

First Tier Tribunal Cases Following the Grenfell Tower Fire

Grenfell Tower is a 24 storey block on Grenfell Road, London W11 1TQ. On 14th June 2017 a fire occurred from a suspected faulty fridge/freezer resulting in the external cladding catching alight with tragic consequences. The full investigation is still ensuing, however we have already seen one tribunal case following this aftermath, with another on the way:

1. Fresh Apartments, Salford, Manchester – who is to pay for an ongoing fire watching service?
2. Citiscape, Croydon, South London – who is to pay for the removal of an existing ACM cladding system and replacement with a new cladding system?

New Safety Measures for Fire Prevention

This section refers to a First Tier Tribunal case known as Fresh Apartments, Salford (IRPM, 2018)

In July 2017, the Tribunal received an application from the Freeholder of Fresh Apartments in Salford, Manchester. The hearing took place at the end of January 2018.

The block ranges from 3-10 storeys and has a cladding system comprising a Rainscreen of Aluminium Composite Cladding panels (ACM3- the least fire resistant type). For this particular block of flats and following the Grenfell Tower fire, discussions took place between the managing agents, Premier Estates, and the Greater Manchester Fire & Rescue Service. Following discussions, a 24 hour Waking Watch service was introduced to have the Building patrolled to detect a fire quickly, and then alert the emergency services and all of the residents to evacuate the Building. Speed is of the essence because the normal ability of a building to contain a fire for a reasonable period may have been compromised by the external cladding system used. The Freeholders appointed a Risk Assessor who confirmed a Waking Watch service should be in place to comply with DCLG Guidance. There were four elements to this Tribunal hearing, which included: (a) whether the Lease enabled the Landlord to recover the cost of the Waking Watch through the Service Charge, (b) whether the costs of the Waking Watch are to be taken into account in determining the Service Charge and having regard to Section 19 of the Landlord & Tenant Act 1985, (c) whether the Waking Watch is a qualifying long term agreement for the purposes of Section 20 of the 1985 Act, and (d) the cost of the proceedings.

The Tribunal was satisfied that the Waking Watch was an expenditure that was reasonably incurred and therefore was recoverable through the Service Charge pursuant to the provisions of the Lease. The Tribunal also agreed that it was not a qualifying long term agreement because the Freeholder insisted a fresh purchase order was raised each month to instruct the supplier for the month ahead. In relation to costs, the Tribunal decided the Applicant (the Freeholder) was entitled to bring

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proceedings to establish its entitlement to recover these costs and therefore the Tribunal did not award costs against the Applicant.

This Tribunal case will likely have an effect on other blocks of flats with an ACM Cladding system, but is unlikely to have an impact on other blocks of flats without an ACM Cladding system.

Buildings with ACM Cladding Systems

(Sky News, 2018)

There is an upcoming Tribunal case between residents at Citiscape in Croydon, South London, and the owner of their Building as lessees are facing the prospect of having to pay out up to £2million to remove and replace the ACM Cladding System which has recently been installed. This is a similar external cladding system to that used at the Grenfell Tower. The managing agents advised the residents that the total cost would be in the region of £500,000, but this estimate then increased to between £1.8million-£2million. This estimate meant that a lessee's share could be between £13,300-£31,300 each. After making an initial demand to install the ACM cladding system to the exterior of the Building, this second demand will no doubt be resisted by some or all of the lessees. Due to the urgent nature of these works following the Grenfell Tower fire, the question of affordability and responsibility to bear the cost of these works will be determined by the Tribunal in due course.

This will no doubt have an effect on the other 228 blocks of flats across the country which have failed Safety Tests brought in by the Government in the aftermath of the Grenfell fire. The determination of this Tribunal case could have further consequences such as the saleability of a flat with an ACM external cladding system, and also the saleability of a flat with an unpaid major works contribution of between £13,300-£31,300.

Whether or not there is already an effect on the saleability of flats in such blocks with these cladding systems is currently unknown.

Whether or not First Tier Tribunal determinations in these cases (or appeals) establish guidance for how defects in major works contracts result in costs reasonably incurred for Service Charge recovery purposes is a point being watched by many in the industry.

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