

# FAQ for leaseholders

## Commonly asked questions about building safety

May 2022

### Summary

The Building Safety Bill passed into law on 28 April 2022, becoming the Building Safety Act. The Act sets out a series of reforms intended to make buildings across the country safer, as well as giving residents and homeowners more rights, powers and protections.

These FAQs are based on commonly asked questions that leaseholders raise with the NHF directly, or with our housing association members. Our responses are based on our knowledge of the new laws and current funding programmes, and our ongoing engagement with the government and relevant industry bodies.

There may be instances where your question would be better placed with organisations that have specific knowledge of your personal circumstances, such as your lender or your housing association landlord.

## What the Building Safety Act means for leaseholders

The government has published a [factsheet](#) for leaseholders summarising the main changes the Building Safety Act will introduce for leaseholders. We would encourage you to refer to this factsheet in the first instance.

In summary, the Building Safety Act means that:

- Residents in high-rise buildings will have more say in the management of their building.
- Residents will be able to raise building safety concerns directly with the owners and managers of their buildings, who will have a duty to listen to them. Any residents who feel their concerns are being ignored can raise these with the new [Building Safety Regulator](#).
- All leaseholders will be protected from paying for the majority of costs to remediate defective buildings.

### The new leaseholder protections

The Building Safety Act introduces new clauses that will set out in law the principle that building owners should not pass on costs to leaseholders for remediation works **wherever possible**.

The government has made it clear that it expects the industry responsible to pay to fix the problems it created. It has [secured commitment from a number of developers](#) to remediate life critical fire safety works in buildings 11m and over that they have played a role in developing or refurbishing over the last 30 years in England. In addition, the government is establishing a cladding remediation fund, sourced from developers and industry, to cover the costs of remediating unsafe external wall systems on buildings between 11m and 18m, where there is no original developer to carry out the work.

**Building owners are now legally prevented from charging leaseholders for any costs relating to the removal or remediation of external cladding.** The government's Building Safety Fund is available to fund cladding remediation on buildings 18m and over – subject to a technical assessment – while developers are expected to remediate any 11-18m buildings they themselves are responsible for.

Where building owners do not have the means and wealth to pay for non-cladding defects, they **will be able to legally recoup some costs from leaseholders** to pay for works required. The Building Safety Act sets out that housing association and local authority landlords are exempt from requirements to demonstrate whether they have the means and wealth to pay for non-cladding costs. However, these costs will now be fixed at a cap of no more than £10,000 for leaseholders outside London, and £15,000 within London (referred to in this document as **‘the cap’**). In addition, leaseholders with properties valued at less than £175,000 outside London and £325,000 inside London will be **exempt from any costs**.

## Questions about remedial works

### Is my building unsafe?

Since the tragic fire at Grenfell Tower, housing associations have been urgently and carefully assessing their buildings for fire safety risks. This has uncovered safety concerns in some multi-occupied buildings, and housing associations are committed to resolving these. Buildings that present greater risks have been inspected and remediated first, and housing associations have made considerable progress with these buildings. In cases where safety issues have been identified, housing associations are putting in place interim safety measures to ensure resident safety until permanent measures can be implemented.

Housing associations are following new industry standards when assessing buildings for safety risks. The government updated its guidance on external wall systems and cladding in January 2022, following the publication of the British Standards Institute’s [Publicly Available Standard \(PAS\) 9980](#). This sets out the steps and factors that building assessors should take into account when categorising a building’s risk, and should help them to understand how risks need to be appropriately addressed, or where buildings can be deemed safe.

Resident safety is and will remain housing associations’ number one priority. If you have specific concerns or questions about your building, please speak to your landlord.

### My housing association still can’t confirm whether works are needed to my building. Can you explain this?

The process of assessing buildings for fire safety issues is thorough and complex, and relies on the services of a qualified professional. Due to the number of buildings

that have required assessment in recent years, capacity within this sector is severely limited. Housing associations are prioritising this resource towards higher-risk buildings in the first instance. However, this is causing some delays to inspecting lower-risk buildings for remedial works, despite housing associations' best efforts to secure these inspections. In addition, the government recently changed its suggested approach to inspecting buildings, so that works are only carried out on a risk basis. This could mean that some buildings are being reviewed again to ensure that any risks are being addressed appropriately.

### **Will my housing association charge me for works to my building?**

As described in the 'new leaseholder protections' section above, the government has put in place a number of protections to prevent leaseholders being charged for remedial works in most cases.

As stipulated in the Act, they will make every effort to recoup costs via other routes – such as pursuing manufacturers and contractors, grant funding, and available government funding – and would only be able to pass costs on to leaseholders as a last resort.

Where costs have to be passed on, these are subject to the cap – described in the 'new leaseholder protections' section above, and leaseholders will be able to challenge their landlord if they believe they have not taken sufficient steps to recover costs through alternative routes. Housing associations remain committed to protecting leaseholders from building safety costs wherever possible.

### **The Building Safety Charge has been scrapped, but my service charge bill still references costs for fire safety works. Can you explain this?**

The Building Safety Act was amended during its passage through Parliament to scrap the proposed Building Safety Charge, which was to be a separate charge in addition to your usual service charge to cover costs related to regulatory changes in the Act, including the proposed Building Safety Manager. The purpose of the proposal was to provide transparency around building safety costs, so that leaseholders could easily distinguish these from the service charge. However, it is important to note that landlords already have ongoing and day-to-day responsibilities relating to building and fire safety, which are part of the service to leaseholders and recoverable through the service charge.

The proposal for a Building Safety Manager was also scrapped in the final Act in order to reduce costs for leaseholders, and there are a number of additional protections from costs, such as the caps outlined above.

## **What government funding is currently available to housing associations for remediation?**

There are two government funding schemes for remediating external wall systems on buildings of 18m and over, and another approach currently being established for buildings of between 11m and 18m.

- [The Social Sector ACM Cladding Remediation Fund](#) – housing associations can apply for funding to assist with the costs of removing and replacing aluminium composite material (ACM) cladding on social residential buildings of 18m and over.
- [The Building Safety Fund](#) – housing associations can apply for funding to cover leaseholders' portion of the costs of removing and remediating unsafe, non-ACM cladding on buildings 18m and over. The government recently announced that it would begin the next phase of the Building Safety Fund, and launched a portal in January 2022 for leaseholders to follow the status of their building's application.
- A new approach to pay for remediation of 11-18m buildings was proposed by Michael Gove in January. The government has negotiated with developers, some of which have pledged to remediate 11-18m buildings they constructed in the last 30 years. Developers are also being asked to contribute through a levy for the remediation of medium-rise buildings where the original developer no longer exists. We have engaged with the government to ensure that housing associations will be able to access this funding.

## **My housing association still can't confirm whether my building has qualified for Building Safety Fund funding. Can you explain this?**

There are a number of stages that building owners have to complete in order to successfully apply for remediation costs to be covered through the Building Safety Fund. These include submitting a detailed and costed project plan, which relies on the support of fire safety experts, who are in short supply due to the volume of buildings being assessed and remediated. We understand that there have also been a number of administrative delays in terms of reviewing and approving applications, so some building owners are having to wait some time before finding out if their

application has been successful. The government launched a portal in January 2022 where leaseholders can check the status of your building's application.

### **My housing association has already charged me for remedial works. Will this be refunded?**

The government has clarified that costs leaseholders have already paid out in the last five years – including for interim measures such as waking watches – will count towards the cap explained above. The government has also introduced new remediation contribution orders, which would compel developers of defective buildings to reimburse leaseholders for costs already paid out. These measures mean that in some cases you may be reimbursed for costs you have paid out, or any further costs will be limited by the new cap.

You may also have received a Section 20 notice from your landlord. This notifies you of charges that may be made to you through your service charge, and outlines how you can challenge these costs. Please note that housing associations are obliged to issue these notices to leaseholders even in circumstances where they do not plan to charge you for the work – and they are doing everything they can to avoid doing so.

### **What are housing associations doing to reduce the increases in buildings insurance that leaseholders contribute to?**

The Secretary of State, Michael Gove, has stated his commitment to protecting leaseholders from building safety costs, which includes looking at ways to reduce insurance bills for properties with fire safety issues. The government hasn't yet confirmed what this would look like, but has asked the Financial Conduct Authority, together with the Competition and Markets Authority, to review this in the first instance. Housing associations are providing buildings insurers with as much information about buildings as possible, to enable the industry to take an informed approach to pricing insurance premiums.

## **Questions for shared owners**

### **Can I rent out my property until it is possible to sell it?**

Subletting has generally not been permitted for shared owners due to conditions of the funding housing associations receive to provide shared ownership homes. However, the government has recently amended its grant funding guidance to make clear that issues of building safety should be treated as an exceptional circumstance in which sub-letting is generally permitted by the government. We know that many

housing associations have already been taking this stance and have allowed shared owners to sublet their properties, and the amended guidance will support this approach. In order to sublet your property, you will still need to secure agreement from both your landlord and your mortgage provider.

## **Will housing associations buy back shared owners' share of their property so that they can move?**

Housing associations own and manage large numbers of buildings that need to be inspected for safety concerns, and remediated if any are found. This represents a complex and challenging amount of work, which we estimate could cost the sector around £6bn – and possibly as much as £10bn – for buildings they bought in good faith. This means that housing associations will realistically not be in a position to commit on a blanket basis to buy back shared owners' share of their homes.

Housing associations are not-for-profit organisations that rent homes to many lower income families and vulnerable people.

We understand that this has been an extremely challenging time for leaseholders, and we welcome the government's measures to protect leaseholders from building safety costs. If you have specific questions about your housing associations' policy on buying back shared ownership homes, we would encourage you to contact your housing association directly.

## **Mortgages and valuations**

### **How can I get an EWS1 form?**

The Royal Institute of Chartered Surveyors (RICS), which developed the EWS1 form, sets out [clear guidance](#) on when a lender should and should not require the form. This will depend on the height and risk profile of the building, taking into account the types of cladding present and external wall construction. Some lenders have been asking for EWS1 forms for all multi-occupied buildings, even where they don't meet this criteria.

If a lender is requesting an EWS1 form, the form will need to be completed by a qualified fire safety inspector. EWS1 forms can only be organised by the building owner, so please contact your landlord in the first instance to see if one exists for your building, or if they plan to procure one.

**Some mortgage providers have said that they will approve mortgages on buildings that need remedial works, providing there is a costed and funded plan for these in place. How can I find out if this is the case for my building?**

We understand that lenders and valuers need to work through the process of verifying whether there is a costed and funded plan in place for each building. The NHF has offered support to lenders so we can make this happen as quickly as possible to support leaseholders who want to sell their flats.

Housing associations are working as quickly as they can to assess and remediate buildings, but it is a long and complex process, and there is a severe shortage of qualified professionals who can carry out the work. This means that for some buildings, it may take some time before a costed and funded plan will be put in place.

The NHF is urging the government to increase capacity among qualified professionals to speed up the inspection process and remedial works. In the meantime, you can speak to your landlord to find out more about the status of your building.