

FIRE SAFETY BRIEFING NOTE: NEXT STEPS

On 27th June 2022 Michael Gove, Secretary of State for Levelling Up, Housing and Communities, published a letter to building owners and managing agents advising that the leaseholder protection provisions set out in the Building Safety Act 2022 would come into effect from 28th June, protecting Qualifying Leaseholders from any financial costs associated with life-critical building-safety defects. He also issued guidance for leaseholders on the implications of the Act which can be viewed [here](#).

The guidance states that any leaseholder should not pay any outstanding or current invoice relating to historical cladding or non-cladding building safety costs that were caused during the construction or refurbishment of the building. We are delighted that the Government has put in place measures for leaseholders to protect them from unaffordable costs relating to remediation of cladding and other fire safety defects. This is something which we have been advocating since the start of the Government announcements requiring remediation.

As discussed in this briefing note, there are many unanswered questions which require further clarification. We hope that Government will provide this clarification at the earliest opportunity in order that we have a clear way forward.

WHAT DOES THIS MEAN NOW?

In accordance with the Building Safety Act, Qualifying Leaseholders do not have to pay for the remediation of life-critical building-safety costs.

You are a Qualifying Leaseholder if your property is in a building above 11m (or 5 storeys) and on 14 February 2022:

- Your property was your main home, or
- You owned no more than 3 UK residential properties in total

If you purchased your property after 14 February 2022 and one of the above two points was true, you are also a Qualifying Leaseholder.

If you are a non-qualifying leaseholder and one of the following apply, you will also be protected from paying for life-critical building-safety costs

- The building owner is the original developer, or a company linked to the original developer, or

- The developer has signed the Building Safety Pledge

WHAT QUESTIONS ARE STILL UNANSWERED?

At this stage there are a number of questions that remain unclear or unanswered. We are working with our professional associations to seek more clarity on these points which include:

- What exactly is defined as a cost caused as a result of life-critical building-safety defects?
- What is defined as a 'non-cladding defect' or an 'interim fire safety measure'?
- What exactly is covered under the formal Building Safety Pledge agreement?
- How should costs for non-qualifying leaseholders be dealt with?
- What does the affordability test look like for Freeholders and when will this become live?
- When will the Building Safety Fund and the specific fund for buildings over 11m go live?
- What happens to buildings incurring ongoing costs now (such as Waking Watch) where affordability tests have not taken place?
- How will the value of properties that define leaseholder cap levels be calculated?
- What happens if a building owner cannot afford the costs over and above any leaseholder cap?
- What happens to costs already paid that are over and above the leaseholder cap?
- Who funds the upfront costs of remediation where leaseholders are required to pay a capped cost with payments spread over ten years?
- How will overseas building owners be held to account?
- What happens to leaseholders in unsafe buildings that are under 11m?
- What happens to orphan buildings that have been remediated at leaseholder cost – will there be a retrospective right to reclaim costs from Government funds (e.g. Building Safety Fund)?

WILL LEASEHOLDERS GET A REFUND?

This is dependent on a number of factors, many of which remain unanswered by the Government's announcement and will also be specific to each building. However, it is clear the direction of travel the Government is taking and we remain hopeful, but not yet certain, that there will be clear mechanisms by which leaseholders will be reimbursed for costs incurred where they are a Qualifying Leaseholders.

There are two key factors which still impact on our ability to find a clear route to funding of fire safety remediation on your behalf:

1. The Developer Pledge

As things stand, 47 developers have signed up to the pledge, indicating their intention to cover the cost of life critical fire safety remediation. However, the pledge is simply a commitment to sign the detailed agreement. The detailed form of agreement has not yet been issued by Government and it is therefore not possible for us to know precisely what costs will be covered. In this way, we do not yet know, for example, whether historic waking watch costs will be covered under the terms of the Developer agreement.

2. Freeholder (Building Owner) contributions and the Wealth Test

The Government is yet to publish details of the affordability calculation for freeholders or to define what is meant by 'net wealth'. It is therefore not possible for us to tell what costs should be covered by the freeholder, and what remaining costs should be borne by leaseholders.

As listed above, there are a number of other points which remain unclear. Once we have better clarity, we will be able to advise leaseholders more fully as to what the specific implications are for them.

WHAT CHARGES WILL LEASEHOLDERS STILL HAVE TO PAY?

Leaseholders will still be responsible for the maintenance of existing life-safety equipment and other routine maintenance for their buildings.

The Property Institute (TPI) (incorporating ARMA & IRPM) offers this advice:

"the Building Safety Act does not prevent freeholders, RMCs, RTM companies or managing agents from issuing any invoices whatsoever for building safety measures. Some charges can still be recovered from 28 June 2022 following the coming into force of the Act (as ever, only where permitted by the terms of the lease); the provisions are complex and detailed. However, the focus of this letter leans towards the costs of fixing bad buildings and other related costs where buildings require some form of remediation. Every building has its own set of circumstances and at this early stage, we caution agents to be very careful that any charges to leaseholders are permitted under the new legislation. You should bear in mind that not all leaseholders enjoy the protection of the Act and the ability to levy charges depends on a wide range of factors including the nature and status of the landlord / freeholder, the nature of the work the demand relates to, and the amount of charges levied in respect of relevant building safety measures in previous years.

If there is any doubt, you and or your clients should take legal advice where necessary to confirm you / they are acting in accordance with the law."

We are advised that the TPI will be issuing a more detailed guidance note to members over the next few days, and we will share this when it becomes available.

CONCLUSION

We fully understand that the issue of fire safety has been of great concern to very many leaseholders who are facing impossibly high bills. We are hopeful that the question of who pays will be made clear in all cases very soon. We are working hard to engage with developers and leaseholders to resolve these questions as quickly as possible in all cases. Meanwhile we ask that you bear with us until we are able to make the necessary adjustments to service charges.

Rendall & Rittner

29th June 2022