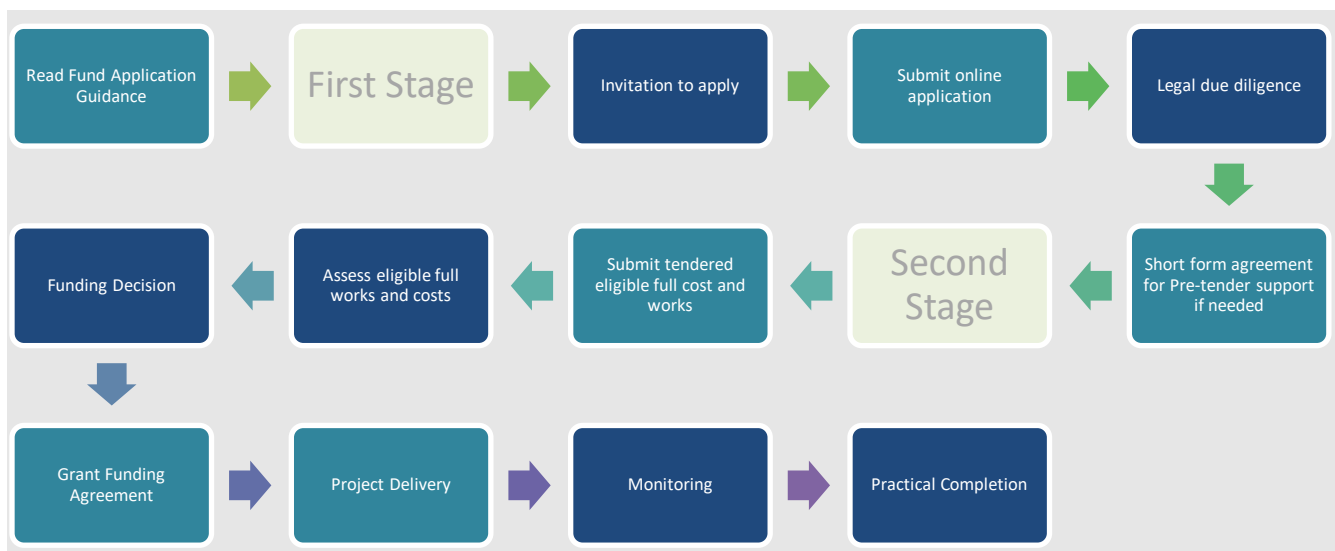
You are required to use competent professionals on your project. We will rely on the information they produce as evidence of the accuracy of your answers in the application. We also require your competent professionals to sign-off project works and all relevant documentation. The expression 'competent 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 MHCLG and Delivery Partners to be fully satisfied on a material point. Further guidance on competent professional can be found at [Registration Prospectus Annex A pages 4-6](#).<sup>2</sup>

### Application Journey



### Invitation to apply

Delivery Partners will invite you to submit your application online through their portals if (i) you registered your building(s) and (ii) your building meets the technical eligibility criteria, as assessed by MHCLG. Please do not attempt to apply until you have received this invitation.

If your building has not yet passed the technical eligibility criteria, please continue to prepare the relevant supporting information ahead of the invitation.

## **Submit online application**

You will complete and submit an online form that covers the first and second stage applications. For Applicants who enter into the grant funding agreement, the online portals will be used to make payments and monitor the progress of projects.

The tables below show the different information you will need to have gathered for your first stage application. This is aligned to the steps in the process schematic above.

## **First Stage Application**

This section of the application form is outlined in Annex D. The first stage involves you being invited to submit your application. Once you have submitted your application, we will carry out basic checks to confirm that you have completed it correctly. We will get in contact with you if your application is missing any required information and will provide support should you need it to help resolve any outstanding issues.

The first stage will involve initial legal due diligence to determine your eligibility for the fund. During this stage, we will gain a better understanding of you and your building(s).

If you meet the legal eligibility criteria, and you have indicated on your application form that you need Pre-Tender Support (pre-Works contract support), we will offer it at this stage. This will be 10% of our estimated benchmark total eligible costs for your building.

We ask for the particulars of the building(s) you wish to seek funding for, including location. You are required to provide a plan showing the footprint of the building(s). You are also required to identify four residential properties within the Building. We will need to check the service charge provisions for your building and will ask you to identify four different properties within the Building which are held on leases representative of all the residential leases granted for properties in the Building.

## **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 advisers. This involves checking your details and obligations as the Responsible Entity.

Role	Assessment
You	<p>You will nominate four residential properties which you are confident are generally representative of the leases which have been issued in the Building and which demonstrate that:</p> <ul style="list-style-type: none"> <li>-You can pass the costs for remediation to leaseholders through service charge</li> <li>-The Leaseholder has an obligation to pay the service charge</li> </ul> <p>Our Legal Advisers will conduct a review of these.</p>
Legal advisers	<p><b><u>Eligibility (First Stage)</u></b></p> <p><b>Leaseholders</b> Our Legal Adviser will review at least one of the leases relating to properties nominated by you. This is important in the context of State Aid as the underlying requirement in making funding available is that the State is relieving leaseholders of a financial burden that they would otherwise face. This may create the need for you to revise the application by providing further information and re-submit.</p> <p><b>Ownership structure</b> Our Legal Adviser 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. The Legal Advisor will review your title details and include a short form legal summary to accompany the Application when it is considered by the Fund Application Board.</p> <p><b>Service Charge Obligations</b> Our Legal Advisor will also review at least one residential lease so that we can be satisfied that you are entitled to recover the cost of eligible works (which are permitted by lease documentation terms) via the service charge regime for the Building. This is important in the context of State Aid as the underlying requirement in making funding available is that the State is relieving leaseholders of a financial burden that they would otherwise face.</p> <p><b><u>State Aid Declarations (Second Stage)</u></b></p> <p>This step may be started at stage 1 diligence but for any costing applications, either for pre-tender or full, will complete as part of the stage 2 diligence.</p> <p>Legal Advisor to review declarations using the Undertakings Summary Schedule provided by you and assess whether any leaseholders who have declared this status (or who you have identified as Undertakings) have sufficient capacity to benefit from the funding (the current de minimis threshold is €200,000 calculated at the official published EC Commission reference rate at the point at which the aid is legally committed by the Department). This calculation will take into account the proportion of funding available for the affected leaseholder and any aid they declare to have received from other sources during the current and the last 2 fiscal years. The declaration calls for this information.</p> <p>We will identify any Leaseholder Undertakings where only limited funding is available because their State Aid 'headroom' would otherwise be breached. If declarations are not provided in relation to any Leaseholder Undertaking,</p>



Role	Assessment
	<p>we will not be able to provide funding to that particular Leaseholder.</p> <p>NB Our requirement is that you will submit full details (other than works/costs, and State Aid declarations) even if your application is initially for eligibility or pre-tender support. This element of diligence will therefore not need to be repeated at a later stage.</p>

**Applicant or Nominated Representative Payment Details**

Delivery Partners will only make grant payments into either a Client Money Account or Trust Fund Account. The Applicant or its nominated representative must provide details as part of the first stage application of the Client Money Account or Trust Fund into which Delivery Partners will make grant payments. If the Applicant or its nominated representative is using a Client Money Account they are required to provide evidence that their organisation is registered under a Client Money Protection Scheme (CMPS) as described under the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018. This regime includes CM Protect, UKALA, RICS, NALS, ARLA PropertyMark and Money Shield.

If the Applicant or its nominated representative are not CMPS registered they will need to provide details of an account using a trust deed linked to a form of trust legally established for the benefit of leaseholders ('a Trust Fund'). This is to protect any funds paid into the trust fund account for the purposes of the Project and certify that it complies with the requirements of Section 42 of the Landlord and Tenant (LTA) Act 1987. The bank account holder – which may be the Applicant or its nominated representative - will need to complete the template trust deed evidencing the proposed terms so that this may be validated. This will be required before Delivery Partners make grant payments into the account.

**Second Stage Application**

**Submit tendered eligible full cost and works**

At this stage you will need a firm proposal, including detailed project plan and costs . You will be required to complete an online template for full works and costs similar to the one in Annex D. This will be similar to the second stage (full works and costs) questions outlined below.

If you have not already done so, you will now have to complete the required information for this section in the application form in the online portal.

The table below sets out the self-certification requirements which will you see as questions that you will be required to complete on the application portals in respect of your proposed works and costs, as well as guidance about how to answer them. Annex D outlines all other questions in the application portals.

This section of the portal relies on you to 'self-certify' by either choosing answers that are either binary (Y/N) or completing free text fields or dropdown lists. You should upload all the information we ask for including completed templates.

The information we require you to either upload or keep on file is intended only to reflect the standard project documentation normally required to ensure that a cladding remediation project will be successful.

Once you have submitted your application, we will work with you to resolve any issues, including any areas where you are unable to self-certify compliance with the fund requirements. Following this, it is your responsibility to self-certify compliance and provide the required information as soon as possible.

## Second Stage – Full Works and Costs Application Questions

### Scope of Works, Project Team Appointments and Resident / Leaseholder Notifications

General guidance regarding what constitutes a 'competent professional' can be found under 'Competent Professional'.

**Requirement:** You must confirm that a 'competent professional' has certified that the planned remediation design and Works comply with the Building Safety Fund's technical requirements for replacement cladding system, and that you have on file formal written evidence of this, that is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** This confirmation and certification sign off must be provided by the Design Manager working with the design team e.g. engineer, architect, quantity surveyor etc. They must be experienced in façade design or working on the fire safety of external wall systems on high-rise buildings to ensure that the coordinated design achieves the BSF Fund requirements.

For simpler projects where there is only one discipline involved, i.e. an Architect undertaking cladding design, then the Architect will be acting as Design Manager under these circumstances and should be able to confirm the design meets the technical requirements.

The BSF requirements can be found in Annex A. We will also provide you with building specific requirements during the registration phase. Certification by the competent professional may take the form of a design report or technical note certifying that the design meets the BSF requirements.

#### Document(s) you must keep on file:

- A design report or technical note by a competent professional on the design of the remedial works.

**Requirement:** You must confirm that sign off of the Specification or Employer's Requirements (your design and specification) detailing the full project Works has been provided by a 'competent professional' and that evidence of specification sign-off and records in accordance with the above are available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** This confirmation and certification must be provided by the Design Manager working with the design team e.g. engineer, architect, quantity surveyor etc. They must be experienced in façade design or working on the fire safety of external wall systems on high-rise buildings to ensure that the coordinated design achieves the BSF requirements.

For simpler projects where there is only one discipline involved, i.e. an Architect undertaking cladding design, then the Architect will be acting as Design Manager under these circumstances and should be able to confirm the design meets the technical requirements

## Second Stage – Full Works and Costs Application Questions

The Specification or Employer's Requirements define your requirements including the scope of works and services including allocation of risks that are used in conjunction with your tender documentation to help procure a contractor.

You must ensure that a competent professional provides sign-off that these cover the full scope of works required. You must also ensure that you record and store details of the fire safety classification of the replacement cladding material, insulation and sheathing board, where applicable and the fire safety classification of any of these materials which are being retained regardless of quantity)

### Document(s) you must keep on file:

- The Specification or Employer's Requirements
- Evidence of sign-off in writing of the Specification of Employer's Requirements by a competent professional
- Information on the fire safety classification of the replacement cladding material
- Information on the fire safety classification of the replacement or existing (if being retained) insulation
- Information on the fire safety classification of the replacement or existing (if being retained) sheathing board.

**Requirement:** You are required to hold and maintain a Project Directory of existing and proposed professional team appointments. Confirm you have such a directory and that it is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** The project directory must capture records of all consultants or contractors working or proposed to work on the project and must include their role on the project and their contact details. We recommend including pre-works information such as details of client, designers, other consultants, which is not a requirement under in Construction (Design and Management) Regulations (CDM Regulations) 2015.

### Document(s) you must keep on file:

- The Project Directory

**Requirement:** You must confirm you have appointment documentation for all appointments of professional team members made to date, and that these are available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** You are required to keep all existing appointment documentation (including scope of service, fee quotation and your acceptance) for all professional team appointments noted in the Project Directory, including costs relating to those you are claiming through your application.

### Document(s) you must keep on file:

For each member of the professional team:

- Scope of services to be provided

## Second Stage – Full Works and Costs Application Questions

- Fee quotation
- Evidence in writing of you accepting or confirming the appointment

**Requirement:** You must confirm that a 'competent professional' has agreed that all existing and proposed project scoping documentation covers the full scope of Works and there are no scope or coordination gaps, and that you have on file formal written evidence of this that is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** This confirmation must take the form of a competent professional signing off all scoping documentation as having been reviewed and is fully coordinated. The confirmation and certification sign off must be from the Design Manager and or the Project Manager. The Design Manager's role should include coordinating and integrating all aspects of the project including the design between disciplines to avoid missing or conflicts between any elements of design. As such the Design Manager should be competent to review project scoping document to ensure it meets the BSF requirements.

A Project Manager with similar experience may also be able to provide this certification by reviewing the scoping documents and coordinating with the disciplines at the appointment stage to ensure the scope of services are complete.

All designs that are prepared by different members of the project team must create a single, unified set of information.

### **Document(s) you must keep on file:**

- Evidence of written confirmation of this by the competent professional

**Requirement:** You must confirm that you have on file formal written evidence of competence for all professional project team appointments, signed off by you or an appointed 'competent professional', and that this is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** You are required to keep written evidence of competence for all professional team appointments. This must include where applicable evidence of membership to professional bodies and record of project experience etc. which, for example, might be submitted as part of project fee proposal. This should be available on request.

### **Document(s) you must keep on file:**

For each member of the professional team:

- Evidence of membership of relevant professional bodies; or
- Evidence of previous experience of similar projects

**Requirement:** You must confirm that appropriate levels of Professional Indemnity Insurance and limits of liability, for the risk associated and in accordance with industry best practice, are in place for all current appointments and evidence of this is available on request. *Your application will not proceed until you can confirm this.*

## Second Stage – Full Works and Costs Application Questions

**Additional Guidance:** All members of the professional team must have Professional Indemnity (PI) Insurance, with a minimum limit of £1m or of no less than the total cost of the works (whichever is the higher). The insurance must not have any exclusions for fire safety or cladding-related projects. You are required to keep evidence of Professional Indemnity Insurance for all existing and proposed professional team and contractor appointments and information on any limits of liability. This should be available on request.

If your contractor will have some design responsibility, you must also ensure that the Contractor has PI Insurance to cover the design of the works.

If this is not possible, you must explain why that is the case and specify when confirmation can be provided. If any member of the Professional Team or the Contractor are unable to secure PI Insurance at commercial rates for the remediation of the cladding, you are to provide full details for further consideration by the Delivery Partner and MHCLG.

### Document(s) you must keep on file:

For each member of the professional team and (where applicable) your contractor:

- A PI insurance certificate showing the level of PI cover
- A copy of the PI insurance policy

**Requirement:** You must confirm that residents and leaseholders will be informed of the proposed Start on Site Date at least two weeks prior to such date. *Your application will not proceed until you can confirm this.*

### Document(s) you must keep on file:

- Evidence of communication of start on site date to residents and leaseholders

## Statutory Approvals

**Requirement:** You are required to tell us if the Works require Planning approval.

If they do, then you must confirm that planning approval will be in place prior to start on site.

If the works do not require Planning Approval, you must confirm that you hold formal written confirmation, available on request, that Planning approval is not required.

### Document(s) you must keep on file:

- (If planning approval is required) formal planning approval by your local authority
- (If planning approval is required) a project plan which includes timelines for obtaining planning approval
- (If planning approval is not required) Evidence that planning approval is not required (e.g. an email from a planning officer).

**Requirement:** You must confirm that you have Full Plans Approval or a Plans Certificate in respect

## Second Stage – Full Works and Costs Application Questions

of the remediation works (available on request).

If you have not yet obtained Full Plans Approval or a Plans Certificate, you must confirm that this will be in place prior to start on site, or (where a Design and Build contract will be used) that Full Plans Approval or a Plans Certificate will be in place at completion of Royal Institute of British Architects (RIBA) Stage 4.

**Additional Guidance:** Full Plans Approval or a Plans Certificate are provided by your Building Control Body – either Local Authority Building Control or an Approved Inspector. This confirms that the planned works will comply with Building Regulations.

More information on the RIBA stages of plans of works can be found here:

<https://www.architecture.com/knowledge-and-resources/resources-landing-page/riba-plan-of-work> .

### Document(s) you must keep on file:

- Full Plans Approval or Plans Certificate

**Requirement:** You must confirm all remaining Statutory Approvals will be in place within the timescales required by the authorities providing the approvals. *Your application will not proceed until you can confirm this..*

**Additional Guidance:** Other statutory approvals required may include highways, Network Rail, utilities providers etc.

### Document(s) you must keep on file:

- Evidence of these statutory approvals (where applicable)

## Procurement

**Requirement:** You must confirm the Fund's standard contract requirements, as set out in Annex B have been included within the Works Contract. *Your application will not proceed until you can confirm this..*

**Additional Guidance:** These requirements set out what is required for the Works Contract with your main contractor.

### Document(s) you must keep on file:

- the Works Contract

**Requirement:** You must confirm and explain your procurement strategy i.e.

Procurement Routes: -

-Traditional

-Design & Build

## Second Stage – Full Works and Costs Application Questions

- Other

### **Additional Guidance:**

Traditional: contractors are asked to tender for carrying out the works on the basis of a specification and/or drawings that have been fully designed by the professional team.

Design & Build: contractors tender based on partially complete design information on the basis the appointed contractor will have the responsibility for completing the design and carrying out the works. The Contractor must have evidence of PI Insurance certificates that cover the design of the works. If the Contractor is unable to secure PI Insurance at commercial rates for the remediation of the cladding you are to provide full details for further consideration by the Delivery Partner and MHCLG.

**Requirement:** You must confirm and explain your tender strategy i.e.

### Tender Routes: -

- Obtaining Quotes / Open tender

-Negotiated

-Other

### **Additional Guidance:**

Obtaining Quotes / Open tender: quotations and proposals are sought from numerous contractors, and one is selected on the basis of quality, competence, experience and cost.

Negotiated: a single contractor is approached to conduct the Works and costs are negotiated.

## Contract Execution

**Requirement:** You must upload the completed full works and costs spreadsheet we provide to calculate your total project costs. The contents of the spreadsheet will be similar to the template provided in Annex D. *Your application will not proceed until this has been uploaded.*

**Additional Guidance:** You must ensure that this includes an appropriate contingency amount as part of your contract sum with your main contractor

### **Document(s) you must upload:**

- The completed Full Works and Costs spreadsheet

**Requirement:** We require you to confirm the value of the total eligible costs and that this is based on a tender price. *Your application will not proceed until this has been provided.*

**Question:** You must confirm that a 'competent professional' agrees and has signed off that the contract sum represents a reasonable sum for the Works cost given current market conditions,

## Second Stage – Full Works and Costs Application Questions

taking into account any qualifications or exclusions, and that evidence of this is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** Contract sum means total Works cost split between ineligible and eligible costs. The reasonable sum should represent the market price.

This confirmation and certification must be from the project cost consultant or quantity surveyor with similar experience who will be in a position to compare the contract sum against your pre-tender estimates, MHCLG benchmarks. They should use their professional experience to take into consideration the prevailing market conditions.

### Document(s) you must keep on file:

- Confirmation by a competent professional, which may take the form of a tender report or tender recommendation

**Requirement:** You must confirm that a ‘competent professional’ agrees and has signed off that the split of costs between eligible and ineligible costs are accurate and that the breakdown is accurate and the totals are correct, and evidence of this is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** This sign-off must consider the breakdown between eligible and ineligible costs as described in this application guidance. If the competent professional or you are uncertain about whether some costs are eligible, you should ask your Delivery Partner.

This confirmation and certification must be provided by the project cost consultant or quantity surveyor with suitable project experience. You should note that Government requires a Duty of Care Deed from your cost consultant and or Quantity Surveyor.

### Document(s) you must keep on file:

- Confirmation by the competent professional, which may take the form of a tender report or tender recommendation.

**Requirement:** You must confirm that a ‘competent professional’ agrees and has signed off that the Works programme has been reviewed and is considered a reasonable estimate of time for the Works, and that evidence of this is available on request. *Your application will not proceed until you can confirm this.*

**Additional Guidance:** This confirmation and certification must be provided by the Project Manager, who will be able to review the plan for the remediation works, and the durations against their pre-tender estimates, available benchmarks and to use their professional experience to advise on whether the timescales are reasonable for the works proposed.

### Document(s) you must keep on file:

- Confirmation written by the competent professional

**Requirement:** You must confirm if the Works Contract will require any design to be carried out by the contractor (Contractor’s Design Portion). *Your application will not proceed until you can confirm this..*



## Second Stage – Full Works and Costs Application Questions

**Additional Guidance:** Contractor Design Portion is an agreement for the contractor to design specific parts of the works. The contractor may in turn sub-contract this design work to specialist sub-contractors.

**Requirement:** You must confirm that the lead designer, if separate from consultant, agrees that any Contractor's Design Portion elements are suitable and sufficient in order to complete the design development in accordance with the Fund requirements, and that evidence of this is available on request. *Your application will not proceed until you can confirm this.*

**Additional guidance:** The lead designer (sometimes referred to as the design coordinator), directs and co-ordinates other designers in the consultant team as well as any specialist designers that are appointed. If you do not have a lead designer, then you must confirm the same for the competent professional undertaking similar activities to a lead designer and indicate who this is doing this role.

### **Document(s) you must keep on file:**

- Confirmation by the lead designer or other appropriate consultant

### **Assess eligible full works and costs**

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

### **Funding decision and grant funding agreement**

When a decision is made, we will write to you setting out our decision and next steps. You will need to complete and sign a Grant Funding Agreement including ancillary documents (standard form collateral warranties and a Duty of Care Deed from the cost consultant). You may submit a request to drawdown approved funds once the grant funding agreement is completed and all the relevant conditions have been met.

### **Project Delivery**

Following award of funding and signing of the Grant Funding Agreement, we require you to enter into a Works contract. We have laid out in Annex B the Works contract requirements and other additional information you will need for your project.

### **Monitoring**

You have an obligation to provide project management information at minimum on a monthly basis, as set out in Annex D. This information will be used to monitor progress and costs. We require you to provide it, at the latest, within 7 working days following the end of the previous month.

We will use this data to understand where projects are not proceeding according to plan and triage support to those projects who might need it, for instance where completion dates are slipping or where spend is falling behind that expected. This support could include Applicant (Client) Side Support to help progress projects. You retain responsibility and accountability for your project.

## **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 the Delivery Partner. If a variation to the maximum grant sums is approved, MHCLG will confirm this in writing to the Applicant.

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 non-ACM 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 not 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.

In all cases where 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.

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. For these reasons, we will require your cost consultant (or quantity surveyor) to enter into a Duty of Care Deed with MHCLG.

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 the unsafe non-ACM remediation work. 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 unsafe non-ACM remediation works.

We have outlined in Annex D questions relating to variations. Further details of the cost variations process will be provided by the Delivery Partners in the application portal User Guides.

If further assistance is required, Delivery Partners 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.

### **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. Delivery Partners may engage their cost consultants to work with you when settling final accounts. Annex C lists some of the documents we require you to ensure your competent professional provides to you at practical completion. These should be available on request..

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

### **Open book access**

The BSF processes follow the Government's approach to open book contract management. These help MHCLG maintain a clear line of sight between the cost requirements for eligible works compared to the MHCLG funds granted. A low cost, minimal open-book approach is applied, which provides us with assurance that value for 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 to the online application portal. We require you to keep on record any other documents that you have confirmed you have obtained so they are available when requested. The Grant Funding Agreement requires MHCLG, Delivery Partners and appointed third parties are given access to required information and documentation.

During works:

The MHCLG and Delivery Partners (GLA and HE) 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 MHCLG 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.