

**IN THE MATTER OF  
THE GRENFELL TOWER INQUIRY**

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**APPLICATION FOR CORE PARTICIPANT STATUS BY THE  
EQUALITY AND HUMAN RIGHTS COMMISSION**

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**A. Introduction**

1. The Equality and Human Rights Commission ('the Commission') applies for Core Participant status in the Grenfell Tower Inquiry ('the Inquiry'). It makes the application under Rule 5(2)(b) of the Inquiry Rules 2006 on the basis that it has a 'significant interest in an important aspect of the matters to which the Inquiry relates'.
2. The Grenfell Tower fire caused catastrophic loss of life for which the state may have been responsible. The Inquiry's examination of the circumstances leading to the fire and its aftermath is a critical element of the discharge of the obligation under Article 2 of the European Convention on Human Rights ('ECHR') to investigate state responsibility for the deaths of the victims. The Commission's interest in the Inquiry arises from its concern to ensure that the Inquiry properly understands and fulfils its human rights obligations and considers state responsibility in the context of the rights guaranteed by the ECHR and the Human Rights Act 1998 ('HRA 1998').

**B. The Commission**

3. The Commission is a non-departmental statutory public body established under the Equality Act 2006 ('EA 2006'). It is the single equality and human rights body in Great Britain. It is independent of government.
4. The Commission has statutory duties under the EA 2006 to promote understanding of the importance of human rights, to encourage good practice in relation to human rights issues and to encourage compliance with the Human Rights Act 1998 (s.9(1) EA 2006). It has the power to hold formal investigations (s.16 EA 2006) and inquiries (s.20 EA 2006), to bring judicial review proceedings to prevent breaches of the HRA and to make interventions in legal proceedings (s.30 EA 2006).
5. The Commission is an accredited National Human Rights Institution, which gives it formal status with the human rights treaty bodies of the United Nations and it plays an

active role in UN treaty monitoring of the UK. In collaboration with the equality and human rights bodies in Northern Ireland and Scotland, the Commission is part of the UK Independent Mechanism for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities ('UNCRPD').

### **C. Human rights issues in the Inquiry**

6. The right to life in Article 2 imposes a positive obligation on the state to 'afford general protection to society' (*Bljakaj v Croatia* [2014] ECHR 74448/12, para 108). Where state authorities know of a risk to life and fail to take adequate steps to protect it, there may be a violation of Article 2 (*Osman v UK* (1998) 5 BHRC 293; *Öneryildiz v Turkey* [2004] ECHR 48939/99; *Budayeva v Russia* (App no 15339/02, 20 March 2008).
7. Many of the issues identified in the Inquiry's terms of reference, including the decisions relating to the building's design, modification and management, the adequacy of and compliance with regulations, the local authority's response to residents' concerns and the adequacy of the emergency response, raise the prospect of state culpability for violating the victims' right to life. The terms of reference must be interpreted and understood in the context of the scope of the state's obligation to protect life. By way of example, the European Court of Human Rights has emphasised that the right to information is an essential aspect of Article 2 (*Budayeva*, para 132). If it is to comply with Article 2, the Inquiry will need to examine whether public bodies provided appropriate information about fire safety to the residents, an issue that is not explicitly referred to in the terms of reference. It may also need to consider whether residents were able effectively to access the legal system to raise concerns about fire safety and the consequence of changes to legal aid funding for the accountability of landlords and local government.
8. A large proportion of the residents and victims of Grenfell Tower had protected characteristics under the Equality Act 2010, including race, ethnicity and disability, and the Inquiry may be considering evidence that reveals discrimination on those grounds, and on the basis of social origin under Article 14 ECHR. The terms of reference also include the response of the authorities in the days after the fire, which raises serious questions for the authorities under Article 8 and 14.
9. The adequacy and lawfulness of the state's actions as identified in the terms of reference must be judged according to the standards set by the ECHR and HRA 1998. These standards are in turn informed by provisions of UN human rights treaties, which the

European Court of Human Rights draws upon to inform the scope of state obligations (*Demir v Turkey* (2009) IRLR 766, para 69; *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16, [2015] 4 All ER 939, para 130). In this Inquiry, the provisions of the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), which guarantees the right to adequate housing in Article 11, and the protections of the UNCRPD, will be particularly relevant.

10. Previous public inquiries, including those concerned with deaths arising from systemic failure, have explicitly recognised and addressed the human rights issues raised by the state's failure to protect life. In the Mid-Staffordshire NHS Foundation Trust Public Inquiry, Sir Robert Francis QC considered the scope of the Health and Safety Executive's obligation under Article 2 to provide a safe system of healthcare and to investigate deaths (Inquiry report, vol II, para 13.149-151). This Inquiry is similarly confronted with potential systemic failures on the part of multiple public bodies that must be analysed in the context of human rights law.
11. The positive duty to protect life is accompanied by an obligation to conduct an 'effective investigation' into deaths. Investigative obligations also arise under the prohibition on torture, inhuman and degrading treatment in Article 3 and the right to private and family life in Article 8, both of which are engaged in the circumstances of the Grenfell Tower fire and its aftermath. Lord Bingham explained the purpose of the investigative obligation in *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51, [2004] 1 AC 653, paragraph 31:

'The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.'
12. The state's Article 2 investigative obligations are usually satisfied by an inquest which looks broadly at the circumstances in which the person died, including systemic failures in the regulatory system (s.5(2) Coroners and Justice Act 2009; *R (Middleton) v West Somerset Coroner* [2004] UKHL 10, [2004] 2 AC 182, para 19). The inquests into the deaths in Grenfell Tower have been suspended pending the completion of the Inquiry and the police investigations and can only be resumed on the conclusion of the Inquiry

and any prosecution if the senior coroner believes there is sufficient reason to do so (Schedule 1, para 9, Coroners and Justice Act 2009). The combination of the Inquiry and criminal process are likely, therefore, to be wholly responsible for discharging the state's Article 2 obligations. Accordingly, it is critical that the Inquiry takes full account of relevant human rights principles in its examination of the evidence, its findings and recommendations, in order to ensure that the state has discharged its obligation to carry out an effective investigation under Article 2.

#### **D. Application of section 5(2)(b)**

13. As the public body charged with protecting and promoting human rights, the Commission has a significant interest in any investigation where the state is implicated in a failure to protect life. The Inquiry will be examining matters that go to the heart of the protections guaranteed by Article 2. The Commission regards participation in the Inquiry as an important fulfilment of its public function to promote awareness and understanding of human rights, and to encourage public authorities, including the Grenfell Tower Inquiry itself, to comply with their obligations under the HRA 1998.
14. In addition to the Commission's interest in the fulfilment of the state's Article 2 obligations, it has long-standing concerns about the adequacy of social housing in Britain and it is currently undertaking a formal inquiry into housing for disabled people. One matter of particular concern to the Commission is the accessibility and safety of social housing for disabled residents. During the course of recent focus groups held by the housing inquiry, disabled people raised the issue of appropriate housing allocation and the risks of non-working lifts. The Grenfell fire has heightened their concerns. In two London focus groups, the Commission heard about disabled residents who were unable to escape from Grenfell Tower.
15. Following the fire, the UN Special Rapporteur on Housing raised concerns about the UK's compliance with ICESCR. The fire and the findings of this Inquiry are likely to be considered in the next examination of the UK by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities. The Commission's participation in the Inquiry would assist in performing its treaty monitoring functions.
16. For these reasons, the Commission believes that it satisfies the test under Rule 5(2)(b) and should be granted core participant status.

### **E. The Commission's participation in the Inquiry**

17. The Commission is mindful that the Inquiry must complete its work quickly and efficiently and must make recommendations to address fire safety in other buildings without delay. The Commission would take a responsible and proportionate approach to participation and does not anticipate that it would be necessary to attend all the Inquiry's hearings. It would seek to cooperate with the Inquiry's legal team to identify relevant aspects of the evidence on which its expertise would be useful. It hopes that its contribution would support both the Inquiry and the victims to achieve an effective and meaningful resolution of the questions posed by the Inquiry's terms of reference.

### **F. Representation**

18. If it is designated as a core participant, the Commission would be represented by its own legal team and would instruct counsel to represent it during hearings. The Commission would meet its own legal fees and would not seek an award of costs from the Inquiry.

Equality and Human Rights Commission

8 September 2017