IN THE MATTER OF THE GRENFELL TOWER INQUIRY

BEFORE SIR MARTIN MOORE-BICK, MS THOURIA ISTEPHAN AND MR ALI AKBOR OBE

MODULE 6 CLOSING SUBMISSIONS

CENTRAL GOVERNMENT AND TESTING & CERTIFICATION

ON BEHALF OF THE BEREAVED, SURVIVORS AND RESIDENTS REPRESENTED BY TEAM 2

INTRODUCTION

1. An ordinary Tower Block domestic fire was inevitable. Dr Colwell and Mr Martin literally wrote the book – BR 135 – warning of that very danger. *They* described how such a fire can leave a compartment and re-enter the building. *They* described how such a fire will compromise the fire service's ability to respond to a fire. Grenfell Tower was the block where the inevitable fire occurred. What was not inevitable was the sheer scale and human cost of the fire. Compartmentation failed and the reason it failed was preventable. Those residents died because manufacturers of combustible cladding and insulation marketed their materials onto residential buildings and because testers, certifiers and government ignored Tower Block resident safety.

2. There was no regulatory system in place. Untrained, un-supervised and uncaring individuals in the testing and certification bodies and government conscious of the risk to life failed to establish any effective oversight of safety in the building industry. There was no risk assessment, impact assessment, audit committee or structure that might have a made a difference. The thinnest of defences have been presented by Mr Martin and others – that they believed others would do 'the right thing' but the catalogue of warnings from Garnock Court to Lakanal and the many cladding fires around the world showed the industry was not capable of self-regulation.

3. Dr Colwell, Mr Martin, and others in government such as Louise Upton and Dame Melanie Dawes should be removed from any position of responsibility where individual safety is at any risk. They have proven their incompetence through their inaction and callous disregard for the lives of others. However, even if these individuals, among many others that must face the necessary repercussions, leave public-facing roles, the fact that there was no regulatory system in place nor governance over the building industry is a failure of government. The fact that government failed to oversee the building industry would have been bad enough but over a lack of governance, government added a deregulatory agenda with no express exception for hazardous

materials, demonstrating nothing other than contempt for those living in social housing.

4. In a just society we must ensure the most vulnerable people are cared for first. Team 2 has always said that within building regulations the starting point should be safety first, second and last. But the standard of safety must be measured against those who are the least able to 'get out' or flee a fire. The measure of safety must not be looked at as against an athlete or even an average person, it must be measured against the vulnerable and those whose mobility is compromised. How is this to be achieved? Housing provision must always be judged, utilising PEEPs, against the ability of residents and their visitors to leave the premises and safeguard themselves and their family. **The safety of those who are vulnerable must become our litmus test for the safety of all.**

TESTING & CERTIFICATION

BRE

5. Training and expertise at the BRE was shown as limited at best and absent at worst. Dr Crowder referred to *"occasional presentations sort of in-house to staff about the test methods"*[1]. Brian Martin himself admitted that his fire knowledge gained at the BRE was via his own independent conversations chasing scientists and lab techs.[2]

6. Dr Colwell was asked about staff training[3] to keep the BRE and its activities independent, and if this should have been provided. Despite clear issues in training, she said she *"felt that the mentoring that we were working with within the teams was providing that guidance."*[4]

Privatisation, the commercial[5] mission and the deregulatory landscape

7. Considerable evidence arose from the privatisation and business led running of the BRE, which was aggravated by the government's deregulatory stance. Dr Crowder referred to this 'double-whammy'[6], stating: "*I became aware of things like the Red Tape Challenge, where government was actively pushing to reduce its involvement in fire safety* […] *the Fire Futures review, which was about decentralising fire safety, government having less of a presence in fire safety and encouraging industry to take the lead in* […] *a belief that it had that industry would lead the way and do what it needed to do."*

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[1] {Day 229, 09/02/2022, 9:8-9:20}
[2] {Day 250, 17/03/2022, 15:19-16:7}
[3] Martin had no fire safety training upon joining government, and was reliant upon his years at BRE {Day 250, 17/03/2022, 33:19-34:9}
[4] {Day 232, 15/02/2022, 192:9-193:3}
[5] *"...is it right that the BRE had a direct financial interest in carrying out BS 8414 tests? A. Of course. It was run as a commercial operation, if what's that you mean.* […] *We did testing and we charged a fee for it. Q. Yes, and that was a revenue stream, a valuable revenue stream, for the BRE post-privatisation? A. Well, I'd say it was a revenue stream..."* {Day 237, 23/02/2022, 141:24-142:25}
[6] {Day 229, 09/02/2022, 19:20-20:20}

8. The effect of privatisation on its own was discussed with Dr Crowder; who gave powerful and cogent reasons why the UK needs an independent, state-owned testing body not tied to or beholden to private interests. Dr Crowder said:[7] "[…] *it was after the financial crash when this increased focus on finance came to the fore - that certain individuals struggled with that. They didn't like having to stop, you know, that you've got a brief from a client that says, "This is the thing that we want and we're going to pay this much for it", and they're not interested in going two or three levels beyond that to really fully understand the fundamentals."*

9. Drs Colwell and Smith agreed that post-privatisation, BRE fire safety research suffered from a significantly reduced ambit. Colwell confirmed: "*there was a lot more work around very direct, single project investigations, which didn't lend themselves to* […] *wider knowledge and experience*[…]. *It's a different type of research environment. It's a much more focused, less blue sky type approach."* Dr Smith also confirmed that the government fire safety research programme was diminished.[8] Worse, where research and evidence didn't align with government objects, it would not be funded.[9]

10. Another privatisation side-effect was that of reduced publication speed, if publication was possible at all. Dr Colwell said the BRE's legal position post-privatisation meant: "*it would be a requirement that it was not ours to publish and therefore needed to be referred back to the commercial owner to do that."*[10] Dr Smith also accepted that: "*once we were privatised, then everything that was going to be put into the public domain had to go through the department, so there was another tier of checking."*

11. These effects of commercialisation can be seen in the contractual requirements imposed in the 2012 Investigation of Real Fires Project. Contractual limitations here prevented the BRE from making any policy recommendations, stating: "*All reports produced by BRE for this project will not contain any proposed text for a revision to an Approved Document or supporting guidance."*[11]

12. One of the worst outcomes of the BRE's privatisation in terms of high-rise residents' safety was the issue of client confidentiality. This meant data from failed tests, even when they gave clear warning of dangerous cladding systems, could not be disclosed to the public or even the government. Dr Colwell said she never considered the impact: *"No. It was not and it is not practice to make public private test reports of any commercial testing, be that from a small-scale*

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[7] {Day 229, 09/02/2022, 30:12-32:7}
[8] {Day 234, 17/02/2022, 95:3-95:21}
[9] {Day 236, 22/02/2022, 151:13-151:20}
[10] {Day 231, 14/02/2022, 52:17-54:3}
[11] {BRE00000951/51}

test to a large-scale test […] *publishing any test data that was not ours was not an option to us*".[12]

13. It seems impossible to avoid the conclusion that the contractual limitation on 'policy recommendations' was the product of the deregulatory climate and Red Tape Challenge[13]. Dr Crowder said BRE staff tried to find ways to 'work-around' contractual limitations[14], stating: "*at the end of each* […] *fire of special interest report, there was a summary set of what we called implications. They weren't recommendations as such because we weren't allowed, but we did try and tease out what the type of issues were that had occurred in a fire and map them onto the relevant parts, B1 to B5, of the approved document and Part B in that way."*

14. The intrusion of commercial interest into the orbit of fire safety also affected the removal of Class 0. Dr Crowder understood that eliminating Class 0 caused industry concerns that there were *"products that were on the market as a result of achieving class 0 that would cease to be on the market if Class 0 ceased to be a viable option."* [15]

15. Dr Crowder's response to the final reflective questions made clear that he felt strung along, stating he was no longer prepared to be "*beholden*" to clients, and that "*you think you're working alongside colleagues, but you don't necessarily understand all of what is going on or the information that you ought to be privy to*". [16]

16. Even being generous the bar was very high for any attempts to introduce new regulations. Dr Crowder understood from Mr Brian Martin that for every positive life safety provision added by government, three must be removed. However, he accepted it was not the BRE's place to consider the policy's repercussions, and they should have focused on their role of advising government as to what changes needed to be made without consideration of the Red Tape Challenge.[17]

17. Dr Smith's evidence added another dimension to the BRE's commercialisation. Documentary evidence showed she was concerned the BRE might lose market share to the CWCT when they sought to clarify the classification requirements for high-rise builds. Her shocking response in 2014 was "*Wooooh! This looks very dangerous. We need to discuss our strategy to ensure that we don't end up handing the fire safety mantle to CWCT (a competitor) losing the need for BR 135, BS 8414 etc*".[18]. Dr Smith claimed this commerce-first response was *"a knee-jerk reaction"*

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[12] {Day 232, 15/02/2022, 194:1-195:1}
[13] Red Tape Challenge Press Release, 07/04/2011, {https://www.gov.uk/government/news/red-tape-challenge?msclkid=cf995290d13011ecb28e2f0e1547ebe0} [last accessed 30/05/2022]
[14] {Day 229, 09/02/2022, 117:3-117:17}
[15] {Day 229, 09/02/2022, 54:25-55:15}
[16] {Day 230, 10/02/2022, 232:18-233:16}
[17] {Day 230, 10/02/2022, 223:6-225:2}
[18] {BRE00047459/1}

and accepted the email gave the impression that her *"sole concern was to protect the BRE's revenue streams"*, with fire safety coming a firm second. [19]

18. Dr Smith clarified that the BRE had long held concerns about the danger of allowing manufacturers to affect the testing of their materials. She agreed she had warned government that manufacturers would try to influence research *"for their own financial benefit in a way which might be difficult to control"*.[20]

The absence of a risk assessment and response system

19. The catastrophic test incorporating ACM rainscreen panels demonstrated beyond doubt that these materials were extremely dangerous. Dr Colwell accepted that the experiment, performed in 2001 as part of the CC1924 contract, resulted in a "*very rapid, very large fire growth*", and that those attending were all "*shocked*" and "*surprised*", with the test being terminated in under 6 minutes.[21]

20. This disastrous test result at the turn of the millennium should have been communicated throughout the building industry and government. There should also have been a mechanism to guarantee no buildings were clad in these types of ACM materials and enquiries made into how much was already on buildings. Instead, the BRE relied on their own survey that Dr Colwell admitted was "*a very limited snapshot*". [22] The BRE seem to have entirely failed to follow this up. Dr Colwell said they relied on government to act and showed complete unwillingness to go beyond the contract's specific terms: *"What actions* [the Department] *took after that to determine what was on the wider selection of buildings and how that was being addressed was something dealt with within the department, not something that we were asked to engage with."* [23]

21. If Dr Smith is to be believed, the disastrous test result was never discussed with her, as she stated she was completely unable to recall Dr Colwell reporting the shocking result to her.[24] However, Dr Smith appeared to agree the materials had not performed well, but regarded the result as an outlier and was not overly concerned, stating: "*it was part of the project to ensure that these products could never ever be used.*"[25]

22. Mr Martin recalled: "Sarah walked into the office and showed me a small piece of material which I now know to be ACM […] and she described the mechanism by which it reacted with the fire, ie the aluminium melted away, exposed the polyethylene, and then the polyethylene began to

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[19] {Day 237, 23/02/2022, 56:1-57:9} & {Day 237, 23/02/2022, 61:14-63:6}
[20] {Day 235, 21/02/2022, 67:10-67:24}
[21] {Day 232, 15/02/2022, 96:12-97:23} & {Day 232, 15/02/2022, 99:14-99:22}
[22] {Day 235, 21/02/2022, 104:7-104:17}
[23] {Day 235, 21/02/2022, 104:7-104:17}
[24] {Day 235, 21/02/2022, 106:7-106:17}
[25] {Day 235, 21/02/2022, 109:5-109:13}

burn". Although this conversation should have led to an immediate Inquiry as to what was being used on buildings and how this can be assessed and controlled, Mr Martin said Dr Colwell was not shocked, finding it an "interesting result", the two having an "interesting conversation".[26]

23. The cumulative effect of the above issues strongly suggests that by the time the CC1924 contract was complete, testing was nothing more than a contractual exercise. In manufacturer-funded testing, the BRE was a mere extension of their research and development departments. Public safety considerations were no longer part of the role in the commercial organisation of the BRE.

24. This lack of engagement by the BRE and its Director in considering the safety of residents, occupiers and visitors was emphasised in answers to CTI's questions to Dr Colwell, where in evidence she accepted the following:

    a. CC1924 demonstrated to BRE & government that Class 0 was, "not able to detect the fire hazard associated with the use of some apparent common combustible rainscreen cladding products"; [27]

    b. PE cored ACM, despite Class 0 status, "presented a clear external fire spread hazard", and "was likely to present a very real danger with respect to external fire spread on high-rise buildings"; [28]

    c. Fire safety testing "was either flawed or not reproducible, or technical loopholes were being exploited by manufacturers, or manufacturers were simply making false claims about fire safety"; [29]

    d. CC1924 detailed reports were never, prior to GTI, released into public domain as the BRE believed the work *"was completed for the department and it was for the department to decide how it was disseminated."* [30]

    e. Dr. Colwell never considered, before the Grenfell fire, revisiting the issue and warning industry about ACM PE as she *"genuinely understood the guidance to mean that it couldn't be used."* [31]

25. Dr Colwell clearly demonstrated the lack of mission relating to fire safety in the CWCT meeting. She denied being *"part of the conversation in the way that the minutes are reflected"* for the July 2014 meeting, and was unable to explain why she had not raised the CC1924 testing results other

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[26] {Day 251, 21/03/2022, 47:25-49:4}
[27] {Day 232, 15/02/2022, 129:2-131:4}
[28] {Day 232, 15/02/2022, 129:2-131:4}
[29] {Day 232, 15/02/2022, 129:2-131:4}
[30] {Day 232, 15/02/2022, 129:2-131:4}
[31] {Day 232, 15/02/2022, 129:2-131:4}

than saying "*I can only assume it wasn't something that was a discussion point that was being raised*" – whilst also lacking an "*edict*" to prevent her from raising such information in the group.[32] For reference, the meeting minutes show confusion about whether such products are permitted on 18m+ builds, and state the following:

"It was stated that clause 12.7 of ADB is intended to prohibit the use of polyethylene cored ACM in buildings over 18m as they are not classed as limited combustibility. […] The wording of the main text refers to filler materials which could be taken to include the polyethylene core but this is not clear."[33]

26. Dr Colwell explained in evidence that she was minded to develop a FAQ warning about ACM use and the applicability of ADB s12.7; given her knowledge of cladding fires in the UAE and, presumably, from her own observations of ACM materials within tests. She ultimately failed to even raise the matter with Brian Martin, stating: "*I looked to do some development of a document, and in discussion then with other colleagues* […] *the introduction of the revision of the ADB was coming through, and it was assumed that, as we'd already had that conversation earlier in the year, it would be taken up with that, and so I didn't pursue that conversation with Brian, which, with hindsight, is something I should have done.*"[34]

27. Despite being chased about the drafting of an FAQ by others who clearly had an expectation that Dr Colwell would be doing her job, she failed to inform anyone that this was not forthcoming, stringing CWCT members along saying, *"we will circulate"*.[35] In evidence, Dr Colwell accepted it was "*wholly misleading*", and gave the "*wrong impression*" as to what was really happening.[36] Even as she attended the next CWCT meeting, in October 2014, where Alan Keiller gave a presentation stating the CWCT and BRE were working on a FAQ, Dr Colwell still failed to inform anyone this was not happening, blaming it on her own *"lack of closure"*,[37] denying the CWCT the chance to step in and resolve the issue. Dr Colwell described her regret, stating *"I absolutely would have handled in a different way."*[38]

28. The confusion within ADB caused by the word filler was explained by Mr Martin to have at least in part been because there was a concern that anything more prescriptive might be challenged, stating "*there was a concern that by identifying a specific product in a very prescriptive way, that*

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[32] {Day 233, 16/02/2022, 192:7-193:14}
[33] {SIL00001916}
[34] {Day 233, 16/02/2022, 205:21-206:13}
[35] {CWCT0000040}
[36] {Day 234, 17/02/2022, 21:11-22:8}
[37] {Day 234, 17/02/2022, 14:8-16:18}
[38] {Day 234, 17/02/2022, 69:3-69:9}

might fall foul of having not consulted specifically on that, and that there's a risk of manufacturers challenging the department and you find yourself dealing with a judicial review".[39]

29. Unless there is a functioning testing and certification system, constantly questioning itself, assessing risk in the public interest and monitoring the impact of its processes within a transparent and accountable structure, then risks will be allowed to flourish. In areas of regulation involving construction materials and building regulation, if there is no such regulator, people will die.

Class 0/ADB

30. The CC1924 experiments also made clear Class 0 meant nothing in terms of fire safety, as the ACM material used was also a Class 0 product. When asked why there was no greater concern as to how a Class 0 product could fail a full-scale test so catastrophically, or why the Select Committee's recommendations on eradicating Class 0 were not revisited, Mr Martin had no explanation. He accepted: *"the results suggest that it would be dangerous to allow national class 0 to be used on buildings as a standard for assessing fire performance above 18 metres"*.[40]

31. Dr Crowder was asked to consider what type of composite materials could be behind the metal face of the cladding panels. Inquiry questions exposed the uselessness of Class 0:

"Q. So is it your reading now that any composite product, so long as the outer surface of that product is composed throughout of non-combustible or limited combustibility material, will achieve Class 0? A. Yes [...] *anything that has a metal face applied to it could, under the preceding editions of Approved Document B, be deemed to be Class 0."*[41]

32. Mr Martin also accepted that, per Dr Crowder's interpretation of Class 0, "you could have a piece of highly combustible or even explosive material which would achieve national Class 0 without being tested so long as it was lined on its outer face with, for example, a 1-micron aluminium foil facer". He said this now "troubled" him, but he had never raised or discussed the possibility of this interpretation with the Department or BRE.[42]

33. The meaning and interpretation of s12.7 of ADB came under intense scrutiny in the evidence. Dr Colwell said in her statement that she took '*filler*' to refer to materials used within systems to fill gaps.[43] When tested in evidence, astonishingly this became "*material between the -- in the make-*

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[39] {Day 252, 22/03/2022, 39:11-40:6}
[40] {Day 251, 21/03/2022, 70:8-71:1}
[41] {Day 229, 09/02/2022, 66:5-66:22} & {Day 229, 09/02/2022, 66:23-67:5} Crowder agreed plastic explosive could be behind "*1-micron aluminium foil facer*"
[42] {Day 250, 17/03/2022, 62:13-63:6}
[43] {BRE00047571/56}

up of the panels themselves".[44]

34. It must be remembered that Dr Colwell and Brian Martin were co-authors of BR 135 (2nd ed.), which expressly warns of the dangers arising from combustible cladding materials. Despite positioning themselves as experts, and Dr Colwell's involvement in drafting s12.7[45], she was unfortunately unable to explain where the word "*filler*" came from.[46]

The Real Fires Project

35. Professors Bisby and Torero have given their opinions on the BRE failures to grasp the issue or even consider the role of combustible cladding in the BRE Real Fires project. For 14 years, the project reports reaffirmed to government, in a seemingly boilerplate fashion, the overall effectiveness of Building Regulations and ADB. Despite obvious issues with fires during the period of these documents, Dr Crowder stated: "*it doesn't indicate a fundamental problem* […] *but this was followed up with then specific recommendations."*

36. Although the BRE were tasked with acting as a warning system as to the operation of ADB, it was apparent in evidence that cladding fires such as that in Sudbury House in 2010 were missing. Dr Crowder accepted that an August 2010 YouTube video showing this fire found by Prof. Bisby "*ought to have been found*", but said, "*compared to the sorts of fires that we typically investigate, it is not a huge fire".*[47] If the BRE is not considering combustible cladding in its reports, it is hardly a surprise that such a disaster as Grenfell was effectively sleep-walked into.

37. It became increasingly difficult for Dr Crowder to maintain his defence of the BRE when asked why "despite the occurrence of external spread of fire in the two examples we looked at, the involvement of the cladding systems, the observation of burning debris in these fires, there is no mention in the end-of-year report for the period April 2016 to March 2017 to the fact that external downward fire spread is a matter of some potential significance in terms of public safety". He had no explanation as to why such a danger was not flagged up to the Department.[48]

38. In the end Dr Crowder had nowhere to hide and agreed the BRE reports had not considered downward fire spread in combustible cladding. He said this was not raised beyond "*innovative construction products and techniques which have not yet been considered in relation to the regulations or ADB*", because "*within any one of the project reports, there wouldn't have been a*

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[44] {Day 233, 16/02/2022, 75:17-77:8}
[45] {CLG00018832}
[46] {Day 233, 16/02/2022, 105:23-106:11}
[47] {Day 229, 09/02/2022, 174:7-174:13} & {Day 229, 09/02/2022, 178:15-179:9}
[48] {Day 229, 09/02/2022, 196:9-197:2}

trend relating to it".[49] Dr Crowder also accepted that even in the Lakanal House fire report the performance of combustible polyurethane foam panels was not considered.[50]

39. Dr Crowder explained the DCLG's view on Lakanal, via Brian Martin, "was simply that Lakanal had occurred as a result of non-compliance […] it was non-compliant in lots of different ways, therefore it is not a problem with the guidance, as such, it's that people hadn't followed it".[51]

40. Mr Martin had considered the dangers of cladding fires while at the BRE co-authoring the second edition of BR 135. This understanding of these dangers was prompted by the 1999 Garnock Court fire, his takeaway from that fire being: "*Don't use combustible cladding* […] *multiple fires in a block of flats creates major problems for firefighters."* He accepted multiple fires "*challenged the very fundamental underpinning of the stay-put policy".*[52]

41. Mr Martin accepted on documents available, by September 2002, the government knew:

    a. Class 0 was "not able to detect the fire hazard associated with the use of some apparently common combustible rainscreen cladding products";[53]

    b. Despite Class 0 status, "ACM with a PE core presented a clear external fire spread hazard";[54]

    c. ACM PE was "likely to present a very real danger with respect to external fire spread at height";[55]

    d. Class 0 was not "a safe and appropriate classification to ensure that the functional requirement was met; […] you might have a class 0 product but not meet the functional requirement".[56]

42. Mr Martin's explanation as to why the CC1924 data was undisclosed to the public for nearly 20 years was incredibly poor, saying: "*I think it just got forgotten and fell between the gaps."*[57] He said no-one looked into whether combustible ACM materials were already being used on buildings because: *"it just wasn't the way that we tended to operate. We were just focused on trying to think about how the guidance for new buildings was drafted."*[58]

43. As those in charge of fire safety had no illusions about the dangers of cladding fires to Tower

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[49] {Day 229, 09/02/2022, 213:19-215:6}
[50] {Day 230, 10/02/2022, 62:8-62:12}
[51] {Day 230, 10/02/2022, 87:19-88:7}
[52] {Day 250, 17/03/2022, 102:10-102:18}
[53] {Day 251, 21/03/2022, 83.15-84.15}
[54] {Day 251, 21/03/2022, 83.15-84.15}
[55] {Day 251, 21/03/2022, 83.15-84.15}
[56] {Day 251, 21/03/2022, 83.15-84.15}
[57] {Day 251, 21/03/2022, 87:15-88:12}
[58] {Day 251, 21/03/2022, 193:1-193:14}

Block residents, there is no excuse for failures to regulate and control the use of combustible materials. The simple and tragic answer is that they were on notice and did nothing.

UKAS

44. UKAS's mission is "*Working alongside our customers and in collaboration with UK Government and key stakeholders, our mission is to build a world of trust and confidence in the products and services accreditation underpins.*"[59] The evidence before the Inquiry shows that UKAS accreditation is tissue thin, dangerous and of no use to consumers.

UKAS Oversight

45. The level of oversight and follow up by UKAS in relation to the BRE's performance of BS 8414 was incredibly poor. In evidence Ms Turner, when pressed, was forced to agree the BRE had not been managed adequately and UKAS had done nothing about this:

"SIR MARTIN MOORE-BICK: [...] *the impression you get from this passage we've been looking at is that there had been quite a long period of time over which BRE had not, for whatever reason, been managed or operated in accordance with the required standards. First of all, is that a fair understanding of this? A. Yes, it is*[60]*"*

46. Worse, it was also revealed that records for the calibration of BRE test equipment were incomplete, in that "the investigation of the scale and impact of the non-conformity has not been carried out and as such there is not the information available as to whether immediate containment action is required such as halting work."[61] Ms Turner accepted that despite fundamental failings and improvement actions being raised with the BRE, "there was no absolute, fundamental addressing of the problem".[62]

47. The Inquiry also considered UKAS's assessment of the BBA and certification process. Mr Randall (UKAS) confirmed in his witness statement they had only assessed one cladding certification project back in 2009.[63] Ms Turner accepted it was "*difficult*" for UKAS to ensure a "*correct and robust certification process is being replicated across the organisation in those circumstances*".[64] For an oversight body supposed to ensure the safety of certificates issued, reviewing only one cladding certification project out of multitudes meant UKAS's blinders were

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[59] UKAS, "Our Vision", {https://www.ukas.com/about-us/our-vision/?msclkid=bdbd6aafd06b11ec8a5ed379a09a9902} [last accessed 20/05/22]
[60] {Day 227, 07/02/2022, 42:7-43:18}
[61] {UKAS0004339 /7}
[62] {Day 227, 07/02/2022, 20:16-20:21}
[63] {UKAS0011424/13}
[64] {Day 227, 07/02/2022, 93:10-93:25}

on before they exited the stable.

48. Post-Grenfell, a BBA whistle-blower drew UKAS' attention to the Arconic Reynobond certification, making clear the certificate had not been reissued since 2008, and Arconic had failed to respond to BBA requests to confirm no more changes would affect the certificate's validity.[65] UKAS still failed to adequately consider the relevant factors, concluding: *"Overall, the information viewed gave good confidence that BBA are following their processes relating to surveillance, including those for triennial reviews of certification. In addition, the information gave confidence that the review process is effective."* In evidence Ms Turner accepted such issues were relevant and *"would need to be considered"* and that UKAS should have *"paid very close attention to what may well have been a gap in the data"*.[66]

LABC

49. As stated in our opening submission, the evidence of Barry Turner and David Ewing of the Local Authority Building Control (LABC) did nothing to dispel perceptions of acquiescent dealings with Kingspan and Celotex. The LABC failed to ensure rigorous independence when certifying the insulation later used on Grenfell Tower; they only have cursory knowledge of the regulatory framework, including ADB; were willing to accept wholly inaccurate claims from these manufacturers on trust alone; and this resulted in issuing inaccurate and misleading certificates which gave a false sense of a seal of approval from Building Control.

50. When asked about how an LABC certificate was marketed as a "*fast track*" through Building Control approvals, Director of Technical Services Barry Turner claimed colleagues were "*not aware at the time of how wording can be so important*".[67] Despite the way his colleagues expressed themselves, he did not deny LABC's certification process *was* a "*fast track*" and so ensured Building Control officers would deem particular products satisfactory.[68] This was the tactic Celotex's Mr Roper succeeded in using, minimising challenge from Building Control and dispensing with the need for an expensive and more rigorous BBA Certificate.[69]

51. Whatever the process - "type approval scheme" or "Registered Detail" – *"the same principles apply"*[70]. The LABC did not learn to scrutinise or push back on errors or misleading statements until K15 was established as the go-to 18m+ combustible insulation, as seen in K15's 2009 type

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[65] {UKAS0011424/20}
[66] {Day 227, 07/02/2022, 128:13-128:20} & {Day 227, 07/02/2022, 129:21-130:3}
[67] {Day 216, 08/12/2021, 31:23-35} & {Day 216, 08/12/2021, 32:1-16}
[68] {Day 216, 08/21/2021, 27:3-10}
[69] {CEL00000716}
[70] {Day 216, 08/12/2021, 32:18-22}

approval certificate and 2013 Registered Detail.

52. Mr Turner argued LABC's close connections with Kingspan were developed through the DCLG; and repeatedly said LABC relied on Kingspan's thermal performance expertise.[71] The LABC also lacked expertise to peer review approval certificates.[72] Ultimately, Mr Turner blamed HBC's[73] Mr Jones for the inclusion of the nonsensical phrase *"K15 can be considered a material of limited combustibility"*. He accepted the resulting certificate was *"inaccurate and misleading"*. [74] He was unable to explain why the K15 certificate for system approval was "exceedingly wide", whole-building systems through to individual components[75] even though it was based on a single ageing 2005 BS 8414-1 test (applicable to only the system tested).

53. LABC struggled to remain independent. When Mr Turner had missed the relevance of K15 being marketed as a material of limited combustibility, it was drawn to his attention in the strongest terms by Rockwool in 2009.[76] How did LABC remedy the mistake? They did not. Mr Turner simply dismissed it as a "*complaint from a competitor, and LABC shouldn't act as referee between competitors.*"[77] But LABC were players not referees. Kingspan Head of Marketing John Garbutt learned of the complaint and protested to 'Barry' (whom he knew from working on the Zero Carbon Hub) that Kingspan "*did not in any way overstate the case*" regarding the accuracy of their certificate. Mr Turner superficially said he was "*open and fair*" but admitted he did not follow up the complaint. LABC were effectively Team Kingspan.[78]

54. As late as July 2014, the LABC were implicated in endorsing K15 as limited combustibility in the infamous Brian Martin "friendly warning" email. The NHBC in response asked Kingspan to "*provide evidence that their product can be used in alternative construction types other than that specified in the current BBA certificate*".[79] Mr Turner did not recall taking action[80] and did not regard it as a big deal,[81] charging David Ewing to look into it, who only queried the wording in the August 2013 Registered Detail for K15. It did not occur to him to be concerned or to look into all buildings clad with K15 on the wrong basis since 2009.[82] Ultimately the LABC could not conceive Kingspan were "*anything other than true and honest*".[83]

1.

[71] {Day 216, 08/12/2021, 40:15-41:19}
[72] {Day 216, 08/12/2021, 49:6-49:21}
[73] Herefordshire Building Control who oversaw K15 type approval on behalf of LABC
[74] {Day 216, 08/12/2021, 35:25-37:11}
[75] {Day 216, 08/12/2021, 59:10-60:15}
[76] {LABC0000924}
[77] {Day 216, 08/12/2021, 83:9-85:1}
[78] {Day 216, 08/12/2021, 93:2-94-16}
[79] {Day 216, 08/12/2021, 182:16-17}
[80] {Day 216, 08/12/2021, 183:15-23}
[81] {Day 216, 08/12/2021, 190:7-21}
[82] {Day 216, 09/12/2021, 184:6-186:15}
[83] {Day 216, 13/12/2021, 5:24-6:13}

55. Rather like Celotex FR5000 becoming RS5000, between 2012-2016 David Ewing presided over the re-branded LABC Registered Details scheme. Mr Ewing agreed the role demanded technical knowledge and an understanding of the Building Regulations and associated practical guidance.[84] The same mistakes and assumptions were made. As for the back-stop of LABC peer reviewers, Mr Ewing said they: "*weren't undertaking another sort of clinical check of the registered detail; they were looking at the preambles*".[85] Even if his peers were intent on reviewing the preambles, it was a shambles. Mr Ewing eventually conceded he would have expected peer reviewers to return to the BBA Certificate to satisfy themselves it would support what the LABC certificate would say [86] and that it was concerning his peers were not able to identify the technically incorrect information.[87]

56. Mr Ewing assumed when it came to Kingspan's Registered Detail (in effect a renewal) Mr Jones' original work could be relied on without any further checks to his expertise, accuracy or the basis for his findings that K15 could be considered limited combustibility. He was, however contrite in acknowledging LABC should have had "*an audit trail around the competencies*".[88] As it was, the misinformation from the K15 type approval summary was simply "*a straight copy over from the original supporting documentation*".[89] By August 2014, Kingspan had promised supporting test evidence to back up their claims about K15 use over 18 metres and Mr Ewing extended the Registered Detail on that basis. He admitted it was "foolhardy" not to have supporting evidence *before* issuing a certificate.[90] The reason? "*We'll save this failing company yet!*"[91] a colleague assured Mr Ewing who admitted Kingspan were "*sweetening us up by offering us the additional work*"[92]. Offers too good to refuse.

57. The little action Mr Ewing took in September 2014 was to have the K15 certificate removed from the LABC website. But he admitted he did not inform Kingspan. LABC wanted to appease NHBC warnings but equally did not want to be bitten by the hand that fed them.[93]

58. Rewinding to late 2013, Celotex's Jon Roper approached Mr Ewing for a Registered Detail for their "new" PIR product. In turn, Mr Ewing sought help from Mr Jones - the source of misinformation – "*I have also been approached by Celotex who have queried our interpretation*

1.

[84] {Day 217, 09/12/2021, 95:16-96:6}
[85] {Day 217, 09/12/2021, 118:2-22}
[86] {Day 217, 09/12/2021, 156:3-157:3}
[87] {Day 217, 09/12/2021, 160:24-161:11}
[88] {Day 217, 09/12/2021, 137:7-22}
[89] {Day 217, 09/12/2021, 147:13-148:21}
[90] {Day 218, 13/12/2021, 9:21-10:17}
[91] {Day 218, 13/12/2021, 21:24-25}
[92] {Day 218, 13/12/2021, 23:16-24:11}
[93] {Day 218, 13/12/2021, 75:3-75:18}

of ADB in relation to the K15 product. I have no technical data behind our archive system so can't dig into it."[94] Mr Ewing shows full reliance on Mr Jones, and blindly accepted what was offered: an extract from Kingspan's own technical literature and determination that K15 is "... *as the board is described as Class 0, it can be termed a 'material of limited combustibility' and so in terms of the relevant part of Doc B it is suitable for use within the wall construction even at heights over 18m."*[95] Mr Ewing professed his assumption that this was "technically accurate" but even a quick reference to ADB would show Class 0 and MOLC as distinct and very different classifications for fire. He sent Mr Roper a copy and paste of all those inaccuracies to which Mr Ewing confessed: *"I was not happy with myself for sending it out".*[96]

59. Following Celotex "*passing*" the BS 8414-2 test in May 2014, Mr Roper then sent out wording for the re-branded FR5000 as: *"Celotex RS5000 has successfully tested to BS 8414:2* [...] *meets the criteria* [...] *in BR 135 and therefore is acceptable for use in buildings with storeys above 18m in height,"* mirroring the language used in that appendix for the K15 Registered Details certificate.[97] Despite accepting his need for technical knowledge, Mr Ewing assumed it was "*technically correct*" as he had gone to his peers, but conceded: "*I know it's completely wrong*". Mr Roper failed to point out this flagrant falsehood as it was advantageous to Celotex.[98] The LABC approached the Registered Design as global approval, not system-specific, and gave Celotex blanket approval above 18 metres.[99] Mr Ewing justified this by claiming the cladding in the Celotex test was "standard",[100] despite BS 8414 tests only applying to systems tested.

60. Celotex pushed LABC hard, even suggesting removing all references to RS5000 being the same as FR5000. It was not until K15's certificates became problematic that Mr Ewing pushed back.[101] It took until September 2015 before the caveat affirming this was a specific system test and not global approval appeared deep in the small print. [102]

61. Immediately following the Grenfell Tower fire, there was a fear of having "*egg on their face*" for withdrawing the BCA guidance.[103] Further, Mr Ewing said, "*LABC has been gamed and played by the insulation manufacturers for their own benefit. I'm still struggling to come to terms with why anybody would actually try and sell a product that wasn't fit for purpose, particularly in*

1.

[94] {LABC0005339}, & {Day 218, 13/12/2021,146:21-4}
[95] {Day 218, 13/12/2021, 149:13-150:1}
[96] {Day 218, 13/12/2021, 151:17-153:6}
[97] {Day 218, 13/12/2021, 155:2-22}
[98] {Day 218, 13/12/2021, 151:17-153:6}
[99] {Day 218, 13/12/2021, 164:11-166:7}
[100] {Day 218, 13/12/2021, 180:17-182:7}
[101] {Day 218, 13/12/2021, 194:1-20}
[102] {Day 218, 13/12/2021, 200:2-201:9}
[103] {Day 217, 09/12/2021, 81:9-13}

relation to fire safety."[104]

NHBC

62. The NHBC is the UK's largest building control and warranty services provider. Its building control function falls under profit-making subsidiary NHBC BCS Ltd, owned by the main, non-profit-distributing parent company.[105] Ms. Marshall estimated NHBC provide building control to just under 50% of the high-rise market.[106]

Privatisation & interactions with industry

63. The NHBC's evidence illustrates how privatisation of regulator functions is dangerous and does not work. There was a lack of training and understanding of the proper application of ADB in key figures dealing with major fire safety issues for the NHBC. Steve Evans had no fire engineering education[107] and was unable to recall receiving specific training on post-1992 ADB editions.[108] The team's senior, Diane Marshall, did not recall specific ADB training and said she "*sat through*" NHBC training material, but "*wouldn't be familiar with how* [the requirements] *would be applied on a project-by-project basis.*"[109] Ms Marshall was not familiar with BS 8414-1 or -2 and BR 135.[110] John Lewis was the team's fire engineer, however, his fire engineering masters did not address UK fire testing regimes or any cladding specialism,[111] and his work was not peer-reviewed[112] despite his newly-qualified status as of 2013.[113] Ms Marshall confirmed she relied on her "specialists"[114] – namely Mr Evans and Mr Lewis.

64. Regardless of their function as de-facto regulator due to their building control function[115], the NHBC failed to ensure projects passing through their approved inspectors were not a threat to the public. Mr Lewis described a bafflingly naïve and unquestioned trust in Kingspan, as: "*... not very rigorous thinking, but it was: surely Kingspan, they sell this all over the world, they put it on lots of high-rise buildings, they must know that it's safe.*"[116]

65. This problem was further compounded by blind faith in another private body: the BBA. The NHBC's unquestioning acceptance of the 2008 BBA certificate for K15, including its clause

1.

[104] {Day 128, 13/12/2021, 209:11-19}
[105] {Day 225, 02/02/2022, 77:25-78:14}
[106] {Day 225, 02/02/2022, 73:10-74:5}
[107] {Day 219, 14/12/2021, 8:7-8:15}
[108] {Day 219, 14/12/2021, 5:23-6:1}
[109] {Day 225, 02/02/2022, 71:19-71:20}
[110] {Day 225, 02/02/2022, 77:16-77:18}
[111] {Day 223, 31/01/2022, 69:4-71:5} & {Day 223, 31/01/2022, 139:22-140:10}
[112] {Day 223, 31/01/2022, 6:21-7:8}
[113] {Day 223, 31/01/2022, 5:24-6:4}
[114] {Day 225, 02/02/2022, 91:3-91:4}
[115] {Day 223, 31/01/2022, 60:17-61:3}
[116] {Day 223, 31/01/2022, 153:24-155:16}

allowing referral to the manufacturer for advice on compliance, was exemplified in the below exchange between CTI and Ms. Marshall:

"Q. […] *did you not wonder how the BBA certificate* […] *the one that had pertained until 17 December 2013, could possibly have allowed the use of K15 above 18 metres? A. No, I saw no reason to challenge the credibility of a BBA certificate. Q. But it was incredible on its face, surely, wasn't it?* […] *A. It was -- the standing of a BBA certificate in the industry is well regarded. Q. Even if it says the moon is made of green cheese? A. It's unlikely to make that statement, but, yes, it would be assessed by the surveyors on the basis of the technical content and, as long as the criteria were met, then the surveyors would accept it on that basis."*[117]

66. Mr Lewis apparently had concerns about K15 literature as early as 2012 in the form of the LABC certificate, but failed to intervene as the LABC were a *"different organisation"* and *"there wasn't anyone to escalate up the chain if you had one of these concerns"*.[118] Even when concerns about the product were directly raised with the NHBC in 2013,[119] there was no immediate halt on the acceptance of K15, with Mr. Lewis accepting *"the business, money side of it would have been the issue. I think at that point it would have been how to manage a lot of angry customers."*[120] Further, the NHBC were concerned an immediate halt "*was going to leave an awful lot of buildings that could not complete in time* […] *for the end of the year, and that was a cut-off date in most housebuilders' diaries, people wanting to move in by Christmas. It would have had a massive knock-on effect across the industry* […]".[121]

67. The NHBC approach to compliance sadly did not improve as time passed. When asked why, by January 2015, they had not written to clients to halt blanket K15 acceptance, Mr Evans took a backwards approach to the burden of proof for compliance, stating that *"at that time, we didn't know that K15 would not be safe in those positions."*[122]

68. Throughout this period, and even after the 2015 board meeting, multiple instances occurred where it should have been clear to a reasonably competent, engaged professional that Kingspan treated the NHBC with contempt. Delay tactics and failed attempts to engage fire engineers in late 2014[123] were red flags that the myopic NHBC failed to act on with urgency, still relying on the statement that there was no evidence to show K15 was a *"massive fire risk"*.[124] As Mr Lewis

1.

[117] {Day 225, 02/02/2022, 119:8-120:5}
[118] {Day 224, 01/02/2022, 27:15-28:2}
[119] {NHB00000583} & {NHB00000585}
[120] {Day 223, 31/01/2022, 60:3-60:14}
[121] {Day 223, 31/01/2022, 165:13-166:3}
[122] {Day 219, 14/12/2021, 196:19-197:2}
[123] {Day 225, 02/02/2022, 169:1-169:10}
[124] {Day 224, 01/02/2022, 24:6-24:16}

said: "*I did on several occasions point out that this was getting flimsier and flimsier, you know, the way we were accepting this product* [...] *the more we got into it, we were not getting a greater feeling of comfort, it just seemed to be getting flimsier and flimsier.*"[125]

69. Even when the DCLG's Brian Martin intervened, emailing a *"friendly warning"* about the use of combustible insulation in high-rise builds,[126] this government official tasked with the lead of ADB was met with nonchalance. Mr Evans said: *"it didn't set off any alarm bells because it was an issue that we were dealing with at that time."*[127] Mr Lewis said it was not a *"surprise"* as *"the use of combustible types of insulation was commonplace"*,[128] and *"we just treated it along the lines of the way we'd been looking at the K15 issue and the way we'd come to the conclusions that the K15 and the basis on which that was accepted was* [...] *what it was."*[129]

70. As mentioned above, and as further testament to the NHBC's desire to prioritise commercial interests, it emerged that at no point during the Kingspan scandal did they consider the safety impact on legacy builds, instead relying on the old BBA certificate as cover.[130] The 2008 certificate and its clause permitting referral to manufacturer for compliance should never have been relied on and the abject lack of thought for residents in the NHBC's legacy builds strengthens the case: regulatory functions do not belong in private hands.

NHBC & Industry Guidance

71. Instead of stopping the use of K15, NHBC conspired to push a new route of compliance into mainstream use: desktop studies, via the BCA Technical Guidance Note 18 (BCA TGN18), Issue 0. Initially intended as an NHBC piece of guidance, the document was then "sub-contracted" out to the BCA for use by the industry at large, at Mr Evans' suggestion.[131] As noted by Counsel to the Inquiry, this was very much a case of the goalkeeper *"collaborating with the striker".*[132]

72. Even at BCA level, no fire engineers were consulted as there was "*no need*[133]", as those involved at the BCA were *"experienced building control professionals*[134]*"*. Despite no other official guidance permitting this kind of desktop study, Mr Evans said it was *"established convention"*,[135] even though he was not aware of any desktop studies being carried out for "*façade systems*" prior

1.

[125] {Day 223, 31/01/2022, 131:19-131:24}
[126] {NHB00000732}
[127] {Day 220, 15/12/2021, 67:21-67:22}
[128] {Day 224, 01/02/2022, 4:3-4:4}
[129] {Day 224, 01/02/2022, 8:21-8:24}
[130] {Day 223, 31/01/2022, 5:24-6:4}
[131] {Day 220, 15/12/2021, 33:6-33:11}
[132] {Day 223, 31/01/2022, 195:14-195:19}
[133] {Day 220, 15/12/2021, 33:24-37:3}
[134] {Day 220, 15/12/2021, 33:24-37:3}
[135] {Day 220, 15/12/2021, 33:24-37:3}

to the publication.[136] Not even the DCLG was consulted on this note, as he felt building control's role was to *"develop guidance where there were missing parts of Building Regulations or it wasn't covered."*[137] In developing this system, the NHBC relied on Annex A of Appendix B, but this was not confirmed by independent fire engineering advice.[138]

73. Additionally, in an act of - at best - extreme naivety, Mr Evans assumed that bodies producing desktop assessments would account for failed tests despite obvious client confidentiality issues or refuse to produce such studies if the client insisted on confidentiality.[139] We now know 29 desktop studies produced by the BRE relied on failed 2014 K15 & Trespa BS8414 as the basis for compliance confirmation,[140] and none found from the relevant time period yet referred to the K15 & Sotech failed 2007 tests or the first failed Celotex RS5000 test from February 2014.

74. In the original Issue 0 of BCA TGN18, desktop studies drafters were limited to *"suitable independent UKAS accredited testing body (BRE, Chiltern Fire or Warrington Fire)"*.[141] Unfortunately, this appeared to be too much pressure for bodies such as the BRE. The repercussions of privatisation were manifested yet again: despite the already poor quality of desktop studies, the NHBC, and specifically Steve Evans, proposed to widen the ambit of those able to draft them, to speed up the system and keep project leads happy.[142] Mr. Lewis denies this change in wording was to help *"mop up the backlog"* due to the BRE's struggle to keep up with demand,[143] and denies the further worsening quality of desktop studies was due to the dilution of requirements.[144] It is clear the speed of business was prioritised, nonetheless.

75. In oral evidence it became clear that the NHBC's internal escalation process was ineffective at best. There was no peer-review of Mr Lewis' desktop studies decisions, as no peers were available at the NHBC,[145] no outsourcing, no true second opinion, simply a newly-qualified fire engineer, and Mr Evans, who Ms Marshall relied on for expertise.

76. Even when the NHBC sought to halt acceptance of K15, they continued to fail the UK's high-rise residents: the industry announcement was neutered, and failed to mention K15 by name, having already taken well over a year to address its use.[146] In her closing comments, Ms Marshall

1.

[136] {Day 220, 15/12/2021, 37:25-38:9}
[137] {Day 220, 15/12/2021, 37:8-37:19}
[138] {Day 220, 15/12/2021, 45:6-45:12}
[139] {Day 220, 15/12/2021, 52:11-53:12}
[140] {Day 98, 01/03/2021, 135: 9-18}
[141] {NHB00000760}
[142] {Day 221, 16/12/2021, 168:19-169:6}
[143] {Day 224, 01/02/2022, 109:21-110:23}
[144] {Day 224, 01/02/2022, 124:20-125:7}
[145] {Day 223, 31/01/2022, 6:21-7:8}
[146] {NHB00001032}

admitted *"the issues with Kingspan could have been drawn to a conclusion far swifter."* Mr Evans also accepted he *"should have escalated that a lot sooner, seen through that* [...] *I would have pressed a lot firmer for more testing at an earlier time.*[147]*"*

77. Having put out an announcement to the industry pointing out the dangers of combustible insulation, the NHBC undermined it less than 18 months later in their own 2016 guidance note.[148] In appendix 3 of this note, the use of K15 and RS5000 (inter alia) was permitted alongside Class B ACM.[149] A secondary governmental failing appears here: DCLG official Brian Martin saw the document and failed to object, instead attending and speaking at the note's launch in July 2016,[150] despite his participation in the CC1924 BRE/CLG contract and awareness of international ACM fires at the turn of the millennium. There was also no legitimate evidence to allow the product's use specifically alongside combustible insulations. In fact, when shown evidence by Sotech of the failed K15 & aluminium cladding panel BS 8414-2 tests,[151] none of the three providing oral evidence were able to recall any discussions on the issue. When asked why they published the 2016 note despite knowing of the failed test, Mr Evans said: *"we felt at that time, sufficient option 3 assessments carried out by fire engineers, BRE, Exova, to satisfy ourselves that we were in a position to be able to publish that."*[152]

78. Unfortunately, the NHBC 2016 Guidance Note appears to have been introduced with a view to streamlining acceptances of builds, with little to no thought for the public's safety due to the apparent faith in desktop studies seen for builds such as that in Appendix 3.[153] Mr Evans also admitted that this note entirely bypassed s12 of ADB:

"SIR MARTIN MOORE-BICK: But would you accept, Mr Evans, that there is something of an anomaly here, that on the basis of appendix 3 you can now justify a build-up which does not have insulation of limited combustibility, does not have cladding panels of limited combustibility, so one's completely bypassed paragraphs 12.5 to 12.7 of ADB? A. Yes, I would accept that."[154]

79. As Mr Lewis concluded in his evidence: *"it shouldn't have been written* [...] *its only saving grace, for want of a better word, from my point of view, is that it never actually got used."*[155]

NHBC Post-Grenfell: What Next?

1.

[147] {Day 221, 16/12/2021, 231:16-231:19}
[148] {NHB00000065}
[149] {NHB00000065}
[150] {BRE00004395/10} & {BRE00004395/19}
[151] {NHB00002791}
[152] {Day 221, 16/12/2021, 231:16-231:19}
[153] {Day 225, 02/02/2022, 77:16-77:18}
[154] {Day 221, 16/12/2021, 169:21-170:3}
[155] {Day 225, 02/02/2022, 59:25-60:16}

80. The story of the NHBC clearly demonstrates that, in practice, allowing regulatory services to be carried out by private bodies leads to inevitable conflicts of interest. Had these conflicts been effectively managed, and use of non-compliant combustible products halted immediately in 2013, it might have been plausible to say this was a salvageable system. However, due to failures to prioritise public safety for fear of upsetting industry players, it is clear the venture to privatise such key regulatory services has failed, corrupted by commercial interests, with a lasting and current legacy exemplified in the continuing cladding scandal. It is from this perspective that we propose such services are taken out of private hands, to prevent further conflicts and ensure that public life safety is adequately protected.

CENTRAL GOVERNMENT

PREAMBLE

81. The nature and substance of the evidence in the Inquiry in this part of the module beggars belief - belief in a system that failed to protect the right to life. There is one overarching conclusion: that the edifice of government was, and remains, as much at risk as Grenfell Tower itself was in 2017.

82. The Inquiry has exposed the fundamental fault lines in both, the former significantly contributing to the latter. An unresponsive system of parliamentary democracy, wherein the concentration of power is vested in a cabal of short-term Ministers, bereft of any technical expertise to enable challenge, enquiry, robust oversight and transparency; this was, and is, a recipe for disaster. The core accelerant fanning the flames was a deep rooted, remorseless, aggressive political dogma disguised as freedom, freedom to facilitate the interests of industry and private enterprise.

83. This combination of forces nurtured a hostile environment where health and fire safety, human rights, and equality within social housing were systematically portrayed as impediments to the free market. This provided licence and momentum for behaviours ranging from incompetent to grossly negligent and corrupt.

84. The testimony in the government part of this module, which has singularly marked those in positions of authority and responsibility, is characterised by arrogance, ignorance, indifference and, in some instances, deceit. Witnesses have regularly shown a remarkable lack of awareness, effectively, 'the higher you go the less you know' as if this is a quality to be proud of. It has often been born from 'not wanting to know' as it did not fit the political purpose of government. It has become increasingly clear that few, if any, of the Nolan 'seven principles of public life'[156] have

1.

[156] "The Seven Principles of Public Life", GOV.UK , 31/05/1991, {https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2} [last accessed: 06/06/2022]

been upheld by the majority of senior politicians and civil servants. The principles are: *Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; Leadership.*

85. The apotheosis of this race to the bottom came in the module's final stages with Lord Pickles. His demeanour, excuses and ill-informed attempt at empathy do not bear repetition. Even his apology is couched in terms of an involuntary act of 'misspeak' for which he is not really responsible.[157]

86. At the heart of this performance is ministerial responsibility. Lord Pickles finally fell on this sword, but it is meaningless without repercussions. What he claims he did not know about matters in his own department,[158] he certainly should have known. We submit his proclaimed ignorance was an inevitable corollary of the political environment he helped create. There was no complaint or raised hand precisely because deregulation was the order of the day. The ex-Secretary of State's belated attempts to rewrite history as if it was never intended to cover Building Regulations safety measures,[159] demonstrate the untrammelled, disingenuous nature of ministerial responsibility.

87. Even if he knew more than he claims, it would not have made any more difference than if he had directly responded to the Lakanal letter.[160] Had he held fire safety as a priority then, there might have been very different outcomes for the tower's residents.

88. This Inquiry is a moment of reckoning – for the system and for government. Acceptance of responsibility must entail an admission of failure, reconstructive change and effective sanctions. Further, as Lord Barwell said: *"it is absolutely right that the Inquiry holds the government to a much higher standard than anybody else because it's the government that ultimately has the responsibility for taking decisions in the public interest."*[161]

89. This is faced and recognised head-on in the opening of the Department's written submissions:

"The Department acknowledges its responsibilities for past failures and is therefore implementing changes to make buildings safer now and in the future." […] *"individually these errors and missed opportunities from the Department and across industry may not have caused the fire at Grenfell Tower, but cumulatively they created an environment in which such a tragedy was possible."*[162]

90. A substantial step that could have been taken on many occasions with great effect, particularly between 1999 and 2017, was 'a ban on combustible materials in external walls of new HR homes

1.

[157] {CLG00036415}
[158] {Day 261, 06/04/2022, 90:21-91:2}
[159] {Day 261, 06/04/2022, 52:22-53:13}
[160] {CLG00002788}
[161] {Day 260, 05/04/2022, 259:5-259:9}
[162] {CLG00036387/1} & {CLG00036387/3}

and funding to remove dangerous cladding from existing HR residential buildings.'[163] Such a relatively obvious and simple solution has taken until the 1st of June 2022 to come to near full fruition in the announcement of improvements to fire safety guidance and building regulations by the Fire Safety Minister Lord Greenhalgh. There will be a ban on Metal Composite Material panels with unmodified polyethylene core (MCM PE) on all new buildings at any height. There is already a ban on the use of combustible materials in and on the external walls of new residential HR over 18m. Further statutory guidance will be introduced to restrict the use of combustible materials below this height 11-18m.

91. Had this approach been adopted in 1999 (or thereafter) such measures would inevitably have included refurbishing existing HR like Grenfell Tower and thereby have prevented the 72 deaths. This clear and unambiguous *'prescription'* would have obviated the endless obfuscation, confusion and delay caused by scholastic and misplaced debate generated by Class 0, limited combustibility, the meaning of *'filler'* and Euroclasses as opposed to the U.K. national standard. It would also have circumvented the fallibilities of 'performance' testing regimes to be scrutinised in Module 7 (noting it was still possible to construct fire safe insulated external wall/facade without a hazardous cavity). Above all, it would have saved lives.

92. But all this would have required new regulations and was contrary to political doctrine.

93. The government position was reinforced as the oral submissions began with the words: *"The department is deeply sorry for its past failures in relation to the oversight of the system that regulated safety in the construction and refurbishment of HR buildings."*[164]

94. These observations are welcomed but it is since notable that numerous witnesses were reluctant to accept the Department's concessions, even in hindsight. Responsibility, accountability and repercussions for those at fault at all levels are at the heart of governance and this Inquiry. Unless accorded prime status, public health and safety risks will remain and government ministers will walk away blaming others, commonly their advisers (a trait readily discernible at present).

95. The centrality of this concern about the state of parliamentary governance was made clear in moving narratives of which the Inquiry is aware. The first was the late Sir David Amess MP's 2019 speech to the House of Commons near the second anniversary of the fire:

"The world was horrified when we saw a tower block ablaze in the fourth or fifth wealthiest country in the world and it should never, never, have happened. Over the past six years the All

1.

[163] {CLG00036387/4}
[164] {CLG00036387}

Party Group has met resistance when seeking improvements to fire safety, despite compelling evidence that such measures should be introduced. In the 13 years since the regulations were last reviewed nothing has happened. It is perhaps rather easier for a Conservative Member to make those points than [...] *for other Members because we should never have got to the position of the Grenfell Tower fire tragedy , especially after the warnings and recommendations from the Coroner after the Lakanal House Fire and the 2013 Inquest, the rule 43 letter to the Secretary of State* [...] *the large number of letters exchanged between me and numerous Ministers and meetings with successive Ministers. It brings no comfort to the victims of Grenfell* [...] *it is the fault of the Conservative Government, the Labour Government* [...] *of every Member of Parliament that our voice was not heard and the recommendations were not listened to."*[165]

96. It could not be expressed more succinctly. The buck-passing merry-go-round must stop here; with government, led initially by David Cameron, described at the start of this module as a government consumed with an '*unbridled passion for deregulation*'.[166] Previous governments bear a share of responsibility for this policy but the critical difference is the way Cameron targeted the culture of safety (health or fire) and characterised in derogatory terms a '*risk averse*' society. Safety rules were a hindrance, an 'albatross' around the neck of industry to be '*killed*'.

97. From 2010 onwards this set a more intense tone and it is no coincidence that the DCLG became known as the Department of Deregulation. It meant the slightest shift towards clarification would not occur if it involved a regulation '*in*' as opposed to '*out*'. Creeping paralysis, lethargy and demoralisation set in within the Civil Service. A paucity of effective engagement in government does not bode well for understanding and engagement with communities.

98. The second narrative was delivered in Module 4 by resident Hanan Wahabi, who also gave evidence in Phase 1. When asked about lessons learned, she said, in a powerful statement:

"Is it not enough that we walked out of the building and had to watch my family, my brother and his family die? We still need support. Our children need support. Local and central government cannot be allowed to abandon us, to wash their hands of us, when they think they have done enough. What happened to us was through their failings. Our loss, our pain, our wounds are because of them.

"This duty of care needs to extend beyond us to the rest of the country, to the thousands of families who live in communities like us, like we had at Grenfell, who are still treated as second class

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[165] {https://hansard.parliament.uk/commons/2019-06-06/debates/69CABE5D-68DE-4DBB-A77E-0C33C804762B/GrenfellTowerFire} [last accessed: 30/05/2022]
[166] {Day 214, 06/12/2021, 12:17-12:22}

citizens. It needs to extend to the thousands impacted by the building safety crisis up and down the country.

"We are still impacted. We still hurt. We still remember. We haven't forgotten. All the issues we have, the PTSD, the mental and physical trauma that you see as problems in us; this isn't who we were; this is who some of us are now because what the government did to us [...] *Those that caused this tragedy need to held accountable. Their duty of care to us now has no limit."*[167]

99. A glaring anomaly in this context is the absence of the key player in this narrative, the Prime Minister, David Cameron. He galvanised policy in the critical years prior to Grenfell and was the architect of the renewed and rejuvenated deregulatory policy that targeted safety, a policy that facilitated the conditions of causation. Team 2 has submitted two requests for his attendance as a witness, the first in November 2021 and the second in April 2022. Both have been declined on the basis that it would be disproportionate and unnecessary for him to be called.

100. Hanan, other residents, and the general public for the benefit of whom this Inquiry was established are owed answers about the Prime Minister's awareness of the repercussions, impact upon fire safety and risk to life caused by his policy. If he realised, what did he do to counter these risks and where is the evidence? If he did not, how could such matters have escaped his attention and understanding?

101. His letter of 6th April 2011 to Lord Pickles and other ministers or senior civil servants, was explicit and categoric about the government's '*ambitious deregulation agenda'* (alongside the PM's public Red Tape Challenge launch) and should be read in full, especially against Lord Pickles' claimed contrary understanding in evidence. Herein lies the bankruptcy of the political system.

102. If he meant what he said in declamations to the public and exhortations to colleagues, his responsibility for the consequences is incontrovertible. If he didn't and it was all a performance, a fake to maintain power, which misled the electorate and civil service, it is equally reprehensible.

103. Three passages capture these undercurrents. One from the 2011 letter, the second from a speech he delivered on 5th January 2012 and the last from Lord Pickles' testimony.

The 2011 Letter

'This marks a change from the old ways of doing things - and it's success will depend on you and your department being fully behind this approach. So this is not a polite request to "reduce regulation if you can", it is a change in approach that means Ministerial teams should see

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[167] {Day 267, 25/04/2022, 141:4-142:2}

themselves personally accountable for the number of regulations contained within and coming out of departments, and the burden they impose. Be in no doubt all those unnecessary rules that place ridiculous burdens on our businesses and on society - they must go once and for all.'[168]

The 2012 speech to small businesses, Maidenhead Berkshire

"the Government is waging a war against the excessive health and safety culture that has become an albatross around the neck of British businesses. This coalition has a clear New Years resolution to kill off the health and safety culture for good […]*"*[169]

104. In evidence[170], Lord Pickles characterised the 2011 letter as a common Dear Colleague communique, as you might expect from a CEO, citing a difference between '*this kind of veneer and the reality"*[171] […] *"You are giving it an importance that - this is not something special".*[172]

105. Challenged repeatedly on whether he took the Prime Minister's letter – and word – seriously, he said he did but contrasted this with private governmental discussions: "*Q.* […] *this letter is to be read by the relevant minister against the background of private discussions* [they] *had over time with the Prime Minister? A. Well the key - well, I wouldn't say - if you're lucky enough to have private discussions with the Prime Minister or with his office or with senior colleagues* […]*'.*[173]

106. Lord Pickles may play it down and claim he paid it little attention, but these reservations did not reach the public or the officials tasked with implementation. They did not alter policy makers' mindset on building regulation and ADB, nor change things on the ground or improve safety. The concern was more with image, websites and reputational damage.

107. There was no exemption for Building Regulation safety aspects,[174] no identification of unnecessary rules nor ridiculous burdens. Why? Publicly, mention was made of conkers in playgrounds.[175] It is relevant and necessary to discover what the terms in this letter meant and what the PM intended. What oversight did he have over departments and their higher echelons? What was his input in selecting junior ministers whose tenure was short and who rarely had appropriate qualifications, expertise, or experience in building construction and regulation?

108. Did the PM know his Secretary of State did not take his command seriously – a '*fancy letter from*

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[168] {HOM00018307}
[169] "David Cameron: I will kill off safety culture", The Independent, 05/01/2012 {https://www.independent.co.uk/news/uk/politics/david-cameron-i-will-kill-off-safety-culture-6285238.html} [last accessed 30/05/2022]
[170] {Day 262, 07/04/2022, 4:6 -15:7}
[171] {Day 262, 07/04/2022, 6:10-6:19}
[172] {Day 262, 07/04/2022, 9:17-10:3}
[173] {Day 262, 07/04/2022, 7:25-8:11}
[174] {CLG00019465/8}
[175] "Conkers fights: Is it the end for the playground game?", BBC, 10/10/2014 {https://www.bbc.co.uk/news/uk-england-29519601} [last accessed 30/05/2022]

the PM', 'not something special'?[176] Are they on the same pitch or is it a pretence? It is necessary and proportionate to interrogate meaning, intention and impact assessment with the inaugurator and would be a travesty of justice and accountability for these questions to remain unanswered.

109. Lord Pickles' position in evidence contrasts starkly with the understanding of officials who felt constrained and bound by the policy. As they (Harral,[177] Ledsome, Martin, Upton) understood it, the BR and ADB were not excluded from 1 in 2/3 out, or the RTC. Lord Pickles found this '*utterly inexplicable*' and was '*genuinely amazed'.*[178]

110. Mr Ledsome, Department Deputy Director from June 2011 to May 2017, did not think a fight for a BR exemption was *"worth having".*[179] He failed to consider whether there was a life safety exemption to the cost-benefit analysis required for new regulation, claiming he was unaware if it existed, adding: *"I wish we had thought of it."*[180]

111. Mr Harral, Head of Technical Policy from 2014 to October 2017 and Brian Martin's senior, also referred to severe effects on his health, leaving the civil service in 2017 because he believed the workload would "*kill*"[181] him, having fallen ill twice in 2016. He noted that the entire division's work was "*distorted*" between 2014 to mid-2015 in the Housing Standards Review, a piece of deregulatory work, leaving no capacity for desperately needed review of ADB.[182]

CORE ISSUES

112. Counsel to the Inquiry helpfully set out the four basic questions to be addressed in this module:[183]
    a) Were risks from fire in HR properly understood by government before the blaze?
    b) Had lessons been learned from previous incidents in the U.K. and overseas?
    c) What steps had or had not been taken by government to address the risks *from fire* in HR buildings?
    d) What motivated government in its approach to fires before the 2017 disaster?

113. In light of the evidence and the Department's opening, the answers are temptingly brief. For (a) and (b) it is clearly 'No'. For (c), 'None', and (d), the overarching dogma of deregulation which delegated the task of fire risk to industry. An ultimate and overriding question, primarily for David Cameron, then becomes how these conditions of causation came about.

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[176] {Day 262, 07/04/2022, 148:5-148:8} & {Day 262, 07/04/2022 , 10:21-10:25}
[177] {Day 243, 07/03/2022, 53:25-54:9} – Harral – "*fully envisaged*" BR involved in life safety would be involved in deregulation
[178] {Day 262, 07/04/2022, 100:2}
[179] {Day 241, 02/03/2022, 76:6-76:15}
[180] {Day 241, 02/03/2022, 78:22-79:11}
[181] {Day 243, 07/03/2022, 6:15-16}
[182] {Day 243, 07/03/2022, 89:7-89:20}
[183] {Day 214, 06/12/2021, 3:8-3:21}

114. The risk question, however, at the heart of all four issues is framed broadly, and tasks *'from fire'* not merely *'of fire'*. The latter dominates this module but the former is equally important for governance and is incorporated into our recommendations at the end. Fire safety must be seen as an entity in its own right, a cohesive and inclusive portfolio, requiring joined-up informed thinking; robust oversight and accountability. The ambit should extend beyond building and construction regulations and involve prevention and suppression measures; preparedness protocols; emergency service resources and practices; Local Authority responsibilities; and tenant empowerment, especially in social housing. The impact and interrelationship of these aspects cannot be subsumed in a general brief of the kind described by Gavin Barwell[184] albeit a Minister of State rather than a Parliamentary under Secretary.

115. Government's general approach to fire safety was largely underwritten by a complacent and blind belief that despite previous U.K. incidents, markedly Knowsley Heights (1991), Garnock Court (1999), and Lakanal House (2009) – all of which importantly were social housing estates – what was happening in Europe, the Middle East and Australia, could not happen here.[185] They did not want to hear inconvenient truths and, where possible, suppressed information on potential fire risks and hazards from public scrutiny. The duties of care and candour were flagrantly cast aside.

116. The repercussions of this approach were serious and far reaching. There was totally inadequate investigation with the BRE (Building Research Establishment), which was cut adrift to compete for private contracts in 1997.[186] The Lakanal Coroner's detailed and carefully drafted R43 letter of recommendations to Lord Pickles in 2013[187] was batted away with blandishments to the Coroner, the APPG and others, about a long-term review of building regulations which ultimately did not occur until after the fire. Shockingly, even Dame Melanie Dawes, Departmental Head of the Civil Service, knew nothing of Lakanal and its significance until the morning of the fire.[188]

117. This lacuna was amplified in her evidence by even broader deficiencies in awareness. She told the Inquiry she was not aware that, in 2016, the MHCLG's Building Regulations better regulation Unit effectively told officials in the BR division not to propose any new regulation.[189] She claimed also to be unaware that the MHCLG's BR department did not consider whether its work might be the subject of an exemption, for example where life safety issues were potentially in play.[190]

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[184] {Day 260, 05/04/2022, 18:16-19:24}
[185] {Day 254, 24/03/2022, 53:25-54:18}
[186] {Day 234, 17/02/2022, 74:5-74:7}, {Day 233, 16/02/2022, 108:8-109:4}, "BRE described as 'buck-passing incompetents' after inaction on cladding warning", Inside Housing, 17/02/2022 {https://www.insidehousing.co.uk/news/news/bre-described-as-buck-passing-incompetents-after-inaction-on-cladding-warning-74332} [last accessed: 30/05/2022]
[187] {CLG00002788}
[188] {Day 249, 16/03/2022, 19:8-19:20}
[189] {Day 249, 16/03/2022, 53:22-54:25}
[190] {Day 249, 16/03/2022, 54:3-54:8}

118. Dame Melanie was '*very surprised*' to learn all this. Policy guidance should have been in place to ensure life safety was not compromised.[191]

119. Long before her 'Lakanal moment' on the day of the fire, it was well known in the industry and the Department that developing building techniques often involved incorporating combustible materials. Brian Martin knew, as did Lord Pickles, "*the conditions existed that there were people putting things in, into panels and the like, that were combustible*".[192]

120. Sir David Amess MP repeatedly made this point forcibly in APPG letters. The Department generally seemed to consider the letters "*disruptive*", with Mr Ledsome saying he would have *"used a word which might have had a similar import"*.[193] Lord Wharton failed to consider the issue properly or form an opinion on the APPG generally, relying entirely on the officials beneath him to formulate responses.[194] Mr Williams did much the same, and was apparently "horrified" to discover in evidence that Brian Martin had been "*batting the APPG away*".[195]

121. Bob Ledsome was asked by the Inquiry: *"Do you accept that there was an utter failure of engagement with the concerns that the APPG was raising? A. I've accepted that, with hindsight, we could have offered the minister the opportunity to make a fuller response to specific comments made in the APPG letters."*[196]

122. Lord Barwell reflected on this failure: *"It probably does follow that the officials didn't think the concerns the APPG were raising were particularly well-founded."* [197] His suspicions appear to have been correct. Mr Martin, who had for years manipulated ministers to refuse the APPG's suggestions and meeting requests, revealed his scorn for the APPG's campaign in oral evidence. He balked at the idea of the APPG's secretary Ronnie King, who had an *"absolute priority of fire safety"* drafting ADB. [198] Mr Martin suggested acting on the APPG's fire safety concerns created situations in which the *"government had to choose"* between *"death by fire or death by starvation."* [199] In his continued refusal to allow the APPG an audience with ministers, Brian Martin took it upon himself to limit the need for those elected to govern from making this so-called choice - apparently in the interests of the nation's economy.

123. The denouement of this saga is starkly played out in Mr Martin's final words of evidence. He is

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[191] {Day 249, 16/03/2022, 54:9-54:13}
[192] {Day 262, 07/04/2022, 147:7-149:3}
[193] {Day 242, 03/03/2022, 99:11-100:7}
[194] {Day 258, 31/03/2022, 164:6-164:14}
[195] {Day 259, 04/04/2022, 114:23-117:5} & {Day 259, 04/04/2022, 141:7-142:14}
[196] {Day 242, 03/03/2022, 150:8-150:19}
[197] {Day 260, 05/04/2022, 233:13-233:16}
[198] {Day 252, 22/03/2022, 130:23}
[199] {Day 252, 22/03/2022, 132:10-132.23}

asked about reactions and responses after the fire. There was a scramble at the Department to assemble a coordinated explanation to rebut Press assertions that the regulations permitted the cladding on Grenfell and to answer if this was an isolated incident. Suddenly, the waters parted, and the fog of confusion dispersed.

Q. "Why was it possible after the deaths of 71 people [...] *to state so definitively that such products were not acceptable for use over 18 metres, when you had been asked that repeatedly for a number of years and had never given any plain and unequivocal view to that effect?*[200]

Mr Martin claimed to Mr Millett that he had but in different terms. Nonsense.[201]

124. Note, throughout his time in office and all his disseminations on ADB, he knew, as did others, the speed of fire spread from the 2001 tests. Mr Millet's poignant questions summarised this:

Q. "Did you or, to your recollection anybody else, including perhaps Dr Smith, tell the minister that the department had carried out a full scale test on a cladding system incorporating ACM panels some 16 years previously and therefore had a very good idea of how such panels were likely to perform in a fire?[202]

Q. "Did you tell [Dame Melanie] *that you had been involved in a project including large scale testing in 2001 at the BRE involving ACM with a polyethylene cored panel which showed that such panels caused a raging inferno during an external wall fire?*[203]

125. Mr Martin unbelievably denied he knew the detail.[204] He had been responsible for official BR fire safety guidance for almost 18 years when the fire happened, so it is unlikely he was unfamiliar with crucial test data outcomes. The BRE engaged him in 1999, seconded to the Department for several days a week to support its ADB work. Booth Muirie's reputable cladding consultant Nick Jenkins also warned him in February 2016 that ACM was in wide supply and use, historically and ongoing in the U.K. and was a matter of 'grave concern'.[205] Emails on these points merit reflection, scrutiny and present to government a momentous 'Red Alert' about the dangerous impending cladding crisis now encompassing the plight of thousands trapped in high-risk HR - a warning akin to those from Shah Ahmed (his inferno letter)[206] and the Francis O'Connor/Ed Daffarn blog ('playing with fire').[207] It was set against dramatic HR conflagrations in the Middle

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[200] {Day 257, 30/03/2022,195:20-196:3}
[201] {Day 257, 30/03/2022,195:20-196:3}
[202] {Day 257, 30/03/2022, 208:7-208:12}
[203] {Day 257, 30/03/2022, 234:10-234:14}
[204] {Day 257, 30/03/2022, 234:10-234:17} & {Day 257, 30/03/2022, 208:7-208:14}
[205] {CLG00031093}
[206] {TMO10037439}
[207] {IWS00002138}

East especially Dubai where ACM panels, in Mr Martin's own words to Mr Ledsome, when *"exposed to a fire the aluminium melts away and exposes the polyethylene core - whoosh!"*[208]

126. As Mr Ledsome accepts, '*it should have been gripped better*' and '*is a matter of deep regret*'.[209] He was aware of the 2014 NHBC/Kingspan debacle and failed to inform relevant Building Control policy teams about the problem with the use of combustible insulation.[210] It is no surprise he failed with aluminium cladding too. Mr Ledsome accepted there was a *"misplaced optimism"* in Building Control bodies and industry *"doing a competent job"*[211] – but how could they if there was no governmental intervention on the matter?

127. Mr Martin must have realised, at least from the 1999 Garnock Court fire, that there was a strong argument for its prohibition altogether, perhaps why he was so anxious to suggest and have agreed retrospectively, possibly via a script endorsed by independent experts, that this was the correct interpretation of the guidance throughout – another history rewrite akin to that of Lord Pickles. This unravelled in Mr Martin's answers on Dame Melanie's 22 June 2017 letter and the footnote on core filler indicating that s.12.7 applied to any element of the cladding system. [212]

128. His evidence was to the contrary on his 2006 amendment to ADB. '*Limited combustibility*' was never intended to apply to 'any' element: *"Q. So do you know how this false representation of the government's position about the intention behind 12.7 came to be included in this footnote, given that it does not reflect the content of the actual guidance as intended by you at the time? A. It's a mistake on my part. I must have missed it. Q. Are you sure this wasn't a planned, deliberate and underhanded attempt by you and those around you to rewrite history in the light of the 71 deaths at Grenfell in order to protect the government's position after the event? A. No.*" [213]

129. While denied, it is difficult to accept oversight as an explanation when he must have realised the eyes of the world were on how much was known and had regulations been complied with.

130. Figures including former BRE technical development director Martin Shipp, fire safety expert Colin Todd and former government adviser Sir Ken Knight contributed to the letter containing this footnote.[214] Given this letter was destined for all local authorities and housing association CEOs, all contributors would have been anxious to ensure accuracy.

131. His mea culpa response to the reflective question reveals the theme developed in this submission.

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[208] {CLG00031093/4} & {HOM00043106}
[209] {Day 245, 09/03/2022, 76:13-76:18}
[210] {Day 245, 09/03/2022, 21:25-24:19}
[211] {Day 245, 09/03/2022, 118:2-124:6}
[212] {RBK00015952}
[213] {Day 257, 30/03/2022, 230:9-230:2}
[214] {RBK00015952}

"[…] the approach the government - successive governments had to regulation had had an impact on the way we worked, the resources we had available, and the mindset that we'd adopted as a team, and myself in particular, and […] as a result of that, I ended up being the single point of failure in the department, and I think that's why I think we failed to stop this happening. For that's something I'm bitterly sorry."[215]

132. He is right on the deregulatory climate's deleterious effect but wrong on himself being the single point of failure. His superiors; line manager, civil service head, Secretary of State and PM allowed him to accrue power and influence as it facilitated policy objectives. Notably, Dame Melanie supported his purported interpretation of the regulations in the false representations in her letter.

133. His explanation also partly addressed question (a) (para 112). He admitted underestimating the scale and severity of the fire risk. Had he realised, he would have *"escalated the issue and perhaps we could have done something to prevent what happened to the people of Grenfell Tower".*[216]

134. This may be the understatement of his two decades scrutinising regulation. It is not hindsight as he suggests because he heard the loud warnings from the outset of the cladding catastrophe.

NOT AN ISOLATED INCIDENT

135. We have previously highlighted relevant fires in the U.K. and abroad as did the BBC in documentary *'Fires that Foretold Grenfell'* in November 2018 vis-a-vis the U.K.[217] It is not intended to traverse this again but rather distil some general themes.

136. Wherever and whenever they took place, lessons on fire risks in HR residential blocks were not absorbed nor learned. Worse, several witnesses barely knew of them and, despite their governmental positions, displayed no appetite or enthusiasm for discovering what happened. A dismissive, disinterested air prevailed – regulations here are different and do not permit such outbreaks but, if one did occur, it could be distinguished and disregarded.

137. While he disputed the words used, Mr Martin reportedly asked prominent architect Sam Webb in 2016 to *"show me the bodies"*[218] when discussing the BR's adequacy in the House of Commons.

138. The chronology begins with Summerland on 3rd August 1973 where 50 died in an inferno over 5 storeys with Oroglas acrylic glass sheeting on the facade.[219] While not a HR residential block but

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[215] {Day 257, 30/03/2022, 242:3-242:12}
[216] {Day 257, 30/03/2022, 241:21-242:2}
[217] "The Fires That Foretold Grenfell", BBC Two, 15/11/2018 {https://www.bbc.co.uk/programmes/b0bqjp75#:~:text=The%20five%20fires%20revisited%20include,House%2C%20London%20(2009).} [last accessed: 30/05/2022]
[218] {SWE00000001/90} & {Day 255, 28/03/2022, 35:9-35:2}
[219] "Summerland: deadly lessons lost", Hugh Pearman, RIBA Journal {https://www.ribaj.com/culture/summerland-fire-the-lessons-of-grenfell-went-unheeded-50-years-ago} [last accessed: 30/05/2022]

an entertainment venue, it should have been seen as an omen of the potential risks of cladding.

139. Four others, however, in the subsequent history stand out and cannot have gone unnoticed by government: Knowsley in '91, Garnock Court in '99, The Edge in Manchester in 2005 and Lakanal House in 2009. The first has particular significance. The government did not learn the promotion of safety. Instead, it cast the die for how cladding issues would be approached.

KNOWSLEY HEIGHTS

140. Knowsley Heights was a flagship government-funded project through Housing Management Estates Action, trialling a new cladding system on HR residential blocks.[220] The BRE (pre-privatisation) monitored the project and, shortly after installation, the build was destroyed by fire in 1991. Knowsley employed GRP cladding panels and lacked cavity barriers.[221] The cavity acted as a chimney, and smaller window frames created gaps filled with combustible materials.[222]

141. A premonition of Grenfell, flame re-entry occurred throughout the build.[223] The BRE fire report failed to identify that Class 0 only assessed surface spread, not overall combustibility, therefore failing to address the life safety threat left lurking by reliance on it. Instead, it stated: *"there is no reason to suggest a life risk associated with cladding unless there are cavities large enough to allow for vertical fire spread"*.[224] Government masked the ramifications and played it down publicly as insignificant.[225] Meanwhile, the BRE was developing new tests, seeing a large potential for commercial funding.[226]

142. A golden opportunity was missed – after this fire in 1991, the government knew small scale fire testing failed to ensure external cladding fire safety for 18m+ HR. Instead of conducting a systems review, exploiting commercial advantage took precedence. Class 0 remained in place until the Grenfell fire nearly 3 decades later, allowing a clear threat to life safety to go unchecked.

143. The pivotal watershed then arrived 8 years later when government was cemented into a recognised bond with industry in the aftermath of the Garnock Court fire.

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[220] "Government sought to 'play down' cladding fire at pilot project it funded in 1990s, investigation reveals", Inside Housing, 13/06/2021 {https://www.insidehousing.co.uk/news/news/government-sought-to-play-down-cladding-fire-at-pilot-project-it-funded-in-1990s-investigation-reveals-71116} [last accessed: 30/05/2022]
[221] {BRE00035385/3}
[222] {BRE00035385}
[223] {BRE00035385}
[224] {BRE00035385/5}
[225] "Government sought to 'play down' cladding fire at pilot project it funded in 1990s, investigation reveals", Inside Housing, 13/06/2021 {https://www.insidehousing.co.uk/news/news/government-sought-to-play-down-cladding-fire-at-pilot-project-it-funded-in-1990s-investigation-reveals-71116} [last accessed: 30/05/2022]
[226] "Government sought to 'play down' cladding fire at pilot project it funded in 1990s, investigation reveals", Inside Housing, 13/06/2021 {https://www.insidehousing.co.uk/news/news/government-sought-to-play-down-cladding-fire-at-pilot-project-it-funded-in-1990s-investigation-reveals-71116} [last accessed: 30/05/2022]

GARNOCK COURT

144. On 11th June 1999 a 14-storey block of flats, Garnock Court, in Ayrshire, was consumed by a fire that spread via the external cladding, reaching the 12th floor in 10 minutes and destroying flats on 9 floors, with one fatality. Combustible glass fibre reinforced panels (GRP) cladding featured alongside PVC window frames. The refurbishment had also been carried out in 1991.

145. That year, the BRE took on Mr Martin as a BR expert specialising in fire.[227] He was rapidly becoming known as a BR guru, despite a background in building control without any specific qualifications or training in fire safety. Within weeks he was seconded into government as *"the lead consultant"* providing support *"on matters of fire safety'*,[228] specifically on ADB issues,[229] again despite a lack of qualification. He joined the Garnock investigative team, co-authoring and commissioning the report - a clear conflict of interest that troubled no-one, least of all himself.[230]

146. For the recently privatised BRE, government was a key commercial client. For government, it provided a convenient link to industry needs. Mr Martin moved into government offices (a privilege not afforded to his predecessor), thinking it was to ensure *'value for money'* from him.[231]

147. The now-privatised BRE prepared 3 reports, dated September 1999 and April 2000 for North Ayrshire Council and August 2000 for DETR.[232] The main lesson should have been *'do not use combustibles*'. If taken seriously, it would have entailed amending the regulations. Counsel to the Inquiry's careful analysis demonstrated that, while the reports were largely identical, two key concerns were removed from the copy intended for Anthony Burd (Mr Martin's supervisor in government). Specifically, reservations about Class 0 and the need for non-combustibles.

148. Mr Martin could not explain such precise editing in a report concerning his specialist area.[233] These were concepts at the heart of ADB, as well as his own responsibilities. The obvious answer was denied by Mr Martin as ADB brief keeper and draftsman. Somebody must have been told to excise them to make the BRE's report to government in 2000 consistent with its decision to reject the Select Committee's recommendations. His own self-deprecating description of his role springs to mind - '*oily rag'*.[234]

149. Garnock was a landmark fire. The report led to a Parliamentary Select Committee - hardly an

1.

[227] {Day 250, 17/03/2022, 16:25-17:11}
[228] {CLG00019469/2}
[229] {Day 250, 17/03/2022, 24:20-25:1}
[230] {Day 250, 17/03/2022, 109:14-110:15}
[231] {Day 250, 17/03/2022, 20:18-21:4}
[232] {Day 250, 17/03/2022, 94:10-95:11}, Sept. 1999 {BRE00035377/2}, May 2000 {BRE00035377/22}, Aug. 2000 {BRE00035375}
[233] {Day 250, 17/03/2022, 118:13-119:2}
[234] {Day 250, 17/03/2022, 162:9-163:17}

exercise where key data is mistakenly lost. The Committee issued a report in December 1999, advising elimination of Class 0, proposing instead cladding systems to either be entirely non-combustible or pass a large-scale test.[235] Famously, they stated, it should not take a serious fire in which many people die before all reasonable steps are taken towards minimising the risks.[236]

150. Fundamentally, what was driving government policy such that Class 0 was not removed, and a requirement introduced for external wall components to be Class A1/A2 until 18 months after the GT fire? Mr Martin suggests it was to circumvent a more onerous route to compliance - onerous for industry and not in the interests of safety for HR occupants.[237]

151. Mr Martin's conversion was complete in 2008 when he joined the government on a full-time basis a year before the Lakanal House fire. However, while on secondment, information was available and cited in literature he reviewed in 2000 (Architects Journal 1988) as part of a report he wrote suggesting ACM panels with a polyethylene core were being used in the external facades of buildings above 18m, another important facet that eluded Mr Martin's attention. [238]

152. Significantly, an experimental cladding testing programme was conducted in 2001 (CC1924), which partly involved 14 full scale exercises, only 3 of which were passed, .[239] When put to him, this was another overlooked aspect in discussions and consultations.[240] He was unaware of the 14 tests and, while attending some himself according to Sarah Colwell,[241] he can't help - an oddity as he was employed to answer enquiries about ADB and to co-author BR135 2nd edition in 2003.

153. None of the 5 rainscreen panels including an ACM with a polyethylene core passed.[242] When shown a fragment by Sarah Colwell, the shock she claims she expressed[243] did not resonate with Mr Martin even though flames had so rapidly reached the top of the rig and doubled, that the test was terminated.[244]

154. *'As I say this does sound awfully glib given the circumstances, but at the time it was an interesting outcome.'*[245] An outcome avoiding a future inferno might have been more interesting! A conclusion or regulation prohibiting ACM-PE use was not a bridge too far but it never cropped up. Hard to believe responds Mr Martin,[246] more government downplay.

1.

[235] {CLG00019478}
[236] {CLG00019478/9}
[237] {Day 250, 17/03/2022, 167:19-169:3}
[238] {Day 251, 21/03/2022, 11:22-13:1}
[239] {Day 251, 21/03/2022, 43:10-44:9}
[240] {Day 251, 21/03/2022, 58:18-59:4}
[241] {Day 232, 15/02/2022, 82:18-82:23}
[242] {Day 251, 21/03/2022, 43:10-44:9}
[243] {Day 232, 15/02/2022, 100:5-100:25}
[244] {Day 232, 15/02/2022, 96:16-97:20} & {Day 232, 15/02/2022, 99:12-99:22}
[245] {Day 251, 21/03/2022, 52:23-53:1}
[246] {Day 251, 21/03/2022, 59:5-59:11}

155. In short, the provisions of ADB were shamefully inadequate. What is the point if Class 0 permits the use of a product that does not meet the functional requirement? A functional requirement that was also made more vague during Mr Burd's tenure, when the word "adequately" was added in 2000, reading: "*The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.*"[247] Mr Burd claimed he expected professionals to be able to simply *"look into the document"* and understand what was required.[248] If industry was not told what this meant, and government did not disclose its knowledge of the dangers present, then how was this possible?

156. Mr Martin did not appear moved by the dismal failure of specific products designated as Class 0 by the manufacturer meeting the performance criteria (only 4 out of 11). Counsel condensed the overall picture into 5 propositions, asking if Mr Martin accepts, on the documents, that government knew by September 2002 that:

    a) *The national reaction to fire systems classification and Class 0, were not able to detect the fire hazard associated with the use of some apparently common combustible rainscreen cladding products?*[249]

    b) *Despite being able to achieve a Class 0 reaction to fire classification from the national classification system, ACM with a PE core presented a clear external fire spread hazard?*[250]

    c) *PE cored aluminium rainscreen cladding was likely to present a very real danger with respect to external fire spread at height?*[251]

    d) *Class 0 was not in itself, a safe and appropriate classification to ensure the functional requirement was met. He cited Mr Martin's evidence that a Class 0 product may not meet the functional requirement*

    e) *Fire safety compliance testing was flawed, not reproducible, or technical loopholes were being exploited by manufacturers to make false claims about fire safety?*[252]

    Mr Martin agreed to the first four propositions, saying of the fifth: *"I think that last conclusion may be going too far* [...]*"*, couching his answer depending on test repeatability.[253]

1.

[247] {CLG10000012}
[248] {Day 238, 24/02/2022, 206:19-207:17}
[249] {Day 251, 21/03/2022, 83:15-84:21}
[250] {Day 251, 21/03/2022, 83:15-84:21}
[251] {Day 251, 21/03/2022, 83:15-84:21}
[252] {Day 251, 21/03/2022, 83:15-84:21}
[253] {Day 251, 21/03/2022, 83:15-84:21}

157. This summary begs the ultimate question, why, with this level of knowledge, was nothing done until 72 people died? The Select Committee's vain hope that such an outcome would not happen. By 2017 this cannot be explained away as accident, oversight or incompetence, although each aided and abetted, but rather the product of a deliberate governmental political agenda. At the same time, it begins to answer issues 3 and 4 at paragraph 112 supra.

158. It is also notable that none of the research underlying these propositions was published at the time or following the fire for the benefit of the public paying for it, and only came to light during Phase 2 of this Inquiry. It is difficult to conceive a more telling answer than this:

Q. "Is there any innocent explanation for why this data was sat on between September 2002 and disclosure to the Inquiry for Phase 2? A Tragically, I think it just got forgotten and fell between the gaps"[254]

LAKANAL, AND DCLG DYSFUNCTION

159. By the time Cameron's government launched its initiative on safety, the ground was prepared. The deregulation mindset was embedded. Civil servants had little or no room to manoeuvre, demoralised by cuts to resources and staff. Junior ministers etc, unlikely to rock any boats.

160. Wharton, Barwell, Lewis, Williams, were short-term appointments with scant time to get their feet under the desk. During Lord Pickles' tenure (2010 - 2015) he had 10 junior ministers, lasting roughly 18 months he estimated.[255] It is rare for ministers to know much about the area for which they take responsibility, especially technical data. Ignorance of subject matter is almost expected as a qualification (not a *"bad thing"*- Pickles[256]). Once they get a grip it is time to move on.

161. Before the ink was dry on Eric Pickles' 2013 response to the Lakanal coroner, the excuses and delays in implementing her recommendations began. No work was done before Pickles' departure in 2015, and matters went from bad to worse afterwards. The Department's upper echelons became devoid of any senior official or Minister who had read the coroner's letter, let alone been briefed on Lakanal beyond perfunctory information on the whim of the moment or in passing conversation. Melanie Dawes had no clue about Lakanal while in post as Permanent Secretary and in her oral evidence she suggested the issue was structural: a *"lack of system to flag recommendations"*.[257] Barwell put it more strongly: *"the department had convinced itself that this wasn't a* [...] *life safety issue and wasn't therefore urgent"*.[258] This was, he admitted, *"clearly*

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[254] {Day 251, 21/03/2022, 88:4-88:8}
[255] {Day 261, 06/04/2022, 16:20-17:6}
[256] {Day 261, 06/04/2022, 23:6-23:19}
[257] {Day 249, 16/03/2022, 73:9-73:10}
[258] {Day 260, 05/04/2022, 129:17-129:19}

a mistake". [259] Because of time or over-burdened work-loads and portfolios, it is rare to find anyone in DCLG exercising initiative or interest to research beyond matters to which their attention is drawn. The result is a submissive culture where challenge is non-existent; an unending support for the status quo; a dearth of historical or global awareness about HR fires in the U.K. and the rest of the world.

162. So, when Cameron sends his 'fancy' letter about priorities, it reinforces already ingrained themes. Even when Theresa May appoints Gavin Barwell as Minister of State at the Department, he has no inkling about fire safety, and no hint of urgency or promised target date for a wholesale review of regulations to incorporate the threat of combustibles.[260] Indeed, his belief from the briefing with Bob Ledsome was that "*the system was working far better than we now know it actually was*" and, as a result, his focus remained on housing supply.[261] No update was produced on the Lakanal recommendations, which were his responsibility to develop and which he had not read.[262]

163. Lord Barwell only learnt of the coroner's recommendations three months into his tenure, when briefed to answer a Parliamentary question anticipated from Steve McCabe MP. As *"a meeting broke up*" Steve Quartermain shared an afterthought with Barwell: "*You should be aware there was this coroner's letter that made four recommendations, we've dealt with three of them, one is outstanding, it's around simplification of the document, we're going to do it as part of a wider review of the Building Regulations*"[263]. Lord Barwell was clear Ministers should have "*handover meetings*" in future. It was not enough that he met Brandon Lewis. He required a briefing from James Wharton to understand his Building Regulations portfolio and what his department was striving to achieve.[264]

164. In Barwell's initial briefing from Bob Ledsome in August 2016, the Department's priorities were made clear. No mention of Lakanal, but the Minister was treated to a slide show where deregulation is de rigueur. It read: *'Building Regulations and Standards have delivered significant deregulation. There is a potential for further savings to business. So identifying ways to deregulate or reduce cost to business will be a fundamental consideration in our future reviews of regulation, building control system or the statutory guidance contained in the approved documents. We think there are opportunities for example to improve the approved documents and*

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[259] {Day 260, 05/04/2022, 205:12-205:17}
[260] {Day 260, 05/04/2022, 53:18-55:12}
[261] {Day 260, 05/04/2022, 20:19-21:25}
[262] {Day 260, 05/04/2022, 59:22-60:2}
[263] {Day 260, 05/04/2022, 63:6-63:11}
[264] {Day 260, 05/04/2022, 262:23-264:24}

make them easier to use. "[265]

165. Lord Wharton received no handover from Stephen Williams, and Lord Barwell received no handover from Wharton.[266] The civil servant briefings were also poor, with Mr Ledsome admitting he informed Lord Wharton that: *"the current system of Building Regulations was working well, the number of fires had fallen substantially over the years, and that this was attributable in part to the Building Regulations."*[267] He failed to provide the Lakanal R43 letter,[268] or to tell him the ADB review schedule proposed was *"optimistic"*.[269] Ministers showed no interest in interrogating officials, and officials showed no interest in informing them.

166. No word on safety or risks to life, known to government and requiring urgent regulatory attention. The impression conveyed was fire deaths were decreasing and there was no pressing problem. The Chair's intervention underlines the extent to which the government's agenda had by 2016/7 nullified the importance of life safety risks:

Sir Martin Moore-Bick: "[…] *presumably the primary function of those* […] *dealing with the building regulations was to produce the most effective regulatory system possible. Did it surprise you, or even concern you, when you were being briefed about building regulations, such emphasis was given on deregulation? A. "So it surprised me a little. So, I mean, look I'm in favour of* […]*"*

Q. "...it might suggest that the deregulatory mindset had become […] *at least very high in the thoughts of those whose job was not so much to deregulate, but get the regulations right."*[270]

167. And those with that job were powered by thoughts expressed clearly by Mr Martin on one hand and Mr Cameron on the other. Mr Martin alluded to *'better safety'* risking making industry inefficient and non-competitive, even the prospect of bankruptcy and starving to death![271] Not a far cry from the dramatic albatross analogy. Hardly surprising then that, tasked with that job, Mr Martin was consumed by cheap quick fixes:

Q. "[…] *you were part of the executive arm of government responsible for the review of ADB? A. "we weren't reviewing ADB at the time. We were looking for quick wins to reduce regulatory burden in the building regulations. That's what ministers asked us to do so that's what we did."*[272]

168. Reduction is the order of the day. No chance of anything with the tiniest regulatory expansion.

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[265] {CLG10009046/6}
[266] {Day 258, 31/03/2022, 17:25-19:5} & {Day 260, 05/04/2022, 31:11-31:24}
[267] {Day 241, 02/03/2022, 214:20-215:4}
[268] {Day 241, 02/03/2022, 212:8-212:15}
[269] {Day 241, 02/03/2022, 214:20-215:4}
[270] {Day 260, 05/04/2022, 69:12-70:23}
[271] {Day 252, 22/03/2022, 132:1-132:23}
[272] {Day 252, 22/03/2022, 136:7-136:14}

Q. "Did nobody think to go to Ministers and say, "well look here is this quite important change we made in 2006, to be honest it was all a bit late, the timing didn't work, we put some changes in, we think they might need to be clarified, we just want to put an amendment in by way of clarification or a definition, can we do that ?" Is that not something you or perhaps your seniors could have had? A. No, I mean that wouldn't have made sense [...] *at the time* [...] *there is only so many of us working on a range of different things so we were focussing on what we were being asked to do at the time.*

Q. An additional definition in the glossary of Appendix E wouldn't have fallen foul would it of any of the deregulatory measures or criteria then in place? A. We'd have needed to demonstrate that it didn't add any additional cost, and we'd probably have only got it into the process if we could demonstrate it was reducing cost.

Q. But it wouldn't have added any additional cost, or would it, if all you were doing was spelling out what you had always intended from 2006? A. "[...] *we'd need an evidence base to demonstrate that one way or another. That would have been a year's work so that wasn't really within the scope of what we were being asked to do."*[273]

169. These answers say it all in relation to issues posed and were corroborated by Mr Ledsome's inability to consider changes in regulations where there was a danger to the public.[274] Lord Pickles finds this '*astounding*' and *'ludicrous'*.[275] Agreed, but it is not an unexpected consequence of a doctrinaire government in which he played a key role.

170. Lord Barwell said he held officials in the highest regard and would not be using the well-known trope: "*Well, it's all the officials' fault that I wasn't told*"[276]. This attitude pairs badly with the pervasive issue of 'the higher you go the less you know'. There was extreme reliance on officials, but the issues Mr Ledsome and colleagues faced meant Ministers were unreachable and there were too many tiers of authority. Mr Ledsome and Home Office director Dan Greaves agreed to write to Mr Lewis on Lord Barwell's behalf to try to progress the approved documents review. Lord Barwell admitted this was a "*worrying sign of dysfunction that they felt it necessary to do that."*[277]. We submit this 'dysfunction' was or is unsustainable and must be addressed within the corridors of Whitehall.

171. Despite the vague murmurings of reviewing the approved documents by the time Lord Barwell

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[273] {Day 252, 22/03/2022, 136:15-137:16}
[274] {Day 241, 02/03/2022, 77:22-79:11} – *"goodness, I wish we had thought of it"*
[275] {Day 261, 06/04/2022, 85:3-85:12} & {Day 261, 06/04/2022, 82:8-82:13}
[276] {Day 260, 05/04/2022, 60:1-6}
[277] {Day 260, 05/04/2022, 196:13-198:6}

took his position in 2016, his whole department had lost sight of the very reason for the review. He told the Inquiry: "*Having now read Eric Pickles' response to the coroner, I think there's a lack of clarity about exactly what the government was committing itself to.*"[278] The DCLG had forgotten the Lakanal coroner's recommendations were the result of six deaths. Richard Harral's email to Bob Ledsome and Brian Martin on 25 September 2015 exemplifies this:

"*Q: Eric Pickles "Commitment following Lakanal House Inquests".* [...] *"Why do this?" Under the "What happens if we don't?" column: "Growing pressure from lobby groups." "Key risks etc"* [...] *you can see it says: "Significant reputational damage if further fire deaths occur and DCLG has not acted."* [279]

It was clear the Department saw more value in their reputation than in driving to avert deaths in the first place.

172. Lord Barwell admitted his focus on prioritising policy work for the housing white paper meant further delay reviewing ADB, from October 2016 to February 2017. His private office were not accepting the review work and this in turn delayed progress on the 'Building Regulation Discussion Document'.[280] But, supposing for one moment that Ledsome, Harral and Martin *had* provided the Discussion Document[281] – the gateway to consultation – far earlier? In reality, the 3.5 pages devoted to Part B did not include *any* reference to external fire spread, cladding or the Lakanal Recommendations.[282] Had the Grenfell Tower fire not happened, no-one in industry would have been made aware of the government stance on the s.12.7/filler/Class 0 debacles, the very issues that helped cause the fire. Lord Barwell was in the dark and no-one had tailored the document to apply the recommendations. In fact, Lord Barwell approved it on 18 April 2017 and was "*content with recommendations*" and "*particularly interested in the work in parts B*". [283]

173. The coroner had stated that ADB should be "intelligible"[284] but the department bastardised the meaning which became known as "simplification". It fitted the zeitgeist for the department: 'simplification' was the perfect marriage to deregulation. ADB s.12.7 needed to be intelligible as to understand its meaning regarding "filler". But Bob Ledsome suggested that; "*we would have expected to have dealt with the coroner's comments about improving section 12 as part of that simplification exercise*"[285]. This simply does not seem credible and has all the hallmarks of after

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[278] {Day 260, 05/04/2022, 109:18-24}
[279] {Day 242, 03/03/2022, 25:13-23}
[280] {Day 260, 05/04/2022, 249:1-253:3}
[281] {CLG10009583}
[282] {CLG10009583/24}-{CLG10009583/28}
[283] {CLG00030961}
[284] {RBK00013774/9}
[285] {Day 242, 03/03/2022, 17:21-18:13}

the fact reasoning to justify its absence from the Discussion Document. That document was a dodo before it even left the department. In a recurring theme amongst ministers, the Discussion Document failed to prompt Lord Barwell to consider the recommendations. His response: *"I should have shown more curiosity"*.[286]

174. Many other precautionary steps besides ADB reform were ignored alongside the APPG's admonitions. After the fire, Simon Ridley[287] summarised the correspondence for Dame Melanie, describing the Department's handling as *'appalling: delayed, partial and looks chaotic* [...] *The lack of urgency or reason for delay is striking."* [288] Twenty-one letters, basically ignored and fobbed off with a misleading assertion that the regulations review was on target when it had barely commenced. The first draft for consultation was approved in March 2017 just three months before the fire.[289]

175. The thrust of this debacle can largely be laid at the door of the Secretary of State on whose watch it developed. An ex-Minister who steadfastly denied that the deregulation policy or RTC applied to safety aspects of the BR. Despite his late and overnight searches while giving evidence,[290] no document exempts the regulations in this way; no circular or directive from him. Given that 70% of the regulations have safety implications, no document alerted officials or reassured them deregulation and RTC do not bite. This might explain why no one complained or asked questions - they knew it was hopeless. It might also explain how Lord Pickles ended up completely in the dark about the core problem of combustibles.

176. Asked if he was ever aware of the dangers posed in HR buildings by the use of combustible materials in external walls: *"No, and when I did become aware after I was Secretary of State, I found that really shocking*".[291] He also denied knowledge of serious HR fires in the UAE in 2012/2013 and Melbourne's Lacrosse Building in 2014, saying officials never brought them to his attention.[292]

177. Mr Harral and Mr Martin exchanged emails about these fires in early 2016. When asked why Mr Harral did not check if such dangerous cladding was being used in the UK[293], he blamed the Department's environment for his inaction, saying he had become "*very non-reactive because*

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[286] {Day 260, 05/04/2022, 264:1-8}
[287] DCLG's Director General of decentralisation and growth
[288] {CLG00030840/7}
[289] {Day 260, 05/04/2022, 153:14-155:25}
[290] {Day 262, 07/04/2022, 24:19-24:23}
[291] {Day 261, 06/04/2022, 38:23-39:3}
[292] {Day 261, 06/04/2022, 39:8-39:13}
[293] {Day 244, 08/03/2022, 143:22-144:3}

doing anything was so hard"[294], and claiming "*we were so hidebound by the kind of structures that we sat within.. that we were not feeling confident or adventurous or forward-looking.*"[295]

178. Furthermore, if anyone had used the term ACM, polyethylene core or cladding panels between 2010 and 2015, Lord Pickles would not have understood what they meant. In his weekly meets and private chats, safety had been successfully relegated so what was known of the dangers and what was exercising and confusing industry about what could be used, were not being discussed.

179. It may also explain the lack of urgency, clarity and progress on the Lakanal Coroner's R43 recommendations. Lord Pickles now claims he accepted them all save one.[296] If so, it is unfathomable that he did not express that anywhere in his response to the Coroner, which he now also claims would not have made any difference due to the department's mindset.[297]

180. The other steps are related to building design, construction and materials, requiring separate consideration and regulation. The same hostile environment ensured no urgency to address these. They arose most conspicuously in the wake of the Lakanal fire and the Coroner's R43 letter of 2013,[298] in the midst of the Cameron coalition term of office.

181. The Coroner identified glaring areas requiring remedial action to prevent the occurrence of future deaths: Fire safety, firefighting and search and rescue; Fire risk assessment Regulatory Reform (Fire Safety) Order 2005; Retro fit sprinklers in HR buildings; Building Regulations and Approved Document B. These recommendations were urgent then to prevent loss of lives. Had they been acted on by central government, it is likely that 72 lives would not have been lost.

182. The letter opens, under the heading Fire safety, firefighting and search and rescue: *'it is recommended that your department publish consolidated national guidelines in relation to the stay put principle and its interaction with the "get out and stay out" including how such guidance is disseminated to residents'.*[299] The Department did not publish consolidated national guidelines on stay put this before GT fire. As we have seen, the question "where do we go and what do we do?" loomed large among GT residents on the night of the fire and for many "stay put" was ill advised. The ramifications are still reverberating.

183. It is doubtful anyway now if any HR resident will stay put in the event of fire given what happened at Grenfell and the images transmitted worldwide. In most fires since, people have successfully

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[294] {Day 244, 08/03/2022, 132:18-19}
[295] {Day 244, 08/03/2022, 144:5-9}
[296] {Day 261, 06/04/2022, 168:22-169:6}
[297] {Day 261, 06/04/2022, 160:18-161:16}
[298] {CLG00002788}
[299] {CLG00002788}

left the premises as quickly as possible, often before the arrival of the emergency services. The critical point that still needs to be properly embraced in the context of HR is that, time is of the essence. Compartmentation cannot be relied upon as a failsafe. Spread of fire, and especially smoke, occurs rapidly, within minutes. There is little or no time to work out whether to stay and hope, or get out before the common parts are overwhelmed. There must be a clear, well understood and practised presumption in favour of evacuation - as if a conditioned response - even though that might be an inconvenience, however rare.

184. This does not appear to be the import of recently announced fire safety advice on 1st June. This endorses the incorporation of an evacuation alert system (e.g. BS8629), operated by the FRA once they have arrived to override stay put, but it is the minutes before this that count.

185. An associated corollary remains for those who cannot leave and rightly ask 'how' do we get out? How are disabled and vulnerable residents, the elderly, infants, infirm, immobile, indisposed, expected to escape? Is the argument that cost and technical complications mean PEEPS obligations arising under equality and human rights legislation cannot be met? The government now nakedly argues that the answer is 'yes'.

186. At the Building Safety Bill's third reading (May 2022), building safety Minister Lord Stephen Greenhalgh couched the government's rejection of the Inquiry's Phase 1 Recommendation in terms of 'practicality, proportionality and safety'.[300]

187. The Fire Safety (England) Regulations 2022, just published, come into force in 2023.[301] They do not implement the Phase 1 recommendations on PEEPs, or on the requirement that HR owners and managers must have an evacuation plan. Is this a return to protecting business and landlords' interests; while relegating fire safety provision as an impediment to progress? Bat it away. Procrastinate. Another consultation. Exactly how Bob Ledsome expressed the 1 in 1/2/3 out policy. Cost to business was the key metric.[302]

LESSONS LEARNED … NOT ENOUGH

188. Coroner Frances Kirkham's second major recommendation under heading *"Fire Safety"* in her letter to the Secretary of State required the Department to review GRA 3.2 High Rise Firefighting to produce further consolidated national guidance, - sensible and basic concerns which included:

- Awareness of the spread of fire downwards, and sideways.

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[300] {https://hansard.parliament.uk/lords/2022-04-04/debates/ECEAEAD5-9736-4C75-BBB6-53764151213D/BuildingSafetyBill} [last accessed 30/05/2022]; see further para 234 below
[301] "Fire Safety (England) Regulations 2022", Home Office, 18/05/2022 {https://www.gov.uk/government/publications/fire-safety-england-regulations-2022} [last accessed 30/05/2022]
[302] {Day 241, 02/03/2022, 77:5-77:9}

- Awareness of the risk of spread of fire above and adjacent to a flat fire
- Awareness that insecure compartmentation can compromise and facilitate potentially fatal smoke and fire spread.
- Awareness of the particular features of HR - configuration and access - with special reference to aerial ladder platforms.[303]

189. The Secretary of State's response to the Coroner's recommendation that consideration be given to mandating residential HR building owners/occupiers to provide premises information boxes or plates near the premises in an accessible and tailored manner was a summary dismissal on the grounds of it being *"unnecessary"* and *"disproportionate"*[304]. This dismissal of safety provisions on the grounds of proportionality was prescient of its response to GTI Phase 1 recommendations. At least this was now, in part, disavowed on June 1st with the announcement that all new HR over 11m will have to include a secure information box.[305]

190. All these points were significant features of GT. The department had not issued consolidated national guidance taking account of these observations before the GT fire. This information is not merely for internal consumption by central government, the Local Authority and LFB but should be available to the public at large. It is closely related to all the questions above in 107. The Coroner suggested relevant information for residents should be on or near the premises.

REGULATORY REFORM (FIRE SAFETY) ORDER 2005 AND FIRE RISK ASSESSMENTS (FRAs)

191. Mr Martin's evidence described a government department that overlooked life safety, not recognising it as a core and mandatory part of its safety function. He cavilled when it was put to him that Part B of ADB, which is solely concerned with life safety, should have been drafted from a life-safety perspective, flippantly suggesting incorporating life safety provisions would bankrupt the country. It was clear from this that his department ranked the cost of regulation above the requirement to protect life[306] and in any event would have had to justify any guidance changes on a cost neutral basis[307], indicating safety-based changes *wasn't something that we gave any consideration to at all*[308]. Not only did Mr Martin not consider that safety was an incumbent requirement of his department, he went so far as to deny responsibility for safety matters

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[303] {CLG00002788}
[304] {https://www.lambeth.gov.uk/sites/default/files/ec-letter-from-rt-hon-eric-pickles-mp-20May2013.pdf] [last accessed 30/05/2022}
[305] "Partial ban for combustible materials on new medium-rise buildings to be imposed", Inside Housing, 01/06/2022 {https://www.insidehousing.co.uk/news/news/partial-ban-for-combustible-materials-on-new-medium-rise-buildings-to-be-imposed-75931}
[306] Brian Martin, {Day 252, 22/03/2022, 136:7-138:15}
[307] Brian Martin, {Day 252, 22/03/2022, 136:7-138:15}
[308] *Opere Citato*

indicating: "*I think the difficulty we'd have is that the judgement about whether a building complies or not rests with the designer and the building control body*[309]."

192. The Executive's disdainful approach was set against a backdrop of a fire services industry which was openly discussing and advocating fire safety risk assessment competence schemes and which mistakenly understood that government would specify FRA accreditation through legislation[310]. In fact, Ms Upton intended the converse. In emails to Sir Ken Knight and Brian Martin she eschewed the Fire Sector Federation (FSF) having any formal arrangement in regularising Fire Safety Risk Assessments, accusing the FSF of "*it's* (sic) *worst excesses in respect of control freakery*[311]". This typifies the DCLG's antagonistic approach to placing FRAs on a regulatory footing and how far removed the department was from the paramount importance of safety and the regulatory failings over which it presided.

193. The evidence has established that building safety, safety risk assessment and FRAs fell outside of regulation. To that end there was, and remains, no or inadequate regulation or any requirement in law of how fire safety risk assessments were conducted, who conducted them, how they were conducted or perhaps most importantly by whom they should be conducted. The Regulatory Reform (Fire Safety) Order (FSO) 2005 variously provides that certain actions should be carried out by a competent person[312]. The threshold for competence is and remains non-descript and low:

"A person is to be regarded as competent for the purposes of this article where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the preventive and protective measures."[313]

194. Similar pre-cursor competence descriptions appear throughout the FSO[314]. It is remarkable that the life safety critical provisions within the FSO fail to define the qualification requirements of the individuals undertaking the work.

195. In the absence of mandated qualifications enforced by regulation, market forces have prevailed, the consideration of the cost of employing a Fire Risk Assessor has outweighed the importance placed on the quality of a Fire Risk Assessor's work; this has resulted in a race to the bottom of FRA quality standards; it represents a goitre on the neck of public safety.

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[309] Brian Martin, {Day 253, 23/03/2022, 42:25-43:19}
[310] Dennis Davis, {Day 246, 10/03/2022, 111:1-111:18}
[311] {CLG00000527}, Email re Fire sector Federation Fire Risk Assessment Competency Council and the Rule 43 recommendations; adequacy of existing guidance (Local Government Fire safety in purpose-built flats), concerns re development of passport scheme.
[312] Regulatory Reform (Fire Safety) Order 2005. Article 18(5)
[313] Regulatory Reform (Fire Safety) Order 2005. Article 18(5)
[314] See Article 13(4) Fire Fighting and Fire Detection, Article 15(3) Procedures for serious and imminent danger and for danger areas. Article 18 *Safety assistance*, the drafting of the latter two Articles is even more incomprehensible referring to other qualities.

196. The absence of formal qualifications or a professional competency scheme has led to a sub-culture of unqualified Fire Risk Assessors[315] undertaking activities for which they are not qualified. In this country anyone can hold themselves out as a Fire Risk Assessor and, if brazen enough to embellish their experience, have the opportunity of working and making decisions that directly affect the most vulnerable in our society.

197. Fire engineering decisions and FRAs affecting public safety should be the preserve of the properly qualified and professionally accredited, public safety and the wake of high-rise building fires demands that it be a regulated activity. We entreat the inquiry to recommend that the term "Engineer" be a protected term in law and made subject to both academic and professional qualification awarded by an engineering institute recognised and regulated by the Engineering Council, the UK regulatory body for the engineering profession. An FRA on any public building should then be either undertaken by or subject to review by a professionally qualified engineer.

GUIDANCE ON DISABLED EVACUATION BETWEEN LAKANAL AND GRENFELL

198. The evidence in Module 6 shows that the government's guidance on landlords' evacuation duties to disabled residents was unsafe and unlawful, as was the process by which it was devised, reviewed, and promulgated as the Secretary of State's statutory guidance. It also reveals that at the heart of the Department responsible for ensuring fire safety in HR blocks, there was a culture of disregard and disrespect for the views of disabled people, contrasted with a culture of acute responsiveness towards landlords.

199. Pre-Lakanal, and after the FSO came into force, a suite of guidance was issued under Art 50, including guidance encompassing HR blocks, and on means of escape for disabled people, endorsed by the Disability Rights Commission. All the guidance recognised a duty to plan for the evacuation of disabled people, and the need for PEEPs to facilitate this. The LGA Guide ('the Guide') published in 2011 dismissed evacuation planning, including PEEPs, for disabled people in HR blocks in three sentences, of which the middle sentence did the heavy lifting:

"79.9 In 'general needs' blocks of flats, it can equally be expected that a resident's physical and mental ability will vary. It is usually unrealistic to expect landlords and other responsible persons to plan for this or to have in place special arrangements, such as [PEEPs]. *Such plans rely on the presence of staff or others available to assist the person to escape in a fire."*[316]

200. Enforcing authorities were expected to refer to this guidance informing them it was unrealistic to

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[315] Dennis Davis, {Day 246, 10/03/2022, 143:3-144:6}, hundreds of unregulated assessors in the market place.
[316] {CLG00002029/120}

expect landlords they were inspecting to plan for the evacuation of disabled people in their buildings. This had no precedent in any guidance, as Mr Martin was compelled to accept.[317] The Guide was the first guidance – statutory or otherwise – to say responsible persons need not have any plan for how disabled people would evacuate the building in case of imminent danger.

201. The government funded, organised, and defended the exclusion of disabled people in HR blocks from the entitlement under the FSO to an evacuation plan (while minimising its own involvement in the LGA Guide to suit its agenda). It ignored, and breached, its Equality Act (EA) duties and was dismissive of these duties when confronted.

202. The Guide was commissioned in the aftermath of – and as an 'urgent' reaction to – the Lakanal House fire. Louise Upton described it as helping provide advice and guidance needed *"to prevent a tragedy on the scale of Lakanal House happening again"*.[318]

203. Ironically, the urgency was not, in reality, to save lives but to frustrate new efforts by FRS to enforce FSO duties to make disabled and other residents safer. Colin Todd explained: "*We were in that little period after 2009 where suddenly there was this focus on blocks of flats, but there never had been before* […] *Lakanal House.*"[319] There was "*urgency in production of this Guide, which was stressed to us by LGID [and which] arose from the fire at Lakanal House*",[320] namely, to blunt "*a relatively sudden wave of enforcement of the Fire Safety Order"* post-Lakanal. [321]

204. Mr Todd's office drafted the Guide, effectively for DCLG, who funded the LGID to run the project but, he said, LGID made clear the ultimate client was CLG.[322] He said that his tender was awarded following an interview conducted by four DCLG representatives (including Mr Martin and Ms Upton) and only one representative of LGID (Caroline Bosdet), who had *"no technical expertise in fire safety, but had* […] *the role of a project manager"*.[323] Ms Upton said DCLG *"really saw the need for this guidance to be available, to be right"* and *"we had a lot of skin in the game at the beginning"*. This was an understatement. DCLG paid for it, chose the team, and endorsed (or otherwise) the result. There was a degree of subterfuge: DCLG were officially 'observers' on the Project Board but "*the mantle of "Observer" was more associated with the doctrine that the guidance was sector-led rather than practical reality* […]"[324]

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[317] {Day 256, 29/03/2022, 4:20-6:22}
[318] {HOM00046040/9}
[319] {Day 167, 27/07/2021, 116 :24-117 :5}
[320] {CTA00000012/2}, para 6 - LGID is Local Government Improvement and Development, subsequently subsumed into the LGA
[321] {CTA00000012/2}, para 7
[322] {CTA00000012/30}
[323] {CTA00000012/31}
[324] {CTA00000012/7}

205. Mr Martin had a central role. He "assisted" on FSO matters as he "was the only person in the department, or sometimes both departments, that had any experience of fire safety, and I had a network of contacts".[325] His assistance on the LGA Guide included securing a contractor, reviewing the text, and contributing to discussion on the Guide's development.[326] He represented DCLG on the project group with Ms Upton: "there weren't really anybody else."[327]

206. Whether to permit PEEPs was central from the outset. Mr Todd said two days after a panel of DCLG officials awarded him the contract: *"we had a list of showstoppers, if you like, that we wanted to address, and one was disabled evacuation, and I think we said "evacuation or not" in our internal note on that, and then we wanted to get the public view on this."*[328]

207. Despite this, Mr Martin and Ms Upton's extraordinary evidence was that the government forgot, or just did not think, to obtain views from disabled residents, organisations, or disability specialists. Ms Upton said they "*just didn't think about it*"[329], and did nothing to ensure the authors consulted disabled people about "*guidance about how to assist vulnerable and disabled persons in the event of a fire*".[330] Mr Martin agreed no steps were taken to ensure the Guide's authors *"obtained the views of organisations representing disabled people or vulnerable people"*.[331] Asked what Mr Todd's office or DCLG did to substantiate the Guide's view on PEEPs, Mr Martin said there was an *"extensive exercise of talking to people with a stake in the issue of fire safety in blocks of flats"* and Mr Todd's office had *"a lot of clients with this type of building"*[332], (i.e., landlords facing the FRS post-Lakanal "*wave of enforcement*" who engaged Mr Todd).

208. In April 2011, the draft Guide was made available.[333] Mr Todd identified vulnerable occupants and PEEPs as "*inconsistent and/or contentious*" issues in the responses, requiring referral to the Project Board for a decision.[334] Ms Bosdet's report identified key themes emerging from the consultation[335] which "*the Project Group are asked to take a view on to inform the finalization of the guidance,*"[336] including "*people with disabilities*". The "*Issue to resolve*" was that: *"The premise of escape route design in general needs blocks of flats is that people can escape unaided from their own flat. Clearly some people can't just as they can't in houses, through age or*

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[325] {Day 255, 28/03/2022, 167 :20}
[326] {Day 255, 28/03/2022, 173 :7-13}
[327] {Day 255, 28/03/2022, 171 :11-18}
[328] {Day 168, 28/07/2021, 109 :2-109 :15}
[329] {Day 248, 15/03/2022, 11 :1-11.9}
[330] {Day 248, 15/03/2022, 13 :11-13 :20}
[331] {Day 255, 28/03/2022, 177 :14-177 :21}
[332] {Day 255, 28/03/2022, 191 :17-192 :7}
[333] {CTA00000012/14}, para 64
[334] {CTA00000012/17}, para 74
[335] {HOM00018928/1}
[336] {HOM00018928/2}

disability. While the problem is well recognized and highlighted by many respondents, no solutions have been suggested. How can this be further addressed in the guidance? If at all?"[337]

209. Ms Upton accepted this was *"a prompt to seek the advice from a disability specialist or from those groups representing the disabled and vulnerable"*[338] but it did not do so. Nor did the project group *"seek to commission any research or embark upon a further round of consultation focused on the issue of what solutions, if any, there were to help those unable to evacuate unaided".*[339]

210. Asked if she was aware *"CFOA was concerned that the draft LGA ignored and eliminated advice on disabled access and evacuation?"*, Ms Upton replied evasively: *"I was clearly aware that Andy Cloke from CFOA had that view."*[340] She agreed that CFOA's criticism was *"a further prompt to engage the services of a disability specialist and/or to engage with those groups who represented the disabled and the vulnerable on this crucial issue"* and that the project group *"talked about it [...] but didn't do anything about it."*[341]

211. Mr Martin said most people working in fire safety considered the Guide to be *"a reasonable approach"*[342]. Pushed further, he admitted government did not speak to any groups representing vulnerable persons in arriving at this *"prevailing view,"* and downplayed his own involvement: *"A.* [...] *that was probably an oversight, I guess. Q. An oversight? What, the government forgot? A. Well, I'm guessing so. I mean, I had nothing to do with it, so I think I'm probably answering questions that I'm not really fit to answer. Q. Right. Well, you didn't have nothing to do with it, Mr Martin, as we know, we've seen some documents. A. Okay. Q. So that's not right, is it?"*[343]

212. Ms Upton and Mr Martin relied on their misunderstandings of stay-put and the FSO to justify excluding disabled residents from landlords' duty to plan for the evacuation of all relevant persons. Ms Upton said: *"in your own home, that [statutory] responsibility didn't exist [...] General needs blocks were safe for everyone to be there unless they had a fire in their own home."*[344] Mr Martin said blocks of flats do not have staff, so in this country: *"the stay-put approach was the best way to resolve the challenges associated with disabled people,"*[345] adding: *"it's never been entirely clear in my mind* [...] *whether it's reasonable to expect the* [responsible person] *to be considering the occupants of the flats, when they're in their flats. That's not as clear*

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[337] {HOM00018928/2}
[338] {Day 248, 15/03/2022, 16:19-17:1}
[339] {Day 248, 15/03/2022, 17:17-18-6}
[340] {Day 248, 15/03/2022, 22:22-22:25}
[341] {Day 248, 15/03/2022, 22:21-23:13}
[342] {Day 255, 28/03/2022, 191:22-192:14}
[343] {Day 256, 29/03/2022, 23:17-25:8}
[344] {Day 248, 15/03/2022, 17:4-17:14}
[345] {Day 255, 28/03/2022, 188:1-188:12}

as it might be."[346] They took this stance despite the Guide itself recognising that: *"Although the FSO only applies to the common parts, residents within flats are 'relevant persons', whose safety from a fire that starts in or spreads to the common parts, must be considered."*[347]

213. Mr Martin leant heavily on Mr Todd's office in his evidence. Mr Todd accepted relevant FSO duties applied to residents in blocks with a stay-put strategy, but thought that disabled people were excluded.[348] The Guide's precedent '*stay put*' notice said: *"You must leave immediately if smoke or heat affects your home, or if you are told to by the fire service. If you are in any doubt, get out"*.[349] Mr Todd accepted a stay put strategy would mean *"any resident of that building affected by fire and/or smoke should also be able to evacuate the premises as quickly and as safely as possible*" but added: *"it was an understanding that was reflected in the LGA guide that in the case of persons with disability, they would need to rely on rescue by the fire and rescue service."* He admitted, in general terms: *"safe evacuation should not depend on the intervention of a fire and rescue service"* but reiterated: *"Other than for disabled people in blocks of flats"*.[350]

214. The Guide accordingly relied on stay put.[351] Mr Todd's misinterpretation of the FSO, presumably shared by the staff of his office, meant the Guide was legally flawed from the outset.

DISREGARD OF EQUALITY DUTIES, AND MORPHING INTO STATUTORY GUIDANCE

215. The government first ignored and, when challenged, dismissed their legal duties to disabled people under the EA. Mr Martin had no recollection of legal advice being obtained on EA duties before the Guide went to press.[352] The government's unlawful disregard of the PSED to disabled people when promulgating guidance about their evacuation is demonstrated by its response to post-publication challenge on its duties and its subsequent approach to reviews.

216. When it was contended that the Guide constituted unlawful discrimination against disabled people, LGA consulted DCLG – consistent with DCLG calling the shots. The evidence showed they had operated on the assumption that there was no need to consider equality duties to disabled people. Ms Upton's evidence was that she had not done so until Elspeth Grant wrote to the LGA. Confronted with a submission that "*the weight of the advice in paragraph 79.9 to paragraph 79.11 violated anti-discrimination laws*"[353], Ms Upton confirmed that, despite DCLG having

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[346] {Day 255, 28/03/2022, 175 :9-176:5}
[347] {CLG00014443/43}
[348] Inc Arts 9(7) {Day 167, 27/07/2021, 119:11-121:7}; 14(2)(b) {Day 167, 81:14-90:4} and 15(1)(a)) {Day 167, 92:11-93:20}
[349] {CLG00014443/154}
[350] {Day 167, 27/07/2021, 83:6-24}
[351] Although its blanket exclusion of the PEEPs duty was not limited to blocks with a stay-put strategy
[352] {Day 255, 28/03/2022, 177:6-177:12}
[353] {Day 248, 15/03/2022, 26:11-26:22}

"*skin in the game*", she chose not to seek or suggest that others sought any legal advice on whether the guidance on disabled residents was lawful under the Guide, saying: "*I suppose it was LGA guidance. LGA were representing the housing providers. I know this sounds terrible, but I'm not sure I would have seen it as solely my responsibility to do that*".[354] She had not found out if the Guide's authors sought feedback from or the views of disability specialists or those representing the disabled for the purposes of responding to this letter.[355] She could not recall and "*never saw any* [EA] *advice*" obtained by Mr Todd's office or DCLG.[356] Mr Todd's evidence shows his office obtained no advice, nor did he know of anyone doing so.[357]

217. Ms Upton described LGA as "*representing the housing providers*"[358] (i.e., the "*landlords and other responsible persons*" whose FSO duties were considered in the Guide). On 7 September 2011, in an internal email about whether it breached the EA[359], Ms Upton noted: *"During the development and consultation on the guidance the group was much exercised about the position of disabled people in the event of a fire, and the responsibilities of their landlords in respect of their means of escape in the event of fire* […] *The cost of providing a suitable means of escape in these blocks would be extortionate, and the sector felt that expecting landlords and owners of residential premises to have* [PEEPs] *in place for each resident was completely unviable. CFOA who were key partners in the work to develop the guidance were clear that in some instances it may be necessary for the FRS to rescue occupants of these buildings."*[360]

218. Ms Upton said she did not know why Ms Grant was not told: *"the underlying rationale for the LGA guide's position on PEEPs was an anxiety to avoid imposing disproportionate burdens on landlords".*[361] She agreed that *"it should have been, in a spirit of candour".*[362]

219. Ms Grant said the PEEPs guidance was a radical departure from previous FSO and other guidance on PEEPs and asked to see the results of the equality analysis on the impact on disabled people. Far from acknowledging the error in failing to consult disabled people, the government's senior fire safety officials wished to close the argument down. In emails, Mr Martin (with whom Ms Upton "*totally agreed*"), advised Ms Bosdet how to dismiss concerns about the Guide being unlawful discrimination against disabled people: "*Whatever you do, keep your answer short. I assume no EA was produced? It isn't a radical change it is just setting out what is recognised*

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[354] {Day 248, 15/03/2022, 26:11-27:11}
[355] {Day 248, 15/03/2022, 29:4-29:20}
[356] {Day 248, 15/03/2022, 30:19-31:3}
[357] {Day 168, 28/07/2021, 135:17-136:24}
[358] {Day 248, 15/03/2022, 26:25-27:1}
[359] {HOM00019843}
[360] {HOM00019843/1}
[361] {BSR00000085/4}
[362] {Day 248, 15/03/2022, 32:15-32:24}

current practice. Hence no need for an EA. Don't answer the legal advice bit."[363] When asked: "[the Guide] *may have been current practice, as Ms Bosdet says in her email, but why best practice,"* he replied: *"I think you're splitting hairs with words. I'm not sure I gave it that much consideration. That's what was regarded as the appropriate way of managing that kind of block.*"[364] But regarded as the appropriate way by whom? It was a self-fulfilling prophecy to ask the housing sector: what do you do and is what you do appropriate?

220. While there was no duty to produce a document with a particular title, there was a duty to comply with the PSED whenever any public function was exercised. Producing guidance to protect landlords' current (or any) practices from enforcement action plainly fell within that. Mr Martin's claim that because the guidance endorsed existing practice, there would be no PSED duty (including of consultation with disabled people and specialists), was flawed.

221. Mr Martin further justified dismissing EA concerns on the basis that there was no chance the government would act on the views of disabled people and organisations if they disagreed with the Guide's endorsement of landlords excluding disabled people from evacuation planning: *"the likelihood of the guide being withdrawn and being modified to require personal emergency evacuation plans* […] *just wasn't going to happen, so there seems little point in continuing."*[365]

222. Based on what has happened since the Grenfell Tower fire, including government's refusal to implement GTI's recommendations to protect disabled people, Mr Martin's position that it was pointless to hear from disabled people as the guidance would not change was, at least, a prescient one. However, it also demonstrated an unlawful failure by government, even then, to take any steps to comply with its PSED to disabled people.

223. The Guide's status morphed over time. Mr Martin claimed it was practical advice rather than guidance on statutory duties: "*That's a problem for the regulators, if you like, not for the person using* [the Guide]."[366] FRS questions were answered with "*This is not issued under Section* [sic] *50 by the Secretary of State*" and "*is sector led guidance.*"[367]

224. It had been *"agreed that an evaluation exercise should take place one year after publication to assess how widely it is being used and how useful it is to the sector."*[368] This was done in July 2012. Although the review must have been scheduled when LGA and DCLG were confronted

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[363] {HOM00020345}
[364] {Day 255, 28/03/2022, 198 :21-200:5}
[365] {Day 255, 28/03/2022, 97:1-8}
[366] {Day 255, 28/03/2022, 175:21-176:5}
[367] {HOM00018928/2}
[368] {HOM00023280/1}

with Equality Act objections post-publication, they did not even consult disabled people or organisations at this stage, sending it only to the same people as they did pre-publication.

225. The largest group of respondents was landlords, and stakeholders were pleased: *"many responses stated that although their actions had not changed the guidance backed up their existing approach to fire risk assessment and in many cases gave them more confidence and the ability to challenge fire services over complex housing fire safety issues."*[369]

226. Key issues were nevertheless *"highlighted as areas that stakeholders wanted more information and guidance on".*[370] Comments included: *"issues around vulnerable people, we find severely disabled persons living in purpose built flats, who are at risk if there is a fire and they cannot self-evacuate, lack of government understanding on this"* and *"more guidance for [PEEPs] for residents known to have difficulties with or be unable to escape unaided would be useful".*[371]

227. These issues were not disclosed in Ms Upton's submissions to ministers on 17 April 2013 and 13 May 2013. She said: *"we are content that this guidance provides sound advice on [...] the issues that housing providers should consider if they are to ensure an acceptable level of fire safety."*[372] She justified this conclusion in her evidence by saying the LGA evaluated the Guide in 2012 and found it *"fit for purpose"*[373], without reference to the gaps identified regarding disabled people.

228. Those same submissions appear to be the first time the Guide was asserted (by Ms Upton) to be Article 50 guidance.[374] Eric Pickles adopted this in his response to the Lakanal Coroner on 20 May 2013, drafted by Ms Upton, saying the availability of the Guide on the LGA website and the fire safety pages of the government's website: *"fulfils my duty (under article 50 of the Fire Safety Order) to ensure that such guidance as I consider appropriate is available to assist responsible persons to discharge their duties under the Fire Safety Order."*[375]

229. A further review was undertaken in May 2013, of which Lord Pickles informed the Coroner in his R43 response.[376] Consultees were given 13 days to respond.[377] The request for comments was pre-empted by the statement: *"DCLG considers that the guidance provides sound advice on the* [...] *issues that* [landlords] *should consider in ensuring an appropriate level of safety".* Ms Upton accepted, *"the matter had been prejudged"* and *"tends not to encourage a full and frank provision*

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[369] {HOM00023280/4}
[370] {HOM00023280/4}
[371] {HOM00023280/11}
[372] {CLG00019980/2}
[373] {HOM00046040/36}
[374] {CLG00000505/2} and {CLG00019980/2}
[375] {CLG00002040/2}
[376] {HOM0004604037} & {CLG00002040/1} - {CLG00002040/2}
[377] {CST00005484/1}

of views [...] *if the LGA is already indicating that the department considers the advice to be sound."*[378] The LGA emailed Ms Upton in June 2013 to say: *"We have had very little response to our request for stakeholders to review the guidance. However, we have had a very robust endorsement from the authors* [Mr Todd's office]*".*[379]

230. Ms Upton treated this as meaning the housing and fire sectors still considered the Guide appropriate, and she informed enforcement authorities (ie FRS) of this,[380] she "*absolutely*" agreed that *"a robust endorsement from the authors was not quite the same."*[381] When asked if it was possible that the low response indicated *dissatisfaction*, she responded: *"It was all – given how totemic* [...] *Lakanal House had been, it was conceptually inconceivable, with hindsight, that nobody would have been interested in this guidance, when it had been the thing that was most wanted after the fire* [...]*"*[382]. The Guide stated that: *"a precautionary approach whereby, unless it can be proven that the standard of construction is adequate for 'stay put', the assumption should be that it is not... is considered unduly pessimistic."*[383] This was retained unchanged when Lord Pickles informed the Coroner that he had promulgated the Guide as guidance under Article 50, despite what the DCLG knew by May 2013, and was unchanged by the government as Article 50 guidance up to the GT fire.

JUSTIFICATION AND THE CURRENT GOVERNMENT POSITION

231. The Module 6 evidence draws back the curtain on the thought processes behind the government's persistent minimisation of a duty to plan for the evacuation of disabled people. They are replaying the errors and using the same excuses to justify them. This is apparent from the echoes in the government's current rationale of the reasons offered in evidence.

232. Module 6 is acutely timely and important. The Inquiry recommended PEEPs in its Phase 1 report. The Prime Minister accepted all its recommendations. The government has just rejected the PEEPs recommendation after over 2.5 years of stalling[384] and is now consulting on a proposal to do nothing in nearly all HR blocks, and virtually nothing even in the highest risk blocks.[385]. At

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[378] {Day 247, 14/03/22, 149:8-22}
[379] {HOM00046074/3}
[380] {HOM00046040/39}
[381] {Day 247, 14/03/2022, 157:8-19}
[382] {Day 247, 14/03/2022, 158:21-159:7}

[384] Personal Emergency Evacuation Plans in High-Rise Residential Buildings – recommendations from the Grenfell Tower Inquiry Phase 1 Report -- Government response, p56 {https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970325/UPDATED_FINAL_Government_Response_to_Fire_Safety_Consultation.pdf} [Last accessed, 05/06/2022]
[385] The proposal is limited to blocks with a simultaneous evacuation strategy, and requires the RP to share with FRS only the location of flats where mobility impaired people have self-identified as such. It proposes that "*Where evacuation is required, this should begin immediately*" - except disabled people who cannot self-evacuate. They are required to rely on the FRS, which may "*involve the provision of survival advice to those unable to leave the building (via the control centre) and the emergency evacuation of those individuals by the*

the Building Safety Bill's Third Reading, Lord Greenhalgh noted that "*more than 40% of the disabled residents*" died in the fire before relying on three reasons to dismiss PEEPs: practicality, proportionality, and safety:

"On proportionality, how much is it reasonable to spend to do this at the same time as we seek to protect residents and taxpayers from excessive costs? On safety, how can you ensure that an evacuation of mobility-impaired people is carried out in a way that does not hinder others in evacuating or the fire and service in fighting the fire?[386]

233. These could each have come from Mr Martin's playbook: i.e., it is a "*dark*" fact that disabled people have to be left to die.[387]

234. Ms Upton[388] endorsed Mr Todd's evidence that: *"The consensus opinion of the Project Group was that it should be acknowledged in the LGA Guide that PEEPs were impracticable because of the difficulty of collating information and keeping it up to date."* [389] Mr Martin said: *"it's extremely difficult, possibly impossible, to know the details of all of your residents. People come and go in these blocks, and people's level of vulnerability can change"*[390] – flawed reasoning. If a PEEP was materially out of date, the disabled person could be expected to alert the landlord and/or it would not be put into action. This was an irrational basis for abandoning them altogether.

235. The upshot of the government's thinking was that it was too burdensome on landlords to expect them to consider and plan for the evacuation of disabled people:

"You can only expect of the responsible person something that is reasonable, and if you want to get to the point where a person who is unable to self-evacuate to be rescued in every event, then every block of flats would need a permanent staff of fire rescue people, which is unreasonable and impracticable. Q. Why? A. It would be too expensive—it would be disproportionate. [...] *Q. So people die in their flats because they're bedbound, because it's too expensive to have a system to get them out? A. I suppose so.* [...] *Q. Was that British government policy? A. That was what was considered at the time to be the* [...] *reasonable approach to the problem* [...] *The only other option you could have would be to forcibly remove people from their homes and put them into care."*[391]

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Fire & Rescue Service" – aka FRS rescue. Open Consultation: Emergency Evacuation Information Sharing {https://www.gov.uk/government/consultations/emergency-evacuation-information-sharing} [Last accessed on 01/06/2022]

[386] {https://hansard.parliament.uk/lords/2022-04-04/debates/ECEAEAD5-9736-4C75-BBB6-53764151213D/BuildingSafetyBill} [last accessed 30/05/2022]

[387] {Day 255, 28/03/2022, 182:11-18}

[388] {Day 248, 15/03/2022, 20:23-21:9}

[389] {CTA00000012/17} para 78

[390] {Day 256, 29/03/2022, 24:8}

[391] {Day 255, 28/03/2022, 182 :22-183 :23}

236. Mr Martin also said it was a *"universally understood problem"* in a general needs block that: *"if the fire and rescue service can't get to them, there is no one else [...] you can't put [it] into a statutory procedure to say, "You must rescue your neighbour in the event of a fire". I think there are some people who think that should be the provision. That wasn't the prevailing view at the time."*[392] Even the Guide stated that a PEEP required *"staff or others available to assist the person to escape in a fire".*[393] Mr Martin did not explain why *"others"* could not include family and friends present or nearby, or a PA or carer. Mr Martin's assertion that PEEPs involving voluntary assistance are incompatible with statutory procedure (by which he must mean the FSO duty to have an evacuation plan) was irrational and had no legal basis. Such a plan was not foolproof (nor is one involving a workplace 'buddy'), but it plainly reduced risk compared to no plan.

237. Mr Martin based this "*prevailing view*" on the views of landlords (Mr Todd's clients and others). Ms Upton thought disabled residents' interests would be covered because "*housing providers knew the demographic of people in their buildings*"[394] and *"would articulate the views of their disabled tenants."*[395] This insight into how the government devalues disabled people/ specialists compared to the views of landlords was confirmed by Mr Martin: "*people that are on the receiving end of fire safety often don't hold a lot of opinions on the subject.*"[396]

238. Why was a plan involving voluntary assistance incapable of satisfying the responsible person's statutory duty, yet no plan at all could meet this duty? After all, Mr Martin was only too conscious of the consequences of no plan: *"Q. So what do you do? What was the view at the time about what would happen to vulnerable persons with mental or physical disabilities? A. Where possible they would self-evacuate, or hopefully the Fire Brigade would get to them in time. Q. What if it wasn't possible? A. This is – I mean, this is a very difficult subject to talk about objectively, but that's one of the reasons why there are a large number of people that – with disabilities that die in fires, is because they can't get themselves away from an incident."*[397]

<u>OBSERVATIONS, LESSONS, ACTION POINTS AND RECOMMENDATIONS FOR CENTRAL GOVERNMENT</u>

239. As end of evidence hearings approach, there is an opportunity to begin consolidating, with the recommendations stage and overarching submissions in mind. The following observations are an attempt to begin drawing conclusions together:

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[392] {Day 255, 28/03/2022, 181 :20-182 :4}
[393] {CLG00014443/120}
[394] {Day 248, 15/03/2022, 11 :17}
[395] {Day 248, 15/03/2022, 13 :21-13 :24}
[396] {Day 255, 28/03/2022, 192 :20-25}
[397] {Day 255, 28/03/2022, 182:5-183:24}

a. Fire safety must be accorded top priority and not viewed as a hindrance to business and in particular the construction industry. It cannot again be a political football, kicked into touch. Regulatory functions and testing cannot be left in private hands and must be renationalised.

b. The Cost/ Benefit metric should not predominate.

c. The particular estate of social housing, and most of all its residents, must be recognised and respected. The Cave review appreciated the role and significance of the tenant's voice. It should be empowered and protected. There is a golden upcoming opportunity to undo the damage done by the abolition of the Cave initiatives (TSA) by the Cameron government. This takes the form of the Social Housing Regulation Bill on the back of its proposals in the Social Housing White Paper. It is to be hoped that the regulator's increased powers and introduction of a UK-wide residents panel will prove to be more than window dressing.

d. The ambit of fire safety in residential housing, especially HR, must be coordinated and consolidated under one roof or portfolio. Two or three government departments and ministers deal with different aspects. A cohesive and integrated approach to understanding technical data and the interface and interlocking nature of this area should replace fragmentation. The building in terms of construction design, materials, building control, testing, certification and RA is closely allied to FRS access and equipment, evacuation and residents' particular needs.

240. To satisfy these requirements special skills are essential. Evidence has shown few in government had them. The Secretary of State, junior ministers, parliamentary under-secretaries, private secretaries, permanent secretaries, director generals or their deputies; none were versed in fire safety or the BR. There was a lack of training or expertise, not assisted by a haphazard, ad hoc handover or induction process. Learning on the job was common. Unless matters were drawn to attention or flagged up by others, they were passed over and left unchallenged in the department. A circular dilemma since no-one bar possibly one person – Brian Martin - had the knowledge or experience. There were no Special Parliamentary Advisers in this field either: "*But I'm afraid the way in which the political system works is that you don't necessarily get ministers who have an in depth knowledge of a particular subject. And if I'm being really blunt that isn't a bad thing. A minister who thinks they know about something is actually sometimes quite dangerous.*"[398]

241. In these circumstances, ministerial responsibility and accountability has become a worthless concept. Ministers are barely in post long enough to get a grip and walk away without sanction. In office, the exercise is often obfuscation, deferral and delay. A step to remedying this parlous

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[398] {Day 261, 06/04/2022, 23:2-23:19}

state of parliamentary democracy is to elevate and formalise the APPG, providing it interrogation and censure powers in the chamber. The integrity, diligence and commitment of these groups remains unquestioned, least of all that led by the late Sir David Amess on this topic.

242. A further example of how threadbare the process had become is the treatment of the Lakanal Inquests R43 recommendations. Over decades they were ignored, lost or dismissed. Lord Pickles was even sceptical about the Lakanal letter. Astonishingly protocol is needed before anyone knows what to do. What followed has been a matter of chance. Lakanal was not a talking point or on the department's radar. No so-called tracker spreadsheet incorporating Lakanal has been found. This goes to the heart of accountability and such failing lies at the root of governance.

243. There must be a clear, timed, staged procedure with responsibility resting with the most senior minister with the fire safety portfolio to ensure such a R43 letter is reviewed and researched with regular updates. Given the government's dismal record, this cannot be left to the department. The well-known, respected organisation Inquest has long proposed an independent oversight body to monitor and report on government progress so Recommendations are not left in the long grass.

244. General oversight of the Department's responsibilities for fire safety business has been lax to non-existent. As Counsel described Lord Pickles *'spectacularly out of touch'.*[399] Private conversations provide the answer. Effective and transparent oversight stems from a properly qualified and resourced department, which knows what it is looking for and what has been overlooked. A distinct portfolio. Short-term austerity cutbacks jeopardise long term safety.

245. Underpinning the efficacy of these proposals lies the DUTY OF CANDOUR. Examples abound throughout the period examined by the Inquiry through to oral testimony where a false picture or representation has been painted around admitted failures. Trust in government is in short supply and, until it is restored, the ability to remedy failures will be out of reach. Specific issues:

    a. The acceleration of assisted removal of combustible cladding on existing buildings;

    b. The reversal of the government's shameful refusal to implement the Phase 1 recommendations on PEEPs and evacuation plans (done after years of can kicking);

    c. Clear national guidance on Stay Put or Get Out, universally communicated to the public in an accessible form is an urgent consideration - at the forefront of the Lakanal letter.

246. During the Inquiry there have been several HR fires where residents have self-evacuated before the FRS arrived. The various forms of contingency evacuation plans (simultaneous/ phased/

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[399] {Day 262, 07/04/2022, 101:1-101:6}

progressive /2 staged) must be tailored and practised according to the particular HR.

EPITAPH

247. Counsel to the Inquiry powerfully summarised a critical moment in Lord Pickles' examination in light of overwhelming evidence that fire safety was not exempt from building regulations and that the implementation of this policy was carried out by his officials, to Lord Pickles' amazement:

Q. 'Do you take responsibility, ultimate responsibility?" A. "Yes yes of course, ultimately everything is done in my name and ultimate, the nature is - you can't if you've got full responsibility, that can't be qualified. The fact that I didn't know, the fact I had no indication, the fact I had no opportunity to correct, this does not in any way reduce my responsibility."

Q. "There is, Lord Pickles, of course, another explanation [...] *your department was always subject, as the documents we've looked at together might suggest, to the deregulatory agenda, and you are now seeking to recast that narrative, and to underplay what was in truth an enthusiasm by your government for a deregulatory which led to complete absence of proper checks and balances so far as concerns life safety ? A. "Again I think that would be unkind"*[400]

248. There is no other explanation. How else can the absence of a single document from central government suggesting an important exemption for building regulations fire safety aspects and the absence of a single document from senior departmental politicians and civil servants to their officials requiring they pay regard to any such purported exemption, be explained? Once more, those at the heart of this disaster are playing fast and loose with the truth in an attempt to absolve themselves from any responsibility for a fire which was predicted and preventable.

Michael Mansfield QC
Sam Stein QC
Mark Henderson
Abdul Jinadu
Thalia Maragh
Austin Stoton
Team 2 Bereaved, Survivors & Residents Representatives
Monday 6 June 2022

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[400] {Day 262, 07/04/2022, 103:6-103:23}