BUILDING SAFETY
IMPACT OF GRENFELL TOWER
INQUIRY PHASE 2 REPORT

OUTLINE

- Key findings from the Grenfell Tower Inquiry Phase 2 Report
- Potential implications of the findings for construction litigation
- Criticisms of the testing regime, impact for future external wall assessments and litigation
- Key recommendations and the impact on the construction industry

THE GRENFELL TOWER INQUIRY PHASE 2 REPORT KEY FINDINGS

"How was it possible in 21st century London for a reinforced concrete building, itself structurally impervious to fire, to be turned into a death trap?"

THE PATH TO DISASTER

"The fire at Grenfell Tower was the culmination of decades of failure by central government and other bodies in positions of responsibility in the construction industry to look carefully into the danger of incorporating combustible materials into the external walls of high-rise residential buildings and to act on the information available to them."

TESTING AND MARKETING OF PRODUCTS

"Systematic dishonesty on the part of those who made and sold the rainscreen cladding panels and insulation products"

"Engaged in deliberate and sustained strategies to the testing processes, misrepresent test data and mislead the market"

"Those strategies succeeded partly because the certification bodies… failed to ensure that the statements in their product certificates were accurate and based on test evidence."

THE REFURBISHMENT

- **Architect** – failure to recognise that the ACM PE was dangerous and warn against its use, failed to ensure fire safety strategy completed, failed to understand it was responsible for design work by sub-contractors, failed to act in accordance with standards of reasonably competent architect
- **Fire engineer** failed to meet the standards of a reasonably competent fire engineer, failed to produce final version of fire safety strategy
- **Principal contractor** –inadequate and casual attitude to fire safety, did not ensure it or its sub-contractors understood their responsibilities, inexperienced team, failed to take proper steps to investigate competence, complacent about the need for fire engineering input into fire safety strategy

THE REFURBISHMENT

- **Cladding sub-contractor** – insufficiently concerned about fire safety, relied on others to ensure he design was safe including building control, failed to ask the kind of questions about materials to be expected of a reasonably competent cladding contractor
- **Client** – TMO – failed to take sufficient care in its choice of architect and paid insufficient attention to matters affecting fire safety, including work of fire engineer
- **Building Control** failed to properly scrutinise the design or choice of materials, or satisfy itself that it would comply with BR

POTENTIAL IMPLICATIONS ON CONSTRUCTION LITIGATION

- Findings likely to be of particular relevance in claims against building professionals and manufacturers
  - Standard of reasonable care and skill e.g. architects, main contractor, fire engineer
  - Fitness for habitation where breach of Building Regulations relevant to fire safety

CLAIMS AGAINST MANUFACTURERS

- Section 148 and 149 of the Building Safety Act 2022
  - Require legal and equitable interest
- Assignment
- Contribution Claims
  - Misrepresentation
  - Collateral contract
- Reform

ASSESSING THE FIRE PERFORMANCE OF EXTERNAL WALLS

- Chapter 111
- Important findings about the testing regime
- Clear implications for way external walls are assessed in future

STAY PUT STRATEGY

- No hard recommendation to change
- But very strong pointers

  "*…in a building with a "stay put" strategy for responding to fire, no significant spread of fire beyond the compartment of origin can be tolerated*" (111.3)

  "*A stay put strategy in response to a compartment fire will be acceptable only if there is negligible risk of fire escaping into and spreading through the external wall*" (113.13)

CRITICISM OF THE FIRE TESTING REGIME

- Over-reliance on small scale tests (e.g. Class 0) which do not provide relevant information on external fire spread
- Limited relevance of large-scale BS 8414 test/BR 135 classification
- Lack of correlation with functional requirement – can get extensive fire spread and "pass" the test, yet still not compatible with functional requirement, particularly if stay-put strategy
- Limited relevant data from test

- Some materials don't reach peak temperatures until 30 minutes after start of test e.g. HPL
- Tells you what is a bad idea to include in the external wall, not what is a good idea
- Limited relevance of some European testing
- Lack of test evidence supporting the efficacy of cavity barriers

IMPLICATIONS

- Reliance on BS 8414 testing/BR 135 classifications
- PAS 9980 Guidance
- Scope for more buildings requiring remedial work?
- Need for holistic assessment by fire safety engineer looking at fire safety strategy

OTHER IMPLICATIONS OF GRENFELL REPORT FINDINGS?

- **Responsibility of Building Control**
  - Serious failings RBKC Building Control at Grenfell Tower
  - NHBC – knowledge of scale of use of combustible insulation
  - Scope for revisiting responsibility?

- **Government**
  - Knowledge of risks posed by some combustible materials, including ACM PE
  - Failure to warn industry or properly regulate
  - Deregulation and cutting of red tape
  - Impact on e.g. "*just and equitable*" tests in BSA?

RECOMMENDATIONS

- Report makes recommendations under four headings:
  - The construction industry
  - The London Fire Brigade
  - Response and recovery
  - Vulnerable people

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

- In the Report, the Inquiry starts from the premise that the BSA is a big step in the right direction
- Though there are ways the Report recommends government and industry should go further

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

The construction regulator

- Establishment of a single construction regulator
- The regulator would be responsible for, among other things:
  - Construction products
  - Testing and certification
  - Regulation and oversight of building control
  - Monitoring the Building Regs and guidance

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

The construction regulator

- The construction regulator would also be responsible for other matters recommended by the Inquiry:
  - Licensing of contractors to work on higher-risk buildings
  - Accrediting fire risk assessors

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Definition of higher risk building

- Inquiry's view (para 113.7):

  "[…] we do not think that to define a building as "higher-risk" by reference only to its height is satisfactory, being essentially arbitrary in nature. More relevant is the nature of its use and, in particular, the likely presence of vulnerable people, for whom evacuation in the event of a fire or other emergency would be likely to present difficulty"

- The Inquiry recommends the BSA definition be reviewed urgently

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Legislation and guidance

- Statutory guidance in ADB should be reviewed and revised as soon as possible
- Clear warning in each section that the legal requirements are contained in the Building Regs

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Fire engineers

- Not a protected title currently
- The Report recommends an independent body be established to regulate the profession, define the standards required for membership, maintain a register of members and regulate their conduct

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Fire engineers

- Govt should convene a group of appropriate professionals to produce an authoritative competence statement
- Govt should take urgent steps to increase the number of places on high-quality masters level courses in fire engineering

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Fire engineers/ fire safety strategy

- A statutory requirement that a fire safety strategy is produced by a registered fire engineer which is:
  - submitted with building control applications (at Gateway 2) for the construction or refurbishment of any higher-risk building and
  - reviewed and resubmitted at the stage of completion (Gateway 3).

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Fire risk assessors

- System of mandatory accreditation:
  - certify the competence of fire risk assessors
  - set standards for qualification and CPD and such other measures as may be considered necessary or desirable

RECOMMENDATIONS: CONSTRUCTION INDUSTRY

Building control

- Govt should appoint an independent panel to consider whether:
  - it is in the public interest for building control functions to be performed by those who have a commercial interest in the process
  - all building control functions should be performed by a national authority

RECOMMENDATIONS: VULNERABLE PEOPLE

- Further consideration should be given to the recommendations made in the Phase 1 report
- NB. 2 September 2024, two days before the Phase 2 report's release, the govt announced it will make proposals in relation to Residential PEEPs