

June 2017 NEWSLETTER

OPINION

Grenfell Tower- Is it time to rethink “stay put” & adopt a more proactive approach? The fire at Grenfell Tower has put into doubt the currently accepted “stay put” strategy adopted within residential properties especially in respect of tall residential blocks.

Whilst much has been said about the cladding systems used during the refurbishment of the tower block, questions have also been raised about the “stay put” policy approach which appears to have been adopted at the tower, with some commentators suggesting that the policy or how the policy has been applied may have contributed to the loss of life.

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Many property owners, managers and agents have been following accepted guidelines of “stay put” when designing and managing such buildings however “stay put” only works if the compartmentation and fire resistance of the elements of structure within the property are effective and in the real world we have to accept that achieving full compartmentation in building in the long term has been a challenge.

The “stay put” principles are quite simple; passive fire protection and the provision of compartmentation ensure that any fire should be contained within its room/area of origin meaning that those within this area can evacuate to a place of safety and adjoining neighbours and others within the building can stay put within their own protected compartment whilst the brigade fight and ultimately put out the fire.

Any breaches or perforations in such compartmentation or a lack of or damaged fire protection though means that the whole strategy of “stay put” actually places the occupants at risk; these can manifest themselves in many ways such as;

- Changes to services
- Lack of or insufficient fire stopping
- Refurbishment works
- Day to day damage
- Installation of letter boxes
- Removing self-closers, strips and seals
- Poorly fitted fire resisting glass
- Inadequate door frames and stops

which come as a result of the fact that;

- there are sometimes inadequate controls and checks during construction
- tenants often undertake alterations without understanding what those changes mean; and
- a lack of enforcement from agents and others.

Over the years whilst undertaking intrusive fire surveys and assessments Ark have seen far too many examples of severe breaches within compartmentation or a lack of fire stopping. These buildings have all received building control approval and all were, according to the fire risk assessments at the time, satisfactory, so something needs to change!

“Stay Put” does provide some flexibility for the Brigade and also allows the Brigade to make operational decisions and change “stay put” if the circumstances necessitate to a more proactive “evacuation” strategy (be that simultaneous or phased).

Whilst this provides flexibility it does present several issues including;

- occupants must be informed that the strategy is changing – but in so many buildings and especially in residential blocks and other buildings how can this be achieved without a PA system especially if conditions are creeping steadily towards untenable, which would have promoted the change in strategy;
- how do we change the behaviour of occupants - many would remain within their compartment and will be reluctant to move; traditionally people are reluctant to change and move without clear and easily understood reasons and warnings;
- how effective are means of escape arrangements – if there is a need to change strategy, how badly affected are the means of escape arrangements already with smoke and flame – are they still tenable.

Whilst as stated we accept that “stay put” remains a viable protective strategy, the fact that owners and agents are having to rely upon the integrity of both construction and use means that surely its time that the passive “stay put” approach should be questioned.

Let us be clear – we are not suggesting that landlords and managers rip up proven effective approaches, but surely with the tragic loss of life at Grenfell, now is the time for property owners and agents to question the strategy and if possible consider either adopting a more proactive approach or at least considering how “stay put” can be adapted and improved to deal with the concerns and issues raised above.

Of course, landlords and managers could swap from the passive approach to a more proactive approach of planned evacuation (be it simultaneous or phased) from the building by:

- detecting any fire condition;
- providing sufficient warning to the occupiers;
- limiting the initial spread of fire and smoke;
- eliciting / encouraging evacuation;
- ensuring the means of escape routes are sterile, available and sufficient to cope with occupant numbers;
- protecting these means of escape proactively during the evacuation process; and
- allowing people to move away from the effects of fire and smoke to a place of safety.

Adopting this strategy will of course entail ensuring that other systems and measures are in place and that escape routes are capable of being protected and of a sufficient size to cope with occupant numbers.

We also should accept that this strategy also has its downsides:

- there are numerous examples where such a strategy has also failed due to poorly maintained systems or failures to act in time; and
- full, building wide detection can, if poorly designed and installed lead to numerous false alarms and evacuations due to often “burnt toast.”

There is, in our opinion a “third way”.

We should consider how both passive and proactive measures can be brought together to ensure that we get the best of both; limiting the spread of fires within compartments; protecting those within the building and instigating a phased evacuation from the start from those who would be most affected if conditions become untenable.

Is it also not time that domestic sprinklers are a statutory requirement especially within new build construction and that landlords and managers are forced to consider if it is feasible to retrofit domestic sprinklers.

Whilst we all await the cause and the outcomes of the fire, we can learn from other fires such as the 2009 Camberwell fire at Lakanel House where 6 people were trapped by flames that spread out of control because of what was described in court as safety deficiencies in the block. These deficiencies included;

- the failure to undertake and give effect to a fire risk assessment;
- allowing breaches within fire-resistant structures between each maisonette staircase and the common internal doors;
- a lack of compartmentation within the false ceiling structures of common corridors; and
- a failure to provide fitted intumescent strips (which swell when heated) and smoke seals on fire doors.

The UK’s passive approach has, for many years, worked and fires such as Grenfell are, thankfully rare. But the concept of “stay put” and passive protection must in our opinion be reviewed and reconsidered.

Finally, all landlords have a clear responsibility under the law; to ensure that their premises meet all fire safety requirements and are effectively maintained and managed to provide the necessary levels of protection so that in the event of a fire they keep their residents safe.

For all our clients and others, we would offer the following advice;

1. Check to ensure fire detection and alarm systems are fully operational and can be heard throughout the property - if you have faults or issues with the systems ensure you have in place arrangements to rectify these and if necessary have in place mitigating measures to continue to provide protection
2. Consider the need for an invasive fire survey / fire stopping survey considering the effectiveness of compartmentation, if not, and you have adopted "stay put" ask how confident are you that compartmentation and fire stopping within your property is effective?
3. Are all fire doors are in good condition and in working order (i.e. have they been damaged or do they close fully into the frame)?
4. Have you checked other fire and life safety systems such as emergency lighting, ventilation and/or pressurisation systems, fixed and portable firefighting systems etc. to ensure that they have been maintained and serviced on a regular basis and are in working order
5. Have you checked your fire risk assessment - is it up to date? Have all measures been dealt with? Has there been any changes which suggest you need to reconsider its findings?
6. Check that you undertake regular fire patrols and inspections? Are these recorded and are they up to date? How/are you dealing with any issues raised during such inspections? Are staff competent to undertake such inspections, would they recognise and report issues such damaged fire doors for example?
7. Check that all servicing, maintenance, testing, inspection records up to date, complete and available for inspection?
8. Check that on-site staff are fully trained to deal with and manage emergencies and ensure that they know what to do if any of the systems fail?
9. Reassess the emergency procedures; are they satisfactory? Have they been communicated to tenants and others?
10. If you have construction works being undertaken- check what measures are in place to ensure all fire safety and life safety systems are maintained and protective measures are in place? Check to make sure that they do not propagate or would not contribute to fire spread within or outside the building

Ark's team are available to provide support; contact your engagement manager or call on 020 7397 1450.

David Hills
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NEW LEGISLATION

Whilst no new legislation has or is currently proposed, the HSE has recently completed consultation in respect of the implementation of Directive 2013/59/EURATOM which lays down basic safety standards for protection against the dangers arising from exposure arising to ionising radiation.

Briefly the main changes proposed include:

- Dose Limit for exposure to the lens of the eye and implementation of the Directive – the Directive introduces a reduction of equivalent dose from 150 mSv to 20 mSv in a year. Currently exposure to ionising radiation is calculated and assessed on a calendar year basis, this would require individual dose limits to be re-calculated for the remainder of the year. HSE propose to transpose the BSSD early, on 1st January 2018, to avoid confusion and any additional cost burden to businesses.
- Graded Approach - introduction of a new three tiered risk-based system of regulatory control. The Directive refers to these levels as notification, registration, and licensing - the higher the radiation protection risk associated with the work, the greater the requirements. It requires HSE to have in place a positive system of authorisation whereby permission is granted to duty holders for higher risk activities through registration and licensing.

In addition the HSE has recently completed consultation regarding proposed changes to the process for considering disputes under Fee for Intervention (FFI). The HSE is looking at how the process should operate. In particular, it recognises the need to ensure that the process is accessible to all types and sizes of business and is proportionate to the issues involved and amount of the fees.

NEW GUIDANCE

New ISO 45001 Draft Issued

The ISO has published ISO45001.2:2017 for international consultation. The results of this consultation, which is due at the end of July, will be further considered in September by the standards organisation. Previous drafts of the standard had been rejected by the organisation following a vote of its 70 country members.

ISO45001 if accepted will replace the current BS OHSAS 18001 and according to the BSi will help organisations put in place systems which will “continually improve” health and safety.

BS9999:2017 - Fire safety in the design, management and use of buildings. Code of practice.

The new standard has now been published and contains those issues detailed within our March Newsletter.

HSG 282 Health and Safety Guidance 282: The Control of Legionella and Other Infectious Agents in Spa-Pool Systems

Spa-pool systems are a recognised source of diseases caused by infectious agents including the organism that causes legionnaires' disease, primarily Legionella pneumophila. There have been a number of outbreaks linked to spa pools in leisure centres, hotels, holiday homes, on cruise ships and on display.

The new guidance is primarily for those who manage or operate spa-pool systems and explains how to manage and control the risks from legionella and other infectious agents. It will also help service suppliers, designers, manufacturers, importers, suppliers and installers of spa-pool systems meet their legal responsibilities.

As well as guidance on operating and maintaining commercial-type systems, there is specific advice on domestic-type spa pools or hot tubs used as part of a business activity, for example in holiday park rental units, hotel bedrooms with a dedicated spa and systems on display or at exhibitions.

The guide includes advice on effective ways to safely manage and control spa-pool systems through:

- a design, commissioning, operation and maintenance;
- a testing and monitoring spa-pool water quality;
- a quality and frequency of inspections.

LEGAL

Sentencing Guidelines – total fines triple in the guidelines first year

Sentencing guidelines help judges and magistrates decide the appropriate sentence for a criminal offence.

Criminal offences in England and Wales are very broadly defined and can have different levels of seriousness. According to the Coroners and Justice Act 2009, when sentencing an offender for an offence committed on or after 6 April 2010, a court must follow any relevant sentencing guidelines, unless it is contrary to the interests of justice to do so.

The Sentencing Council have issued the Health and safety offences, corporate manslaughter and food safety and hygiene offences: Definitive guideline which is to be used from 1 February 2016.

These guidelines provide a definitive sentencing guideline for use in courts in England and Wales on health and safety offences, corporate manslaughter and food safety and hygiene offences.

In a report published by IOSH and the law firm Osbourne Clarke called “Health and safety sentencing guidelines one year on.” finds that the largest 20 fines imposed for offences in 2016 cost the organisations involved a total of £38.6million. In comparison, the largest 20 fines for both 2015 and 2014 cost the respective organisations £13.5 and £4.3million respectively.

LONE WORKERS

South West Water Fined Following Drowning of Employee.

It has been reported that South West Water has been fined £1.8m following an incident that led to the drowning of an employee. The employee was found within a treatment plant and the court heard that the employee had been carrying out routine tasks when he appeared to have fallen through a narrow opening above a treatment unit and was then left with no means of escape or a way to call for assistance. He appeared to have lain within the tank for 4.5 hours until a colleague was dispatched to the site.

The company was at the time operating an automatic call in system which calls after a period of inactivity to a control centre. Despite having received a call at 16:53hrs, the employee was not, it appears, to have been found until 19:50hrs on the day.

In addition, South West Water had been advised of the risks associated with staff falling into such tanks yet had failed to act on these, in addition previous records showed that another employee had fallen in a tank and had remained there for an hour before being rescued.

It is clear that there is a clear need for organisations to have in place effective lone worker arrangements and that where risks are highlighted that these are mitigated as soon as possible.

SAFE SYSTEMS OF WORK

Employee Paralysed Following Systems Failure

It has been reported that an Essex based utilities company has been fined following an incident where an employee working within a trench was paralysed when a 400kg pipe fell on to him.

The employee was working in a 1.4m deep trench when the pipe fell onto him and struck his back, tearing his spinal cord and fracturing two of his ribs. The employee is now paralysed from the waist down.

According to the HSE this was not an isolated case and the method of work adopted which led to the incident was inherently unsafe and on some occasions, was undertaken in plain sight of management. The company were fined £200,000 and ordered to pay an additional £56,686 in costs.

Organisations should develop effective safe systems of work for all activities undertaken and ensure that these are adopted.

WORKPLACE TRANSPORT

Insufficient training leads to £1m fine

Nottinghamshire Country Council have been fined £1 following an incident where a tractor collided with a member of the public. The 71 year old, who was disabled was at the time attending a guided walk and was struck by the vehicle which was being used to collect fallen branches. The employee at the wheel stated that he could not see the member of the public and the HSE found that not only had the Council had failed to segregate vehicles from the public they had not trained its staff to the required level to operate such equipment or act as a banksman nor had they provided the correct equipment for the job being undertaken. In addition to the fine, the Council was ordered to pay £10,269 costs.

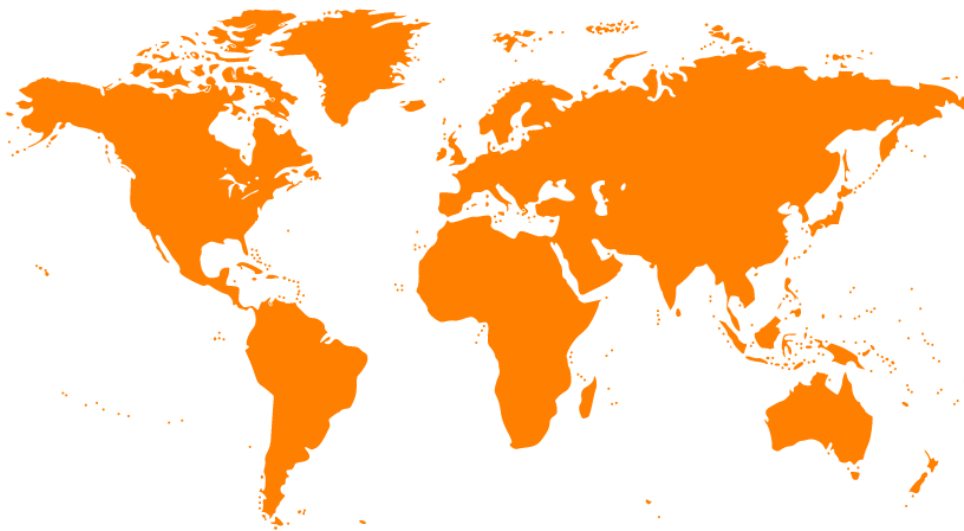
Organisation therefore must consider segregation methods when operating vehicles and equipment close to people; in addition organisations must develop and implement suitable and sufficient training plans and analysis to protect themselves against such claims.

INTERNATIONAL FOCUS

France

The new French President, Emmanuel Macron has pledged to simplify the current Labour Code (Code du Travail). The current code is acknowledged to be very “worker “centric and the President has vowed to simplify the Code and make it more “employer friendly.”

The principal feature of the regime in France is the need for employers to draw up a Document Unique d’Evaluation des Risques Professionnels covering all of the risks associated with the activities being undertaken by workers and update this on an annual basis.



In addition under the code, any employer with more than 50 staff must set up a Comite d’Hygiene de Securitie et des Conditions de Travail (CHSCT) which is designed to act as a forum for discussions between workers and managers, analyse workplace risks and propose appropriate action. The President has pledged to reduce the number of union-led and statutory bodies covering health and safety such as the CHSCT’s.

Enforcement of the code is the responsibility for large workplaces of the Direction Generale de Travail (which is part of the Ministry of Labour) whilst small and medium sized organisations are enforced by regional authorities.

The apparent light touch approach to enforcement in place within France is highlighted by an incident and accident rate considerably higher than the UK (581 deaths compared to 239 in the UK (2014) and 724,662 workplace injuries compared to 244,948 in the UK) despite having similar demographic.