Cladding disrepair and dilapidations

Welcome
Agenda

- Idiot’s guide to cladding
  - Paul Savidge, Wintech Ltd
- Current legal issues
  - Simon Allison, Landmark Chambers
- Disrepair and failure
  - Paul Savidge and Simon Allison
- Q&A
Typical Cladding Forms

- Unitised Cladding
- Stick System Curtain Walling
- Rainscreen
- Render
- Precast Concrete
- Brickwork
Stick System Curtain Walling

Rainscreen
Render

![Render Image]

Precast Concrete

![Precast Concrete Image]
Brickwork

Cladding Finishes and Life Expectancy

Colour fastness

- Powder Coated Aluminium (25 Years)
- Pre coated galvanised steel sheet (25 Years)
- High Pressure Laminates (Trespa) (15 to 20 years)
- Terracotta (30 years+)
- Glass Reinforced Concrete (GRC) (25 Years+)
- Anodised Aluminium (50 years+)
- Aluminium composite cladding (ACM) (25 Years)
- Fibre Cement Board (15 years)
- Precast concrete (50 Years+)
- Render (10 to 15 years)
Current Legal Issues: Cladding

Simon Allison

14.06.17- Grenfell Tower

- 24 storey building (67m / 220ft)
- 120x 1 & 2 bed flats
- Non-structural partitions
- 1 stairwell
- Constructed 1974
- Refurbished 2016 (£8.7m)
- At least 72 people died
- At least 70 people injured
- 223 escaped
Immediate steps taken

• Compulsory testing regime implemented via DCLG for ACM clad buildings

• Notified to private landlords by letter 20/6/17 (where identified)

• Testing undertaken by BRE, funded by DCLG

• Once tested, building manager informed of outcome, by category: Cat 1 being ‘safe’, categories 2 and 3 being of concern. Category 3 ACM is that used on Grenfell.

• Where cat. 2 or 3, written report was issued, advising building owners / managers to immediately contact the local FRS for ‘advice and support’ and to follow guidance issued by DCLG.

• No formal statutory footing for the advice given.

• Where high risk, interim mitigating measures recommended that ‘must immediately be implemented to ensure the safety of residents, pending replacement of the cladding’.

• Mitigating measures: Fire watch (‘waking watch’), fire alarm (all units), sprinkler, removal of cladding.
Current position

- MHCLG building safety programme is monitoring progress:
  https://www.gov.uk/guidance/building-safety-programme

- Guidance on ACM clad buildings in place for a while

- Recent BRE testing regime looking at other types of cladding, results awaited

- Also looking at building regs changes, fire doors, compartmentation etc.

Current position

- Latest data on ACM clad buildings:
  - 433 high-rise residential and public buildings in England identified w/ACM
  - 79 fully remediated
  - 354 not yet fully remediated, of which:
    - 117 social sector
    - 163 private residential
    - 34 student accommodation
    - 31 hotels
    - 9 public buildings such as hospitals and one school

- Currently NO official data on high-rise buildings clad in other forms of combustible cladding. Likely several thousand more buildings affected.
Regulatory Reform (Fire Safety) Order 2005 (‘FSO’)

• Can only touch on this in outline today.

• FSO binds the ‘Responsible Person’ (usually, the owner) together with any other person who has, to any extent, control of the premises so far as the requirements of the FSO related to matters within his control.

• Applies to ALL buildings, with particular requirements where they form a workplace or where hazardous substances are present.

• The obligations are contained principally in articles 8 to 22 of the FSO.

Regulatory Reform (Fire Safety) Order 2005 (‘FSO’)

• FSO focused on risk assessment:
  – Measures to reduce risk of fire
  – To take general fire precautions ‘so far as is reasonable practicable’ / ‘as may reasonably be required’
  – To carry out a ‘suitable and sufficient assessment of the risks’

• Does NOT impose an absolute duty on anyone to replace the combustible façade materials, but in many residential instances that will be the reality.

• DOES empower the FRS to bring criminal prosecution for failure to comply and / or to issue prohibition notice (art.31)
Regulatory Reform (Fire Safety) Order 2005 (‘FSO’)

- Whilst current focus is on buildings where people sleep, ALL premises subject to FSO.

- Person with ‘control’ will vary, depending in part on allocation of responsibilities under the lease – who is liable to keep in repair or comply with statutory requirements?

- At end of term, has there been compliance with the FSO? What does the outgoing tenant’s risk assessment (if any) say? Bear in mind, it may not be relevant (for the future) after tenant has left, especially if change of use.

How dangerous is category 3 ACM?

- **Dr Roth Phylaktou**, an expert in fire investigation at the University of Leeds, has said that the aluminium panels combined with insulation was ‘optimum for vertical fire spread’.

- Dr Phylaktou said:

  'The polyethylene in the cladding would have burnt as quickly as petrol.'
Relative Fire Load

<table>
<thead>
<tr>
<th>Product</th>
<th>Type</th>
<th>Thickness</th>
<th>UK Class</th>
<th>Euro Class</th>
<th>Fire Load (MJ/m²)</th>
<th>Rigidity EI (daN.m²)</th>
<th>Weight (kg/m²)</th>
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<tr>
<td>Trespa std</td>
<td>HPL</td>
<td>6mm</td>
<td>1</td>
<td>D-s2,d0</td>
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<td>24</td>
<td>8.1</td>
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<tr>
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*Table supplied by FR Consultants Ltd - [https://frcconsultants.co.uk](https://frcconsultants.co.uk)*

What is being done about this?

- **Grenfell Inquiry**: ongoing – final report unlikely before 2021
- **Hackett Report**: Released May 2018.
- December 2018, government confirmed in intends to implement Hackett proposals, but unclear how this will overlap with Grenfell Inquiry and other projects.
- Central to Hackett proposals is clarifying accountability of parties at all stages of a building’s life and simplifying regulatory framework
Building Regulations - amends

• Building (Amendments) Regulations 2018 (SI 2018/1230)
  – Came into force 21/12/18, amends the Building Regulations 2010
  – Prohibits use of combustible materials anywhere in external walls of high-rise buildings (>18m) containing one or more dwellings
  – Applies to new buildings and refurbishment work to external walls

Building Regulations – amends

• New requirements apply only where a ‘relevant building’ (reg 7(4)):
  – Building with a storey at least 18m about ground level which:
    • Contains one or more dwellings;
    • Contains an institution (e.g. residential schools, care homes, hospitals, sheltered accommodation etc); or
    • Contains a room for residential purposes but does not include a room in a hostel, hotel or boarding house.

• Bear in mind will apply on change of use e.g. hotel to student accommodation.
Building Regulations – amends

• Cannot now include materials as part of an external wall (or specified things attached to that wall) unless it meets European Classification A2-s1, d0 or A1.
  – A1: Will not contribute in any stage of the fire, including a fully developed fire.
  – A2: Will not significantly contribute to the fire load and fire growth in a fully developed fire.
  – s1: Weak/no smoke, s2: Medium smoke, s3: High smoke
  – d0: No dripping, d1: Slow dripping, d2: High dripping
    (BS: EN 13501-1)

NB: Any other (non-relevant) building most materials on external wall over 18m must meet A2-s3, d2 or better (‘limited combustibility’).

Building Regulations – AD Part B


• Multiple docs to piece together, unhelpfully.

• Diagram 40 in AD B Part II indicates can use euro class B in buildings other than dwellinghouses, but note all insulation materials (‘filler material’) in external wall must be of limited combustibility (A2 – see table A7 to AD B).

• For tech detail, speak to a surveyor!

Fire safety
APPROVED DOCUMENT

B
Who will pay? Duties under the lease

• Varies (obviously!), each case will be different.

• Replacement of façade system may fall within obligation:
  – To keep in repair (depends…)
  – To renew / replace / rebuild ‘where necessary’ (probably, where resi)
  – To ‘insure and keep insured’
  – To comply with requirements and directions of any competent authority
  – To comply with statute and regulations orders and byelaws
  – Sweeper clause (in service charge context)

Inherent defect?

• No rule of law prohibiting the recovery of the cost of rectifying inherent defects.

• Q = is it properly a repair, or would it involve giving back to the landlord a wholly different thing from that demised?

• Question of degree in each case: Ravenseft Properties Ltd v Davstone [1980] QB 12 (insertion of expansion joints to stone cladding system)

• Same principle whether design error or construction / workmanship error
Disrepair and Failure

Glass Failures

Structural Failures
- Terracotta detachment
- Rainscreen panel detachment
- Window detachment
- Render failing
- Coping detachment
- Structural glazing failure
Disrepair and Failure

Failure to Accommodate Thermal and Building Movement

Disrepair and Failure

Water Ingress
Disrepair and Failure

Coating Failures

Disrepair and Failure

Fire Issues

Missing / Defective cavity barriers
Inappropriate materials
When is cladding in disrepair?

• Guiding principle to whether something is a repair is whether the thing to be repaired is in a physical condition worse than that in which it was at some earlier time (Quick v Taff Ely BC [1986] QB 809)

• Context specific – system in question / terms of the lease – what is extent of tenant obligations, taking into account all relevant circumstances?

• Work to prevent recurrence of damage can fall within scope of a covenant to keep in repair: Holding and Management Ltd v Property Holding and Investment Trust Plc [1990] 1 All ER 938 – Brick slip cladding – design and construction faults leading to failure of elements of system.

‘Redecoration’

• Sometimes have express decorations clause, but not always.

• Potential for many context specific borderline cases.

• A part of a building may be damaged / deteriorated, yet still perform its function eg. Alcatel Australia v Scarcella [2001] NSWSC 154 (tenant required to remove / re-anodise corroded aluminium window frames – cheaper to replace – covt = keep in good and substantial repair).

• Corrosion or rusting - a deterioration in the substrate, (usually) amounting to disrepair.
‘Redecoration’

- Central to whether there is a need to deal with deteriorated decorative coatings to cladding systems is, logically, whether their existing decorative condition is not such as would satisfy a reasonably minded tenant of the class likely to take them.

- So… as ever… ‘it depends’!

- What about an express covenant to decorate those parts as are ‘usually so decorated’?

Alamdo Holdings Property Ltd v Australian Window Furnishings (NSW) Property Ltd*

- Lease of two large factory buildings contained a covenant on the part of the tenant:

  “in the last year of the term and from time to time if necessary or reasonably required by the Lessor paint, repaint, clean or otherwise appropriately treat in a proper and workmanlike manner such part of the Demised Premises usually so treated.”

- Roof = galvanized steel, designed to be maintenance free during its life.

- In fact, had been recoated to extend its life.

*[2006] NSWCA 224.
Thank you

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Questions