

**Welcome to Landmark Chambers’
‘Residential Fire Safety Update’ webinar**

The recording may be accessed [here](#).

Your speakers today are...



Justin Bates

Topic:
Legislative
Reform



Simon Allison

Topic:
The Building
Safety Fund

The Building Safety Fund



Simon Allison

Building Safety Fund ('BSF') – To cover



- What is it?
 - General eligibility requirements
 - Current timeline and take-up
 - Apparent difficulties
 - Potential changes
 - Practical ramifications:
 - Failure to obtain funding
 - If get funding – how to use?
 - s20 consultation / dispensation
- *All in 15 minutes!*

BSF: What is it?

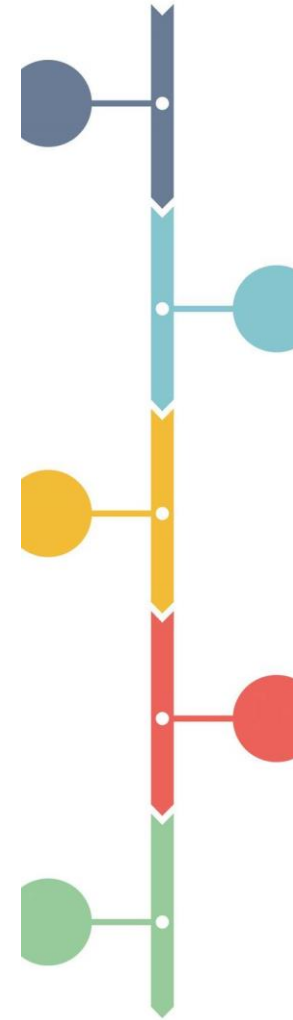
- Starting point:
<https://www.gov.uk/guidance/remediation-of-non-acm-buildings>
- It isn't: the ACM fund
- £1bn – for 20/21 year
- Buildings 18m+
- HPL/EPS / combustible insulation etc.
- Private and public sector
- Applications made by building owners / responsible entity

General eligibility requirements

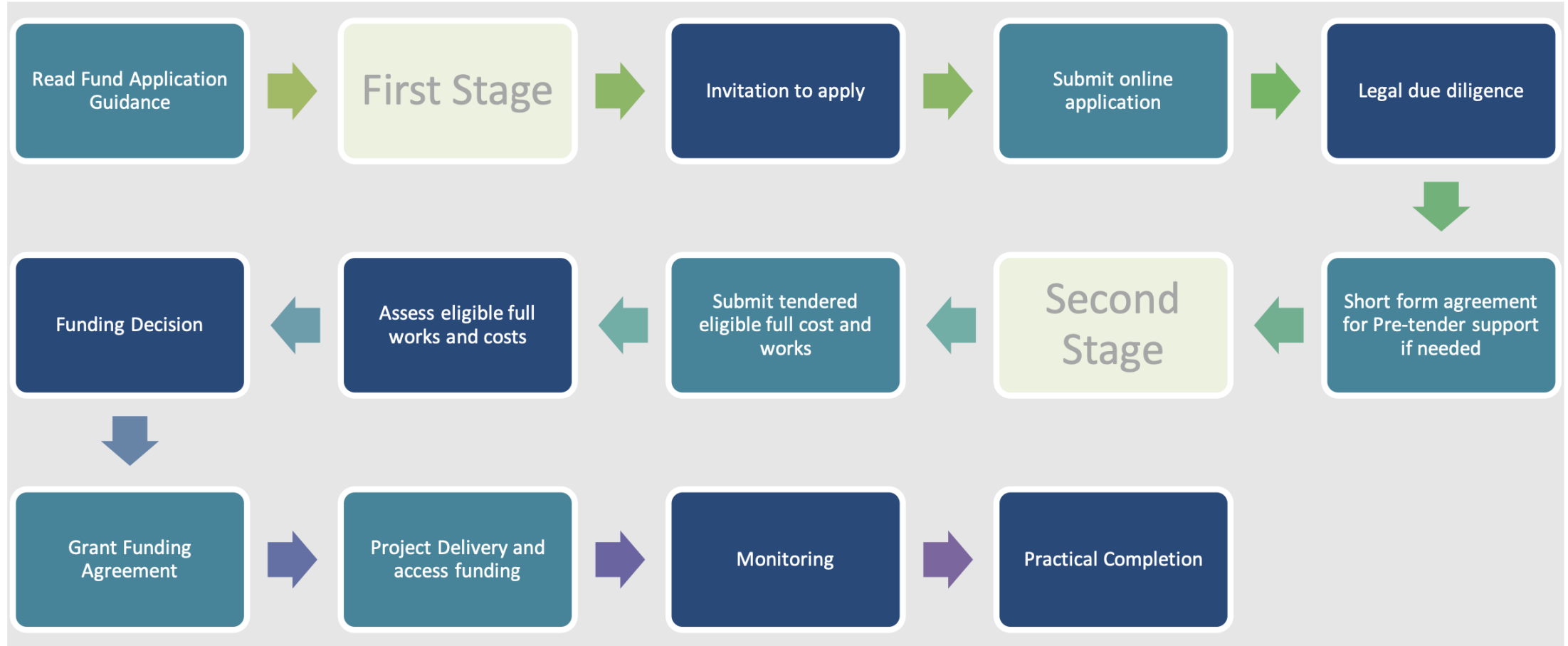
- Top storey at least 17.7m above ground level
- Cost of works must be recoverable from leaseholders
- Works must not have been committed to when BSF announced
- Mixed use ok, non-resi isn't.
- Social sector funding requirements
- Evidence – LOTS
- Pursue third parties – 'reasonable steps'

Timeline / Take-up

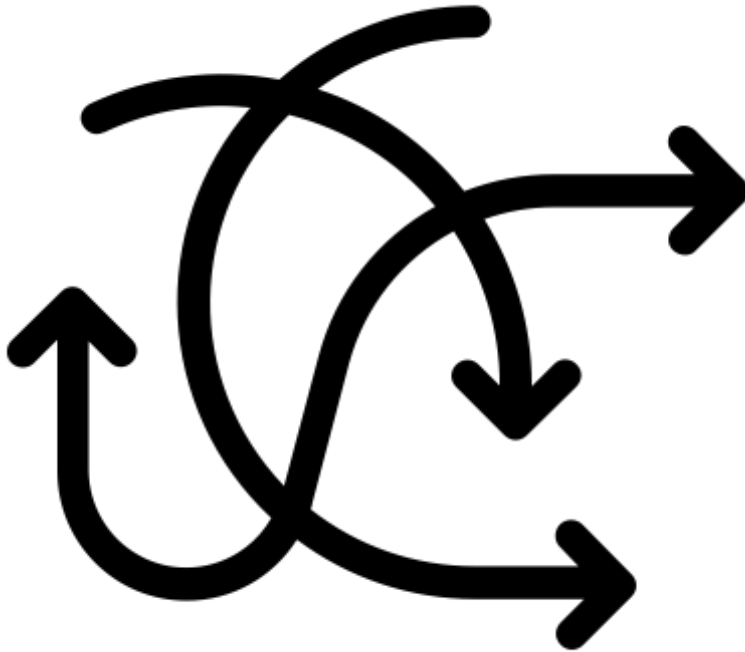
- Registration June / July 20
- Applications opened – from 1 August
- First come first served
- Validation: Homes England / GLA
- Slow process
- To be fully costed by 31/12
- Some stats:
 - 2784 registrations
 - Only 65 ready to proceed 25/9



The process...



Some difficulties...



Doesn't cover mitigating measures



Where works fall under 2 funds



State aid



Timescales – 31 Dec, 31 Mar



Funding agreements ('non-negotiable')



Fund insufficient



Limited availability of contractors

Changes on the horizon

- Easy to speculate, more difficult to accurately predict...
 - Potentially a large number of developments won't be funded
 - Possible alternative / replacement scheme?
 - Extension of current deadlines?
- Driving factors:
 - Ultimately, political decision
 - Government wants to demonstrate progress with remediation
 - Any changes likely to be last minute

Practical ramifications of BSF outcome

- Failure to obtain funding
 - Real difficulties in funding works in some instances
 - Costs not reasonably incurred?
- How to use BSF funding?
 - In effect, run project as if no BSF funding secured
 - Apply BSF funding as credit against bills of eligible leaseholders (i.e. no credit where fall foul of state aid rules, or commercial tenants).

Practical ramifications of BSF outcome

- s20 consultation requirements must be met or dispensation obtained
 - Probably no need to consult for pre-works surveys as not ‘works’
 - Compliance with s.20 likely to be very difficult or impossible in many cases
 - Need to commit to contract promptly if funding secured to meet timescales

- Dispensation (s20ZA LTA85):
 - **No time limit**, but recommend apply as soon as able to evidence app properly; ideally prior to binding contract.
 - Comply as far as you can – NOI usually possible
 - Extra-statutory / informal consultation very desirable.
 - Communication is key to straightforward dispensation app

Legislative Reform



Justin Bates

What has Parliament been doing?

- Draft Building Safety Bill
 - 1) Communities and Local Government Select Committee report
 - 2) A lot of published public evidence
 - 3) Press leaks (Sunday Times last weekend)
- Fire Safety Bill
 - At “ping pong” stage
 - Reforms and vehicle for disputes with the BSB

Draft Building Safety Bill

Published in Draft in July 2020

- New regulatory regime
- Focus on “higher risk” buildings
- Most controversial parts are clauses 88 and 89
 - Implied term that LL will carry out relevant safety works as required by the Bill
 - And LH will pay the costs of those works within 28 days of a demand (in effect, a parallel service charge regime, including a reasonableness provision and a consultation mechanism)

Public call for evidence

- 326 submissions; almost all critical of the new charging regime
- 5 days of oral evidence

Report published 24 November

- The new charging system was almost universally hated. Leaseholders thought it unfair they had to pay for fixing fire safety defects that pre-dated their ownership of their leases
 - (*cf* the recent evidence at the Grenfell Inquiry)
- The Local Government Association described the reforms as the “greatest shortcoming” in the Bill (despite the fact their members would benefit)

Cont...

- Committee noted that both the previous government and the current one had made public statements that leaseholders should not be required to pay for fire safety works (‘tho recently the gov has changed to saying they should not pay unaffordable sums)
- Report concludes that
 - Gov should ensure leaseholders do not pay for historic fire safety costs
 - Gov should provide initial funding and look at ways of recovering from developers in due course
 - Need significantly longer than 28 days to pay

Next steps?

- Cross party opposition to charges falling on leaseholders
- Gov seems surprised at the degree of criticism their proposals have faced
- Sunday Times leak suggests 30 year loans at 2% interest to help leaseholders pay these costs

Fire Safety Bill

- The uncontroversial reforms
 - Makes cladding part of the Regulatory Reform (Fire Safety) Order 2005, so enforceable by fire brigade under that Order rather than a local authority using HHSRS and Housing Act 2004
 - Makes the external face of the front doors of flats within the Order (trying to solve the problem of a door being demised to the LH and it not being out of repair, but not meeting fire standards)

Fire Safety Bill

- The controversial reform
 - Added in the House of Lords
- “Prohibition on passing remediation costs on to leaseholders and tenants*
- 1) The owner of a building may not pass the costs of any remedial work attributable to the provisions of this Act on to leaseholders or tenants of that building.*
 - 2) Subsection (1) does not apply to a leaseholder who is also the owner or part owner of the freehold of the building.”*

Fire Safety Bill

- Gov opposes that amendment and will try and take it out
 - In fairness, it isn't a very good amendment because it is too broad; it would prevent recovery of routine maintenance etc
 - Likely MPs will propose an alternative amendment

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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