

# THE GRENFELL TOWER INQUIRY

## RULING

on

## APPLICATIONS

by certain core participants

for funding to cover the cost of translating the Phase 1 report

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1. The Inquiry has received applications from the recognised legal representatives of a group of bereaved, survivor and resident core participants for an award of funding to cover the cost of obtaining translations of the Phase 1 report into their clients' various first languages. The basis of the application is explained below, but in each case it is said that the applicant does not have a sufficient command of English to read and understand the report.
2. The Phase 1 report was written and published in English, but translations of the Executive Summary (Chapter 2), Recommendations (Chapter 33) and Looking Ahead to Phase 2 (Chapter 34) have been made available in 17 other languages. Grenfell Tower was home to a very diverse community and those who died had relations not only in the United Kingdom but in many other parts of the world. Some of them have a good working knowledge of English and can read the report without difficulty or with the assistance of friends and relatives, but others, including some who live in this country, are unable to do so with ease or at all.
3. The original application was made in October 2019 by the recognised legal representatives ("RLRs") of 14 named core participants, some, but not all, of whom had lost relatives in the fire, to provide funding to cover the cost of translating the report into Farsi, French, Arabic and Italian. On 21 November 2019 the Solicitor to the Inquiry wrote to the firms concerned asking them to make it

clear whether they were contending that their clients had a legal right to be provided with translations of the report or funding to enable them to be obtained, and if so, explaining why that was the case. On 29 January 2020 Hodge Jones and Allen responded on behalf of all firms representing BSR core participants setting out the nature of the arguments they wished to advance. They did not state in terms that it was their intention to extend the original application to include all those who might arguably have difficulty reading the Phase 1 report in English, but I have proceeded on the assumption that that was their purpose. As a result, the number of those who are said to require a translation has increased considerably, but no attempt has been made to identify either the persons on whose behalf the applications are made or the languages into which it is said the report needs to be translated. Moreover, no distinction is drawn between those who have lost relatives in the fire and those who have not. Although the applications were not expressly made under section 40 of the Inquiries Act 2005, I infer from the way in which the original applications were presented and the absence of any indication to the contrary in the letter of 29 January 2020 that the intention is to rely on that provision.

4. Since the basis of the application is that those on whose behalf it is made do not have a sufficient command of English to be able to read and understand the Phase 1 report, it might be necessary at some point to consider the extent to which individual applicants do or do not have a sufficient command of English to render the provision of a translation necessary, but that is a matter that can be put to one side for the time being. In the past the Inquiry has authorised the RLRs of those on whose behalf the original applications were made to incur the cost of obtaining translations of various documents for them and I therefore accept that they, at any rate, do not have a sufficient command of English to read the Phase 1 report in the form in which it was published. However, since the rest of the applicants have not been identified, it is not possible to reach any conclusion about them. For the moment, however, I shall consider the applications on the assumption that none of

those on whose behalf they have been made have a sufficient command of English to enable them to read and understand the report.

*The basis of the applications*

5. The applications originally made on 31 October 2019 can be treated as having been subsumed in the applications made in the letter of 29 January 2020. In summary, the arguments put forward in that letter are as follows:

(i) The fact that the state may have had some responsibility for the deaths of those who died in the fire imposes an obligation on it under article 2 of the European Convention on Human Rights (“ECHR”) to investigate the circumstances in which those deaths occurred.

(ii) The investigation must be subject to a sufficient element of public scrutiny to ensure proper accountability.

(iii) The degree of public scrutiny may well vary from case to case, but in all cases the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests: see *Jordan v United Kingdom* (2003) 37 EHRR 1.

(iv) In this case the legitimate interests of the next-of-kin include being able to read the report of the public inquiry in full in their own language in order to satisfy themselves that the investigation was independent and rigorous. Without a full translation of the report, therefore, there can be no effective participation for those of the bereaved who cannot read English.

(v) Failure to provide translations of the Phase 1 report to those of the bereaved who cannot read English would involve unlawful discrimination in the enjoyment of Convention rights in contravention of article 14 of the ECHR.

(vi) Failure to provide translations of the Phase 1 report to all those who do not have an adequate command of English would amount to unlawful discrimination on the grounds of nationality, contrary to sections 9 and 29 of the Equality Act 2010, and would also involve a breach of the public sector equality duty contained in section 149 of the Act.

- (vii) Failure to provide translations of the Phase 1 report to those who do not have an adequate command of English would also involve a breach of the Inquiry's duty under section 17 of the Inquiries Act 2005 to act fairly.
- (viii) There is a broader public interest in translating the reports of this public inquiry into languages other than English.

*Article 2 of the ECHR – the State's obligations*

6. It is convenient to begin by considering the arguments based on article 2 of the ECHR. Much of what has been said under this head in the letter of 29 January 2020 is not controversial. I accept that the circumstances surrounding the fire at Grenfell Tower were such as to give rise to an obligation on the part of the state under article 2 of the ECHR to carry out an investigation into the circumstances in which the deceased met their deaths and that the investigation must be of a kind which, in both substantive and procedural terms, satisfies the various requirements identified in the Strasbourg jurisprudence. Those requirements include a sufficient element of public scrutiny to ensure proper accountability and an opportunity for the next-of-kin to be involved in the procedure to the extent necessary to safeguard their legitimate interests: see *Jordan v United Kingdom* (2003) 37 EHRR 1, paragraph 109.
  
7. In the case of the Grenfell Tower fire it is intended that the state's obligation under article 2 to investigate the cause of death will be discharged primarily by the public inquiry (although it does not follow that the inquiry is the only mechanism available for doing so). The circumstances which gave rise to the need for an investigation in *Jordan* were far removed from those of the Grenfell Tower fire and the broad statement of principle in paragraph 109 of the judgment sheds little light on what in any given case are to be regarded as the legitimate interests of the next-of-kin. This is a question which, in my view, is to be answered by reference to the particular circumstances of the case.

8. As I have already pointed out, the letter of 29 January 2020 does not identify the persons on whose behalf the applications are made, but since it was written on behalf of all those who act as RLRs for BSR core participants, I assume that the intention was to make broadly similar applications on behalf of all of those whose first language is not English. Having said that, however, it is clear from the original applications that not all of them have been bereaved as a result of the fire or (in the language of the judgment in *Jordan*) are the next-of-kin of someone who died. That is relevant to some of the grounds on which the applications are based.
9. In the letter of 29 January 2020 the applicants place some emphasis on paragraph 109 of the judgment in *Jordan* and I am content to assume that each of the bereaved on whose behalf an application is made had a close enough relationship to the deceased to be regarded as next-of-kin for these purposes. If that is so, it is necessary to determine whether the state is obliged to provide a translation of the report in order to safeguard their legitimate interests. Since article 2 is concerned with the state's duty to investigate deaths, it is not clear how those who have not been bereaved are said to benefit from the obligations it imposes and in my view they cannot.
10. One of the principal purposes of the investigation which the state is obliged to undertake under article 2 is to discover the circumstances and cause of death and to secure accountability. The next-of-kin clearly have a legitimate interest, therefore, in the outcome of the investigation and in particular in learning how and why the deceased died and who, if anyone, was responsible for the death. It follows, in my view, that in a case such as the present the state has an obligation to make the conclusions of the investigation available to the next-of-kin in a form in which they can understand it and from which they can satisfy themselves that the investigation has been properly carried out. It does not follow, however, that the next-of-kin must be given access to all the findings made by the person conducting the investigation or the full details of the reasoning that led to the

conclusions. Moreover, whether the state has fulfilled its obligation in this respect must be judged in the context of the nature and extent of the next-of-kin's participation in the investigation and the information made available to them through that process.

11. In the present case the bereaved were represented by solicitors and counsel throughout Phase 1 of the Inquiry. They were able to attend the hearings themselves, if they wished to do so (as many did), or could watch them on the live stream, both from this country and from abroad, in order to follow the evidence as it was given. Where necessary interpreters were provided to enable effective communication between the bereaved and their lawyers and to enable those who attended the hearings to understand the evidence as it was given. As a result, those who wished to do so were able to follow the progress of the Inquiry and evaluate the evidence for themselves. They also had the benefit of summaries and explanations provided by their lawyers.
  
12. The Executive Summary (Chapter 2), Recommendations (Chapter 33) and Look Ahead to Phase 2 (Chapter 34) have been translated into 17 languages, including the first languages of all those on whose behalf the original applications were made. Of those chapters, the Executive Summary is the most important for the purposes of these applications, because it contains a description of the scope and structure of the report and sets out the conclusions about the cause and development of the fire, its escape into the cladding, the loss of compartmentation, the failure of the external walls to comply with the Building Regulations, the spread of the fire to the whole of the building, the conduct of the London Fire Brigade on the incident ground and in the control room, and the response of the other emergency services. In addition, for the purposes of explaining the contents of the Phase 1 report to their clients legal representatives have produced precis of the report which have been translated into various languages at public expense.

13. In those circumstances I consider that the steps that the Inquiry has taken to enable the bereaved to understand the outcome of Phase 1 of the investigation are sufficient in the context of this inquiry to satisfy the state's obligation to make the outcome of the investigation accessible to the next-of-kin.

*Article 14 of the ECHR – Non-discrimination*

14. Article 14, which prohibits discrimination in the enjoyment of the rights and freedoms set out in the Convention, is complementary to the substantive articles. When considering an alleged breach of article 14 it is convenient to approach the matter through the series of questions identified in *Gilham v Ministry of Justice* [2017] EWCA Civ 2220. The first is whether the facts fall within the ambit of one or more of the Convention rights. In this case they do as far as the bereaved are concerned, though the position is different in relation to those who did not lose a relative in the fire. The second question is whether there was a difference in treatment in respect of that right between the complainant and others put forward for comparison, namely, those bereaved whose first language is English. In one sense there was, because those whose first language is English had access to the full copy of the report, but in substance there was not, because they all obtained what they were entitled to receive under article 2, namely, access in their own first languages to the core findings and conclusions of the Inquiry.
  
15. If there was no substantive difference in treatment, there cannot have been any discrimination of the kind prohibited by article 14, but if I am wrong about that, the difference in treatment was in my view objectively justifiable because it was a reasonable and proportionate means of pursuing the legitimate aim of controlling the burden on the public purse. It follows that I do not consider that there has been any unlawful discrimination contrary to article 14 between the applicants and other bereaved in the enjoyment of their rights under article 2.

16. If I am wrong in my understanding of the extent of the state's obligation under article 2, difficult questions may arise about the ability of individual bereaved to read and understand English. Although I accept that those on whose behalf the original applications were made cannot read English well enough to read and understand the Phase 1 report, it is possible that some of the other bereaved applicants nonetheless have a good enough command of English to enable them to read and understand it, perhaps in some cases with the assistance of family and friends. Does the state nonetheless have an obligation to provide them with a copy of the report translated into their own first language? In my view each case must turn on its own facts. If, as I accept, the state has an obligation to communicate the outcome of the investigation to the next-of-kin, the need to provide a translation will depend on the ability of the individual next-of-kin to understand the report in its original language. For the reasons I have already given, this is not a matter that arises for determination in this case, but I mention it simply in order to record that I have no evidence of the extent to which, if at all, any of the applicants can read and understand English, with or without the kind of informal assistance from family or friends that may be available to them. An essential element in the claim under this head is therefore missing.

*The Equality Act 2010*

17. The applicants say that failure to provide them with translations of the Phase 1 report in their first languages involves unlawful discrimination in the provision of services contrary to sections 9 and 29 of the Equality Act 2010, the relevant protected characteristic being nationality.

18. This argument has not been developed at any length, but seems to proceed on the basis that the Inquiry is a provider of services, in this case making available copies of the Phase 1 report, and that to provide copies only in English to those who are not British nationals involves unlawful discrimination contrary to section 29. The



argument does not appear to depend on whether the applicant has been bereaved but, since the Inquiry distributed copies of the Phase 1 report to all core participants, appears to encompass anyone who is a core participant and not a British national.

19. Since nationality has no necessary relationship to the ability to speak and read English, I assume (although this has not been explicitly stated) that the applicants intend to rely on the provisions of section 19 relating to indirect discrimination. The argument then is that the provision to foreign-nationality applicants of copies of the report in the English language amounts to the application of a practice which is discriminatory in relation to them because they are less likely to have a good command of English and are therefore likely to be put at a disadvantage by comparison with persons of British nationality; and that the practice does in fact put those applicants at a disadvantage and is not a proportionate means of achieving a legitimate aim. In simpler terms, persons of foreign nationality are less likely to be able to read English than those of British nationality; making the report available to them only in English puts them at a disadvantage and is not a proportionate means of achieving a legitimate aim.

20. It is not clear whether the individual applicants hold British or foreign nationality and there is no evidence of the extent to which those who are foreign nationals have difficulty reading English. Apart from that, however, I have significant difficulties with this argument. In the first place, I do not think that the Inquiry is a provider of services in the sense in which that expression is used in section 29 of the Equality Act. However, subsection (6) extends the reach of the section by providing that a person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination. I am prepared to accept for present purposes (though without deciding the point) that publication of the Phase 1 report was an administrative function which constituted the exercise of a public function and so

fell within subsection (6). However, my function in that respect as chairman was limited to publishing the report in the form in which it had been delivered to the Prime Minister and in that respect there has been no direct or indirect discrimination.

21. The cost of providing translations into the four languages identified in the original applications would be substantial (about £180,000). Insofar as the letter of 29 January 2020 makes an application on behalf of all BSR core participants who are not British nationals and for whom English is not their first language, the cost of providing translations would be significantly greater, perhaps in excess of £750,000, if translations were required into all 17 languages in which the summary was produced. In my view to publish the report only in English, together with the additional material in translation to which I have referred, represents a proportionate means of informing core participants of the outcome of Phase 1 while at the same time achieving the legitimate aim of avoiding an unnecessary burden on the public purse. There was therefore no indirect discrimination.
22. Accordingly, I do not think that the Inquiry can be required under section 29 of the Equality Act to provide translations of the Phase 1 report into the applicants' first languages.
23. Section 149 of the Equality Act imposes on public authorities and persons who exercise public functions an obligation to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share protected characteristics and those who do not. This is compendiously referred to as the public sector equality duty.
24. The applicants say that the Inquiry is subject to the public sector equality duty and that failing to provide them with a full translation of the Phase 1 report into their

respective first languages is a breach of that duty. However, no attempt has been made to support that assertion by reasoned argument.

25. Although as chairman of the Inquiry I am not a public authority for the purposes of the Equality Act, I am prepared to accept (without deciding the point) that in publishing the Phase 1 report I was exercising a public function and was therefore subject to the duty imposed by section 149(2) of the Act. However, in relation to the publication of the Phase 1 report the Inquiry has in my view had due regard to the need to eliminate discrimination on the grounds of race and nationality insofar as those characteristics might affect people's ability to read and understand it. Having due regard to the need to eliminate discrimination involves recognising the circumstances in which it may occur and identifying means of avoiding it. It calls for a proper and conscientious focus on the statutory criteria. At the time the Phase 1 report was published the Inquiry recognised the fact that some of those who wish to understand the outcome of the investigation might not have a sufficient command of English to read the report for themselves. It sought to avoid discrimination that might arise as a result by providing translations of the key parts of the report and by covering the cost of translating the summaries prepared by RLRs for the very purpose of informing their clients of its conclusions. That was a reasonable and proportionate response which ensured that all those who wished to understand the outcome of that part of the Inquiry's investigations could do so. I do not consider that the obligation to have due regard to the need to eliminate discrimination makes it incumbent on the Inquiry to provide each of the applicants with a translation of the whole of the Phase 1 report into their various first languages.

*Duty to act fairly*

26. Finally, it is said that the chairman's obligation to act fairly carries with it an obligation to make the Phase 1 report available to the applicants, who do not have

a good command of English, in their own first languages as I have for those who are able to read it in English.

27. Section 17(3) of the Inquiries Act provides as follows:

In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

28. I am prepared to accept that publication of the Phase 1 report is an aspect of the conduct of the Inquiry for which as chairman I am responsible following my agreement under section 25(2)(b) of the Act to take responsibility for it. I also accept, therefore, that in deciding how and in what form to publish it I am obliged to act fairly. It does not follow, however, that I am obliged to make translations of the whole report available to all those whose first language is not English or whose command of English is not adequate to enable them to read and understand the report in its original form. In this respect it is helpful to refer to the scope of the state's obligation under article 2. If, as I think, the state's obligation is satisfied by informing the next-of-kin of the core findings made by the person who carried out the investigation, that strongly suggests that the content of the duty to act fairly in relation to publication is circumscribed to a similar extent. In other words, fairness requires that each of the bereaved should be informed of those findings, but not necessarily of the details which underpin them. I do not, therefore, consider that section 17(3) requires me to provide the applicants with copies of the whole report in their own first languages. The existence of any broader global interest in the Inquiry's findings does not seem to me to have any bearing on the question.

*The power to make an award under section 40*

29. At this point I wish to return to the question whether I have the power, as the applicants appear to assume, to make an award under section 40 of the Inquiries Act 2005 in respect of the cost of obtaining translations of the Phase 1 report.

30. My power to make financial awards is contained in section 40(1) of the Act, the material parts of which provide as follows:

**40 Expenses of witnesses etc.**

(1) The chairman may award reasonable amounts to a person—

(a) . . .

(b) in respect of expenses properly incurred, or to be incurred, in attending, or otherwise in relation to, the inquiry.

(2) . . .

(3) A person is eligible for an award under this section only if he is—

(a) . . .

(b) a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.

31. The core participants clearly fall within subsection (3) because of their interest in the outcome of the inquiry, but there remains the question whether subsection (1) extends to the cost of obtaining a translation of the Phase 1 report; or, to put it in the language of the statute, whether the cost of obtaining a translation of the report is an expense properly incurred in relation to the inquiry. I do not think it is. Section 40 is clearly intended to give the chairman power to make awards in respect of expenses incurred in taking part in some way in the process of the inquiry, but the various arguments advanced in support of the applications in the letter of 29 January 2020 all lead to the conclusion that the Inquiry itself (or, under article 2, the state) has an obligation to provide the applicants with the translations of the Phase 1 report they seek. Accordingly, if those arguments were well-founded, the Inquiry or the relevant Minister would be under a duty to obtain

the necessary translations at public expense. Obtaining a translation of the report would not, in my view, be an expense properly incurred in relation to the inquiry or one in respect of which an award could properly be made under section 40.

32. For these reasons I have reached the conclusion that the Inquiry is under no duty to provide the translations which the applicants seek and that I have no power to make an award in respect of the costs of obtaining them and that their applications must therefore be refused.

The Rt Hon Sir Martin Moore-Bick

14 May 2020