



Llywodraeth Cymru  
Welsh Government

Welsh Government  
Building Safety  
Developer Remediation

**PACT**

Between

**THE WELSH GOVERNMENT**

and

**McCarthy Stone**

## Welsh Government and Developers' Pact

We (the developer) agree with the principle that leaseholders should not have to pay for any costs associated with life-critical fire-safety remediation work arising from the design, construction or refurbishment of the building they live in; we want to work constructively and in good faith with you (the Welsh Government) and building owners/responsible parties, in order to achieve this.

On the basis of the Agreed Principles set out in the schedule to this Pact, we are therefore pleased to confirm that we will take responsibility for performing (or otherwise at our discretion funding and/or procuring) remediation and/or mitigation works to address life-critical fire-safety defects on all our residential buildings in Wales which are 11 metres and over in height that we have developed or refurbished (other than solely as a contractor) ("**our Buildings**").

We will work closely with you to establish an approach for determining the nature and scope of remediation and/or mitigation works that is proportionate and consistent. This process will take into account learning over time and will inform what is required to remediate and/or mitigate life-critical fire-safety defects, on the basis of the Agreed Principles (as set out below).

Recognising the need to finalise these arrangements without delay, and carrying out the remediation work to our Buildings, we are committed to working at pace with you to get everything in place to make this happen. We want leaseholders and tenants to be assured that their building will be made safe from life-critical fire-safety defects as quickly as is reasonably possible, and that they will not need to pay the costs of these remediation works. We confirm that we will work rapidly and in good faith with officials in the Welsh Government over the coming months to agree the necessary formal legal documentation that reflects the Agreed Principles.

We will publish this Pact, together with the Agreed Principles, on our website as soon as this Pact is dated so that leaseholders are aware of our public commitments. We are happy for the same documents to be published on the Welsh Government website or any other publishing or media platform.

Additionally, for any of our Buildings which have already been identified by us as falling within the scope of the Agreed Principles, within one month of the date of this Pact, we will deliver to you a proposal (including a proposed schedule listing the buildings identified) for contacting the relevant building owners/responsible parties and leaseholders to confirm that their building is covered by this Pact (and the Agreed Principles) and detailing the next steps that we will take to meet your objectives. For any other buildings that are in scope of the Agreed Principles and are subsequently identified by or to us, we will agree a process with you to ensure prompt communication with relevant building owners/responsible parties and leaseholders as required.

## **Agreed Principles**

### **Subject to contract and formal legal documentation**

The following principles are agreed between the Welsh Government and each Participant Developer (as defined below) in relation to the performance of remediation and/or mitigation works (or the funding and/or procurement of such works) to address life-critical fire-safety defects on all relevant residential buildings of a height of 11 metres and over in Wales.

The Welsh Government and each Participant Developer intend to enter into formal legal documentation in the coming months to give effect to the Agreed Principles set out below.

### **Remediation and/or mitigation work**

In these Agreed Principles, the following terms will have the meaning given to them below:

**Participant Developer(s):** Means each developer that has played a role in the development or refurbishment of Buildings (as defined below).

**Building(s):** All residential buildings in Wales of 11 metres and over in height that: (i) require remediation and/or mitigation work to address life-critical fire-safety defects; and (ii) have been built or refurbished in the 30 years prior to 5 April 2022 by a Participant Developer in Wales.

Building height is to be measured in accordance with The Building Regulations 2010, Approved Document B (for use in Wales), Appendix C.

**Obligation** Subject to the terms of the formal legal documentation to be effected, each Participant Developer will commit to fund and undertake or, procure at its own cost (which may include rights of recovery through the National House Building Council or its equivalent or any relevant insurance policy), and as quickly as reasonably possible, all necessary remediation and/or mitigation work to address life-critical fire-safety defects (subject to building owner and planning consent).

Such work will be proportionate and limited to addressing life-critical fire-safety defects arising from design, construction or refurbishment defects on Buildings which the relevant Participant Developer played a role in developing or refurbishing (as applicable). This includes situations where design and construction at the time were compliant with building regulations.

The Obligation excludes situations where life-critical fire-safety defects have arisen solely as a result of: (i) any post-completion failure to maintain the Building following completion of construction or refurbishment by the Participant Developer (as the case may be), and provided always that the Participant Developer has no ongoing obligations in relation to the repair or maintenance of such construction or refurbishment works, or (ii) alterations to the Building that were not undertaken or procured by the Participant Developer.

Where a Participant Developer:

- in agreement with the building owner/responsible party (where such building owner/responsible party is not a group company of the Participant Developer), funds the relevant building owner/responsible party to carry out the relevant works (having given due consideration to the building owner/responsible party's proposals and reasonably considering that such funding and proposed works to be funded will be sufficient to discharge the Obligation) but does not itself carry out the work necessary to address the life-critical fire-safety defects; or
- having used all reasonable endeavours to resolve any issue of access, is refused access to a Building to carry out the work necessary to address the life-critical fire-safety defects, and the Participant Developer has engaged with the Welsh Government to discuss other options for resolving the issues of access and the Welsh Government is satisfied (acting reasonably) that no other options are reasonably available to the Participant Developer for resolving the issues of access,

the Participant Developer will have no further liability for those works pursuant to this Pact and Agreed Principles, provided that the conditions on which the Participant Developer will be released from its liability for the relevant works in accordance with the first bullet point above will be set out in the formal legal documentation.

The Obligation extends to all Buildings the Participant Developer has developed or refurbished, whether on its own behalf or on behalf of others (including in relation to development for registered providers under section 106 of the Town and Country Planning Act 1990). However, it excludes

work carried out solely as a contractor (where the nature of the profit is contract rather than development profit).

The scope of works (or level of funding) will not require to cover any betterment or improvement work which goes beyond that required for life-critical fire-safety defects, other than:

- improvement work that is necessary to comply with the Standard at the time the relevant works are commenced; and
- improvement work that is inherently incidental to the works undertaken.

**Standard:** Buildings will be assessed and remediated proportionately to the following standards:

- as articulated in the PAS9980 methodology in respect of (i) the external wall construction or cladding of a Building and (ii) the internal parts of a Building that are relevant to the PAS9980 methodology, such as compartmentalisation; and
- in respect of those internal parts of a Building not covered by PAS9980, all industry standards relevant to ensuring the internal parts of the Building meet a life-critical fire-safety standard.

The Welsh Government will work with each Participant Developer, and where appropriate, the relevant Fire and Rescue Service and local authority to agree the means of auditing and assuring this standard.

**Monitoring:** Each Participant Developer will commit to demonstrate that it has either provided funding for or carried out remediation and/or mitigation works in accordance with the Standard as quickly as is reasonably possible. The Welsh Government will work with each Participant Developer, to agree a mechanism for each Participant Developer to demonstrate on an ongoing basis that such funding or remediation and/or mitigation work is being progressed as quickly as reasonably possible. Such mechanism will be set out in the formal legal documentation to be put in place between each Participant Developer and the Welsh Government, or as otherwise agreed between them from time to time.

**Duty to inform:**

The formal legal documentation will contain provisions requiring Participant Developers to report periodically to the Welsh Government on:

- the progress of its remediation and/or mitigation works;
- the timeline for completing its remediation and/or mitigation works; and
- steps taken to prompt and request building owners/responsible parties/Participant Developers to identify further Buildings that require remediation and/or mitigation works to be carried out.

The accuracy and completeness of such information will be subject to periodic, formal attestation by the directors of the relevant Participant Developer (on the basis of their best information, knowledge and belief having made reasonable enquiries).

Each Participant Developer commits to:

- provide the Welsh Government with all relevant data that it has within its possession or control in relation to Buildings which have been built or refurbished in the 30 years prior to 5 April 2022 by that Participant Developer; and
- provide any such additional data that the Welsh Government may reasonably request for the purposes of giving effect to the Pact from time to time.

**Audit and verification:**

The formal legal documentation will contain appropriate and reasonable audit and verification provisions to ensure that:

- for Buildings that have been built or refurbished in the 20 years prior to 5 April 2022, information supplied by each Participant Developer to the Welsh Government is true, accurate and not misleading; and
- for any other Buildings, information supplied by each Participant Developer will be as accurate as reasonably possible having regard to the age of those Buildings.

**Claims:**

Nothing in the Pact or the Agreed Principles shall be construed as an admission of liability on the part of the Participant Developer.

Additionally, the formal legal documentation will make it clear that:

- nothing in the Pact and Agreed Principles constitutes a waiver of any civil claims, rights or remedies (including under contracts of insurance/warranties, or construction contracts and against contractors) which may be available to any Participant Developer; and
- the formal legal documents are not intended to, or to be construed so as to, fetter any civil claims (including under contracts of insurance/warranties, or construction contracts and against contractors) available to Participant Developers, building owners/responsible parties, leaseholders and/or residents' management companies from time to time.

**Dispute resolution:**


The Welsh Government will work with each Participant Developer, to agree an independent and fair mechanism in the formal legal documentation for resolving disputes arising between Participant Developers and, for example, managing agents, building owners/responsible parties, leaseholders, lenders and/or insurers in relation to any remediation and/or mitigation works, and the Participant Developers will endeavour to ensure that such processes are reflected in their arrangements with the relevant managing agents, building owners/responsible parties, leaseholders, lenders and/or insurers (as the case may be).

**Engaging leaseholders:**

The formal legal documentation will contain provisions relating to, amongst other things:

- the process by which leaseholders, building owners/responsible parties, residents and/or residents' management companies of affected Buildings should be engaged by Participant Developers (which will include a requirement for Participant Developers to assist with providing frequent updates to the relevant parties on the progress of the remediation and/or mitigation works, and provide to them with the latest delivery plans for such remediation and/or mitigation works); and
- the mechanism through which leaseholders, residents and/or residents' management companies can engage with the relevant Participant Developer.

We McCarthy Stone have read and agree to this Pact

Name	John Tonkiss
Role Designation	Chief Executive
Signature	
Date	30 September 2022



