



Ministry of Housing,
Communities &
Local Government

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

Social Sector Grants (leaseholder costs) Guidance

July 2020

Ministry of Housing, Communities and Local
Government



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Building Safety Fund for the remediation of non-ACM cladding systems

Introduction

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

This guidance is for social sector Claimants to the Building Safety Fund and provides you with further information about the fund and how Registered Providers of Social Housing (RPs) can claim funding equivalent to the value of work which would otherwise be charged to leaseholders. If you are a registered provider of social housing and have registered an interest to discuss your financial viability, the Department will make contact with you using the details provided at registration.

The government published the Registration Prospectus¹ for the Building Safety Fund on 26 May. The prospectus includes guidance on the remediation of non-ACM buildings.

As a Claimant to the Building Safety Fund, we expect 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 regular updates to them on the progress of your funding application and remediation works. As a minimum we expect you to provide updates to leaseholders at the following key milestones, in whichever order they occur.

- Claim submitted
- Claim approved
- Commencement of works (with an estimated completion date)
- Works completed.

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

About the Building Safety Fund

The Government announced a new non-ACM Cladding Systems Remediation Fund ('the fund') in the Budget on 11 March 2020. This is to fund the remediation of unsafe non-ACM cladding systems (including, for example, certain types of other metal composite or High-Pressure Laminate panels) on high rise residential buildings (i.e. are 18 metres and over in height).

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

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887452/BSF_Non-ACM_Cladding_Prospectus.pdf

Funding will be provided to the Responsible Entity for each building as the organisation responsible for the remediation of cladding from the building.

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:

- removal and replacement of unsafe non-ACM cladding systems
- improved leaseholder communication and engagement
- projects delivered at pace, on time and budget

Private sector building owners whose leaseholders would otherwise incur the costs through service charge arrangements, should access separate funding guidance that can be found here <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#fund-application-guidance>. Social sector housing providers who have demonstrated during the registration process that the costs of remediation are unaffordable or are a threat to financial stability will be contacted by the Department directly.

How much money is available?

The Government is providing £1 billion grant funding in 2020/2021 to cover all reasonable costs for the remediation of unsafe non-ACM cladding systems on high-rise residential buildings.

Driving the pace of remediation

As set out in registration prospectus, the £1bn available under the Building Safety Fund is available in the financial year 2020/21. Therefore, each time an application is approved by MHCLG funds 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.

Funding for social housing providers will be allocated alongside private sector funding. We will require the same commitment to meet payment milestones as early support payments. Payment will be made first to those Claimants who can assure us that they will be in contract with a main contractor, which is in possession of the site and has started to deliver this contract by 30 September 2021.

Claim forms must be completed and returned to BSFsocialsector@communities.gov.uk by 30 June 2021 or else the claim will not be taken forward. This is also in line with milestones set for the private sector.

We will not distinguish between these applications when allocating funding provided, they are eligible. If the funds are fully allocated, Claimants 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.

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.

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

Who can apply?

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

The Responsible Entity (henceforth referred to as the Claimant) 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.

A sample lease or leases related to the properties against which the grant is being claimed would be considered appropriate evidence of the legal obligation to carry out works and the right to recover costs through a service charge.

The Department will carry out sample checks on a percentage of buildings for which claims are submitted, these checks will seek confirm that appropriate evidence is available to validate the value of the claim.

Claimants can appoint representatives to help manage their application, but as a condition of funding, Claimants must enter into a funding agreement on terms acceptable to MHCLG.

What we will we fund

You will be able to claim for funding equivalent to the value of work which would otherwise be charged to leaseholders, who will therefore be the beneficiaries of this funding. We will fund reasonable eligible capital costs for qualifying project works that remediate unsafe non-ACM cladding systems on high-rise residential buildings.

To access funding the Department will expect that work can start on site by 30 September 2021. Claims will need to be submitted based on the eligible costs as set out in the prospectus.

The start on site date is the commencement of physical work beyond interim measures to permanently make the building safe, such as starting to remove and replace cladding. This should be the contractual start date for all works, if the contract includes works beyond the scope of remediation.

The Fund is only for remediation of unsafe non-ACM cladding systems (in scope remedial works – see Annex A² of the Prospectus) on high rise residential buildings 18 meters or higher, with an allowable tolerance of 30cm under this height. Details on how to measure your building are included in the technical Annex A to the Prospectus.

We cover a wide range of direct project costs including:

- Works directly related to the replacement of unsafe non-ACM cladding systems³ including:
 - Access, where apportioned appropriately and directly related to qualifying works (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 items⁴
- Managing agents' fees in respect of administering qualifying expenditure⁷
- 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 will be informed by an industry standard approach to specification and procurement of works, having regard to cost benchmarks established from comparable projects. Higher than expected costs will be challenged and will be subject to further scrutiny, and the level of grant may be reduced.

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.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887231/Annex_A_-_technical_information.pdf

³ 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.

⁴ Apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs.

- Professional team fees in respect of non-qualifying items.
- Managing agents' fees in respect of administering non-qualifying expenditure.
- Costs which would not otherwise be recovered from leaseholders through the service charge provisions in their leases⁵.

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

When and how can I apply for funding?

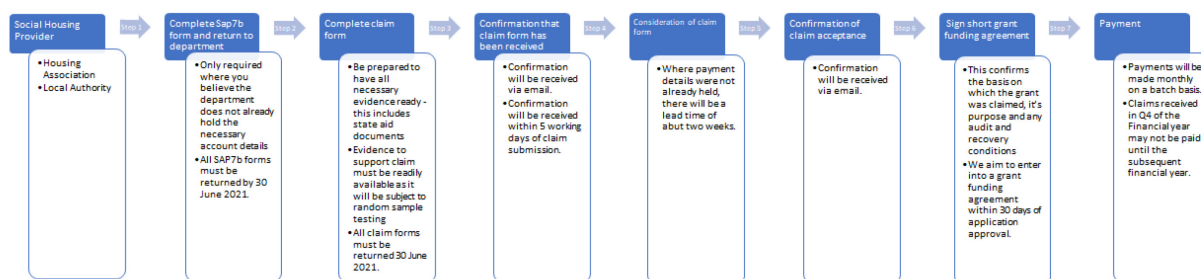
The claim process will open on 31 July 2020 and the fund is available up to 30 September 2021.

To be eligible, you will need to certify;

- You hold contractual rights to carry out works and for the cost of remediation of unsafe cladding to be borne by leaseholders.
- The cost of remediation, on which the value of a claim will be based.
- That cladding is unsafe, as defined in the Building Safety Fund prospectus.
- The project will be on site and remediation work will have started by 30 September 2021.

Application Process

Your application process journey as below:



The claims process opens 31 July 2020 and will be available through the remainder of the financial year to 30 September 2021.

⁵ 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

You will need to complete the online claim form and return it to BSFsocalsector@communities.gov.uk by 30 June 2021. To be considered eligible for funding you must provide:

1. Confirmation that evidence is available to support submissions regarding eligibility of height and materials.
2. Confirmation of costs of the project – this could be a report from a cost consultant, together with the basis on which costs attributable to leaseholders have been calculated.
3. Confirmation that you have the legal right to recharge leaseholders – this could be evidence in the form of a copy of lease agreement that contains the legal right to pass cost back to leaseholders. Social housing providers will be expected to show a representative sample demonstrating that the ability to recharge is across all leases.
4. Certification that the project will be on site and remediation work will have started by 30 September 2021.

Whilst the Department requires that the building owner has the right to carry out remediation, at the leaseholder's cost, we do not expect building owners to have to undertake a S.20 process or demonstrate an intent to exercise their contractual rights. However, it may be necessary to do so if other work is to be undertaken.

You will be expected to make a claim building by building. To be clear, the Department we will only be making payments to those that are able to be in contract and on site by 30 September 2021 and where work has not commenced before 11 March 2020; this requirement is the same as for application close in the private sector.

By submitting a claim per building rather than bulk submissions per Local Authority or Housing Association, it will mean that a claim can be put in and not have to wait if another building is unable to confirm their start on site date or there are other delays in verifying information.

Claims will be paid monthly on a batch basis, and any claims received in Q4 of the Financial year may not be paid until the subsequent financial year. Certified bank details may be required and the paperwork for submitting these details will be provided alongside a claim form.

Evidence requirements

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

We will require that evidence is available on request to support the information certified in the claim form. The Department will carry out sample checks on a percentage of buildings for which claims are submitted, these checks will seek confirm that

appropriate evidence is available to validate the value of the claim. We **recommend** the following:

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

The grant claim must be prepared and authorised by separate individuals. In Local Authorities S.151 Officers are required to sign off claims under the fund. For other Registered Providers the claim must be authorised by the organisations Financial Director, or the equivalent member of an appropriate professional body.

As stated above we do not require the submission of multiple pieces of evidence. Where separate products and materials are identified in separate reports, we expect that you have this evidence readily available should it be called for sample testing.

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

Self-certification

We will expect you to self-certify any evidence you will use in support of your application. You will be required to sign a declaration stating that what you are submitting is true and accurate to your knowledge. We acknowledge that costs will be based on returned tender prices which may vary. However, it is important to note that once agreed, the amount of grant funding requested cannot be varied.

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

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

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

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 organisations. Any payment made by the government which is subsequently found to be unlawful State Aid would need to be repaid.

Even small amounts of aid to individual Leaseholder Undertakings⁶ tantamount to State Aid, so to comply with State Aid rules we are taking advantage of the State Aid de minimis regulation⁷ 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.

Where the de-minimis apply, 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, we will check the information provided by the Claimant against the amount available under the de minimis regulations. This will include State Aid calculations to make sure an Undertaking does not breach the €200,000 threshold for de minimis State Aid.

When you apply to the fund, for State Aid purposes you will act as our agent. You take on the responsibility to write to all your leaseholders informing them of the State Aid rules. We will provide you with the letter templates which you must use to undertake the following:

- Ask leaseholders who identify as Undertakings to declare any other de minimis aid they have received during the current and previous two fiscal years before the BSF grant is provided;
- Inform all leaseholders explicitly that it is de minimis aid we are giving them, for their future reference. You should tell leaseholders that if they are Undertakings, they must declare the BSF grant(s) in future if asked.

You should tell leaseholders that if they are Undertakings, they must keep records of de minimis aid for a minimum of three years. We only expect 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

⁶ An Undertaking is a person that is engaged in economic activity in relation to all or part of the Building. This may be an individual, company or trust.

⁷ 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.

assessment of the leaseholders within your Building. You should have all State Aid documentation readily available.

The de minimis regulation requires that public authorities keep records of all de minimis aid paid out for 10 years from the last payment. 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 expected to sign a declaration confirming the information provided about these Undertakings is full, accurate, complete and complies with the requirements of this guidance and the registration prospectus. You should note that the declaration also empowers MHCLG to recover monies from Leaseholders should any information turn out to be incorrect or incomplete or if they have received illegal State Aid. The funding agreement contains similar powers to recover sums from you should your self-certification responses prove to be incorrect.

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

Your payment details

Payment of grant funding will be made directly into the responsible entity's bank account. Payments will be made in batches on a monthly basis from September 2020. Further information on the payment date will be provided on approval of your claim. Payments will only be made for projects which meet the criteria for start on site by the 30 September 2021, though some payments may be made after this date.

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

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

Cost recovery

You are expected 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 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 non-ACM cladding. Where building owners have already recovered damages, you 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

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, 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.

Addressing leaseholder concerns

This document summarises how we expect you to keep leaseholders 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 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 will act as the 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/>.