

IN THE MATTER OF THE GRENFELL TOWER INQUIRY

RESPONSE TO SUBMISSIONS ON INTERIM RECOMMENDATIONS

CS STOKES & ASSOCIATES LIMITED

Introduction

1. This document is intended to assist the Grenfell Tower Inquiry ('GTI') with interim recommendations and addresses some of the issues raised by CPs in that regard.
2. An important issue for the GTI to determine is in what instances it will make recommendations to HM Government and/or a specific Regulator for specific actions to be taken as opposed to recommending that HM Government and/or a specific Regulator *considers* taking a specific action or actions. The former will require a greater degree of evidential clarity than the latter.
3. The GTI will be aware that it has yet to receive expert oral evidence from Colin Todd on the subject of:
 - a. The Regulatory Reform (Fire Safety) Order 2005;
 - b. The Housing Act 2004;
 - c. Building Regulations, Building Control and Approved Document B;
 - d. Existing Guidance in the form of the LGA's Fire Safety in Purpose Built Blocks of Flats 2012 ('LGA Guidance' - CTAR 00000033);
 - e. Property Information Boxes;
 - f. Fire Risk Assessments;
 - g. Stay Put; and
 - h. Fire Protection measures generally.

4. A number of interim recommendations are sought particularly by the BSRs which span these various topics (and others). Whilst the desire and need for action is appreciated, caution should be exercised when the evidential picture is incomplete.

The Regulatory Reform (Fire Safety) Order 2005

5. Paragraph 18 of the G11 Submissions on Interim Recommendations dated 14th December 2018 seeks a recommendation that the Regulatory Reform (Fire Safety) Order 2005 ('FSO') be '*amended so as to provide that it extends to the external common parts of any building which comprises or contains residential accommodation.*'
6. Paragraph 18 goes on:

'The common understanding appears to be that the 2005 Order does not extend to the external envelope of a building (see Expert Report of Colin Todd, para 2.75, drawing attention to '...a body of opinion that external walls of a block of flats fall outside the scope of the Order...').

That understanding appears to be shared by CS Stokes & Associates Ltd (see both written and oral opening statements) and the Ministry of Housing and Local Government (see Addendum Guidance on the HHRS, November 2018, para 4.08).

7. Plainly the FSO will need to be considered by the GTI in detail – it has not undertaken that exercise so far. The following observations are made to assist the GTI:
 - a. CS Stokes & Associates Limited ('CS Stokes') agrees with the G11 that if the FSO were to include the external walls of a residential building, it would have to be amended.
 - i. CS Stokes' position is that the FSO does *not* include the external walls of a residential building to which it applies as a matter of *construction* of the FSO itself.
 - ii. The common understanding identified (correctly) above flows from that construction and not vice-verse.

- b. As to construction, the FSO does not apply to ‘*domestic premises*’ (Reg 6(1)(a)). ‘Domestic premises’ means a ‘*private dwelling...which is not used in common by the occupants of more than one such dwelling*’ (Reg 2).
 - i. Hence those parts ‘*used in common by the occupants of more than one dwelling*’ **are** covered by the FSO.
 - ii. There is no reasonable basis upon which occupants could be said ‘*to use*’ the external walls of a building in common with other occupants.
 - iii. Colin Todd describes the opposite construction as ‘perverse’ (paragraph 9.1.14 of his report – CTAR00000001).
- c. As to ‘*common understanding*’, and in any event, CS Stokes asserts that Colin Todd’s view is correct. The LGA Guidance (CTAR000000033) is entirely consistent with this interpretation.
- d. Conversely, the Housing Act 2004 (which created the Housing Health and Safety Rating System (‘HHSRS’)) **does** include the structure and exterior of a purpose-built block of flats – see section 1 (5) and **does** include matters relevant to fire safety – see section 10).
 - i. The LFB Fire Safety Regulation Premises Inspection and DATA Collection form (LFB00000144 – 24th March 2017) identifies the Housing Act 2004 on page 4 as relevant legislation.
 - ii. The Office of the Deputy Prime Minister produced HHSRS Operational Guidance in February 2006 (‘the HHSRS Operational Guidance’) (CTAR 000000035) which addresses the Housing Act 2004 duties.
- e. There is reference in G11’s Submissions on Interim Recommendations (see paragraph 6 above) to the Addendum Guidance on the HHSRS. This is an addendum to the HHSRS Operational Guidance¹.
- f. Paragraph 4.03 of the original HHSRS Operational Guidance observes that inspections which generate the required Risk Assessment ‘*generally will be*

¹ The relevant paragraph in the Addendum seems to be 4.03 not 4.08.

restricted to visual and surface inspection, without any destructive investigations and limited by furniture and furnishings’.

- g. The LGA Purpose Built Flats 2012 (CTAR00000033) guidance identifies Types of Fire Risk Assessments (‘FRAs’) on page 45. In the vast majority of cases (where there is no reason to expect serious deficiencies in structural fire protection) a non-destructive FRA will be sufficient for most purpose-built blocks of flats – and those are FRAs which do not include the external walls in any event.
8. If an interim recommendation is made to amend the FSO to include the external walls of a residential building such as Grenfell Tower, the following issues fall for consideration:
- a. Should that recommendation include the FSO covering the external walls/cladding in terms of materials and construction (including fire stopping/cavity barriers)?
 - b. If the FSO is to cover external building walls/cladding in terms of materials and construction (including fire stopping/cavity barriers) should those issues also be addressed specifically in a FRA?
 - c. If the external walls/cladding in terms of materials and construction (including fire stopping/cavity barriers) are to be addressed in a FRA, to what extent are they to be assessed:
 - i. Is that to be a destructive or invasive assessment – if so to what extent and by whom? What qualifications does such an assessor need to possess? It is likely that such an assessor would have to have building experience/qualifications and/or be qualified as a fire engineer – such a requirement would change the landscape of FRAs very considerably. The GTI is asked to bear in mind that a large number of buildings in the UK have FRAs carried out by individuals who are the responsible persons but who may have no FRA training at all.

- ii. If it is to be non-destructive or non-invasive – by reference to what level of inspection and materials and to what extent and by whom?
 - d. Further, if the external walls/cladding in terms materials and construction (including fire stopping/cavity barriers) are to be addressed in a FRA, as a matter of practicality, how would this be achieved? For example, how would a Fire Risk Assessor be expected to access materials either concealed behind cladding/rainscreen etc. materials, or materials at height, in the as-built environment?
 - e. Which other documents also need amending – see for example the HM Government Fire Risk Assessment suite of documents including the ‘Fire Safety Risk Assessment – Sleeping Accommodation 2006, the LGA Guidance (CTAR00000033) and PAS 79.
9. It is respectfully submitted that these issues have far reaching implications for fire safety in the UK, in particular how FRAs are conducted and by whom. CS Stokes does not argue against such a development but seeks to assist the GTI with the implications of doing so.

The Housing Act 2004

10. The GTI has received all but no evidence at all in relation to the Housing Act 2004 and the relevant duties. If the regime going forward is to avoid duplication and/or the risk of confusion, both the regimes under the FSO and the Housing Act 2004 need to be considered together for the purposes of improvement and perhaps simplification.

Provision of FRAs to the Fire and Rescue Service

11. The G4 submission in particular suggests that FRAs should be provided (presumably as a matter of obligation) to the relevant Fire and Rescue Service. RBKC have suggested they be published on a website. CS Stokes has no difficulty with this becoming an obligation but would observe that, at present, pursuant to the FSO, it is not the FRA that must be recorded in writing but the significant findings of that FRA. In the instant case, it is apparent that at least one, probably two (if not more), of CS Stokes’ FRAs were supplied to the LFB in any event.

12. The LFB Fire Safety Regulation Premises Inspection and DATA Collection form (LFB00000144 – 24th March 2017) on page 7 specifically asks the question ‘*[h]as a suitable and sufficient Fire Safety Risk Assessment been carried out for the premises?*’, and answers by identifying the FRA as ‘broadly compliant’. It may be therefore that the GTI will want to establish precisely what the practice of providing a FRA to the Fire and Rescue Services is, and/or was, before making recommendations.

7(2)(d) visits and Property Information Boxes (‘PIBs’)

13. These issues could relate to Fire and Rescue Services nationally but for present purposes the observations made are confined to the LFB.
14. CS Stokes’ position is that, in theory, there is nothing wrong or inadequate about the following existing regime *in principle*:
- a. GRA 3.2 (LFB 00001255) at a national level; which informs –
 - b. LFB Policy 633 (LFB 00001256); which relevant information as required by Appendix 1 of 633 is gathered on –
 - c. 7(2)(d) visits; which information is then recorded in the –
 - d. ORD format (LFB00003116 – 15th Feb 2017) and/or LFB Fire Safety Regulation Premises Inspection and DATA Collection form (LFB00000144 – 24th March 2017).
15. Relevant information obtained and recorded as a result of paragraph 14 should then be transferred to the Mobile Data Terminals for consultation en route to a fire (see paragraph 5 of LFB Policy 633 - LFB00001256).
16. Against that background, it is submitted that a requirement to have PIBs is not necessarily desirable, particularly with a large residential block of flats:
- a. It now appears common ground that there is no such requirement at present.
 - b. All relevant firefighting information *should already* have been obtained by the LFB by reference to the process set out at paragraph 14 above – the LFB should not need further information than they already have to fight a high rise fire. That

includes information about Site Staff and Emergency Contacts for the building (ORD - LFB00003116 page 5) and any information relevant to residents, which should include mobility issues.

- c. An additional source of information in a PIB risks introducing either information which is inconsistent with the information already obtained by the LFB, or which is out of date – confusion must be avoided at all costs.
- d. An additional source of information in a PIB risks adding nothing to the information which the LFB should already have and may therefore invite wasting valuable time and resources when firefighting and rescue activities are paramount.

17. The LFB's Submission on Interim Recommendations at paragraph 2(d) is a reflection of the information the LFB *should* already have. It should not need to recover that information in hard copy on site.

- a. It is clear that GRA 3.2 requires *the LFB* to have a contingency plan.
- b. Having more than one contributor to a PIB will require coordination between the two and risks information being inconsistent with that held by the LFB alone and out of date.
- c. CS Stokes' position is that the primary source of information for the LFB to rely on should be in their possession as they arrive on site through the means identified above and not for them to recover when they are there.

18. However, the following inconsistencies between GRA 3.2 and LFB 633 need to be addressed.

- a. Appendix 1 of LFB Policy 633 follows but does not entirely reflect the issues identified on page 16 of GRA 3.2. In some respects LFB Policy 633 at Appendix 1 asks more questions. However, in the 10th bullet point on page 16 of GRA 3.2, reference is made to '*cladding systems, mounted trunking...*' which appears absent from LFB Policy 633.

- b. GRA 3.2 requires contingency plans that cover *‘an operational evacuation plan being required in the event the ‘Stay Put’ policy becomes untenable’* (page 17).
- i. Despite there being a space for ‘contingency plan’ on the ORD (LFB 00003116 – 15th Feb 2017 at page 4), it is not immediately obvious that the contingency plan envisaged by GRA 3.2 is required by LFB 633.
 - ii. LFB 633 at paragraph 7.45 requires the Incident Commander to *‘consider following the evacuation plan devised as part of the occupier’s fire risk assessment, unless the fire dictates otherwise.’* In this context the evacuation plan is the Stay Put policy.
 - iii. LFB 633 at paragraph 7.46 goes on to observe that it may be necessary to *‘undertake a partial or full evacuation in a residential building where a ‘Stay Put’ policy is normally in place’*.
 - iv. LFB 633 at paragraph 7.46 appears to require the Incident Commander to consider an alternative evacuation strategy there and then, but does not appear to require the relevant Station to have a contingency plan in place *in advance*, as per GRA 3.2.

Fire Drills

19. Reference has been made to Fire Drills being undertaken in the premises.

- a. The GTI’s attention is invited to the way in which Fire Drills are currently addressed in the LGA Guidance at paragraph 78.6 – this is predicated on the basis of the Stay Put policy being in place:

‘78.6 ... it is neither practical nor necessary to carry [fire drills] out in purpose built blocks of flats. Even in blocks with communal fire alarm systems this is unrealistic. In large sheltered housing schemes incorporating extensive communal amenities ... fire drills may be necessary. However, these will still only apply to people present in the common parts. Residents within their flats would not be expected to take part in fire drills.’

- b. If the reference to Fire Drills is to be taken to mean a drill to self-evacuate the entire building on the basis of a building wide audible fire alarm:
 - i. This is manifestly inconsistent with the Stay Put policy and risks considerable confusion;
 - ii. This would, currently at least, not be possible in the vast majority of cases in purpose built blocks of flats, where building wide audible fire alarms are not required; and
 - iii. In any event, could only be on the basis of a contingency plan developed by the LFB.
- c. In order to make such an interim recommendation, the GTI would therefore have to consider, and make further and related facilitative recommendations on, issues such a new requirement for communal area audible fire alarms, the operation of Stay Put etc.. In considering this, the GTI is asked to consider whether in fact the evidence presented to date allows the GTI to make recommendations on such issues at this juncture.

Active and Passive Fire Prevention/Suppression (sprinkler) systems

- 20. Sprinkler systems are not (contrary to the Mayor of London's Submission on Interim Recommendations number 2 top of page 3) for use in the common parts – in the majority of cases, low fire load in common parts and escape routes are likely to mean that adding water to those areas would create a greater hazard to those trying to escape than existing conditions would create.
 - a. See for example the British Automatic Fire Sprinkler Association Technical Guidance Note No 2 Issue No 1 October 2011 at paragraph 2.3.1 and paragraph 8.14 of Approved Documents B2.
 - b. The G4 Urgent Proposed Interim Recommendation submissions at paragraph 30 are to be preferred *if* the retro fitting of sprinklers is to be recommended.

21. With respect, the G11 Submissions on Interim Recommendations on Active and Passive Fire Prevention/Suppression Systems need to be considered with great care:

- a. If item (i) and the General Fire Alarm referred to in (ix) are to be recommended at all, they cannot be introduced to residents in a high-rise block without carefully considered further information and/or fire drills so that residents know how to use the equipment and in what circumstances. If a 'Stay Put' policy remains in place for a given building, the introduction of these measures without further clarification is likely to lead to confusion as they are, at first blush, consistent with a general self-evacuation policy.
- b. If Items (ii), (iv) and (v) are to be recommended at all, they cannot be introduced to residents in a high-rise block without carefully considering further information/instruction being provided so that residents know in what circumstances they are to try and fight a fire (either in their own flat or in common parts). Providing equipment of this sort, if it is designed to cause a resident to fight a fire (or attempt to), is inconsistent with both a Stay Put policy and a General Evacuation policy. There are other reasons why fire-fighting equipment is not provided generally – the potential for vandalism being one. Consideration would also need to be given to who would be responsible for ensuring that residents are provided with suitable initial and ongoing training to use fire-fighting equipment, and who would be responsible for its upkeep. The GTI will undoubtedly also want to give consideration to the (potentially wide-ranging) implications of making residents the persons primarily responsible for fighting a fire in the first instance.
- c. Whilst CS Stokes is not an architectural practice, it is not immediately obvious how a building like Grenfell Tower (or others constructed with the same principles in mind) could have a retro fitted 'dedicated fire escape' as per Item (xi).
- d. As to the intercom system (xiii) – consideration needs to be given to whether or not the intercom system is to be treated as a fire protection measure. If it is to be so considered, it will probably need to have a separate and protected power source as well fire rated/protected wiring to every flat in the building. GRA 3.2

already addresses the issue of using an intercom in the context of an evacuation on page 49 but not as a designed/protected fire protection measure.

- e. It would not be correct (xiv) to say that a ‘safe haven’ was to be found in the bin chute cupboards – although they were not penetrated by fire and smoke there was no evidence that the atmosphere within them was capable of sustaining life. Again, if spaces such as bin chutes are to be considered as ‘safe havens’ in the context of a fire protection measure they need to be properly considered, risk assessed and constructed accordingly, presumably, for example, to include ensuring continuous provision of clean/breathable air.

Plans/Building Control and the LFB

- 22. The G11 submissions on Interim Recommendations at paragraph 16 identifies *‘Documents to be made available to the Fire and Rescue Authority’*.
- 23. The GTI’s attention is invited to Article 45 of the FSO which imposes a duty:
 - a. Article 45(1) – on the local authority with whom plans to erect, extend, or structurally alter a building *‘to consult with the ‘enforcing authority’* – i.e. the Fire and Rescue Service (the LFB) *‘before passing the plans’*. The same duty arises for a change of use application (Article 45 (2)); and
 - b. Article 45(3)(b) – once the permitted works have been completed, the building owner should be required to confirm that the approved plans are an accurate reflection of the building as constructed/adapted. The local authority is then required to provide any updated plans/drawings to the Fire and Rescue Authority (in this case, the LFB).
- 24. That which the G11 appears to contend for is therefore already in place. Although evidence about this part of the planning/building control process has not yet been given, it is not clear why the LFB would not have had *‘...access to any accurate plans of the tower post-refurbishment.’* The LFB certainly should have had that access.

CS Stokes and Associates Limited

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