View Response

Response #1125154

1

Please provide your full name

You must provide an answer to this question.

End Our Cladding Scandal

2

Please provide the name of the firm you work for (put N/A if this isn't applicable e.g. you're responding as a leaseholder/buyer)

You must provide an answer to this question.

N/A

3

Are you responding as a:

Select at least 1 option.

- [x] Leaseholder
- [ ] Building owner or property manager
- [ ] Prospective homebuyer
- [ ] Solicitor/conveyancer
- [ ] Fire safety professional
- [ ] Registered Valuer
- [ ] Insurer
- [ ] Insurance broker
- [ ] Estate Agent
- [ ] Professional body
- [x] Other (please specify in the comment box)

If other, please specify

Campaign group focusing on fire safety in residential buildings across the United Kingdom.

4

Are the scenarios set out in the document clear and easy to understand?

You must provide an answer to this question.

Yes

Please enter any additional comments

The indicative common scenarios and potential valuation approach are understood. What is less clear is how and where the complexity of the leaseholder protections, and the qualifying or non-qualifying status of leaseholders, will be reflected in a final valuation. Will this be through the valuation based on client instructions or will valuations

be undertaken based on a range of potentially inconsistent special and specified assumptions?

The qualifying or non-qualifying status of the protections applying to a property are to be transferred to future buyers of that property - will it be the surveyor or the lender who will apply a (no doubt material) discount factor based on this status? How will there be a truly consistent and proportionate approach to valuations based on a potentially contradictory framework?

5

In your view do the assumptions proposed in each scenario appropriately reflect the likely impact of the new leaseholder protections?

You must provide an answer to this question.

Somewhat/Partially

Please enter any additional comments

The apparent requirement for a route to funding being clear for this valuation approach does not necessarily reflect scenarios where a leaseholder is qualifying under the Building Safety Act's leaseholder protections. Qualifying leaseholders cannot be charged for cladding costs (and a cap is in place for non-cladding costs) so it could be argued that the source of funding is irrelevant to use or not of this valuation approach of the protected property/lease. We assume that the "route" relates to the building being in a funding scheme but would also note that the July 15th Statement from Industry (https://www.ukfinance.org.uk/policy-and-guidance/guidance/statement-industry-support-leaseholder-protections-within-building) explicitly stated that: "lenders will lend on buildings that will be self-remediated by developers or captured under a recognised government scheme or there is evidence of a qualifying lease certificate."

What is the impact to a qualifying leaseholder's property valuation if the start and end date of remediation works are not yet known? If the leaseholder is protected from the costs of the remediation, why is the start/end date relevant to the valuation? We are aware that the July 15th Industry statement was supposed to herald a world where start and end dates were not needed but that is not yet happening in reality.

Clarity is needed on the impact on property valuation where the seller is a qualifying leaseholder and their liability for remediating building safety costs is capped (or zero) as defined in the BSA, but the building owner (freeholder/landlord) is eligible to pass on relevant defect costs to qualifying leaseholders although only then within prescribed annual limits and to account for costs that have already been paid. Therefore, is the value of the property to be reduced by the maximum contribution cap (either £15,000, £10,000 or £0), or by another value? If so, what would be the methodology used to calculate this consistently?

It is not clear how the scenarios account for situations in which the leaseholder is qualifying and fully protected from all costs (lease value is below the value thresholds), but information is lacking about route to funding, remediation or waking watch costs, remediation start and end dates etc. In this situation, the leaseholder cannot be made to pay for any remediation or interim costs so what is the position if this information is not available?

'Future value and saleability may be affected in relation to the wider market, until initiated remedial/mitigation works are fully completed, but this impact is assumed to be temporary and has been ignored for valuation purposes.' - This statement appears logical and helpful to ensure leaseholders trying to sell their property are not penalised

for the temporary impact of required remediation works. Whether it has the desired effect in (an ongoing risk averse) reality is open to question.

The issue here, and throughout the guidance note, is what should happen in theory versus what actually does and will happen in practice. We understand that the start and end date will give the valuer ‘comfort’ that there is an agreed programme and works will be completed by an agreed point in the future (albeit our experience of remediation projects is that few seem to adhere to the original programme dates) and that, without this, there would be increased levels of uncertainty. We understand that the RICS red book may require a ‘valuation date’ and that a valuer would then be obliged to identify the proposed remediation dates; however, this approach then only seems to follow the March 2022 industry statement, where start and end dates were required, rather than the July 15th statement, which appeared to override those earlier requirements.

We are very concerned of the impact of these new ‘desirability factor’ components, which are to consider a range of factors outside of a leaseholder’s control, whether these be the timelines or the issue of exorbitant insurance premiums, which the Government has still not gripped – to see that these factors may now be included in a valuation adds insult to the injuries we have suffered over the last five years. We fear that timelines may be a materially detrimental factor affecting valuations with a negative impact on those buildings where dates for work are still unknown. This potentially means a double whammy for qualifying leaseholders in an orphan building who will be on the hook for non-cladding costs of £10k/£15k as well as further detriment to valuation based on remedial works being in the distant future.

While we understand that the valuation approach may be subject to the lender’s specific risk criteria and instructions given by the client, it then appears to potentially be

contradictory to include a range of considerations such as the summary of works 'that may impact on the marketability and desirability of the property' as well as the impact on amenity while also stating that such impacts are assumed to be temporary and are ignored for valuation purposes. The rationale appears to continue to be that a risk-based approach will be driven by industry and those mortgage providers willing to take on additional levels of risk – unfortunately, our experience over recent years is that industry stakeholders will remain focused on mitigating their own liability with positive sounding statements rarely being matched by commensurate action on the ground. After a financial crash caused by sub-prime mortgage lending, allied with ongoing current volatility in interest rates, we fear that lending assumptions will continue to be risk averse and the flat sales market will remain broken. Unfortunately, our concern is that what is being proposed will not bring the required proportionality or consistency to valuation outcomes.

One major concern is the position where other non-cladding work is required. How will a valuation be undertaken for those buildings in respect of the leaseholder protections? This is particularly important for those buildings under 18m, where there are material safety issues such as compartmentation defects. While PAS 9980 is supposed to ensure a holistic approach, i.e., within the context of a building's use, occupancy and fire safety arrangements, the PAS is focused on the fire performance of external walls. Buildings are now regularly being asked to undertake a Type IV intrusive assessment and the focus on cladding valuation continues to ignore those issues other than saying the valuer has to take into account all known, relevant information when valuing a property. How will this information be taken into account? How will consistency be achieved? Will surveyors receiving this information be suitably qualified to understand and interpret it?

Where a qualifying leaseholder's property is valued at lower than £175,000 outside

London and £325,000 inside London (according to the BSA uprating calculation), the cost of potential non-external wall system remediation and/or waking watch costs should not be relevant to the value of the property, as qualifying leaseholders cannot be made to pay for any building safety related remediation (providing the defect was present at construction) or for the cost of waking watch. This must be considered and fully reflected in the approach being taken.

For Indicative Scenarios (4.2), clarity is needed on the impact on property valuation where the seller is a qualifying leaseholder and their liability for remediating building safety costs is capped (or zero) as defined in the BSA, but the building owner (freeholder/landlord) is eligible to pass on building defect costs on to qualifying leaseholders. Is the value of the property reduced by the maximum contribution cap (either £15,000, £10,000 or £0), or by another value? What will be the methodology used to calculate this?

The following questions are for valuers to answer.

6

Please only answer this question if you are a valuer.

Please confirm you have tested the guidance and that you will be able to value (subject to client instructions) if this guidance is in place, as proposed.

«No response»

If you are unable to value, please state what the challenges are and your proposed solution(s).

«No response»

7

Please only answer this question if you are a valuer.

What support do you need from RICS' Standards and Regulation teams, to help apply this guidance?

- [ ] Regulatory advice
- [ ] Toolkits
- [ ] Case scenarios
- [ ] Training
- [ ] Other (please specify in the comment box)

Please enter any additional comments

«No response»

The following questions are for lenders only.

8

Please only answer this question if you are a lender.

Does this guidance provide an appropriate approach to support lending on all properties envisaged under the lender pledge?

«No response»

Please enter any additional comments

«No response»

9

Please only answer this question if you are a lender.

Would a valuation based on these assumptions provide sufficient protection for leaseholders, and sufficient certainty for lenders in making buying and lending decisions?

«No response»

Please enter any additional comments

«No response»

10

Do you have any further comments on the proposed guidance?

As a group representing leaseholders in unsafe and / or unsellable buildings across the country, who are directly and materially impacted by the current lending limbo, we are extremely disappointed that we were not invited to feed into this consultation prior to this point. We understand that we are able to now provide our feedback via this public consultation; however, our firm view is that it would be morally decent as well as far more effective for there to be leaseholder representation much earlier on in the process rather than what many fear to be a “tick-box exercise”.

While we do not profess to be experts, we have years of lived experience of the fallout of the building safety crisis and see decisions about our lives and futures still being made without our being able to input at the same stage as industry. The wide-ranging negative consequences of previous sector initiatives designed behind closed doors - such as the EWS1 - should have acted as a warning that industry alone is not always best placed to design effective solutions. We repeat our request that leaseholders must be

represented in the working group, as made directly to RICS when we met in April and most recently in October.

We understand that RICS is attempting to provide a standardised approach to a very complicated situation - our firm view is that this is likely to prove impossible due to the inherent complexities of the leaseholder protections and the lack of clarity on how these will work in reality. We fear that any attempts to standardise this process will fail as tiers are created in respect of valuation decisions based on which funding scheme a building is in and then whether the individual leaseholder is deemed to qualify for the leaseholder protections. The proposed framework is unlikely to provide the consistency that is needed - we are concerned that it will effectively amount to a “postcode lottery” where leaseholder protections are sidelined in favour of other subjective - and at times contradictory - criteria.

The wider point is that the valuation approach is predicated on the various funding schemes being up and running (and/or the new leaseholder certification and landlord certificate process being followed correctly). The Consultation document recognises this in para 20: “There will also be a period during which the information available about when a building will be remediated, and which developer or government scheme will be responsible for paying the costs of remediation, will vary between properties.” How long will this period be? How will the information be shared? DLUHC has suggested that information on buildings in the schemes will be shared with lenders, but it isn’t clear how and when this is to happen. For example, https://buildingsafetyportal.co.uk/ does not seem to be being used in any real volume. In July 2021, seven lenders agreed to cover the cost of submitting EWS1 forms to this portal, yet this does not seem to have taken place.

Consideration should also be given to the impact on leaseholders whereby the freeholder (or managing agent) is not forthcoming with all the information required for the valuation process. Where such information is provided historically, through LPE1 forms or management packs, it is caveated heavily with standardised disclaimers – will the valuer take the information in good faith, or will those caveats be reflected in the valuation approach? If reflected, how will that be achieved on a consistent and realistic basis?

One clear issue is that valuers may follow the same risk averse approach that focuses on mitigating their own liability and will not want to be overly “generous” in the assumptions made when valuing a property. What will be the impact on equity in a home if someone tries to remortgage based on this approach? For example, if they have a high Loan-to-Value mortgage (or used Help to Buy or are a shared owner) then this approach could lead to negative equity. This could also be a major issue for BTL leaseholders.

The draft approach recognises the issue of a lack of directly comparable evidence for a valuer to draw upon experience and professional judgement – this may likely lead to inconsistent valuations based upon subjectivity. As and when all the promised remediation funding schemes are implemented, there is likely to be a limited directly comparable evidence base for a valuer to draw upon for some time. In the absence of comparable data, we are concerned that the increased volumes of cash transactions that we have seen, usually at a significant discount, will have a disproportionate impact on valuations being given. How will there be sufficient comfort that any comparative valuations are based on the same assumptions that have been given by a specific client without trawling through each and every valuation report, if they are available?

The likelihood of increased valuation fees for leaseholders and the competency of

valuers is also a concern. We understand that, typically, residential valuation is undertaken by surveyors undertaking “volume instructions”, which are relatively uncomplex in their nature by way of more simplistic proforma valuations at a relatively low cost. The level of detail that is anticipated to be required for the type of valuation that will be needed for individual leaseholders is likely to be far more complex given the assumptions and special assumptions proposed. Therefore, the valuations will likely be undertaken by more experienced valuers (possibly more commercial valuers) that are used to undertaking this level of complexity, especially given they will likely be required to use “valuers experience and discretion” due to the lack of comparable evidence. If this happens, there are likely to be increased valuation fees and hence costs to the leaseholders as part of any new lending or refinancing. There is also the question of whether there are enough competent valuers with the necessary experience and the appetite to undertake these types of complex instructions. Has this been taken into account at this point rather than at the point the issue emerges? Will the Government's state-backed Professional Indemnity Insurance scheme ensure that a risk-based approach is taken, or will such concerns continue to dominate the approach a valuer takes?

It may be that traditional residential valuers currently undertaking volume work could be upskilled, albeit this would likely take some time to filter through and still result in increased costs for borrowers / leaseholders. Given the lack of comparable evidence and without a defined approach to the valuation as a practice statement from RICS, it will be very difficult for valuers to undertake a valuation in line with the definition of “Market Value” as defined by the RICS Red Book, which is “The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion”.

Will the guidance note become a practice statement? Guidance notes are “best practice” not mandatory requirements from members. Therefore, until this is adopted as a practice statement will it be considered as seriously by RICS members?

The draft approach notes that: “For residential blocks and/or flats, 4 storeys or fewer or under 11 metres, the principles contained within this professional standard may be applicable along with the information set out in RICS’ Valuation of properties in multi-storey, multi-occupancy residential buildings with cladding, 1st edition.” We fear that this is eerily reminiscent of the December 2019 EWS1 guidance, with that form saying it was for blocks over 18m or where specific concerns exist. It seems clear that buildings under 11m will be valued based on these principles, yet those buildings have been ruled out of any funding help or scheme participation by the Government. RICS prides itself on safeguarding the public interest yet seems to be silent on the issue of those buildings under 11m that the Government insists (with inconclusive evidence) are safe. RICS is well aware of the issues with dangerous materials in those buildings with the explicit guidance issued in March 2021 to require EWS1 forms for buildings under 11m with ACM, MCM or HPL. Is RICS still safeguarding the public interest?

We have ongoing, serious concerns that the proposed approach, while well-meaning, will not lead to anything close to a proportionate and consistent valuation methodology for properties caught up in the building safety crisis. Our firm view is that it is highly unlikely that the current proposals will break this deadlock, leaving innocent leaseholders still trapped in this living nightmare.