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Grenfell Tower: The Insurance Implications

Graham Denny
Partner
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Learning objectives

At the conclusion of this presentation participants will be able to:

- Identify and understand the main issues of this tragedy.
- Identify the various enquiries that are happening.
- Evaluate the potential insurance implications.
- Summarise the issues in liability policies.
- Recognise the international scope of the tragedy.
- Describe the practical and wider issues.
- Develop advice for landlords and property owners.



Overview of the tragedy

- Location – North Kensington, West London
- Building was a 24 storey block designed in 1967, constructed 1974 and refurbished between 2014 and 2016
- Date – 14 June 2017
- Fire broke out on 4th floor
- 72 people died, 67 people rescued and others evacuated from nearby buildings
- Royal Borough of Kensington & Chelsea paid £20.9m in hotel bills between June 2017 and February 2018 to rehouse the residents
- The Borough has set aside £5m for legal bills arising from the tragedy
- Further £8m spent financially supporting families and individuals
- May 2018 – Government announced a £400m operation to remove dangerous cladding from tower blocks owned by councils and housing associations.

Press headlines

- “Murder by numbers: the legacy of the Grenfell Tower Fire” (New Statesman)
- “Disaster waiting to happen” (Daily Telegraph)
- “They were told it was safe” (The Sun)
- “Disaster in 15 minutes – residents had warned building was “firetrap” (The Times)
- “Grenfell Tower doors “resisted fire for half the time expected” (UK Construction week)
- “Met Police may press manslaughter charges, which could see individuals jailed” (The Independent)

Refurbishment of the Tower

- Whilst Tower built in 1974 it underwent a £8.6m refurbishment between 2014 and 2016
- The work included new exterior cladding, replacement windows and communal heating system
- Bottom 4 floors were remodelled creating 7 additional homes and improvements to communal facilities
- So in total there were 129 flats across 21 residential floors and 3 levels of mixed use

Cladding

The design specifications for refurbishment work indicate the cladding on the Tower was intended to be a cassette system comprising Celotex FR5000 polyisocyanurate (PIR) insulation board attached to a timber backing:

- PIR difficult to ignite and has good fire resistant capabilities
- Insulation was protected from the weather by an aluminium composite material (ACM). Made of an insulated core sandwiched between two, 0.5mm aluminium sheets
- There was then a 50mm gap between the insulation and the rain screen cladding
- ACM is popular in new builds and refurbishments because it is lightweight, offers good thermal properties and it is a good and quick way to instantly transform appearance of aging buildings

Cladding

A Reynobond ACM panel was specified for the rain screen:

- Available in two variants
- 1st features a polyethylene core
- 2nd said to be more fire resistant with a mineral core
- Reported that the cheaper polyethylene core was used - Low melting point

Chimney effect of cavities

- Cavities in buildings can contribute to the spread of fire drawing flames upwards

No suggestion the building regulations infringed but were they fit for purpose?

- But there are experts who say such ACM panels with polyethylene core should not be used on buildings over 18m in height

Fires around the world, notably UAE and Australia has led to a ban on such combustible cores in cladding.

Issues

- Effect of cladding
 - Was the cladding used that which was recommended?
 - Effect of Reynobond PE
 - But even if correctly fitted should resist fire
 - Also gap between cladding and window casement acts as a chimney to spread fire upwards and downwards.
Fire spread from 4th floor to top floor in only 15 minutes
- Was there adequate emergency lighting and smoke ventilation?
- Did the building design compromise the resilience of the building?
- Doors installed failed fire tests
 - only withstand fire for 15 minutes when meant to withstand fire for 30 minutes.
Kensington and Chelsea Council acknowledged that the doors tested provided less protection than guidelines recommend

Questions to be answered

- Who oversaw the refurbishment works?
- Who advised on what cladding and other materials, like doors were used? Who took the decisions?
- Who was aware of difference in fire safety capability of cladding? Should they have been aware?
- What testing was undertaken before decision?
- What did residents complain/warn about and when?
- What was the management company's response to such complaints/warnings?

What's happening

Official Public Enquiry headed by Sir Martin Moore Bick <https://www.grenfelltowerinquiry.org.uk/>

- Lawyers representing survivors and relatives of the victims began giving evidence to the inquiry on 10 and 11 December 2017
- More than 530 individuals and organisations have been granted core participant status for the inquiry
- Believed to be the largest number accredited to a public inquiry in the UK
- May 2018 – Government agreed for two experts to sit with Sir Moore Bick
- 21 May the start of the Commemoration Hearing
- Other hearings will take place throughout the summer and into September

Police Enquiry

- Criminal investigation into fire said to be one of the largest and most complex in the history of the Met Police
- Looking into offences including manslaughter, corporate manslaughter, misconduct in public office and breaches of fire safety regulations
- The investigation will examine a number of areas including
 - How Grenfell tower was managed and maintained
 - Fire safety measures
 - The most recent refurbishment carried out
- Over 31 million documents have been collated and 2,500 physical exhibits
- 1,144 witnesses have given statements and over 300 companies are part of the investigation

What's happening

Inquiry by the Equality and Human Rights Commission.

- Established under Equality Act 2006
- Statutory responsibility to promote awareness, understanding and protection of human rights
- Considering such issues as
 - Did State bodies discharge duties to protect life?
 - Treatment of people after the fire (medical treatment, counselling, care and housing)
 - Access to justice
 - Powers include publishing opinions, providing guidance

Independent review of Building Regulations and Fire Safety (Hackitt Review)

- Led by Dame Judith Hackitt
- Final report produced in May 2018
- Recommends “new regulatory regime” for tower blocks and buildings of 10 or more storeys
- Report stops short of calling for a ban on combustible material in cladding systems
- However the Government announced consultation on banning combustibles hours after review was published
- Hackitt review does not recommend any new oversight to the testing regime or that reports should be made public
- At present, test reports are considered commercially confidential



Insurance Implications

Property Insurance

Norwegian insurer, Protector Forsikring, wrote the property and liability insurance for the Grenfell Tower, reinsured by Munich Re.

- £50m is estimated cost of claims protector own exposure said to be £2.5m with remainder born by reinsurance

Issues generally falling for consideration:

- Non disclosure
- Warranties – specific warranties as to fire safety?
- Cause of damage – what caused the damage being claimed for?
- Exclusions – defective property and design exclusions, also for defective workmanship
- Limits of Indemnity
- Other properties with similar cladding: Any mitigation costs cover/sue and labour type covers. What criteria needs to be met 'imminent damage'? Does cladding constitute damage?

Liability policies

Liability policies

- Professional Indemnity / D&O insurance / Public liability.
 - How policies respond will depend on the nature of the allegations, causes of action.
- Issues
 - Non disclosure, prior circumstances exclusions
 - Notifications – scope of notifications is limited to investigations or broadened to include future civil claims
- Scope of cover
 - Investigations cover?
 - Sublimited covers?
 - Criminal/dishonesty exclusions
 - Wilful conduct exclusions
 - Aggregation issues- What are the limits per single occurrences
 - e.g.: Subcontractor for Grenfell Tower alleged to have only £5m limit of liability cover

Personal liability

- Directors and senior management in organisations:
 - Corporate Manslaughter / Health and Safety – gross negligence and awareness of dangerous practice:
 - e.g. it is reported that combustible cladding was used, even after the 16 inspections made by the Council during refurbishment.
 - D&O legal cover for legal costs and legal representation triggers are normally for formal investigations.
 - Notification – what was notified in relation to personal liability
 - Conflicts between directors and officers
 - What limits have been purchased as often D&O limits in the aggregate

International Scope

- Scope of litigation not limited to the UK
- Shareholder claims
 - New York based manufacturer of components of the tower's cladding stopping sales of the product
 - The manufacturer of the external panelling being blamed for fire's ferocity so taken decision to no longer provide its product in any high rise developments.
 - Other components, including insulation, supplied by other parties.
 - Investigations will need to establish whether a particular component was faulty or an accelerator of the fire or whether the fabricator's incorporation of various components was the decisive element in the cladding's lack of resistance to the fire.

Practical and Wider Issues

Practical Issues

- Assessing insurance coverage and position of insurer is difficult.
- Evidence Gathering
 - Seizing of evidence for investigations/access to evidence
 - Media focus
 - Accuracy of reporting
 - Emotional nature of event
 - Political positioning
 - Accuracy of witness evidence
- Legal positioning ahead of investigations
 - Focus on offloading blame to those with deep pockets
 - Scope of insurance

Practical Issues - continued

- Outcome of investigation
 - Participation/attendance to understand evidence and effect on liability claims
 - Attendance at all investigations to assess evidence:
 - Impact on potential liability
 - Inspect on assessment of coverage
- Erosion of limits of indemnity in particular D&O policy which is written in the aggregate

Wider issues – Cost of remedial work

- Over 300 high rise buildings (over 18 metres tall) have Grenfell-style cladding:
 - 130 are in the private sector
 - 13 are hospitals or schools
 - Of the public buildings, only 7 have had their cladding replaced.
- The Government has announced a £400m operation to remove dangerous cladding from tower blocks owned by councils and housing associations.

Wider issues – Cost of remedial work

- BUT what about privately owned buildings?
- Battle raging as to who is liable for the costs to replace cladding on high-rise residential buildings across the country.

Nova House, Slough

- Complex of 68 privately owned apartments, deemed to have flammable cladding and substandard fire safety.
- Works to replace cladding estimated at £4m.
- December 2017 leaseholders billed £22k each for re-cladding works.
- Collective claim against the inherent defects insurance policy
- Insurers: **no evidence of structural damage to the building** or breach of building regulations at the time of construction. **Absence of actual or imminent damage.**
- Slough Borough Council agreeing to take over the freehold and pay for the works so ultimately cost will fall on the tax payers.

Wider issues – Cost of remedial work

- New Capital Quay, Greenwich development puts 1000 homes at threat
 - One of biggest single private housing developments
 - Galliard (the developers) facing a bill of £40m and are planning on suing the Warranty and Indemnity insurance provided NHBC. Centres on who pays for the cladding that was certified as compliant with building regulations at the time of installation. NHBC indicated that it will defend claim.
 - Residents concerned they will be asked to pay an estimated £20m-£40m bill (£20,000 - £40,000 a flat).
 - Also face a £1.25m bill for round the clock fire patrols
- Citiscope in Croydon – leaseholders have been told they could face a £2m bill

The future?

Advice to landlords

- Immediate checks should be undertaken to assess type of cladding and take action to remedy problems.
- Update risk assessments using appropriate and qualified experts.
- Review and update evacuation policies and “stay put” advice in light of risk assessments, and communicate fire safety advice clearly to residents.

The future?

Insurance

- Property insurance and Professional Indemnity premiums increasing. Also D&O insurance for those in the property / construction sector or managing property
 - Kensington & Chelsea have written to leaseholders informing them of the likely hike in their insurance premiums
- Volume of Professional Indemnity insurers willing to accept the risks of cladding contractors or who undertake facade work has been reduced. Likely to impact upon trades involved in design, construction or refurbishment of buildings over 18m high
- Insurers covering property risks or professionals operating in the construction sector are asking detailed questions of insureds
 - Work done
 - Combustibility of materials used
 - Involvement in installation of aluminium composite panels
- Duty of disclosure



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Q&A

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