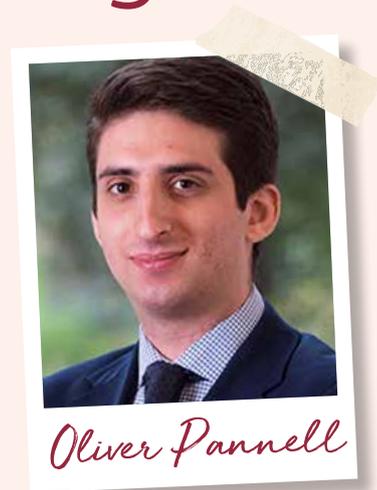


Fire Prevention: The Danger of Cladding

by Oliver Pannell, Senior Associate, Edwin Coe LLP

The second anniversary of the Grenfell Tragedy is a time to take stock and consider what, if any, progress has been made in the last two years both in reporting on the cause of the tragedy, as well as in taking steps to make our buildings safer. Consideration must also be given to what remedies are available for other buildings with similar cladding.



The tower

Anyone reading this article will be aware of the circumstances surrounding the Grenfell Tragedy, but it is useful to look first at the building itself and the cause of the fire. The tower block was designed and constructed in the late 1960s/early 1970s. It consisted of 24 stories to a height of approximately 220 feet. There were 127 flats and a single central staircase. Extensive renovations took place and were completed in 2016 at a cost of £8.6m. As part of those renovations the exterior was cladded with two types of aluminium composite at a cost of about £2.6m. Building heights are important because the Building Regulations apply different standards to different heights; cladding placed over 18m has to be at least Class 0 or B rated. The cladding on the Grenfell Tower were E rated and had no fire resistance capability.

The fire

The fire is believed to have started when a Hotpoint fridge in a fourth floor flat caught fire in the early hours of 14 June 2017. A poor crimp connection is thought to be the likely cause, which resulted in a connector overheating and short circuiting. The fire brigade extinguished the fire in the flat, but upon exiting the building saw that flames were working their way up the exterior. More than 200 firefighters and 40 fire engines were involved in trying to contain the blaze, with over 100 firefighters inside the building at any

given time. It took about 24 hours to bring the fire under control and damping down was still taking place two days later.

The investigations and the Government's response

Two public investigations were launched following the tragedy. The one which has featured most in the press is that chaired by retired Court of Appeal judge Sir Martin Moore-Bick, examining the circumstances leading up to and surrounding the Grenfell fire and which, when complete, aims to make recommendations as to the action needed to prevent a similar tragedy happening again. The second considered the adequacy of Building Regulations under the Independent Review of Building Regulations and Fire Safety, led by a former Chair of the Health and Safety Executive, Dame Judith Hackitt.

Both investigations have been mired in controversy: the adequacy of Sir Martin's enquiry has been challenged by those families directly affected by the Grenfell tragedy, while Dame Judith's enquiry has been criticised for not recommending an outright ban on combustible cladding.

The government has also been criticised for not doing enough, although it has pledged £400m to pay for councils and housing associations to replace potentially dangerous cladding and £200m toward private tower blocks in England only. That is unlikely to cover all of the costs in circumstances where many building owners are having to spend around £2m, if not more. Owners will have 3 months to access the new fund from early July.



Cases and potential claims

Following the tragedy, some buildings were evacuated over fire safety concerns and buildings affected by similar cladding have had to employ 24/7 fire marshals to conduct a walking watch or take other steps, such as installing fire suppressant systems, pending replacement of the defective cladding. There have been a couple of high profile cases brought by leaseholders in the First-tier Tribunal (Property Chamber), in relation to developments known as Citiscape and Cypress Place in Croydon and Manchester respectively, seeking to challenge a freeholder's ability to recover, through service charges, the cost of replacing cladding and in taking precautionary measures.

Whilst the decisions are not binding (because of the nature of the Tribunal), both serve as useful reminders that leases will be followed strictly; if they permit recovery through service charges, there is little leaseholders can do. Their main recourse is to consider whether there have been any defects in the consultation procedure and to challenge whether the most appropriate measures have been taken so as to minimise the costs.

For buildings which do not qualify for government funding, or where there is likely to be a significant shortfall, claims could be considered against insurers under home build policies, against developers under the Defective Premises Act 1972, conveyancing solicitors for negligence, local authorities and the installers/manufacturers of cladding. Each case would need to be considered on their merits and claims against local authorities are likely to be especially difficult due to public policy concerns which inhibit claims against local authorities.

Let's hope that in the next two years significant progress is made.

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