



Ministry of Housing,
Communities &
Local Government

Private Sector ACM Cladding Remediation Fund

Full Fund Application Guidance

July 2019 – Updated May 2021

Ministry of Housing, Communities and Local Government



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Private Sector ACM Cladding Remediation Fund

Introducing the fund

The government is committed to ensuring that residents are safe and feel safe in their homes. We are clear that all buildings with unsafe¹ Aluminium Composite Material (ACM) cladding systems² must be remediated so that residents can have peace of mind. Unsafe ACM cladding represents an unparalleled fire risk and is not safe, and therefore the government is taking action.

Interim measures are in place to keep residents safe in all unsafe ACM-clad buildings, but ultimately this cladding must be replaced. We expect building owners and responsible entities - that is, those organisations which have a legal responsibility for the repair, condition and safety of the building, and which have a legal right to recover the cost through the service charge - to act promptly to ensure that their buildings and residents are made safe in the longer term by removing and replacing unsafe cladding systems as swiftly as possible while ensuring that remediation works are carried out effectively and safely.³

To address the lack of action taken by private building owners, the government announced that around £200 million⁴ will be made available to remove and replace unsafe cladding from high-rise private residential buildings. The Private Sector ACM Cladding Remediation Fund will cover the cost of the replacement of unsafe ACM cladding on private residential buildings in England over 18m in height, with an allowable tolerance of 30cm under this height⁵. Funding will be provided to responsible entities who will be responsible for remediation, but the fund will be for the benefit of leaseholders who would otherwise incur the cost through service charge arrangements.

The government acknowledges that some private building owners and developers have acted swiftly and already fully funded the remediation of unsafe cladding themselves, thereby avoiding the need to access the fund and saving taxpayers' money. The public will expect building owners to honour any outstanding commitments to pay for and carry out remediation works as quickly as possible.

This guidance document sets out the scope and eligibility criteria for the fund, against which applications will be assessed. It describes which costs are covered, the eligibility criteria, how the fund works - including important rules on subsidy control – how to apply and the timetable for submitting applications.

¹ 'Unsafe' means those cladding 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.

² The fund-related definition of 'cladding system' is included in the section below; *What costs are covered by the fund?*

³ Information on interim measures and remediation can be found at:

<https://www.gov.uk/government/publications/updated-interim-safety-advice-for-building-owners>

<https://www.gov.uk/government/publications/information-note-for-landlords-and-building-owners-of-tall-residential-buildings-with-acm-cladding>

⁴ <https://www.gov.uk/government/news/government-to-fund-and-speed-up-vital-cladding-replacement>

⁵ This revision to the guidance confirms that we are allowing a tolerance of 30cm to this measurement so any building with appropriate evidence that their building measures 17.70m or above will be eligible to proceed to application stage. For more information, see page 2 of Annex A – Technical Information for the Building Safety Fund, available at <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

How much money is available?

Grant funding will be available to cover all reasonable costs for the remediation of unsafe ACM cladding on residential buildings over 18m in height (or within the 30cm tolerance) and in private ownership. From initial information provided by building owners and local authorities, and from the experience of operating the Social Sector ACM Cladding Remediation Fund, the government estimates total costs at around £200m.

Eligibility criteria

The fund will be available for the benefit of leaseholders in residential buildings over 18m in height (or within the 30cm tolerance) who would otherwise have an obligation to meet the cost of cladding remediation by virtue of provisions in their leases. Where leaseholders are not liable for the costs of remedial works via service charge under the terms of their lease, but the responsible entity for the building is a leaseholder-run Right-to-Manage⁶ company, the building may still be eligible for funding.

To be eligible for the fund applicants will need to confirm that they are replacing unsafe ACM cladding with materials of limited combustibility that have been classified as European Class A1 or A2-s1, D0.⁷

We will expect building owners to actively identify and pursue all reasonable claims against those involved in the original cladding installations, and to pursue insurance and warranty claims where possible. Successful claims will require some or all the proceeds returned to government. Building owners therefore need to be mindful at all stages in the remediation process of the opportunities to secure and retain documentary evidence that could support such claims.

Applications for buildings comprising mixed residential and commercial use will be within scope.

Responsible entities, including engagement with leaseholders

Applications can only be made by the responsible entity, and as a condition of funding responsible entities will enter into a funding agreement on terms acceptable to MHCLG. A responsible entity may be the building freeholder or head leaseholder or a management company who has primary responsibility for the repair of the property. A management company which is not the responsible entity will still be able to apply and manage the application as an agent for the responsible entity.

We expect responsible entities to inform all leaseholders and residents that they will be applying for funding. Responsible entities should also inform leaseholders and residents of the nature of the works they intend to carry out and should provide regular updates to leaseholders and residents on the progress of their funding application and remediation works. As a minimum we expect responsible entities to provide updates to leaseholders at the following key milestones:

- Application submitted

⁶ 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.

⁷ A1 or A2-s1,d0 as classified in accordance with BS EN13501-1:2007+A1:2009

- Outcome of application received
- Commencement of works (with an estimated completion date)
- Works completed.

Responsible entities should also make leaseholders aware that they can access specialist advice for help to understand their rights through the Leasehold Advisory Service (LEASE). Although leaseholders should contact their responsible entity with queries about their specific building, LEASE will act as the point of contact for leaseholders with questions about the fund. The government has allocated additional funding to LEASE to provide independent, free, initial advice to leaseholders on building safety issues to ensure they are aware of their rights and are supported to understand the terms of their leases. More information on LEASE, including how to contact them for advice, is available here: <https://www.lease-advice.org/>

The Ministry of Housing, Communities and Local Government (MHCLG) has written to all responsible entities known to be affected following the announcement of the fund. Responsible entities should, therefore, already be in contact with MHCLG through the Building Safety Programme. **If responsible entities have not notified MHCLG of buildings that fall into this specification, they should do so immediately by emailing towercaseworkteam@communities.gov.uk**

Unsafe ACM cladding

The fund will cover the removal and replacement of unsafe ACM cladding systems. 'Unsafe' means those cladding systems that have been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. Full details are set out in the consolidated advice note⁸ published by the Building Safety Programme on 5 September 2017.

The following will be used as evidence that unsafe ACM cladding needs remediating: either a copy of the Building Research Establishment's (BRE) screening test result for a sample of the cladding from the building; documentary evidence that the type of ACM matches the specification of ACM cladding which failed the government's BS8414 tests; or the local authority having notified MHCLG that unsafe ACM cladding has been confirmed.

Unsafe non-ACM cladding

Where buildings are eligible for funding via the Private Sector ACM Cladding Remediation Fund and have unsafe ACM cladding, applicants may also apply for funding to remove and replace unsafe non-ACM cladding systems on the building which would be eligible for funding via the Building Safety Fund (BSF)⁹. The scope and cost of these works should be made as part of a single application, or as a request for additional funds, to the Private Sector ACM Cladding Remediation Fund. The costs of remediation of the non-ACM cladding will be funded via the Building Safety Fund and are subject to the same requirements and conditions as set out in the BSF Fund Application Guidance. Applicants

⁸ <https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing>

⁹ For more information, please see the registration prospectus and annexes here: <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

to the Private Sector ACM Cladding Remediation Fund should have contacted their delivery partner to register their non-ACM cladding system by 31 July 2020.

If only unsafe non-ACM cladding systems are present, then an application should have been made via the BSF through submitting a registration by 31 July 2020.

Exclusions

The fund will not be available for:

- non-residential buildings.
- buildings under 18m in height (allowing for the 30cm tolerance).
- Unsafe non-ACM cladding systems, unless eligible for the BSF and provided unsafe ACM cladding is also present on the building.
- buildings where a warranty claim for the full costs of remediation has been accepted.
- costs which would not otherwise be recovered from residential leaseholders through the service charge provisions in their leases¹⁰.
- buildings owned by social sector landlords who should instead apply for funding from the Social Sector ACM Cladding Remediation Fund¹¹.

Subsidy control

EU State aid rules no longer apply to subsidies granted from 1 January 2021 in the UK, except for aid within scope of the Withdrawal Agreement, including aid under Article 10 of the Northern Ireland Protocol. However, public authorities must comply with our international commitments on subsidies, and in particular the subsidies chapter of the UK-EU Trade and Co-operation agreement (TCA).

The subsidy control rules will replace the previous diligence requirements for the provision of state aid, which no longer apply following the end of the UK-EU transition period on 31 December 2020. Subsidy control rules apply from 1 January 2021 and allow the government to provide funding from state funds to economic actors, previously referred to as undertakings. The revised diligence processes are designed to comply with subsidy control rules under the UK-EU Trade and Cooperation Agreement for the provision of funding for remediation of unsafe cladding under the Private Sector ACM Cladding Remediation Fund, and the Building Safety Fund. Further guidance on subsidy control is available at <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>.

Previously under the state aid de minimis rules, an undertaking could receive up to €200,000 state aid over a three-year period. Economic actors may now receive up to 325,000 Special Drawing Rights, which is approximately £350,000, over three consecutive financial years, as Small Amounts of Financial Assistance which is exempt from the application of the TCA.

Funding provided for the benefit of leaseholders who are owner occupiers is unaffected as this does not constitute a subsidy. To receive the funding the leaseholder must be liable to meet the costs of remediation through the service charge provisions in their leases¹².

¹⁰ For example, hotels, hostels, purpose-built student accommodation uses, private rental sector (PRS) uses and PFI contracts are not eligible.

¹¹ <https://www.gov.uk/government/publications/social-sector-acm-cladding-remediation-fund-application-guidance>

¹² Where leaseholders are not liable for the costs of remedial works via service charge under the terms of their lease, but the responsible entity for the building is a leaseholder-run Right-to-Manage company, these costs may still be eligible for funding.

Funding for the benefit of buy-to-let landlords, lessees of commercial premises and housing associations continues to fall within the scope of the rules, either on the basis of Small Amounts of Financial Assistance or Services of Public Economic Interest (SPEI) compensation under the TCA.

Beneficiaries who provide SPEIs are not subject to a cap on the amount of funding they can benefit from receive. However, where an SPEI subsidy is 15m SDR or above, then details will need to be provided on the UK’s subsidy database. This will be relevant for remediation funding where Registered Providers of Social Housing (RPs), or exceptionally other organisations with a charitable purpose, would be liable for the costs of remedial works by virtue of their service charge obligations¹³.

Applicants should ensure they do the following:

- Provide a list to Delivery Partners of all leaseholders who they believe to be economic actors (including Registered Providers of Social Housing) and their proportion of the total service charge liability, in the form of the Economic Actor Schedule.
- Collect declarations on the amount of subsidy previously received from all leaseholders of commercial premises on site.
- Collect declarations from any leaseholders of residential premises who are economic actors and have previously received subsidy.

Awards of funding made under the Private Sector ACM Cladding Remediation Fund prior to 1 January 2021 will continue to be bound by the state aid rules in force at the time.

What costs are covered by the fund?

The following table summarises the costs covered by the fund.

Eligible items covered by the fund	The fund will <u>not</u> cover
Works directly related to the replacement of unsafe cladding systems ¹⁴ including: <ol style="list-style-type: none"> 1. access (e.g. scaffolding, mast climber etc.) (only where apportioned appropriately directly related to qualifying works). 2. removal and disposal of existing cladding. 3. replacement materials. 4. labour and reasonable on-costs to the contractor. 	Works which are not directly related to the remediation of unsafe cladding systems even where these may be planned to be undertaken at the same time. For example: wider redecoration, renewal and general maintenance, the replacement of windows or other elements, internal works or any other remediation, maintenance, repair or renewal costs.
	Other necessary fire safety works which are not related to an unsafe cladding system.
	Operational running costs, including those associated with interim measures

¹³ Charitable organisations will normally constitute health and/or social and/or educational services and will also usually only be provided with State assistance. Examples may include those as regards health and long-term care, childcare, access to and reintegration into the labour market and the care and social inclusion of vulnerable groups. The leaseholder does not necessarily have to be a charity. However, it is likely to be a 'not for profit' organisation or one focused on services of this kind. Because determining whether a particular service qualifies as a service of this type can be complex, Applicants should consult with their Delivery Partner as soon as possible if they consider that there may be a leaseholder in their building who might qualify.

¹⁴ A cladding system includes the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding system includes the weather-exposed outer layer or 'screen, fillers. Insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants.

Professional team fees in respect of qualifying items (*apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs)	Professional team fees in respect of non-qualifying items.
Managing agents' fees in respect of administering qualifying expenditure (*apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs)	Managing agents' fees in respect of administering non-qualifying expenditure.

Eligible costs will be those costs which could be attributed to the capital costs¹⁵ of the project. Ongoing revenue costs, such as the cost of interim safety measures, are not eligible. The fund will provide a grant to cover the 'reasonable' cost of eligible items only. Reasonable costs will be informed by an industry standard approach to specification and procurement of works having regard to 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.

Extraordinary technical requirements which incur extra costs essential to but not normally associated with removing and replacing unsafe cladding systems may be included. MHCLG will consider such requests for funding and will assess them applying the same criteria applied to the initial application.

We encourage applicants/responsible entities to assess the extent of any additional work required to make buildings safe from a fire safety perspective and to have a plan in place for funding and carrying out these works.

How the fund works

The guiding principle of the fund is to increase the pace of remediating unsafe ACM cladding on high-rise residential buildings. It does not remove the existing responsibility for building safety and repairing obligations from responsible entities.

We will assess eligibility in two stages:

1. Stage one will quickly verify that the building, its leaseholders and the responsible entity is within scope of the fund.
2. Stage two will commence once an in-principle agreement to proceed is in place. This stage will evaluate the proposed solution and costs and undertake due diligence.

Where funding is approved, work should be carried out at pace. The government will not be assuming procurement responsibilities or providing a list of approved contractors. In line with the purpose of the fund, compliance with statutory consents/Building Control approval will also need to be demonstrated at key points. However, we expect work on site to start as soon as possible after funding has been approved.

Where works have already started but are not yet completed, we will assess applications for funding based on the same criteria as applications for funding where works are yet to start

¹⁵ 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.

and provide funding for the qualifying works already completed.

Applications for funding where works have already completed will also be assessed using the same criteria. Subject to subsidy control rules and the qualification requirements set out in this prospectus, we will provide funding for the costs of remediation of unsafe ACM cladding once we receive evidence of building control sign-off.

If leaseholders have already paid for the remediation of unsafe ACM cladding through the service charge, whether for work that has been completed or has yet to be started, the funding agreement will require the applicant to reimburse leaseholders (or the relevant sinking fund) for an amount equivalent to the benefit they will receive following a successful application for funding.

VAT

Snagging (or the correction of faults) is often carried out after the building has been 'completed'. Provided the replacement cladding forms part of the original construction and the person requesting the cladding had an interest in the building during the construction works, then the replacement cladding may qualify for the zero rate as snagging. This work may form part of a building contract with zero-rated VAT. If applicants require advice on whether their replacement cladding meets the criteria of snagging and so is eligible for VAT at zero rate, they can write to the HMRC Clearance Team.¹⁶

Pre-contract support

We will consider applications for advance funding to enable applicants to get to the point at which they have a construction contract in place and thus clarity on the scope of works proposed, the costs thereof and the level of support from the fund which is sought. These applications will need to meet the fund's initial diligence criteria.

This may take the form of funding for surveys, design, planning and procurement costs etc. Where this is the case applicants will still need to provide full details of the ownership and management arrangements in respect of the blocks themselves in order to apply. Cost and works details will then be provided when a successful tender is received, and an assessment will take place as set out above before confirming the level of qualifying support for the remediation works themselves.

If the applicant does not proceed with the works or their application turns out to be ineligible, we will recoup the value of this initial funding and will seek an indemnity to cover this.

Full support

Separate applications will need to be made per building as we expect building owners to have carefully considered the right solution for each building. We will consider additional applications where costs overrun (see below).

Where pre-contract support isn't required, applicants can request full support for the cost of remediation works after a successful tender, including reasonable and proper pre-contract

¹⁶ <https://www.gov.uk/guidance/non-statutory-clearance-service-guidance> - see Annex D.

costs.

Once approval is confirmed the grant amount will be fixed. Legitimate increases in the scope and cost of work required will be considered and will be assessed in accordance with the criteria set out above, including subsidy control rules. However, we expect applicants to make arrangements which minimise the risk of this happening, for instance by scoping and specifying works adequately, going through a competitive process to award a contract and appointing a competent contractor using industry-recognised contractual agreements. Arrangements which place an undue level of risk with the client – and in turn the funder – will not be acceptable. Responsible entities must take all opportunities to ensure work is covered by supplier warranties, which help protect leaseholders from future costs.

In the event of costs incurred or expected exceeding those which have been agreed, the following will apply:

- The applicant must notify MHCLG and submit a separate application for additional funding.
- MHCLG will consider applications for funding where:
 - o There is a legal obligation which requires a change in the scope of works to replace the unsafe ACM cladding.
 - o Work on site uncovers that the unsafe ACM cladding is more extensive than originally tendered for, or that the scope of works must change and become more costly.
 - o The applicant applies for funding to replace unsafe non-ACM cladding which has been confirmed as eligible under the Building Safety Fund
- In all cases, MHCLG reserves the right not to provide further funding beyond that agreed. Any risk of cost increases therefore resides with the applicant.

Where additional funding is provided, this is subject to the same subsidy control conditions under which the funding agreed has been provided.

Applicants/responsible entities are responsible for assembling any funding package necessary in order for works to go ahead, of which resources from the fund may only be a part. A first payment for construction work under the fund will only be made when the re-cladding work has commenced on site.

We will carry out a reasonable and proportionate amount of diligence in order to safeguard public money concerning:

- the ownership and management arrangements of individual blocks.
- the service charge obligations of leaseholders.
- the scope and cost of proposed cladding remediation works and the contractual arrangements to deliver remediation.

The scope of due diligence is limited to supporting the purpose of the fund and building owners should not rely on it to highlight any design, construction or other related issues that remain the building owner's responsibility to address.

We will benchmark costs with MHCLG-derived cost information and external benchmarks. Where costs are outside our expectation, we may request additional supporting information.

Payments will be made as cash grants and will be made either as:

- one payment of 80% of eligible costs (less any pre-tender support) at start-on-site,

and one payment of 20% of eligible costs at practical completion¹⁷

- otherwise, on the basis of monthly valuations of work carried out on site, with an appropriate degree of due diligence, mirroring industry standard practice. This will also include withholding a final payment at Practical Completion.

If your chosen contractor has requested different payment schedule terms, or you are otherwise unable to operate the terms set out above, you should contact your delivery partner (Homes England / The GLA) to discuss alternative payment scheduling.

On site progress tracking and draw down of funds

We will check progress regularly. To ensure work is undertaken to expected standards, and with a particular focus on fire safety, we expect appropriate quality assurance measures and safety checks to be in place on site. All building control bodies appointed for remediation projects supporting the fund must take into account relevant advice issued by MHCLG.

Further reassurances on building safety will be required from responsible entities where works take longer than expected. Periodic on-site inspections will be carried out.

Cost recovery

Building owners will be expected to take all reasonable steps to recover the cost of replacing the unsafe cladding from those responsible. At the application stage we will ask for information regarding such steps and may seek further information to satisfy ourselves of the position. Where building owners do successfully recover damages relating to the removal and replacement of unsafe cladding the government will expect building owners to pay to government any amounts recovered which are referable to the removal of the unsafe cladding up to the amount provided through the fund.

We will not seek to recoup amounts recovered in litigation or settlement which do not relate to the removal and replacement of unsafe ACM (or, where covered by funding, non-ACM) cladding. Where building owners have already recovered damages, they should deduct the relevant amounts from applications and provide an explanation as to how this has been calculated.

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

Enforcement

If a responsible entity does not apply and refuses to remediate a high rise building with unsafe ACM cladding, we expect local authorities and fire and rescue services to take enforcement action. We have established the Joint Inspection Team, which includes experts in environment health, building control and fire safety, to support local authorities to assess buildings under the Housing Health and Safety Rating System and thereafter with enforcement action under the Housing Act 2004.

¹⁷Practical is defined as when the Certificate of Practical Completion is issued for all the Works and if more than one such Certificate of Practical Completion is issued, the date of the latest such certificate.

How and when to apply for funding

The Ministry of Housing, Communities and Local Government (MHCLG) has written to all responsible entities known to be affected following the announcement of the fund. Responsible entities should, therefore, already be in contact with MHCLG through the Building Safety Programme. If responsible entities have not notified MHCLG of buildings that fall into this specification, they should do so immediately by emailing towercaseworkteam@communities.gov.uk

Where can I find further information and support?

If you would like to discuss your application further, please contact us at psrapplication@communities.gov.uk

Although leaseholders should contact their responsible entity with queries about their specific building, LEASE will act as the point of contact for leaseholders with questions about the fund. If you are a leaseholder with an enquiry, please contact the Leasehold Advisory Service (LEASE) via <https://www.lease-advice.org/>

Annex A – Information required

This is set out comprehensively via the application portal but will broadly cover:

- Verification of residential leaseholders and obligations
- Verification of contracting party and obligations
- Subsidy Control declarations
- Building details
- Cladding details – initial and replacement; testing etc.
- Proposed works and costs together with supporting documentation
- Contracting route and contract details together with supporting documentation
- Other required fire safety work

In addition to supporting documentation on tenders and tender prices we will require a cost breakdown as follows:

Cost Description	Total project costs (£) – i.e., if ‘project’ is for multiple blocks and/or works over and above replacement cladding	Total eligible for MHCLG funding (£) – i.e., costs of in scope work to the one block which is the subject of this application	Total of grant support applied for (£)
Access (e.g., scaffolding or mast climber)			
Removal of defective material in the cladding system			
Replacement of defective material of the cladding system			
Abnormal costs			
Professional fees – pre-tender stage			
Professional fees – post-tender stage			
Irrecoverable VAT			
Preliminaries			
Contingencies			
Overheads and profit			
Client costs			
Total	Calculated	Calculated	Calculated

You will also be required to provide details of the account held in trust for the benefit of leaseholders into which we will make grant payments, with evidence that this complies with the requirements of Section 42 of the Landlord and Tenant (LTA) Act 1987.

Or

If you have a Client Money Account registered under a Client Money Protection Scheme (CMPS), you will be requested to provide evidence that the account is registered under the CMPS.