



## **PREVENTION OF FUTURE DEATH RESPONSE ON BEHALF OF PEABODY TRUST**

### **Introduction & Summary**

1. On behalf of Peabody, we reiterate our sincere condolences to the family of Malika Hibu following her tragic death in February 2024.
2. The inquest into Malika's death in July 2024 found that she died tragically in February 2024 after falling into Regent's Canal. We are grateful for the opportunity to address in this Response four concerns raised by HM Senior Coroner ME Hassel following the inquest in her Prevention of Future Deaths Report dated 7 August 2024.
3. Specifically, we address below the concerns identified in relation to (a) Peabody's knowledge of the ownership boundary in relation to the canal, (b) risk assessment in relation to the barrier to the canal, (c) acting on complaints made by residents about the barrier, and (d) follow-up on safety concerns in relation to barrier.

### **A. Identification of Ownership Boundaries**

#### Existing Policies and Procedures

4. As an organisation, we identify the boundaries of the properties we own from our own records as well as those held at HM Land Registry. We maintain on our systems property shape files obtained from HM Land Registry and update them in line with quarterly updates received from the Land Registry. Where, in the course of a project, the detail of boundary ownership appears unclear from our records and the shape files, we refer to the deed title. In the vast majority of cases, together these records allow us to definitively identify for which land we are responsible.
5. We also, as part of any new development process, conduct research, surveys and site investigations. Our management of any new development follows a due diligence tracker which prompts title and boundary checks. Naturally, when new land is acquired, Peabody also obtains and relies on legal advice and obtains a report on title as to the boundaries of the title obtained.

## Crest Buildings

6. In the case of Crest Buildings and the canal barrier, in legal terms, it is not clear from the property records at the Land Registry who owns and has responsibility for the barrier and the part of the Dock Wall upon which the barrier sits. However, the records relating to the transfer of the Crest Buildings site into Peabody's ownership, and the consents and permissions required to undertake any works affecting the Dock Wall, provide useful guidance.
  
7. The history of the property is as follows:
  - (i) On 31 March 1998, part of the City Road Basin ("**the Basin**") was leased for a term of 40 years from 25 March 1984 to Islington Borough Council ("**the Council**"). The lease is registered with title number NGL614130 ("**the Lease**"). The Lease required the Council to keep in a good state of repair the whole of the Basin "*including those parts of the Waterway wall which are included within the Property*". The Lease did not sub-divide different parts of the "waterway wall".
  
  - (ii) On 10 September 2012, the Canal & River Trust ("**CRT**") was registered as the proprietor of the "**the Basin**" (title number NGL823732).
  
  - (iii) On 24 March 2015, Canal & River Trading CIC ("**CIC**") (a company related to CRT) transferred to Family Mosaic Home Ownership Limited ("**Family Mosaic**") all of the land contained in title numbers AGL279378 and NGL817307, which in particular covers the land at 1 to 98 Crest Buildings ("**the 2015 Transfer**"). The specific areas of land that were transferred are tinted pink and blue on the title plan for AGL279378.
  
  - (iv) The 2015 Transfer stated that the property transferred to Family Mosaic "*does not include the Dock Walls.*" Ownership of the Dock Walls was therefore retained by CIC. The Dock Walls were defined as "*the front and back sides of the retaining walls and false quays (if any) and other banks and edges of any waterways adjacent to the Property and marked as existing between the points "A" and "B" on the Plan.*"
  
  - (v) A note is also recorded on the Register of Title for title number AGL279378 (i.e. the relevant part of Crest Buildings), which says: "*NOTE: As to the parts tinted pink and tinted blue on the title plan the Dock Walls are excluded from the title.*"

- (vi) During the development stage for Crest Buildings, Family Mosaic left the barrier on the Dock Wall in place on the understanding that Family Mosaic did not own that barrier nor any part of the Dock Wall.
  - (vii) In 2017, Peabody merged with Family Mosaic, making Peabody the owner of the land at Crest Buildings that was previously owned by Family Mosaic.
8. Considering that history, issues relevant to the responsibilities of ownership and maintenance of the barrier and the Dock Wall are:
- (i) The Register of Title for the Crest Buildings site explicitly states that “the Dock Walls” are excluded from Peabody’s ownership. The Register does not say that Peabody owns any part of the Dock Walls.
  - (ii) The 2015 Transfer says that the property which was transferred to Family Mosaic and which is now owned by Peabody “*does not include the Dock Walls*”. The “Dock Walls” in the Transfer are defined as “*the front and back sides of the retaining walls and false quays (if any) and other banks and edges of any waterways adjacent to the Property and marked as existing between the points “A” and “B” on the Plan.*” It was and is not clear whether the “banks and edges” of the waterway which are excluded from Peabody’s ownership include the top of the Dock Wall where the barrier sits. It was and is also unclear what the “front and back sides” of the retaining walls, which are also excluded from Peabody’s ownership, refer to. We understand that, legally, the “sides” of the wall cannot mean simply the side “surfaces” of the wall. Taken together, the definition of the “Dock Walls” appears to cover all the relevant parts of the (structurally functioning) wall. We understand that that appears to have been the view taken by the Land Registry, because the Register of Title says the entire “Dock Wall” is excluded from Peabody’s ownership, without referring to any particular sub-parts of the wall.
  - (iii) The walls bounding the water along this part of the Basin had been leased to the Council and the Council was required to keep all of the walls, without any division of particular parts, in good repair. We understand that this suggests ownership of those walls was retained by CIC under the 2015 Transfer.

- (iv) It was and remains the case that any changes to the barrier on the Dock Wall requires both planning permission from London Borough of Islington and the consent of the CRT/CIC.
  
  - (v) In the original planning permission in 2015, the London Borough of Islington had stipulated that *“no gates, fences, boundary treatments or other barriers shall be retained or installed within the site adjacent to the City Road Basin, without the prior written consent of the Local Planning Authority ... the erection, construction, improvement, or alteration of a gate, fence, wall or other means of enclosure within the site shall not be carried out without express planning permission.”* This is consistent with wider public policy in favour of open access to waterfronts, and there remain today many hundreds of housing estates, including residential properties owned by others immediately adjacent to Crest Buildings, which have open access to canals and waterways. Planning permission was granted by the London Borough of Islington on the specific basis that this waterfront scheme should include a high proportion of affordable homes for families.
  
  - (vi) Under the 2015 Transfer, the CRT also maintained a right to moor boats and vessels along the canal edge, including the right to install, retain and maintain mooring rings and other apparatus in connection with mooring. This excludes any right on the part of Peabody to impede access over the Dock Walls.
  
  - (vii) CRT in pre-planning discussions since the inquest has made clear that any installation of new railings on the Dock Walls requires a risk assessment to justify it, must not damage the Dock Walls, must not hinder emergency access and egress from the waterspace, must not impede access to the land or any easements and rights reserved over the land, and must adhere to CRT’s Code of Practice.
9. The first time CRT indicated to Peabody its view that Peabody owns the barrier and the relevant part of the Dock Wall was after the tragic events of February 2024. Similarly, the first time Islington Borough Council indicated to Peabody its view that Peabody is responsible for the barrier was on 16 July 2024, one day before the hearing of the inquest. These views did not address the legal issues surrounding the Register of Title, the Transfer Deed and the Lease that we identified, as above.

## Proposed Action

10. For the reasons we have set out above, the uncertainty concerning ownership and responsibility for the waterfront barrier adjacent to Crest Buildings arose because of a legally complex issue in relation to how to interpret the relevant property records. Peabody did have in place, and continues to maintain, robust procedures to identify and record the boundaries of its properties. However, Peabody is determined that, regardless of the ownership of the waterfront edge, Peabody will do everything under its control to help prevent a tragedy like this from occurring again. We have therefore identified learnings in relation to other aspects of our procedures, as we set out below.
11. Since the tragic incident on 17 February 2024, Peabody has also taken prompt action to work together with all relevant parties to put in place temporary fencing at the canal side which has been inspected by the Royal Society for the Prevention of Accidents (RoSPA), and has prepared proposals to install a new, permanent barrier. We note that we are instructed by CRT that any activity involving the Dock Walls or the current barrier requires the consent of the CRT which must take into consideration the requirements of water users and the rights of the CRT over the Dock Walls and surrounding land. We continue to work with them and all other affected parties, including working closely with our residents, to implement a mutually agreed solution promptly and on a permanent basis.

## **B. Risk Assessment**

### Existing Policies and Procedures

12. Peabody has detailed policies and procedures in place to identify and manage risks at the outset from the design and construction stage. In particular:
  - (i) All schemes are required to be designed in accordance with the design principles, key requirements and guidance within Peabody's Design Guide. It is a core principle of the Design Guide that every resident has the right to see their home as a sanctuary and a place of safety. Accordingly, it requires that Design Teams consult with Peabody's in-house Health and Safety Team.
  - (ii) Peabody's Standard Employer's Requirements to which its contractors are held include a requirement that proposals for suitable edge protection are devised at the contractor's technical design stage. Proposals alternative to the preferred

systems are required to be risk-assessed. Railings are required to enclose front gardens to dwellings where appropriate.

- (iii) A Design Governance Panel reviews whether proposed schemes meet five Design Priorities. Safety is one those five priorities. Proximity to open water was previously assessed as part of that priority where relevant. Since the inquest, proximity to open water and risk mitigation is now explicitly referenced. Accordingly, risk assessment of new waterfront properties on a project-by-project basis included specific review of water safety and, since the inquest, this has now been specifically codified in our procedures to require a water safety review applying the RoSPA risk rating tool. Such reviews consider, for example, the installation of railings, use of boundary markers and lighting, incorporation of signage, water safety education, and systems for site monitoring, as appropriate. Reviews at the property design stage are then followed up by physical inspection and reporting post-construction.
- (iv) Particular attention is paid throughout Peabody's policies to the safety of play areas for children. These are required to be designed according to best practice, specifically to meet the associated BS EN Regulations, the RoSPA's Code of Good Practice for Play Areas, and are inspected by an accredited RPII inspector (Register of Play Inspectors International) who will issue a Post Installation Inspection to define compliance and risk. Peabody's Design Guide and Standard Employer's Requirements for contractors both require that communal areas such as playgrounds and seating areas should be well overlooked and designed to allow supervision from nearby dwellings.

13. In addition, we use a number of strategies to identify risks after residents move into our buildings, including:

- (i) Post-occupation evaluations: We generally review all newly constructed buildings and places from a project-management and a design-quality perspective. Data is collected with a view to learning process or design lessons for future similar projects. Approximately once per year, a recent project is identified for an in-depth review with design, project-management, in-occupation and resident voice stakeholders. Again, the purpose of the review is to learn and incorporate changes to ways of working, design standards, management preferences and the like for the benefit of future projects as well as any changes which might be appropriate for the project in question.

- (ii) Regular block/estate inspections and play space inspections: When risks are identified in the course of our regular block/estate inspections that suggest specific action is required, these are recorded and progressed electronically under our Customer Relationship Management (CRM) case management system. Our inspections follow an Estate Inspections Procedure which sets out a systematic process to ensure we are aware of the conditions of our estates, and that inspections are tracked and managed. The Procedure specifically covers an inspection of health and safety in relation to play spaces, as well as the condition of fencing and gates.
- (iii) Safeguarding awareness: This addresses protective actions that we must take to prevent individuals to whom Peabody has a duty of care from experiencing harm. Anyone concerned about the welfare of one of our residents can raise an alarm by making a referral to us, and we explain to residents how they can do so via our website. Our staff are made aware of the need for safeguarding and we have a dedicated staff member appointed as the Head of Centre of Excellence for Safeguarding to oversee cases and maintain high levels of awareness. We maintain carefully developed safeguarding policies for both children and adults.
- (iv) A complaints procedure by which residents can seek action on particular risks they identify or concerns they have: see below.
- (v) An Accident and Incident Policy: This includes logging and learning from near misses.
- (vi) A further Risk Assessment Policy on hazards and risks in the workplace, which includes our estates.

### Crest Buildings

14. In the case of Crest Buildings, the design and construction of the property was overseen at the time by Family Mosaic, and Family Mosaic obtained planning permission for the property. We are not aware that any concern was raised as to excessive risk from proximity to the waterfront during the planning permission stage; instead, as set out above, the planning conditions required open access to the waterfront to be maintained. Family Mosaic worked on the understanding that, in light of the legal understanding

about ownership (also set out above), the barrier did not belong to them and they could not obstruct access to the waterfront.

### Proposed Action

15. While robust risk assessment and management procedures identified above are already in place within Peabody, we keep our practices under regular review and have considered further insight from the tragic incident in February 2024. We are therefore updating our Design Guide and our Standard Employer's Requirements for contractors to include, as a check-list item, an explicit requirement to conduct risk assessments of adjacency to water and similar hazard types from the design stage onwards. This will reference a requirement for both a design review of proposals and planned risk mitigation, and also a post-installation inspection. We plan to finalise and embed these changes within the Employer's Requirements by 31 January 2025.
16. In addition, in accordance with advice from RoSPA, an audit is being conducted across Peabody estates to inform the formation of a Water Safety Policy across the group to ensure that water risk assessment guidance is properly tailored to the needs of our organisational context. Work on this document is already under way in co-operation with the RoSPA, and we plan to finalise this policy following completion of work on the Employer's Requirements.

## **C. Complaints Procedures**

### Existing Policies and Procedures

17. We have a clear complaints policy and procedure that set outs how we approach complaint recording and processing. This is aligned to the Housing Ombudsman's Complaint Handling Code.
18. Residents are informed of the policy and procedure, in particular how to register complaints so that they can be appropriately logged and actioned, when they move in to our buildings and more information can be found at any time on our website or through calling our customer helpline. In line with the policy and procedure, we record all complaints submitted in this way in our CRM case management system. Our staff are trained on providing formal complaint responses in line with the Housing Ombudsman Complaint Handling Code.



19. We also receive a large number of informal enquiries and communications from residents, for example on routine site visits by Neighbourhood Managers. Where appropriate, these are also recorded and processed using our CRM case management system. As an organisation, our staff record and progress many such enquiries, especially those where follow-up tasks are identified.

### Crest Buildings

20. No formal enquiries or complaints were submitted by residents in relation to the safety of the canal side barrier at Crest Buildings. We understand however that, in 2019, an informal concern was raised about the barrier to the then Neighbourhood Manager on a routine site visit. The then Neighbourhood Manager considered that it was not possible to block off the canal side barrier in view of what was understood about the planning conditions, the policy of the Council to maintain open access to the waterfront, and Peabody's lack of ownership rights over the barrier. We understand that it is because she considered no action was possible and the concern was raised informally in the course of a site visit when various other enquiries and issues will also have been raised, that the issue as to the barrier was not formally logged for processing on the CRM system.

### Proposed Action

21. In this case, therefore, there was a formal complaints processing system in place, but this issue was not further actioned for the reasons stated above. We are satisfied that the various improvements we have made to our complaints systems, processes and culture since 2019 (both to comply with the Housing Ombudsman Code and to reflect our own learning) mean that no additional changes are required to our complaints system and processes at this point.. However, we are strengthening our processes for near miss/hazard reporting (see below).

## **D. Follow-Up on Safety Risks**

22. On 31 October 2023, consistent with Peabody's policies under which staff members routinely visit and inspect its properties to keep safety issues under review, a Peabody staff member conducting a routine visit at Crest Buildings identified that additional waterfront fencing may be required. Because of the understanding that Peabody did not own the barrier or the Dock Wall, he communicated his concern to the Council and sought the Council's assistance. No response was received from the Council. Our staff

member then chased a response on 9 February 2024. Regrettably still no response to the issue was received from the Council before the tragic incident on 17 February 2024.

23. As with the issues above, we have carefully considered learnings from these sad events and have therefore reviewed our policies and practices to ensure that safety risks are identified at an early stage and that, once identified, they are monitored and appropriately mitigated. We note that the reason the concern as to the barrier was not further actioned in this exceptional case was because of the understanding, in view of the legal considerations set out above, that the barrier did not belong to Peabody and that the waterfront could not be obstructed. As set out above, we do have a robust Estate Inspection Procedure, a Complaints Policy, a Risk Assessment Policy, and an Accident and Incident Policy, which would otherwise ensure that such concerns are logged and followed-up. Nevertheless, we plan to raise awareness with our staff members and provide additional guidance that safety observations such as those identified in this case should be formally logged under our existing policies, procedures and systems. We plan to do this by 31 October 2024. As noted, we are also taking steps in coordination with the RoSPA to ensure that waterfront risks are appropriately identified and actioned across our estates with a further Water Safety Policy.

### **Concluding Remarks**

24. We hope this Response and the actions identified above demonstrate that Peabody takes all safety concerns seriously.
25. We reiterate that this tragic case arose from a combination of factors. There have been issues around ownership and planning with conflicting interests concerning public access to the canal (as required by the London Borough of Islington), access and egress to the water (as required by CRT/CIC), and the safety of residents at Crest Buildings. The particular legal complexity in relation to ownership of the waterfront barrier is not common to other Peabody properties. On the other hand, planning conditions and public policy in favour of open access to the waterfront are common and well-established across the country, and there are many hundreds of housing estates, including residential properties owned by others immediately adjacent to Crest Buildings, which have open access to canals and waterways.
26. As explained above, acting on the basis that, as stated in HM Land Registry's title for the property, the Dock Walls did not belong to Peabody, and being aware that the conditions of our planning permission restricted any obstruction of the waterfront through new railings or fencing, in October 2023 we raised our concern with the Council

about the adequacy of the existing barrier and sought the Council's assistance. We were conscious that the Council had firmly required clear access to the waterfront for the public as part of its planning consent, and that residential properties owned by others immediately adjacent to Crest Buildings do not have any barrier at the water's edge at all. Obstructing the waterfront without the approval of the Council would have risked serious legal breaches of our planning permission. Despite the concern we raised, we were not advised that anyone took the view prior to the tragic events of February 2024 that we had the legal right to install any new barrier on the Dock Walls and to obstruct access to the waterfront as we may have considered.

27. Since the tragic events of February 2024, in addition to the strengthening of policies and approaches described above, Peabody has taken swift steps to put in place emergency temporary fencing and develop more permanent safety features at the canal edge. In particular, we have prepared proposals for the installation of new protective railings. We have been instructed, however, that this requires approval from (and changes to various legal agreements with) both the London Borough of Islington and the CRT/CIC. We continue to work with them and all other affected parties, including our residents, to enable Peabody to commission the design, construction and implementation of a mutually agreed solution promptly and on a permanent basis.
28. We remain deeply saddened by the events of 17 February 2024, and repeat our sincere condolences to Malika's family.