

GRENFELL TOWER INQUIRY

SUBMISSION FOR THE OPENING OF MODULE 6 (GOVERNMENT) ON BEHALF OF THE MAYOR OF LONDON

1. In this part of Module 6 the Inquiry will, for the first time, examine what the Government knew or ought to have known about the weaknesses and failings in the Building Regulations and associated documents as a result of the learning from other earlier fires and what was or ought to have been done in response to that information.
2. The built environment is kept safe for those who live and work in it, in large measure by instilling compliance with the Building Regulations together with the guidance in the Approved Documents which sit alongside them. The statutory framework also informs the decisions of those who attend in response to an emergency. There is clear evidence that Central Government were aware of the shortcomings of Approved Document B as far back as 2012 when a decision was made to commission wide ranging research to inform a wholesale review of it. On the night of the fire, critical and crucial decisions were made on the assumption that the Building Regulations and Approved Document B had been complied with and were fit for purpose. They clearly were not and Central Government ought to have known they were not.
3. The Inquiry is going to hear from current and former Ministers, officials and civil servants with first-hand knowledge of what was known prior to 2017 about the effectiveness and efficiency of the Building Regulations and Approved Documents, the concerns being raised in relation to the fire risk in high rise buildings and what action was being taken by Government. There is a divergence of evidence about what was done and indeed what ought to have been done, which will be a matter for the Inquiry to assess, but there are a number of features of the evidence that the Mayor would urge the Inquiry to give particular consideration in an effort to prevent future tragedies occurring where known risks have been identified.
4. Rule 43 of the Coroners Rules 1984 as amended, and Regulation 28 of the Coroners (Investigations) Regulations 2013, concern the statutory obligation of the Coroner in

relation to the prevention of future deaths. This obligation is intended to ensure that the Coroner's learning, from hearing the evidence in a particular inquest or inquests, is transferred to those with the power to change the system. It reflects the need for those with that responsibility to be made aware of the problems, faults or failures so that the system can be reformed, adapted and amended in order to prevent future deaths occurring as a result of the same or similar failures. It is that part of the Coroner's statutory function that is intended to give those families who have suffered bereavement, some degree of closure and comfort knowing that lessons have been learned from the deaths of their loved ones.

5. On 28th March 2013¹ in the aftermath of the inquests into the deaths of six individuals who lost their lives in the tragic Lakanal House fire, HH Frances Kirkham sent a letter pursuant to Rule 43 of the Coroners Rules 1984 to Sir Eric Pickles, Secretary of State for Communities and Local Government. She made wide reaching recommendations to the DCLG which have significant resonance and familiarity to the issues that you have been asked to consider in your Inquiry into the fire at Grenfell Tower. The Mayor summarises the more relevant and important issues, some of which you have already considered in the earlier part of this module:
 - (i) The need for sufficiently clear fire safety advice to be given to residents of high rise residential buildings in case of fire within the building;
 - (ii) The need for national guidance to be disseminated to residents in relation to the "stay put" principle and its interaction with the "get out and stay out" policy;
 - (iii) The benefit of retro-fitting of sprinklers and the need to encourage providers of housing in high rise residential buildings containing multiple domestic premises to consider the retro-fitting of sprinkler systems;
 - (iv) The need for a review of Approved Document B to ensure that it provides clear guidance in words and format that are intelligible to the wide range of people required to use it, 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.

¹ {CLG00000597}

Those issues are all relevant and important considerations for this Inquiry as a result of the dreadful tragedy at Grenfell Tower and the Inquiry will want to know from those in power why 4 years after those matters had been raised by the Assistant Coroner in relation to Lakanal House, another tragic fire happened involving many of the same issues, with devastating consequences.

6. The Mayor does not suggest that the machinery of Government can resolve complex issues such as these in a matter of weeks or months, but neither should matters which were considered sufficiently serious and urgent to have resulted in a prevention of future death report be liable to extensive delay on the political whim of a Department or a Minister. What is clear here is that in the days following the fire the DCLG was running for cover and acknowledging that “the lack of urgency or reason for delay is striking”² and “the fact that our focus is on red tape is very clear”³.
7. From the evidence disclosed to the Inquiry and to be examined over the coming weeks, it seems that there were two fundamental problems which this Inquiry should examine. The first was the rapid change of personnel in DCLG and latterly the Home Office which had primacy over the issues with which this Inquiry is concerned and the second was the ability of that Department to delay or avoid dealing with issues which had been highlighted by the Assistant Coroner and about which the DCLG had given assurances in 2013.
8. Secretary of State Sir Eric Pickles responded to the Assistant Coroner’s Rule 43 letter on 20th May 2013. On the timing of the review of Approved Document B he responded: “*We have commissioned research which will feed into a future review of this part of the Building Regulations. We expect this work to form the basis of a formal review leading to the publication of a new edition of Approved Document in 2016/17*”⁴
9. The research referred to amounted to seven workstreams commissioned from BRE in 2012. They reported in February 2015.⁵ They needed to be published to enable external stakeholders to feed into the review. They covered:

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³ {CLG00030840_007}

⁴ {CLG00001954}

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- (i) periods of fire resistance;
- (ii) maximum compartment sizes;
- (iii) construction details roof, voids, cavity barriers and fire/smoke dampners;
- (iv) fire protection of basement and basement car parks;
- (v) sprinkler provisions;
- (vi) space separation;
- (vii) means of escape for disabled people.

This demonstrates that after the Lakanal House fire, there was an awareness in Government that these were areas of concern which required a proper review, even before they were the subject of recommendations from the Coroner. Work was already underway by the time the Coroner made her recommendations, which makes the subsequent delays more striking.

10. The general election called for 7th May 2015, prevented publication in early 2015 and following the new appointments of relevant ministers it was not provided to them until December 2015.
11. The workstream research papers were referred to the Minister in December 2015 for publication and in October 2016 an update was provided as publication had still not taken place.⁶ It is clear that a number of attempts had been made to get authority for publication without success.
12. The Inquiry will hear from those who were responsible for and failed to drive these reforms forward but the evidence from the civil service suggests that while they were well aware of the issues and reiterated the commitment made to the Assistant Coroner in 2013, issues were not addressed with any urgency. There was a failure to sign off publication of the research to enable this to be carried forward within a reasonable time or at the very least to enable the Department to fulfil its commitment.
13. In spite of the assurance given to the Assistant Coroner, confusion and inaction seem to have been prevalent. In November 2015 Brian Martin was emailing saying:

⁶ {CLG00019376}

“We have not announced a formal review of Approved Document B. So there’s no timetable for that, and not [sic] guarantee we’ll do one.”⁷

14. The regular reminders sent to progress matters were not acted upon⁸ and the delays were compounded by the Brexit referendum and the subsequent general election. There is no requirement by an incoming Minister to continue with the commitment of his/her predecessor. This had the effect that these issues of public safety started from the beginning again each time the relevant Minister changed.

15. Furthermore, in the aftermath of the 2015 election, the focus of the Department was perceived to have changed. As Richard Harrell records in his statement, the position in September 2015 was set out in a briefing to Ministers:⁹

“10. The current fire safety provisions in Part B of the Building Regulations for England were published in 2006. A further review had been planned for 2013 but this was postponed whilst the Department focused its attention on other priorities including the red tape challenge and the housing standards review.

11. In 2013, the inquiry into the 6 deaths in the fire at Lakanal House recommended that the guidance in Approved Document B should be simplified. Eric Pickle’s response to the Coroner set out his intention to review Part B during this parliament and that this would include simplification where this was possible.

12. A detailed work plan for Building Regulations is yet to be agreed with ministers but we are looking to review how these guidance documents can be improved”¹⁰

16. A substantive review in 2013 may have resulted in a better outcome for Grenfell Tower. Richard Harrell recognised too that post-election in 2015 that *“any increase in the financial burden from regulatory change would be unwelcome”¹¹*. In spite of much toing and froing, no discernible progress was made from the receipt of the research on December 2015 to the time of the Grenfell Tower fire in June 2017.

⁷ {CLG00000693}

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⁹ {CLG00019487_0022}

¹⁰ {CLG00018763}

¹¹ {CLG00019469_0016}

17. Overlaid on the changes of personnel was the policy of deregulation, the red tape challenge and the perceived need for “one in two out.” Any additional regulation could only be effective in the event that two sets of regulations could be repealed. As a result, it would appear that during 2016 there was a move away from the assurance of the full review of Approved Document B given to the Assistant Coroner in 2013, to a position where:

“The proposal for reviewing AD B was a limited scope review focusing on simplification and specific technical issues. The submission noted this would help to manage expectations and strong lobbying for expansion of regulation. This would lead to an update of ADB which would also fulfil the last Government's commitment to clarify guidance in this part of the Regulations (which was a recommendation from the Lakeland House Coroner in 2013)”¹²”.

18. From outside it looks like lip service being paid to an assurance previously given. For the sake of these Bereaved, Survivors and Residents and others who may come after them, the Inquiry will need to consider what can be done to ensure that assurances provided to Coroners as part of the statutory function to prevent future deaths, are followed through and completed in full regardless of a change of personnel, general elections or even Government policy. The implementation of safety critical recommendations must not be sidelined for political convenience. If this can be allowed to happen, then one wonders about the fate of the important recommendations to be made by this Inquiry. The Mayor has, in correspondence with the Government, supported INQUEST's call for a national oversight mechanism to ensure that recommendations from inquiries and inquests are systematically followed up.

19. As of the date of Brian Martin's statement in 2018¹³, the reports he had commissioned in 2012 had still not been published. The third party stakeholders had not been able to provide their comments and assistance and the review, completion of which had been promised to the Assistant Coroner in 2016/17, had not taken place.

20. There were people actively seeking to facilitate the recommendations that had been made. On 5th August 2014,¹⁴ 17 months after the Assistant Coroner's Rule 43 letter, the All Party Parliamentary Committee on Fire and Rescue under the Chairmanship of the late David

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¹³ {CLG00019469_0022}

¹⁴ {CLG00011290}

Amess wrote to the Minister Stephen Williams. It invited three simple changes to be made to Approved Document B immediately. Two are relevant to this Inquiry. First, that the report on the effectiveness of residential sprinklers be updated to reflect the later more favourable 2012 research. Second, to reinstate the requirement of one hour fire resistance to the window panels reflecting the concerns raised in the Lakanal House inquest that the window sets and panels had burned through in four and a half minutes leading to the spread of fire to other flats.

21. Those amendments would, at the very least, have reinforced to third parties the need for the Lakanal issues to be addressed forthwith. In spite of those recommendation from a Committee that might be thought to have significant expertise in this area, the Department through Stephen Williams MP considered that such a recommendation would amount to a significant policy change and would not be consistent with the policy on sprinklers and regulation more generally.
22. In December 2014, at a meeting between the APPG and the Parliamentary Under Secretary of State Penny Mordaunt, the APPG expressed its concern that the DCLG was not giving urgent attention to the Coroner's recommendations to amend the Building Regulations in advance of the current planned review, which was expected to be completed during 2016/17. Penny Mordaunt responded that Stephen Williams MP had explained in a letter dated 19 September that he had neither seen nor heard anything that would suggest that these specific changes were urgent and that he was not willing to disrupt the work of the Department by asking that these matters be brought forward.¹⁵
23. The response from the APPG is chilling when viewed in the light of subsequent events:

“As you rightly point out, this is a matter for your ministerial colleague, Stephen Williams MP, however the Group has since written to the Minister saying they were at a loss to understand, how he had concluded that credible and independent evidence which had life safety implications, was not considered to be urgent, when amendments of much lesser Importance to the Approved Document had been made between reviews.

As a consequence the Group pointed out to the Minister that should a major fire tragedy, with loss of life occur between now and 2017, in for example, a Residential Care Facility or a purpose built Block of

¹⁵ {HOM00001625_02}

Flats, where the matters which had been raised here, were found to be contributory to the outcome, then the Group would be bound to bring this to others' attention.¹⁶”

24. 12 months later with no progress having been made the APPG sought a meeting and clarity from the new minister James Wharton MP – the briefing for that meeting contains the following:

“The current fire safety provisions in Part B of the Building Regulations for England were published in 2006. A further review had been planned for 2013 but this was postponed whilst the Department focused its attention on other priorities including the red tape challenge and the housing standards review.¹⁷”

25. The APPG’s record of the meeting that took place with James Wharton was noted as being largely more positive than had been the case with his predecessor Stephen Williams. The APPG went on to note:

“Should the review of the Approved Document in fact proceed as intended, then whilst some clarification and simplification in the guidance is necessary, it is felt that any changes need to consider best practice and new technology in construction, and to reflect today's built environment where fire safety is wider than the Fire and Rescue Service alone, because emergency firefighting is a measure implemented when safety features and protection has failed, and we need to remove this eventuality as much as possible. These are the views of both the Fire and Construction Sector who are of one mind that such problems are challenging both its members, and may be compromising both life and socio-economic safety.¹⁸”

26. It went on prophetically:

“Today's buildings have a much higher content of readily available combustible material. Examples are timber and polystyrene mixes in structure, cladding and insulation, with internal fire protection usually afforded by layers of plasterboard and use of fire stopping padding. A plasterboard compartment is often incomplete above false ceilings, and becomes imperfect over time, through DIY and wear and tear. This fire hazard results in many fires because adequate recommendations to developers simply do not exist. There is little or no requirement to mitigate external fire spread.”

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¹⁷ {CLG00007996_0002}

¹⁸ {CLG10007860}

27. In the autumn of 2016, there was again pressure to publish a discussion document on the amendments to the building regulations, and to highlight the need to publish the original reports which had been available for 18 months but had not been published to other stake holders. The regular requests for updates by the APPG and concerns raised by the civil service that the assurances given to the Assistant Coroner had not been met did not meet with action. In March 2017, the discussion document was finally provided to the then Minister Gavin Barwell¹⁹. It set out the current thinking in relation to the review. It made reference to the savings that were to be made by way of deregulation but not a single reference to the need to prevent loss of life as a result of the fire at Lakanal House nor that it was a culmination of the assurance provided to the Assistant Coroner in May 2013. The general election was called on 18th April 2017 and took place on 8th June 2017 with the Grenfell tower fire occurring less than a week later. The issues raised by the Lakanal House inquests had not been addressed by Central Government and neither had the Government fulfilled its assurance given to the Coroner that Approved Document B would be reviewed.

28. The Bereaved, Survivors and Residents need to know why this was. They need to know whether a focus on public safety and prevention of loss of life, rather than deregulation and the red tape challenge, would have made a difference on the night of the fire, or to safety in other buildings. And they need to know that the recommendations that this Inquiry makes will be implemented in full and promptly to avoid the situation where assurances are given and are not then fulfilled.

ANNE STUDD QC

19 November 2021

¹⁹ {CLG00002910}