

MODULE 1 – OPENING ON BEHALF OF THE KENSINGTON AND CHELSEA TENANT MANAGEMENT ORGANISATION

1. BACKGROUND AND CONTEXT TO THE REFURBISHMENT OF GRENFELL TOWER

The Kensington and Chelsea Tenant Management Organisation (“TMO”) wishes to begin these Phase 2 Module 1 opening submissions by expressing once more its immense sympathy, remorse and sorrow in relation to the horrifying and tragic events that took place at Grenfell Tower on 14 June 2017, in which a large number of valued members of a very special community lost their lives.

The TMO continues to welcome the efforts of the Public Inquiry and remains in full support of the Inquiry’s objective to obtain clear, reliable evidence and to learn all possible lessons so as to improve public safety. The TMO shares the Inquiry’s hope that these efforts will ensure that no such tragedy ever occurs again.

The TMO has provided substantial evidence to the Inquiry in relation to this first Module of Phase 2, which focusses upon the refurbishment project that took place between 2012 and 2016 at Grenfell Tower (“the Project”). Five of the former employees of the TMO are scheduled to give evidence in Module 1 and these individuals are committed to providing evidence to the Inquiry in an open and transparent way.

As the Inquiry will now be aware, the TMO is a tenant management organisation established under section 27 of the Housing Act 1985.

The TMO was established to manage the housing stock of the Royal Borough of Kensington (“RBKC”). The roles and responsibilities of both the RBKC and the TMO under this arrangement were set out in the Modular Management Agreement (MMA) {RBK00019006}. This agreement was drafted in standard form in accordance with Right To Manage legislation as set by the Secretary of State.

The TMO employed staff with the skills appropriate to fulfil the responsibilities set out in the MMA. It follows that the TMO’s employees included specialists in housing management and maintenance. While the TMO did employ staff with experience in managing property repairs and capital investment projects, it did not possess specialist

knowledge in relation to design and construction and any such project would be contracted out externally.

The CDM Regulations provide the regulatory framework for all construction projects. The Project commenced under the 2007 CDM Regulations and was in the final stage of construction when the 2015 Regulations came into force on 6 October 2015. The TMO retained the role of Client under both Regulations, being a company that in the course or furtherance of a business seeks or accepts the services of another which may be used in the carrying out of a project for it.

The 2007 CDM Regulations did not require or expect Clients to plan or manage the projects themselves and, in respect of notifiable projects', permitted Clients without construction expertise to rely on the CDM co-ordinator's advice as to how best to meet their duties (Paragraphs 25 and 26 ACOP CDM 2007). While the role of Client was expanded under the 2015 Regulations, there was still no requirement on it to take an active role in managing the construction work (Paragraphs 30 L153 HSE Guidance on CDM 2015).

It follows that, the TMO was not required to manage the Project itself, but it was required to appoint a team of professionals to plan and manage the project on its behalf.

To coordinate the procurement of this team, the TMO appointed Artelia as the Project CDM co-ordinator, Employer's Agent and Quantity Surveyor. This appointment, discussed in more detail below, was made at an early stage in the planning of the works and well in advance of the commencement of the constructions phase of the works.

In recognition of the magnitude of the project, the TMO established its own project management team to oversee the refurbishment from the Client's perspective. This team included a dedicated Project Manager. While this team possessed an understanding of the construction industry and its legislative framework, and of how projects were procured and delivered from the viewpoint of a Client, it would only ever have delivered a construction project by employing external construction professionals to do so. The TMO would not and could not deliver any construction projects itself.

Ultimately, the CDM Regulations and the Design and Build procurement route permitted the TMO to rely on the professionals it had appointed for the Project.

2. THE DECISION TO REFURBISH GRENFELL TOWER

In 2011, the RBKC advertised through the Official Journal of the European Union (OJEU) process the tender for a project to build a new Academy and Leisure Centre (the ‘KALC’) on the Lancaster West Estate at the base of Grenfell Tower. The KALC project also included the construction of thirty residential dwellings {TMO10001001_0115}. This project was authorised and led by RBKC, with the TMO playing no role.

However, because the TMO were able to identify Grenfell Tower as a major investment priority, and because the RBKC recognised that the residents of the Tower were directly affected by the ongoing works on KALC, discussions took place between the RBKC and the TMO as to whether Grenfell Tower could be regenerated alongside the KALC project.

A significant benefit of bringing the two projects together was shared consultancy work, such that the works could commence more expeditiously. Funding for the Project was primarily generated from the disposal of void basement areas at an RBKC property within Elm Park Gardens.

In identifying the priorities for the Project, the TMO engaged with the community and residents. These discussions revealed that improvements to the internal living conditions for residents could best be achieved by upgrading the communal domestic hot water and central heating systems, and by installing thermal insulation to improve thermal efficiency and fuel economy, as well as installing new windows.

In his Report, the Inquiry’s expert architect Paul Hyett observed that the decision to improve the thermal performance of the Tower was perfectly reasonable, and that of the options available in terms of upgrading the thermal performance of the building, the decision to apply thermal insulation to the outside of the existing external concrete walls was a good one. Mr Hyett further observed that it would have been exceptionally difficult, both technically and in terms of disruption, to achieve the level of upgrade required in terms of thermal performance through the addition of that insulation to the inside of the external walls (paragraphs 2.8.1 to 2.8.4, {PHYR0000002_0052}).

In the early stages of the project, the TMO's involvement was in seeking the necessary approvals from the RBKC, establishing available funds from the RBKC, obtaining Board approval to commence the project, establishing a project team, procuring a pre-contract professional team and assisting that pre-contract professional team in obtaining planning permission.

3. APPOINTMENT OF PRE-CONTRACT PROFESSIONALS BY THE TMO

The KALC procurement route

For the KALC project, the RBKC procured a team of professional consultants by accessing an open and competitive tender and vetting process known as the Improvement and Efficiency South East ("IESE") framework.

The project team for KALC included Studio E as Lead Consultant, Appleyards (Artelia) as cost consultants and Employers Agents, Max Fordham as Structural Engineers and Leadbitter Group as the Principal Contractor.

A decision was made that it would be sensible for the TMO to utilise this pre-existing IESE procurement framework by appointing the same professional team for the Project. The principal benefit of using the pre-existing IESE framework was a reduction in the procurement timeframe, meaning that improvements to residents' homes could be delivered earlier, thereby reducing the length of disruption to residents and potentially giving rise to cost and delivery efficiencies.

The TMO understood that all the appointments for the £57.8 million KALC project would be qualified and competent to carry out the then approximately £9 million refurbishment project at Grenfell Tower. However, because this procurement method did not meet the full requirements of the TMO's procurement Standing Orders, Board approval in the form of a waiver was requested and granted on 29 March 2012. This waiver did not mean that the professional team appointed for the Project was in any way subject to lesser standards in terms of experience, quality and competency.

The appointment of Artelia

The Project was governed by the Construction (Design and Management) Regulations 2007 and 2015.

The general duties of CDM-Coordination were set out in s 20 of the 2007 Regulations. These included a duty to give suitable and sufficient advice and assistance to the Client on undertaking the measures it needs to comply with the Regulations during the project. For this reason, the appointment of Artelia at any early stage was an important action for the TMO to take to ensure that it understood its duties as Client.

Artelia's appointment was to cover services in three areas:

- 1) To provide Employer's Agent (EA) Services: that being to act as the EA in respect of the Design and Build contract and to be responsible for administering the Design and Build contract and for monitoring the progress of the contract. The specific EA services for the project are those which were ticked in the RICS schedule that is attached to the EA's contract {ART00005742}.
- 2) To provide Quantity Surveyor (QS) services: that being to provide the TMO with advice as to how to control the costs of the project and estimating contractor costs and building materials needed. The specific QS services required for the project were those ticked in the RICS schedule attached to the EA's contract {ART00005742}.
- 3) To act as the CDM Co-ordinator (CDM-C).

The fee proposal from Artelia for the role of CDM-C, Employer's Agent and Quantity Surveyor is dated 2 May 2012 {ART00006358} and the TMO's acceptance of the fee proposal was on 21 August 2012 {ART00006544} and Artelia were introduced to the project at an Initial Design Team Meeting for the project on the 19th April 2012 {ART00006544_0005}.

The distinction between pre and post contract

The Project followed the Industry-wide recognised Royal Institution of British Architects ('RIBA') Outline Plan of Work 2007 (updated in 2013) (often referred to as 'the RIBA Work Stages'). The Outline Plan of Work organises the process of managing

and designing building projects and administering building contracts into a number of key Work Stages. The sequence or content of Work Stages can vary or overlap to suit the procurement method.

The way that building projects, including that which took place at Grenfell Tower, are procured tends to be in two distinct phases, known as;

- ‘Pre-contract’ up to the point the Building Contract is awarded, reflecting RIBA Work Stages A to H covering Preparation, Design, Pre-construction.
- ‘Post-Contract’ from when the Building Contract is awarded to the end of the Rectification Period, reflecting RIBA Work stages J to K covering Construction.

The RIBA Work Stages set out in detail what is required at each stage. The intention of using competent contractors is that they will understand fully what is required and what their respective roles and responsibilities are under the various professional appointments to deliver the project.

4. PRE-CONTRACT PHASE

Establishment of Pre-Contract Professional Team (PCPT)

The pre-contract professional team (“PCPT”) appointed by the TMO for the refurbishment of Grenfell Tower consisted of the following professionals:

Artelia	CDM-Co-ordinator
	Employers Agent
	Quantity Surveyor
Jenny Jackson	Procurement Advisor
Studio-E	Architect
	Lead Consultant

Curtins	Structural Engineer
Max Fordham	M&E Engineer
CS Stokes	Fire Risk Assessor
Exova	Fire Safety Consultant
	(Appointed by TMO to report to Studio E and paid by TMO)
Churchman	Landscape Architect
IBI Taylor Young	Planning Consultant
Syntegra Consulting	BREEAM Assessor

The differing roles and responsibilities of the various members of the PCPT in relation to ensuring that the design was fully compliant were set out in the various professional appointments.

As Client, the TMO's role in the pre-contract phase of the Project was to monitor and manage progress of the refurbishment works against budget to ensure delivery of the programme. Its role was also, together with contractors, to liaise with residents, who remained in situ during the works, to facilitate works within residential areas.

The TMO reasonably expected and relied upon the fact that all contract services were the responsibility of the professional team appointed and would be carried out competently and as per the terms of the RIBA stages of work. The TMO relied on the regulation of these professionals by the respective codes of conduct, rules and regulations of their professional bodies.

Lead Consultant Pre-contract

Studio-E were appointed to provide the full architectural services as set out in the RIBA 'Standard Conditions of Appointment for an Architect 2010', including the Schedules of

Project Data, Services and Fees and Expenses, and Appendices A-E ({SEA00004571}, amended October 2011 as {SEA00009822}).

Studio E were appointed as Lead Consultant, Lead Designer, ‘Architect as Designer’ and ‘Landscape Designer’. In the first three instances the appointment was in fact for stages A-L which is the complete RIBA stages of work, constituting a complete service of works from inception to completion {SEA00009824}.

Design Compliance Pre-contract

The PCPT was responsible for the design of all the works pre-contract necessary for the Project and for ensuring that the design was compliant with all necessary legislation, codes of practice, best practice and Building Control requirements. It was not the role of the TMO as Client to be part of the PCPT. The TMO relied on the professional team it had appointed for design compliance, and in doing so, took comfort from the fact that the PCPT also engaged with;

- The RBKC Planning Department - in relation to Planning Permission, Discharge of Conditions and amendments, and
- RBKC Building Control - in relation to complying with Building Regulations,

to ensure that all aspects of Planning and Building Regulations were fully dealt with and complied with.

At the pre-contract stage, Studio-E were responsible for compiling the design and the specification for the works, which included the windows and the cladding system. The mechanical and engineering aspects of the design were dealt with by Max Fordham. The fixings for these items required input from Curtins however Studio-E as Lead Consultant was responsible for these design elements in order to take them to the tender stage.

As both Curtins (Structural) and Max Fordham (M&E) had input into the design process, they were also responsible for ensuring at the pre-contract stage the compliance of their designs and specifications so that tenderers could price as accurately as possible.

Additionally, at the pre-contract phase, Studio E was responsible for ensuring that a design risk assessment was compiled, reviewed and updated when appropriate.

The procurement route

The procurement route advised by Artelia for the Project was one of Design and Build. A Design and Build procurement route is one where a main contractor is appointed to both design and construct the works, as opposed to a traditional contract, where the client appoints consultants to design the development and then a contractor is appointed to construct the works. In a Design and Build contract, responsibility for obtaining statutory approval passes to the main contractor, including responsibility for the discharge of Planning Conditions and for receipt of Building Control approval.

At an early stage in the project, Artelia engaged with Leadbitter with a view to appointing Leadbitter as the Principal Contractor pursuant to a Design and Build contract. As explained earlier, Leadbitter had been the Principal Contractor appointed by the RBKC for the KALC project.

At a TMO Board meeting on 15 November 2012 {TMO10001939}, Mark Anderson presented a paper {TMO10001766} seeking approval for the progression of the detailed design and tender package phases of the Project and recommending the appointment of Leadbitter as Principal Contractor, and for the TMO to enter into a preconstruction agreement with Leadbitter.

It was reported that the Project comprised two elements; regeneration of the exterior of the Tower and renewal of the internal building services installations and fabric. The total project budget for the combined works at that time was £9.4 million, comprising £6 million regeneration works and £2.5 million capital programme works with a £0.9 million contingency.

As of January 2013, the Project was progressing and the TMO understood it to be at an advanced stage of pre-contract design and planning. However, Artelia then brought to the attention of the TMO that the scheme costs put forward by Leadbitter were at variance with Artelia's estimates. Leadbitter was also very slow in providing cost information and responding to requests.

Discussions were had about the difference between Artelia and Leadbitter's estimates for work packages. At that time the budgeted costs for refurbishment were £9 million while costs presented by Leadbitter were £12m-£13m, which Artelia advised did not represent value for money. The TMO was also concerned about Leadbitter being taken over by Bouygues, who lacked experience working with residents in occupation. It was very important to the TMO on behalf of the residents that the contractors demonstrated their ability to work alongside residents in situ and to be sympathetic to their needs and issues.

On 10 April 2013, Paul Dunkerton emailed Robert Powell of Artelia in respect of these issues and queried what it would mean if the TMO decided to re-procure {ART00007532}. After a short hiatus, on 11 June 2013, Phillip Booth of Artelia emailed the TMO a draft revised programme, exploring two potential procurement routes: Office of the Journal of European Union ("OJEU") and the London Housing Consortium Framework {ART00007499} and {ART00007545}. Mr Booth explained that the OJEU process would take a month longer, but would be a more open procurement option requiring a Pre-Qualification Questionnaire. He explained that the OJEU process would be open to Leadbitter.

By 25 July 2013, the Board agreed market test the Design and Build contract through an OJEU procurement process to ensure that a Principal Contractor with the right skills and proven experience of working alongside residents was procured, and to achieve value for money {TMO10002849}. In this context, value for money meant exploring possible design and material changes which would not compromise quality or safety, or compliance with relevant legislation.

Artelia led the procurement exercise with advice from Jenny Jackson, an external procurement consultant engaged by TMO to ensure that the procurement rules were followed correctly. It was important that TMO staff and residents were involved in scoring the tender and there was a costs and quality matrix to follow.

Value engineering - general

Following the return of tenders, the successful tenderer was identified as Rydon. However, the winning figure of was still in excess of budget advised by Artelia and

therefore Artelia suggested that a value engineering exercise should be carried out by the PCPT.

Value engineering is a recognised and common industry practice specifically referred to in the RIBA Stage Guide. It may be summarised as:

‘A systematic and organised approach to provide the necessary functions in a project at the lowest cost. Value engineering promotes the substitution of materials and methods with less expensive alternatives without sacrificing functionality.’ (RIBA Stage Guide 2015).

What this meant in practice was that, together with the successful contractor Rydon, the PCPT looked at ways to reduce the overall figure by exploring alternative designs, materials, and methodologies that would result in cost savings. As observed by Paul Hyett in his Expert Report:

‘Competitive tendering and on-going value engineering are themselves intrinsic parts of most UK construction projects. Indeed, they lie at the heart of virtually all manufacturing and service supply processes within and outside the construction industry both within the UK and across free market economies more widely.’ (para 2.8.13).

The TMO entered into a pre-contract agreement with Rydon that allowed it to develop the details of the work and to enable the Planning Permission to be progressed prior to signing of the contract. Rydon were then appointed as the Principal Contractor, complying with the requirement of Regulations 14(2) of CDM 2015 on the TMO as Client to promptly appoint a Principal Contractor to plan, manage and monitor the construction phase of the Project.

It was the TMO’s firm understanding that this value engineering exercise was standard industry practice and would in no way compromise on quality or safety. While there will inevitably be pressures on budget in any multi-million project, it was never the TMO’s policy or approach that this should negatively impact on quality or compliance.

As part of a Contractor Introduction Meeting on 1 April 2014, the following proposals were presented by Rydon as part of a value engineering exercise {ART00002255}:

£376,175 – switching zinc cladding to aluminium cladding

£35,004 – omission of crown design

£60,074 – omission of window louvres

£116,608 – pre-finished window board

£20,650 – alternative flue manufacturer

£20,870 – carbon steel for pipework in lieu of stainless steel

At no time were any concerns or issues of design non-compliance arising out of the value engineering exercise raised with the TMO by any of the PCPT, as would have been the TMO's absolute expectation.

Value engineering - cladding

In relation to the cladding specifically, prior to the tender exercise, a number of cladding material options were presented to the TMO by the PCPT.

Two of the cladding options identified by the PCPT were zinc and aluminium. The tender requirement was for the applicants, including Rydon, to price several cladding options including zinc and aluminium. The purpose of this was first to test the cost and second to keep options open as Planning Permission for the project had not yet been achieved.

It follows that the Planners considered both the aluminium and zinc options. On 6 May 2014, Rydon sent an email to Claire Williams advising “Proposal of material change to the facade. From Zinc to Aluminium composite (ACM). Put forward our case that ACM is not an inferior product to Zinc” {ART00008792}.

Given its role as Client, the TMO was not involved in any assessment of compliance with the Building Regulations. At no point did any of the professionals appointed by the TMO, or RBKC Planning, raise any issues or concerns with the TMO that either zinc or aluminium cladding might not be safe or compliant with current regulations.

Fire Safety and Engineering

The PCPT advised the TMO of the need for a fire consultant on the Project and for this reason, the TMO appointed an external consultant, Exova Warringtonfire (“Exova”). Exova’s primary task was to consider and review the refurbishment proposals and to determine and recommend the fire safety strategy for the Tower. This required Exova to consider the existing arrangements and the proposed design in terms of fire prevention, fire safety and fire resistance standards.

Exova was appointed by the TMO on two occasions. First, on 18 July 2012 in respect of fire safety engineering services as part of the refurbishment {EXO00000543} and second, on 31 July 2012 to prepare a fire strategy for the existing building {EXO00000122}. While the TMO paid for those services, in practice Exova provided the findings of its assessments to Studio E, on the basis that it was the architect who would be utilising and relying on the specifications in terms of fire engineering. It was not the TMO’s role, nor did it have the expertise to, lead on fire engineering matters.

Exova produced reports to Studio E dated 31 October 2012 {ART00001868} and 24 October 2013 {TMO10049904}, with a third signed report bearing two different dates, namely 5 November 2013 and 7 November 2013 {TMO10017186}.

It was reported in section 3.4.1 in each of these reports in respect of section B4 of the Building Regulations 2010 that the proposed changes would have no adverse effect on the Tower in relation to external fire spread but that would be confirmed by analysis in a future issue of this report. Exova further advised Studio E that to comply with section B3 of the Building Regulations 2010, all new elements of structure would be constructed to have the same standard of fire resistance as that of existing elements. Exova also advised that compartment walls and/or floors would be provided between apartments and as between apartments and common areas with 60 minute standard of fire resistance unless they formed part of the structural frame of the building, where they would have a 120 minute standard of fire resistance. Exova also noted that doorways within compartment walls would be fitted with self-closing doors having a 60-minute standard of fire resistance except where a different standard will be necessary to satisfy B5.

It is now understood that Exova suggest that its finding regarding external fire spread was not intended to relate to the cladding. This is a surprising assertion to the TMO. It is suggested that by not enquiring about the cladding, Exova may have created confusion within the PCPT about its views on the overall safety of the proposed changes to the Tower. If this comment was not intended to relate to the cladding, the TMO questions whether Exova did enough to enquire about the intended external cladding system and to give advice as the scheme fire engineer.

Once appointed, it was a matter for Rydon to assess whether it needed external fire engineering support. The decision by Rydon not to employ Exova once appointed was theirs to make as the Design and Build Contractor.

Summary of the pre-contract stage of the Grenfell refurbishment

The TMO took reasonable steps to ensure that it appointed competent and experienced specialists as part of its PCPT. The TMO had no evidence or reason to doubt the professionalism or ability of any of the appointees. The TMO relied on the PCPT team to act professionally on behalf of the Client.

At no time were any concerns raised by any of the PCPT to the TMO regarding any issues of design non-compliance, throughout the procurement, design and value engineering stages. Had any of the PCPT had any concerns about the compliance or safety of the design, the TMO would have expected such concerns to be brought to its attention. In fact, the TMO would have been entitled to expect that any design or material options which were not compliant or safe would not be presented to it at all.

5. POST CONTRACT PHASE

Once Rydon were procured as the Principal Contractor and Design and Build Contractor pursuant to a Joint Contract Tribunal (“JCT”) Design and Build contract, it took on responsibility for both the design and construction work {TMO10041791}.

Under a Design and Build contract, the main contractor is responsible for both the design and the contract work. The contractor must carry out the design and construction in accordance with the Employer’s Requirements. The Employer’s Requirements for the

Project were prepared by Studio E on behalf of the TMO on 23 November 2013 {RYD00001712}.

The procurement of a Design and Build Contractor is covered under the RIBA Work Stages and all professional construction consultants would understand this process and work in accordance with the requirements of the various stages.

The TMO Board agreed to enter into a pre-contract agreement with Rydon Construction Ltd with a total scheme cost of £9.7million. The Board was advised that there was further work to be done to finalise the detailed design and achieve the necessary planning permissions. Residents were advised of the project tender acceptance in a Grenfell Tower Regeneration Newsletter dated April 2014 {TMO00837550}.

To assist it in fulfilling its responsibilities, Rydon appointed the following team:

Architect	Studio-E (by direct appointment)
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Structural Engineer	Curtins (novated)
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Smoke Management	PSB
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M&E Engineer	JS Wright & Co
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Specialist sub-contractors

As a consequence of Rydon's appointment, the composition of the TMO's PCPT underwent a transformation to the following:

Artelia	CDM-Co-ordinator
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	Employers Agent
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	Quantity Surveyor
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Max Fordham	M&E Engineer
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CS Stokes	Fire Risk Assessor
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Churchman	Landscape Architect
IBI Taylor Young	Planning Consultant
Syntegra Consulting	BREEAM Assessor
John Rowan & Partners	Clerk of Works (Architectural)
Silcock Dawson (sub-consultant of John Rowan & Partners)	Clerk of Works (M&E)

In the post contract phase, the TMO's role was to monitor and manage progress of the refurbishment work against budget to ensure delivery of the programme and to liaise with residents to facilitate works within residential areas. It was also the TMO's role to report on progress and budget to the its own Executive and Board, and to the RBKC.

Lead Consultant Post-contract and responsibility for design compliance post contract

Following the appointment of Rydon, Studio E entered into direct contractual relationship with Rydon, with a corresponding collateral warranty with the TMO as the beneficiary. The Rydon/Studio-E Deed of Appointment provided a comprehensive list of services which Studio-E were required to provide to Rydon {RYD00094228}.

Curtins were then novated to Rydon on an ab initio basis. This meant that all responsibility for structural engineering was transferred to Rydon. A collateral warranty with the TMO as beneficiary accompanied this novation.

Once appointed, Rydon became responsible for ensuring that the design was in compliance with all necessary legislation, codes of practice, best practice and the like as set out in the JCT Design and Build Contract clause 2.17 below {ART00008194_0020}

Clause 2.17

Delete clause 2.17 and heading and insert:

- “2.17.1 The Contractor shall (to the extent set out in clause 2.17.2.1 below) be fully responsible in all respect for the design of the Works including:
- 2.17.1.1 any design contained in the Employer’s Requirements and for any discrepancy in or divergence between the Employer’s Requirements and/or the Contractor’s Proposals and/or any drawings, details, documents and other information submitted by him in accordance with clause 2.8;
- 2.17.1.2 but not limited to the co-ordination and integration of all design and the interface between design elements for the Works whether carried out by the Contractor or by any other party engaged on the Works and the Contractor shall adopt and take responsibility for any design work in relation to the Works which may be carried out or which may have been carried out by professional consultants or specialist Sub-Contractors or by any other person at the request of the Employer;
- 2.17.1.3 all aspects of design development, selection of goods and materials and the satisfaction of performance specifications included or referred to in the Employer’s Requirements, the Contractor’s Proposals, this Contract or any Change.
- 2.17.2 without prejudice to any expressed or implied warranties or conditions or to the generality of clause 2.17.1, the Contractor warrants to the Employer that:
- 2.17.2.1 the design of the Works (including any design carried out by any design consultant or any sub contractor with design responsibility or by any other person whether or not employed or engaged by the Contractor) has been and will be carried out using all the reasonable skill and care to be expected of a professionally qualified and competent design and build contractor experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Works;

2.17.2.2 subject to clause 2.17.2.1, the Works will when completed comply with any performance specification or requirements included or referred to in the Employer's Requirements or the Contractor's Proposals, this Contract or in any Change;

2.17.2.3 subject to clause 2.17.2.1, the Contractor shall design and construct the Works in compliance with all Consents (including the discharge of any reserved matters in planning consents relating to the Works), Statutory Agreements, Statutory Requirements, relevant codes of practice British Standards of EU equivalents and manufacturers recommendations and the requirements of the insurers of the Employer (insofar as details have been provided to the Contractor at the date of this Contract)."

As discussed in more detail below, the TMO was aware that the Design and Build Contractor and post-construction professional team also engaged with the RBKC Planning Department and Building Control to ensure that all aspects of Planning and Building Regulations were fully dealt with and complied with.

In light of those contractual responsibilities, the statement from Rydon's Refurbishment Director Stephen Blak at paragraph 6.1 of his witness Statement {RYD00094225_0010} that Rydon's role was not to undertake any design work or to carry out construction work is surprising.

While not a requirement under the Design and Build contract or the CDM Regulations, at the post contract phase, the TMO took the additional step of employing two Clerk of Works, namely;

- Clerk of Works (Architectural) – John Rowan & Partners
- Clerk of Works (M&E) – Silcock Dawson (a sub-consultant of John Rowan)

to report independently to the TMO upon the construction as the work proceeded

RBKC Planning and Building control

The TMO were aware of and relied upon the crucial role of RBKC Planning and Building Control in determining whether the refurbishment works were compliant with current legislation. Building Control were the appropriate assessor for the Project, as opposed to an Approved Inspector, due to their closeness to the Project in the form of their knowledge of Grenfell Tower as part of RBKC housing stock and their work on KALC.

The TMO were aware that RBKC Planning and Building Control were involved in dialogue with Studio E about the Project from a very early stage {RBK00033904}. The TMO is aware that Exova met with Building Control on 6 November 2012 to discuss the fire safety strategy for Grenfell Tower, demonstrating that formal dialogue existed between the consultants and the planners was from an early stage {EXO00001371}. Furthermore, the TMO is aware that Building Control had reviewed the Exova Outline Fire Safety Strategy Issue 2 dated 31/10/2013 {RBK00003810}.

The TMO was aware that the Project required a full planning application. The applicant was Rydon, with Studio E submitting the application on Rydon's behalf to RBKC Building Control on 4 August 2014 {RYD00014378}. Included in this application was the fire strategy prepared by Exova.

It was appropriate for the TMO to rely on Rydon and Studio E to competently prepare and submit the full planning application on its behalf. The TMO would have expected RBKC Planning Control to raise any issues with the adequacy of any applications with the appropriate parties. At no point did Studio E or Building Control raise any issues with the TMO as to the adequacy of the fire strategy.

The TMO is aware that RBKC Building Control attended Grenfell Tower on multiple occasions to inspect the works. At no time throughout the process did RBKC Building Control raise any issues in relation to fire safety in respect of building materials, the fire safety strategy or the works with the TMO.

Value Engineering Post-contract

After the contract was awarded to Rydon, which included the cost savings from the Pre-contract Value Engineering exercise, there were no further cost savings achieved through any Value Engineering initiatives.

It is often a subject that is discussed when there is a desire to reduce escalating costs, however, on the Grenfell Tower refurbishment no further Value Engineering was undertaken in the Post-contract phase.

Client Designer Adviser Role

It is suggested that within the witness statements of Artelia that the TMO should have appointed a Client Designer Adviser role (CDA) in the post-contract phase of the refurbishment project. However, the Client Design Advisor is not an appointment referred to in the 2007 CDM Regulations or the ACOP guidance that accompanies those Regulations.

Artelia had been appointed to a number of roles in the project. CDM-C, Employer's Agent and Quantity Surveyor. The CDM-C role included taking reasonable steps to ensure that designers complied with their duties (see Regulation 20(2)(c)). Additionally, in their form of appointment, Artelia confirmed themselves to be designers. Clause 4.2 of the Appendix to Artelia's appointment sets out that "the Consultant is a designer" for the purposes of the CDM Regulations. This made it clear to the TMO that Artelia did have design capacity.

Furthermore, clauses 1.3.2, 1.4.4 and 1.51 of the Appendix to Artelia's appointment {ART00005742} state that they are to establish and agree approvals including to ensure that design sign offs are carried out. Further, in regard to the role of Employer's Agent, Schedule 1 of the JCT (2011 edition) Contract is titled Contractors Design Submission Procedures which details the design review process specifically for the project {ART00008194}.

Further, the TMO had appointed a complete professional team comprising of architects, M&E consultants, Structural Engineers and a very experienced Principal Contractor, all of whom had design responsibilities.

As Artelia explained it to the TMO, the CDA role would not touch on those discrete areas of the Project where aspects of the project required the specialist knowledge of a designer. This is evidenced in an email from Claire Williams to Peter Blythe and Phillip Booth of Artelia {ART00002701_0001}.

For all these reasons, the TMO did not see what the role of CDA offered and did not think that Artelia asking seeking fees for a role that did not apply to specialist issues, such as cladding, was justified.

In connection with the same issue, the witness statement of Simon O'Connor of Rydon suggests at paragraph 18 that the TMO would be carrying out the role of the client design advisor in house and would be "signing off" all design decisions. For the reasons stated above, this is not an accurate statement.

The Provisions of Pre-construction Information under CDM 2007 Regulations

Both the TMO and Artelia had duties under CDM 2007 to provide pre-construction information. The TMO's duty was to provide Artelia with any information that would assist in their preparation of the Health and Safety file.

The TMO at all times understood Artelia to be complying with their duty to prepare this file, including relying on the detailed document 'Pre-Construction Information for the Royal Borough of Kensington and Chelsea Tenant Management Organisation (TMO) Enhancements and Improvements to Grenfell Tower' {RYD00092644} which set out that the document had been prepared in accordance with the requirements of CDM 2007 and was provided to the contractors to comply with in respect of the provision of relevant health and safety information.

Health and Safety File under the CDM 2007 Regulations

In addition to appointing a CDM-C and a Principal Contractor, the TMO as Client under Regulation 3(3) of CDM 2007 regulations was required to retain a Health and Safety file.

As CDM-C, Artelia were responsible for preparing the Health and Safety file where none existed and for updating this file in respect of the refurbishment works pursuant to Regulation 22(2)(e) of CDM 2007 as this was a notifiable project.’

The purpose of the Health and Safety file is:

‘ ... to ensure that, at the end of the project, the client has information that anyone carrying out subsequent construction work on the building will need to know about in order to be able to plan and carry out work safely and without risks to health’ (Para 45 HSE Guidance on CDM 2015).

The Health and Safety file is not required to follow a set format and may be combined with a Building Regulations Log Book or a maintenance manual. Under both CDM 2007 and CDM 2015 there is a requirement for the Client to maintain the file for the purposes of assisting ‘anyone carrying out subsequent construction work’. The Regulations do not envisage that it will be available for the purposes of an emergency.

Principal Designer under the 2015 Regulations

On 6 April 2015 the CDM Regulations 2015 came into force, introducing the concept of a “Principal Designer”. There were transitional arrangements for implementation of the Regulations with a grace period of 6 months to achieve compliance including for the appointment of a Principal Designer where a project was already underway on 6 April.

The original contract completion date for the Project was 4 September 2015. Because the construction work was behind schedule, the TMO were required to appoint a Principal Designer in the very final stages of the construction work.

As Artelia were the TMO’s CDM-C and Employer’s Agent under the CDM Regulations 2007, the TMO was reliant on Artelia to inform it of this necessity and to advise it on how best to undertake the appointment. During the transitional period the CDM-C was required to liaise with the Principal Contractor over the content of the health and safety file (paragraph 5(d)(i) Schedule 4 CDM 2015). This requirement was then shifted to the Principal Designer under CDM 2015.

On 24 September 2015, less than two weeks before the CDM Regulations 2015 came into force, Simon Cash of Artelia emailed Claire Williams of the TMO to inform it that

Artelia would be consolidating the CDM-C document for the refurbishment project so that it could be issued to the Principal Designer under the new CDM Regulations 2015.

Claire Williams replied to Simon Cash the following day seeking confirmation that Artelia would be retaining the Principal Designer role {ART00006502}. The TMO's understanding at the time was that the CDM-C role under the CDM Regulations 2007 was essentially being split under the 2015 regulations between the Client role and the newly created Principal Designer role. It follows that the TMO's expectation was that Artelia would take over the role.

That same day, Paul Burrows of Artelia replied formally advising the TMO that under CDM 2015 the CDMC role had been abolished. He explained that the role was not a change of name only but a change of duties and expected competencies, with a focus on designers designing out risks and, where that was not possible, identifying the type of mitigation they envisaged to be used by others working on the structure at a later date. Attached to that email was a chart summarising the roles of the different duty holders under the new regulations. Artelia advised that they were unable to take on the role as their professional indemnity would not allow it.

The TMO then contacted a construction consultancy called Bailey Garner who advised that they were unable to take on the Principal Designer role as they had not been involved in the refurbishment project since its inception.

Claire Williams then called Simon Cash to discuss the TMO's options. He advised that the first port of call for the role should be Rydon as they were ultimately responsible for the design under the Design and Build Contract. He then advised that if Rydon would not take on the role of Principal Designer, the TMO should ask Studio E through Rydon {ART00006195}.

Claire Williams then emailed Simon Lawrence of Rydon querying whether Rydon would be able to take on the role of Principal Designer for Grenfell, or whether it would look to contract this out to Studio E. He responded advising that Rydon would not be able to take on the role. He explained that on all of Rydon's other contracts the CDM-C had been transferred to the Principal Designer {ART00006174}. As explained above,

this was the TMO's understanding of what would happen however Artelia declined to take on the role.

On 28 September 2015, Claire Williams emailed Neil Reed of Artelia, as CDM-C and Employer's Agent, seeking advice as to what the TMO should do if a natural Principal Designer was not forthcoming from within the team {ART00006174}. She recorded in an email at the time feeling "at a loss" as the architect and Principal Contractor had both declined to take on the role, as had Artelia.

It is the TMO's belief that had Artelia as the TMO's CDM-C and Employer's Agent explained the nature of the Principal Designer role and Artelia's inability to take on the role to the TMO earlier, the TMO would have had more time to consider its options. In reality, the TMO was given less than two weeks to find a Principal Designer. The appointment was further complicated by the fact that none of the parties involved in the design from inception would take on the role, nor would the external consultant approached on the basis that it had not been involved since inception.

On 1 October 2015, Claire Williams emailed Neil Reed highlighting various issues in relation to the project. In respect of the change in CDM regulations, she queried as follows:

"CDM Regulations change: As long as the project team agree the Design is fundamentally complete then we believe the provisions within the legislation allow KCTMO to request the Principal Contractor to compile the H&S File and issue direct without the formal appointment of a Principal Designer. Can we get this put into the meeting next week – and check that the team agree the design is 'fundamentally complete' – and get this minuted?" {ART00004824}.

Artelia did not advise TMO as to how this aspect of the project should be managed when the role of the CDM-C finished as a result of the commencement of CDM 2015. The TMO took steps to enquire who would assume the role and Artelia, Rydon and Studio E all refused to adopt the role. This left the TMO no real choice but to assume the role itself, however this was on the understanding that Rydon would be responsible for preparing the Health and Safety file.

The original completion date for the refurbishment was 4 September 2015 by which point the design aspect of the refurb was fundamentally complete. In Progress Meeting no 17 on 17 November 2015, it is recorded that it was agreed that the project was in the latter stages and that Rydon would be responsible for collating and presenting the Health and Safety file information in accordance with the Employer's Requirements and then present this to the TMO on completion of the Project {ART00006158}. It was anticipated that Rydon were either in receipt of, or in a position to obtain, all relevant information to be included in the Health and Safety file.

Had further design work arisen in the period in which the TMO was appointed Principal Designer and completion of the project, this would undoubtedly have been referred to Rydon and the professional team.

Health and Safety File under the 2015 Regulations

At the conclusion of the project the TMO were provided with a Health and Safety file by Rydon on a memory stick. In turn this was disclosed to the Deputy Solicitor to the Inquiry Ms Nasser on 20 December 2017. Dr Barbara Lane makes no direct reference to having reviewed these particular documents in her Report and this is a matter that will need to be explored during Phase 2 of the Inquiry.

In her report, Barbara Lane is critical of the contents of the Health and Safety file provided by All Group Holdings on behalf of Rydon to the TMO {BLARP20000001}. At the time of drafting these submissions, no witness statements or documents have been made available from All Group Holdings.

The TMO would not have had the technical expertise to assess whether the Health and Safety File complied with the statutory requirements. They had been advised by Rydon that it was sub-contracting compilation of the file to All Group Holdings. The TMO had no reason to doubt that it would not be undertaken in a suitable and sufficient way to comply with relevant legislation.

In addition, for extra assurance Claire Williams sent the file to Tony Batty who worked for John Rowan and who was experienced in system installation and maintenance, to comment on the M&E sections. He identified some missing items and this was fed back

through Rydon. It was not suggested to the TMO that the final version was in any way deficient.

Regulation 38 of the Building Regulation 2010 require that where building work involves the erection or extension of a relevant building, fire safety information shall be given by the person carrying out the work to the responsible person at the completion of the project. If a building manual was required, the TMO was reliant on Rydon and Artelia to liaise and produce a compliant manual and on Building Control to request and review any such documents.

Inspections of the Construction work

Rydon had the responsibility under the Design and Build Contract to comply with all legislation, standards and Building Regulations and to obtain Building Control approval. All matters relative to Building Control were therefore dealt with directly between Rydon and RBKC Building Control inspectors who made regular visits to site and held other meetings with Rydon and LFB.

The TMO engaged John Rowan and Partners as Clerk of Works to inspect the works on site. This included inspection of workmanship and methodology to ensure works were carried out as designed and compliant with all relevant standards and to challenge Rydon when necessary if there were shortcomings.

The inspectors were Jon White and Tony Batty. Mr Batty was a sub-contractor of John Rowan and Partners who dealt with the M&E side of inspections. They attended site routinely and typically once a week but often two or three times a week depending on site activities. Their role included the provision of reports to inform TMO and the project team of progress against the program of works and any issues arising which they did via regular Site Inspection Reports.

Furthermore, Carl Stokes, the TMO's fire risk assessor, inspected the premises before and after the refurbishment and provided comprehensive assessments of fire risk. These assessments were partly informed by discussions with Rydon and the LFB.

The evidence disclosed now suggests failures in the inspection regime by the professional teams involved. The TMO was not made aware of these failures at the time and could not reasonably have identified these shortcomings when the professional contractor seemingly did not. The TMO had actually gone further than its contractual duty by employing its own Clerk of Works.

The TMO notes that Ben Bailey of Harley was “shocked” when he saw the photographs at figures 8.34, 8.35, 8.42 and 8.44-7 of Barbara Lane’s first report {HAR00010060_0010}. This suggests that the Rydon inspection regime and of its subcontractors had flaws. The statements from the Rydon site managers are on the whole so short and lacking in detail that it is difficult to make an assessment of the implementation of an inspection regime, or their training and experience to inspect cladding systems or the instruction they received from Rydon. Those photographs would appear to suggest that the Rydon site inspection regime was nowhere near as rigid as it should have been or that the TMO might of expected from a competent Principal Contractor.

The evidence of Rydon, Harley and Osborne Berry as well of RBKC Building Control and the Clerk of Work will be of great interest to the Inquiry. The decision to use mast climbers rather than scaffolding needs explaining as does the regime generally.

Summary of the Post Contract responsibilities for the Grenfell refurbishment

The TMO had no reason to doubt the ability of the Rydon as a reputable and experienced contractor appointed following a robust procurement exercise to deliver the design and construction of the project.

Furthermore, the TMO had no reason to doubt the professionalism or abilities of the remainder of the Post-Contract Professional Team.

At no time were any concerns raised by Rydon, RBKC Building Control or any of the Post Contract Professional team to the TMO (or to Artelia as its Employer’s Agent far as it is aware) regarding any issues of design non-compliance, throughout the procurement, design, value engineering and construction stages which the TMO would have expected.

6. OTHER DISCRETE ISSUES

The cladding applied to the building

The TMO had no technical qualification, ability or knowledge of either the materials used in cladding insulation, nor how they were affixed to the Tower. What the TMO did do was put together a competent and experienced PCPT with responsibility for design pre-contract. Post Contract, the Design and Build procurement route meant that the compliance of the cladding design and materials became the responsibility of the Principal Contractor and its specialist designers and sub-contractors.

Rydon were selected via their tender submission because of their experience and expertise in this regard having carried out similar projects previously under the terms of the Design and Build contract. They were tasked with ensuring that appropriate materials were being used and fitted. John Rowan and Partners were engaged as Clerk of Works, to check and inform TMO of any non-compliances in the installation. The detail would then be interrogated by RBKC Building Control.

The statements of Harley and Studio E reveal that that Harley first suggested the use of ACM to Studio E. The TMO understands that Studio E relied on the advice of Harley in relation to the cladding and that although not a member of the PCPT, the advice provided by Harley at pre-tender was used to inform the NBS specification. As a designer and contractor, Harley was required, in giving advice which it knew would ultimately form part of a specification, for ensuring that that advice complied with the CDM Regulations. It was also responsible for ensuring that, if its advice changed, that it informed Studio E and Artelia, as the project CDM-C, to ensure that design and construction risk assessments were reviewed/revised/updated.

As the lead designer, Studio E had a duty to make an assessment as to whether ACM was a compliant material choice for Grenfell Tower. The evidence is not clear as to what checks Studio E made with regard to the compliance of those cladding materials with EU and British Standards and this is something that the Inquiry will wish to explore with the witnesses of Studio E.

The TMO believes that as Client it was, at the pre contract phase, reasonably entitled to rely on Studio E to only present cladding options that were suitable for Grenfell Tower

and compliant with relevant legislation and the TMO notes the conclusions in the Expert Report of Paul Hyatt in respect of these issues {PHYR0000004}.

The evidence is unclear as to what assessment Harley (or Studio E or Rydon) undertook to determine whether ACM was a compliant material choice for Grenfell Tower. It is unequivocal that those companies were in the best position to make the assessments of the overcladding. Logically Harley, as a specialist cladding contractor, were in the best position to undertake research and carry out assessment of the combustibility of the materials being used. Additionally, because Harley were part of the Rydon post contract professional team, and because Rydon were ultimately responsible for the design and construction, it is Rydon who the TMO directly relied to ensure that the cladding applied to the building was compliant and safe.

It is the same narrative in terms of the insulation, windows and cavity barriers applied to the building.

CONCLUSION

The TMO and its former employees remain deeply affected by the fire that took place at Grenfell Tower on 14 June 2017 and continue to be committed to the Inquiry's investigation into the events that led to such an unimaginable loss of lives.

The TMO was not given any cause to doubt the professionalism or ability of any of the PCPT in relation to the pre-contract stage of the Project. It had confidence in the PCPT team to act professionally on behalf of the TMO as the Client. At no time were any concerns raised by any of the PCPT regarding any issues of design non-compliance during the procurement, design or value engineering stages.

The TMO's view is that during the pre-contract stage, its internal team fulfilled the role of maintaining an overview of the Project. The PCPT provided information to the TMO who then reported to the TMO Board and the RBKC.

The TMO was not given any cause to doubt the integrity of any of the professionals in the post contract stages or that any aspect of the design, planning, or material selection was non-compliant with the current legislation or regulations. Rydon had delivered

similar projects on similar buildings with the same materials in other authorities. It also had extensive experience of working with residents in situ, which was a key factor in the delivery of this project.

There were clearly many organisations in both the PCPT and the post-contract professional team with specific technical expertise that were in a far better position than the TMO and had a legal duty to identify non-compliance. None did.

At no time were any concerns raised by Rydon to the TMO, or to Artelia as the Employer's Agent, regarding any issues of design non-compliance throughout the procurement, design, value engineering and construction stages.

At no time were any concerns raised by RBKC Building Control to the TMO, or to Artelia as the Employer's Agent, regarding any issues of design non-compliance, throughout the procurement, design, value engineering and construction stages. The TMO would have expected that any such concerns be brought to its attention by Building Control.

There can be no denying that the design and construction of the refurbishment works to Grenfell Tower that took place between 2012 and 2016 compromised the safety of the building and led to a tragic loss of lives.

The TMO will continue to work closely with the Inquiry to assist them in their detailed review of the refurbishment works in Module 1 and with all their ongoing investigations.