

Building Safety in Practice

ANDREW BROOKES

17 MAY 2023

AJB@ANTHONYGOLD.CO.UK

Fire Regulations, Building Safety and Housing Law

- Not always obvious how this relates to everyday housing law, for example homelessness and housing conditions.
- The Grenfell Tower Inquiry did not focus much on tenants, their interactions with their landlord, or their experience of living in social housing – an opportunity missed.
- Yet the far reaching legislative changes following the Grenfell Tower fire can be used to advise and support tenants, leaseholders and other occupiers.



Consultation.

- What did Grenfell Tower residents want? Cladding or new kitchens and bathrooms?
- S105 Housing Act 1985 for secure tenants.
- No equivalent for Housing Association (Registered Provider) tenants, or leaseholders.
- The Social Housing Regulation Bill does not amend s105 or give tenants new powers to be consulted.
- But see “residents’ engagement strategy” for “higher risk buildings” explained below.

Is my building safe?

How can residents find out about fire safety in their building?

Can residents obtain a copy of the Fire Risk Assessment (FRA)? No legal obligation to see an FRA. Freedom of Information Request for public sector landlords (to be extended to RPs in the Social Housing Regulation Bill).

Many social landlords do provide or publish FRAs: eg <https://www.lggroup.org.uk/en/building-and-fire-safety>.

Information on past fires from the Fire Brigade: eg <https://www.london-fire.gov.uk/about-us/services-and-facilities/services-we-offer/incident-reports/#:~:text=How%20to%20make%20a%20request,Your%20full%20name>

s91 Building Safety Act 2022 (BSA) introduces a new requirement that, for buildings over 18 metres/7 storeys landlords will need a “residents’ engagement strategy” : See <https://www.housing.org.uk/resources/engaging-with-residents-on-building-safety--briefing-for-housing-associations/>. This will include a right to information such as the FRA.

The BSA also gives more limited rights for residents in buildings above 11 metres but below 18 metres (Schedule 8 BSA).

Dangerous cladding or other features of the building that cause a fire risk.

- Defective cladding and other fire safety defects may not fall within the definition of disrepair within the meaning of Landlord & Tenant Act 1985. However, from 20 March 2020 tenants are likely to have a cause of action under the Homes (Fitness for Human Habitation) Act 2018 (“the Fitness Act”). The Fitness Act amended the Landlord & Tenant Act 1985. It inserted a new s9A, s9B and s10.

Section 9A LTA 1985 implies into all relevant tenancies the following:

(1) In a lease to which this section applies of a dwelling in England (see section 9B), there is implied a covenant by the lessor that the dwelling—

(a) is fit for human habitation at the time the lease is granted or otherwise created or,

if later, at the beginning of the term of the lease, and

(b) will remain fit for human habitation during the term of the lease.

- Fit for human habitation includes that the dwelling is free from “prescribed hazards” in the Health and Safety Rating System (HHSRS). That hazard list includes “Fire”. In *Rendlesham Estates Plc & Ors v Barr Ltd* [2014] EWHC 3968 (TCC) Edwards-Stuart J set out a definition of fitness for the purposes of section 1 DPA 1972. The dwelling must:

(a) be capable of occupation for a reasonable time without risk to the health or safety of the occupants: where a dwelling is or is part of a newly constructed building, what is a reasonable time will be a question of fact (it may or may not be as long as the design life of the building); and

(b) be capable of occupation for a reasonable time without undue inconvenience or discomfort to the occupants.¹⁸ In further passages, Edwards-Stuart J sets out examples of what may amount to unfitness, including defective foundations, a lift that broke down with “monotonous regularity (subject to the degree of inconvenience)”, no safe means of access or escape from a dwelling, or hazards to the common parts, mould and damp in living rooms and bedrooms.

A building facade which was in breach of building regulations and/or had been identified as a significant risk in a Fire Risk Assessment is very likely to make a building unfit. But how would the residents of Grenfell Tower ever know that the façade was unsafe?

Lifts, Communal Doors, Front Entrance Doors and door closers

- s11 (1A) Landlord & Tenant Act 1985 is relevant to lifts and communal doors.
- Lifts. NB additional importance of lifts to firefighting where the fire brigade can take control of the lift.
- Communal Doors. Will be inspected as part of the Fire Risk Assessment.
- Front Entrance Doors. Now covered by the Fire Risk Assessment following the Fire Safety Act 2021. Importance of door closers. What about tenant alterations to the front entrance door?
- NB. Position of leaseholders including shared ownership.

Vulnerable residents

41% of adult disabled residents who were present in Grenfell Tower on the night of the fire lost their lives, compared to 18% of adult non-disabled residents.

17 of the 67 children present in Grenfell Tower on the night of the fire lost their lives (25%).

Social housing providers often have little or no data on disabled residents.

Tenants with disabilities are housed on higher floors with no strategy in place if evacuation is required. Indirect discrimination: s19 Equality Act 2010.

The battle over Personal Emergency Evacuation Plans “PEEPS” - a recommendation from Phase 1 of the Grenfell Tower Inquiry.

The role of the Public Sector Equality Duty (s149 Equality Act 2010).

Homelessness and Allocations

- Homelessness and Suitability. Vulnerable residents, no PEEPs, private sector accommodation.
- Consider fire safety issues when advocating for clients about the suitability of accommodation. Is there a Fire Risk Assessment for the building? Is there an evacuation or stay put strategy? Is the client or a member of their family disabled or vulnerable? Consider PAS 9980 and “Fire safety risk assessment: means of escape for disabled people”. Adds more to the Equality Act 2010.
- Temporary Accommodation. Use of converted office blocks. Evacuation or Stay Put policy?
- Allocations - suitability.

Housing Conditions – Defective Premises

- Defective Premises Act 1972 (“DPA”).
- S1 DPA requires those involved in constructing a dwelling to ensure that the dwelling is fit for habitation when the work is completed. As of 28 June 2022 the limitation period is 15 years regarding works completed after 28 June 2022, and 30 years regarding works completed before 28 June 2022. This change was brought about by s135 Building Safety Act 2022.
- s134 BSA also introduces as s2A DPA a new prospective right of action against any person who “takes on work in relation to any part” of a dwelling. This means that claims may now be brought in respect of any refurbishment or remedial works completed on an existing building after 28 June 2022, subject to the new 15 year limitation period, if the works make the building unfit for habitation. If this section had been in force at the time of the Grenfell Tower fire, there would have been a clear right of action against RBKC but also others including Rydon, the design and build contractor.
- How is the DPA different from s11 Landlord & Tenant Act 1985 or the express terms of the tenancy?
- Limitation
- Obligation is not just on contractual landlord. E.g. Developer/Builder/Architect.
- Claims against associated companies.

Finally - a word about leaseholders (including shared ownership)

- Repairing obligations. Just the lease. s11 Landlord & Tenant Act 1985 and the Homes (Fitness for Human Habitation) Act 2018 do not apply. Defective Premises Act 1972 (as amended) does apply as do, for higher risk buildings, the provisions of Building Safety Act 2022.
- Consultation. S105 Housing Act 1985 does not apply. Recognised tenants' associations – s29 Landlord & Tenant Act 1985.
- Service Charge. S20 Landlord & Tenant Act 1985. Additional protections in the Building Safety Act 2022.
- The problem of selling. EWS1 forms.