

# Cladding Disputes Brochure

**Mansfield**  
Solicitors & Advocates  
**Limited**

# Who We Are

---

At Mansfield Solicitors and Advocates the team are well versed and experienced in this relatively new area of law. Cladding has been a significant issue of concern for leaseholders since the Grenfell disaster of 2017.

Official figures indicate that 450 buildings remain covered in combustible material. Which could affect as many as 700,000 flat owners.

If the cladding does need replacing it is likely that the cost will be passed on to the tenants by way of service charge and you may be facing significant increases in your monthly payments.

There are number of potential problems besides the obvious safety issues which you may be faced by residents:

- You may find it difficult to sell your property in its current condition
  - Flat owners cannot sell to get out of mortgages they cannot afford because of the current government regulations forcing families into financial hardship.
  - Mortgage companies may be reluctant to allow you to remortgage.
  - Your property may now be worth significantly less than when you purchased it.
  - You may be facing life changing sums of money to rectify the problem.
- 

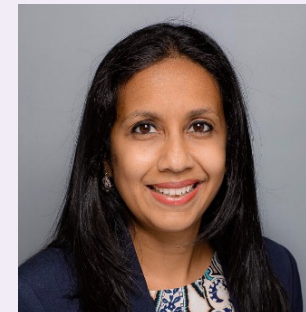


**Anna Comerford**

Anna Comerford is head of our Construction and property disputes department and she has plenty of experience in making you feel comfortable and delivering the best service.

She is contactable on her e-mail: [anna@mansfield.legal](mailto:anna@mansfield.legal) and our main number 0203 772 6728

Anna is assisted by her team comprising of Anjala Balendran Solicitor and Sarah Clark.



**Anjala  
Balendran**

If Anna is not there, you can speak to Anjala Balendran. Her e-mail is: [anjala@mansfield.legal](mailto:anjala@mansfield.legal)



**Sarah  
Clark**

Or you can speak to Sarah Clark. Her e-mail is: [sarah@mansfield.legal](mailto:sarah@mansfield.legal)

# Frequently Asked Questions:

## Does my building have combustible cladding?

The managing agency may have already applied for an ESW1 and the results may have already been circulated.

This will help you to determine whether the cladding on your building is dangerous, and whether work is needed to fix it and whether the work to install the cladding was done in breach of building regulations.

## Who is liable for the cost of replacing combustible cladding?

This is usually the question that causes homeowners the most stress and anxiety. Unfortunately, the answer is often not straightforward.

The primary assumption is that leaseholders are responsible under the terms of the leaseholders agreement to pay for the cost of repairs under the service charges. But the question then is whether or not the remedial works fall under this category?

The fire safety of residential blocks of flats is governed by three main pieces of legislation:

- The Housing Act 2014
- The Regulatory Reform (Fire Safety) Order 2005 (RRO)
- The Building Regulations 2010

The general principle is that the landlord/freeholder is responsible for the fire safety of the overall building, the management company for common areas and the leaseholders for the interior of their flats and the common areas.

What this means is that all of these parties may have some degree of responsibility for contributing to the cost of replacing combustible cladding. However, exactly what each party's degree of liability is will depend on the circumstances, as will their options for recovering this cost from other parties, such as a developer.

An important point to understand is that, even if the freeholder is responsible, leaseholders may still be liable for all or part of their costs in having the cladding replaced. This is because these costs can potentially be recovered by the freeholder through the tenants' service charges under the terms of their lease

## How does the government's cladding scheme work?

The government has created a £5 billion fund to help cover the cost of replacing combustible cladding on residential high rise buildings over 18 metres tall. This fund is intended to provide grants to pay for the remedial work required.

While this is clearly positive for those who are able to access the funds, there are two main issues with the fund.

Firstly, the fund will not help those in buildings under 18 metres tall that have unsafe cladding that needs to be replaced. This leaves potentially

thousands of properties affected by unsafe cladding unable to claim.

Secondly, it is estimated that the total cost of remedying all of the fire safety issues identified in residential buildings in the wake of the Grenfell tragedy could cost £15 billion. This means there could be a £10 billion shortfall in the amount needed to cover the work required – a shortfall that may need to be covered by leaseholders.

For those in buildings with unsafe cladding that are between 11 and 18 metres, the government is offering an alternative solution in the form of long-term, low interest loans. These loans can cover the cost of replacing combustible cladding but will ultimately need to be repaid by leaseholders.



## What about NHBC insurance?

It is not only the liability insurers of parties involved in the construction of a building that may find themselves dealing with claims over allegedly defective cladding. The first question a building or flat owner faced with a large repair bill is likely to ask is whether cover is available under any insurance policy over the building.

While a traditional buildings policy is unlikely to respond, buildings that have been recently built or refurbished may benefit from additional inherent latent defects insurance or structural housing warranty cover or other similar cover. Whether a claim is available under this type of policy will depend on the individual circumstances.

These policies generally respond where a building has sustained “actual” or “imminent” damage. Housing warranty policies in particular often also extend to cover defects that are discovered to be causing a present or imminent danger to the physical health and safety of the occupants. It is generally necessary to show that a defect constitutes a breach of the building regulations in force at the time of construction, rather than a breach of current regulations (if different).

The party with primary responsibility for any required repair costs, whether the insurer or otherwise, is thereafter likely to explore whether any third party recovery claims are available to pass liability on elsewhere.





## Contractors, designers and sub-contractors

Building owners have common law and statutory obligations to tenants and occupiers of the building to ensure their safety. It is likely in all circumstances that if the building fails to comply with the relevant Building Regulations that it would constitute a breach of that duty. Individual leases may contain specific terms which widen this duty.

A breach of the Building Regulations may have been caused by negligent design or defective workmanship. Some will be obvious to identify (such as a combustible cladding material like ACM) but others may be more difficult, particularly if concealed behind the external cladding. Firstly, it is necessary to identify the nature of the breach of the Building Regulations and whether it arises as a result of a breach of

duty/contract. Any defect which is a breach of the Building Regulations will almost certainly constitute a breach of the relevant contract.

If the building owner was the person who employed the designers/builders to design and build the building then it ought to have a direct contractual link with those parties. Where the building owner was not the original employer under the building contract, it may have acquired collateral warranties from the designers/builders or have had rights assigned to it. Limitation periods will need to be checked in each case but will generally be 12 years from the date of practical completion if the building contract was executed as a deed. The position may be different for consultants.

Where a defect has been caused by negligent design, advice or specification (or lack of) it is likely that the relevant professional (if still solvent) will have professional indemnity

insurance which may respond to a claim for damages if negligence can be proven. Such claims could be made against design consultants and/or contractors and sub-contractors if their contracts contain responsibilities in relation to design/specification. Those responsibilities are likely to be subject to a test of reasonable skill and care, raising the question of whether a claim can be successfully brought in circumstances where the industry generally considered that it was designing in accordance with the building regulations applicable at the time.

Parties are encouraged to bring claims as soon as practicable as professional indemnity insurance is generally held on a "claims made" basis, which means that the policy responds at the time the claim is made. Therefore, if the policy holder becomes insolvent or no longer keeps the said insurance then the claim may be uninsured (bringing additional practical difficulties in recovering damages).



The background of the top half of the page is a solid purple color. On the right side, there are several overlapping, semi-transparent purple geometric shapes, including triangles and a large 'M' shape, creating a layered, abstract design.

[www.mansfield.legal](http://www.mansfield.legal)

0203 772 6728

Orpington | Essex