THE RT HON DR LIAM FOX MP (North Somerset)

HOUSE OF COMMONS
LONDON SW1A 0AA
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Wednesday, 31st March 2021

Dear Rob,

CLADDING

When I spoke in the (extremely time-limited) House of Commons debate on the cladding issue, last week, I reiterated a number of concerns that have been repeatedly raised by my constituents.

I said: "***What we need is urgency. Time is not just money; it is also worry, anxiety and uncertainty, and I echo the points made in one of the many excellent letters from my constituents in Portishead on this. It says: 'It is not right that leaseholders have to worry about the costs of fixing safety defects that we did not cause'. We all agree with that; the question is who should pay. If the costs are a direct result of legislative change made by the Government, it is reasonable for taxpayers to contribute to that. If they are not, builders and insurers should pay, including for non-cladding related defects.***

The second point that my constituent makes is this: 'We recognise that the additional £3.5 billion announced by the Secretary of State is a step forward and we do welcome this funding. We are still awaiting the full detail of this funding announcement, as well as that of the proposed loans for medium-rise buildings'. In the last debate, we were told that more details would be forthcoming after the Budget. It is after the Budget, and we have still not had the details we are looking for, and these are real-time problems for which our constituents require real-time solutions".

I repeat these remarks because they were very much the issues that were to the fore in a long conversation I had with affected constituents at the weekend.

In particular, there is a growing frustration at the time being taken to put measures into place to prevent significant (and in some cases irreparable) damage being done to lease holders.

Concerns fall into a number of categories:

FINANCIAL HELP AND TIMESCALES

While Government Departments are sorting out detailed arrangements between themselves, real bills are falling onto the mats creating real distress, and sometimes genuine panic, among leaseholders.

While we all appreciate the huge sums of taxpayer's money being earmarked to help ease the current situation, especially in the financially difficult circumstances of the Covid19 pandemic, this will be of limited use if it is not made available immediately.

As one of my constituents, who has been extremely patient and constructive during the current problems put it: "*I cannot stress enough, that all Leaseholders do not have money to pay out. It would have been difficult enough in normal circumstances to meet deadlines and fund the remediation money demands from the Management Agents. However, with the added Covid19 Worldwide Pandemic, job losses, furlough reductions in salaries and, added bills because we have been in a 'Stay at Home' position, this has become downright impossible*".

There is a great deal of frustration in that it seems the Government have not extended deadlines despite the unique difficulties generated during the pandemic.

There is further irritation that due to the Covid19 "Work from Home" requirements, the whole EWS1 Process and Remediations has not been possible, missing the requirement for the Government imposed deadlines for the Cladding Fund Grant.

INCONSISTENCY IN THE APPLICATION OF REGULATIONS AND REMEDIES

As I have mentioned in the House of Commons on a number of occasions, I believe that where there has been a change in government regulations and leaseholders have found themselves in breach through no fault of their own, then it is entirely reasonable that the taxpayer should be asked to fund any remediation costs.

In the fire safety bill debate on 22nd March I quoted a constituent who wrote "*providing funding for buildings over 18 metres while forcing leaseholders in buildings under 18 metres to pay via a loan scheme is entirely unfair, because building height alone does not determine fire risk.*"

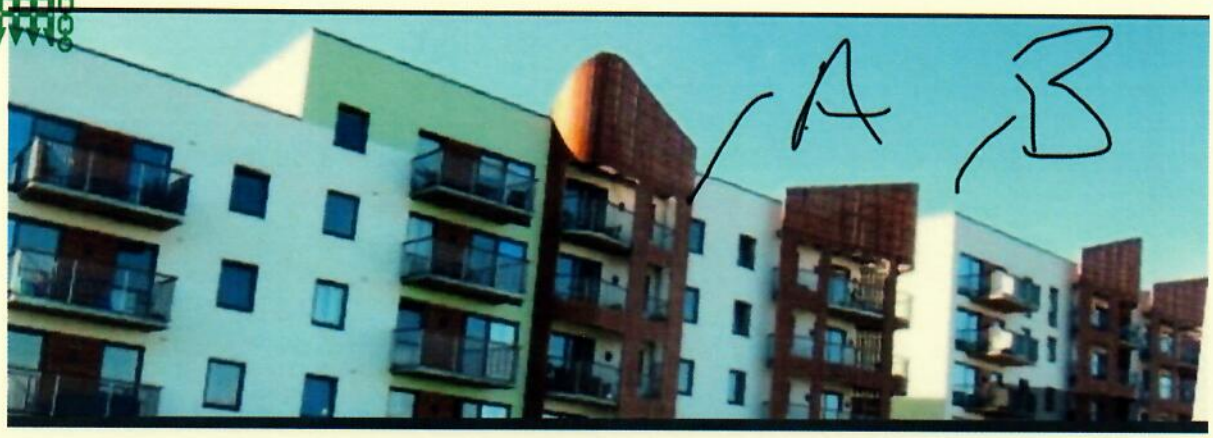
If it is a matter of principle that leaseholders should be protected from being in breach of regulations that came about because of legislative change, I find it difficult to understand why the height of the building should be a material consideration.

This whole problem is exacerbated by some of the practical issues involved.

Below, you will see a very good example of how this differentiation becomes extremely difficult in practice.

I enclose photos of two adjacent properties which have tiny differences in height but are similar constructions in the same area around the marina in Portishead, in my North Somerset constituency.

You can see from the enclosed table the very different way in which the current interpretation of regulations is impacting on leaseholders:



	Building A / 94 on the Estuary	**Building B / 110 on the Quay**
Height	Under 18m	Over 18m
Developer	Crest Nicholson	Crest Nicholson
Built	2014	2013/4
Freeholder	Aviva	Not Aviva
Agents	Mainstay / HML	Principle
Parking closed	Yes – 26.03, 78 cars on street, huge fire engine access risk.	No
Balcony furniture banned	Yes	No
Interim costs	**Leaseholders billed £460k** see attached – no breakdown. **£5,200 increase per flat** in 2021 service charge v 2020.	**Minimal leaseholder impact** - Alarm covered by Crest, WW partially covered by Freeholder, some WW for leaseholders.
NHBC 10 year warranty	**Mainly rejected** - Not covering cladding, render, balconies as in regs at time	**Mainly accepted** - Not covering balconies
Remediation costs	No conclusive evidence presented by Aviva post consultation with Crest/NHBC. If goes ahead as is probable by car parking decision (!) and service charge then leaseholders in firing line due to funding limits. Terrifying and very confusing as building signed off by NHBC and mostly 'in regs' as above.	**Covered by NHBC / Crest**

It was also made clear on the RICS website that for buildings of four stories or fewer, an EWS1 form should only be required if there are ACM, MCM or HPL panels on the building.

Leaseholders now complain that all buildings under 18m are now subject to remediation works which do not fall within the terms of the lease for the demise of the building.

They feel strongly that this is a major failure in the responsibility for the safety of the leaseholders from the homebuilders, those responsible for counsel/building regulations and NHBC.

It seems that now, all buildings under 18 metres are subject to remediation works (at a cost to the Leaseholders) which do not fall within the terms of the Lease for the demise of the building.

This is a Homebuilder, Council/Building Regulations and NHBC failure to shoulder their responsibilities for the Safety of the Leaseholders.

Why, for example, should leaseholders be forced to pay huge solicitors' bills to deal with changes brought about solely by the introduction of new regulations?

Some of the buildings affected in my constituency are only seven years old with NHBC warranty, having been certified as fit for purpose.

What share of remediation and associated costs will they be liable for?

SURVEYS

There have been a number of different difficulties experienced by my constituents in relation to surveys.

In the House of Commons on 1st February, I raised with the Minister that "*there is some sharp practice going on, especially in relation to surveys. Extortionate amounts are being paid by tenants for these surveys in relation to EWS1. I have one in front of me, which talks about incorrect height information, 24-hour monitored CCTV when there is none, timber decking to balconies when the balconies are composite decking and stacked balconies when they are open balconies—the list goes on and on*".

I subsequently raised my concern with the Royal Institute for Chartered Surveyors.

On the issue of the EWS1 Intrusive Survey which, as you know, goes into depth relating to building materials, building fire breaks/stops and cavity barriers as well as providing information on fire safety recommendations, one of my concerned leaseholders wrote:

"I believe, after going through the 4 EWS1 Intrusive Surveys on my Development and going through other local Development EWS1 Intrusive Surveys, that the Surveys "are not fit for purpose". My Reasons:

a. *The EWS1 Intrusive Survey should be just that. A Survey providing evidence on the materials used and where there is Evidence of Fire Breaks/Stops and where Cavity Barriers are.*

b. *There should be not fire safety recommendations within the EWS1 Intrusive Survey. The EWS1 Intrusive Survey, once finalised and passed off, should then be submitted to the local Fire Department for a Fire Engineers report to be carried out. It is at that point that the Fire Department should issue an Enforcement for their recommendations to proceed.*

c. *Based on the above, The EWS1 Intrusive Survey is one cost, the Fire Department is the second cost. All of these are currently levied to the detriment of the Leaseholders. However, currently, Leaseholders are paying for the EWS1 Intrusive Survey, followed by paying for a Fire Engineers Report and then paying for the Fire Department report which then clarifies the next safety measures to be put in place temporarily (and possibly permanently). i.e. waking watch, digital temporary fire alarm.*

There is also concern that the EWS1 Intrusive Survey is set to be required every five years under the Fire Safety Bill.

The point has been raised once this survey has been carried out on a particular building, and remediations have taken place, then every five years there would only be a requirement for a Fire Department Risk Assessment.

I would appreciate clarification on this point.

BUILDING SOCIETIES, INSURERS AND BANKS

I have raised on a number of occasions what direct contact Ministers have had with the Association of British Insurers, the building societies and the banks, because without their help, we are unable to deal with the negative equity and resale problems that are at the heart of so much of the distress we find.

We have heard that the market should sort it out, as we would normally expect, but we are still waiting for elements of that market to be in place that we would normally regard as being necessary.

I feel that only the government has the "clout" to bring these major institutions into line with the government's own intentions in the best interests of leaseholders. I look forward to hearing what progress has been made on this front.

Finally, I want to reiterate my strong belief that remediation costs should fall on those who are responsible for the problems faced by leaseholders. There is a very strong feeling that, despite the sums of money that they have declared they will be putting away to deal with this emergency, the builders and NHBC are not carrying their full responsibility.

Of particular concern is the length of time that it may take for leaseholders to come to a satisfactory outcome with these powerful groups who are armed with their own sets of lawyers. By the time any such accommodation is reached it may be much too late for many leaseholders who are caught in the crossfire.

While I do not believe taxpayers should be asked to sign a blank cheque in order to absolve builders and insurers from their own responsibilities, I believe that if the bureaucracy is not able to move more quickly to provide proper protection, it may become necessary to extend public funds which will need to be recouped at a later date.

Leaseholders are being asked to pay large sums now which many of them simply do not have and they are unable to sell their properties or obtain loans due to the cladding issue itself.

For example, leaseholders are having to pay substantial sums upfront to start the process of tenders which would enable the government grant to be issued. Most of the apartment blocks whose residents I have spoken to do not have enough in their reserve funds to employ contractors to run the tendering process.

One group of leaseholders told me that the potential cost for the building contractor is in the order of £50,000 with a further £10,000 in legal fees to have a solicitor received the tenders to enable leaseholders to apply for the grant.

While I would reiterate that my constituents involved in this issue are genuinely grateful for the huge amount of taxpayers' money which has been set aside to help, it is essential that processes are expedited to ensure that funding is available when it is needed.

This is a very distressing time for most of those involved and promises of money tomorrow no help when substantial bills are arriving today.

I look forward to your response.

Yours ever,

Liam

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