

Following the horrific events at Grenfell tower block, fire safety is in the spotlight. Conveyancers and their clients will be concerned to know what their rights and liabilities might be, as well as the safety of properties that clients occupy, rent out, or are considering buying. As yet CML/UK Finance has not issued any specific requirements or amendments on the subject.

This bulletin aims to outline the key issues that need to be addressed. Clients need to be made aware that this is a very serious issue, that conveyancers are not able to give advice on this area, and that they may need to obtain advice from a fire safety expert.

Two official fire safety guides are also attached to this guide, one for each of the categories below. Clients can be referred to these, and also the series of 12 fire safety guides that can be downloaded by visiting the Fire Safety Guidance collection at GOV.UK.

1. Single household properties, shared houses, purpose built flats, bed-sit HMOs, etc.

These properties are primarily governed by the Housing Act 2004, though in some cases the Order mentioned below may also apply to them. Guidance on how to ensure adequate fire safety for 'Domestic properties' is covered by the 82 page **LACORS National Fire Safety Guidance**.

The guidance contains practical advice on fire risk assessment, and contains case studies with suggested fire safety solutions. It is aimed at landlords, managing agents, residential leaseholders, owner-occupiers, freeholders, and tenants.

The guidance is laid out as follows:

Part A: this lays out the purpose, scope and application of the guidance

Part B: outlines the principles and methodology of fire risk assessment. This is particularly aimed at landlords. It is intended to offer them guidance and assistance in a simple format, in order to de-mystify the fire risk assessment process.

Part C: outlines the general principles of fire safety in residential accommodation. It shows how various fire safety precautions may be applied to reduce risk.

Part D: offers example case studies for various types of premises.

The fire risk assessment process.

Essentially, there are five steps in the process. The paragraphs quoted refer to the Guidance:

1. Identify re hazards (paragraph 6.5).
2. Identify people at risk (paragraph 6.10).
3. Evaluate, remove or reduce risk and protect against remaining risk (paragraph 6.14).
4. Record, plan and inform or train (paragraph 6.20).
5. Review (paragraph 6.25).

The guidance should assist clients in understanding their responsibilities, but it should be made clear to them that conveyancers cannot advise further, and that they should seek guidance from their surveyor or an appropriate fire safety expert.

2. 'Properties with sleeping accommodation'- B&Bs, guest houses, flat complexes, hostels residential accommodation, the common areas of flats and maisonettes, etc.

These properties are governed by the **Regulatory Reform (Fire Safety) Order 2005**. See the attached 148 page DCLG guide titled '**Fire Safety risk assessment**'.

The Guidance applies to all guest accommodation properties such as B&Bs, self catering accommodation, hotels, hostels, spas, the common areas of HMOs, flats and maisonettes, and other properties where there is sleeping accommodation as described in the Guidance. It is aimed at all persons having responsibility for fire safety. This will include managers, owners, management companies, and landlords.

Part 1 of the guidance explains what fire risk assessment is and how to go about it.

Part 2 provides further guidance on fire precautions.

The **Appendices** provide example checklists, some detailed technical information on fire-resisting elements, and advice on historic buildings.

Pages 6 and 7 of the Guidance set out the steps that **MUST** be taken including:

- Take general fire precautions
- Carry out a risk assessment and keep this under review
- Keep certain records
- Make and give effect to fire safety arrangements
- Take measures for fire-fighting and fire detection
- Ensure fire safety equipment and emergency exits are properly maintained, and kept in working order, with emergency lighting where appropriate
- Appoint competent persons to help discharge certain fire safety duties
- Co-operate with other persons having fire safety duties
- Provide information and safety training to employees
- Provide information about fire safety risks to third parties
- Consider any additional risks arising from any dangerous substances on the property



Who has fire safety obligations?

Landlords, flat management companies and their directors, managing agents, and anyone who is in a position of responsibility or control of shared areas, including the exterior parts of a property. In particular, clients may be (or may become) directors of flat management companies and should be made aware of their responsibilities. Where there is more than one person who has responsibilities, all of them must take reasonable steps to co-operate and co-ordinate with each other.

Clients should be made aware that failure to comply with duties imposed by the Order is a criminal offence. There is no 'bedding in' period after completion, hence clients need to ensure that they comply with their obligations on the day they complete the purchase. For this reason fire safety needs to be considered before exchange of contracts.

Sellers should be pressed by buyers to provide relevant information, answer questions and provide copies of any fire assessment. Although the seller's fire assessment may not apply to buyer's situation, it may be a good starting point.

Conveyancers obligations & lenders attitudes

Neither Part 1 or Part 3 of the CML/UK Finance Lenders Handbook refer specifically to fire risks. It may be that in due course individual lenders may add specific requirements in Part 2, but the position is unclear at present.

However, conveyancers are expected to certify the property is 'good and marketable', and also take reasonable steps to verify that there are no discrepancies between the title and other documents 'which a reasonable competent conveyancer should obtain'. In the light of recent developments and increasing sensitivity on the subject of fire safety, it may be that the courts will hold that this could include fire safety issues. For this reason it may be prudent to clarify any fire safety with the valuer, the lender and the client.

RICS has issued numerous guides to its surveyors on fire safety, and clients should be encouraged to refer to their surveyor, or a competent fire expert, for advice on fire safety.

The level of importance for this aspect will vary depending on whether the property is, at one extreme, a single domestic detached residence to, for example, an ex-local authority flat in a high rise block that has been re-clad.

Action points for conveyancers

Some or all of the following points may apply:

- Ensure clients take the issue of fire safety seriously, and have the property inspected by a competent person
- Obtain copies of all notices served under the Building Regulations or any other fire safety related notices, or correspondence with an enforcing authority
- To what extent any works required under such notices have been carried out?
- What are the current means of escape for the property, and what legal right there are to use the escape route?
- Obtain detailed answers to pre-contract enquiries on fire safety issues
- Obtain a copy of the most recent risk assessment for the premises together with details of any changes since the assessment that may have affected its validity.
- Obtain copies of any records kept for the purposes of the RRO 2005
- Obtain copies of any reports issued by the fire service or a fire inspector
- Ensure the contract contains obligations to allow access to this documentation between exchange and completion for fire risk surveys.

It is important to bear in mind that risk assessments are specific not only to the particular premises, but also to the occupier. It follows that obtaining a copy of a risk assessment carried out by a previous occupier of the premises is very unlikely to be sufficient to discharge the duties under the RRO 2005. Small differences in the way in which the premises will be used and the activities carried out there following completion may affect the level of risk, and mean that different fire safety measures are required.

Even where the occupier will remain the same following completion, any changes resulting from the acquisition could trigger the need to review any existing risk assessment.

However, an existing risk assessment may be a useful source of information for the buyer's own risk assessment.

Fire Escape Routes

One aspect that is sometimes overlooked is whether the property enjoys legally enforceable easements over the fire escape exit routes. For example, it may be that there is no right to use emergency stairs or access ways, since they may have been constructed without reference to the rights that the land actually has.

As a result the client should be asked to check the fire escape routes and to provide a plan showing these so it can be compared against the legal easements revealed on the title. If the property does not enjoy legal rights of access over fire escape routes it may be that the property cannot be used until formal rights are negotiated.

High-rise tower blocks - Cladding tests

On 21 June 17 DCLG announced a free cladding fire test aimed at private residential tower blocks over 18m high. A sample of the cladding can be sent away for testing and the cost will be met by DCLG. Clients can be referred to the DCLG website and the letter from the DCLG attached. It is anticipated that this is aimed at the owners or managers of such buildings, rather than individual flat occupiers, but they may have responsibility for fire safety if they are involved in the management of the building.
