

## **Bolanachi Questions and Answers**

### **Section 20 consultation**

#### **Why was the residents' meeting held the night before consultation ended?**

We didn't choose the date to coincide with the end of the consultation, it was chosen to give you enough time to raise questions (and for us to respond) before the meeting. If we'd held the meeting earlier, we might not have been able to answer all your questions.

This way, you can read our answers before the meeting (we won't be going through them on the call), giving us more time to update you on the proposals and for you to raise any further concerns.

#### **Can I still ask questions after the consultation period ends?**

Yes, of course. We want to give everyone the chance to comment on, and ask questions about, the proposed works. Please do continue to ask questions and we'll do our best to answer them. We appreciate that some of the Section 20 notices didn't arrive within the three days we normally allow on top of the 30-day consultation period – this was due to postal delays during the lockdown.

#### **Can I have a tailored, individual response to my observations, not just a generic one?**

As many of the observations are on similar subjects, we've decided to collate these in one document and to share them with all the residents. That way you'll get a response to your observations and also be able to read the responses to all the other observations too.

If you've got any personal concerns, please email [EWS@hyde-housing.co.uk](mailto:EWS@hyde-housing.co.uk) and we'll reply to these directly.

#### **Can the Section 20 process be extended beyond the end of the consultation period on 27 May?**

Legally, the consultation process is set at 30 days. However, the courts have said this should be extended to between 33 and 35 days, to allow for postage time, so that's the approach we adopt in all our consultations.

This consultation was extended for a further month to allow time for you to raise more observations and to give us more time to consider them. We can't extend the process any longer, because we need to ensure work starts by September 2021, to meet the criteria of the Building Safety Fund; any further extension would mean we wouldn't be able to start work in time.

#### **What is the last possible date the consultation could be extended to, without missing the September deadline for starting the work?**

We're not considering extending the consultation process at the moment but that doesn't mean we stop our discussions with you. We'll still hold meetings with you and you can still raise questions, concerns, comments throughout the works. We want to continue to have a positive relationship with you and involve you in the project.

#### **Why are you rushing the section 20?**

We've allowed an additional month to consider and respond to your observations. However, we believe this work is necessary and we'll proceed on this basis, so we can meet the Building Safety Fund deadline of work starting by September 2021.

**If the Section 20 consultation has finished and you're going to continue regardless, when is the next time we can legally rebuke a cost? Is that when we receive a service charge?**

You can continue to challenge the 'reasonableness and necessity' of the work at any point throughout the consultation, while work is underway and when we send the final bill. Our intention to start work doesn't prejudice your right to challenge the costs and any charges we propose to pass on to you.

It's in everyone's best interests to work through these challenges before costs are billed to residents. However, where we can't reach a consensus, we must act on our responsibilities for building management.

The risk of recovering costs rests with ourselves and we must demonstrate that works are needed and that costs are reasonable. Both Hyde and residents can approach the First Tier Tribunal together or separately to determine if we have the right to recharge the costs and this can be at any time; in most cases this happens once work is finished.

If we had any concerns about whether or not these works were needed, we would place ourselves at significant financial risk through our Building Safety Fund application and at the First Tier Tribunal. It's not in our interest to carry out unnecessary work to the building.

**Is the latest Section 20 consultation still valid given the multiple changes?**

While we've removed the communal lighting, and may well remove the VAT, from the original cost estimate in the Section 20 notice, the consultation is still valid. However, remedial works to the brickwork was not covered. If we do need to carry these works out, we'll apply for dispensation from the First Tier Tribunal before passing on any costs to leaseholders.

**Appointing Kier to deliver the proposed project**

**How can you appoint Kier to carry out these works without consulting with residents?**

In May 2018, we sent you a Section 20 notice to let you know about our plans to set up framework and long-term agreements with contractors to carry out fire safety works on our buildings.

This 'competitive tender' process saw a number of companies bid for 'lots' (each covering different aspects of the types of work we wanted to carry out). After reviewing and comparing the companies' capabilities, experience and prices, we appointed a number of them to the framework.

Kier is the top-ranking contractor in Lot 12, which covers management contracting services (where Kier manages other contractors delivering the work, on our behalf). This was Kier's role on the original ACM cladding removal project.

Because we consulted with customers on the fire safety works framework in 2018-19, and because we're proposing to appoint Kier through that framework, we don't need to consult with you again.

**If Kier is a management contractor, how can it deliver the work using its own staff?**

The original tender documents sent to contractors bidding for Lot 12 of the fire safety works framework stated that management contractors could also carry out works directly (ie using their own staff), so there's no issue with appointing Kier to carry out the works.

However, our legal advisors have told us that not saying Kier could also deliver works when consulting with residents on the Lot 12 framework, means there could be a legal challenge to the current consultation on the timber cladding replacement.

So, to ensure the consultation is transparent and fair, we'll be seeking 'dispensation' from the First Tier Tribunal for the 2018-19 consultation process, due to the omission of "and delivery" from the Section 20 notices. In other words, we'll be able to appoint Kier to carry out the timber cladding replacement, even though we didn't state that in the 2018-19 consultation.

This dispensation does not change our position regarding charging leaseholders: we're still applying for Government funding and, where possible, will aim to recover costs from developers, before we pass on any costs to leaseholders.

**Why can't you award the work to contractors in Lots 1-11, with Kier as management contractor?**

At the time of the original consultation, in 2018-19, contractors were open to managing others through this sort of framework. However, a lack of availability of contractors means it's difficult for management contractors to find companies to deliver the work; they would prefer to deliver it themselves.

**Do you think you've complied with the Section 20 process?**

We know there's an issue with the latest Section 20 notice, in that the 2018-19 framework consultation notice didn't say Kier could deliver works itself, despite that aspect being included in the tender documents. That's why we extended the consultation period, so that we can respond fully, and honestly, to your observations.

We don't believe that residents will experience any 'prejudice' (eg financial harm) by appointing Kier to carry out the works directly. However, the dispensation application to the First Tier Tribunal will allow you to challenge, and provide evidence, why you feel you have been prejudiced.

We've included more details of the Section 20 process in an appendix to these Q&As.

**Does this mean that you can't pass on costs to leaseholders?**

If we are successful in our application for dispensation, it won't change our ability to pass on costs to leaseholders of more than £250 each. However, we're still applying for Government funding and, where possible, will aim to recover costs from developers, before we pass on any costs to you.

**Please can you clarify how you've fulfilled the Section 20 notice? Given that we were initially told you were going into the works stage for the timber in February 2020 and no cost was raised. Surely, by moving to the works stage without raising a cost in February 2020 you have invalidated the Section 20 process?**

We know there's an issue with the latest Section 20 notice, in that the 2018-19 framework consultation notice didn't say Kier could deliver works itself, despite that aspect being included in the tender documents. That's why we extended the consultation period, so that we can respond fully, and honestly, to your observations.

We don't believe that residents will experience any 'prejudice' (eg financial harm) by appointing Kier to carry out the works directly. However, the dispensation application to the First Tier Tribunal will allow you to challenge, and provide evidence, why you feel you have been prejudiced.

**We understood we could nominate contractors as part of our observations to the Section 20 notice – why haven't we been given that opportunity?**

We only ask customers to nominate contractors for projects (a Stage 4 consultation) where we don't have a long term or framework agreement; this doesn't apply in this case, as we have a framework in place for fire safety works. That doesn't mean we don't want your comments and feedback, these are always welcomed.

**Why haven't you given us at least two other estimates for these works?**

The letter we sent you in March is a 'Schedule 3 Section 20 notice', which means we're consulting with you about work where the contractor has already been selected through an earlier consultation and tender process. In this case, the contractor Kier was selected as part of our 2018-19 fire safety framework consultation. This means we don't have to give you more cost estimates for these works.

Our consultant Martin Arnold carried out a value for money review of the original fire safety frameworks and we always review framework contractors' cost estimates for individual projects. to ensure they offer value for money.

**Why do you think awarding to Kier is the best option?**

Kier's leading role in the successful delivery of the ACM cladding removal at Bolanachi means we feel it's best placed to carry out the next phase of the building safety works – the timber cladding replacement. Kier knows the building well and will be familiar to residents, so work can be carried out quickly and efficiently, and will deliver best value for money.

**What happens if you don't appoint Kier?**

Appointing Kier also means we don't have to go through a competitive tender process for the timber cladding replacement, which would take months and will delay the project.

**Please share our leases with us.**

We'd be happy to share copies of your leases. Please email [EWS@hyde-housing.co.uk](mailto:EWS@hyde-housing.co.uk) with your address and we'll send this to you straight away.

## Remedial works

**How do these current proposed works differ from the cladding replacement works carried out before? Can you provide more details of the proposal, so we can understand what we're being asked to pay for?**

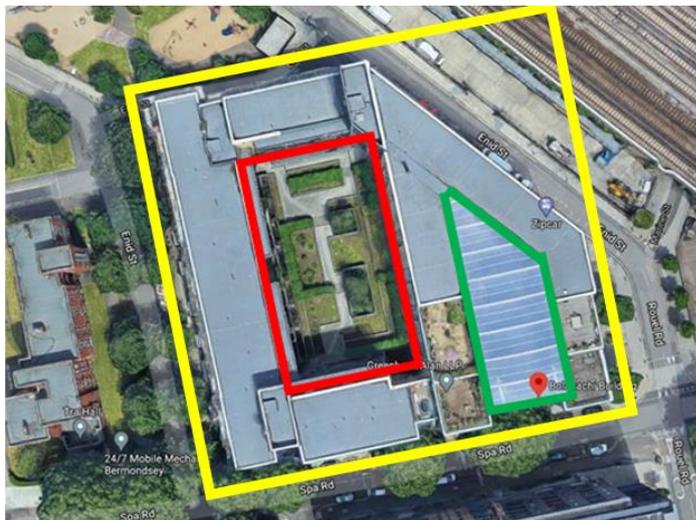
The previous work, between April 2018 and July 2019, saw us replace aluminium composite material cladding (ACM) with an A1-rated (non-combustible) cladding system. We also carried out fire stopping works and replaced timber decking on the balconies at the same time.

The current proposals are to replace the timber balustrades (the handrails and the sides) of the walkways in the atrium and the timber cladding on some of the walls of the courtyard, with an aluminium system powder-coated with a wood finish.

The proposals don't include ACM cladding removal or any work to individual balconies – these have already been carried out.



*Timber cladding in the courtyard (left) and timber balustrades in the atrium (right).*



*A plan of Bolanachi Building – the atrium is marked in red; the courtyard area is in green.*

The aluminium system is made by Vulcan Cladding Systems and will have a Rosewood finish. This has been tested by Warrington Fire and has an A2-s1-d0 fire rating:

- A2 – limited combustibility
- s1 – little or no smoke produced in the first 10 minutes of a fire
- d0 – no flaming droplets and particles are produced in the first 10 minutes of a fire

This means that the materials don't contribute to the formation or spread of a fire (see next page).

### **Fire behaviour**

The reaction to fire classification determines how much a material contributes to the behaviour of fire. A2-s1,d0 is non-combustible in Scotland and of limited combustibility in England and Wales, while at the other end of the scale, an F rating is easily flammable:

- A1 = non-combustible materials
- A2 = non-combustible (Scotland) and limited combustibility (England and Wales)
- B, C, D = ranges from very limited to medium contribution to fire
- E, F = high contribution to fire

### **Smoke development**

The 's' part of the classification refers to the total smoke emitted during the first 10 minutes of exposure to fire:

- S1 = little or no smoke
- S2 = quite a lot of smoke
- S3 = substantial/heavy smoke

### **Formation of flaming droplets/particles**

The 'd' part of the classification relates to the number of flaming droplets and particles that are produced within the first 10 minutes of fire exposure:

- D0 = no droplets
- D1 = some droplets
- D2 = quite a lot.

### **How many timber panels are being replaced? What's the cost per panel?**

The project has been priced on replacing timber by the linear metre, not per panel. We've provided a detailed breakdown of the timber replacement costs to customers via email on 21 September 2021.

### **Did you know you would need to carry out more cladding works when you replaced the ACM cladding? What guidance, legislation and advice are you following?**

After the ACM cladding was replaced Bolanachi Building, in 2019, we commissioned our consultant Martin Arnold to carry out further fire safety assessments, in line with Government Advice Note 14, that had been issued by the Ministry for Housing, Communities and Local Government (MHCLG) in December 2018 (while the ACM work was underway).

The Advice Note gave guidance for building owners with non-ACM materials in external wall systems, including cladding and insulation. While not a legal requirement, it strongly advised owners

of buildings above 18m to take 'general fire precautions' in their buildings and to ensure external wall systems were 'safe'. The guidance highlights the need for building owners to review the risk presented from combustible materials, such as timber, and recommends cladding systems should be of 'limited combustibility'.

Additionally, in June 2019, Government issued an Advice Note on Risks Arising from Balconies on Residential Buildings, with similar recommendations regarding timber cladding.

Both pieces of guidance were considered during Martin Arnold's assessment. Martin Arnold's report, issued in September 2019, and a further report by Frankham RMS (issued in November 2019), highlighted the timber covering the walkways in the atrium area and courtyard area as a risk and recommended its replacement with a non-combustible material.

We won't be sharing these reports with customers. Our lawyers have told us we need to be very careful that we don't share anything that could potentially compromise any future claims we may make. We know claims are often vigorously defended on a number of different levels, so we need to ensure we take the right steps. However, we can share the following extracts from the two reports:

*"FRMS advises that, in the absence of any proof that the materials are non-combustible, replacement of these materials should be considered, as they present a risk to all residents required to escape through this area. A single fire could jeopardise the escape route for all residents.*

*"This timber is potentially a high risk and does not comply with the current advice note on balconies on residential buildings from the Ministry of Housing, Communities and Local Government."*

**(Frankham RMS Balcony Survey Report 2019)**

*"Although the timber cladding at Bolanachi Building is not confined to balconies, it does enclose walkways and escape routes and therefore [the MHCLG advice] would apply.*

*"The timber on the external parts would provide a means for fire to spread externally. This timber is located to elevations which are below 18m but is an area for fire to spread and does pose a risk. The probability of a fire starting on a walkway is low, but should it occur the severity is high.*

*"The view of the MHCLG Expert Panel is that the clearest way to prevent the risk of external fire spread and is to remove and replace any combustible material with one that is non-combustible (classified as A1 or A2-s1, d0)."*

**(Martin Arnold AN14 Report 2019)**

**Have you rigorously questioned the recommendation of the experts?**

We've received advice from three independent, expert organisations which all agree we need to replace the timber. Our in-house fire safety specialist has reviewed all the recommendations and agrees that we need to carry out this work to completely remove the risk.

Fire risk assessments carried out by Savills in May 2020 and February 2021 also highlighted the timber as a potential risk.

**What other options have you considered and why have these been ruled out? For example, why can't you just treat the timber with fire retardant or new timber?**

MHCLG's expert panel has said the clearest way to prevent the risk of fire spread is to remove and replace any combustible materials with non-combustible ones.

As the building owner, we're responsible for the safety of residents and our buildings. Taking all the advice into account we believe the best way to ensure residents safety is to remove the risk entirely and replace the timber with a non-combustible product. We can't replace it with new timber.

Any treatment would only reduce the potential of surface spread of fire for a limited amount of time, it would not prevent the timber from burning and so doesn't reduce the risk. We'd also have to remove each piece of timber to treat it, to ensure complete coverage (which would have to be checked).

This process would have to be repeated every two years, so isn't a practical or cost-effective approach.

**If the Martin Arnold report from 2019 recommended these works, why were we issued a certificate of compliance on 2 October 2019?**

The certificate of compliance relates to the ACM replacement works.

**Why didn't you replace all the timber when you carried out the ACM replacement and replaced the timber on our individual balconies? Was Hyde or its fire safety consultant negligent in not including it in these works?**

During the ACM replacement project, we considered the balconies part of the external wall system, so we replaced the timber on balconies. MHCLG advice and guidance at the time didn't highlight the risk of timber used for walls and walkways, so these weren't included in the original works. However, subsequent guidance has highlighted the need to assess timber used in this way on buildings.

**Does the new Fire Safety Bill replace all Government guidance on the timber cladding and on the balconies and so works are no longer required? Or is the work needed to meet EWS1 requirements?**

The Fire Safety Bill doesn't change Government guidance on what materials can be used on buildings. This includes the timber cladding on the walkways at Bolanachi which we're proposing to replace with non-combustible materials and timber on individual balconies, which was replaced during earlier works. This work is also required for the building to pass an EWS1 assessment.

**Has the fire risk of the under-croft car park and the bin store been factored into the fire risk assessment?**

Both the bin store and the under-croft car park are adequately compartmentalised, with a minimum fire separation between them and the flats of 90 minutes. The car park is ventilated into the courtyard but there is low chance of fire spreading, as heat and smoke would be dissipated and so there is no effect on the fire safety of the building.

**In the FRA (Fire Risk Assessment) there were a lot of unanswered questions requiring further information from management - can Hyde provide this and how this links to the building regulations.**

We have all relevant information about the design and construction of the building. It's important to note that, while products and buildings may have met building regulations at the time of construction, they may not satisfy the requirements of the latest guidance. Ultimately, they may present a significant risk, despite meeting historic building regulations.

**Do you still hold the O&M manual for the building, and records of materials used from the original contractor? Could you please provide details of the exact type of timber panels and their fire rating? Could you please provide details of their performance in a large-scale test?**

We've reviewed the O&M documentation and unfortunately, there are no details on the timber panels used in the original construction. However, regardless of the fire rating of the original timber panels, they are made of combustible material, so they'll still need to be replaced.

If you'd like to see specific information from the O&M manual, we're happy to share extracts with you, via email. Please make requests via [residentfiresafety@hyde-housing.co.uk](mailto:residentfiresafety@hyde-housing.co.uk)

**What other work are you proposing?**

We originally planned to include the installation of communal lighting and an upgrade of the electrical system but, having listened to your feedback, these have now been removed from the proposed works.

As well as the timber replacement, the current proposals include replacing seven communal fire doors; the front doors to flats are not being replaced as they provide adequate fire protection. The new fire doors will have a FD30 rating, which means they can resist fire for 30 minutes; they'll look the same as the current doors.

The fire doors in total are costing £19,973.94 excluding VAT, this equates to £2,853.42 per door.

**Can you provide a timeline?**

<b>April 2018</b>	ACM Replacement Project (including timber dwelling balconies) commences
<b>December 2018</b>	MHCLG AN14 released
<b>June 2019</b>	MHCLG Balcony advice note released
<b>July 2019</b>	ACM Replacement Project (including timber to balcony cheeks) completed
<b>August 2019</b>	Hyde commission AN14 report and balcony report to specifically look at timber
<b>September 2019</b>	Martin Arnold AN14 Report issued to Hyde
<b>November 2019</b>	Frankham RMS Balcony Survey Report issued to Hyde
<b>December 2019</b>	Hyde begins specifying timber replacement intending to continue contractual arrangement with Kier following ACM works
<b>January 2020</b>	MHCLG Consolidated advice note released (EWS included)
<b>February 2020</b>	Original start date for timber replacement works assuming continuation of the existing terms and conditions with Kier following ACM works. Site set up begins.
<b>March 2020</b>	Covid-19 delays halt site set up
<b>May 2020</b>	Complications arise with continuing existing contractual arrangement arise further delaying works
<b>September 2020</b>	Specification of works changed to include lighting replacement and provisional sum for fire doors.
<b>October 2020</b>	Decision made to appoint Kier as Principal Contractor under the Hyde fire framework. Kier to reprice to include electrical and fire door works.
<b>November 2020</b>	Brick work sections assessment carried out by fire engineers using information from previous AN14 intrusive inspections
<b>December 2020</b>	Programme details & specification reviewed
<b>March 2021</b>	S20 consultation issued to residents
<b>July 2021</b>	Proposed mobilisation due to consultation extension
<b>August 2021</b>	Proposed start
<b>July 2022</b>	Proposed completion

## Carrying out the remedial works

### **Why is Kier starting work, when the funding issues aren't resolved and customers weren't involved in the tender process?**

We need to start work before the end of September 2021 to be eligible for the Building Safety Fund, even though a final decision is yet to be made by MHCLG. As we're carrying out work on safety grounds, it must go ahead, regardless of whether or not we get Government funding.

### **What building contract is being used? Why is a 'not to exceed' clause not included?**

Kier's contract is a fixed cost contract with contingency and provisional sums allowed within the fixed cost. We're using the JCT Intermediate building contract with contractor's design 2016.

### **Do we have an exact completion date for the works?**

We can't give you an exact date but currently, we expect work to be finished in July 2022.

### **The programme seems conservative, are you incentivising Kier to finish earlier?**

This is a realistic timescale for the work and we've agreed the programme with Kier.

### **Why is scaffolding needed in the atrium? Have you looked at other, less expensive options, such as fall restraint systems?**

Kier considered a number of options and decided scaffolding was the safest and most cost-effective way of carrying out works.

### **Will Kier need access to flats?**

Kier won't need to access the flats – work will be carried out from the scaffolding.

### **How will the plants in the atrium be protected - if they are damaged or die, will they be replaced? Will we have to wait until works are complete?**

We'll make sure the plants are maintained as normal during works (bearing in mind the disruption caused by the work itself). Any plants that die or are damaged during work will be replaced by Kier at its cost.

### **How will you ensure cleaning gets done and access to bins and other public areas, such as parking and lifts, is maintained during works?**

Cleaning will continue and Kier will ensure access is maintained to public areas (work-dependent) during the project. Eight parking spaces will be unavailable while work is underway and if access to any of the bin stores is restricted at any time, we'll ensure rubbish is cleared more often and the costs of this won't be passed onto customers.

### **How will you deal with personal property kept in communal areas?**

We'd like to remind everyone that personal property shouldn't be kept in communal areas. The Bolanachi Building Property Manager carries out monthly inspections.

### **Can you assure us that any damage caused by the proposed works to our homes will be covered?**

Work will be covered by a commercial all-risks policy to cover loss or damage to the building.

## Brickwork remediation

### **What brickwork are you assessing?**

We've carried out inspections of the brickwork of the external walls of the building (not between individual flats), to check for layers of fire protection.

### **When will you have the results from the brickwork investigation? Why don't you wait until you have these results before starting the timber replacement, as you've said it might be more cost effective to do it at the same time?**

The report from the fire engineer on whether or not the insulation behind the brickwork needs to be replaced has been delayed, because of proposed changes to the way in which external wall systems are assessed. BSI PAS 9980 Fire risk appraisal and assessment of external wall construction and cladding of existing blocks of flats – Code of Practice is due to be published in autumn 2021.

As a result, we would rather wait, than carry out unnecessary (and costly) work. We'll update you with the impact of the new code of practice as soon as it is published. However, despite this, we've produced a specification for the work on the assumption the insulation will need replacing, we can apply to the Building Safety Fund.

If we have to carry out remedial work to the brickwork, this can be carried out immediately after the timber replacement and we'll still benefit from any cost savings (or won't incur additional costs).

### **Will you share the factual report of brickwork survey with customers?**

We've been told by MHCLG that we can't share any reports or details with customers while the Building Safety Fund application is being assessed.

### **Can you confirm if remedial work is needed to the brickwork areas?**

Inspections have confirmed the correct cavity barriers are present in the external brickwork. However, there's combustible insulation in the walls, which our fire engineer has recommended is replaced. We're still assessing whether we need to carry out this work, as we're confident the risk is extremely low.

### **Will we be able to stay in our homes, if remedial work to the brickwork is carried out?**

We believe the building will be habitable and safe during any brickwork remedial works but we'll confirm this when we've finalised what work needs to be done.

### **Can you provide a cost estimate for the remedial works to the brickwork?**

A worst-case scenario cost estimate for brickwork remedial works was included in overall cost estimates shared with customers in the week of Monday 12 July 2021.

### **Will you try to recover the cost of the brickwork remedial works from the original contractor?**

We don't believe the combustible insulation issue is a 'defect' or the result of negligence on the part of the original contractor, but we'll look to recover any remedial costs we can from third parties, where possible.

**Will the brickwork remedial works be covered by the Building Safety Fund?**

We've been advised that the Building Safety Fund (BSF) should cover the brickwork remedial works, if required. We've prepared a specification of works for replacing the insulation, as part of the application for the BSF. However, we're still assessing the need for these works.

**Will the brickwork remedial works also have to start by 30 September, to qualify for the Building Safety Fund?**

Yes, brickwork remedial works would need to be part of the same project. However, Government has said it will consider later start dates on a case-by-case basis, so work may be able to start later. We're still aiming to begin work by the end of September.

## Government funding

### **Will you be applying for Government funding and if so, how much of the works will be paid for by this funding, if the application is successful?**

We applied to the Building Safety Fund for the timber removal and separately for the brickwork on 25 June 2021. Unfortunately, we can't estimate how much of the work will be covered by funding (if we're successful) because we aren't in control of that decision.

### **What's the deadline for applying to the Building Safety Fund?**

We had to submit our proposal for the works as part of an application to the Building Safety Fund before the end of June 2021 and work must start by September 2021. You can read more about the fund application process here: <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

Government funding only supports replacing materials with limited or non-combustible materials.

### **Will you share the Building Safety Fund application with us?**

We've met with the Ministry of Housing, Communities and Local Government, following our Building Safety Fund application; it has advised us not to share the details of the application publicly.

### **When will we know about the Building Safety Fund decision?**

We're having open discussions with MHCLG fortnightly, to discuss our BSF applications. However, we won't hear whether we have been successful or not until late September and won't know how much funding we'll receive, if any, before then.

### **Can customers attend the MHCLG [Building Safety Fund] meetings?**

Customers won't be involved in the MHCLG discussions regarding the Building Safety Fund applications.

### **Will funding be shared across all projects or were applications made on a building-by-building basis?**

Applications to the BSF are made on a building-by-building basis. Any funding we receive for Bolanachi Building can only be used on Bolanachi and nowhere else. Funding covers the costs that we could recover from customers, which means we'll have to pay our share of the costs (on behalf of our tenants), regardless of whether we're successful in our application for funding.

### **What are the possible outcomes of the application to the Building Safety Fund and will the Ministry of Housing, Communities and Local Government (MHCLG) be commenting on whether or not the proposed work is needed?**

Our application to the Building Safety Fund (BSF) is now being reviewed by MHCLG. We'll continue to keep you updated on the progress of our application – please bear in mind the volume of BSF applications means it may be some time before we know whether or not we've been successful.

The need for the proposed timber replacement work is based upon expert advice we've received from our fire engineers, so we can keep everyone living in the building safe. We'll need to carry out the work, even if we're unsuccessful in our application to the BSF.

**You said you need to start work by September 2021 to apply for government funding. Is there anything that could prevent you from this? If so, what?**

The Government has recently said it will consider funding projects that start after September 2021 (on a case-by-case basis). However, if we have to change our current proposals, that will cause a delay and could put funding at risk.

**If the timber cladding replacement work had been carried out at the same time as the ACM cladding replacement, would it have been covered by Government funding?**

No, the original fund was only for removing ACM cladding.

**If you're applying to the Building Safety Fund, why are you asking us to pay?**

The Building Safety Fund may not cover all the costs of the remedial work, which means we may still have to pass on some of the costs to leaseholders. We wanted to tell you that we wouldn't be paying for further fire safety works and so we started the Section 20 process. Please remember the Section 20 notice is not a demand for payment, and we haven't billed you for anything yet.

**By how much will the Building Safety Fund reduce the costs to leaseholders?**

We've applied for the full amount of the cost of the works that would be passed on to leaseholders, so, if we're successful, we won't be passing any costs onto leaseholders. However, we won't know how much funding we'll receive until we hear back from MHCLG.

**Will the proposed work be cancelled if the Building Safety Fund application is unsuccessful?**

The need for the proposed timber replacement work is based upon expert advice we've received from our fire engineers, so we can keep everyone living in the building safe. We'll need to carry out this work, even if we're unsuccessful in our application to the Building Safety Fund.

Regarding brickwork remedial works, inspections have confirmed the correct cavity barriers are present in the external brickwork. However, there's combustible insulation in the walls. We're still assessing whether this needs replacing, as we're confident the risk is extremely low.

**We heard Hyde has received £13m from the Government to pay for building safety work – how will this be split between buildings?**

You may have seen a headline in Inside Housing stating we've received £13m in Government funding to pay for building safety work. The £13m (actually £12.9m) is money we've received from government funding and from contractors relating to historic fire safety costs, including removal of ACM cladding. It doesn't relate to the current Building Safety Fund applications. You can read more in our **Annual review** [[www.hyde-housing.co.uk/annual-review-19-20/](http://www.hyde-housing.co.uk/annual-review-19-20/)]

## Legal claims from third parties

### **Can you get the original developer to pay?**

We'll always seek to recover costs from original developers, contractors and previous building owners to mitigate the costs to ourselves and our homeowners and will continue to do so.

In the case of Bolanachi, we will pursue the original contractor, Roof Ltd, to rectify any defects we identify against its original contract. (Please note that there was a mistake on the Section 20 notice, that stated Rok was the original developer of Bolanachi Building, we are sorry for any confusion caused).

### **Could you provide full details of which parties you are planning to pursue for these costs? Has this process started?**

We're not ruling out claiming for this work against the original contractor, Roof Ltd. However, we'd need to prove that Roof was in breach of its original contract with us, which will relate to the Building Regulations at the time, not necessarily those in force today.

### **Could the original contractor ask to do its own surveys and delay any works until they're out of warranty?**

No, there are processes in place to stop such a situation. However, we don't believe the timber cladding or the combustible insulation issue behind the brickwork are 'defects' or the result of negligence on the part of the original contractor, but we're continuing to explore if we can recover any remedial costs we can from third parties, where possible.

### **Can you update us on any claims against the original contractor. Is there anyone else you can claim against?**

We don't believe the timber cladding or the combustible insulation issue behind the brickwork are 'defects' or the result of negligence on the part of the original contractor, but we're continuing to explore if we can recover any remedial costs we can from third parties, where possible.

## Passing costs on to leaseholders

### **Can you provide a 'worst case' cost estimate for the remedial works?**

We shared the cost estimates with customers in the week of Monday 12 July 2021 and a detailed breakdown on 21 September 2021.

### **Are the current estimated costs essentially the worst-case scenario? Is there a risk they could be even more?**

The cost estimates cover all known works and include a contingency for unforeseen issues. As with any construction programme, we can't guarantee there won't be additional unforeseen works but we're confident there won't be.

### **How many flats in the building are owned by Hyde and are the costs going to be apportioned to Hyde in the same way as with leaseholders?**

We own 38 of the flats in Bolanachi building and the share we'll pay on behalf of our tenants is based on the same calculation used to apportion costs to leaseholders – which is the same way we apportion service charges. The amount we'll pay is detailed in the cost estimates with customers in the week of Monday 12 July 2021.

### **Will the commercial leaseholder be contributing to the cost of the proposed works?**

If we do have to pass on costs to leaseholders, the commercial leaseholder will pay its share.

### **The timber cladding replacement has been planned for some time, why haven't you told us that we may have to pay some of the costs before?**

As we explained in our letter in March, we originally promised to cover the costs of building safety works, specifically those relating to the removal and replacement of ACM cladding (and any additional works required as part of that work), following Grenfell.

This enabled us to carry out the urgent works as quickly as possible, to make sure everyone was safe. We then took legal action against the contractor which built Bolanachi, Roof Ltd, and applied for government funding. We recovered £4.5m towards the £6m cost of the ACM cladding replacement, so we paid £1.5m.

Bolanachi Building is just one of many where we've taken a similar approach. Since 2017, we've spent more than £63m on building safety work across all our properties but to date, we've only recovered about £13m from contractors and through Government funding, leaving a significant shortfall.

We've done far more for our leaseholders than many other housing associations and private landlords but we simply can't afford to continue to pay for all fire safety work indefinitely (we currently estimate having to spend another £100m to £200m over the next five to ten years). We already pay a significant proportion of fire safety costs on behalf of our tenants, so not all the costs are passed to leaseholders.

Additionally, our charitable status (and the funding we receive) means we are obliged to manage and maintain the tens of thousands of homes we own, and to provide services to our customers. We also need to build more affordable homes to meet growing demand; homes that must meet ever-more strict safety and environmental regulations.

However, we're now having to tell leaseholders that we may need to pass on some of the costs to them in future, if we can't recover it from the original developers or contractors (through the courts if necessary), or if we can't get Government funding to cover all the costs.

As we've said before, we understand this is very difficult for leaseholders and we're doing everything we can to avoid having to pass on the costs wherever we can, so we can minimise the financial impact.

### **It's not my fault you need to carry out more fire safety work – why should I pay for it?**

Leaseholders, and some of our tenants, are obliged to contribute to paying for maintenance and repairs to their building, under the terms of their leasehold or tenancy agreement. This may include fire safety work. We normally pass these costs on through service charges but in this case, as the cost of the work will be more than £250, we'll bill you separately, after work is finished.

### **Why is the consultancy fee a percentage, not an exact number?**

Consultancy fees are typically expressed as a percentage of the project costs and can increase, or decrease, depending on any unforeseen circumstances that happen during the project. If we do have to pass costs on, as part of the bill.

### **Why are you charging a management fee?**

Under the terms of your lease, we can apply a management fee to cover our costs for managing repairs, maintenance, insurance and services. The management fee applied to major works isn't included in annual service charges, although it's based on the same calculations.

We have to ensure this fee is 'reasonable', in line with Section 18-30 of the Landlord and Tenant Act. The fee is an estimate and we'll review this at the end of the works, to make sure that it reflects the time and costs we've incurred during the project, from consultation through to completion.

### **Can you justify a management fee calculated after VAT and consultancy fees of 10%? Why is it not charge based just on the works, excluding VAT and consultancy fee? Why can't you waive the management fee?**

We will review the management fee throughout the course of the works. You'll only be billed for the reasonable costs we incur and we have to provide evidence of these.

### **You've added VAT: are you challenging Government on recovering VAT for fire safety works?**

Because Kier is the organisation charging VAT on the timber cladding replacement, it has to ask HMRC if the work can be zero rated. We've supported Kier's application to remove VAT from the cost estimate and are awaiting a decision.

### **Why is the work costing so much money?**

The timber cladding covers a large area of the building, so there is a lot of material to replace and works will take a lot of time and labour.

### **Can you use the building's sinking fund to pay for some of the work?**

The sinking fund contains contributions from both homeowners and tenants and we can only use the homeowners' portion of the fund to pay towards the proposed works. This is currently £411,296, out of a total sinking fund balance of £630,128. We'll continue to review sinking fund contributions and ensure all the current homeowner contribution is used towards the cost of these works.

**I understand that there are six weeks before the Building Safety Fund outcome, so we have until that time before any costs might be passed to leaseholders. After that, Hyde could continue, if there is no other avenue to get the costs back, and then we would get a service charge with the cost at a later date and then be able to rebuke the charges via tribunal etc?**

The deadline for applying to the Building Safety Fund (BSF) was 30 June 2021, however this didn't stop work starting (one of the criteria for applying to the BSF is that we begin work by September 2021 – although the Government has said it will consider later starting projects on a case-by-case basis).

We'll only bill you after work has finished. We expect work to take about 40 weeks and we'll know over the coming months if the BSF application has been successful. If it is, we'd only be asking service chargeable residents to contribute to those parts of the contract not eligible for funding.

If our application is unsuccessful, we still have a number of options to consider, for example taking legal action against the original developer. This means we can't say definitively what costs are going to be passed on. We can assure you we won't charge your account, nor we will ask you to pay in advance; if we do have to recharge you, it will be when work is finished and we'll go through another consultation with you.

**Will this work be covered by the Government's leaseholder loan scheme?**

Details of the Government's proposed leaseholder loan scheme are yet to be announced, so unfortunately, we can't say whether this work will be eligible.

**If you're successful in reclaiming money, would we be refunded?**

We'll only pass on the costs to residents once we've exhausted all other avenues, which includes claiming from original developers and Government funding. So, we wouldn't be refunding you if we were successful, as you wouldn't have paid anything.

**You've spent £6m on Bolanachi, but your recent correspondence said you had recovered substantial costs from the contractor and received grant funding for the ACM works. How much have you actually spent and how much have you recovered of the £6m?**

We've recovered £4.5m in relation to the ACM cladding replacement, so Hyde paid £1.5m.

**Are you able to use the money you recovered to pay for the proposed timber cladding works?**

We won't be using the money we recovered to pay for the current proposed works. The money we recovered was used to pay towards the original ACM works.

**Why are you asking leaseholders in Bolanachi Building to subsidise work on other buildings?**

This isn't correct, the money we recovered from Roof Ltd and Government funding was used towards the cost of the ACM works. We're not asking Bolanachi leaseholders to pay for work on other buildings, these works are specific to your building. We don't ask customers to subsidise work in other buildings.

**You've said that funding you've already received for Bolanachi is ringfenced and so can't be used for the proposed works. Does this mean that you're using the funding elsewhere, so in effect, Bolanachi leaseholders are paying for work on other buildings?**

This is a misunderstanding. We want to be clear that we never ask leaseholders of one building to pay for work to another building, nor is Government funding that we receive for work on a building used to pay for work to other buildings.

The 'ringfencing' of funding refers to the funding we received to pay towards the cost of removing the ACM cladding from Bolanachi. We can't use that money to pay for any of the proposed works, because Government gave it to us to pay for the ACM cladding removal (and the money we received did not cover the entire cost of the ACM cladding removal), so there is no money left. That's why we're applying for more Government funding, through the Building Safety Fund.

**How will costs be split between flats?**

Our section 20 notice gave an estimate of costs, splitting these equally between the 138 flats and the commercial unit in the building, regardless of size, what floor a home is on or whether it is owned privately or by Hyde. We own and manage 38 of the flats in the building, with major repairs paid for through tenants' rent.

Your leases state costs must be apportioned 'fairly and reasonably', and also allow us to choose how to apportion costs (which can differ from how service charges are split).

Our legal counsel has advised us that the fairest and most reasonable way to split any potential building safety costs between homeowners is to apply the same methodology we use for service charges, ie to apportion the costs based on the square meterage of each property. This means that, as we pay for works on behalf of our tenants, we'll pay a greater proportion of the costs.

This means that most homeowners will pay slightly less than they would if we split the costs equally; those with larger homes will pay more and those with smaller homes less.

However, we want to reiterate that we will only pass on any charges to leaseholders as a last resort; we're continuing to pursue other avenues of paying for the works, such as the Building Safety Fund and recovery from third parties.

**Why should leaseholders pay for the freeholder's legal advice?**

Advice, including consultancy fees, can be recharged to residents under the terms of your lease, but that doesn't mean that we plan to do so.

We're currently getting independent legal advice on the best way to apportion the costs of the proposed works, so they are both 'fair and reasonable', as defined in your lease.

**Will future legal fees be passed onto leaseholders?**

While we're able to recover legal costs through service charges, we've not decided what costs we'll recharge in the future. Legal costs incurred to date will not be recharged.

**What you are proposing to charge me is more than the value of the share of my home that I own**

The way costs are apportioned doesn't relate to the share you own; shared owners are obliged to pay 100% of the building costs under the terms of their lease.

**if a shared owner only owns 25% of their home, why should they pay 100% of the share apportioned to that home? Hyde should pay 75%.**

While shared owners own between 25 and 95% equity in their home, under the terms of their lease, shared owners have to pay 100% of service chargeable costs, regardless of the amount of equity they own.

**It's unfair that leaseholders bear all the cost of major works, when Hyde is the freeholder and rents some of the flats in the building out**

The costs of works are being split between all the homes in the building, not just leasehold and shared ownership homes. This means Hyde will pay the share apportioned to any homes we rent out. Under the terms of your lease, you are obliged to pay towards the costs of work to the building, including safety works.

**Can you tell us when we might have to pay for the work?**

If we do have to pass on any of the costs, we won't bill you until work is finished. We'll send you a summary of the costs we've incurred within 18 months of the first invoice payment (note this doesn't mean we'll be asking for payment at that point).

**Will we have to pay for more work in the future?**

The need to replace the timber cladding is due to changes in fire safety guidance since the building was constructed. We don't yet know if we'll need to carry out any further fire safety work, as fire safety legislation and guidance is continually changing. Unfortunately, this means we may have to carry out more work in the future.

We're doing everything we can to avoid passing costs onto leaseholders, by applying for Government funding and seeking to recover costs from others where possible. However, we may have to pass on some of these costs.

**Assuming most leaseholders will not be able to pay all the costs in one go, while works are being carried out, who'll pay for the shortfall, to ensure works are done?**

We'll pay for all the costs of the work, so they can go ahead; we're not asking anyone to pay towards these costs at the moment. Once work is finished, we'll share the final costs with you and work with leaseholders to agree individual payment plans.

**If customers have to pay, will that be in a lump sum or instalments? Will monthly instalments be limited to £50 as stated by Government?**

If we do have to pass on any costs, customers would have to pay within 12 months of us billing them. That's because we don't have a Consumer Credit Licence, so we can't offer extended payment terms. We are currently reviewing this and exploring how we might be able to offer extended payment terms.

The Government hasn't given any details about its proposed long-term low interest loan scheme to cap leaseholder payments at £50 a month. We expected this would be included in the Building Safety Bill, however, it isn't in the current draft of the Bill, published in July 2021. The Government has said it will give more details about the scheme in September 2021.

### **What happens if I can't pay anything?**

If we do have to pass on some of the costs to you, we will work with you to come up with an affordable payment plan.

### **What happens if a leaseholder files for bankruptcy? Will you initiate recovery proceedings if a leaseholder cannot pay?**

We don't want anyone to have to file for bankruptcy and we'll work with everyone to agree affordable payment plans, should we have to pass on costs.

### **How are you helping leaseholders with the impact of this situation on their mental health?**

If you are struggling with your mental health or experiencing a tough time right now, you can find support on Togetherall.

Togetherall is an online service providing 24/7 support (from experienced clinicians who are always available), plus a range of courses and tools to help you manage your wellbeing. This service is safe, anonymous and free to all Hyde customers over the age of 16. You can find out more on Hyde's website (<https://www.hyde-housing.co.uk/news/hyde-in-the-community/togetherall-a-free-service-for-our-customers/>).

### **Is Hyde capitalising any of these fire safety costs?**

We're capitalising costs and income related to the 38 properties in Bolanachi Building that we rent out. All costs recovered from leaseholders and shared owners are not capitalised.

### **Have you considered selling some of your properties to raise the funds for the remedial work?**

We don't have any plans to sell properties to fund remedial work.

### **Why can't you use your reserves to pay for this work?**

We must maintain a level of reserves which can't be used for other purposes, to ensure our continuing financial viability, and therefore our ability to continue to provide homes and services. As a housing association, we also need to ensure that, when we use our reserves, they're used to the maximum benefit, according to our charitable purpose. This doesn't include paying for building work on behalf of leaseholders, where it is the leaseholders' responsibility.

### **Legislation may change and it may mean Hyde will have to pay a larger proportion of the works – what impact will that have on what leaseholders pay?**

Unfortunately, we don't know the effect of future legislation on the costs that can be passed to leaseholders by social landlords. The Fire Safety Bill was passed in early May and didn't change the Government's position, ie costs of building safety work may still be passed on to leaseholders. We're continuing to lobby Government, through the National Housing Federation and the other industry associations, to financially support our leaseholders and pursue developers for remedial works and costs.

### **I am an owner/leaseholder letting a flat in Bolanachi to private tenants. If leaseholders do have to pay for these works, do you know if that cost will be tax-deductible? That is, can I treat the cost as a loss such that I can lower the tax payable on my rent receipts?**

We can't advise you on what work is tax deductible – you'll have to seek your own financial advice.

**I was told in February, via email, that nothing had been recovered from the Building Safety Fund or the original contractor to pay for work; this is very inconsistent**

Apologies for any confusion. To clarify, we took legal action against the contractor which built Bolanachi, Roof Ltd, and applied for government funding, to pay for the removal of the ACM cladding. We recovered £4.5m towards the £6m cost of the replacement. This is separate to the proposed works for which we've applied to the Building Safety Fund.

**If I move, will I have to pay the full amount of the works or would it be passed onto the new owner?**

As part of the standard pre-assignment process during a sale, the solicitor of the prospective buyer would usually contact the seller's solicitor asking for certain information regarding the property. This would include whether there were any known works planned.

Assuming the sale completes before billing, the new homeowner would be responsible for settling any outstanding charges. A retention fee may be set aside between the two sets of solicitors to cover this amount. However, this isn't a matter for Hyde and we expect any amounts to be settled by the owner at the time of billing.

While the government has confirmed it will implement a leaseholder loan scheme, we don't have any details yet.

**What if we disagree with your plans to charge leaseholders?**

We're considering all your observations but based on the advice of our experts, we do still need to replace the timber on some areas of the external walls and walkways, so these works are necessary and they're likely to go ahead.

As we've said previously, we're doing everything we can to avoid passing costs onto leaseholders, by applying for Government funding and seeking to recover costs from others where possible.

If we have to bill you, we can consider an application to the First-tier Tribunal for both customers and ourselves, to get an independent determination on what can be charged. A First-tier Tribunal handles property and land-related disputes; you can find out more information at <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>.

## Waking watch

### **Wouldn't it be better to pay for a permanent waking watch, instead of paying for these, and future works?**

A waking watch and a temporary change in evacuation strategy from 'stay put' to 'simultaneous evacuation' is only a mitigation measure. It isn't an acceptable way for managing fire safety in the long term. We've now installed the temporary fire alarm system, which means we can reduce the waking watch.

Waking watch will cost more than £0.5m a year; far more than the cost of the proposed works, if it was in place permanently.

### **Who's paying for the waking watch?**

We'll be covering the cost of waking watch until we've completed the timber replacement works. If the waking watch is required beyond completion of these works (based on Government guidance and advice), we may have to pass some of the costs onto homeowners.

### **Will you be recovering the retrospective costs of waking watch from leaseholders?**

No, we won't recharge waking watch costs incurred until conclusion of the timber replacement works.

### **Has any decision been made on the need to keep the waking watch in place?**

The waking watch will remain in place until we decide it is safe to remove it. The waking watch monitors the alarm system, raises the alarm in the event of a fire, helps vulnerable residents evacuate and liaise with the fire brigade.

## Fire alarms

### **Why have there been so many false alarms?**

We're investigating why we've had so many false alarms and switched off the system while we reviewed its design and specification. This was carried out by independent experts, Hyde and the system manufacturer. We'll test the system before its turned on, and reinstate remote monitoring.

We're also reviewing of our management of temporary alarm systems, waking watch and remote monitoring. We'll keep you up to date on the progress of this review and share our findings when it's completed, to give you reassurance that everything is working as it should.

### **Are the building alarms linked?**

Yes, all alarms linked as part of the overall building system and the entire building must be evacuated if there's an emergency.

### **How quickly would the fire brigade respond?**

The fire brigade will be contacted by our monitoring service within about 60 seconds. The fire brigade will attend as soon as possible - although we aren't in control of that.

### **Will we have to pay for the additional waking watch due to these false alarms?**

No, customers won't have to pay for the additional waking watch due to the false alarms.

## EWS1, sales and re-mortgaging

### **Can you provide the Fire Risk Assessment for Bolanachi Building?**

A copy of the latest fire risk assessment for Bolanachi Building can be downloaded from the Bolanachi Building Safety page of our website (<https://www.hyde-housing.co.uk/bolanachi/>) .

### **Can you provide an EWS1 form for Bolanachi Building?**

The EWS1 form is not a legal requirement, it is a condition being imposed by lenders, based on Government advice. We provide fire risk assessments for all our buildings, which provides evidence that a building has adequate layers of protection to keep residents safe from fire.

Bolanachi Building does not have an EWS1 form; we can't carry out an EWS1 assessment, or issue an EWS1 form, until these proposed works are finished because the building would be given a B2 rating ie a recommendation that remedial works be carried out.

Please note that the findings from ongoing inspections of the brickwork elements of the building may result in us having to carry out further remedial work before an EWS1 assessment can be carried out.

### **What work is needed to obtain a successful EWS1?**

An EWS1 survey will be carried out at the end of the project and the EWS1 form will be issued about six to eight weeks after work is completed.

All the proposed work to replace the timber cladding needs to be done before an EWS1 assessment is carried out. Please note that we're also currently investigating the brickwork on the building, to check for combustible insulation; while we believe the risk to be very low, we can't be sure if further remedial works will be needed before the building can pass the EWS1 assessment.

### **So, even if the proposed timber cladding replacement work is carried out, we may still not get an EWS1 form?**

Unfortunately, that may be the case. We're waiting to find out the results of the brickwork investigations before we can confirm. If no further works are needed, then we can commission an EWS1 assessment once the timber replacement work is finished.

### **Will removing the communal lighting upgrade from the proposed work mean we won't get an EWS1 certificate?**

No, it won't – the EWS1 is only concerned with the external walls of the building, including the timber cladding in the atrium and courtyard.

### **Without an EWS1 form, I can't sell my flat. Can I sublet?**

Shared owners are not allowed to sublet; this is to stop people becoming shared owners for financial gain. Leaseholders can sublet their homes but they must have a buy-to-let mortgage. Without an EWS1 form, it is unlikely lenders will offer these.

### **How were people able to buy their home in the past couple of years without an EWS1 certificate?**

EWS1 forms were introduced in January 2020 and are a lender requirement, not a legal one; we can't comment on individual lender's requirements.

### **What if I can't re-mortgage or sell without an EWS1 form?**

We know how difficult this is for all residents, particularly those needing to re-mortgage or sell their home. However, without an A/B1 rated EWS1 it is unlikely that lenders will consider loans against properties.

We'll provide you and your lender with any reasonable information to help with the lending requirements including the latest fire risk assessments and proposed works information. We appreciate lenders will have a risk-based approach but we encourage them all to consider the works completed to date and those proposed when making their assessment. Our team will help you to provide the relevant information to your lenders; contact the team at [EWS@hyde-housing.co.uk](mailto:EWS@hyde-housing.co.uk).

**I note that where Shared Ownership Leaseholders increase the value of their property through construction improvements (new kitchens or bathrooms) this increase in property value is taken into account when staircasing. Currently, the value of each property will be reduced by the same value of the proposed work and, in paying for these works to be completed, Leaseholders will be increasing the value of our property in the same way as installing a new bathroom or kitchen. If it is independently determined that the Leaseholders should be responsible for the costs of the works, then these costs must be considered against the value of the property in the future.**

Changes in guidance and recommendations will not change property values. The nil valuations that residents are receiving from lenders at the moment don't reflect the property's true value. We don't anticipate these works having a material impact on property values.

## **Warranties**

### **Aren't there building warranties that cover this sort of work?**

Leaseholders should check if they have any warranties in place and contact their insurer to see if they can make a claim. Some leaseholders may have a Structural Defects Insurance Policy from Zurich; we know that Zurich transferred its business to East West Insurance Company, which is now in administration.

### **Has anyone made a successful claim to Zurich or East West Insurance Company?**

We're not aware of any successful claims (as these are made by individual policy holders and are private) but that doesn't mean claims haven't been made and, if they have, they may be being considered. However, it's unlikely that any claims have been successful regarding the current proposed works, as leaseholders have not been invoiced for any work (and may not be, if we're successful in applying for the Building Safety Fund or recovering costs from third parties).

If you have a Zurich policy (or any other warranty) and it's about to expire, it may be possible to make a claim based on the estimates we've provided in the Section 20 notice. But again, the claim might not be considered until you've had a bill for the works.

### **Why are you asking leaseholders to contact Zurich/East West Insurance Company and not contacting them yourselves?**

Warranties are issued to the leaseholders, not the freeholder. This means any claims have to be made by the leaseholders – we can't make a claim.

## Freehold purchase

**Can you tell me how residents could buy the freehold of the building?**

You can find information on the process and requirements here through the lease advice website <https://www.lease-advice.org/advice-guide/ce-getting-started/>

## First Tier Tribunal

**When are you applying for dispensation for the Section 20 process [to appoint Kier to do the work]? How will customers be involved?**

We'll apply to the First Tier Tribunal for dispensation if our Building Safety Fund application is unsuccessful and we have no option but to pass on costs to customers. This is likely to be after we incur costs and not before.

The tribunal is an impartial third party which reviews the facts of the application and determines liability for costs. As such we don't see this as a negative process. We're reviewing our position on eligibility for government funding and whether this would be affected by a proactive application, but we aren't otherwise opposed to pursuing this route for the benefit of all parties.

We'll let customers know before we make our dispensation application. All service chargeable customers will be formally notified as part of the proceedings and asked if they would like to join the application. The dispensation application will explain why we haven't been able to comply with the Section 20 requirements and why we believe costs can be recharged to residents.

You'll be able to challenge these costs at the tribunal, where we'll need to provide evidence that costs should be passed on to customers, are necessary and reasonable, and the waking watch contract offers the best value for money.

Customers can appoint legal and specialist representatives and request that costs are paid by Hyde through the tribunal process; the tribunal will decide if we have to pay these costs.

The dispensation process can be determined 'on the papers' (ie using written evidence only) or in person, in court. You can find out more about dispensation and the tribunal here: <https://www.lease-advice.org/advice-guide/application-first-tier-tribunal-property-chamber/>

## Communications

**Please can you provide me with a list of all correspondence (both letter and email) that has been sent to residents or leaseholders since the start of 2017.**

We are in the process of collating all correspondence and will share it with you as soon as we can; as you can imagine, there have been many communications over the past four years. We'll aim to get these to customers by the end of July. If there is a specific communication you would like please let us know.

**Can you email updates in the future?**

We can email updates to you but some communications – such as Section 20 notices and service charge statements – have to be sent by post (by law). Please email [ews@hyde-housing.co.uk](mailto:ews@hyde-housing.co.uk) and we'll make sure you're on our mailing list.

### **Can we record the meeting and can we have minutes?**

We can't record the meetings for data protection reasons but we'll note all the questions asked, both verbally and in the chat. We'll respond to the questions after the meeting via email and we'll also publish the questions and answers on the Bolanachi Building safety web page.

### **Can the meetings be longer?**

We are keeping to one-hour meetings and will try and focus the questions and answers. We'll aim to improve how we manage the meetings, to make them as productive as possible. We'll also share questions and answers with you after the meetings and on our website.

### **Can future meetings be held in person?**

We'll continue to hold meetings online (mainly using Zoom), despite easing of COVID-19 restrictions, mainly because many customers have told us they find them more convenient and easier to fit in around work and home life. We'll start holding some face-to-face meetings again but only once we're confident it's completely safe to do so (and if most customers would prefer to meet in person).

### **Can customers attend project meetings?**

We'll be holding project meetings with customers about every six weeks during works; the first meeting was held on 31 August 2021. The project team, which will include representatives from Kier and Hyde, will provide updates on how work is progressing and answer any questions you may have.

## **Other questions/responses**

### **How are you lobbying Government to help homeowners in this crisis?**

We are a member of the G15, a group of London's largest housing associations, which is a powerful voice in the sector. Neal Ackcral, our Chief Property Officer, chairs the G15 Building Safety Group, which is attended by representatives from MHCLG. The G15 is actively lobbying Government, RICS (Royal Institute of Chartered Surveyors) and lenders, to try and find a solution to this national crisis.

We are also a member of the National Housing Federation (NHF) and are continuing to support its efforts in lobbying Government and other MPs in regard to changes to the upcoming Fire Safety Bill. We provided evidence to NHF which was used to lobby Peers in advance of the House of Lords' debate on the Bill in March 2021. We also help homeowners answer lenders' queries, providing them with up-to-date fire risk assessments and other supporting information.

### **While the ACM cladding was being replaced, I was told by the site manager that the wood cladding would need to be done as well as our doors.**

We need more details of this conversation before being able to investigate; we apologise for any miscommunication.

### **We need a full roadmap and all the scenarios**

Having consulted with independent consultants, and considering Government guidance, we've decided the most effective solution to mitigating the fire safety risk of the timber cladding is to remove it and replace it with an aluminium system, powder-coated with a wood finish, which has limited combustibility.

## Appendix: Section 20 of the landlord and tenant act 1985 (as amended)

### Summary

1. The end of the consultation period doesn't mean we will no longer consider your comments and concerns; we'll continue to discuss things with you and involve you in the works programme
2. Just because work starts, it doesn't mean you're agreeing to accept the costs
3. We never carry out any unnecessary work to our buildings
4. You can challenge the works and costs throughout the process and, if we do have to bill you, we can jointly apply to the First Tier Tribunal for a 'determination' of those costs (where the tribunal panel decides if, and how much, you should pay). We don't need to lodge an application now, it can be at any time.

### What's the Section 20 process?

1. The landlord proposes works which it is obliged to carry out under its contracts with tenants and homeowners.
2. The landlord consults with service chargeable residents, explaining the proposed works, the contractor it's chosen and why work is needed. The consultation must include the estimated costs for works to the building and an estimate of how much service chargeable residents will have to pay.
3. The consultation lasts 33 days, during which service chargeable residents can ask questions and comment on the proposals (called 'observations'). The landlord must pay 'due regard to' (consider) all the observations and, where possible, respond to each one individually. The landlord should be able to provide evidence that all observations have been considered.
4. If the landlord is satisfied it needs to carry out the work then, at the consultation period, it can proceed. It's recommended that the landlord continues to engage with residents.

### What if residents don't agree that works are needed?

We're obliged to maintain our buildings in accordance with all guidance and legislation, regardless of any concerns over the recovery of costs. The Section 20 process doesn't stop work going ahead if we believe it's necessary and reasonably costed and that we're acting in the best interests of the building and residents, even if residents disagree.

So, if we believe work is necessary and reasonably costed, it can start once consultation has ended. However, this doesn't mean we won't continue to discuss the work with you and involve you in the project.

We must provide evidence of the need for the work, and that costs are reasonable, before any costs are passed on to residents. However, even when residents aren't satisfied that a landlord has provided enough evidence, this isn't a reason for work to be delayed. Ultimately, the question of who pays is one that can be determined once work is finished, through the First Tier Tribunal.

### What if I feel my observations haven't been considered?

Under the Section 20 process, we must demonstrate we've taken time to review observations, particularly where any comments could impact our proposals to carry out the work. We don't necessarily have to respond to every observation individually and sometimes we collate frequently asked questions and comments into one overarching observation, so we can provide a summary response.

We review and consider every observation we receive and hold regular meetings to ensure our responses are clear, concise and address residents' concerns.

If you don't feel your observations have been considered, this is something we can continue to discuss or take to the First Tier Tribunal for determination.

**Can you specify exactly what clauses and subsections of the lease these proposed works fall under as a relevant expenditure, that allow for them to be included in the service charge provision.**

Under Clause 7 of your lease, we are obligated to maintain, repair, renew and, where we believe it's required, improve the building. Residents are obliged to pay a proportion of these costs through the service charge (the 'Specified proportion of the service provision').

Clause 8 further defines what will be recharged to residents, referring back to our obligations under clause 7. The following definitions and clauses should be read in order:

**Definitions within the lease**

**Landlord:** Hyde Housing Association Limited

**Leaseholder:** the owner of the property

**Building:** the property known as Bolanachi Building

**Specified proportion of the service provision:** A fair proportion of the elements of the service provision as defined in clause 8

**Service charge:** The specified proportion of service provision

**Clause 7: The landlord further covenants with the leaseholder**

**Clause 7.1** that (that subject to the payment of the service charge and energy services fee) and except to such extent as the leaseholder or the tenant of any other part of the building shall be liable in respect thereof respectively under the terms of this lease or of any other lease) the landlord shall maintain repair redecorate renew and (in the event in the landlord's reasonable opinion such works are required) improve:

**Clause 7.1.1** the roof foundations and main structure of the building and all external and load bearing walls and windows and doors on the outside of the flats within the building....the exterior of and structural parts of the balcony and terrace (if any) and all parts of the building which are not the responsibility of the leaseholder under this lease or of any other leaseholder under a similar lease of other premises in the building

**Clause 7.1.2** the pipes sewers drains wires cisterns and tanks and other gas electrical drainage ventilation and water apparatus and machinery in under and upon the building and the estate (except such as serve exclusively an individual flat in the building and except such as belong to any public utility supply authority)

**Clause 7.1.3** the common parts of the building and the common parts of the estate

**Clause 8.2** The leaseholder hereby covenants with the landlord to pay the service charge during the term by equal payments in advance at all times

**Clause 8.3** the service provision in respect of any account year shall be computed before the beginning of the account year and shall be computed in accordance with clause 8.4.

**Clause 8.4** the service provision shall consist of a sum comprising

**Clause 8.4.1** the expenditure estimated by the surveyor as reasonably likely to be incurred in the around year by the landlord upon the matters specified in clause 8.5

**Clause 8.5** the relevant expenditure to be included in the service provision shall comprise all expenditure reasonably incurred by the landlord in connection with the repair management maintenance insurance and provision of services for the building and the estate and shall include (without prejudice to the generality of the foregoing)-

**Clause 8.5.1** the reasonable costs of and incidental to the performance of the landlord's covenants in clauses 7 including the sub-clauses in **clause 7**

**Clause 8.5.3** the reasonable costs of and incidental to compliance by the landlord with every notice regulation or order of any competent local or other authority in respect of the building and the estate (which shall include compliance with all relevant statutory requirements)

**Clause 8.5.4** all other expenses (if any) incurred by the landlord in and about the maintenance and proper and convenient management and running of the building and the estate including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying any inherent structural defect in the building (except in so far as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or maybe liable thereof) any legal or other costs reasonably incurred by the landlord (and otherwise not recovered) in taking or defending legal proceedings (including any arbitration) arising out of any lease of any part of the building of the estate or any claim by or against any tenant thereof by any third party against the landlord as owner tenant or occupier of any part of the building

**8.5.5** all reasonable fees charges and expenses payable to any solicitor accountant surveyor valuer architect or other person whom the landlord may from time to time reasonably employ in connection with the management or maintenance of the building and the estate including the computation and collection of rent (but not including fees charges or expenses in connection with the effecting of any letting or sale of any premises) including the reasonable costs of the preparation of the account of the service charge and if any such work shall be undertaken by an employee of the landlord then a reasonable allowance for the landlord for such work

**8.5.8** repairing maintaining managing and renewing any party of the building including the common parts and keeping the same adequately cleaned and lighted

**8.5.10** the cost of repairing maintaining and renewing all firefighting equipment and complying with the reasonable requirements of the fire officer or the insurers.

#### **Apportionment of costs variations**

**Clause 8.8** if in the reasonable opinion of the landlord it shall at any time be necessary or equitable to do so the landlord may increase or vary the building specified proportion and/or the estate specified proportion