

Guidance note:

Fire Safety and Cladding – Advice note 14

Issue

The Government advice and expectations regarding safety of cladding systems is causing issues in the sales, staircasing and remortgage applications for many residents. Where assurance cannot be provided surveyors are refusing to provide a valuation, returning a £0 value on flats. This effectively halts the sale/remortgage leaving residents in high rise blocks unable to complete the transaction.

Background

In December 2018 the Government issued Advice Note 14 (AN14) concerning wall covering systems (cladding) that did not incorporate Aluminium Composite Material (ACM).

This guidance was later consolidated in '**Building Safety advice for building owners** <https://www.gov.uk/government/publications/building-safety-advice-for-building-owners-including-fire-doors> issued in January 2020. This extended the reach of the requirements to all buildings regardless of height. The consolidated guidance states: *For the avoidance of doubt, building owners should follow the steps in this advice as soon as possible to ensure the safety of residents and not await further advice or guidance to act.*

Why is there a problem?

The core of the problem is that no-one is prepared to say that the cladding meets the required criteria for fear of liability. The defining test (BS 8414) can be expensive, costing around £45,000 and take between 6-18 months to complete and hence is not a viable option with respect to unlocking a sale or remortgage.

Many landlords that have taken action have introduced a rolling programme undertaking testing based on risk. It is expected to be several years before the testing of all blocks is complete.

The Ombudsman's approach

When investigating we should adopt a three pronged approach:

- What is the landlord's long term plans for compliance with the guidance and are these fair and reasonable?
- How has it communicated with shared owners/leaseholders regarding the situation and was this communication appropriate?
- How has it responded to the individual circumstances of the resident?

Long term plans - It is accepted that for now the Government's expectations are only set out in guidance. This means that there is an element of discretion for a landlord as to how and when it chooses to comply with the guidance. We cannot force the landlord to undertake the testing, particularly given the shortage of experts, nor can we force a surveyor to release a true valuation.

Communication - Once the landlord became aware of the implications of the situation for residents did it take appropriate steps to inform residents and manage expectations?

Individual circumstances - Has the landlord considered the impact of the situation on the particular circumstances for the resident? We would expect a landlord to show empathy for residents trapped in these circumstances and to mitigate the impact where possible.

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