

## **The legal challenge to PAS 79-2 (2020)**

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On 5 March 2021, the British Standards Institute (BSI) withdrew its new guidance on fire risk assessment (FRA) PAS79-2: 2020 in reaction to threatened legal action from the family of Sakina Afrasehabi, who died in the Grenfell Tower fire in June 2017.

Ms Afrasehabi was unable to self-evacuate from her flat on the eighteenth floor due to severe mobility issues.

An amended version of the PAS79 full standard 2012, PAS79-2: 2020 was created after a consultation period into the requirement for a slightly different format of assessment to high-rise residential buildings since several elements of the standard format were not relevant to a fire risk assessment only, given the communal/shared spaces of the blocks.

Under current guidance, fire risk assessors are not responsible for identifying people with disabilities or for landlords to make provision for their evacuation in a fire, as it was deemed to be wholly unrealistic for housing providers to prepare individual evacuation plans.

The guidance was written by Colin Todd, who was an expert witness at the Grenfell Tower Inquiry and the only one of four to advocate against PEEPs (Personal Emergency Evacuation Plans). The other expert witnesses - Dr Barbara Lane and Professors Ed Galea and Jose Torero - advocated adopting PEEPs. The inquiry appears to have discounted the evidence from Mr Todd in favour of the other three.

In October 2019, Ms Afrasehabi's family threatened to sue the Government over 'its misleading and inadequate proposal not to implement inquiry recommendations relating to disabled people'. They argued that the consultation 'rowed back' on the PEEP proposal made by Phase 1 of the Grenfell Tower Inquiry, and instead recommended such plans 'be drawn up only for those in buildings with a waking watch'.

The Government 'justified' this on the basis that there was a 'lack of personnel available to assist' evacuations, alongside 'the complexity of buildings, turnover of residents and data protection'.

Communication from Ms Afrasehabi's daughter, Nazanin Aghlani, through a letter from her solicitors Bhatt Murphy to the Home Office, stated that 'Applying the recommendation in this way would effectively disapply this for 97% of high-rise residents who need a PEEP.' The letter added: 'While the consultation document identifies that it is departing from the inquiry's recommendation, it claims that the proposal "gives effect to the underlying objective of the inquiry's recommendation".'

The letter warned that action would be taken if government continued to pursue its plans to not fully implement the proposal that all vulnerable high-rise residents be provided with a written evacuation plan.

A BSI spokesperson stated: 'BSI, in its role as the UK National Standards Body, is temporarily suspending PAS 79-2: 2020 *Fire risk assessment, Housing, Code of practice* and has removed it from sale.'

### **Issues with implementing evacuation plans**

When we look at the possibility of providing PEEPs to those wishing to live in high-rise residential blocks, we have to consider the implications of delivering the infrastructure to ensure that any plan works during an evacuation.

Who would be responsible for the creation of the PEEP and its continued useful status as an assessment? In the case of the private sector, this would have to be either the resident or their family/representative, and in the case of social housing providers it would be done by social care teams or similar professionals.

There has to be an obligation on the person renting or purchasing an apartment/flat in a private high-rise or higher-risk building to consider their own needs and requirements, selecting a building type that best suits their personal circumstance; this cannot be down to private landlords of these buildings to police.

### **Conclusion**

The opinion expressed by Colin Todd is, in my view, the correct one. In the real world of assessing risks to life safety from fire, there are many practical elements we cannot ignore: H&S legislation uses the term 'reasonably practicable' for just this instance.

We have to weigh up the 'practicable' requirements of providing a PEEP for every relevant resident of a high-rise residential building, both now and into the future, and to understand how to compel those people to agree to this process being conducted and the results/findings supplied to the landlord of their building. This information would need to be stored in the 'fire document box' located at the main entrance to the building.

There are many civil rights to consider here, along with people's freedom of choice. How would a fire risk assessor identify anyone in the building with a possible requirement for a PEEP? This information would need to be supplied by the building owner/managing agent, creating issues relating to GDPR.

Would local authorities be responsible to provide a PEEP for every relevant person in both public and privately rented accommodation throughout their area? If a resident is being 'placed' in a property by a local authority/social housing provider, they have an obligation to ensure that the property is 'fit for purpose' (and remains as such throughout the tenancy period) and changes in location should be made if the resident's medical situation changes.

This a huge task and a massively contentious process that would require a resident to move regardless of their own feelings/wishes. To try to deliver this in the private sector simply could never work.

There are other considerations, such as the Disability Discrimination Act 1995, which prevents discrimination due to any form of disability; so to preclude someone living on the twentieth floor of a high-rise residential building would not be acceptable under law, let alone from a moral standpoint.

Residents, or the families of residents, living or moving into high-rise residential buildings would need to be responsible for the creation and upkeep of any PEEP required, as well as for liaison with the local fire and rescue authority and building management to ensure that relevant up to date documents are stored in a fire documents box for use in a fire evacuation.

A complete list of any person living in the building who could not self-evacuate would need to be stored in the fire document box with clear and concise information relating to age, gender, location and what issue that person has relating to evacuation (are they in an electric wheelchair, for example).

Collaboration between local authorities, social housing providers, private residents, their families/representatives, and the building management (via the 'Building Safety Manager' when the role becomes a reality) is absolutely key to making any provision to create and maintain any PEEP as a viable option.

This scenario would be an ongoing process and not a one-off, with all changes requiring updated PEEPs created and stored in the fire document box to ensure that all information likely to be used in a fire by the local fire and rescue authority is accurate and fit for purpose.

Any deviation from this process could lead to firefighters entering buildings during a fire to rescue residents who may not even live there any longer, putting themselves at unnecessary risk.

Until all of this is resolved, and processes/procedures implemented, it would be a question on the PAS79-2 document that is constantly noted as 'No or N/A' with no real action resulting from the report.

**The views expressed in this document are Martin Ryan's alone and do not necessarily reflect the opinions of IWFM.**