

To: Mark Prisk

From: Bryan Lea
Affordable Housing Management &
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Location: Zone 1/E1, Eland House

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Date: 1 May 2013

Cleared: Paul Downie
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LAKANAL HOUSE INQUEST - RULE 43 FIRE SAFETY RECOMMENDATIONS

Summary

1. On 28 March the Coroner investigating the July 2009 fire at Lakanal House in Southwark issued a 'Rule 43' letter, making recommendations to the Secretary of State.
2. The Coroner recommended that DCLG should encourage providers of housing in high-rise residential buildings containing multiple domestic premises to consider the retro-fitting of sprinkler systems. In addition, the Coroner's letter recommended that Government should provide further guidance on the definition of 'common parts' in buildings containing multiple domestic properties.
3. This submission seeks your views as Housing Minister on how we should respond to the Coroner. Separate advice has been provided to Brandon Lewis and Don Foster in respect of recommendations relating to fire safety and building regulations. In the light of Ministers' views, we will provide a co-ordinated draft response for the Secretary of State to send.

Timing

4. DCLG is expected to respond to recommendations made by the Coroner to by 23 May. We aim to provide the Secretary of State with a draft DCLG response to the Coroner in the week beginning 6 May.

Recommendation

5. In our response to the Coroner, on the recommendation relating to sprinklers, we should:
 - Emphasise that it is fundamentally a matter for landlords to decide whether sprinklers are the right mechanism for meeting their obligations under Fire Safety Order and the Housing Act;
 - Commit to reviewing, with the LGA and other partners, the advice issued under the LGA's ownership to landlords in 2011, and if necessary to revise the guidance to ensure that it remains fit for purpose in the light of the findings from the Inquests.
6. On 'common parts' we should:
 - Refer again to the LGA guidance, which we will review to ensure that it provides as much clarity as possible;

- In parallel we see a need to look closely at the legislation to ensure that the definition of 'common parts' is fit for purpose. We do not recommend at this stage that we should commit publicly to a review, but we will report to you on this issue in due course.

Background

7. On 28 March, narrative verdicts were returned into the deaths at Lakanal House in July 2009. The fire, in a 1950's block owned by LB Southwark is widely regarded as the UK's worst tower block fire. It claimed six lives: Dayana Francisquini (26), her daughter Thais (6) and son Felipe (3); Helen Udoaka (34) and her 20-day-old daughter, Michelle; and Catherine Hickman (31).
8. The Coroner issued four Rule 43 letters at the same time as the verdicts were handed down. These were addressed to the London Borough of Southwark, the London Fire Brigade, the Fire Sector Federation and the Secretary of State for Communities and Local Government. All were made publicly available. The recommendations for DCLG address operational fire fighting issues, and policy in relation to fire safety in multi-occupied residential buildings and Building Regulations. A copy of the Coroner's letter to the Secretary of State is attached at **A**.
9. Brandon Lewis has agreed the proposed response to the Coroner's recommendations relating to Fire Safety Order and fire safety in multiple occupied residential buildings (Louise Upton's submission of 17 April to Brandon Lewis attached at **B**) and Don Foster has agreed the recommendations in relation to building regulations (as set out in Brian Martin's submission - attached at **C**).

Regulating Fire Safety in Housing

10. Fire safety in domestic premises is regulated through the Housing Health and Safety Rating System (HHSRS). The Fire Safety Order applies only to the shared areas of multi-occupied residential premises, but not the individual dwellings. A note at **D** explains the framework of regulation. In essence, the framework places on landlords and building managers the responsibility for ensuring safety without prescribing how this should be achieved.

Retro-fitting sprinklers

11. DCLG commissioned research on the cost of sprinklers and their effectiveness which reported in 2005. We have also reviewed more recent research commissioned by others such as the Chief Fire Officers Association and the Welsh Government. We are not persuaded that the case has been made that retro-fitting sprinklers is cost-effective. In our reply to the Coroner, and in any guidance we publish, we would re-emphasise that any decision whether to retro-fit sprinklers in a building is one for the landlord or freeholder and should be considered in the light of its assessment of risk and existing risk mitigation measures.

'Common Parts'

12. The Coroner recommended that Government should provide clear guidance on the definition of “common parts” of buildings containing multiple domestic premises. The question of what constitutes a ‘common part’ (for example, whether that term would cover the front door of a flat) is relevant to the operation of both the Fire Safety Order regime and the Housing Health and Safety Rating system.
13. We think that the LGA guidance issued in 2011 takes a practical and pragmatic approach to ensuring landlords and other housing providers are aware of how to comply with their duties under both the HA and the FSO. Housing, Building Regulation and Fire colleagues met the LGA on 24 April and were supportive of its proposal to carry out a review of the guidance in the light of the findings from the inquests with a key stakeholder group. DCLG has confirmed it is content to support this process and will work with the LGA to as it develops.
14. We will however look more closely at the underlying legislation to see whether further clarity could be achieved.

Guidance

15. Detailed and comprehensive guidance on fire safety in flats was published in 2011 by the LGA, with support from DCLG. That guidance has been well-received: a survey by the LGA last year showed strong approval by landlords and other interested groups. We met the LGA last week to consider the case for revisions to the guidance and will be continuing to work with them.
16. For the purposes of the response to the Coroner on the Rule 43 we consider it sufficient to say we are considering whether any revisions to the existing guidance would be helpful.

Costs

17. There is no expectation currently that DCLG should provide funds to enable landlords to comply with fire safety regulations, and this should continue as long as we maintain the existing regulatory framework. If we were to take stronger measures to require compliance, which might involve major retro-fitting or other work, the impacts on landlords, leaseholders and tenants could be considerable and could lead to pressure on Government to make funding available.
18. Stronger measures would create a new unfunded pressure against the Department’s budgets (which are currently fully allocated for 2013/14 and 2014/15). We have not currently estimated the likely financial impact of this option. A case for any additional funding would need to be made to Treasury.
19. This submission has been cleared with Finance.

Bryan Lea

Copies to:

Secretaries of All Ministers

PS/Special Advisers

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Inner Southern District of Greater London

**The Coroner's Court
1 Tennis Street
London SE1 1YD**

**Her Honour Frances Kirkham CBE
Assistant Deputy Coroner**

28 March 2013

The Rt Hon Eric Pickles MP
Secretary of State for Communities and Local Government
Department of Communities & Local Government
Zone G9, 4th floor
Eland House
Bressenden Place
London
SW1E 5DU

Dear Secretary of State

Lakanal House fire 3 July 2009

I write concerning the inquests into the tragic deaths of Catherine Hickman, Dayana Francisquini, Thais Francisquini, Felipe Francisquini Cervi, Helen Udoaka and Michelle Udoaka, who all died in a fire at Lakanal House, Camberwell, London, on 3 July 2009.

The jury brought in Narrative Verdicts in respect of each of the deceased.

I write to you pursuant to Rule 43 of the Coroners Rules (as amended) which provides:

"(1) Where

- (a) a coroner is holding an inquest into a person's death,
- (b) the evidence gives rise to a concern that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future; and
- (c) in the coroner's opinion, action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances,

the coroner may report the circumstances to a person who the coroner believes may have power to take such action."

I announced at the end of the inquests that I would be sending a report to you, as evidence adduced at the inquests gave rise to concern of the type identified in Rule 43. I believe that your Department has power to take action as set out in this report.

Different sections of this report will be relevant to different sections of your Department. I ask you, please, to ensure that the report is drawn to the attention of all relevant sections.

Fire safety, fire fighting and search and rescue

Evidence adduced at these inquests indicates that there is insufficient clarity about advice to be given to residents of high rise residential buildings in case of fire within the building. It is recommended that your Department publish consolidated national guidance in relation to the "stay put" principle and its interaction with the "get out and stay out" policy, including how such guidance is disseminated to residents.

It is recommended that consideration be given to review of Generic Risk Assessment 3.2 "High Rise Firefighting" to provide consolidated national guidance as to the following:

- matters which should be noted by fire brigade crews making familiarisation visits and visits pursuant to section 7(2)(d) Fire and Rescue Services Act 2004, including the gathering of information regarding high rise residential buildings with unusual layouts, and access for aerial ladder platforms and other specialist vehicles at an incident
- awareness that fire can spread downwards and laterally in a building
- awareness of the risk of spread of fire above and adjacent to a fire flat
- awareness that insecure compartmentation can permit transfer of smoke and fire between a flat or maisonette and common parts of high rise residential buildings, which has the potential to put at risk the lives of residents or others.

It is further recommended that Government give consideration to requiring high rise residential building owners or occupiers to provide relevant information on or near the premises, such as premises information boxes or plates. Such information must be accessible by and tailored to the requirements of the fire and rescue service and kept up to date by the premises owner or occupier.

Fire risk assessments pursuant to Regulatory Reform (Fire Safety) Order 2005

The evidence adduced indicated that, notwithstanding publication of your Department's 2006 guide (Fire safety Risk, sleeping accommodation) and of the Local Government Association's August 2011 guide, there remains uncertainty about the scope of inspection for fire risk assessment purposes which should be undertaken in high rise residential buildings. Evidence was adduced which indicated that inspection of the interior of flats or maisonettes in high rise buildings was necessary to enable an assessor to identify possible breaches of the compartment which have the potential to impact on the fire safety of the resident or others.

It is recommended that Government provide clear guidance on

- the definition of "common parts" of buildings containing multiple domestic premises
- inspection of a maisonette or flat which has been modified internally to determine whether compartmentation has been breached
- inspection of a sample of flats or maisonettes to identify possible breaches of the compartment.

Retro fit of sprinklers in high rise residential buildings

Evidence adduced at the inquests indicated that retro fitting of sprinkler systems in high rise residential buildings might now be possible at lower cost than had previously been thought to be the case, and with modest disruption to residents.

It is recommended that your Department encourage providers of housing in high rise residential buildings containing multiple domestic premises to consider the retro fitting of sprinkler systems.

Building Regulations and Approved Document B

During these inquests we examined Approved Document B (2000 edition incorporating 2000 and 2002 amendments) ("AD B"). I am aware that AD B has subsequently been amended, and believe that a further amendment is due to be published soon. The introduction to AD B states that it is "... intended to provide guidance for some of the more common building situations". However, AD B is a most difficult document to use. Further, it is necessary to refer to additional documents in order to find an answer to relatively straightforward questions concerning the fire protection properties of materials to be incorporated into the fabric of a building.

It is recommended that your Department review AD B to ensure that it

- provides clear guidance in relation to Regulation B4 of the Building Regulations, with particular regard to the spread of fire over the external envelope of the building and the circumstances in which attention should be paid to whether proposed work might reduce existing fire protection
- is expressed in words and adopts a format which are intelligible to the wide range of people and bodies engaged in construction, maintenance and refurbishment of buildings, and not just to professionals who may already have a depth of knowledge of building regulations and building control matters
- provides guidance which is of assistance to those involved in maintenance or refurbishment of older housing stock, and not only those engaged in design and construction of new buildings.

Response

Rule 43A of the Coroners Rules requires that you give a written response within 56 days beginning with the day on which the report is sent. If you are unable to respond within that time, you may apply to me for an extension. The response is to contain details of any action that has been taken or which it is proposed will be taken whether in response to this report or otherwise, or an explanation as to why no action has been taken.

As required by rule 43, I shall send a copy of this report to the Lord Chancellor.

Yours sincerely



Frances M Kirkham

To: Brandon Lewis

From: Louise Upton
Fire Safety Policy Team

Location: Zone B6, Eland House

Tel: [REDACTED]

Date: 17 April 2013

Cleared: Dawn Eastmead
DD National Fire Policy Division

Copies: Secretaries of All Ministers
PS/Permanent Secretary
Others - see list below

LAKANAL HOUSE INQUEST - RULE 43 FIRE SAFETY RECOMMENDATIONS

Summary

1. This submission seeks your views on the Coroner's Rule 43 recommendations in relation to fire safety in premises containing multiple domestic premises (Annex A).

Timing

2. Routine (response required within 5 days). DCLG is expected to respond to recommendations made by the Coroner by 23 May. We aim to collate responses from this and other related submissions and provide the Secretary of State with a draft DCLG response to the Coroner in w/c 6 May.

Recommendation

3. That you agree respond to the coroner's recommendations (set out in paragraph 6 below) in respect of the Regulatory Reform (Fire Safety) Order 2005 and fire safety in multiple domestic premises as follows:
 - highlight the availability of DCLG-funded national guidance ('Fire Safety in Purpose Built Blocks of Flats' - July 2011), owned by the Local Government Association on behalf of the housing and fire sectors; and, confirm that DCLG are working with the LGA to consider whether it remains fit for purpose; and
 - acknowledge that whilst the legislation (i.e., the Fire Safety Order, which applies to the common parts of such buildings and, the Housing Act 2004, which applies to individual dwellings and to the common parts) can be complex (Annex B), the guidance, which is well known within the sector, is designed to make its practical application simple. We have no plans to issue new guidance but we will, with the LGA and stakeholders, review and, if necessary, amend the existing guidance to ensure it adequately reflects issues raised by the Inquest.

Background

4. On 28 March, narrative verdicts were returned into the deaths at Lakanal House in July 2009. The fire, in a 1950's block owned by LB Southwark is widely regarded as the UK's worst tower block fire. It claimed six lives: Dayana Francisquini (26), her daughter Thais (6) and son Felipe (3); Helen Udoaka (34) and her 20-day-old daughter, Michelle; and Catherine Hickman (31).
5. The Coroner issued four Rule 43 letters at the same time as the verdicts were handed down. These were addressed to the London Borough of Southwark, the London Fire Brigade, the Fire Sector Federation and the Secretary of State for Communities and Local Government. All were made publicly available. The recommendations for DCLG address operational firefighting issues, and policy in relation to fire safety in multi-occupied residential buildings and Building Regulations.

Consideration

6. The Coroner's view that there is uncertainty about the scope of inspection for fire risk assessment purposes in high rise residential buildings. Although she acknowledges availability of the DCLG-funded LGA guidance on Fire Safety in Purpose Built Flats, she recommends that the Government provide clear guidance on the:
 - definition of "common parts" of buildings containing multiple domestic premises
 - inspection of a flat or maisonette which has been modified internally to determine whether compartmentation has been breached
 - inspection of a sample of flats or maisonettes to identify possible breaches of the compartment.
7. Guidance on fire safety in purpose built blocks of flats: The LGA published new national guidance specifically on fire safety in purpose built flats, including high rise in 2011. It addresses the issues that the Coroner has raised in some detail.
8. DCLG funded the project and worked with LGA to put together a Reference Group of key housing stakeholders from across the public and private sectors and with representatives from the enforcing authorities – local authority environmental health officers in respect of the Housing Act 2004 and fire and rescue authorities in respect of the Fire Safety Order. This group identified the areas where additional advice and guidance would be helpful.
8. The new guidance was well publicised by the sector in July 2011. It is available both on the LGA's website and on the fire safety pages of the DCLG website, fulfilling the FSO duty on the Secretary of State to ensure that such guidance, as he considers appropriate, is available to assist responsible persons discharge their duties under the FSO. In summer 2012, the LGA evaluated the impact of the guidance in the sector, surveying views of the stakeholder Reference Group, as well as a range of organisations representing the enforcing authorities, local authorities, ALMOs, PRPs, private sector landlords, resident management companies, private resident's associations, managing agents and fire risk assessors. The evaluation reported that of the 53 respondents:
 - **92.2%** believed the guidance was effective in overall terms in contributing to improving the fire safety of residents in purpose built flats
 - **86.6%** said that the guidance helped them understand their legal responsibilities

- **76.9%** said that the document was easy to use.

9. The guidance was relied on and quoted without controversy by a number of the legal teams at the Inquests suggesting it is a valuable document, both in explaining the concept of risk assessment in these buildings and in providing practical solutions to addressing any fire safety concerns which arise. This includes identifying where and when housing providers should consider accessing individual flats for the purpose of comprehensively assessing fire risk.

10. Housing, Building Regulation and fire safety officials are, however, meeting the LGA on 24 April to discuss with them whether there may be any implications from the Coroner's recommendations for the guidance and to identify options for dealing with any amendments should these be required. We will provide further advice in the light of the outcome.

11. For the purposes of the response to the Coroner on the Rule 43 we consider it sufficient to say we are considering whether any revisions to the existing guidance would be helpful. This will include whether there is a need for further guidance on the definition of 'common parts'. Annex A sets out the scope of the Fire Safety Order and the Housing Act 2004.

Legal

12. We have developed this submission with colleagues in Legal (Fire and Housing). They are considering whether further clarity on the definition of 'common parts' used in housing legislation, could be made available for the purposes of fire safety, and further advice will be provided to Ministers in due course.

Louise Upton

To: Don Foster

From: **Brian Martin**
Building Regulations and
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Date: 11 April 2013

Copies: Secretaries of All Ministers
PS/Permanent Secretary
See list at end.

LAKANAL HOUSE INQUEST - RULE 43 RECOMMENDATIONS REGARDING BUILDING REGULATIONS

Summary

9. This submission seeks your views on the Coroner's Rule 43 recommendations, specifically regarding building regulations, following the inquest into the Fire at Lakanal House.

Timing

10. Routine,
11. DCLG is expected to respond to recommendations made by the Coroner by 23 May. We aim to collate responses from this and other related submissions to the Secretary of State in w/c 6 May, which will include a draft reply to the Coroner.

Recommendation

12. That you agree to respond to the coroner's recommendations at **Annex A** (page 3) regarding building regulations as follows;
- a) Acknowledge that the guidance in Approved Document B (Fire safety) can be difficult for inexperienced people to apply.
 - b) Commission a review of guidance currently provided by the Replacement Window - Competent Person scheme operators to their members to ensure that there is proper understanding of the scope of the schemes and where fire protection requirements affect window installations.
 - c) Set out the Government's intentions to issue a revised Approved Document B in 2016/17 following a full review of the fire safety aspects of Building Regulations. This would use the Department's new, style guide for "easy to read" approved documents and take account of current research which is due to deliver in 2015.

Background

13. On 28 March, narrative verdicts were returned into the deaths at Lakanal House in Camberwell during what is widely regarded as the UK's worst tower block fire in July 2009. They victims were Dayana Francisquini, 26, and her daughter Thais, six, and son Felipe, three; Helen Udoaka, 34, and her 20-day-old daughter Michelle; and 31-year-old Catherine Hickman.
14. The Coroner has issued 4 rule 43 letters, one to the London Borough of Southwark, one to the London Fire Brigade, one to the Fire Sector Federation and one to the Secretary of State for Communities and Local Government. The recommendations for DCLG address Operational Fire Fighting, Fire Safety Policy, Building Regulations and Housing Policy.

Considerations

15. During the Inquest, there was considerable attention paid to alterations that had been made to the building during its lifetime. This included replacement of the window system in 2006. This system took the form of a series of frames that formed windows, doors and wall panels. The fire spread both up and down the outside of the building and this was, found to be exacerbated by the incorrect specification of the wall panels.
16. The work had been carried out by a window installation contractor that was registered with the FENSA Competent Person Scheme. This was the first scheme of its type and was still in its infancy when the work was undertaken. The contractor issued compliance certificates for its work which were taken as evidence of compliance by the landlord, LB Southwark.
17. At the inquest, it was acknowledged that the FENSA scheme did not extend to certification of the wall panels and that the panels themselves did not meet the guidance given in Approved Document B. Unfortunately, the expert witness appointed to advise the Inquest gave confused and conflicting evidence on what was required by building regulations at the time. This was, to some extent, due to the process of cross examination and it became necessary for me to give evidence to clarify the situation.
18. Given the confusion in court it is unsurprising that the Coroner has criticised the clarity of the guidance in Approved Document B and has called for it to be made clearer. The Department has adopted a new style guide for Approved Documents, which was used in the drafting of new approved documents published in January.
19. However, a rewrite of Approved Document B would be a significant project and we would therefore recommend that this be done as apart of a fuller review. The Department has not made any statements about when the next review would be carried out but, with Ministers agreement, we have commissioned research intended to feed into a future edition. This work is due to be completed in 2015 and we would expect that a revised Approved Document could be published during 2016/17.
20. Given that most of the issues with Building Regulations related to the FENSA scheme it would be advisable to raise the issue with FENSA and other scheme providers for replacement windows to ensure that their members are fully aware of the scope of the schemes and the requirements applicable to their work. We would aim to complete this by the end of summer, without the need for the Department to divert significant resources.

21. In the light of the above, are you content with the recommendations in Paragraph 4 with a view to these being collated in a submission put to the Secretary of State?

Brian Martin
Building Regulations and Standards Division

Scope of the Fire Safety Order:

The fire safety regulations, which are enforced by fire and rescue authorities in most premises, apply to all workplaces and other premises to which the public have access. They require responsible persons to assess the risk from fire and implement and maintain adequate and appropriate fire safety measures to reduce the risk to life to as low as reasonably practicable.

The Order was introduced primarily to give effect to a number of European Council Directives designed to improve the health and safety of workers at work. It does not apply to domestic premises except, in cases (article 31) where it is necessary to prohibit or restrict the use of premises to ensure the safety of relevant persons (ie, those lawfully on the premises). DCLG wrote earlier this year to London Fire Brigade confirming our view was that the Fire Safety Order was not intended to apply generally to the structure of a block.

Scope of the Housing Act 2004:

The Housing Health and Safety Rating System provision, under the Housing Act 2004, requires local housing authorities to keep housing conditions in their area under review and to carry out inspections of residential premises with a view to determining whether any category 1 or 2 hazards (including fire) exist on the premises. If so, the housing authority has a suite of enforcement options available.

The definition of residential premises in the Housing Act ensures housing authorities may inspect the whole block – individual dwellings and common parts – if they considered it appropriate. Although housing authorities cannot take enforcement action against themselves, the enforcement guidance on the HHSRS makes clear the expectation that they will *'be expected to use the HHSRS to assess the condition of their stock and to ensure their housing meets the Decent Homes Standard (i.e. be free from all category 1 and 2 hazards)*.

Other than the broad Housing Act provisions there do not appear to be additional housing or landlord and tenant legislation which imposes specific requirements on landlords or tenants in relation to fire safety.