

FIRE BRIGADES UNION

Statement of case to the ICL Stockline inquiry

Introduction

1. The Terms of Reference of this Inquiry encompass the regulation of activity at Grovepark Mills and the making of recommendations in light of lessons learned. It is to those Terms of Reference that the Fire Brigades Union (FBU) wishes to contribute.

2. Prior to 11th May 2004, members of the FBU carried out inspections of Grovepark Mills as part of their role as Fire Safety Inspecting Officers from Strathclyde Fire and Rescue Service in pursuit of the Fire Precautions Act 1971. The building having been issued with a Fire Certificate under this Act. The FBU is unable to state the dates of most recent inspections prior to the incident because access to records has been restricted by Strathclyde Fire & Rescue Service.

3. Members of the FBU therefore formed part of the regulatory framework that addressed safety issues at Grovepark Mills in the period leading up to the incident.

4. The FBU is in a unique position in that as well as representing the interests of individual Fire Safety Inspecting Officers, at a national level it is also involved in the formulation of the legislation and policies that those officers enforce both in Scotland and in the wider UK. The FBU is therefore able to provide background information to the enquiry that may be of use in the making of recommendations.

5. To assist Lord Gill in fulfilling his Terms of Reference the FBU would like to contribute to the enquiry in the following way:

A. *Role played by Fire Safety Inspecting Officers*

By describing the role played in the regulation of activity at Grovepark Mills by members of the FBU who were working on behalf of [Strathclyde Fire Authority]

This has a particular bearing on our members who may be subject to criticism during this enquiry or in a subsequent report.

B. *Similarity with previous incident*

By describing similarities between regulatory activity events leading up to the incident at Grovepark Mills and regulatory activity events leading up to the fire at the Bradford City Football Club, England, in 1985.

The FBU believes that a recommendation of Mr Justice Popplewell following his enquiry into the Bradford City Football Club fire may be of interest to this enquiry.

C. *Current regulatory framework*

By describing the changes to the regulatory framework and enforcement regime that have occurred in the years since the incident at Grovepark Mills.

Any recommendations that this enquiry may make in light of lessons learned would need to take account of the new regulatory framework and enforcement regime, rather than be based on the regulatory conditions prior to May 2004.

6. A fuller explanation of the FBU's position on the above matters are contained in the following sections of this submission.

A. Role played by Fire Safety Inspecting Officers

Regulatory framework

7. The relevant regulatory framework is (and was in the period leading up to the incident) divided into three parts, each part enforced by a different authority:

1. The provision of safety measures in new buildings or a parts of buildings that have undergone alteration are controlled by a Building Control Authority. Relevant Building Standards apply to matters relating to the structure of the building and means of escape in case of fire.
2. General fire precautions in existing buildings are controlled by the local fire authority. 'General fire precautions' means measures that apply throughout a building. They are typically *not* put in place to address any specific fire risk such as a piece of plant or machinery.

Broadly speaking, it may be said that the control of general fire precautions involves ensuring that those safety measures provided when a building was new or altered, are maintained, serviced and updated where appropriate.

3. Process fire safety in existing buildings is controlled by the Health and Safety Executive. 'Process fire precautions' are those that are put in place to address specific fire risks such as those found in, or presented by, processes, plant or machinery.

Members of the FBU are involved in the execution of the second of these three aspects – the control of *general fire precautions*.

8. At the time of the incident, the regulations that addressed general fire precautions were primarily divided into three parts:

1. The Fire Precautions Act 1971 (the 1971 Act)
2. The Fire Precautions (Workplace) Regulations 1997 (as amended) (the 1997 Regulations)
3. The Health and Safety at Work etc. Act 1974 (Regulations made under this Act) (the 1974 Act)

The Fire Precautions Act 1971

9. The 1971 Act, now repealed, was enforced by Fire Safety Inspecting Officers of Strathclyde Fire and Rescue Service on behalf of [Strathclyde Fire Authority]. The 1971 Act was concerned only with general fire precautions. In practice, this meant that the risk of fire caused by processes was indirectly taken into account when determining the adequacy of fire alarm systems, means of escape and fire protection (general fire precautions), but it did not give Fire Safety Inspecting Officers any powers to directly address the risk itself.

10. This is emphasised by the old Home Office/Scottish Office publication *Fire Precautions Act 1971. Guide to Fire Precautions in Existing Places of Work That Require a Fire Certificate. Factories, Offices, Shops and Railway Premises*:

"Enforcement of fire precautions associated with manufacturing processes and materials stored for those processes or in connection with storage activities is the

responsibility of the authority responsible for the enforcement of the Health and Safety at Work etc Act 1974. In such premises, because of the nature of the activity, both the fire authority and HSE Inspectors could be involved in enforcement. An occupier/owner can obtain advice on process fire precautions from the local HSE Area Office”.

***The Fire Precautions (Workplace) Regulations 1997 (as amended)
and
The Health and Safety at Work etc. Act 1974***

11. The 1997 Regulations, now also repealed, were intrinsically linked to some of the Regulation made under the 1974 Act. The two sets of Regulations were combined together and called “workplace fire precautions legislation”. They were together enforced by [Strathclyde Fire Authority]. Their effect was to require employers to carry out a fire risk assessment, and to implement appropriate control measures – partly filling the gap left by the 1971 Act that did not give Fire Safety Inspecting Officers any powers to directly address the risk itself.

12. However, as with the 1971 Act, this “workplace fire precautions legislation” was also limited to ‘general fire precautions’ only. It did not empower the Officers of [Strathclyde Fire Authority] to control any special precautions in connection with the carrying on of any manufacturing process. That remained the remit of the 1974 Act and the Health and Safety Executive.

13. This is confirmed by the 1997 Regulations which stated that:

“...“general fire precautions” means measures which are to be taken or observed in relation to the risk to the safety of employees in case of fire in a workplace, other than any special precautions in connection with the carrying on of any manufacturing process”.

Involvement of Fire Brigades Union Members

14. The effect of this arrangement for the regulation of activities was that Fire Safety Inspecting Officers on behalf of [Strathclyde Fire Authority] may have issued a Fire Certificate and subsequently inspected the building to enforce the 1971 Act and the 1997 Regulations, but in practice they had no powers to control any hazardous work processes. Their regulatory control only extended to ensuring that *in the event of a fire*, an alarm would be raised, and people could escape safely.

Explosion risk

15. In this particular case, it is understood that it was not fire, but explosion and subsequent building collapse that caused injury and fatality. Mitigating the effects of an explosion were outside of any regulatory powers held by Fire Safety Inspecting Officers.

16. It is the case that under the 1971 Act, occupiers were required to inform the Fire Authority if they proposed to keep explosive or highly flammable materials of any prescribed kind anywhere under, in or on the relevant building, but the 1971 Act did not empower the Officers of the Fire Authority to prohibit, limit or in any way control the keeping of such materials.

Impending new legislation at time of incident

17. It is relevant to note that in October 2006, the 1971 Act was repealed and replaced with Part III of the Fire (Scotland) Act 2005. In the years before October 2006, the impending

replacement of the 1971 Act was well known in the fire industry, and was in fact planned and then postponed on at least one occasion.

18. It was well known during the time leading up to the Grovepark Mills incident that the Fire (Scotland) Act 2005 was on the horizon. It was also well known that this new Act would remove the requirement for fire certification, and concentrate all enforcement procedures on the carrying out of fire risk assessments by employers in a similar way to the 1997 Regulations (which were also to be repealed).

19. All of this coincided with a shift in emphasis throughout UK Fire and Rescue Services away from routine inspections of fire safety legislation at commercial premises, and towards the provision of 'household' fire safety. In 2002, the Government Review into the Fire and Rescue Services; *The Future of the Fire Service* had said:

"A move to a risk-based approach [to the use of Fire Service resources] does not mean that commercial buildings will be neglected. Instead, they will receive the appropriate cover which recognises companies' investment in sprinklers, night security staff and other precautions."

20. Not all companies do invest in "*sprinklers, night security staff and other precautions*", but none-the-less, in the period leading up to May 2004, it was common practice for Fire and Rescue Services throughout the UK (An equivalent legislative situation existed in England/Wales and in Northern Ireland) to be 'winding down' their enforcement of the 1971 Act.

21. New Fire Certificates were only being issued to brand new buildings, it was very unusual for existing Fire Certificates to be amended and updated, and the frequency of 're-inspections' of certificated buildings was reduced.

22. The FBU submits that the regulatory activities of its members at Grovepark Mills in the period leading up to the incident, should be viewed in light of this National situation.

B. Similarity with previous incident

Joined up enforcement

23. As described in paragraph 7 above, in the period leading up to the incident, Fire Safety Inspecting Officers were part of a regulatory framework divided into three discrete areas:

1. Structural fire safety controlled by Building Regulations at the time of construction or alteration.
2. General fire precautions controlled by Fire Certification and "workplace fire precautions legislation" enforced by the Fire Authority.
3. Process fire safety controlled by Health and Safety Regulations enforced by the Health and Safety Executive.

24. This Inquiry may wish to consider the thought that although the regulatory framework is divided into three discrete areas, there should have been better communication between the three relevant enforcing authorities. Such communication may have lessened the likelihood of the incident occurring. The Terms of Reference of this Inquiry include the making of recommendations. Improvements in inter-agency communications may be considered as one recommendation.

25. On this matter, the FBU would like to make reference to the Inquiry into the fatal fire at the Bradford City Football Club, England, in 1985.

26. In his Interim Report¹, Mr Justice Popplewell was of the view that a lack of inter-agency communication was a contributory factor to the outbreak of the fire. His Report states:

"3.95 It is also essential that any information coming to the Fire Authority about matters for which the Health & Safety Executive are responsible, should be brought to their attention. Mr Laird said that if, every time they found some litter lying about which might constitute a fire hazard, they had to notify the Fire Authority, they would never get any work done; it was really a matter for the occupier to be responsible for his own good housekeeping. Naturally it must be a matter of degree but I recommend that there should be urgent consultation between the Health & Safety Executive and the fire authorities and local authorities as to how best to coordinate and communicate their inspections and reports".

27. Effectively, Bradford City Football Club fell down a gap between two of the three regulatory enforcement agencies. This was prevented from happening again at large sports venues because Mr Justice Popplewell's recommendation led to the development of 'joint inspections' of such premises.

28. However, this process of joined up enforcement never filtered through to other premises such as factories. The FBU represents most of the Fire Safety Inspecting Officers employed by Fire Authorities in the UK, and we are not aware of any formal communication mechanisms between enforcement agencies that work effectively at the level of service delivery.

¹ Committee of Inquiry into Crowd Safety and Control at Sports Grounds. Interim Report. Mr Justice Popplewell. HMSO 1985.

C. Current regulatory framework

Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006

29. As far as Local Authority Fire Safety Inspecting Officers are concerned, the regulatory framework is no less complicated following the coming into force of Part III of the Fire (Scotland) Act 2005 (the 2005 Act) and the associated Fire Safety (Scotland) Regulations 2006 (the 2006 Regulations).

30. The following is intended to throw light on the part of the regulatory framework currently in place that is enforced by members of the FBU in Scotland:

Sections 53 and 54 of the 2005 Act place a duty on certain people to

- (a) *Carry out an assessment for the purpose of identifying any risks to the safety of the employees in respect of fire; and*
- (b) *To implement such fire safety measures as are necessary to ensure, so far as is reasonably practicable, the safety of employees in respect of harm caused by fire.*

Paragraph 1 of Schedule 2 of the 2005 Act describes the fire safety measures that must be implemented as:

- (a) *measures to reduce the risk fire and fire spread;*
- (b) *measures in relation to means of escape;*
- (c) *measures for securing that means of escape can be safely and effectively used;*
- (d) *measures in relation to the means of fighting fires;*
- (e) *measures in relation to the means of fire detection and warning;*
- (f) *the arrangements for action to be taken in the event of fire;*
- (g) *such other measures as may be prescribed by the Scottish Ministers.*

However Paragraph 2 of Schedule 2 of the 2005 Act clearly states that:

“Nothing in paragraph 1 shall be construed as including process fire precautions”

“process fire precautions” are not defined in either the 2005 Act or the 2006 Regulations. However they are mentioned in the 2006 Regulations which state that:

““special, technical or organisational measures” means those measures required to be taken or observed in any workplace in connection with the carrying on of any work process”.

Regulation 3(1) then makes it a duty to review an assessment of risk if:

"there has been a significant change in the matters to which it relates including when the relevant premises, special, technical and organisational measures undergo significant changes".

31. FBU members must therefore enforce regulation that requires an assessment of the risk of fire to be carried out that takes account of the fire risk posed by work processes. However they are not empowered to require any fire safety measures to be put in place that directly impact on those work process. The three way split in fire safety regulation therefore remains unchanged.

32. The introduction of new legislation in the period since 2004 therefore does nothing to more closely bind the three legs of fire safety control in workplaces. There is still therefore a potential for issues of fire safety to slip through the regulatory framework.

Resource issues

33. As recommended by Mr Justice Popplewell with respect to the Bradford City Football Club fire, improved inter-agency working may be beneficial in reducing the likelihood of a similar incident occurring again. But the FBU would like this inquiry to be aware that the potential for this is more limited than it was in 1985 when Mr Justice Popplewell made his recommendation, and even more limited than it was in 2004.

34. In an article addressing the ICL/Stockline incident, Hazards magazine² stated that:

"HSE has been forced to cut back on staff numbers and training, close offices and prioritise inspections on a limited number of target areas; slips and trips, workplace transport, falls from height and musculoskeletal disorders. Since 2003, HSE inspectors have been under instructions to look solely at these issues during inspections".

35. At the same time, with no increase in resources, Fire Authorities have been forced to continue to move their focus towards "community fire safety" to the detriment of fire safety legislation enforcement activity. As part of this change in focus, Local Authority Fire Safety Enforcement Officers are now few in number and are receiving less training. Also, there are fewer senior management posts in fire safety enforcement, so officers do not remain within the discipline for as long as they used to because it is no longer seen as a 'career path'. As a result, there is a reduction in overall knowledge and experience of legislative enforcement issues.

36. Finally, the third leg of the regulatory framework, Building Control Authorities, are also suffering from similar problems of resources. In the report *Future of Building Control*³, it is stated that:

"The picture of the building control profession often communicated is one of an ageing workforce which has found it increasingly hard to recruit and retain qualified staff, particularly in local authorities."

37. The FBU would support any recommendation that there should be improved communication between the enforcing authorities associated with fire safety in buildings. However we would stress that any such recommendation should be accompanied by a

² Hazards. October/December 2007. No 100. *Why did they die?*

³ The Future of Building Control. Consultation. Communities and Local Government. March 2008

recognition that without adequate resources, enforcing agencies are currently struggling to deal with issues that fully fall under their own remit. To facilitate effective improvements in communication would require significant injections of additional resources to develop, deliver and sustain effective joint working practices.

Fire (Scotland) Act 2005: Section 8

38. In terms of the current regulatory control of safety in buildings, the FBU has been asked about the application of Section 8 of the 2005 Act. This Section covers *Fire Safety*.

39. In fact, this Section only places a duty on [fire] authorities to promote fire safety by way of information, publicity, encouragement and the giving of advice.

40. As a result, Section 8 of the 2005 Act has no bearing on the risk of an event similar to the Grovepark Mills incident occurring again.

Fire Brigades Union