

# Building Safety Fund for addressing life safety fire risks associated with cladding in high rise buildings (England only): Fund application guidance for buildings registered in 2020

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Department for  
Levelling Up, Housing and Communities



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## Introduction

The Government announced the Building Safety Fund (henceforth referred to as BSF or Fund) in the Budget on 11 March 2020, to fund the remediation of unsafe cladding systems on high rise residential buildings.

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

This guidance is for applications to the BSF from Responsible Entities (also referred to as the Applicant in this guidance) for grants to address the life safety fire risks caused by unsafe cladding systems on high-rise residential buildings that **registered their expression of interest as part of the registration stage that opened on 1 June 2020 and closed on 31 July 2020.**

The Responsible Entity is the organisation that has the legal obligation or right to carry out the remediation works. The Responsible Entity may be the building freeholder or head leaseholder or a management company or Right To Manage (RTM) company that has primary responsibility for the repair of the property<sup>1</sup>.

Applicants had up to 30 September 2022 to provide sufficient evidence to determine eligibility. using the original BSF technical requirements regarding the removal and replacement of unsafe cladding systems.

***Important: any potentially eligible building without a funding solution that was not previously registered still has an opportunity to access funding. New applications will either apply through the BSF or the Cladding Safety Scheme as appropriate (depending on location, as explained below) and will draw on a Fire Risk Appraisal of External Walls (FRAEW) completed following PAS 9980:2022 methodology.*** From 9 May 2023, applications for buildings outside a London borough should be made to the [Cladding Safety Scheme \(CSS\)](#), delivered by Homes England. This also applies to new applications from high-rise buildings in London which are situated within mixed height developments<sup>2</sup> including 11-18m buildings. . New applicants should visit [here](#) to start their application.

Applications from high-rise residential buildings in a London borough should continue to be made to the Building Safety Fund. Further details can be found in Building Safety Fund Guidance for new Applications 2022 [here](#).

## Fund overview

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<sup>1</sup> RTM Company: a company formed by qualifying leaseholders in order to acquire the management functions relating to a building or self-contained part of a building pursuant to the Commonhold and Leasehold Reform Act 2002.

<sup>2</sup> Buildings which have been combined or joined to create larger blocks, where these are separated from any adjacent buildings by compartmentation and / or where there are limits to circulation; and where the buildings are owned by the same freeholder and managed by the same managing agent.

The Fund was open to registrations between 1 June 2020 and 31 July 2020. If you registered your building during this time period and had submitted sufficient evidence to determine your eligibility by 30 September 2022, this guidance applies to your application.

This Fund will cover all reasonable eligible costs<sup>3</sup> for the works required to address life safety fire risks associated with cladding on high-rise residential buildings in England.

Applicants from the social sector will need to have demonstrated during registration that the costs of remediation in respect of their own stock 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 to the Social Sector Grants (leaseholder costs) Guidance at <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 may be contacted directly. DLUHC will ensure the Regulator of Social Housing is notified and invited to comment, it may be necessary for the Department to contact you directly to discuss.

## Fund objectives

The objectives of the Building Safety Fund are that:

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

## The Building Safety Act

The Building Safety Act received Royal Assent on 28 April 2022 and will come into force over the coming months. The Act includes measures to protect qualifying leaseholders from the costs of cladding remediation. It will also implement a number of policies aimed at improving the regulation of building safety in England.

We will continue to make funding available via the BSF for buildings which meet the eligibility criteria in this guidance, and other existing funding programmes. This includes funding for works that leaseholders would formerly have been obliged to pay for under their lease terms but who now qualify for protection from cladding remediation costs (as the holder of a qualifying lease<sup>4</sup>) under Schedule 8 of the Building Safety Act.

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

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

## **Developer Pledge/ Developer Remediation Contract**

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

On 13 April 2022, the Department announced that leading residential developers had pledged to remediate life critical fire safety defects in buildings over 11 metres that they have played a role in developing or refurbishing over the last 30 years in England. The Government wrote to developers on 30 January 2023 asking them to solidify their pledge and contractually commit to remediating unsafe buildings that they developed or refurbished. . Developers who have signed the contract have also agreed to reimburse any funding received from government remediation programmes in relation to buildings they had a role in developing or refurbishing. The contract and details of the developers who have signed the contract can be found [here](#) <sup>(OBJ)</sup>

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

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

## **Proportionality and the introduction of PAS 9980:2022**

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

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

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

Where your full funding application has been approved, you should not submit an FRAEW and continue to follow the original BSF technical requirements, which requires the removal

and replacement of unsafe cladding systems. If ineligible works to the external wall of your building are causing a delay to eligible works being performed, please contact your delivery partner.

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

You may use your existing Pre-Tender Support monies to fund the cost of an FRAEW. If the FRAEW recommends actions to address life safety fire risks, your eligibility for the fund will change to reflect this. If you did not use PTS funds to undertake the FRAEW, you will be reimbursed at the point of full works and costs approval.

For applicants registered in 2020 who are legally and technically eligible for funding, we will fund the costs of an FRAEW done to PAS 9980:2022 methodology once the FRAEW meets our published requirements, even where the assessment recommends no remedial action is needed.

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

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

### **Guidance for Applicants with FRAEWs that present multiple options for remediation**

We expect the company that carried out your FRAEW to provide clear recommendations and justifications for remedial action(s) (for more information see [Annex A of the Building Safety Fund Guidance](#)).

If your FRAEW has identified multiple options, following our review of your FRAEW we will provide you with a certificate for completion.

This will require you to consider the criteria in the box below when specifying your chosen remediation option(s) for your building wall types.

You will need to apply the criteria below when deciding which remediation option to pursue for each wall type(s).

<p><b>Criteria:</b></p> <p>It is expected that you:</p> <ul style="list-style-type: none"><li>• Consider value for money and choose a solution where the costs of the</li></ul>
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remedial works pursued are reasonable and are proportionate to the level of risk present.

- Ensure your project team are considerate to the needs of residents and leaseholders when considering the remediation options, recognising that any planned works are likely to be disruptive and this impact should be mitigated where possible. The Code of Practice for the Remediation of Residential Buildings sets out the Government's expectations on how this should be done (for further details see 'keeping leaseholders and residents informed')
- Engage the original FRAEW assessor and/or appropriate professional to ensure that the proposed works to address fire risks to life safety presented by the external wall system will reduce risks to a tolerable level.

You may need additional consultants to help you decide which option to pursue and your original FRAEW assessor should be able to assist with which professionals you may need to appoint.

### **Scope of the Fund**

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

- (a) was granted on market terms<sup>5</sup>,
- (b) requires the property to be used exclusively for residential occupation; and
- (c) was granted on a date prior to 11 March 2020 at a premium and which was granted originally with a term (i.e. period) of not less than 21 years

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

For these buildings, funding will be available for the full eligible costs of the project subject to the assessment of a full application. Buildings which have previously been confirmed as meeting the BSF's legal eligibility criteria will remain eligible.

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

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<sup>5</sup> Shared ownership leases would qualify but leases of units owned by social housing providers that let them on a week to week or month to month basis to fulfil their social housing function would not.

- Buildings with cladding systems in scope where remediation works had been committed to, started on site, or had been completed prior to the Budget announcement on 11 March 2020.
- other non-residential buildings, for example Hotels, Hospitals, Offices and buildings where there is no residential component.
- Purpose-built student accommodation, or where a lease specifies a property is to be used exclusively as student accommodation
- buildings developed as part of a Private Funding Initiative (PFI) scheme<sup>6</sup>.
- buildings under 18m in height (buildings 11-18 metres should apply to the Cladding Safety Scheme (CSS), delivered by Homes England, [here](#)).
- buildings over 18m in height situated within London which are a part of a mixed height development which includes other 11-18m buildings (these buildings should apply to the Cladding Safety Scheme (CSS), delivered by Homes England, [here](#)).
- buildings 11m+ situated outside of London boroughs (as of 09 May 2023, these buildings should apply to the Cladding Safety Scheme (CSS), delivered by Homes England, [here](#))

For residential buildings eligible for BSF, the Department expects that any unsafe <sup>7</sup>ACM cladding found will need to be removed and replaced, the costs of which will be eligible for government funding. Competent persons carrying out an FRAEW following the methodology set out in PAS 9980:2022, should take this into account when undertaking the FRAEW.

## Fund structure and administration

DLUHC 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 (our Delivery Partners). Delivery Partners will draw on specialist expert legal and cost consultancy support to help assess applications.

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

The following types of funding are available in the BSF:

- Pre-Tender Support (PTS) funding, where needed - which will only be made available once you have completed the first stage application, been approved following technical and legal eligibility assessment and signed the Short Form Funding

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<sup>6</sup> We will not put funding into a PFI scheme because the purpose of having a housing PFI arrangement is that the private sector bears the risk of these costs and to intervene would trigger a reclassification into the public sector.

<sup>7</sup> Unsafe ACM refers to ACM systems that have been identified as containing combustible materials (e.g. a polyethylene core in an aluminum composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. It is important to note that materials may have been fitted or maintained differently and issues such as the provision of cavity barriers and fire stopping are also critical to the overall performance of the wall system. A FRAEW completed drawing on PAS 9880 methodology should take all of these factors into account.

Agreement for PTS. PTS can also be used to fund the costs of undertaking a FRAEW if applicable.

- Full Cost funding – which will only be made available once you have completed a full application, been approved following technical and legal eligibility assessment and signed the Grant Funding Agreement (GFA). This includes the cost of work undertaken at the pre-tender stage where PTS funding has not been provided.

Your building being deemed eligible or being approved for Pre-Tender Support is not confirmation that you will get full cost 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 DLUHC and the GFA has been completed (i.e. dated) following execution.

## **Driving the pace of remediation and enforcement**

It is essential that the life safety fire risks associated with cladding are addressed as quickly as possible to ensure that residents are safe and feel safe in their homes. Full applications for the BSF must therefore be submitted without delay following confirmation of eligibility. We expect responsible entities to ensure they set out and follow a realistic but ambitious project delivery timetable, and to keep Delivery Partners fully informed about any changes to those timetables.

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

## **Engaging with residents and leaseholders**

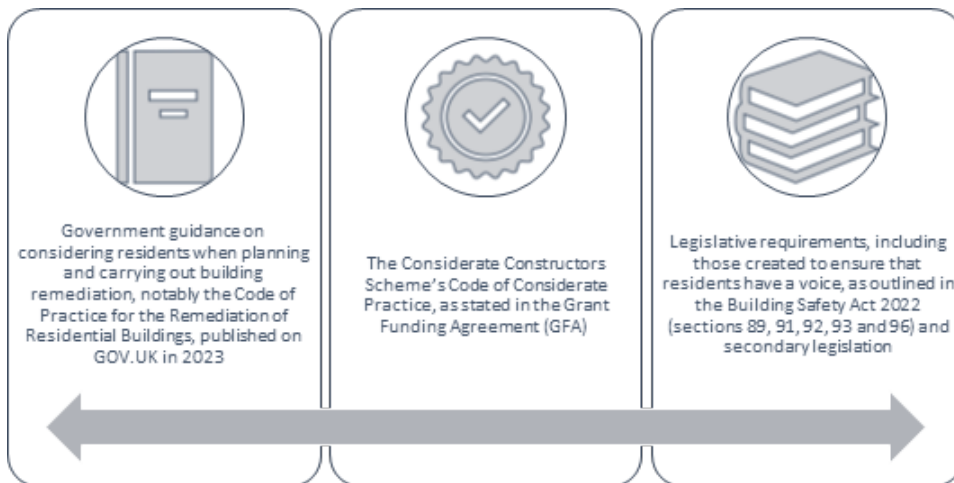
Residents must be at the heart of building safety, with those responsible for remediation projects and works considering residents as a key stakeholder.

Throughout a remediation project, all residents and leaseholders should:

- receive appropriate information and be meaningfully engaged;
- be made aware of the likely impacts on their lives and understand how these impacts are being (and will be) identified, assessed, and managed; and
- know what to expect from those responsible for delivering the project and where to go when they have questions or issues arise.

## **Our expectations**

Building Safety Fund (BSF) applicants are expected to comply with the following:



Click on these links to find out more:

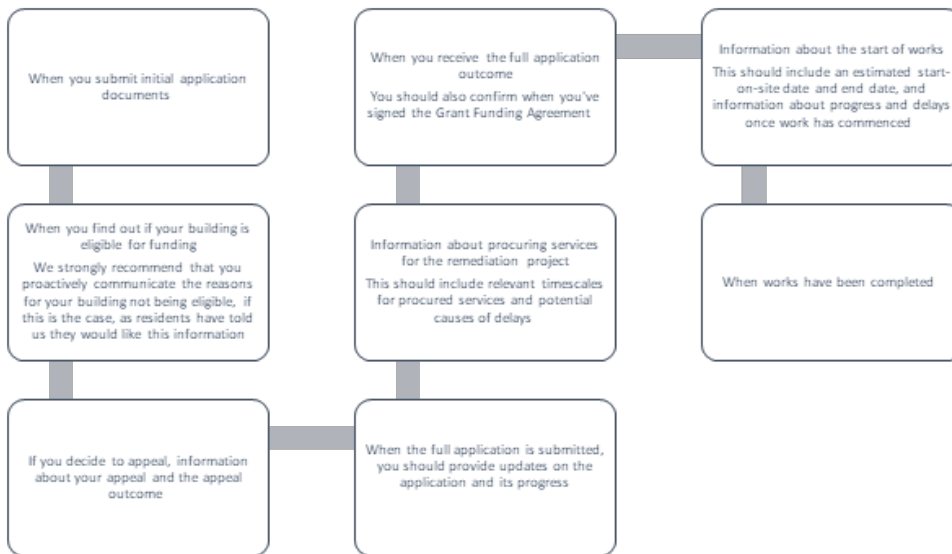
- [The Code of Practice for the Remediation of Residential Buildings](#)
- [The Code of Considerate Practice](#)
- [The Building Safety Act 2022](#)

Where there is any conflict between the Code of Considerate Practice and the Grant Funding Agreement (GFA), the provisions of the GFA prevail.

### Keeping leaseholders and residents informed

In alignment with the Code of Practice for the Remediation of Residential Buildings, the Department for Levelling Up, Housing and Communities (DLUHC) requires applicants (or their official managing agents) to provide regular, up-to-date communications about their BSF-funded remediation project to BSF building residents.

Notably, meaningful information should be provided at the following milestones and at any time upon request:



The [Building Safety Fund \(BSF\) Leaseholder and Resident Service](#) is a secure online information portal that gives all residents in BSF buildings access to standard monthly updates on where their building is in the application process.







We email all applicants (and their nominated leaseholder where the applicant has named one in their initial application) a Unique Building Code, specific to each building in the BSF, along with details of the Service.

We expect applicants (or their official managing agent or nominated leaseholder where one has been assigned) to cascade this information to all BSF building residents so that they can use the Service. Applicants should not share this code with anyone else.

This Service is designed to encourage engagement. Importantly, it does not remove the need for regular resident communications/ engagement from applicants or their official managing agents.

Where regular updates are not provided and applicants/ managing agents are unreceptive to providing information, residents can and do report applicants to the Department for Levelling Up, Housing and Communities (DLUHC) which we follow up.

For more information on what we expect from applicants, please read the requirements set out in Part 2 of the Code of Practice for the Remediation of Buildings, summarised below:

 <p>Residents should receive regular, up-to-date, communications about the project, with meaningful engagement throughout Those overseeing remediation should clearly set out how and when residents can expect that engagement</p>	 <p>Reasonable steps should be taken to identify and understand the needs of residents</p>
 <p>Residents should be given the opportunity to be engaged in making decisions when it is appropriate and possible to do so</p>	 <p>Residents should be able to meet those with a significant role in the project before work commences</p>
 <p>Communication methods should be appropriate and consider the identified needs of residents</p>	 <p>Residents should be clear on how they can ask questions, raise issues and make complaints relating to the project</p>




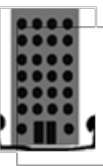


### Considering residents during remediation works

Applicants should ensure, or be assured, that any contractors or sub-contractors for their building’s remediation project:

- consider the impact of works on residents, and
- take reasonable steps to minimise these impacts on those occupying the building, thereby promoting a liveable environment.

This could include considering: the phasing of work, days/time of work, access to common spaces, maintaining ventilation and light, noise mitigation measures, measures to increase privacy, and site-security plans.

For more information on what we expect from applicants, please read the requirements set out in Part 3 of the Code of Practice for the Remediation of Buildings, summarised below:

 <p>Residents are appropriately included as part of the design and delivery of the project, including where changes are to be made during its course</p>	 <p>Reasonable steps are taken to reduce the impact of particularly noisy activities</p>
 <p>Reasonable steps are taken to avoid reducing natural light and/or ventilation wherever possible</p>	 <p>Reasonable steps are taken to reduce the impact of any works requiring access to residents’ homes and common facilities and amenities in the building</p>
 <p>Reasonable steps are taken to ensure the safety and security of the building and the residents</p>	 <p>Reasonable steps are taken to reduce disruption to the lives of any residents required to leave their homes temporarily during remedial works</p>

### Higher-risk buildings

In regulations, there are also additional requirements for higher-risk buildings. Higher-risk

buildings are buildings with at least two residential units which are at least 18 metres or seven storeys high.

Every higher-risk occupied building must have at least one, named, accountable person. This person is responsible for the repair of the structure and exterior of the building.

For buildings with multiple accountable persons, there will be a principal accountable person. If there is only one accountable person, that person will be the principal accountable person.

As an accountable person for a higher-risk building, you have to:

- keep residents informed about building safety,
- provide certain information to all residents at specific points, including when new residents move into the building, and
- provide additional information to residents on request.

As a principal accountable person for a higher-risk building you have to:

- put in place a resident engagement strategy which ensures that residents have the opportunity to understand and participate in the safe management of their building,
- put in place a complaints process for residents, covering complaints relevant to building safety, and
- engage and work together with other accountable persons to ensure the resident engagement strategy and complaints process works effectively.

Guidance on developing a resident engagement strategy has been published on GOV.UK: [Preparing a resident engagement strategy](#)

Additionally, the Building Safety Regulator has produced guidance for residents which can be found here: [Residents of higher-risk buildings](#)

## **Sources of information and support**

We expect you to signpost residents to relevant information. This includes:

- information on GOV.UK:
  - [Leaseholder and resident information on the Building Safety Fund](#)
  - [Residents step by step guide for applications made in 2020](#)
  - [Residents step by step guide for applications made in 2022](#)
  - [Code of Practice for the Remediation of Residential Buildings](#)
- information about the BSF Leaseholder and Resident Service. Please note that the Service's status updates now name the applicant's company (and the managing agent's company where an agent has been appointed)
- information from the Building Safety Regulator for residents of higher-risk buildings: [Residents of higher-risk buildings](#)

Finally, you should ensure that leaseholders are aware that they can get information and advice about their leases, rights or the BSF from the [Leasehold](#) Advisory Service (LEASE).

## **How to raise issues and make complaints**

As mentioned:

- under the Code of Practice for the Remediation of Residential Buildings, we expect all applicants (or their official managing agents) to outline to residents how they can raise issues and make complaints relating to your management of the BSF remediation project, and
- under regulations, higher-risk buildings also must have a complaints process for building safety issues.

If residents are still dissatisfied with how you have handled their issue, they can complain directly to DLUHC – see link below.

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

Any issues that you may have with DLUHC relating to the BSF, and which you have not been able to resolve with your BSF programme contacts, can also be raised through this complaints procedure.

## **Buildings that are 11-18m in height**

The Cladding Safety Scheme will provide funding for the management of unsafe cladding in England where a responsible developer cannot be identified, traced, or held responsible. It will be available to all eligible medium-rise buildings between 11-18 metres across England and applications for high-rise buildings over 18 metres outside of London. The scheme will be delivered by Homes England. If you need to apply for funding for a medium-rise building, visit [here](#) to start your application.

## **What we will fund**

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

For applications where an FRAEW done to PAS 9980:2022 methodology has recommended action to address fire safety risks posed by unsafe cladding, we will fund reasonable capital



costs<sup>8</sup> associated with eligible works on high-rise residential buildings.

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

- Works directly related to the removal and replacement of unsafe cladding systems<sup>9</sup>.
  - (if applicable) Works directly related to remediating unsafe cladding systems and mitigating measures, where recommended by an FRAEW (e.g., installation of sprinkler systems, smoke alarms, etc.).
  - Access, where apportioned appropriately and directly related to eligible works (e.g., scaffolding, mast climber etc.),
  - Removal and disposal of existing unsafe cladding,
  - Replacement materials,
  - Labour and reasonable on-costs to the contractor.
  - (if applicable) Reimbursing costs of an FRAEW. This will be at the point of full works and costs approval if the FRAEW was not paid for using PTS and your FRAEW recommends actions. Where a FRAEW shows no remedial actions are needed, reimbursement will be provided to applicants (who are legally and technically eligible for funding) once the Department is satisfied that the FRAEW meets our published requirements
- 
- Professional team fees in respect of qualifying items.<sup>10</sup>
  - Managing agents' fees in respect of administering qualifying expenditure.
  - Extraordinary technical requirements which incur extra costs essential to but not normally associated with removing and replacing unsafe cladding systems may be included. DLUHC will consider such requests for funding against relevant evidence.
  - Legal costs incurred in connection with a successful cost recovery action<sup>11</sup>.

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

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

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<sup>8</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>9</sup> System of one or more components that are attached to, and might form part of the weatherproof covering of, the exterior of a building.

<sup>10</sup> Apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs.

<sup>11</sup> The GFA requires applicants to take reasonable steps (where it is possible to do so) to recover remediation costs from a prior building owning, developer or cladding installer. Where an applicant is successful in a cost recovery action the Department accepts that any legal costs incurred in achieving that outcome should be deducted from any settlement monies produced prior to distribution, provided that such costs have been properly and reasonably incurred and DLUHC reserves its rights in this regard.

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

For example:

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

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

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

## **When and how to apply for funding**

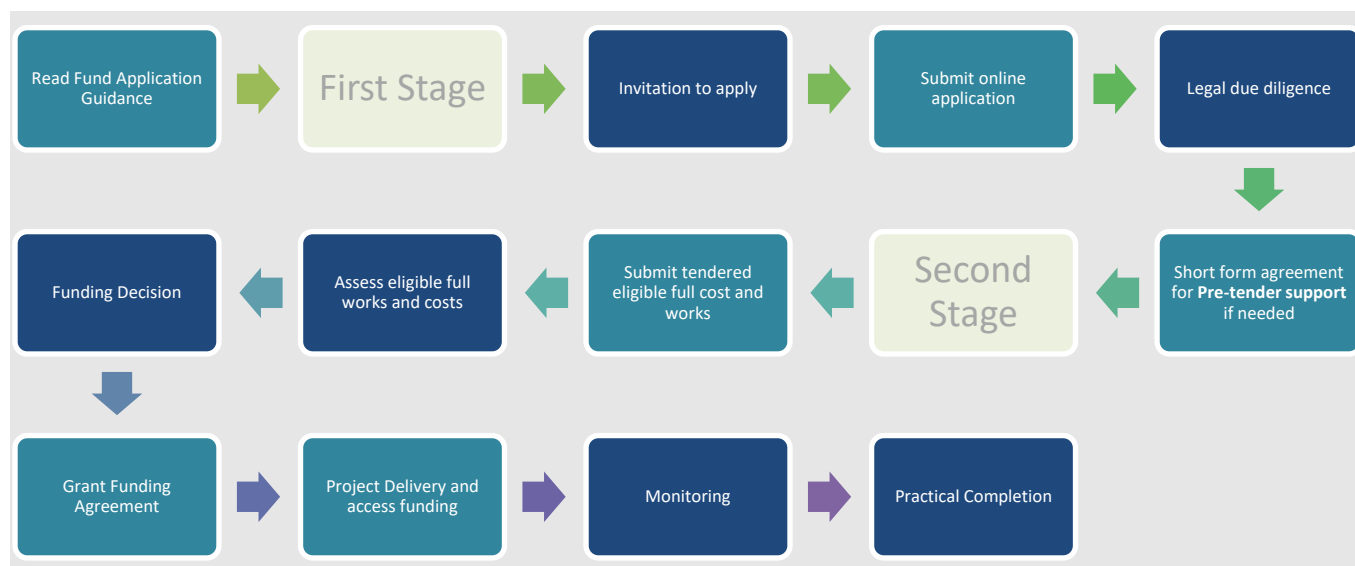
Applicants can appoint a representative to manage their application on a day to day basis and this, for example, may be a managing agent or the project manager leading the works. Even where a representative is appointed to lead the application, the GFA must be signed by the Responsible Entity. The Applicant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

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

In the social sector, the registration process is open to registered providers of social housing. Whilst it is not a requirement for providers to have residential leaseholders to receive funding, the Department will only fund works where remediation costs threaten the financial

viability of the provider or the Housing Revenue Account. For local authorities, this will require a declaration from a section 151 officer at registration phase. Registered Providers (Housing Associations) will be required to provide a business case to the Department setting out their financial position and options. The Regulator of Social Housing will be notified by the Department.

This is a summary of the journey of your application after technical eligibility has been confirmed by DLUHC.



## Application Journey

Based on the above diagram, your application can be split into four distinct stages:

### 1) Submission of technical information and invitation to apply

You will have submitted evidence regarding the technical eligibility of your application to DLUHC.

If eligible, Delivery Partners will invite you to submit your application online through their portals. Please do not attempt to apply if you have not received this invitation.

Existing registrants had until 30 September 2022 to provide sufficient evidence to determine eligibility in order to proceed using the original BSF technical requirements regarding the removal and replacement of unsafe cladding systems

### 2) Legal diligence and Pre-Tender Support

You will need to answer questions about your suitability to receive funding as the Responsible Entity for the Building (based on the legal eligibility criteria for access to the Fund set out in this guidance) and the ownership structure of the building. Our Delivery Partners and their legal advisors will assess the provisions of a nominated lease document to ensure that there is a Qualifying Lease present in the records for the building held at Land Registry and to confirm that the legal eligibility requirements have been satisfied. You will also need to answer questions about the building itself. We will carry out due diligence on the information you provide before providing any funding for pre-tender support or full support for the remediation works and reserve the right to reject an application if it fails to meet the

criteria set out in this guidance.

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

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 usually be limited to 10% of the estimated cost of work.

Whether you need (or are eligible for) pre-tender support, 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.

If you do not proceed with the works 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.

### **3) Full funding application**

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

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

You should answer all the questions in the application form and make sure you upload all required documents via Delivery Partners' on-line portals. 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,
- whether the Applicant is either required (via obligations owed to the leaseholders) to conduct any planned remediation works (whether or not these are chargeable to leaseholders) or entitled to do so either via its ownership of the Building or rights provided to it by the lease documents (for example in the case of a named

- manager in the leases),
- whether there is a Qualifying Lease present in the Building's online records at Land Registry,
- the FRAEW done to PAS9980:2022 methodology (if applicable)
- confirmation of appointment of your competent professionals<sup>12</sup>,
- confirmation of the competence of your chosen contractor
- whether your costs are for eligible works and are reasonable,
- when you will start on site or execute the 'Works contract'<sup>13</sup>,
- how you will monitor progress and evaluate costs,
- obtaining all statutory approvals including planning permissions,
- your forecast starts and practical completion dates,
- the efforts you have made to recover costs.

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 GFA including ancillary documents (standard form collateral warranties and a Duty of Care Agreement from the cost consultant). You may submit a request to drawdown approved funds once the GFA is completed and all the relevant conditions precedent have been met.

#### **4) On-site monitoring**

Following award of funding and signing of the GFA, we require you to enter into a Works contract with the main contractor. Arrangements where third parties who are not the applicant enter into a works contract on their behalf will only be accepted in exceptional circumstances (e.g., where two different entities are responsible for works to different parts of the building), and we may require additional documentation to be provided that deals with the use of any funding provided as between multiple entities and associated responsibilities. In particular, it will not be acceptable for one party to provide full consultancy services and act or appoint the main contractor without the applicant separately appointing an independent cost consultant to scrutinise the project and value of works completed. We have laid out in Annex B the Works contract requirements and other additional information you will need for your project.

#### **Self-certification**

The BSF process requires you to self-certify<sup>14</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.

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<sup>12</sup> "Competent Professional" relates to someone who meets the following criteria: is qualified in their field; is a member of a profession body, holds Professional Indemnity Insurance; is knowledgeable and has significant experience relevant to work specific technical aspects involved; is aware of the current state of knowledge in their field; and has accumulated sufficient experience to be recognised as having a successful track record. This criteria is not limited and there may be more considerations that may need to be had in certain circumstances; it is for Applicants to exercise their discretion when deciding if additional criteria needs to be met by a certain individual or company for it to be considered a "Competent Professional". It should be noted that simply having worked in a field, been involved in a field for a limited amount of time, or having an intelligent interest in it does not, by itself, make a person a competent professional.

<sup>13</sup> For the avoidance of doubt, this means when all parties to such a Works Contract formally agree and sign the final agreed version of that Works Contract.

<sup>14</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 DLUHC for the remediation of the unsafe cladding.

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

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

The GFA will require you to warrant that your confirmations to the self-certification statements are correct and accurate. It is therefore important, where you have appointed a representative to act on your behalf, to satisfy yourself that the project documentation and professional appointments have been correctly established in line with the requirements set by the Fund.

## **Cost recovery**

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

Where the developer who built or refurbished the building subject to the application is not funding the fire safety works, and where the Responsible Entity is unable to do so, then the BSF will cover all reasonable eligible costs to address the life safety fire risks associated with cladding. More information about the Developer Contract can be found at <https://www.gov.uk/government/publications/developer-remediation-contract>.

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

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

Where you do successfully recover damages relating to the remediation of the risks posed by

cladding the government will require Responsible Entities to pay the government any amounts recovered which relate to the remediation of the risks posed by cladding up to the amount provided through the Fund, including funding provided for mitigation measures. 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 remediation of the risks posed by cladding. Where Responsible Entities have already recovered damages, they should deduct relevant amounts in their applications and provide an explanation as to how this has been calculated. You can show these deductions as part of the 'other requirements' entries in the full works and costs spreadsheet.

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

In circumstances where third parties such as competent professionals or chosen contractors do not perform their contractual obligations as part of their agreements reached with the Responsible Entity and, as a result, fund monies are not properly applied, DLUHC requires the Responsible Entity to take all steps necessary to recover any such fund monies. DLUHC is not responsible for any legal fees or other costs associated with Applicants bringing such actions and reserves the right to receive any Fund monies recovered as a result of the same.

## **Building Regulations**

Building work carried out on a building must meet the requirements of the Building Regulations, including minimum standards for fire safety and energy efficiency. Regarding energy efficiency standards, remedial works should adequately account for any changes in thermal bridges which may occur as a result of the work and maintain or enhance the thermal performance of the remediated area, where technically and economically feasible.

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

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

General guidance for external wall insulation

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

General guidance for calculating and avoiding thermal bridging risks

- i. BRE IP 1/06 Assessing the effects of thermal bridging at junctions and around openings
- ii. BR497: Conventions for calculating linear thermal transmittance and temperature factors

- iii. FB61: Reducing thermal bridging at junctions when designing and installing solid wall insulation
- iv. INCA Thermal Bridging Details
- v. INCA External wall insulation specification for weathering and thermal bridge control

## Professional Indemnity Insurance (PII)

Your main contractor and all members of the Design Team must have PII with a minimum limit of £1m or of no less than the total cost of the works (whichever is higher), capped at £10m. This means that if the cost of works is greater than £10m, only a maximum of £10m of cover will be required. This must be maintained for 6 years if available at commercially reasonable rates and terms. The insurance must not have any exclusions for fire safety or cladding-related projects.

Your Design Team are any contractors or consultants which hold Material Design Responsibility. Material Design Responsibility means responsibility for any design which is integral to the structure or the fabric (including, without limitation, roofing, cladding or any other waterproofing) of the building.

In September 2022, the Department agreed a new model insurance clause with the International Underwriting Association (IUA) covering fire safety risks in order to increase the availability of PII without exclusions. This is freely available for insurers to use for cladding remediation work on high-rise residential buildings which is funded by the BSF.

As part of this agreement with the IUA, the measures which are required by the clause are compulsory for all BSF projects. As a summary, what this means for Applicants is that their project **must**:

- 1) Have a clerk of works, who is **independent** of the Design Team, appointed on the project to oversee all works. This can be a chartered member of the Royal Institution of Chartered Surveyors (RICS) or the Chartered Institute of Building (CIOB) or a member of the Institute of Clerk of Works and Construction Inspectorate (ICWCI) or the Society of Façade Engineering (SFE) with experience of fire safety in high-rise residential buildings.
- 2) Have a competent professional (as defined by the clause), who is **independent** of the Design Team, to perform to inspect works at key milestones of the project to confirm compliance with the original design of the works. This is an adaptation of existing risk mitigations for projects with insufficient PII. These milestones are:
  - When 20% of funding is expended.
  - When 40% of funding is expended.
  - When 60% of funding is expended
  - When 80% of funding is expended.
  - At the point of Practical Completion.

These milestones should be informed by your Cost Consultant. The party performing the inspections will be required to complete a Compliance Report at each milestone. Template wording for these reports can be found in the GFA.

- 3) Ensure the required project management measures are followed.



The full details of these requirements and the insurance clause can be found.

[here](#)

These requirements **will not apply** if you have already received full funding approval before 18 November. However, where your main contractor and/or Design Team does not meet the PII requirements for the BSF, you should ask them to explore with insurers whether they are able to access this clause at the point of their next renewal if these new requirements are followed.

Should you still be unable to appoint a main contractor and Design Team with sufficient PII, or should they be unable to access this clause from insurers, you should consider whether the following solutions are viable:

- Paying additional money to buy out any policy exclusion. Reasonable increases in the costs of appointing consultants or contractors in order to buy out policy exclusions or increase cover will be eligible for funding.
- Sub-contracting design/fire safety liability to a consultant with sufficient PII.

This is in addition to still following the above requirements.

## Payment profile

Funded projects will be paid in instalments.

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

- c.80% at Second Stage Full Works and Costs (enter into a Works contract),
- c.15% when 50% of funding awarded has been expended on site, as confirmed by your cost consultant, and
- c.5% when you have achieved practical completion

Scenario 2<sup>15</sup>: Projects which require pre-tender (pre-works contract) support:

- 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.
- Three further payments covered by the GFA of:
  - c.70% for the Stage 2 Full Works and Costs (enter into a Works contract),
  - 15% when 50% of the funding awarded has been expended on site, as confirmed by your cost consultant, and
  - c.5% at Practical Completion.

Scenario 3: Projects using a Design and Build procurement route will be paid in four instalments (five if PTS is required) of:

- c.30% to allow the applicant to achieve RIBA stage 4 and Building Control Full Plans Approval,
- c.50% (less any PTS) at Second Stage Full Works and Costs (enter into a Works Contract),
- c.15% when 50% of the funding awarded has been expended on site, as confirmed by your cost consultant, and

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<sup>15</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 GFA is prepared.

- c.5% when you have achieved practical completion.

If, under any of the above scenarios, your chosen contractor has requested different payment schedule terms, or you are otherwise unable to operate these terms, you should contact your Delivery Partner (Homes England / the GLA) to discuss alternative payment scheduling. DLUHC, Homes England or the GLA may also require an alternative payment schedule to be imposed depending upon the circumstances of your application.

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

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

## Subsidy Control

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

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

In order to meet subsidy transparency requirements, DLUHC is required to publish the details of any Applicant which receives more than £100,000 of funding under the Fund (including cumulatively) on the subsidy transparency database (the **Subsidy Database**)<sup>16</sup>. Applicants will be the recipient of subsidy on behalf of leaseholders in their building in order to make the building and residents safe. The details published are:

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

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

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<sup>16</sup> <https://searchforuksubsidies.beis.gov.uk/>

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

## VAT

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

For further guidance on VAT on remedial works, please refer to HMRC's publications on gov.uk<sup>17 18</sup>.

These supplies may also be subject to the Construction Domestic Reverse Charge when made on or after 1 March 2021<sup>19</sup>.

## 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, DLUHC or your Delivery Partner 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.).

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<sup>17</sup> <https://www.gov.uk/guidance/buildings-and-construction-vat-notice-708>

<sup>18</sup> <https://www.gov.uk/hmrc-internal-manuals/vat-construction>

<sup>19</sup> <https://www.gov.uk/guidance/vat-reverse-charge-technical-guide>

- To replace qualifying unsafe cladding from areas not previously identified.

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

Construction contracts vary in the placement of liability in relation to variations. The cost variation will only be permitted if the liability for the variation is 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 Agreement with DLUHC.

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, their extent and why they relate to the total eligible cost for works to address the fire safety risk caused by the unsafe cladding. If required, you will be requested to provide any further information or documents.

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

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.

## **Open book access**

The BSF processes follow the Government's approach to open book contract management. These help DLUHC maintain a clear line of sight between the cost requirements for eligible works compared to the DLUHC funds granted. A low cost, minimal open-book approach is applied, which provides us with assurance that value for 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 GFA requires that DLUHC, Delivery Partners and appointed third parties are given access to required information and documentation.

### **During works:**

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

### **After completion:**

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

## **Practical Completion**

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

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

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

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

## Planning and Building Control

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

## Further information: Legal due diligence

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

If necessary, your application will be triaged by the Delivery Partners through our expert support lines to help you deal with more complex issues. If your application requires this support, then it might take longer to sign off as completed.

Your application will undergo initial legal due diligence carried out by the Delivery Partner Legal Advisors. This involves checking your details and obligations as the Responsible Entity.

Role	Assessment
You	<p>You will nominate a residential property in your building which has been let on lease terms that you are confident meets the following criteria and provide such other information or documentation that is required to allow the Fund appointed Legal Advisors to confirm that:</p> <ul style="list-style-type: none"> <li>• the unit assessed is residentially occupied; and</li> <li>• the unit lease requires the property to be used exclusively for residential occupation; and</li> <li>• the unit lease was granted before 11 March 2020 for a term of no less</li> </ul>

Role	Assessment
	<p>than 21 years</p> <p>(together a '<b>Qualifying Lease</b>').</p> <p>The Legal Advisors appointed by the Fund will conduct a review of these.</p>
<p>Legal Advisors</p>	<p><b><u>Eligibility (First Stage)</u></b></p> <p><b>Leaseholders</b> Our Legal Advisor will review the lease relating to property nominated by you. This is to verify that there was at least one residential leaseholder in the Building that holds a Qualifying Lease at the point of the BSF being announced. This may create the need for you to revise the application by providing further information and re-submit.</p> <p><b>Ownership structure</b> Our Legal Advisor will verify that you as the Applicant are the correct contracting party (i.e. the Responsible Entity) or highlight the position to us where this is different.</p> <p>The Legal Advisor will review your title details and include a short form legal summary to accompany the Application.</p>

### **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 and ensure that they are only used for the purposes of the Project. 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.

### **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. 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 you will 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.



### 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.

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

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 any replacement cladding materials, insulation and sheathing board, where applicable and the fire safety classification of any of these materials which are being retained regardless of quantity.

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### 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 replacement cladding materials
- Information on the fire safety classification of replacement or existing (if being retained) insulation
- Information on the fire safety classification of 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 the 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
- Fee quotation
- Evidence in writing of you accepting or confirming the appointment

## Full Works and Costs Application Questions

**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 the 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 and your main works contractor. 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. For your main works contractor, this must include evidence of a track record of delivering similar projects, and evidence that the contractor has sufficient staff and working capital available to carry out a project on the same scale of your project. 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

For the main works contractor:

- Evidence of previous delivery of similar projects
- Evidence, or the opinion of a competent professional confirming that the contractor has the staff and working capital available to carry out a project on the same scale as your project

## Full Works and Costs Application Questions

**Requirement:** You must confirm that appropriate levels of Professional Indemnity Insurance (PII) 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.*

**Additional Guidance:** Your main contractor and all members of the Design Team must have PII with a minimum limit of £1m or of no less than the total cost of the works (whichever is higher), capped at £10m. This means that if the cost of works is greater than £10m, only a maximum of £10m of cover will be required. This must be maintained for 6 years if available at commercially reasonable rates and terms. The insurance must not have any exclusions for fire safety or cladding-related projects.

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

For each member of the Design Team and your main contractor:

- A current PII certificate showing the level of PI cover
- A copy of the PII 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

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email from a planning officer).

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

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

Procurement Routes: -

-Traditional

-Design & Build

- 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 design 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 or if PI Insurance contains exclusions for fire, you are to provide full details for further consideration by the Delivery Partner and DLUHC.

The procurement route used will also impact which contractors and consultants you require Collateral Warranties from. If using traditional procurement, a Collateral Warranty is required from the main contractor and any consultants with Material Design Responsibility.

Where the Design & Build procurement route is being used, a Collateral Warranty is only required from the main contractor the principal designer (if not the main contractor) and any consultants who have accepted design responsibility due to the main contractor having insufficient or inadequate PII.

**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. Unless there are exceptional circumstances individual to the project which justify a non-competitive process, the default expectation under the Fund is that applicants follow a competitive and industry-standard

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process to appoint a contractor to ensure value for money.

### **Applicants intending to use a negotiated tender:**

You will be expected to competitively tender the works unless one of the following exceptional circumstances are met:

- A negotiated tender is required to meet a deadline set by DLUHC or delivery partners. This means there is not enough time to conduct an open tender before the deadline.
- Contractors have been appointed directly from a National Association of Construction Frameworks (NACF) framework which has been agreed can be used by building owners.
- The contractors are the only suitable party to carry out the works due to existing, extensive, specialist knowledge of the building.

If you undertake a negotiated tender without meeting the above criteria, you will be required to retender the works, meaning your project may face delays and increasing costs.

Regardless of the route to tender utilised costs need to be reasonable and represent good value for money

### **Appointment of parties involved with the original works:**

If you intend to appoint the original contractor to carry out remediation works on your building, you must notify your delivery partner and meet at least one of the following conditions:

- A competitive route to tender is used.
- The appointment is made via a negotiated tender under the condition that the original contractors are the only suitable party to carry out the works due to existing, extensive, specialist knowledge of the building.

In all cases, where the original contractor is appointed, we expect a cost contribution to be made towards the remedial works. The contribution should generally represent both the level of work required and size of the contracting firm. This figure should be determined in discussions between yourselves and the original contractor. Alongside this, we also expect you to seek full legal advice on your cost recovery position. For further information on the cost contribution requirement please speak to your delivery partner.

## 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.*

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**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, 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. 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 DLUHC requires a Duty of Care Agreement from your cost consultant 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*



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*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.*

**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 Design Manager, 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 is doing this role.

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

- Confirmation by the lead designer or other appropriate consultant