

**THE GRENFELL TOWER INQUIRY**

---

**CLOSING STATEMENT ON BEHALF OF  
THE DEPARTMENT FOR LEVELLING UP, HOUSING AND COMMUNITIES  
PHASE 2, MODULE 6, PART 2**

---

**INTRODUCTION**

1. The Department would like to reiterate at the start of its closing statement for Module 6, Part 2 that it recognises its role in failings before the terrible events on the night of 14 June 2017. It accepts responsibility for those failures and expresses its sincere apologies and offers heartfelt condolences to those affected by the tragedy.
2. The evidence in Module 6, Part 2 concerning fire risk assessment, testing and certification and government has been followed carefully by the Department for Levelling Up, Housing and Communities (hereinafter “the Department”). In its opening statement for Module 6, Part 2 the Department focussed on the particular issues identified by the Inquiry; this closing statement follows the same format and sets out a summary of the evidence in respect of each issue and suggests conclusions that are open to the Inquiry on the basis of that evidence.
3. The issues are: (a) the development and interpretation of the relevant Building Regulations and associated guidance; (b) government policy on relevant aspects of fire safety and the evidential or other basis for such policies; (c) reviews of and amendments to the Building Regulations and associated guidance, including consultations; (d) fire safety research commissioned by the Department and other relevant organisations, the conclusions drawn therein and any action taken by government in relation to such research; and (e) government handling of issues raised in relation to fire safety by external individuals and organisations (including coroners).
4. The issue of the Department’s role in relation to the testing and certification regime is also covered in this closing statement.
5. The Department continues to consider the evidence given carefully to learn the lessons of the past in seeking to ensure that such a tragedy never happens again.

## **SUMMARY OF THE DEPARTMENT'S CONCLUSIONS**

6. Having considered that which has been said during Module 6, Part 2, the Department submits that the evidence the Inquiry has heard, in conjunction with the other evidence before it, could be considered to support the following conclusions:
- a) That the Department did not see itself as, and indeed was not, responsible for the enforcement of the system made under the Building Act 1984, but that it did nevertheless fail, as the sponsoring department for the regulatory system, to have sufficient oversight of how the system as a whole was performing and recognise the signals it was receiving;
  - b) That the “outcomes-based”, functional requirement system laid down by the Building Act 1984 and the various Building Regulations made thereunder (as opposed to the prior prescriptive approach) was, and remains, generally fit for purpose insofar as it provides flexibility in an era of rapid change and developments in the construction industry;
  - c) That functional requirement B4, whether as set out in the Building Regulations 1985, the Building Regulations 1991, the Building Regulations 2000 or the Building Regulations 2010, was sufficiently clear such that it could be understood by those in industry and building control, notwithstanding that for the period 1 June 1992 – 30 June 2000 it did not contain the word ‘adequately’, and that in practice the omission of the word ‘adequately’ for that period did not materially affect the intent of the functional requirement or how it was understood;
  - d) That the Department failed to keep Approved Document B up-to-date or address known ambiguities, including around Class 0 and the term “filler”;
  - e) That parts of Approved Document B were poorly drafted and had the potential to cause confusion amongst industry and building control. However, we maintain that any suitably competent design or construction professional, properly applying their mind to the intent of the paragraphs concerning functional requirement B4 and reading the Approved Document as intended, should have concluded that flammable cladding and insulation such as that used on Grenfell Tower was non-compliant with functional requirement B4;

- f) That the delays to the revisions to Approved Document B following the Secretary of State's response to the Lakanal House Coroner dated 20 May 2013, were caused by several factors including: delays to the publication of research; changes in Government and Ministers; the EU Referendum; and the prioritisation of other policies;
  - g) That the successive years of financial constraints had impacted on the size of the team and work of the officials in the Department dealing with Building Regulations policy and their capacity to assess and consider concerns properly;
  - h) The deregulatory agenda being promoted across Government created an environment where officials working on Building Regulations felt unable to consider regulatory interventions and escalate concerns when they arose.
  - i) That the Department's approach to its decentralised role in the regulatory system, and its belief in the ability of competent professionals to properly apply the provisions of Approved Document B to the intention of functional requirement B4, led officials within the Department to underestimate, despite warnings over a period of years, the likelihood of the risk posed to life safety by the use of flammable cladding in England and Wales eventuating;
  - j) That the Department missed opportunities over a period of years to identify and understand issues with the enforcement of and compliance with the Building Regulations and that it failed to put in place a system that would have allowed it to assess issues being raised with it.
7. The detail of these proposed conclusions, and the evidence the Department would invite the Inquiry to consider in support of them, is addressed below.

## **THE REGULATORY SYSTEM**

### *The Department's role*

*The Inquiry may conclude that the Department did not see itself as, and indeed was not, responsible for the enforcement of the system made under the Building Act 1984, but that it did nevertheless fail, as the sponsoring department for the regulatory system, to have sufficient oversight of how the system as a whole was performing and recognise the signals it was receiving.*

8. As set out in the Department's opening statement for Module 6, Phase 2, until June 2017 when the fire occurred, the Department (in the name of the Secretary of State) had the following duties relating to building safety:
- a) Responsibility for legislation prescribing the requirements for building work, in particular: the Building Act 1984, Building Regulations 2010 (as amended), Building (Approved Inspectors etc) Regulations 2010 (as amended) and Building (Local Authority Charges) Regulations 2010;
  - b) Responsibility for statutory guidance in the form of Approved Documents; and
  - c) Responsibility for the legislative framework for assessing the risk of hazards in residential housing. This is also known as the Housing Health and Safety Rating System ("HHSRS").
9. It is clear from the statutory framework that the Department did not have responsibility for the day-to-day enforcement of the system, rather this lay with local authority building control bodies. Nor was there a mechanism in the statutory framework for the Department to review its overall effectiveness. This was reflected in the evidence given by Mr Martin who explained that the Building Act 1984 had been designed to minimise government intervention and that therefore the Building Regulation and Energy Performance Division ("BREP") team had no mechanism for monitoring what was happening in industry.<sup>1</sup>
10. However, whilst there was no legislative basis requiring the Department to take such action, the Department accepts that as the sponsoring government department of the regulatory system it should have been better apprised of the effectiveness or otherwise of it. The ability to consider regulatory intervention was also further undermined by the culture created by the deregulatory agenda being promoted at the time.
11. The Department would invite the Inquiry to consider the work that was undertaken in this regard by the Building Control Performance Standards Advisory Group ("BCPSAG"), a standing sub-committee of the Buildings Regulations Advisory Committee ("BRAC"), which was set up in 2006<sup>2</sup> in order to:

---

<sup>1</sup> Brian Martin, Day 254, pages 155-156, lines 25-7

<sup>2</sup> BCPSAG replaced the Building Control Services Steering Group ("the Steering Group"), which had been established in 1998 by the Construction Industry Council, the Local Government Association and the Association of Consultant

- *Periodically review the effectiveness of the Building Control Performance Standards and supporting guidance, making recommendations for revisions and publication.*
- *Maintain, improve, identify and publish a set of relevant service driven performance indicators.*
- *Annually collect and independently analyse performance data received from building control bodies and publish the results of analysis. Devise and develop with independent advice a system of performance improvement by Building Control Bodies to cover measurement, evaluation and benchmarking of building control bodies' outputs.*
- *Monitor the trends of complaints about building control bodies and input results to the regular reviews, working with member bodies as appropriate.*
- *Periodically report on the Advisory Group's activities to the Building Regulations Advisory Committee for England and the Building Regulations Advisory Committee for Wales.<sup>3</sup>*

12. BCPSAG produced annual reports since 2007 (see, for example, 2012-13<sup>4</sup>, 2013-14<sup>5</sup>, 2014-15<sup>6</sup> and 2015-16<sup>7</sup>) but the Department would accept that these are focussed too much on the customer service of building control bodies and not enough on regulatory quality and the enforcement of the regulatory system.

13. That the Department should have done more to obtain a real picture of the effectiveness of the regulatory framework on the ground, which was reflected in the evidence given by Mr Burd, who indicated that given the opportunity to do it all over again he would have pushed for some form of independent review of the regulatory system in order to assess how it was working in

---

Approved Inspectors to prepare standards, which, in addition to suitable monitoring arrangements, were intended to help ensure that a satisfactory level of building control was achieved. The Steering Group, along with a BRAC Performance Standards Working Group recommended standards for the performance of building control and were supported by guidance. BCPSAG published a revised performance standard when it was established in 2006.

<sup>3</sup> {CLG10000042/21}

<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336381/140723\\_Final\\_BCPSAG\\_Report\\_2012-13\\_to\\_publish.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336381/140723_Final_BCPSAG_Report_2012-13_to_publish.pdf)

<sup>5</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/403669/150212\\_BCPSAG\\_Report\\_2013-14\\_to\\_Publish.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403669/150212_BCPSAG_Report_2013-14_to_Publish.pdf)

<sup>6</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/506069/BCP\\_SAG\\_Report\\_2014-15.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/506069/BCP_SAG_Report_2014-15.pdf)

<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/633828/BCP\\_SAG\\_Report\\_2015-16\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/633828/BCP_SAG_Report_2015-16_Final.pdf)



the marketplace;<sup>8</sup> and of Dame Melanie Dawes, who accepted that, whilst it had not been appreciated at the time, the Department clearly had a regulatory oversight role to play.<sup>9</sup>

14. The Department is committed to addressing these issues and has accepted in full the findings and recommendations of Dame Judith Hackitt in both her *Interim Report* and *Final Report*- in particular the need for a “*proactive, coherent and powerful system of regulatory oversight*” and a “*periodic review (at least every 5 years) of the effectiveness of the overall system of building regulations*”.<sup>10</sup>
15. The steps the Department is taking to address this issue, and the others identified below, are detailed at the end of this closing statement.

#### The regulatory model

*The Inquiry may conclude that the “outcomes-based”, functional requirement system laid down by the Building Act 1984 and the various Building Regulations made thereunder (as opposed to the prior prescriptive approach) was, and remains, generally fit for purpose insofar as it provides flexibility in an era of rapid change and developments in the construction industry.*

16. Having heard and considered the evidence in Module 6, Phase 2, as well as having considered other evidence available to the Inquiry, the Department still believes that the outcomes-based model remains the best approach to regulating building safety.
17. The features of, and policy reasons for, outcomes-based regulatory systems as explained and developed in *BEIS Research Paper Number 8: Goals-based and Rules-based Approaches to Regulation*<sup>11</sup> hold true today and the Department would suggest that Dame Judith Hackitt’s conclusions in her *Final Report*<sup>12</sup> that the regulatory system “*must be truly outcomes-based,*” remains the correct approach in circumstances where building technology and practice continues to evolve.
18. The Department’s position that the outcomes-based regulatory approach remains the correct approach is, however, subject to its concessions that the model must be overhauled in accordance with the recommendations made by Dame Judith Hackitt.

---

<sup>8</sup> Anthony Burd, Day 240, page 204, lines 14-20

<sup>9</sup> Melanie Dawes, Day 249, pages 228-229, lines 19-1

<sup>10</sup> Dame Judith Hackitt, ‘*Building a Safer Future: Final Report*’, p.37

<sup>11</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714185/regulation-goals-rules-based-approaches.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714185/regulation-goals-rules-based-approaches.pdf)

<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707785/Building\\_a\\_Safer\\_Future\\_-\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf)

### The regulatory scheme

19. As set out in the Department's opening statement for Module 6, Part 2, the regulatory scheme involves legal requirements, as contained in the Building Regulations, which are subject to Parliamentary approval<sup>13</sup>, accompanied by guidance contained in Approved Documents. The Approved Documents are statutory guidance to help professionals demonstrate compliance with the functional requirements in Building Regulations, and there is no requirement to follow the guidance contained in them, and no sanction for failing to do so. The Inquiry is invited to consider §21 of the Department's opening statement<sup>14</sup> for further background detail on the regulatory scheme.

### Approved Document B

20. Approved Document B sets out possible routes to compliance with Part B (Fire Safety) of the Building Regulations in common situations. As the Department has maintained, the fire protection of buildings (and the design of buildings generally) is a complex subject, and Approved Document B is a technical document intended for the benefit of competent professionals.<sup>15</sup> The Inquiry is invited to consider §§22-24 of the Department's opening statement<sup>16</sup> for further background detail on Approved Document B.

### Compliance and enforcement

21. As set out above, the Department's role in the regulatory system is and was to set building standards by making the Building Regulations and to give practice guidance in the form of Approved Documents (although this is not mandatory). The Department had no direct role in monitoring or enforcing compliance with the Building Regulations, which is the responsibility of local authorities. The Inquiry is invited to consider §§26-36 of the Department's opening statement for further background detail on the compliance and enforcement system within the regulatory framework.<sup>17</sup>

---

<sup>13</sup> s.1 Building Act 1984, subject to the negative resolution procedure

<sup>14</sup> {CLG00036387/7}

<sup>15</sup> This position has been made explicit in the 2019 edition of ADB: *"The approved documents provide technical guidance. Users of the approved document should have adequate knowledge and skills to understand and apply the guidance correctly to the building work being undertaken."*

<sup>16</sup> {CLG00036387/7-8}

<sup>17</sup> {CLG00036387/9-11}

## DEVELOPMENT OF THE BUILDING REGULATIONS AND APPROVED DOCUMENT B

### Building Regulations

*The Inquiry may conclude that functional requirement B4, whether as set out in the Building Regulations 1985, the Building Regulations 1991, the Building Regulations 2000 or the Building Regulations 2010, was sufficiently clear such that it could be understood by those in industry and building control, notwithstanding that for the period 1 June 1992 – 30 June 2000 it did not contain the word ‘adequately’, and that in practice the omission of the word ‘adequately’ for that period did not materially affect the intent of the functional requirement or how it was understood.*

22. The Inquiry concluded in its *Phase 1 Report* that,

*“...Although in another context there might be room for argument about the precise scope of the word “adequately”, it inevitably contemplates that the exterior must resist the spread of fire to some significant degree appropriate to the height, use and position of the building...”<sup>18</sup>*

23. The Department would respectfully agree with the Inquiry’s conclusion as to the inevitable contemplation of functional requirement B4.

24. As to the period 1 June 1992 – 30 June 2000, during which time the functional requirement omitted the word ‘adequately’, Mr Martin gave evidence that the reintroduction of the word from 1 July 2000 was the result of the Department’s drafting lawyers’ concern that there was an inconsistency in the way that the different functional requirements were written, and that the reintroduction was to ensure consistency, in particular with the limitation on the functional requirements set out in regulation 8 of the Building Regulations 1991 (the version in force at the time), rather than as part of an intention to change the meaning.<sup>19</sup> Mr Burd gave similar evidence.<sup>20</sup>

25. Insofar as the limitation on the functional requirements to ensure the reasonable health and safety of persons in or about buildings in regulation 8 has formed part of each of the Building Regulations (1985, 1991, 2000 and 2010), including during the period 1 June 1992 – 30 June 2000, the Department would invite the Inquiry to conclude that the inevitable contemplation of functional requirement B4, as characterised by the Inquiry in its *Phase 1 Report*, has always

---

<sup>18</sup> Grenfell Tower Inquiry ‘*Phase 1 Report*’, §26.4

<sup>19</sup> Brian Martin, Day 251, pages 90-95, lines 5-9

<sup>20</sup> Anthony Burd, Day 238, pages 203-209, lines 5-3



been sufficiently clear such that it could be understood by those in industry and building control.

Approved Document B

*The Inquiry may conclude that the Department failed to keep Approved Document B up-to-date or address known ambiguities, including around Class 0 and the term “filler”.*

*The Inquiry may conclude that parts of Approved Document B were poorly drafted and had the potential to cause confusion amongst industry and building control. However, any competent design or construction professional, properly applying their mind to the intent of the paragraphs concerning functional requirement B4 and reading the Approved Document as intended, should have concluded that the combustible cladding and insulation such as that used on Grenfell Tower was non compliant with functional requirement B4.*

*The Inquiry may conclude that the delays to the revisions to Approved Document B following the Secretary of State’s response to the Lakanal House Coroner dated 20 May 2013, were caused by several factors including: delays to the publication of research; changes in Government and Ministers; the EU Referendum; and the prioritisation of other policies.*

26. The Department accepts that the Inquiry has identified aspects of the drafting in each of the versions of Approved Document B under consideration (ADB 1992<sup>21</sup>, ADB 2000 (incorporating the 2002 amendments) and ADB 2006 (incorporating the 2007, 2010 and 2013 amendments)) that were *potentially* confusing to industry and building control.

27. First, a change was made from ADB 1992 to ADB 2000 whereby there was a reduction of the circumstances in which the guidance asked for insulation to be of limited combustibility. As Mr Burd explained, whilst the specific provisions of paragraph 13.7 of ADB 2000 did refer to fewer instances of thermal insulation being of limited combustibility, the whole of the paragraph needed to be read in its entirety and that each individual building needed to be examined on its own merits, with users of the Approved Document needing to consider whether to provide a greater degree of material of limited combustibility in a building.<sup>22</sup>

28. Secondly, in ADB 2000 (incorporating the 2002 amendments) Diagram 40 was accompanied by the statement, “*The National classifications do not automatically equate with the equivalent European classifications, therefore products cannot typically assume a European class unless they have been tested*

---

<sup>21</sup> {BLA00005482}

<sup>22</sup> Anthony Burd, Day 238, pages 199-201, lines 5-25

*accordingly.*” Mr Burd accepted that, although it was not intended this way, the use of the word ‘equivalent’ might be misleading in that it could lead a reader to conclude that, for example, National classification Class 0 and European Class B, are equivalent, albeit not automatically so.<sup>23</sup> Whilst the Department would invite the Inquiry to accept Mr Burd’s evidence that the incorporation of both standards may have caused some confusion, it would invite the Inquiry to conclude that in fact it would have been clear to a competent professional that there was no direct equivalence between the two systems and that any confusion should have been resolved by reference to the functional requirement.

29. Thirdly, Diagram 40 of ADB 2006 was titled ‘Provisions for external surface or walls’ (emphasis added). This is in contrast to the predecessor in ADB 1992, Diagram 36, and ADB 2000 (incorporating the 2002 amendments), Diagram 40, which was titled ‘Provisions for external surfaces of walls’ (emphasis added). Mr Burd gave evidence to the Inquiry that this change appeared to be a typographical error<sup>24</sup> and the Department would invite the Inquiry to conclude that this is precisely what did, regrettably, occur in this instance. In this regard the Department would invite the Inquiry to consider that paragraph 12.6 of ADB 2006 (the version in which the typographical error in the title to Diagram 40 appears to have first occurred) reads, “...*the external surfaces of walls should meet the provisions of Diagram 40c.*”<sup>25</sup> The Department would suggest that the wording of paragraph 12.6 of ADB 2006 is compelling evidence that the Mr Burd’s evidence is correct.

30. Fourthly, paragraph 12.7 of ADB 2006 was titled “*Insulation Materials/Products.*” The Department accepts that the title of this paragraph was potentially misleading in that it may be read as limiting the scope of paragraph 12.7 to insulation materials and insulation products only. Mr Burd gave evidence that “*/Products,*” had been introduced as part of the response to the Edge fire and that, in addition to the term “*filler*” (covered below), this was intended to be read as expanding the terms of the paragraph beyond a simple consideration of only insulation materials and products.<sup>26</sup>

31. Fifthly, the Department accepts that the intention behind the introduction of the words “*filler etc*” in paragraph 12.7 of ADB 2006 was not clear to industry. As outlined above, Mr Burd gave evidence that the term “*filler etc*” was introduced into ADB 2006 to expand the terms of the

---

<sup>23</sup> Anthony Burd, Day 239, pages 199-205, lines 25-3

<sup>24</sup> Anthony Burd, Day 240, pages 115-117, lines 10-9

<sup>25</sup> {CLG10002200/95-96}

<sup>26</sup> Anthony Burd, Day 240, page 104-105, lines 11-13

paragraph beyond insulation following the fire at the Edge in Manchester in 2005<sup>27</sup> where a panel with a combustible core had been used, but apparently not for its insulating properties<sup>28</sup>, and specifically following a response to the consultation exercise undertaken where the word was used by a consultee (the National House Building Council, “the NHBC”<sup>29</sup>). Mr Martin gave evidence repeatedly that the intention of the words was to get users of ADB 2006 to think more broadly<sup>30,31,32</sup> about what materials in the construction of an external wall should be of limited combustibility in accordance with paragraph 12.7. The Department accepts, as Mr Martin did, that in trying to find a term to cover the many, variable, complex possible constructions of external walls it alighted upon a vague ground in the middle<sup>33</sup>, and that this caused confusion.

32. Despite the issues identified by the Inquiry in each of the versions of Approved Document B, the Inquiry may conclude, firmly, that any suitably competent design or construction professional, properly applying their mind to the intent of functional requirement B4 and the guidance given in the various versions of Approved Document B, should have concluded that combustible cladding and insulation such as that used on Grenfell Tower was non-compliant.
33. To this extent, dealing with the specific example of any confusion created by the use of the term “*filler*” in ADB 2006, Mr Burd gave clear evidence that the word was intended to, and did, apply to the core of an aluminium composite material (“ACM”) panel.<sup>34</sup> The Department would invite the Inquiry to conclude that a competent professional, applying their mind to any confusion caused by the word “*filler*”, and considering whether to use an ACM panel with a core not meeting the limited combustibility criteria in paragraph 12.7, should have concluded that such a panel could not meet functional requirement B4, and that this was clear from the warning given in paragraph 12.5 of ADB 2006 that:

*“The external envelope of a building should not provide a medium for fire spread if it is likely to be a risk to health or safety. The use of combustible materials in the cladding system and extensive cavities may present such a risk in tall buildings.”*<sup>35</sup>

---

<sup>27</sup> Anthony Burd, Day 240, pages 70-72, lines 6-11

<sup>28</sup> Anthony Burd, Day 240, page 104-105, lines 13-7

<sup>29</sup> {CLG00002410/24}

<sup>30</sup> Brian Martin, Day 252, page 51-52, lines 1-13

<sup>31</sup> Brian Martin, Day 251, page 210-211, lines 21-8

<sup>32</sup> Brian Martin, Day 252, page 13, lines 13-25

<sup>33</sup> Brian Martin, Day 252, page 16, lines 2-15

<sup>34</sup> Anthony Burd, Day 240, pages 113-115, lines 25-8

<sup>35</sup> {CLG10002200/95}

34. The Department would invite the Inquiry to consider that its view in this regard is strongly supported by the Inquiry's expert, Professor Bisby, who in his report *Phase 2 – Regulatory Testing and the Path to Grenfell* concludes:

“929. *It was (and remains) my opinion that any perceived ambiguity in the specific wording of Paragraph 12.7 cannot credibly be used to absolve design or construction professionals of their responsibility for failings as regards installation of unacceptably dangerous external cladding on buildings.*”

“930. *Part of my rationale for the above opinion was (and is) that I believe it is reasonable to expect that any suitably competent design or construction professional, when faced with ambiguity in specific clauses of ADB (or any other statutory guidance), will consider this ambiguity in light of all other relevant clauses within the guidance, and will then make design and construction decisions that err on the side of caution and conservatism, rather than ignorance, cost, speed, convenience, or convention.*”<sup>36</sup>

35. Mr Burd<sup>37</sup> and Mr Martin<sup>38</sup> both gave evidence consistent with this position.

36. The introduction of industry guidance to assist in the interpretation of the functional requirement is considered further below.

37. As to the delays to the expected timetable of the formal review of Approved Document B, leading to the production of a new edition in 2016/17 as indicated in the Secretary of State's letter of response to the Lakanal House Coroner,<sup>39</sup> the Department would invite the Inquiry to consider the summary of the work undertaken on the review prior to the Grenfell Tower tragedy provided at §§96-107 of the Department's opening statement.<sup>40</sup>

38. Mr Harral gave evidence that the BREP team's work had been distorted from 2014 to mid-2015 by the Housing Standards Review and that this work meant that the simplification exercise planned for Approved Document B was not carried out during this time and that there should have been a tracker for the work to consider the timescales of the project.<sup>41</sup> The Department regrets that this issue was not brought to the attention of Ministers or escalated within the senior civil service.

---

<sup>36</sup> {LBYP20000001/69-70}

<sup>37</sup> Anthony Burd, Day 238, pages 205-209, lines 20-3

<sup>38</sup> Brian Martin, Day 251, page 95, lines 11-23 and Day 255, pages 71-75, lines 11-12

<sup>39</sup> {CLG00000589/3}

<sup>40</sup> {CLG00036387/32-34}

<sup>41</sup> Richard Harral, Day 243, pages 88-91, lines 23-16

39. Mr Ledsome expressed regret that the Approved Document B was not given more attention<sup>42</sup> but expressed that it would not have been a straightforward job to have just changed the section of Approved Document B dealing with requirement B4 and that the BREP team thought that they were doing the right thing at the time.<sup>43</sup>
40. Dame Melanie expressed that every government department should learn from the Department's failure to put in place a cultural approach to link the recommendations from a Coroner following a fire as serious as Lakanal House to ensure that such matters were appropriately escalated and held in a more present way across the Department.<sup>44</sup>
41. Lord Wharton gave evidence that while conducting the review of Approved Document B within a wider review of the Building Regulations and building control more generally, would slow the process down, in his view it was important that the work was done properly and, taking the advice of officials, that was what should be done.<sup>45</sup>
42. Lord Barwell gave evidence that during his time as a Minister the Department did not have the capacity to work on both the housing white paper and the review of Approved Document B at the same time,<sup>46</sup> which led to further delay, albeit that the life safety implications of the review were never made clear to him.

## **HISTORIC FIRE SAFETY RESEARCH**

43. As outlined in the Department's opening statement, during the period December 1999 (and indeed before, noting that the contract with the Building Research Establishment ("the BRE") for the 'investigation of real fires' began in 1988,) and the date of the Grenfell Tower tragedy, the Department commissioned a substantial body of research work concerning fire safety. The Department would invite the Inquiry to consider the table that it has filed setting out that work, the conclusions drawn therein and the action taken as a result<sup>47</sup>. The Department would invite the Inquiry to conclude that the research is demonstrative of the Department having given conscientious thought to fire safety issues over the span of this period, albeit based on the

---

<sup>42</sup> Bob Ledsome, Day 241, page 156, lines 15-23

<sup>43</sup> Bob Ledsome, Day 241, pages 125-127, lines 19-3

<sup>44</sup> Melanie Dawes, Day 249, pages 110-111, lines 12-9

<sup>45</sup> James Wharton, Day 258, pages 91-92, lines 7-2

<sup>46</sup> Gavin Barwell, Day 260, pages 128-130, lines 2-19

<sup>47</sup> {CLG00036419}



mistaken assumption that the system was working as intended and consistent with the Department's decentralised role in the regulatory system.

44. The Department would also invite the Inquiry to consider that the policies promulgated in response to the financial constraints in the Department, particularly stemming from the 2008 financial crisis, had an impact on the scope of what research the Department could commission, with the BREP team's dedicated research budget reduced from c.£5.8m to £2.5m per annum during the period 1998 to 2013.<sup>48</sup> A discrete research and analytical support programme for the Building Regulations was agreed as part of the budget allocations within the Department following the 2010 Spending Review, however this was removed in 2015/16 and proposals for individual research projects had to thereafter be considered on a case by case basis.
45. The need for research on issues pertaining to fire safety was determined within the Department by officials working in the BREP team, with the identification based on their own knowledge, intelligence gathered from industry,<sup>49</sup> the investigation of incidents and the recommendations of the BRAC.
46. Departmental officials had to prepare and agree business cases (subject to the approval of the relevant Deputy Director) for individual research projects with the Department's Finance and Procurement teams, which were then subject to scrutiny by the Department's research gateway committee, chaired by its chief analyst. Ministerial approval would also be obtained. Once a project had been approved and commissioned, the BREP team would monitor its progress and, once it had completed, Ministerial agreement would be sought to publish the reports. The Department accepts that the BREP team experienced difficulties in practice in obtaining permission for the publication of certain pieces of research, which is considered in more detail above.
47. It is the Department's starting position that all research commissioned and funded by public money should be published.
48. In respect of the results of the contract the Department had with the BRE titled *"Review of fire performance of external cladding systems and revision of BRE report BR135"* ("contract cc1924"), the

---

<sup>48</sup> Witness statement of Anthony Burd, paragraphs 33-34 {CLG00019461/14}

<sup>49</sup> See for example {BRE00013161}, which involved the formation of a 'Stakeholder group', including members of the relevant trade association, when research was carried out into the fire performance of structural insulated panel systems.

Department regrets that the usual position as to publication appears not to have been followed in respect of the results of the tests carried out by BRE in 2001. The Department would invite the Inquiry to accept the evidence given by Mr Burd that the fact this research was not published was essentially down to an oversight with no decision not to publish the results being taken.<sup>50</sup> To the extent that the results of contract cc1924 represented a missed opportunity for the Department to address issues concerning the use of flammable materials in external cladding, this is considered further below.

49. In respect of the “*Investigation of Real Fires*” contract, held by BRE from 1988 to date<sup>51</sup>, the Department accepts that the reports generated under the contract are necessarily limited by virtue of the need of the report-writer to rely on the goodwill and approval of the local Fire and Rescue Authority to permit adequate investigation. Mr Martin explained that the contract is further limited by the lack of authority of the contract holder to take samples from the site of a fire, and that even if samples were taken, approval would need to be sought to undertake testing.<sup>52</sup> He also gave evidence of the emphasis of the contract on the particular fire and how improvements might be made to the guidance provided in Approved Document B in the future, rather than in considering the risks presented by existing building stock.<sup>53</sup>

50. In 2012 the “*Investigation of Real Fires*” contract was amended (as part of the bid process) so that reports no longer contained any policy recommendations. As Mr Burd explained, the change was brought about to keep the focus of reports produced under the contract on what had actually happened in the particular fire<sup>54</sup>, and that on that basis a decision would have been taken by the Department on whether revisions to Approved Document B were required, with that work being the subject of a separate report as required. The Department does not consider that the change in 2012 meant that the reports prepared under the *Investigation of Real Fires* contract were of less use than previously, but rather that, in line with the government’s general position that research should not contain policy recommendations (such conclusions being for the government to draw), the reports prepared thereafter presented policy implications, which the Department then decided whether to accept as recommendations or not.

51. The Department would further accept that, in practice, it would appear that on occasion (including prior to the change to the contract in 2012) the reports generated under the

---

<sup>50</sup> Anthony Burd, Day 239, pages 104-108, lines 22-22

<sup>51</sup> The Department retendered the *Investigation of Real Fires*’ contract in the Autumn of 2021.

<sup>52</sup> Brian Martin, Day 251, pages 162-163, lines 15-4

<sup>53</sup> Brian Martin, Day 251, page 194, lines 7-16

<sup>54</sup> Anthony Burd, Day 239, pages 157-158, lines 9-7

*“Investigation of Real Fires”* contract were not sufficient to meet the contractual requirement to enable the adequacy of the provisions of Approved Document B to be considered. To the extent that the reports on specific fires may represent a further missed opportunity for the Department to have considered issues concerning the use of combustible materials in external cladding, this is considered further below.

52. The Department would also accept that there was a substantial delay in the publication of the seven workstreams of research commissioned following the Lakanal House fire that reported to the Department in February 2015. As Mr Ledsome indicated in his evidence, such a delay was very unusual.<sup>55</sup> Clearance to publish this research was sought by officials in a timely manner, (notwithstanding some delay caused by purdah before the 2015 general election and the reading in time afforded to the new Minister,<sup>56</sup>) but at the date of the Grenfell Tower tragedy, no approval for publication had been given by Ministers. To the extent that this impacted on the review of Approved Document B committed to by the Secretary of State in his response to the Lakanal House Coroner’s Rule 43 letter, this is considered further below.
53. The Department is currently considering the introduction of a written policy that will set out more formalised steps to be taken when research is pending review and clearance from Special Advisers and/or Ministers to ensure that in the future such delays do not occur again without proper reason.

## **FIRE SAFETY POLICY WITHIN THE BUILDING REGULATIONS AND THE EVIDENTIAL BASIS**

### **Combustible materials**

54. In respect of Class 0 and its application for use in Approved Document B for high-rise buildings, its inclusion within Approved Document B necessarily demonstrates the Department’s acceptance that products meeting the standard were suitable for use on high-rise buildings in the manner set out in the guidance. The Department has been unable to unearth any information that would assist the Inquiry in understanding quite why Class 0 was used as a classification for external walls. Its retention following the recommendation of the Select Committee and other issues pertaining to it are considered below.

---

<sup>55</sup> Bob Ledsome, Day 241, page 198, lines 5-8

<sup>56</sup> Witness statement of Brian Martin, paragraph 45 {CLG00019469/15}

55. In respect of ACM panels with a polyethylene core (“PE”), the Department’s knowledge of these products and the evidential basis for that is covered in more detail in the section below, but in terms of fire safety policy in respect of them, it is clear from the evidence that the Inquiry has heard that prior to the Grenfell Tower tragedy, the Department had not reached a reasoned and settled position on their use and application. As Mr Martin accepted in his evidence, whilst he could see that from 2014 onwards there was a problem with ACM PE, he had completely underestimated the hazard,<sup>57</sup> something he repeated later in his evidence.<sup>58</sup>

## **RESPONSE TO ISSUES ARISING AND RELEVANT HISTORICAL RECOMMENDATIONS**

*The Inquiry may conclude that the Department’s approach to its decentralised role in the regulatory system, and its belief in the ability of competent professionals to properly apply the provisions of Approved Document B to the intention of functional requirement B4, led officials within the Department to underestimate, despite warnings over a period of years, the likelihood of the risk posed to life safety by the use of flammable cladding in England and Wales eventuating.*

*The Inquiry may conclude that the Department missed opportunities over a period of years to identify and understand issues with the enforcement of and compliance with the Building Regulations and that it failed to put in place a system that would have allowed it to assess issues being raised with it.*

*The Inquiry may conclude that the successive years of financial constraints had impacted negatively on the size of the team and work of the officials in the Department dealing with Building Regulations policy and their capacity to assess and consider concerns properly.*

*The Inquiry may conclude that the deregulatory agenda being promoted across Government created an environment where officials working on Building Regulations felt unable to consider regulatory interventions and escalate concerns when they arose.*

56. As the Department set out in its opening statement for Module 6, Part 2, it accepts that in engaging with industry and responding to recommendations on fire safety, it failed to identify the issue of widespread non-compliance with Building Regulations. The evidence called in Module 6, Phase 2 has reinforced the Department’s view in this regard and has highlighted the

---

<sup>57</sup> Brian Martin, Day 253, page 131, lines 11-19

<sup>58</sup> Brian Martin, Day 254, pages 196-197, lines 21-5 and Day 255, pages 8-9, lines 2-11

extent to which the risks posed by combustible cladding were underestimated by those in the Department.

Responses to issues arising and historical recommendations

57. In its opening statement for Module 6, Part 2, the Department set out what action had been taken in respect of certain historical recommendations. Having completed the evidence the Department would wish to add the following:

*Investigation of the behaviour of external cladding systems in fire – Report on 10 full-scale fire tests CR143/94<sup>59</sup>*

58. Whilst the BRE's "*Investigation of the behaviour of external cladding systems in fire – Report on 10 full-scale tests CR143/94*" (produced by Dr Connolly) is not something that the Department's witnesses were able to assist the Inquiry with (see Mr Martin's evidence on this<sup>60</sup>), the Department considers it right to note that it was prepared and that its conclusion that "...it is clear that the BS 476 Parts 6 and 7 tests do not accurately reflect the fire hazards that may be associated with cladding systems," must have been considered by the Department at some stage. The Department would therefore accept that the report apparently represents a further, and potentially the initial, opportunity to have addressed the adequacy of Class 0 in the context of high-rise cladding that was missed.

59. Mr Burd gave evidence that he was not aware of the discrepancies between the reports prepared by the BRE for North Ayrshire and the Department in respect of Class 0.<sup>61</sup>

*House of Commons Select Committee on Environment, Transport and Regional Affairs report 'Potential Risks of Fire Spread in Buildings via External Cladding Systems'*

60. The Department detailed its responses to the Select Committee's recommendations in its opening statement for Module 6, Phase 2.

61. The Department's failure to gather complete and reliable information about how many high-rise residential buildings (multi-storey buildings, using the phrasing of the Select Committee) were clad using external cladding systems, etc. - which could have been achieved by instructing local authorities and Registered Social Landlords to undertake the review as recommended by the Select Committee - led to Class 0 being retained, in addition to the adoption of large-scale

---

<sup>59</sup> {RCO00000001}

<sup>60</sup> Brian Martin, Day 250, page 93, lines 5-14

<sup>61</sup> Anthony Burd, Day 238, page 137, lines 15-25



testing, without an appropriate evidence base (the findings of BRE's *'Review of fire performance of external cladding systems and revision of BR135 – survey summary and options'*<sup>62</sup>, which Mr Martin accepted<sup>63</sup>, and the Department would accept, were far from comprehensive, notwithstanding).

62. Whilst the Department did not have any mechanism by which it could have insisted that local authorities/Registered Social Landlords provide such information, the Department recognises that it should have taken further steps than those it did. The Department regrets that in its response to the Select Committee's report, it set out without further investigation that it supported the Select Committee's view that the *"evidence [the Select Committee had] received during this inquiry does not suggest that the majority of the external cladding systems currently in use in the UK poses a serious threat to life or property in the event of fire."*
63. To the extent that it was suggested during the course of the Module 6, Phase 2 hearings that Class 0 was retained following the Select Committee's report because there had recently been a full consultation on proposals for amendments to Approved Document B<sup>64</sup> (leading to ADB 2000), the Department would suggest that this is supported by its response to the Select Committee, which suggests that *"During the review [leading to ADB 2000] there was no suggestion that the guidance given in the Approved Document was insufficient or if followed would tend to create an unsafe scenario in a fire situation with respect to the external cladding."*<sup>65</sup>
64. The fact that Class 0 had not been raised as an issue in the full public consultation leading to ADB 2000 notwithstanding, following *Investigation of the behaviour of external cladding systems in fire – Report on 10 full-scale tests CR143/94*, the Department accepts that the evidence heard by the Select Committee and its recommendation to amend the guidance in Approved Document B to only allow non-combustible cladding (and systems passing a full-scale test) represents a further missed opportunity to reflect on the adequacy of Class 0.
65. It is with deep regret that the Department would invite the Inquiry to accept the evidence given by Mr Martin that the issue just got missed.<sup>66</sup> The Department has neither seen nor heard any evidence that leads it to believe the claim that the retention of Class 0 was politically motivated.<sup>67</sup>

---

<sup>62</sup> {BRE00041887}

<sup>63</sup> Brian Martin, Day 251, page 32, lines 9-14

<sup>64</sup> Brian Martin, Day 250, page 155, lines 12-23

<sup>65</sup> {CLG10000347/2}

<sup>66</sup> Brian Martin, Day 251, page 83, lines 9-14

<sup>67</sup> David Crowder, Day 209, page 54, lines 22-24

66. To the extent that Mr Martin gave evidence about the production of the second edition of BR 135 with Dr Sarah Colwell in 2003 whilst at the BRE, the Department would invite the Inquiry to accept his evidence that the fact that the warning that appeared in the first edition in respect of Class 0 was omitted from the second edition was an accident and not to keep the market ‘sweet’ or as a result of the deliberate suppression of information.<sup>68</sup>

67. Whilst the Department would accept that successive governments have made the need to build more houses a central policy, the Department does not consider that the Inquiry has heard any credible evidence to substantiate the suggestion that there was a conspiracy between government(s) and industry to suppress standards of safety in the pursuit of housebuilding.

*WarringtonFire’s RADAR 2 report ‘Correlation of UK Reaction to Fire Classes for Building Products with Euroclasses and Guidance on Revision of Approved Document B: Part 2: Proposals for the European Supplement to Approved Document B*

68. In respect of the WarringtonFire RADAR 2 report, the Department would accept that it did not treat the report as an opportunity to commission further research to identify what the frequency of use was of the Class 0 products tested which achieved Euroclass C, D or E.

69. The Department regrets that it did not fully consider the finding of WarringtonFire that:

*“Products 4/05 and 4/121, which also give Class 0 on the UK system give respectively Euroclasses C and D in the European assessment. Both of these products have relatively thin aluminium foil faced flexible foam laminates respectively based on polyisocyanurate and phenolic foam. With these products it was observed that in the [single burning item] test, the aluminium foil facing was penetrated such that the underlying foam was then available to contribute to the rate of heat release calculation whereas in the UK BS 476:Part 6, the heat release found in that test was not sufficient to displace the classification away from the UK class 0. Clearly, the introduction of a simple replacement of the UK Class 0 by a Euroclass B requirement in any regulatory procedure would discriminate against products 4/05 and 4/12 against the practice experience of their acceptability in the UK market for Class 0 applications.”<sup>69</sup>*

70. To the extent that the Department did not want to distort the marketplace or be a barrier to trade to products that were otherwise legitimately classified for use in the UK (or at least the English and Welsh market), as Mr Burd suggested when he gave evidence<sup>70,71</sup>, the Department

---

<sup>68</sup> Brian Martin, Day 251, pages 106-113, lines 12-21

<sup>69</sup> {CLG00000951/9}

<sup>70</sup> Anthony Burd, Day 239, page 132, lines 17-24

<sup>71</sup> Anthony Burd, Day 239, page 120, lines 3-14

now recognises its failure not to revisit the issue of retaining Class 0 as part of the linear route to compliance in Approved Document B in addition to Euroclass B by the time of the Grenfell Tower tragedy.

*ODPM Closing Report: Review of fire performance of external cladding systems and revision of BRE report BR135, contract cc1924*<sup>72</sup>

71. The Department accepts that following the provision of the *Closing Report* for contract cc1924 it had knowledge of the poor performance of ACM PE as against the BR135 criteria.

72. As Mr Burd made clear during his evidence, such panels would not, even when the *Closing Report* was provided to the Department, have been permitted on high-rise residential buildings, notwithstanding their classification to Class 0, because they would not have met the functional requirements, namely functional requirement B4.<sup>73</sup> It remains the Department's position that a competent professional, properly applying their mind to the wording of functional requirement B4 should not have specified ACM PE in accordance with the guidance in Approved Document B (whichever version is considered).

73. The Department also accepts that it did not give any consideration to the conclusion in the *Closing Report* that:

*"The results from the British Standard tests showed that although purchased as Class 0 products, only four of the eleven products tested satisfied Class 0 requirements."*

74. The Department would agree with Professor Bisby that, with the benefit of hindsight, it is difficult to understand why no one on the Industry Advisory Group constituted for the purposes of contract cc1924 raised any concerns regarding the performance of the 'aluminium sheets' rainscreen cladding product tested, nor demand the discontinuance of Class 0.<sup>74</sup>

75. The Department deeply regrets that it did not consider the conclusion quoted above and use it as a basis for enquiring into the adequacy of the testing and certification regime and it accepts that this failure represents another missed opportunity for the Department to have reviewed the adequacy of Class 0 and also to have potentially uncovered the manner in which manufacturers were gaming the testing system.

---

<sup>72</sup> {BRE00041895}

<sup>73</sup> Anthony Burd, Day 239, page, 54-55, lines 8-22

<sup>74</sup> {LBYP20000001/158}

*Email from Bill Parlor of the Association for Specialist Fire Protection dated 7 March 2008*<sup>75</sup>

76. The Department notes that Mr Parlor's original email concerns the '*Code for Sustainable Homes*' and that his concerns regarding fire safety were therefore, to a certain extent, misguided. However, the Department would accept that Mr Parlor went on to raise legitimate concerns regarding the use of Class 0 where that classification had been achieved by a thin film of aluminium<sup>76</sup>. It is apparent that the fire safety dangers posed by "*exemplar structures*" aimed at compliance with the sustainability requirements were being contemplated by the Department<sup>77</sup> but at this stage ADB 2006 had come into effect and the guidance was, the Department would suggest, clear that pursuant to the linear route, anything beyond the surface (meeting Class 0) should be of limited combustibility. The evidence of Mr Burd reflected this.<sup>78</sup> To that end, the proposed response from Mr Martin on 3 April 2008 is, the Department would suggest, entirely appropriate insofar as it notes that his concerns will continue to be subject to investigation.<sup>79</sup>

77. The Department would accept the evidence given by Mr Martin that Mr Parlor's email did, however, represent a further suggestion that Class 0 itself was inappropriate and that this was something that the Department would consider during the next review of Approved Document B.<sup>80</sup> Insofar as the Department failed to give due consideration to the retention of Class 0 in subsequent reviews, the Department recognises this failure.

*Email from Larry Cody of Rockwool dated 20 March 2008*

78. To the extent that it was suggested to Mr Burd that Mr Cody of Rockwool's email of 20 March 2008 suggested that Class 0 was inadequate<sup>81</sup>, the Department would contend this interpretation is incorrect. Nowhere in Mr Cody's email does he reference Class 0 and, as Mr Burd observed, his email appears to be concerned with fires that have happened (without reference to Class 0) and that he is arguing for the necessity of the then-new full-scale 8414 test.<sup>82</sup>

---

<sup>75</sup> {CLG10003645}

<sup>76</sup> {CLG10003645/4}

<sup>77</sup> {CLG10003645/2}

<sup>78</sup> Anthony Burd, Day 240, page 148, lines 6-9

<sup>79</sup> {CLG10003645/1}

<sup>80</sup> Brian Martin, Day 252, page 93-97, lines 24-11

<sup>81</sup> Anthony Burd, Day 240, page 137-138, lines 19-24

<sup>82</sup> Anthony Burd, Day 240, pages 138-139, lines 25-3

79. During the course of the Inquiry it was suggested to Mr Martin that no response could be found to Mr Cody's email.<sup>83</sup> Mr Martin in fact did respond and the Department considers that he responded appropriately on 25 March 2008 by noting Mr Cody's offer of contribution to any work that the Department might be taking forward and reassuring him that his points would be borne in mind.<sup>84</sup>

*Letter from Larry Cody of Rockwool dated 16 October 2009*<sup>85</sup>

80. The adequacy of the Department's email of in response to Mr Cody's March 2008 notwithstanding, the Department has been unable to find any response to his letter to Mr Barry Turner of the Local Authority Building Control ("LABC"), copied to Mr Martin, concerning the claim made in respect of Kingspan K15 being a material of limited combustibility. Whilst Mr Martin did not recall seeing the letter when questioned about it,<sup>86</sup> the Department notes his posited explanation for a lack of response as premised on it having been viewed as one manufacturer criticising another.<sup>87</sup> Notwithstanding that the actual intended recipient of the letter, Mr Turner, also viewed it as a complaint from a competitor,<sup>88</sup> the Department regrets that the matter was not picked up, passed on to Trading Standards as the appropriate body, and investigated. The failure of the Department in not passing the message on represents a further missed opportunity to have potentially uncovered the issues that the Inquiry has unearthed in respect of manufacturers obtaining and making false claims about their products.

*Response to Lakanal House*

81. Having carefully listened to the evidence at the Inquiry concerning the Lakanal House fire, in which six people, including three children, tragically died, the Department would reiterate that which is set out at §§92-111 and further, and in particular, the points made at §112(a)-(e) of its written opening statement<sup>89</sup> setting out the Department's position. The Department has not heard any evidence during Module 6, Phase 2 that would support any conclusion other than that the Department missed a significant opportunity in responding to the tragic events at Lakanal House to look beyond the recommendations made by the Coroner and to consider

---

<sup>83</sup> Brian Martin, Day 252, page 103, lines 19-20

<sup>84</sup> {CLG10003704/1}

<sup>85</sup> {LABC0000924}; date of letter taken from the metadata of the file

<sup>86</sup> Brian Martin, Day 253, page 159, lines 6-8

<sup>87</sup> Brian Martin, Day 253, page 160, lines 4-13

<sup>88</sup> Barry Turner, Day 216, page 83, lines 11-20

<sup>89</sup> {CLG00036387/30-36}



how widespread the use of non-compliant materials on high-rise residential buildings was. The Department deeply regrets not having done so.

*Email from Sam Greenwood (Arup) dated 5 December 2012 (Tamweel Tower fire),*

82. The email from Mr Greenwood to the Department alerting officials to the fire at Tamweel Tower, Dubai is, the Department would suggest, an example of a missed opportunity for the Department to have more deeply reflected on whether such a fire would be possible in the UK. Mr Martin gave evidence that his view was that if people followed the guidance in Approved Document B as intended, i.e., by concluding that the core of an ACM panel should be considered a ‘filler’, then such a fire should not have been able to occur in England or Wales<sup>90</sup>.

*Email from Daniel Turner (Ipswich Building Control) dated 21 January 2013<sup>91</sup>*

83. To the extent that the email from Mr Turner is evidence that an architect and contractor were proposing to use a Kingspan product not meeting the limited combustibility requirements in Approved Document B, the Department would accept that further work was not undertaken to assess whether such usage might be widespread.

84. However, the Department would invite the Inquiry to consider that in the email the Department was told that it was the first time that Mr Turner, an Area Building Control Surveyor, had been asked to consider the use of such panels above 18m<sup>92</sup> and he had, correctly, identified the relevance of paragraphs 12.5-12.7 of ADB 2006. Mr Martin’s response to Mr Turner on 29 January 2013<sup>93</sup> essentially encapsulates the regulatory framework: he points out that the Kingspan products proposed would not meet the guidance in Approved Document B concerned with restricting combustible insulation above 18m, but that other detailed solutions might be available that adequately restrict fire spread and that this would be a problem for the architect designing the building.

*Rule 43 letter following the fire at Shirley Towers dated 4 February 2013<sup>94</sup>*

85. The Rule 43 letter that the Department received following the deaths of two firefighters, Alan Bannon and James Shears, made various recommendations, including that the Building

---

<sup>90</sup> Brian Martin, Day 252, pages 108-114, lines 16-5

<sup>91</sup> {CLG00019193}

<sup>92</sup> {CLG00019193/2}

<sup>93</sup> {CLG00019195}

<sup>94</sup> {CLG00000488}

Regulations be amended to ensure that fire alarm cables be supported by fire resistant cable supports and that social housing providers be encouraged to consider the retro-fitting of sprinklers in all existing high rise buildings in excess of 30 metres in height.<sup>95</sup> Peter Holland, the then Chief Fire and Rescue Adviser (“the CFRA”) responded to the Shirley Towers Coroner by a letter dated 2 April 2013 and addressed the recommendations made.<sup>96</sup> The Director of the Department’s Housing Growth and Affordable Housing accordingly wrote to the Housing Directors of stock-owning local authorities and to the Chief Executives of Private Registered Providers on 8 April 2013 attaching the Coroner’s letter and inviting them to actively consider the recommendations.<sup>97</sup> The recommendation as to fire resistant cable supports was also addressed as suggested in Mr Holland’s response, BS 7671 (requirements for electrical installations) was subsequently amended to require fire resistant fastening and fixings and Approved Document P was updated to reflect this.

*Email from Tony Baker (BRE) dated 25 November 2013<sup>98</sup> and 30 January 2014 meeting*

86. The Department accepts, as Mr Martin did<sup>99</sup>, that Mr Baker’s email to him on 25 November 2013 raised a serious question, and one that he had not had cause to consider between 2006 and 2013.<sup>100</sup>
87. The evidence given by Mr Martin about this email chain<sup>101</sup> is, the Department would suggest, indicative of the difficulties the Department faced when drafting the Approved Documents, which are only ever intended to provide guidance on potential ways to achieve compliance with the Building Regulations in common building situations. This is difficult given the multitude of different materials/products that are available and in the countless combinations that they can be used.
88. To the extent that the correspondence between Mr Baker and Mr Martin considers the question of the application of paragraphs 12.6 and 12.7 in the abstract and notwithstanding the suggestion from Mr Baker that it arose from a number of enquiries, the Department would suggest that nothing within the email chain would have alerted the Department to a widespread

---

<sup>95</sup> {CLG00000488/3}

<sup>96</sup> {CLG00000487}

<sup>97</sup> {CLG00000750}

<sup>98</sup> {CLG10005895}

<sup>99</sup> Brian Martin, Day 252, page 184, lines 7-10

<sup>100</sup> Brian Martin, Day 252, page 184-185, lines 21-11

<sup>101</sup> Brian Martin, Day 252, pages 180-205, lines 16-10

problem concerning the use of flammable cladding and that the response in offering to discuss the issue more fully was an appropriate one at this stage.

89. Whilst Mr Martin was unable to recall the subsequent meeting that took place on 30 January 2014 in Eland House, Dr Colwell recalled in her evidence<sup>102</sup> that the Department was taking the concerns raised seriously and that it would be picked up as part of the next review. The Department considers that at this stage its response was an appropriate one in the absence of further evidence to suggest a widespread issue.

*Email from Chris Macey (Wintech) dated 7 February 2014*

90. Notwithstanding that Mr Martin gave evidence in respect of this email chain<sup>103</sup> that he viewed Mr Macey as arguing for the restriction on the use of combustible insulation materials to be weakened, the Department would accept that it represents a missed opportunity for the Department to have taken action to investigate claims that a number of developers, contractors and manufacturers were ignoring the requirements of Part B.

*Email to Neil Smith (NHBC) on 2 July 2014 and responses<sup>104</sup>*

91. The Department would invite the Inquiry to consider Mr Martin's email to Neil Smith on 2 July 2014 was within the regulatory framework as existed at the time, i.e., one where the Department as part of the decentralised system had no powers to investigate or enforce. To that extent, the Department would further invite the Inquiry to consider as accurate Mr Martin's evidence that his email was, in essence, him fishing to try and gather more information<sup>105</sup>.
92. Notwithstanding Mr Martin's efforts, the Department regrets that, within the context of the decentralised system, it placed reliance on NHBC to take the lead on investigating the matter<sup>106</sup> as set out in the passage in the response from Mr Smith on 11 July 2014 that:

*"There is no reason to suspect that buildings which have been built with Kingspan K15 are at risk at this time, it is just the fact that the testing carried out to date does not bear this out. Kingspan are confident that the testing currently underway will prove the suitability of the material for use over 18m. If they are not able*

---

<sup>102</sup> Sarah Colwell, Day 233, pages 160-166, lines 9-8

<sup>103</sup> Brian Martin, Day 253, pages 31-44, lines 20-24

<sup>104</sup> {NHB00000712}

<sup>105</sup> Brian Martin, Day 253, page 150, lines 16-19

<sup>106</sup> Brian Martin, Day 253, page 171, lines 1-14

*to do this, we will begin the process of informing industry that the product is no longer suitable for use in facades over 18m as well as informing other stakeholders such as the BCA and the Fire and Rescue Service, although both parties are already aware of our on-going discussions.”*

93. The Department would accept that on the basis of Mr Smith’s email the Department was unequivocally seized of information confirming the use of Kingspan K15 on buildings over 18m in height<sup>107</sup> and this information was escalated within the BREP team<sup>108</sup>.
94. The Department regrets that, having been seized of such information, it relied on the reassuring tone of the further email from Steve Evans of the NHBC on 15 August 2014<sup>109</sup> and did not take the opportunity to explore further whether Kingspan K15 had been used on high-rise residential buildings and, if so, how many.

*CWCT Meeting on 2 July 2014*<sup>110</sup>

95. The Department has reflected deeply on the contents of the CWCT meeting on 2 July 2014 minutes and would accept that they demonstrate an underappreciation of the risk that ACM PE cladding products were being used in the UK. On this basis the meeting and the subsequent suggestion for an FAQ to be drafted (even if by the BRE in the first instance) represent a further missed opportunity to enquire into the problems that led to the Grenfell Tower tragedy. To the extent that the minutes record that Dr Colwell had agreed to raise the production of an FAQ with Mr Martin<sup>111</sup>, but accepts that she did not<sup>112</sup>, would, in the Department’s submission, somewhat undermine her evidence that she expected the Department to be responsible for producing such a document.<sup>113</sup>
96. Notwithstanding that the issue was not raised with the Department by the BRE as anticipated, the Department notes and accepts the evidence given by Mr Ledsome that an FAQ could have been used to define a particular word or answer a particular question in respect of Approved Document B,<sup>114</sup> and the Department recognises that this constitutes a missed opportunity to have clarified matters for industry.

---

<sup>107</sup> Brian Martin, Day 253, page 158, lines 16-25

<sup>108</sup> Brian Martin, Day 253, pages 167-168, lines 22-1

<sup>109</sup> {CLG00019253}

<sup>110</sup> {CLG00019336}

<sup>111</sup> {CLG00019336/4}

<sup>112</sup> Sarah Colwell, Day 233, page 22, lines 11-17

<sup>113</sup> Sarah Colwell, Day 233, pages 173-174, lines 23-13

<sup>114</sup> Bob Ledsome, Day 241, pages 180-181, lines 16-21

97. Mr Martin was clear in his evidence that in reading the minutes after they were emailed to him he did not pick up on the suggestion that ACM PE cladding products were being widely used, focussing instead on the potential use and difficulties caused by a lack of clarity in paragraph 12.7 of ADB 2006 and its application to the core of such products.<sup>115</sup> The Department deeply regrets, as Mr Martin indicated in his evidence that he does, that he was not in the room for the second half of the meeting on the basis that the message as to the use of ACM PE cladding products may have come across more clearly<sup>116</sup> and that he did not recognise the gravity of the risk.<sup>117</sup>
98. Insofar as the minutes of the meeting suggest that there was confusion around Class 0 and limited combustibility<sup>118</sup>, Mr Martin gave evidence that this was the first time he had been made aware of such confusion<sup>119</sup>. It is apparent from the fact that Mr Martin's email to Mr Smith of the NHBC (detailed above) was sent prior to the CWCT meeting that Mr Martin must in fact have been made aware in advance of the meeting, potentially, as he accepted, at a meeting at Arup's offices on 25 June 2014<sup>120</sup>, but it would appear to have in any event been around this time that he became aware of the confusion.

*Email to John Albon (BBA) on 11 July 2014 and responses*

99. Having received the email from Mr Smith of the NHBC on 11 July 2014, Mr Martin took steps to contact the British Board of Agrément ("the BBA") on the same day to ask them to investigate the very serious safety matter identified by Mr Smith. The Department believes that Mr Martin acted appropriately in emailing the BBA having escalated the matter within the BREP team.
100. The Department does, however, regret not having explored the potential issues created by the mistake on the previous versions of the BBA certificate in question having been allowed to subsist for the length of time it did. As Mr Martin accepted in evidence, it was a failure to rely on the assurances given by Mr Albon and not to bring the matter to the attention of the UK Accreditation Service ("UKAS") at the time so that it could investigate<sup>121</sup>

---

<sup>115</sup> Brian Martin, Day 253, page 111-113, lines 18-2

<sup>116</sup> Brian Martin, Day 253, page 63, lines 1-17

<sup>117</sup> Brian Martin, Day 253, page 66, lines 20-25

<sup>118</sup> {CLG00019336/3}

<sup>119</sup> Brian Martin, Day 253, pages 135-136, lines 22-1

<sup>120</sup> Brian Martin, Day 253, pages 145-148, lines 20-5

<sup>121</sup> Brian Martin, Day 253, page 207, lines 10-23



*Email from Peter Holland (CFRA) following the Torch fire in Dubai dated 21 February 2015*

101. Mr Martin gave evidence concerning the meaning behind his response to the CFRA's email following the fire at the Torch in Dubai that the provisions of the Building Regulations were designed to prevent such a fire occurring in the UK (or more accurately England and Wales) providing they were applied correctly.<sup>122</sup>

102. Mr Martin's view reflects that of the Department; namely that the word "*filler*" in ADB 2006 applied to the core of an ACM panel such that it required that core to be of limited combustibility, and therefore such a fire should not have been possible in England and Wales providing competent designers/contractors were specifying/building in accordance with either the linear route (including specifying insulation meeting the limited combustibility/non combustibility criteria) or successfully classifying a system to BR 135 in accordance with BS 8414.

*Email from Steve Evans (NHBC) dated 15 June 2015*

103. In respect of the email from Mr Evans on 15 June 2015, Mr Martin gave evidence that he saw this as an opportunity to help a building control body address a problem and that to the extent that the email suggested a wider issue, he was intending to address this during the forthcoming review of Approved Document B, which he understood he was about to start<sup>123</sup>.

104. Insofar as Mr Evans' email represented a further opportunity for the Department to reflect on whether there were systemic issues with compliance with the Building Regulations in respect of high-rise residential buildings, the Department regrets that this opportunity was not taken.

*Email from Nick Jenkins (Booth Muirie) dated 16 February 2016 and responses*

105. The email correspondence between Mr Jenkins and Dr Colwell in the first instance and Mr Jenkins and Mr Martin in the second represents a further example, the Department would accept, of evidence that the intention of the words "*filler etc.*" in ADB 2006 (then ADB 2010) had not been understood by industry. Mr Martin gave evidence concerning the email correspondence with Mr Jenkins<sup>124</sup> and accepted this.<sup>125</sup>

---

<sup>122</sup> Brian Martin, Day 254, page 57, lines 3-18

<sup>123</sup> Brian Martin, Day 254, page 119-120, lines 11-6

<sup>124</sup> Brian Martin, Day 254, pages 187-199, lines 11-10

<sup>125</sup> Brian Martin, Day 254, pages 194, lines 13-17

106. The Department would invite the Inquiry to accept Mr Martin's evidence that the reason he did not highlight the concerns being raised by Mr Jenkins were due to the constraints he was working under and that as a result he underestimated the scale of the hazard and the issue.<sup>126</sup>

107. The Department, similarly to Mr Martin<sup>127</sup> and Mr Ledsome,<sup>128</sup> deeply regrets that Mr Jenkin's email was not recognised as a further warning that should have given rise to investigations to establish the extent of regulatory non-compliance. Given the proximity of Mr Jenkins' email to the high-rise fire in Dubai, the Department recognises that this represents a significant missed opportunity to have commenced a wider review of the regulatory system.

*CWCT Meeting on 17 March 2016*<sup>129</sup>

108. The CWCT minutes of the meeting on 17 March 2016 serve to reinforce that the Department was at that stage aware of the issues of poor drafting in the title to paragraph 12.7 of Approved Document B and in respect of the use of the words "*filler material*". However, the Department maintains that it was still the case that any competent professional, applying their mind to the functional requirement, would have reached the same conclusion recorded in the section of the minutes dealing with the combustibility of material, namely that cladding should not contribute to the spread of fire and that the combustibility clause was intended to include all materials in the external wall with an exception for small, isolated components.

109. To the extent that issues concerning the clarity of Approved Document B were raised at the CWCT meeting on 17 March 2016, Mr Martin gave evidence that, as reflected in the minutes of the meeting, he had indicated that the issues identified would be rectified in the next revisions of the Approved Document.<sup>130</sup>

*Fire Sector Federation, 'Why does Approved Document B need to be reviewed?'*<sup>131</sup>

110. The Fire Sector Federation's document was escalated within the Department after publication.<sup>132</sup> Mr Ledsome was clear in his evidence that its contents would have been an

---

<sup>126</sup> Brian Martin, Day 254, pages 196-197, lines 7-5

<sup>127</sup> Brian Martin, Day 254, pages 197, line 5

<sup>128</sup> Bob Ledsome, Day 245, page 76, lines 6-25

<sup>129</sup> {CLG00019415}

<sup>130</sup> Brian Martin, Day 255, pages 54-55, lines 16-10

<sup>131</sup> {CLG00019395}

<sup>132</sup> {CLG00019394}

important contribution to what the Department needed to or could change in Approved Document B.<sup>133</sup>

*Correspondence from the All-Party Parliamentary Group on Fire Safety*

111. The Inquiry has taken evidence during Module 6, Phase 2 that shows that, during a significant period up until April 2017, the Department was receiving correspondence from the All-Party Parliamentary Group on Fire Safety (“the APPG”) that raised issues relating to fire safety in high-rise buildings and the out-dated guidance in Approved Document B. The Department now accepts that the correspondence received from the APPG was not given the priority or consideration that it should have been given and that a more rigorous and systematic process for tackling and responding to bodies such as the APPG should have been established.

112. The Department has introduced an ‘issues’ tracker to ensure that when correspondence from a body such as the APPG raises issues in respect of Part B of the Building Regulations (or if such issues are raised at meetings, etc.) these are logged and routinely reviewed, using the Department’s board governance structure as a route for escalation.

*Reasons for underestimation of risk and missed opportunities*

*The Inquiry may conclude that in addition to the above, successive years of financial constraints and the deregulatory policy had impacted on the size of the team and work of the officials in the Department dealing on Building Regulations policy, and that officials felt unable to escalate concerns when they arose.*

113. Given the evidence heard in Module 6, Phase 2, the Department has given very careful consideration as to what led it to underestimate the risks posed by flammable cladding and how it was that the ‘threads’ of the issues raised above were not brought together. The Department considers that the following factors, each of which is considered in turn below, form the basis for such underestimation, a failure to appreciate the risks posed by flammable cladding and the failure to keep hold of the ‘golden thread’ of issues being raised: the Department’s view that it did not believe that its role extended to active oversight of, and intervention in, the building safety system; a reliance on industry to self-regulate when issues were raised; an internal culture that did not empower officials to raise concerns about issues that were not considered a priority; and a combination of the effects of financial constraints and deregulatory policy.

---

<sup>133</sup> Bob Ledsome, Day 245, page 112, lines 1-4

114. The Department's failure to understand how the building regulatory system was operating in practice, and a mistaken understanding that the system was working as intended, led the BREP team to fail to join together the threads of issues raised concerning flammable cladding.
115. As Mr Harral explained in his evidence, it was not just in respect of fire safety that the Department failed to ascertain whether the compliance was being achieved as it viewed itself as having a standard setting role, with building control and industry at arm's length, but also in areas such as overheating, ventilation and moisture failures. He suggested that the way the system was structured as a whole was inherently unresponsive to issues not concerned with the setting of standards.<sup>134</sup>
116. Mr Martin gave evidence about the design of the Building Act 1984 having been to minimise government intervention and oversight and that the centre of government did not want the BREP team to interfere with industry.<sup>135</sup> As set out above, he spoke further about the lack of a mechanism to interrogate the system or investigate things.<sup>136</sup>
117. Mr Ledsome gave evidence that the Department had placed reliance on<sup>137</sup> and put its faith in an understanding that the system was working as it was intended to do as originally set up under the Building Act 1984 and that building control bodies and industry bodies were doing a competent and appropriate job and that duty holders were properly and seriously addressing compliance. He accepted that such faith had been misplaced and that more challenge could have been made to those more senior in the Department.<sup>138</sup>
118. Dame Melanie gave evidence that there had been a failure throughout the preceding decades for the Department, at any level, to see that there was a system oversight role that needed to be played, and that this had led to the BREP team never being given any instructions that their role was anything more than to maintain the Approved Documents.<sup>139</sup> This was also recognised by Lord Barwell who reinforced the evidence given by Dame Melanie.<sup>140</sup>

---

<sup>134</sup> Richard Harral, Day 244, pages 132-133, lines 24-18

<sup>135</sup> Brian Martin, Day 254, page 179, lines 7-18

<sup>136</sup> Brian Martin, Day 255, pages 120-121, lines 22-7

<sup>137</sup> Bob Ledsome, Day 245, page 26, lines 1-12

<sup>138</sup> Bob Ledsome, Day 245, pages 120-122, lines 4-10

<sup>139</sup> Melanie Dawes, Day 249, pages 170-172, lines 16-1

<sup>140</sup> Gavin Barwell, Day 260, pages 39-41, lines 13-22

Reliance on industry

119. During the period leading up to the Grenfell Tower tragedy the Department placed reliance on industry, both in terms of responding to issues raised by the Department and in producing its own guidance.
120. In respect of the Building Control Alliance (“the BCA”) and the production of Technical Guidance Note 18 (“TGN 18”), Mr Martin gave evidence that he considered that there was a partnership between industry and the Department that was relied on in seeking to promote good practice within the sector, and it was this that Mr Martin considered when determining that TGN 18 was an example of relevant industry bodies taking appropriate steps.<sup>141</sup> The Department would suggest that there is nothing inherently wrong with industry producing its own guidance, providing such guidance assists users in meeting the functional requirement in question.
121. The Department would invite the Inquiry to consider that there was evidence (from Mr Field of the Building Research Establishment Fire Research Station) before the Select Committee that the cladding industry had demonstrated a responsible attitude following the Knowsley fire in working with the BRE and the Department to develop an appropriate test method (that which became BS 8414).<sup>142</sup> The Department would invite the Inquiry to consider that the Department was entitled to rely on its experience of working constructively with industry over a number of years.
122. Mr Ledsome gave evidence that in respect of the historic issues identified with regard to the use of Kingspan K15, the Department placed reliance on NHBC to follow up vigorously with Kingspan. He gave further evidence that he would have expected Kingspan to have been acting responsibly and to have ensured that any product literature it produced properly reflected the results of the tests undertaken.<sup>143</sup> Mr Martin gave evidence that the impression he had from NHBC was that they recognised there was a problem and that they were working on trying to resolve it.<sup>144</sup>

---

<sup>141</sup> Brian Martin, Day 252, pages 160-161, lines 22-22

<sup>142</sup> {CLG00019484/21}

<sup>143</sup> Bob Ledsome, Day 245, pages 7-8, lines 17-15

<sup>144</sup> Brian Martin, Day 253, page 169, lines 9-21

123. The Department would strongly refute suggestions made that it had an inappropriate relationship with industry and would suggest that the Inquiry does not have evidence before it to support such a finding.

*Financial constraints and deregulatory policy*

124. The Department recognises that financial constraints and deregulatory policy impacted on the ability of officials to do their jobs on a day-to-day basis, which is considered in this section, and in respect of how they approached decisions that had to be made about the escalation of risks, which is considered in the section below on ‘Internal culture’.

125. Mr Burd gave evidence that declining resources for both research monies and headcount within the BREP team from 2007, coupled with various deregulatory measures during his time in the Department, had made it increasingly hard to undertake the job at hand and focus on the role as desk officers for the different parts of the Building Regulations.<sup>145</sup>

126. Mr Harral gave evidence that whilst the scope of the work the BREP team was involved in was very large and complex, it had been squeezed to fit the resource rather than matched to a robust set of processes to manage issues like Coroner’s recommendations.<sup>146</sup> He gave further evidence about an initial restructure of the team in 2007 that resulted in the technical team being downsized.<sup>147</sup>

127. Mr Martin gave evidence that following the 2015 general election there was an even greater ambition towards deregulation.<sup>148</sup>

128. Mr Williams gave evidence that the Department had taken a ‘heck of a whack’ during the first comprehensive spending review in 2010.<sup>149</sup> This is reflected in the Department’s Annual Report and Accounts 2010-11<sup>150</sup>, which states at §6.7:

*“The impact of the Spending Review settlement – combined with the Coalition Government’s ambition to achieve a smaller, more enabling state and a shift in power away from Whitehall – has been a move to a smaller, stronger Department. The number of programme streams in the Department has more than halved*

---

<sup>145</sup> Anthony Burd, Day 240, pages 194-196, lines 18-7

<sup>146</sup> Richard Harral, Day 243, pages 101-103, lines 14-4

<sup>147</sup> Richard Harral, Day 243, pages 9-10, lines 22-20

<sup>148</sup> Brian Martin, Day 255, pages 19-20, lines 17-6

<sup>149</sup> Stephen Williams, Day 259, pages 7-9, lines 22-12

<sup>150</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/247455/0971.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247455/0971.pdf)



*since 2009-10, reflecting the changing nature of the programme making in the Department and also the reduction in resources, with smaller programme streams being rationalised.”*

129. The 2010 spending review had also led to a significant reduction in the headcount of the Department’s staff, with there being 4,172 full-time staff in 2009-10, compared with 2,958 in 2010-11.<sup>151</sup>

130. The Department accepts that, in respect of deregulatory agenda, a case should have been put forward to exclude at least those parts of the Building Regulations concerned with safety. The failure to do this contributed to a culture, alongside reduced headcount, where staff felt constrained in assessing further regulatory interventions.

#### Internal culture

131. The Department, having listened to the evidence given during Module 6, Part 2, is aware that, despite the feelings of those in charge of the Department,<sup>152</sup> it failed to instil a culture that sufficiently enabled individuals within the BREP team to properly assess and escalate risk. This was further propagated by the deregulatory agenda being promoted across Government.

132. Mr Harral gave evidence that the prioritisation policies in place in the Department at the time, (which were intended to achieve the government of the day’s priorities,) were consistently working against the BREP team and that this created a feeling that they were always at the back of the queue<sup>153</sup> and that deregulatory policies had a psychological impact on the team’s function.<sup>154</sup> He gave further evidence that with hindsight he wished the BREP team had had the remit and the resources to take further steps to make enquiries and investigations, but that the team had become totally internalised in their thinking and that he personally was mentally over capacity delivering other exercises that the team had been tasked with.<sup>155</sup> He concluded by reflecting on his regret that he had not been more confident in the importance of what the BREP team had been doing.<sup>156</sup>

133. Mr Martin gave evidence that the leadership culture in the Department at the time was, as he perceived it, to let the sector resolve its own problems<sup>157</sup> and that at the time he may not

---

<sup>151</sup> *Ibid*, page 125, Table 8b

<sup>152</sup> Melanie Dawes, Day 249, page 172, lines 9-15

<sup>153</sup> Richard Harral, Day 244, pages 11-12, lines 4-25

<sup>154</sup> Richard Harral, Day 244, page 137-138, lines 16-8

<sup>155</sup> Richard Harral, Day 244, pages 144-145, lines 18-21

<sup>156</sup> Richard Harral, Day 244, page, 189, lines 20-24

<sup>157</sup> Brian Martin, Day 254, pages 50-51, lines 21-4

have escalated matters because he was working in isolation, focussed on individual policy projects, with no one else in the BREP team that had a background in fire protection who might have questioned him on matters (and vice versa).<sup>158</sup> He also gave evidence that he had been unable to get approval to take forward the work on Approved Document B as he wanted and that he was frustrated because he could not talk publicly about the work he was doing. He attributed his frustration in part to the fact that he was the only person in the team with a background in fire protection.<sup>159</sup>

134. Mr Martin also explained that the BREP team had been encouraged to spend less time on general enquiries and focus more of their time on the project work that they were expected to do, as a result of which not a lot of time and effort was put into dealing with the kind of enquiries detailed above.<sup>160</sup>

135. Mr Ledsome gave evidence that he bitterly regretted not having been able to give his colleagues in the BREP team as much space to undertake horizon scanning work as he would have liked.<sup>161</sup>

136. Dame Melanie accepted that there were failings at the deputy director level and higher insofar as the people in positions higher up should have been making sure the BREP team were prioritised properly.<sup>162</sup>

## **REGULATION OF CONSTRUCTION PRODUCTS**

137. In respect of the marketing of construction products, including their testing and certification, the Department has listened carefully to the evidence throughout the Inquiry on this issue. It looks forward to what further evidence on this topic the Inquiry will take in Module 7.

138. The Department would reiterate that it has accepted all of the recommendations of Dame Judith Hackitt's Independent Review and that it has set up an ongoing independent review of the effectiveness of the regulatory system, about which further detail is provided below. As Mr Burd gave evidence, the intention of the Department in bringing forward the Euroclasses

---

<sup>158</sup> Brian Martin, Day 255, pages 41-43, lines 12-6

<sup>159</sup> Brian Martin, Day 257, pages 168-171, lines 20-6

<sup>160</sup> Brian Martin, Day 254, pages 141-142, lines 22-15

<sup>161</sup> Bob Ledsome, Day 241, pages 46-47, lines 6-1

<sup>162</sup> Melanie Dawes, Day 249, pages 235-236, lines 20-25

alongside the National classes in Approved Document B was to give visible recognition to them under the auspices of the Construction Products Directive.<sup>163</sup>

139. To the extent that the suggestion has been made during the course of the Inquiry that small-scale testing is inappropriate within the context of external cladding, the Department would suggest that this is not the case, and that small-scale tests do have a role to play in fire safety. As per Professor Bisby in his report *Phase 2 – Regulatory Testing and the Path to Grenfell*:

*“...it is usually unfair to criticise a test for being too small, too unrealistic, too variable – a test is just a test; it is what people choose to do with the results from a test that matters.”*

140. Whilst small-scale tests are not necessarily representative of a product in-situ, it is a fundamental principle of fire safety testing that such tests cannot be both totally realistic and repeatable and the Department would suggest that such tests can provide a practical way of ranking the reaction to fire of products in a manner that strikes the appropriate balance between reliability and repeatability.

141. The Department notes that the questions concerning the adequacy or otherwise of Desktop Studies (or ‘Assessments in Lieu of Testing’) are to be considered as part of Module 7. Insofar as the Department considers that Module 7 represents a more appropriate testing ground for the arguments for and against Desktop Studies it proposes to address the Inquiry on them at that stage. The Department’s current position is that Desktop Studies remain a route for competent professionals to assure themselves of compliance with the Building Regulations in certain circumstances (for example to overcome the physical limitations of a test) but it has applied much tighter and restrictive conditions to the carrying out of them in circumstances concerning the assessment of the fire performance of external cladding systems.

142. The Department looks forward to the Inquiry’s recommendations in respect of the testing and certification regime for construction products. A summary of what steps the Department has taken to address the issues uncovered by the Inquiry in respect of the regime is set out below.

## **THE DEPARTMENT’S RESPONSE TO THE GRENFELL TOWER FIRE**

143. The Department is cognisant that the Inquiry has, by its letter dated 14 April 2022, invited submissions from Core Participants on reforms and recommendations to be submitted by 31

---

<sup>163</sup> Anthony Burd, Day 239, page 118, lines 16-19

October 2022. Since the Grenfell Tower tragedy the Department has taken significant steps to address the issues identified above and it will provide more detail about these changes, including the reforms introduced by the Building Safety Act, in its submission in response to the Inquiry's letter of 14 April. With that in mind, below the Department has only provided a summary of what action it has taken across certain key areas since the tragedy.

*Changes to the building safety regulatory system*

144. The Department has accepted the findings and recommendations of Dame Judith Hackitt's Independent Review. It found, the building safety regulatory system was not fit for purpose and within the construction industry there was a race to the bottom, with profits being prioritised over safety. As previously accepted, and as the evidence heard by the Inquiry in Module 6, Phase 2 has confirmed, the Department did not adequately interrogate the underlying performance of the system, nor take sufficient steps to assure itself whether the regulatory regime was working as intended.

145. In response to the Grenfell Tower tragedy and the findings of the Hackitt Review, the Department has made and continues to make important changes to the way that building safety is handled; it has introduced a range of proportionate measures so that people are safe and feel safe in their homes. The Building Safety Act 2022, which received Royal Assent on 28 April 2022, and the Fire Safety Act 2021, which commenced on 18 May 2022, will bring about the biggest improvements in building safety for a generation. These Acts follow and go further than the recommendations made by Dame Judith Hackitt in her final report, ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety.

146. The Fire Safety Act 2021, is the Government's first legislative step to deliver on the Inquiry's Phase 1 recommendations and puts beyond doubt that responsible persons for multi-occupied residential buildings must assess the fire safety risks for the external walls and flat entrance doors. If any risks are identified, then mitigating measures should be put in place.

147. The Building Safety Act 2022 establishes a new Building Safety Regulator and paves the way for a new National Regulator for Construction Products and New Homes Ombudsman. The legislation creates a wider regulatory framework to enable the design and construction of more, high-quality, safe homes in the years to come. It strengthens the Building Act 1984 and

the Regulatory Reform (Fire Safety) Order 2005, to create clear responsibilities for regulatory compliance, fire and structural safety and accountability; making sure that there is someone clearly responsible for safety during the design, build and occupation of higher risk buildings, with serious consequences for those who try to evade their responsibilities. It seeks to improve the competence and oversight of both industry and regulators in the built environment sector and improves routes to redress for past wrongdoing of industry actors. It also provides powers so that all construction products marketed in the UK will fall under a regulatory regime, allowing them to be withdrawn from the market if they present a safety risk. Following Royal Assent, there will be a major programme of secondary legislation through to 2024 to implement many aspects of this regime.

148. In addition to the foregoing, as outlined by Mr Martin in his evidence,<sup>164</sup> following the Grenfell Tower tragedy the Department has re-joined an international group of performance-based building control regulators. The Inter-Jurisdictional Regulatory Collaboration Committee<sup>165</sup> (“the IRCC”) has eight specific goals, which include:

*“Fostering the exchange of ideas and the development of ‘best current practice’ documents and approaches.”*

*“Promoting the sharing of information and the pooling of resources to aid research and development of commonly-needed components of a ‘best current practice’ building regulatory system.”*

149. The Department hopes that, in addition to the changes brought about following the Hackitt Review and the introduction of the Building Safety Act 2022 and the Fire Safety Act 2021, its renewed membership of the IRCC will give it a better opportunity to understand any further issues that may arise as regards the functional system.

#### The Building Safety Regulator

150. Under the Building Safety Act a new Building Safety Regulator, led by the new Chief Inspector of Buildings, has been established as part of the Health and Safety Executive. The Building Safety Regulator has two objectives: to secure the safety of people in and around buildings, and to improve building standards. It will also regulate in line with best practice principles including being proportionate, transparent and targeting its activity at cases where action is needed.

---

<sup>164</sup> Brian Martin, Day 252, pages 115-117, lines 12-19

<sup>165</sup> <https://www.ircc.info/index.html>

151. The Building Safety Regulator will improve the safety and standard of buildings through three critical functions:

- a) leading the delivery of the new regulatory regime for high-rise and other in scope buildings;
- b) overseeing the safety and performance of all buildings; and
- c) promoting the competence and organisational capability of professionals, tradespeople and building control professionals working on all buildings.

152. Dame Judith Hackitt remains the chair of the board overseeing the setup, transition and running of the new regulator.

153. The Building Safety Regulator has powers to set rules about what operational standards must be met, and about practices and procedures to be adopted. Local authorities and registered building control approvers will have to adhere to these rules and comply with the requirements in the exercise of their duties and functions. The Building Safety Regulator is able to revise these rules to reflect best practice requirements as the industry changes.

154. Whilst the Building Safety Regulator is responsible to Ministers and ultimately to Parliament for its performance, as is typical for national regulators, the Building Safety Act provides for an additional safeguard going beyond this usual practice. As recommended by Dame Judith Hackitt, the Building Safety Act requires a regular independent review of the whole system, and specifically the effectiveness of the Building Safety Regulator. This will provide another source of public oversight and transparency in relation to how the Building Safety Regulator performs its functions.

### Gateways

155. In line with Dame Judith Hackitt's recommendation that there be a systems approach to risk management for high-rise residential buildings, the Building Safety Regulator must sign off at three key stages of the process – planning approval, start of construction and handover. These are stop/go decision points that must be passed before a development can proceed to the next stage, strengthening oversight of design and construction. As a result, there should never be a repeat of the situation that occurred at Grenfell Tower where no-one was clear of their responsibilities in terms of ensuring the design complied with Building Regulations, and where unsafe designs and materials were approved for use.



### Building Control

156. The Building Safety Act introduces a new system of oversight of local authority building control and registered building control approvers. The Building Safety Regulator will monitor the performance of building control bodies to identify patterns of regulatory failure and rectify poor performance with a new suite of powers, driving-up standards across the sector.
157. Competence of building control officers, which was a concern raised by Dame Judith Hackitt, will be assured by reforms in the Building Safety Act, turning building control into a regulated profession in which important activities and functions may only be carried out by or with the advice of registered building inspectors. Building inspectors will be required to go through a new registration process and meet certain criteria, which we expect to be linked to a common competency framework, and will be set out by the Building Safety Regulator. Individual registration of building inspectors will allow individual professional accountability for the first time.
158. The Building Safety Regulator has a new set of enforcement powers it can use against poor performing building control bodies. These include powers to investigate and impose sanctions, such as fines, variations to registration, suspensions, and in the most serious cases the ability to strike off a building control approver from the register. For a failing local authority building control body, the Building Safety Regulator can recommend to the Secretary of State that the function is transferred to another local authority. This will encourage building control bodies to improve safety and performance of all buildings and drive up continuous improvement and culture change.
159. While the Grenfell Tower refurbishment was overseen by the Royal Borough of Kensington and Chelsea's building control, the Department is also planning actions relating to the role of private sector building control. Through the Building Safety Act 2022, the Department has removed the competition between registered building control approvers and local authorities on high-rise building projects, having concluded that building control approval for higher-risk buildings should be the responsibility of the public sector, through the new Building Safety Regulator. This will put in place additional safeguards, which in addition to the reforms to oversight and competence of the profession, would be in accordance with the aim

expressed by Lord Barwell in his evidence, namely that there are some benefits to competition, but that the system needed to work in a way which addressed concerns of lowered standards.<sup>166</sup>

160. In considering the potential issues created by the introduction of competition into the building control system, the Inquiry is invited to note the findings of Dame Judith Hackitt in her *Interim Report* that there is not enough evidence to determine either way whether or not competition in the building control market is the cause of lower (or indeed higher) standards.<sup>167</sup> Absent such evidence, the Department's position remains that there is a place for competition in the building control market providing regulatory oversight is properly exercised over quality of inspections and competency of inspectors, with higher risk projects removed from the scope of the private sector and local building control – with responsibility sitting with the national regulator.

#### Regulation of construction products

161. The Building Safety Act includes powers that will extend regulations to all construction products that are made available on the UK market. This includes a power to introduce a requirement for construction products to be safe, in line with the existing requirement for consumer products, and to create a safety critical list of construction products, where their failure would risk causing death or serious injury. Manufacturers of safety critical products will be required to declare their performance and put in place measures to ensure that this performance is consistently met.

162. The Building Safety Act also paves the way for a National Regulator for Construction Products, which will be based within the Office of Product Safety and Standards. It will improve regulatory oversight so that people can be confident that construction products, including those used to construct homes, are safe and will perform as they should. The new Regulator will:

- a) Provide market surveillance and oversight, including maintaining a national complaints system and supporting local Trading Standards so that safety concerns can be identified and addressed quickly;
- b) Lead and coordinate the enforcement of the new Construction Products Regulations, including removing products that pose a safety risk from the market and issuing penalties

---

<sup>166</sup> Gavin Barwell, Day 260, pages 37-38, lines 13-17

<sup>167</sup> Dame Judith Hackitt, *Interim Report*, paragraph 5.24

should manufacturers break the rules. Where a criminal offence has been committed in contravention of the new Regulations, offences may be prosecuted and punishable by fines, imprisonment or both;

- c) Provide advice and support to the industry to improve compliance and provide technical advice to government;
- d) Carry out or commission its own product testing to investigate and identify non-compliance; and
- e) Establish a robust and coherent approach together with the Building Safety Regulator and Trading Standards to drive change across the sector.

163. To identify any further weaknesses in the system and make recommendations for improvement, the Government has commissioned an independent review of the system for testing and construction products and has appointed Paul Morrell OBE and Anneliese Day QC to lead it. The independent review will undertake a critical assessment of the system for testing and certifying construction products. It will identify systemic issues with how construction products are tested, whether on a stand-alone basis or in assemblies, and how test results are used to manage the safety risks that those products pose, and recommend ways to address those issues. It will examine how the current system can be strengthened, to provide confidence that construction products are safe and perform as labelled and marketed.

Addressing safety risks in existing 'higher risk' residential buildings

164. As set out in §§54-57 of its opening statement for Module 6, Phase 2, the Department has introduced a ban on combustible materials in external walls of new high-rise (over 18m) homes.

165. The Department has also committed to invest £5.1 billion to address the fire safety risks caused by unsafe cladding on high-rise residential buildings (of 18 metres and above in height) in England, to protect residents and leaseholders from costs and prioritising the highest risk buildings. £600 million is allocated for the replacement of unsafe ACM cladding systems and £4.5 billion is to address other forms of unsafe (non-ACM) cladding through the Building Safety Fund. As at 30 April 2022, over £1.2 billion has already been allocated from the Building Safety Fund, of which over £1 billion is for private sector remediation and £133 million for social sector remediation. Together with the £478 million that has already been allocated for

buildings with unsafe ACM, the Department has allocated over £1.7 billion in funding so far to individual remediation projects. The Department is also providing over £60m to replace Waking Watch measures with fire alarms in all buildings with a waking watch regardless of height or the reason for the waking watch being in place.

166. Whilst a statement by independent experts in July 2021 concluded that there is no evidence of systemic risk of fire in buildings under 18 metres,<sup>168</sup> the Department has taken steps to hold industry to account for its past failings by negotiating pledges from 45 residential development companies<sup>169</sup> that they will remediate life-critical fire safety defects in buildings over 11 metres in height, which they had a role in developing or refurbishing, without recourse to the Government's £5.1 billion remediation fund. The pledges will be converted into legally binding contracts.<sup>170</sup> The Department continues to seek pledges from other developers.

167. At the end of April 2022, 94% of all identified high-rise residential and publicly owned buildings in England had either completed or started remediation work to remove and replace unsafe ACM cladding. 77% (375) of all buildings have completed ACM remediation works which includes 318 (65% of all buildings) which have received building control sign off. This means around 19,000 homes have been fully remediated. For high-rise buildings with other forms of unsafe (non-ACM) cladding, 943 private sector buildings and 156 social sector buildings are proceeding with a full application to the Building Safety Fund. This means that an estimated 90,000 homes within high-rise blocks are covered by Building Safety Fund applications and leaseholders and residents can be assured the fire risks caused by the unsafe cladding will be addressed at no cost to them.

168. The Building Safety Act retrospectively extends the limitation period to bring a case under the Defective Premises Act 1972 from six to thirty years for works that have already been completed and from six to fifteen years for prospective works, as well as extending the scope of that legislation to make claims possible in respect of refurbishment work as well as the initial provision of a dwelling. These measures provide a legal route to redress that was not previously possible for hundreds of buildings, potentially benefitting thousands of leaseholders.

---

<sup>168</sup> <https://www.gov.uk/government/publications/independent-expert-statement-on-building-safety-in-medium-and-lower-rise-block-of-flats/independent-expert-statement-in-building-safety-in-medium-and-lower-rise-blocks-of-flats>

<sup>169</sup> <https://www.gov.uk/guidance/list-of-developers-who-have-signed-building-safety-repairs-pledge>

<sup>170</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1068867/13.04.2022\\_Developer\\_Pledge\\_Letter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1068867/13.04.2022_Developer_Pledge_Letter.pdf)

169. As the Department stated in its closing statement for Modules 1 and 2, for the public to regain trust in the industry, everyone involved in designing, constructing, managing and maintaining homes, and in manufacturing and marketing construction products, must commit to reversing the shocking culture of indifference to safety that the Inquiry has exposed. The Government has supported this by radically reforming the regulatory system through the Building Safety Act 2022, so that it pays to do the right thing. This is necessary but it will not be sufficient by itself to change industry behaviour.
170. The Department and the Industry Safety Steering Group, chaired by Dame Judith Hackitt, are challenging the industry to make improvements to drive this culture change and, supporting the work of the industry-led Competence Steering Group to develop recommendations for a new system of competence oversight across the industry, and supporting industry initiatives such as:
- a) The Building a Safer Future Charter, which promotes an urgent and positive culture and behaviour change in the built environment sector;
  - b) The Code for Construction Product Information, which requires construction products manufacturers to ensure that the information they provide is clear, accurate, up-to-date, accessible and unambiguous;
  - c) The BSI's suite of national competence standards for individuals working on buildings, to support the work of the industry-led Competence Steering Group and take forward some of the recommendations in its final report *Setting the Bar*, published in October 2020; and
  - d) A new BSI Code of Practice for assessors when examining external walls and cladding. The code of practice is intended to help professionals provide consistent, risk-based and proportionate advice on whether remediation of the external walls is necessary and give building owners clarity on the fire risk of the construction of external walls. The draft was issued for public consultation by BSI in April and is expected to be published in due course.
171. The industry must take responsibility for confronting poor practice and establishing new, improved norms and a safety culture that will restore and merit public confidence in the



industry. This requires strong leadership and improved collaboration, transparency, responsibility, and the building of capacity across the sector to achieve sustained and meaningful change.

Changes to risk management and governance processes

172. Alongside the establishment of the regulators, the Department is positioning itself as having an explicit stewardship role across the built environment. This reflects that the built environment and regulatory systems are complex and interconnected, and addressing systemic challenges will need us to consider the system as a whole. Following this, our approach to risk will need to reflect system effects and incentives accordingly. The Department is revising its overall posture on building risks in line with this approach. This, in turn, will allow built environment system risks to underpin outcomes and interventions we agree to work towards through our role as stewards and sponsors.

173. This new approach to stewardship of the built environment is supported by revisions the Department has made to its overall risk environment. A revised approach to risk management has been endorsed by the Department's Executive Team, in line with the methodology set out by 'The Orange Book', to ensure the Department's approach to risk is consistent with the rest of Government. The Framework seeks to set the tone for our approach to risk, reinforcing the importance of managing risk proactively, empowering our business teams and people to take responsibility for risk and fostering a culture where consideration of risk is integral to delivery of the department's activities. This revised approach:

- Formalised the use of the 'three lines of defence' approach to risk management
- Revised the principal risk categories and principal risks register, aligning the register into 13 principal risks together with associated risk appetite statements
- Set out a more structured approach to risk ownership and risk awareness across the department
- Strengthened the risk governance processes with the aim of ensuring that there is a "golden thread" running across all layers within the department: from project/portfolio level all the way up to the Departmental Board



174. The formalisation of the “three lines of defence” model helps the Department to manage risks holistically in an integrated and mutually supportive manner, with each of the lines of defence contributing to the overall assurance. The ‘three lines of defence’ making up the model are:

- First line of defence: each business team has primary ownership, responsibility, and accountability for identifying, assessing and managing the risks relevant to their business activities
- Second line of defence: consists of a ‘second opinion’/layer to monitor, challenge and facilitate the implementation of effective risk management and co-ordinate the reporting of risk information. The Department’s risk team is a core part of the second line of defence
- Third line of defence: consists of audit activity, which for the Department is undertaken by the Government Internal Audit Agency (GIAA)
- In addition, sitting outside of the Department’s own risk management framework and the ‘three lines of defence’ model, are a range of other sources of external assurance. This includes the Government Functional Standards and the National Audit Office (NAO)

## **CONCLUSION**

175. To the extent that the Inquiry finds that the Department missed opportunities in the years prior to the Grenfell Tower tragedy, the Department would invite the Inquiry to consider its central position; namely that the Building Regulations themselves, and the guidance given in the Approved Documents, should have been sufficiently clear to a competent professional applying their mind to the functional requirement such that flammable cladding like that installed on Grenfell Tower should never have been used. Nevertheless, the Department recognises that, despite various warnings, it, as the sponsoring government department for the regulatory regime, failed to inspect or scrutinise the system in a way that may have enabled it to have uncovered the systemic problems in the construction industry that the Inquiry has laid bare.

176. The Department is hopeful that the changes it has put in place, both internally, in respect of changes to risk management of governance, and externally, by bringing forward the Building Safety Act and reforming the building safety regulatory system, address the failings uncovered since the tragedy.
177. The Department remains committed to learning the lessons of the Grenfell Tower tragedy and continues to review, in the light of the evidence heard by the Inquiry, whether the changes it has made since 14 June 2017 remain appropriate.
178. The Department recognises that it has an ongoing role to play in providing regulatory oversight of the building safety regulatory system and in holding industry to account in ensuring that historical issues with cladding systems are rectified without costs to leaseholders and it is dedicated to both of these issues.
179. In recognising its regulatory oversight role the Department remains cognisant of the evidence given by Dame Melanie that regulatory oversight is not taught in a systematic way in the civil service and is not something that Ministers particularly think about;<sup>171</sup> the Grenfell Tower tragedy has brought the issue to the fore and the Department has taken, and continues to take, steps to ensure that regulatory oversight is exercised appropriately.
180. The Department is also cognisant of the evidence given by Lord Barwell and his comments on the reasons why perhaps officials within the Department did not undertake a stewardship role in respect of the effectiveness of the regulatory framework:

*“...I think it’s really important that responsibility for that failure [to consider themselves responsible for the effectiveness of the Building Regulations when concerning public safety matters] doesn’t just sit with the members of [the BREP] team... There must have been something wrong in the structure of the department that that failing wasn’t identified, and ministers, including myself have to take some responsibility that we didn’t pick up that that wasn’t happening. So I think, you know, it’s not for me to tell the Inquiry what its conclusions would be, but I feel very strongly that even if there were mistakes in that team, it would be wrong, for relatively junior civil servants, to say: well the whole blame sits there. That doesn’t feel fair to me.”<sup>172</sup>*

---

<sup>171</sup> Melanie Dawes, Day 249, page 53, lines 9-21

<sup>172</sup> Gavin Barwell, Day 260, page 42, lines 9-24

181. The Department agrees with Lord Barwell: the failure to put in place adequate systems of risk identification and management was not the responsibility of junior civil servants.

182. Notwithstanding the changes the Department has made since the terrible events on 14 June 2017, it looks forward to the Inquiry's findings and final recommendations arising from Module 6, Phase 2.

6 June 2022