IN THE GRENFELL TOWER INQUIRY

Chaired by

Sir MARTIN MOORE-BICK

Sitting with fellow Panel members Thouria Istephan and Ali Akbor OBE

Advised and assisted by Assessors, currently Joe Montgomery CB, Professor David Nethercot OBE, and John Mothersole

---

FBU's Written Opening Submissions for Module 6 of Phase 2 relating to testing, certification and the government

---

1. The FBU and the firefighters, control staff and fire safety officers we represent ("we") remain humbled by the suffering of the deceased and the bereaved, survivors and relatives of the deceased (BSRs) as a result of the Grenfell Tower fire, and committed to a full and open inquiry. We remind the reader, but do not here repeat, the description of the FBU's wider role given in our opening oral submissions for Module 5. {T176/116:23 & ff}

A. The agenda for this part of Module 6

2. We address the topics to be covered in this Module in the letter from the GTI dated the 1st June 2021 below. However, in our respectful submission we ask the GTI to consider whether, at least in relation to the government, they are too narrow and do not go far enough.

3. It is our submission that this disaster was not simply the result of failings by individual private companies or due to underfunded public services struggling to cope, although this all played its part. The fundamental underlying causes of the terrible loss of life at Grenfell Tower lie in political decisions made by Central

Government in the service of a social and economic system driven by profit and greed.

4. For at least forty years, policies relating to housing, local government, the fire and rescue service, to testing and certification and other related areas have been driven by an agenda of deregulation, privatisation and marketisation with the introduction of competition into the public sector in areas previously governed through direct public control. Pursuant to that,

   4.1. legislation and oversight by the state of fire safety and fire and rescue services (at national or local level) has been replaced by systems of looser regulation, self-regulation and 'guidance';

   4.2. the dominant mantra has been that the private sector knows best with the public sector being opened up to ever greater private provision;

   4.3. the public sector has been increasingly run down and marginalised more recently, as a consequence of the regime of austerity introduced in 2010 which has taken a significant toll on public services.

5. This agenda has been the dominant political ideology of most politicians in Central Government for decades. It has been driven by the profit needs of private businesses with corporate interests being prioritised over and above the needs of citizens; in this case, especially the needs of people living in council, or other socially owned, housing. It has been accompanied by a tolerance of cronyism and corruption.

6. The impact of this agenda can be seen across all areas of Central Government policy relevant to the fire at Grenfell Tower.

B. <u>Deregulation</u>

7. The drive to deregulate began with the election of the Conservative Government in 1979. Prime Minister Margaret Thatcher championed an ideology that the private sector was always superior,

" ……..more generally, of course, the evidence of the lamentable performance of government in running any business – or indeed administering any service – is so overwhelming that the onus should always be on statists to demonstrate why government should perform a particular function rather than why the private sector should not." (Margaret Thatcher, *The Downing Street Years*, 1993 at page 677)

8. The government aims were set out by Lord Young of Graffham, in *Lifting the Burden*, Cmnd 9571, July 1985: 1, 3, 15-16 as,

   "First, freeing markets and increasing the opportunities for competition. Second, lifting administrative and legislative burdens which take time, energy and resources from fundamental business activity"

9. Deregulation was and is about commercial interests and enhancing profitability. The fact that the '**pointless time-wasting**' administrative and legislative burdens were, in reality, rules and regulations introduced to protect people's lives, was beside the point.

10. The drive to deregulate was pursued throughout the 1980s, 90s and into the new century. Governments led by David Cameron pursued it relentlessly with a rule of one in one out and later one in two out {FBU00000108/40, §121}.

    "*The Government is waging war against the excessive health and safety culture that has become an albatross around the neck of British businesses. This coalition has a clear new year's resolution: to kill off the health and safety culture for good. I want 2012 to go down in history not just as Olympics year or Diamond Jubilee year, but the year we get a lot of this pointless time-wasting out of the British economy and British life once and for all."*

    Prime Minister David Cameron; Independent 5.1.2012

11. Just two years before the disaster, in July 2015, the new Conservative Government's blueprint for improving productivity in the UK continued to refer to reducing the burden of regulation. Sajid Javid, Secretary of State for BIS, told Parliament:

"The move to One-in, Three-out for new government legislation raises the bar and will help drive delivery of the £10 billion target."

12. It is our case that deregulation to serve commercial interests and private business played a fundamental role in the tragedy at Grenfell Tower.

C. <u>The revision of the Building Regulations and Approved Document B ("ADB")</u>

13. In the area of building and construction, the policy of deregulation led to the introduction of significantly revised Building Regulations and the accompanying guidance including ADB covering fire safety.

14. In December 1979 Environment Secretary, Mr Michael Heseltine, launched a consultation on the National Building Regulations which had been enacted in 1965 and revised in 1976 (with London retaining its own laws). Consistent with the Government's prevailing ideology, Mr Heseltine argued that any new system of building regulation would have to have "maximum self-regulation, minimum government interference", be totally self-financing, and simple in operation. {LBYP20000001/81, §385}. The fundamental purpose of any changes was to be 'lifting the burden' from business.

15. Mr Heseltine's consultation resulted in the *Building Act 1984* which laid the basis for a bonfire of the previous building regulations. The Act also created the role of private "approved inspector" to act in competition with local authority building control services.

16. The Building Regulations 1985 which followed fundamentally revised previous provisions, cutting them back from more than 300 to just 25 pages. Detailed technical provisions were replaced by 'functional requirements'. London was included in the scope of the national building regulations for the first time in the wake of the abolition of the GLC.

17. The introduction of 'functional requirements' was a major change. It brought with it significant flexibility for building designers and those involved in construction

including manufacturers of building materials. Inevitably, the increased flexibility introduced ambiguity that could be and was exploited by some in the construction industry.

18. For the purpose of the GTI, the key functional requirement is B4(1). In the 1985 version of the Building Regulations this provided that the external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building. The word 'adequately' clearly lacks precision and was removed in the 1991 Building Regulations only to be re-introduced by ADB in 1992.

19. The functional, performance based regulations were supplemented by 'Approved Documents' which provided the government's official explanation of how to meet the requirements of the regulations. However, they were not mandatory and, if other ways could be found to meet the requirements, this was permitted. The 'Approved Documents' themselves were subject to change as time progressed including the fire safety provisions in ADB.

20. We agree with Professor Bisby's comments in his Phase 2 report {LBYP20000001/113, §589}:

> *"Thus, in the period from 1986 until 1996, the vision that Heseltine had initially set out in 1979 was largely realised. The construction industry had been granted the flexibility that it had been seeking, essentially since the 1930s, and the creation of private building control meant that designers and contractors were no longer (necessarily) limited by constraints applied by Local Authority Building Control. The 'race to the bottom' had begun."*

D. Approved Document B

21. The guidance in ADB evolved over time with ever greater complexity and flexibility, bringing concomitant ambiguity and scope for manipulation. In the refurbishments of both Lakanal House and Grenfell Tower this contributed to confusion in the construction firms and among the professionals advising them, including architects. The changes resulted in ever greater ambiguity which, in the case of

Grenfell Tower, were also ruthlessly exploited by private companies for their own commercial self-interest.

22. Mirroring the tragedy caused by the same central failing at The Edge and at Lakanal House, we submit this led directly to the Grenfell Tower disaster with the avoidable selection and installation of a highly combustible rainscreen cladding system which could have been prevented if there had been clear simple provisions in ADB preventing the use of combustible materials in rainscreen cladding systems on an existing high-rise residential building (HRRB).

23. Professor Luke Bisby comments in the preface of his report {LBYP20000001/2, §6} that:

> "*These narrative threads show that by the time of the Grenfell Tower fire there had been numerous opportunities where the statutory guidance and regulatory compliance testing regime* **could** *have been made simpler or less permissive. However, in* ***each case there appears to have been powerful commercial and ideological incentives to increase complexity, whilst also increasing flexibility for industry.*** *I show that the resulting complexity, coupled with widespread incompetence and poor regulatory oversight of built environment professions (and professionals), significantly contributed to the disastrous fire safety outcomes at Grenfell Tower.*"

24. The 1992 version of ADB provided the following in relation to the construction of external surfaces and walls at Sections 12.5-7:

> *"12.5 The external surfaces of walls should meet the provisions in Diagram 36. However, the total amount of combustible material may be limited in practice by the provisions for space separation in Section 13 (see Paragraph 13.7 et seq).*
>
> *12.6 In the case of outer cladding of a wall of 'rainscreen' construction (with a drained and ventilated cavity) the surface of* ***the outer cladding*** *which faces the cavity should also meet the provisions of* ***Diagram 36****.*

12.7 *The external envelope of a building should not provide a medium for fire spread if it likely to be a risk to health and safety. The use of* ***combustible*** *materials for cladding framework or of combustible thermal insulation as an overcladding or in ventilated cavities, may present such a risk in tall buildings even though the provisions for external surfaces in Diagram 36 may have been satisfied.*

In a building with a storey at more than 20m above ground, ***insulation material used in the external wall construction should be of limited combustibility*** *(see Appendix A). This restriction does not apply to masonry cavity wall construction which complies with Diagram 28 in Section 9"* (emphasis added)

25. Diagram 36 referred to the surface of the building being Class 0 where more than 20m high. There is a significant difference between Class 0 and 'limited combustibility"; the latter is a high threshold. It requires materials to survive in a 750°C furnace for two hours. This is a rigorous test: it will burn almost all plastics and would certainly have destroyed the cladding used on Grenfell.

26. Class 0 is much easier to achieve. It requires a pass on two tests: the "surface spread of flame" and "fire propagation". The first test involves applying heat to a rectangular sample of the material for ten minutes. If flames travel less than 165mm across the sample, the material passes. The second involves testing the heat released when the material is placed into a burn chamber for 20 minutes, but again it is the surface of the material which is exposed. This means material with a non-flammable surface – such as aluminium – can pass, even if what sits behind it is effectively solid petrol.

27. The distinction between Class 0 and the concept of 'limited combustibility' had provided a source of confusion in the construction industry and beyond for at least 25 years before the Grenfell fire, seemingly confusing also key employees in BRE {LBYP20000001/143, §773}, and the investigations and expert evidence presented to the Coroner at the Lakanal House Inquest {LBYP20000001/180, §1123}. Confusion was earlier noted in 1992 {LBYP20000001/128, §659 & 665}, and after

The Edge fire (2005) {LBYP20000001/163, §885}, in which combustible sandwich panel external cladding had played a primary role in external fire spread {LBYP20000001/201, §1120}, and continuing through divers projects to the Grenfell fire {LBYP20000001/180, §990}. This confusion has also provided one of the loopholes exploited by unscrupulous manufacturers to market unsafe products {LBYP20000001/180, §991}.

28. Prior to Grenfell, there was a growing body of evidence that Class 0 classification was not adequate, particularly for external rainscreen cladding on HRRB. There is at least doubt as to whether the cladding on Knowsley Heights and Garnock Court was Class 0 even though it was graded as such. However, in Lakanal House, the Inquest jury expressly found that the panels under the bedroom windows of Flat 79 were not Class 0, although they were required to be, and would not have prevented the spread of the fire even if they had been {{LBYP20000001/180, §1123-1126}, and Lakanal Transcript Day 50/4:19-22, and …Day 50/40:14-16}.

29. Central government knew or should have known of the confusion surrounding Class 0 since 1992 yet failed even to mention it in its response to the first report of the 1999 Select Committee inquiry {LBYP20000001/254, 720-2}. Professor Bisby considers "…*this a significant failing by government and its advisors*…" {LBYP20000001/254, 721}. It further knew of the confusion surrounding the ADB guidance since at latest 1999, and of the ambiguity generated by the so called "clarifications" to ADB in 2006 which did not clearly extend to cladding materials other than 'Insulation Materials/Products" and, since at least 2013, of the further confusion around the application of clause 12.7 and the "filler material" terminology. But at no point before the Grenfell fire did it ever address these confusing ambiguities {LBYP20000001/254, §1587-1590}.

30. Professor Bisby reports that despite this awareness in central government: "…*it appears that little or no action was taken by either government or BRE to seek to highlight or mitigate this confusion or the resulting significant hazards; hazards that are of central relevance to the Grenfell Tower fire.*" {LBYP20000001/255, §1590}.

31. We say that, in pursuit of deregulation and austerity cuts and in slavish awe of the construction and petrochemical industries, the government abdicated its duty to British citizens to protect them from foreseeable harm. Following Lakanal House at the latest {LBYP20000001/152, §829-830, …/155, §837}, Class 0 should have been withdrawn. Had this step been taken, the GT disaster might never have happened. Again, to cite Professor Bisby {LBYP20000001/158, §857-8}:

> *"The consequence of the choice to retain Class 0 in 2002 would manifest in many subsequent fires over the following 15 years. However, none of these events were apparently sufficient to motivate government to withdraw Class 0. It would take the deaths of 72 people at Grenfell Tower to motivate government into withdrawing Class 0, and into disrupting industry's status quo."*
>
> *"Only then did government see fit to act on Class 0, and to discontinue its use."*

32. What a condemnation of central government that it took such a tragedy to compel them to put the safety of our citizens including some of the most vulnerable people in our community before the profits of big business. Shame on all of them.

33. ADB was modified in 2000 with revised provisions to Section 12 as follows:

(a) a new provision was inserted into what was Section 12.5 (now 13.5):

> *"Note: One alternative to meeting the provisions in Diagram 40 could be BRE Fire Note Assessing the fire performance of external cladding systems: a test method (BRE 1999)"*

(b) the second paragraph in what was 12.7 (now 13.7) was amended to:

> **"***In a building with a storey 18m or more above ground level, insulation material used in ventilated cavities in the external wall construction should be of limited combustibility (see Appendix A). The restriction does not apply to masonry cavity wall construction which complies with Diagram 32 in Section 10."*

34. These changes were significant in that they,

(a) explicitly brought in the option of testing as an alternative means of complying with 13.5. This was introduced by the BRE which had been privatised in 1997;

(b) restricted the ambit of the new 13.7 to '*ventilated cavities*'.

35. We submit the GTI should investigate these changes and the extent to which they were brought about by lobbying and commercial interests at the expense of fire safety. For instance, Phil Clark (BRE) accepted that, having been privatised, the BS8414 test was a source of revenue for the BRE, so the more they carried out, the more they would make {Clark: T95/33-35}.

36. ADB was modified again in 2006 (this was the version in force at the time of the refurbishment of GT) with the relevant revised provisions were as follows:

"12.5 The external envelope of a building should not provide a medium for fire spread if it likely to be a risk to health and safety. The use of combustible materials in the cladding system and extensive cavities may present such a risk in tall buildings.

External walls should either meet the guidance given in paragraphs 12.6 to 12.9 or meet the performance criteria given in the BRE report Fire Performance of external insulation for walls on multi-storey buildings (BR135) for cladding systems using the full scale test data from BS8414-1:2002 or BS8414-1:2005.

The total amount of combustible material may also be limited by practice by the provisions for space separation in Section 13 (see paragraph 13.7 onwards).

12.6 The external surfaces of walls should meet the provisions of Diagram 40. Where a mixed use building includes Assembly and Recreation Purposes Group(s) accommodation, the external surfaces of the walls should meet the provisions in Diagram 40C.

12.7 In a building with a storey 18m or more above ground level any insulation product, filler material (not including gaskets, sealants and similar) etc. used in the external wall construction should be of limited combustibility (see Appendix A). This restriction does not apply to mason cavity wall construction which complies with Diagram 34 in Section 9."

37. This introduced three now explicit and distinct alternative routes to compliance,

(a) the first and second 'linear' routes, provided that the external wall should meet the requirements, which are specified in the Sections 12.6 to 12.9. However, 12.5 did not make clear whether the wall had to comply with all the requirements or whether one was sufficient e.g. Section 12.6. Consequently, there was a further element of ambiguity;

(b) the further new option brought in the possibility of desk top studies through the inclusion of the words 'full-scale test data from BS 8414'.

38. We consider that allowing desk top studies significantly weakened the fire safety provisions in ADB. It created a far more lax regime which could be exploited by the unprincipled and unethical. The introduction of desk top studies

(a) brought with it the possibility of significant financial savings as it was far cheaper than carrying out a full scale test; see {Sakula: T125/41-42};

(b) provided a route to showing compliance based not on tests but data from previous tests which could be (and, as we now know, was) manipulated by cladding manufacturers;

(c) more generally, bolstered the market for the cladding including combustible materials; see evidence from John Lewis (NHBC) who says testing houses were being overwhelmed by the demand for the more easily accessible tests {NHB00003433, §133}.

39. Professor Bisby reports {LBYP20000001/138, §727-8} that:

> *"§727. Rather than eliminating the use of Class 0 for external cladding products, or alternatively more tightly restricting its application to products where the testing methods underpinning a Class 0 classification were more technically credible, the Government chose to simply add a new - and potentially lucrative to the recently privatised BRE- alternative route to demonstrating compliance with the recommendations of the Approved Document B; i.e. large scale fire testing to BS 8414.*
>
> *§728. Thus, rather than addressing the concerns raised by Knowsley Heights and Garnock Court, the Government appears to have taken a decision to preserve the status quo whilst also further loosening restrictions on the use of combustible materials and products in external cladding applications. It is, therefore, my opinion that the Government's response to Garnock Court and the Select Committee inquiry represents a missed opportunity for government to address key issues relating to industry practice on the design and construction of external wall systems."*

40. We submit the GTI also needs to investigate these changes to ascertain the extent to which they were brought about by lobbying and commercial interests at the expense of fire safety. Given desk top studies are far cheaper than proper tests, this would very much benefit manufacturers and may have been an important factor in their introduction.

E. <u>Confusion due to the different tests and ambiguity</u>

41. The evidence before the GTI supports the proposition that the provisions of ADB caused confusion in the cladding and construction industry including amongst those involved in the Grenfell Tower refurbishment,

    (a) Bruce Sounes (Studio E) said he had found it difficult to form any definitive interpretation from the ADB guidance {Sounes: T21/71};

(b) Ray Bailey (Harley) told the hearing he found ADB complicated and, consequently, did not have a detailed knowledge of it {Bailey: T32/6}. He thought throughout that Class 0 meant a product of limited combustibility {Bailey: T33/11}. He also stated that,

> *"The legislation is complicated to use, it's not very clear and I think any form of combustible insulation or cladding should be banned immediately. I know that's not my place to say, but if the building regs banned it, it wouldn't be on the building . Class 0, as I sort of understand how that came into being, was some industry self - interest body created this false class and it's clouded everybody's judgement and belief over the past 40 years."* (Bailey: T33/195-196)

(c) Mr Geoff Blades (CEP) thought Class 0 meant the product had limited combustibility; {Blades: T41/58};

(d) Mr Hoban (RBKC) told the hearing {Hoban: T46/216} that,

> *"In my considered opinion, the Building Regulations at that particular time, particularly the approved documents, were ambiguous and confusing, and we can see that with particular reference to Approved Document B in the new volume that has come out, because it's a lot more clear."*

(e) Mr Paul Hyett (Expert Architect) told the hearing {Hyett: T64/107},

> *"I grew up with the London Building Acts and constructional byelaws, and it was a different world of greater precision. I have never been the greatest fan of the approved document arrangement, but having said that, my criticism is to the drafting of it as opposed to the principle of the guidance that it gives, and I don't think the drafting - there are many, many examples where the drafting is not good. I did have a concern around the ADB documents before, but certainly my work for this Inquiry has - and I'm very sorry to say this - taken me through this document in the greatest of detail, and I have been somewhere between disappointed and appalled at times by some of the confusion."*

(f) Mr Jonathan Sakula (Cladding Expert) stated in his evidence {T125/29 & 191-2}

> *"I think during the period in question leading up to 2017, there was a growing concern about the clarity of guidance given in ADB2, particularly section 12."*

42. Professor Bisby's opinion {LBYP20000001/169, §929} echoes that of Mr Hyett:

> *"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 the installation of unacceptably dangerous external cladding on buildings."*

43. However, confusion and ambiguity caused by ongoing deregulation, coupled with the effect on building control bodies of austerity cuts and marketisation, made these people's work more difficult and was likely to have been a contributory factor causing the disaster at Grenfell Tower. This is supported, for example, by Mr Hoban's comments at the conclusion of his evidence {T46/217},

> *"The other thing I'd like to say is that if we had a regulatory body like we had with the Greater London Council, and the regulations and Building Acts and constructional byelaws that we had at that particular time, and a support network of the experts that administered the regulations at that time, I don't think we'd be in a position where we are now …..";*

44. The GTI will have to determine whether the confusion and ambiguity in ADB materially contributed to the disaster, as compared to the negligence and incompetence of some of those involved who took on work which they were not qualified to do, as we consider below.

45. We further submit that the evidence shows the vagueness and ambiguity in ADB was also cynically exploited by the companies that manufactured the cladding.

F. <u>Exploitation of the changes by the cladding manufacturers</u>

46. The evidence shows that all of the three cladding manufacturers involved with Grenfell Tower exploited the flexibility and potential loopholes in the testing and certification regime to peddle the products that caused the disaster. For instance, Jonathan Roper (Celotex) accepted when questioned that Celotex,

(a) would exploit the testing regime if necessary to get their product certified {Roper: T71/25};

(b) knew that, in the event of a fire, ACM would melt and allow the fire into the cavity {Roper: T71/29-31};

(c) had utilised wholly misleading and unethical tests driven by the market and their desire to compete with Kingspan {Roper: T71/109-110},

> *"Right . Was the basic point from this slide that you wanted to get across to the MAG, the board meeting essentially, was that the market was ignorant, their ignorance had been exploited by Kingspan, and you wanted to do the same?*
> *A. Not me personally.*
> *Q. Well, no, but you, Celotex?*
> *A. Yes.*
> *Q. And that's because it was worth £10 million worth of revenues to Kingspan.*
> *A. I believe so, yes."*

47. This exploitation of the lax testing and certification regime is dealt with in more detail below.

48. It is our case that this was not just the failure of some 'bad apples' in the cladding manufacturing sector. The fact that all the companies were exploiting the testing and certification in this way shows there was a systemic failure. Professor Bisby comments that industries must be expected to seek to exploit regulatory systems for their own benefit. {LBYP20000001/3, §8}. He also states at {LBYP20000001/261, §1598} that:

> *"Finally, and fundamentally, this analysis shows that while the guidance in Approved Document B could have been clearer and/or more restrictive, it was the structure and overarching philosophy of the wider regulatory framework that created and perpetuated - and indeed encouraged - the conditions in which the (ambiguous) guidance could be misinterpreted, misapplied, and/or exploited in*

the service of generating profit whilst avoiding (thus far) liability for inadequate design decision making."

49. We agree and further submit that the companies were being driven to this by greed and their desire for profit which was encouraged by central government through their '*war on the health and safety culture*' and which forms a core part of the prevailing economic and social system in the UK i.e. unrestrained capitalism.

G. Review of ADB following Lakanal House

50. What is beyond doubt is that any ambiguity and confusion in ADB should have been corrected by the Government. Following the inquest relating to the fire at Lakanal House, the Coroner sent a Rule 43 letter to Mr Eric Pickles, Secretary of State, which included a recommendation that he review the content of the Building Regs and, in particular, ADB to provide clearer and simpler guidance in relation to matters such as the spread of fire over the exterior of a building.

51. Incredibly, by the time of the Grenfell Tower fire some four years later, no such review had been undertaken. Lord Pickles seeks to explain this by referring to the time needed to conduct a complete re-write of ADB {CLG00019471/17, §56}. However, that was clearly not what the Coroner had recommended. Instead, her recommendation related to a relatively small number of paragraphs.

52. Clearer guidance could well have prevented the Grenfell Tower disaster and the fact it was not provided is a major failing of Central Government policy.

53. It is important to note that Lord Pickles refers to the issue of panels being wrongly certified as being compliant with ADB {CLG00019471/17, §57}. This, of course, is a matter at the heart of the GTI. But (see above) central government were well aware this was going on long before the fire, and allowed it to continue.

54. A Select Committee inquiry into cladding took place following a fire on the 11th June 1999 at Garnock Court which led to the deaths of a disabled man in a wheelchair and five others. The FBU provided a memorandum to the Select Committee stating:

"The primary risk therefore of a cladding system is that of providing a vehicle for assisting uncontrolled fire spread up the outer face of the building, with the strong possibility of the fire re-entering the building at higher levels via windows or other unprotected areas in the face of the building. This in turn poses a threat to the life safety of the residents above the fire floor." {FBU00000108/17, §45}

55. The Select Committee's report of 5 January 2000 included recommendations {FBU00000108/18, §46}:

> *"19. The evidence we have received strongly suggests that the small-scale tests which are currently used to determine the fire safety of external cladding systems are not fully effective in evaluating their performance in a 'live' fire situation. As a more appropriate test for external cladding systems now exists, we see no reason why it should not be used.*
>
> *20. We believe that all external cladding systems should be required either to be entirely non-combustible, or to be proven through full-scale testing not to pose an unacceptable level of risk in terms of fire spread...*
>
> *22. We recommend that DETR and the Housing Corporation instruct local authorities and Registered Social Landlords to undertake a review of their existing building stock with a view to ascertaining how many multi-storey buildings are currently using external cladding systems; and how many cladding systems are in use which, whilst complying with the regulations in force at the time when they were installed, do not comply with current Regulations."*

56. Although the issue had been identified by the Select Committee and was known about by the Government, nothing was done about it. Lord Pickles skates over the problem saying it was a technical area. That is simply not good enough.

57. The GTI will doubtless investigate,

57.1. why no action was taken in relation to panels being wrongly certified despite this matter being brought to the Government's attention;

57.2. whether any failure to review ADB or other failure to act was itself a consequence of the deregulation agenda and, in particular, Central Government's war on red tape;

57.3. whether any failure to review ADB or other failure to act was due to lobbying by private commercial interests. (see §23 above):

57.3.1. The change to ADB guidance in 2006 was supported by the British Rigid Urethane Foam Manufacturers' Association (BRUFMA) a lobbying group set up to represent the interests of the plastic insulation industry [see Inside Housing's article of March 2018 "The Paper Trail: the Failure of Building Regulations" by Pete Apps, Sophie Barnes and Luke Barratt].

57.3.2. Documents disclosed to the GTI show that BRUFMA continued to work for Kingspan and Celotex and influence the BRE e.g. via its consultation exercise leading to the 2013 amendment of the AD-B guidance and indeed right up to the fire. See e.g. {KIN00016305}:

57.3.3. There is evidence before the GTI that the manufacturers were lobbying, wining and dining MPs after the fire to promote a product that by then had cost the lives of 72 people {Burnley: T112/143-151}.

57.3.4. There is no reason to assume lobbying of this sort was limited to this one occasion (as the case of Owen Patterson MP lobbying (apparently successfully) for COVID contracts for Randox demonstrates). It is widespread and even involves former Prime Ministers e.g. David Cameron lobbying ministers to change the rules to allow Greensill Capital to receive a COVID Corporate Financing Facility loan.

H. <u>The deregulation of fire safety including the Fire and Rescue Act 2004 and the introduction of the Regulatory Reform (Fire Safety) Order 2005 ("RRFSO")</u>

58. The Buildings Regs and ADB were not the only provisions to be affected by the drive to deregulate. Fire safety legislation was also affected.

I. The Fire and Rescue Act 2004

59. There had been ongoing consideration of reviewing fire safety legislation since the election in 1979. On 26th June 1980 the Conservative government published a Review of Fire Policy, along with a Green Paper for consultation. It argued that fire prevention legislation had placed a "significant financial burden" on the economy. The consultative document proposed "an adequate level of fire protection to be provided as economically as possible".

60. There followed over the next 20 or so years a series of consultations and proposed reviews of fire safety legislation and the fire service. However, it was not until 2004 that significant legislative change was introduced by the Labour Government led by Tony Blair (after the Bain review) which continued the deregulatory approach of the previous Conservative administrations.

61. The Fire and Rescue Services Act 2004

61.1. introduced an additional duty on fire and rescue services to carry out community fire safety education;

61.2. removed national standards of fire cover;

61.3. abolished the Central Fire Brigades Advisory Council ("CFBAC"). Since 1947 this had been an important national body whose remit covered reviewing lessons from major fires, decisions about national standards and guidance, the inspection and enforcement of fire safety, the planning for operational incidents and the training that arises from such planning. Crucially, it had worker representation by firefighters – there is no such representation currently at national level;

61.4. removed the requirement for cuts to firefighter number to be approved by a minister. The new arrangement allowed fire authorities/chief officers to reduce firefighter numbers without constraints;

61.5. abolished the HMI for the FRS in England. Chief Fire Officers were now allowed to peer review.

62. The introduction of community fire safety education, whilst welcome in principle, in practice placed a further significant duty on the FRS without a corresponding increase in resources.

63. The abolition of national standards of fire cover and the removal of the CFBAC were highly retrograde steps. Initially, the CFBAC was replaced by the Practitioners Forum. However, this was abolished by Lord Pickles and the Coalition Government after the 2010 general election. Lord Pickles does not comment in his statement on this further deregulatory step which led to the dearth of national guidance.

J. Fragmentation of the FRS

64. The abolition of national standards of fire cover and the removal of the CFBAC effectively fragmented the fire services around the country. There was now no effective forum at a national level considering the lessons of major fires either in the UK and/or internationally. Instead, this key function was left to individual FRS to do the best they could in the context of declining local resources.

65. This policy was justified in part by the fact that the number of fires and casualties have been declining which Lord Pickles refers to in paragraphs 26 and 28 of his statement. What Lord Pickles doesn't explain is that although fires were been falling numerically, they were nevertheless increasing in complexity and severity, in particular, as buildings were becoming ever more complex. Grenfell Tower may not have been a complex building when it was initially constructed in the early 70s: it was a concrete block. It was unarguably a complex structure after the installation of the cladding in the refurbishment.

66. The Chief Fire Officers' Association ("CFOA") was handed the responsibilities previously undertaken by the CFBAC. This was not a replacement for the CFBAC which drew in expertise from across the FRS including the FBU. Unfortunately, the CFOA supported the policy of austerity and imposed cuts. They backed deregulation with their strategy of 'Safe Enough' which involved a new audit methodology which weakened compliance with articles of the already limited RRFSO and left some aspects of fire safety law unenforced [see Jonathan Herrick, 'The Regulators Code – contributing to the economy', FIRE magazine, January

2015: 36; Jonathan Herrick, 'Fire safety – who can you trust?' FIRE magazine, (March 2015: 48).

67. The complexity of modern day fires means that a national body is more important than ever to consider the lessons from fires and provide considered national guidance tailored to the modern world of firefighting. The CFBAC would have been the ideal forum to consider the recommendation of the Coroner from the Lakanal Fire Inquest in relation to 'Stay Put' and 'Get Out and Stay Out'. Evacuation of a HRRB in the event of a fire would be a difficult and complex operation. As Mr McGuirk opines {SMC00000046/79, §216} there is still no practical strategy or operational procedure in the UK or internationally for the evacuation of a HRRB in a fire.

68. Unfortunately, as a direct consequence of Central Government policy, these discussions did not happen.

K. Regulatory Reform (Fire Safety) Order 2005 (RRFSO)

69. The Fire and Rescue Services Act 2004 was followed in 2005 by the RRFSO which became law in October 2006. The RRFSO,

(a) repealed the certification and enforcement regime of the Fire Precautions Act 1971. Under this regime, all public and commercial buildings, and all non-single-household domestic dwellings (apart from houses in multiple occupation), were required to hold a valid fire safety certificate issued annually after an inspection by the FRS.

(b) introduced a self-compliance regime with Fire Risk Assessments becoming the responsibility of a Responsible Person within the organisation.

70. The self-compliance regime was loose and far less effective than the certification procedure. The Responsible Person would often employ third-party fire-risk assessors who were not required to have any form of professional qualifications. There was no timescale even for FRAs to be carried out.

71. In 2018 it was reported that 500 out of 800 of the UK's Fire Risk Assessors were not registered with accredited bodies; [see Hodkinson, Stuart (2019). *Safe as Houses: Private Greed, Political Negligence and Housing Policy after Grenfell*. Manchester: Manchester University Press. pp. 45–46]. Colin Todd has consistently spoken of the adverse effect of deregulation on the competence of fire risk assessors.

71.1. He told the police {MET00012981/19, §5.3}:

"Although there have been calls by many bodies for mandatory certification or registration of fire risk assessors or fire risk assessment companies, Government has always strongly resisted any proposal that this should be a legal requirement."

71.2. He testified to the Inquiry on 26 July 2021 {T166/127:10-25 & 128:1-11} about the government's persistent resistance to regulating for the competency of fire risk assessors:

"The Government were very much in deregulation mode … it would imply to the business community that they'd have to go out and buy in the services of a specialist, and the Fire Safety Order was brought in in the name of reducing burdens on business. … So intentionally the word "competent" wasn't included, and the sector constantly, through professional bodies and trade associations, bit around the ankles of Government, if I can put it this way, asking them to make it mandatory for fire risk assessor to be competent through a third party registration scheme …"

72. In the case of Grenfell Tower and the LBKC, the deregulatory policy of the RRFSO led to the appointment of Mr Carl Stokes who was insufficiently qualified and not competent to risk assess the fire safety of such a complex building.

73. The RRFSO did not make it clear whether the FRA duty applied to the envelope of the building. The duty applied to the 'common parts' of a HRRB but this term was not defined. The Government's view was that it did not apply as per the opening statement of the LFB on the 30.3.21.

74. The lax regulatory and safety regime of the RRFSO was underlined by the following comment from Tony Pearson (Exova) who stated {Pearson: T19/84},

> *"The fact that they [the LFB] appear to be happy for the building to continue to be operated would suggest that there is a general consensus that, although it is not code compliant, the risks in the context of the Regulatory Reform Order are tolerable, bearing in mind that design standards for existing buildings for the purpose of the Regulatory Reform Order tend to be lower - - I mean, the benchmarks and thresholds tend to be lower than the standards that you would accept from a new-build structure today."*

75. We submit that the fragmentation of the fire service and the removal of national standards and guidance due to the Central Government policy of deregulation constituted a further underlying contributory cause of the disaster.

L. Lord Pickles and the failure to take any or any significant action following the fire at Lakanal House

76. Lord Pickles at paras 29 and 30 of his statement refers to the Coalition Government's policy of removing 'unnecessary and bureaucratic rules' and the 'Red Tape Challenge' i.e. their policy of deregulation. He goes on to say that he excluded the RRFSO from this process. His statement is disingenuous. The reality, as he well knows, is that the damage had already been done with the RRFSO itself being a product of an earlier period of deregulation to which he refers in his statement, saying at para 30,

> *"Secondly, the Order's regime was itself the product of a very substantial and prolonged deregulation exercise under the previous Government, leading to many legislative provisions being repealed and a stream-lined content being contained in the Order."*

77. Business was more than happy with the greatly reduced provisions in the RRFSO. The Coalition Government Fire Minister, Mr Bob Neill MP, told an All-Party Parliamentary Fire Safety and Rescue Group seminar on 9 May 2011 that the Fire Safety Order was effective, "well received by many in the business community" and

proportionate; All-Party Parliamentary Fire Safety and Rescue Group seminar, 9 May 2011. Quoted in 'Our post-coalition future for Britain's fire safety', FIRE, June 2011.

78. What Lord Pickles also did not do, at least in part if not wholly as a consequence of the deregulation policy of the Government, was to take any or any effective steps to respond to the Coroner's Rule 43 letter sent in 2013 following the inquests following the fire at Lakanal House.

79. The Coroner's Rule 43 letter in 2013 contained the following recommendations in relation to the government:

79.1. that they publish consolidated national guidance in relation to the 'stay put' principle and its interaction with the 'get out and stay out' policy including how such guidance is disseminated to residents;

79.2. they conduct a review of GRA 3.2 on 'High Rise Firefighting' to provided consolidated national guidance on a variety of matters identified by the Coroner;

79.3. that they give consideration to requiring HRRB owners to provide fire safety information notices in buildings for residents;

79.4. that they provide guidance on the definition of common parts and other matters;

79.5. that they consider recommending sprinkler systems in HRRBs;

79.6. that they review the content of the Building Regs and, in particular, Approved Document B to provide clearer and simpler guidance in relation to matters such as the spread of fire over the exterior of a building.

80. With the partial exception of (b), none of her recommendations were implemented either effectively and/or at all either by Lord Pickles, his successors or anyone else in government. Further, this failure had significant consequences both for the occupants of GT and the FFs who attended the disaster.

80.1. Stay put

Ultimately, Lord Pickles did nothing about this. He initially responded to the recommendation by stating that detailed national guidance on this issue was already available in Fire Safety in Purpose Built Blocks of Flats, produced by the Local Government Association ("LGA"). This was not the case. He refers at §50 of his statement to a review of the guidance in light of the Coroner's recommendations, but notes it had already been re-evaluated in 2012 with stakeholders expressing a high degree of satisfaction. The Coroner's recommendation a year later in 2013 arising from the deaths of 6 people made clear that more was needed.

A timely review might have resulted in national guidance including on the evacuation of HRRB in the event compartmentation fails during a major fire. However, nothing was done. Even now, four years after the fire, there is still no guidance on the evacuation of HRRB in the event of a fire.

80.2. GRA3.2

This was the only recommendation made by the coroner that Lord Pickles had to some extent acted on before the Grenfell Tower fire. In February 2014, DCLG published a revised version of GRA 3.2 on fighting fires in high rise buildings which accurately described high rise firefighting as "a high risk activity" and "an extremely hazardous environment for firefighters". It rightly stated that "additional time and resources may be required to implement safe systems of work for operations at elevated levels". However, a month previously Mr Boris Johnson, then London Mayor, pushed through his programme of cuts to the LFB which we deal with below.

Further, the revised guidance gave no advice what to do if a fire spreads beyond the compartment of origin. There was no plan or guidance for evacuations. It did not address when an Incident Commander should

move to partial or full evacuation. It merely stated what contingency plans should cover without providing the "guidance" recommended by the coroner on what those plans should be. We believe this too was influenced by the deregulation and austerity agenda of the Central Government.

The contents of the revised GRA 3.2 fell far short of what was needed. The advice that, in the event of a significant breach of compartmentation or other rapid fire spread, Incident Commanders should "follow the evacuation plan devised as part of the premises fire risk assessment" was vacuous, when the only plan likely to be operative was "stay put". It suggested referring to ADB para 4.27 for further information. However, ADB provides very limited guidance to assist fire officers and was intended for commercial buildings. Section 4 in the 2006 ADB was entitled "Design for vertical escape – buildings other than flats".

80.3. Premises safety information

Lord Pickles' response was that "a regulatory requirement is unnecessary and disproportionate". The recommendation was therefore not implemented. This was clearly a consequence of the Government's ongoing deregulation agenda.

We submit that had the recommendation been implemented, it might have helped avoid the disaster of Grenfell Tower. First, greater attention would have been paid by Responsible Persons and the fire safety department to the information provided in such a premises information box/plate, leading to greater awareness of fire safety measures. Second, on the night, it would have provided direct access to information that was missing and still being sought by emergency services deep into the incident. Third, proper information should also have described the operation of the smoke ventilation system.

80.4. Common parts

As has been referred to above, the definition of 'common parts' in the RRFSO did not make clear whether this term included the exterior of the building. The Coroner wanted this to be clarified but nothing was done and Lord Pickles does not mention any steps considered at all in relation to this issue in his statement.

Had the 'common parts' included the exterior of the building, it would have been the responsibility of the FRS and this might have prevented the disaster.

80.5. Provision of sprinklers

Lord Pickles claims to have had a long term interest in sprinklers; see his statement at §37. However, he appears to have taken no action of any sort to try and work with local authorities and others on this issue. At §55 of his statement he refers to having previously sent a copy of a letter from the Coroner of the Shirley Towers Inquest to local authorities and other housing providers on a similar point in April 2013. However, there is no mention of him sending anything after receipt of the letter from the Lakanal House Coroner.

Importantly, there was never any form of even a recommendation let alone mandatory regulation that local authorities and other housing providers should retrospectively install sprinklers. Consequently, little or nothing was done either in RBKC or anywhere else.

The Central Government's deregulatory agenda undoubtedly played a part in this. Lord Pickles refers in his statement at §70 to the Housing Minister, Mr Brandon Lewis, responding to a debate saying research had been commissioned from the BRE. What he does not mention is that Mr Lewis also told Parliament that he was not proposing to make sprinklers mandatory saying,

> *"In our commitment to be the first government to reduce regulation, we have introduced the 'one in, two out' rule for*

regulation. "The Department for Communities and Local Government has gone further and removed an even higher proportion of regulations. In that context, members will understand why we want to exhaust all non-regulatory options before we introduce new regulations."

We submit that sprinklers might well have saved many lives in Grenfell Tower. Deregulation meant they were never on the agenda with the Coroner's recommendations being effectively ignored.

81. Lakanal House was not the only occasion where Central Government and their agencies have failed to learn lessons from major fires and to implement recommendations. Professor Bisby comments re Knowsley Heights,

"I consider the Knowsley Heights fire, its investigation, and Connolly's subsequent research to represent significant missed opportunities to explicitly address the potential hazards associated with combustible Class 0 rainscreen products. I understand that the Inquiry obtained Connolly's 1994 report directly from the author, and that BRE was - for whatever reason - unable to provide the Inquiry with a copy. {LBYP20000001/111, §581}.

82. We submit there is an urgent need for a national oversight body to consider Rule 43 letters and other recommendations from inquiries to ensure they are properly reviewed and implemented.

M. A culture of complacency in relation to building and fire safety

83. The drive for deregulation and the 'war on health and safety' created a culture of complacency with an increasingly prevailing attitude that safety did not matter. This was a direct result of Central Government policy and a further contributing factor to the disaster of Grenfell Tower.

84. The impact of this culture can be seen in the approach of pretty much all of the private sector companies involved in the refurbishment of Grenfell Tower. Safety

considerations simply did not cross their minds as the following evidence demonstrates:

(a) Bruce Sounes told the hearing that he did not ask Max Fordham or Exova as to whether the cladding complied with the Building Regs and/or ADB {Sounes: T20/42}. He also said he did not consider the fire risks in relation to the cladding {Sounes: T20/135}.

(b) Simon Lawrence (Rydon) admitted his company,

(i) did not take any steps to ensure staff understood the relevant Building Regulations {Lawrence: T22/37-38};

(ii) had no in-house fire safety expertise and did not instruct a fire safety expert even though their tender price may have included an amount for a fire safety consultant {Lawrence: T23-45/46, 49};

(c) Steve Blake (Rydon) admitted there was no knowledge within the company of the combustibility of the cladding panels {Blake: T28/48-49} or expertise re whether the cladding complied with the Building Regs or ADB {Blake: T28/65-68};

(d) Mr Maynard accepted that safety was not considered in relation to 'value engineering' {Maynard: T31/56};

(e) Mr Bailey (Harley) said his company had not educated itself about the various fire classifications {Bailey: T33/7-8};

(f) Mr McQuatt (Max Fordham) when considering what materials could be used as insulation did not take into account ADB on fire safety {McQuatt: T42/16};

(g) Mr Osborne (Osborne Berry) who installed the cladding did not ensure they were fitting it in accordance with the certificate holder's or manufacturer's instructions. Nor did they have any instructions about fire performance {Osborne: T43/117-118, 120};

(h) Mr Berry (Osborne Berry) had no discussions with anyone about compliance with the Building Regs, any other legal requirement or fire performance {Berry: T44/26-27, 33-34};

(i) Mr Mark Dixon (S D Plastering) admitted that in the discussions about filling in the gaps around the windows, fire safety was not discussed or considered at all {Dixon: T44/114, 149-151}.

85. The private companies involved in the refurbishment were concerned to get the work done as quickly and cheaply as possible to maximise their returns. Thus, Mr Paul Evans (Celotex Marketing Director) explained how their actions were motivated by the drive within the company to increase revenue {Evans: T72/65-68},

> *"Even before this acquisition [and this is the Saint -Gobain acquisition in and from 2012] Celotex was largely marketing led given that those individuals at the top of the business had mainly originated from the Marketing Department. Celotex used to be owned by private equity group AAC Capital Partners and so the drive for profit making and increasing the company's share price had been systemic in the Celotex culture for some time."*
>
> *Q. Pausing there, do you agree with that from your own observations while you were at Celotex ?*
>
> *A. There was -- yes, the culture for Celotex was around, as I said, you know, the drive for revenue and the plan for exit.*
>
> *Q. Yes. He says: "However, it seemed as though this culture became heightened once Saint Gobain became involved." Do you agree with that?*
>
> *A. Yes."*

86. Celotex can be rightly and severely criticised for their business and marketing practices. However, their behaviour was by no means unique:

(a) it continued even when there was a change of ownership as the above passage makes clear;

(b) in reality, all the cladding manufacturers were behaving in pretty much the same way;

(c) their business practices were no different to any of the other companies involved in the refurbishment of Grenfell Tower who each took on work which they were not properly qualified and/or experienced to undertake without a thought for health and safety.

87. Michael Gove, Secretary of State for in his recent evidence to the Select Committee on 'Levelling up, housing and communities' admitted that,

"The deregulation of assessment [of building materials] and the way in which it was done was mistaken, and I also think that the department itself will be seen to have, on a couple of occasions, not necessarily appreciated the importance of fire safety and not necessarily done everything in the wake of the Lakanal House tragedy [a 2009 tower block fire where six people died] that it should have done." (Guardian 8.11.21)

88. The reality is that the behaviour of private sector companies and business practices in the private sector were,

(a) encouraged by Central Government who portrayed rules and regulations as bureaucratic and unnecessary red tape. That continues to this day with our current Prime Minister, Mr Johnson, almost daily demonstrating that rules are there to be broken or ignored;

(b) dictated by an economic social system that places profit and the accumulation of wealth first and foremost beyond any other goal.

N. <u>Privatisation and the culture that private is best</u>

"Tony Blair is keen to expand the range of private public partnerships because he believes it is the best way to secure the improvements in public services that Labour promised at the last election. He believes private companies are often

more efficient and better run than bureaucratic public bodies." [BBC News 12th February 2003]

89. Since 1979 the prevailing message from successive governments has been that the private sector is best with public services only benefiting from the involvement of profit making private companies and the expertise they can offer.

90. However, the evidence before the GTI is that, far from bringing in expertise, the private sector companies don't "think fire" and treat compliance as "getting it past building control". Michael Gove has recently admitted,

"We collectively, the department, some in local government, others in the private sector, failed people at Grenfell" (Guardian, 8.11.21)

91. The private companies involved with Grenfell Tower were all broadly united by their desire to profit from the refurbishing work even though they had no expertise or relevant experience and/or their products were unsuitable:

(a) Studio E had no experience of overcladding a HRRB {Kuszell: T6/80};

(b) Bruce Sounes (Studio E), the project architect, had no previous experience of overcladding a HRRB {Sounes: T6/174-5};

(c) Mr Steve Blake (Rydon) admitted that he had undertaken no CDP {Blake: Day 28-41} and had no expertise in the risk to health and safety posed by the use of combustible material in cladding systems even though he was responsible for health and safety {Blake: T28/85};

(d) Mr Gary Martin (Rydon) had no experience with cladding or HRRB over 18 metres. Nor was he given training re the same {Martin: T30/5-7}

(e) none of the surveyors employed by Rydon were professionally qualified {Maynard: T31/7-8};

(f) Mr Maynard (Rydon) accepted he had no training in value engineering {Maynard: T31/56};

(g) Mr Bailey (Harley) accepted that between 2014-mid 2016, Harley had no-one with a completed qualification in façade engineering {Bailey: T32/11}. He had no understanding of the fire performance of the cladding {Bailey: T32/15}. Employees were not kept up to date with accepted codes of practice for design and installation of cladding and windows {Bailey: T32/27};

(h) Mr Daniel Anketell-Jones (Harley Design Manager) was completing an MSc course during his work on Grenfell but only reached the module dealing fire after he had left the company {Anketell-Jones: T35/116}. He was provided with no CPD and was not familiar with ADB {Anketell-Jones: T35/119};

(i) Mr Kevin Lamb (Harley) who designed the façade was not a qualified architect, had no experience in cladding and had not previously been involved in a project involving cladding a HRRB {Lamb: T37/64-67}. Mr Lamb was not provided with any training on the Building Regs or ADB and was unaware of previous cladding fires {Lamb: T37/70-72};

(j) Mr Ben Bailey (Harley) had no training in fire safety in buildings {Bailey: T39/5-6}. He was not aware of previous cladding fires {Bailey: T39/32-33};

(k) Mr Geoff Blades (CEP Director) had no training in cladding technology or the fire performance of cladding panels. He did not know the panels were combustible and never discussed this with anyone {Blades: T41/36, & 38-39}. He had no knowledge of the Building Regs {Blades: T41/59};

(l) Mr Andrew McQuatt (Max Fordham Project Engineer) had not worked on a HRRB before {McQuatt: T42/3}. He was not aware insulation products on buildings over 18m should be of limited combustibility. Nor was he aware of the various fire safety classifications {McQuatt: T42/18/-19};

(m) Jonathan White (JRP Site Inspector) had not been involved in a building project that involved ACM. He did not know the requirements of B4 or what ADB contained. Nor did he know what Class 0 or 'limited combustibility' meant

{White: T42/108, & 110-111}. He told the hearing JRP did not train their staff in the Building Regs or fire safety {White: T42/116};

(n) Mr Gurpal Virdee (JRP Contract Manager) never visited the site {Virdee: T43/8};

(o) Mr Mark Osborne (Osborne Berry) had no formal training or qualifications in installing building envelopes or cladding. Nor did he have formal training in fire safety {Osborne: T43/71-72};

(p) Mr Graham Berry (Osborne Berry) also had no formal training in cladding installation or fire safety {Berry: T44/5}. He installed the cladding without checking whether what he was doing was in accordance with the manufacturer's instructions {Berry: T44/30}. He had no experience in installing the particular cavity barrier used on the project {Berry: T44/41-42};

(q) neither Mr Osborne or Mr Berry provided their sub-contracted fitters with any or any proper training in relation to the installation of the cladding {Berry: T44/45-7};

(r) the workers used to fill in the gaps around the windows were not trained as it was seen to be a cosmetic detail {Dixon: T44/-141};

(s) Neil Reed (Head of Project Delivery at Artelia) admitted he had no experience of a HRRB project involving cladding until Grenfell Tower {Reed: T50/109-110};

(t) Jonathan Roome (Celotex) had no qualifications beyond his BTEC in business finance and CSCS card {Roome: T69/4-6}; Jamie Hayes (Celotex Technical Team) had no relevant qualifications or experience {Hayes: T74/5-7}; Debbie Berger (Celotex Technical Officer) had no technical background {Berger: T78/6};

(u) Gareth Mills (Kingspan Senior Technical Adviser) had no technical qualifications {Mills: T77/3-4};

(v) Deborah French (Arconic) had no experience of cladding prior to joining Arconic or discussions about fire safety {French: T87/57-60}.

92. In fact, far from bringing in expertise, the private companies purportedly sought to rely on Building Control in the form of the grossly overworked Mr Hoban {Lawrence: T21/4-5; T25/13; White: T113}. This was despite the fact that,

(a) ultimately it is for those designing and carrying out building works to ensure that the Building Regulations are complied with {Hogan: T45/95};

(b) importantly, Ms Beryl Menzies (Building Control Expert) also confirmed that contractors cannot rely on Building Control to fulfil the role that they might properly be expected to fulfil themselves;

(c) Mr Hoban was unaware he was being relied on in this way {Hoban: T45/97};

(d) Mr Hyett (Expert Architect) was of the view that it was not reasonable for a reasonably prudent architect to rely on Building Control and that, instead, they should check for themselves {Hyett: T65/132}.

Poor workmanship

93. Instead of providing good quality work, the evidence shows that the workmanship of the private sector companies at times was quite shocking,

(a) Mr Lawrence (Rydon) was referred to an email dated 22nd June 2015 where he states {Lawrence: T25/153},

> *"At the moment we have a poorly performing site which is mainly (but not totally) caused by poor surveying and cheap incompetent sub contractors"*

(b) Mr Osborne (Osborne Berry) said he was shocked by evidence concerning the poor workmanship of his own company {Osborne: T43/150, 153-159}.

Despite his protestations, it is hard to accept he did not know what was going on given he was personally working on the site {Osborne: T43/75};

(c) Mr Berry (Osborne Berry) also accepted that photographs by Dr Lane showed poor workmanship and were shocking {Berry: T44/57-60}.He had also personally worked on the site {Berry: T44/6}. It is not surprising that the workmanship was so poor given the fitters were engaged on a day by day basis depending on who was available {Berry: T44/69-70};

(d) the work to fill in the gaps around the windows was clearly a complete bodge up.

94. There is evidence that the reason for the poor standards included that it was social housing so a bodge and make do was all that was required. Mr Lawrence (Rydon) was taken to an email dated 30th January 2015 where he stated {Lawrence: T25/30},

"I'm hearing from other sites that SD Carpentry do a really good job but are slow. As much as it pains me to say it their standard of work may be too good for what we need in refurb ……"

95. Submissions made on behalf of the London Mayor for the opening of Module 3 contained the following at §17 {T115},

"The tragedy at Grenfell has uncovered institutional indifference towards those living in social housing on an alarming scale with catastrophic results."

96. This has been Central Government policy for a generation. The Grenfell Tower disaster was not simply the consequence of poor business practices or incompetence in some companies:

(a) these were also systemic failings encouraged by a Central Government policy of removing rules and regulations to allow 'business to flourish' unfettered;

(b) the product of an economic and social system that propels companies to the pursuit of profit beyond any other goals including fire safety and, ultimately, the protection of people's lives. A system that has left remaining no nexus between human beings other than naked self-interest and callous cash payment;

(c) many individuals who took flawed decisions that contributed to the disaster at Grenfell felt no connection with the residents who were to live (and many to die) with the consequences. The decision makers served their masters instead, the private companies whose only interest was profit.

97. Between them, these incompetent companies constructed a bonfire around the homes of ordinary people who were unaware as to what had been done to their homes until it was too late.

98. Looking at this dismal picture, the Panel may come to the conclusion that the private sector,

(a) does not know best nor is it in any way consistently superior to the public sector;

(b) does not bring any particular expertise or skills to projects such as this. On the contrary, the workmanship was often appalling;

(c) should not be involved in these sort of projects.

<u>Cronyism, deceit and corruption</u>

99. As well as a lack of competence, the involvement of the private sector brought with it a culture of deceit, cronyism and corruption.

(a) Mr Lawrence (Rydon) accepted that the savings from using the unsafe cladding were not going to be passed on to the TMO but, instead, pocketed by Rydon {Lawrence: T24-/46-48, 68}. Mr Blake confirmed this {Blake: T28/156, 193} as did Mr Maynard {Maynard: T31/109};

> *"Q. Is that a polite way of saying that you were showing the TMO rather less by way of savings than you were getting from Harley and pocketing the difference ?*
>
> *A. At that point in time, yeah."*

(b) qualifications and experience were misstated; see {Blake: T28/36-40}; {Maynard: T31/6-8};

(c) Studio E were appointed without going through any proper tender process and even though they had no experience of refurbishment of HRRB {Cash: T48/107-108};

(d) Artelia arguably quoted low to avoid the procurement provisions of the OJEU (denied by them) {Cash: T48/102-103};

(e) private discussions took place with Rydon outside of the OJEU procurement process concerning savings which did not happen with other contractors {Blake: T28/166-168; Cash: T48/213-214};

(f) Osborne Berry appear to have got the contract to install the cladding because they had previously been employed by Harley. There is no evidence of a proper tender {Osborne: T43/76, 80/81; Berry: T44/4};

(g) Rydon went to apparent effort to deceive their client, probably the TMO, about the progress of the work {Berry: T44/25};

(h) all three cladding manufacturers accepted that their marketing material was misleading, dishonest and unethical {Evans (Celotex) T72/93; Meredith (Kingspan) T75/128, 135/140; Schmidt (Arconic) T93/52-53};

(i) even after the disaster, Kingspan were still trying to preserve their position by lobbying and wining and dining MPs {Burnley: T112/143-151}.

100. The last point again raises the possibility of other meetings, lobbying etc by the cladding manufacturers and government ministers including over the content of and changes to ADB. As above, we believe this matter needs further investigation by the GTI.

O. Testing and certification

101. The bodies chiefly responsible for the pre-Grenfell testing and certification regime were all private sector companies. Their status as private companies,

dependent on fee income from clients, made them too willing to please their clients, and reluctant to challenge them or the information they provided.

102. For example Mr Roome of Celotex and Mr Meredith of Kingspan both testified that Stephen Howard and either Dr Sarah Colwell or Phil Clark, of the BRE, helped them devise tests that stood a better chance of passing and to better market their products: {Roome: T69/129} and {Meredith: T75/20}. Likewise, Mr Baker of the BRE agreed that Kingspan's product literature that was current as of 2013 was misleading {Baker: T100/76-77}, but could not recall the BRE taking any outside action to address these concerns. He said the BRE was not a regulatory body and did not have the power to do anything {Baker: T100/80-81}.

103. Additionally, as we pointed out in our opening submissions for Module 2, the BBA's Board members included representatives of the construction and cladding industry including Mr M Ankers, Chief Executive of the Construction Products Association (CPA) which champions construction product manufacturers and suppliers, and Mr DJ Harper, former Group Chief Executive of Celotex Group Limited, who chaired the Board from 2008. The construction industry had too much direct control over the BBA through its Board of directors.

104. This led to a woeful lack of independence and rigour, and enabled companies gaming the system to deceive them with ease. In turn this led to multiple errors and oversights which contributed to the Grenfell Tower disaster by enabling the manufacturing companies, principally Kingspan, Celotex and Arconic, to persuade architects, fire engineers and construction and cladding companies that their products were compliant with the building regulations for use on HRRBs.

105. These testing and certification bodies did not liaise with each other sufficiently to share test data or other information about building materials and their various combinations. For example, although the BBA asserted in its closing submission for Module 2 that *"… In respect of the Reynobond 55 Certificate, there is clear evidence that Brian Haynes did consult Sarah Colwell at the BRE. These individuals would have had the necessary technical knowledge and experience to*

make such a judgement, but the basis of this judgement was not formally documented on the BBA file…." {BBA00011296/4, §12}. In fact the evidence points the other way with Mr Gregorian saying it was Mr Haynes who consulted Sarah Colwell {T105/74:10-23}, and Mr Haynes saying it was Mr Gregorian {BBA00010784/14, §61}. What appears to have happened is that an approach was made to Dr Colwell, but when she explained there would have to be a proposal and a commercial charge made for such advice, nothing further was heard {BRE00047571/91, §§610-612}.

106. This demonstrates the structural problems of sharing valuable information in the testing and certification regime. This should be a public service, not a commercial enterprise. Professor Bisby cites the following passage from BRE Deputy Director Peter Field in 1999 to the Parliamentary Inquiry to show the limiting effect on the work of the BRE and change in culture that accompanied privatisation:

> *"We are a private sector organisation; we are not part of government. Clearly, in days gone by, when we were part of DoE then this work was done and would have been done in the public interest without the need for formal contract. One regrets there are now commercial pressures that require clients to place formal contracts with us before we can undertake work."* {LBYP20000001/297, §684}.

107. The privatised BRE and BBA did not train their staff adequately, nor did they have in place adequate systems for reviewing their work. These essential control measures would have cost money.

108. Both the BBA, BRE and LABC contend that their systems could not cope with clients withholding test data {BBA00011296/7, §20} or otherwise acting in breach of contract. For example, *"...The BBA was entitled to assume that Certificate holders would not act in breach of the certificate contract ..."* {BBA00011296/19, §53}.

109. This is an unsatisfactory basis on which to test the products of a manufacturing company intent on marketing its product for use on HRRBs. But it is to be expected of a company dependent on its client's income and goodwill.

110. By the time of the Grenfell Tower fire there had been numerous opportunities where the statutory guidance and regulatory compliance testing regime could have been made simpler or less permissive. However, in each case there appears to have been powerful commercial and ideological incentives to increase complexity, whilst also increasing flexibility for industry {LBYP20000001/2 §6}.

111. We wish to draw the Panel's attention to the following passages from Professor Bisby's report in addition to those cited elsewhere in these submissions:

{LBYP20000001/42, §207}; {LBYP20000001/90, §445-8}; {LBYP20000001/99, §491 & §499}; {LBYP20000001/104-5, §539-544}; {LBYP20000001/120, §619}; {LBYP20000001/129, §670}; {LBYP20000001/166, §907-912}; {LBYP20000001/136, §714-5}; {LBYP20000001/137-8, §721-8}; {LBYP20000001/140, §741}; {LBYP20000001/210, §1238}

112. Dr Lane identified some aspects of this failed testing and certification system in her supplementary report for Phase 1 report and made recommendations to improve the regime {BLAS0000002/80, §2.28}. The FBU agrees her specific recommendations but contends the regime needs to be brought back into public ownership and control, subject to regulation, and properly funded for the wider benefit of society including, but not just, those who occupy HRRBs, those who regulate their construction, material alteration, fire risk management and maintenance, those who fight fires in them, and those involved in the construction industry.

The degrading of the public sector, austerity and the cuts

113. Side by side with the ever more zealous promotion by Central Government of the private sector, has been the degrading and undermining of the public sector. In recent years that process accelerated as a consequence of Central Government austerity and the cuts in public expenditure.

The Fire Service

114. The LFB has suffered from significant cuts to its budget in recent years, facing a squeeze from central funding cuts and from Boris Johnson, when he was Mayor of London.

115. In the decade preceding the Grenfell Tower fire, the number of wholetime firefighters were reduced by 22%, control staff by 13% and total staff by 23%; see Home Office, Fire Statistics Table 1101: Staff in post employed by fire and rescue authorities by headcount by role, 31 March each year, 6 September 2018.

116. Importantly, on the 9th January 2014 Johnson forced through the closure of 10 fire stations including both Westminster and Knightsbridge. This removed 18 fire engines and around 400 firefighter jobs.

117. The cuts undoubtedly hampered the ability of the LFB in both the run-up to the Grenfell Tower disaster and in their ability to respond to it.

Pre-June 2017

118. The evidence shows that the LFB did not have the resources to properly carry out the 7(2)(d) visits:

(a) DC George considered it would be difficult/virtually impossible for crews to visit such a significant number of properties {LFB00032823/20, §76; Brown: T87/9-10};

(b) AC Cowup had reservations about whether it would be possible to visit all the high rise buildings on a particular station's patch with an email from him saying {Cowup: T186/63},

> *"The feasibility of station personnel visiting all high premises on their stations ground, as this is a very significant task, especially for central London stations. I fully understand why we would state that in Policy, but it may be worth giving this statement further consideration − I have left it in for now!"*

(c) the evidence from DC Brown included that LFS did not have even a basic database of all the high rise buildings {Brown: T186/100-101};

(d) Dan Daly's evidence that the small team of FSO were expected to look at 20,000 building consultations a year {Daly: T183/95};

(e) DC Rita Dexter's evidence was that trying to achieve enough 7(2)(d) visits of sufficient quality was an uphill struggle with the resources they had {Dexter: T180//36-37}.

(f) in Phase 1, a number of LFB witnesses also gave about the lack of resources impacting on 7(2)(d) visits {Dorgu: T19/72; Cotton: T50/81-82; Ricketts: T51/99}. The latter said,

> *"Q. What would normally happen where you've had a high-rise building refurbished, you haven't been able to test the lift to see whether it could be brought under control? What would you normally do? Would you chase up a further 7(2)(d) visit to test all these outstanding matters?*
>
> *A. To be honest, sir, no. Because of the volume of 7(2)(d) visits we do, it's hard to schedule in further 7(2)(d) visits."*

119. As a consequence of central government policy, the LFB generally simply did not have the resources to effectively act as a substitute for all the other systems and procedures designed to ensure the safety of buildings. Nor is this the role of the FRS.

The LFB response on the 14th June 2017

120. The cuts to the LFB resources also affected the response on the night of the fire as follows:

(a) the closing of the nearly fire stations at Westminster and Knightsbridge will have delayed resources (the third and fourth tenders) arriving at the scene by some minutes;

(b) the PDA no longer included an aerial. One did not arrive at the scene until 01:32; (Alpha 213 Paddington TL; LFB Operational Response v7 {LFB00032988/67}).

Social Housing

121. Grenfell Tower along with much of social housing had suffered decades of neglect of repair and lack of investment. This, too, was a consequence of central government policy. Ms Laura Johnson commented in her evidence that RBKC's housing stock suffered from a considerable lack of investment in the council's housing stock really as a result of the way that council housing was funded over a number of years, which resulted across the country, in councils being unable to invest significant amounts in capital programme works {Johnson: T128/41-42}.

122. Ms Amanda Johnson (RBKC) explained about the decline of council housing including in the RBKC saying {Johnson: T131/69},

> *"I grew up in council housing, and I've seen its demise since the 1980s, when Right to Buy was brought in. There's been deregulation in the sector, there's a lack of investment going into council housing, and I hope that you will look at this in a wider context. The Government reduced rents for three consecutive years, which reduced funding, sale of high-value voids, which is no longer happening, and we couldn't borrow more money to invest in our stock until after the fire. So I think that there are wider issues here, through successive governments, Tory, Labour, and the coalition."*

123. The poor state of social housing was and is not just true in relation to RBKC but also in relation to social housing everywhere. The neglect and decay is too apparent.

124. Ms Johnson told the hearing that Grenfell Tower itself

(a) had poor heating, poor windows, poor entrance way, and required significant investment {Johnson; T128/37};
(b) was one of the TMO's worst property assets; {Johnson: T128/33}.

125. This neglect was and remains as direct result of Central Government policy and, in particular, the provisions in the Section 74 of the Local Government and Housing Act 1989. Local authorities could only invest in council housing from funds in the Housing Revenue Account ("HRA") which formed a ring fenced budget. They were not allowed to use their General Fund for this purpose (no matter the extent of the resources of the local authority); {see Johnson: T128/41-42}.

126. The neglect of Grenfell Tower and the lack of funds due to the ring fencing of the HRA and subsequent Central Government regime of austerity led directly to the disaster.

127. What prompted the refurbishment was not concern to improve Grenfell Tower. Instead, it arose because RBKC had built a new school and leisure centre across the road using resources from their general fund. Grenfell Tower opposite was considered to detract from these new projects. Further, the residents compared the new buildings to their own homes and complained. Money became available through the sale of basement flats in Elm Park Gardens and this, together with some funds from the HRA was used to finance the refurbishment.

128. Ms Johnson told the enquiry in her witness statement that money was not an issue and that, if more was required, it would have been forthcoming; see statement at para 84. She was not challenged on this when questioned by the GTI counsel. However, we do not accept that further funds were necessarily available and that all the TMO had to do was ask for it. There was a finite budget and the evidence shows that:

(a) this was an issue for the TMO and the refurbishment project; and
(b) the need to keep the refurbishment within the budget led directly to the use of the cladding.

129. This evidence includes,

(a) Bruce Sounes (Studio E) who told the hearing the TMO were having issues with their budget which led to the use of the cladding which was far cheaper {Sounes: T20/134-136}. Saving could be over £500K {T20/140};

(b) Mr Lawrence (Rydon) told the hearing that the use of the ACM cladding would bring the costs within the TMO budget {Lawrence: T24/30, 33}; He also referred to the cladding being the preferred option because it was cheaper {Lawrence: T24/66};

(c) Mr Blake (Rydon) confirmed that the TMO wanted to make savings of £800K to stay within budget which included cladding savings {Blake: T28/162-163, 168, 171, 174-176};

(d) Mr Maynard (Rydon) told the hearing that 'value engineering' was led by the TMO as the tender was over their budget. It was all about cost {Maynard: T31/55-57};

(e) Mr Harris (Harley) understood the budget for the project was very tight and this led to the use of the ACM cladding {Harris: T34/173-4};

(f) Mr Simon Cash and Mr Phillip Booth (Artelia – Employer's Agent) who told the hearing that the TMO could not afford the project as initially designed within its existing budget {Cash: T48/132; Booth: T50/6-8};

(g) Mr Paget-Brown (RKBC Leader) could not say whether there had been any discussion about resources for the TMO when it took over management of RBKC properties {Paget-Jones: T132/127-128}.

130. Despite Ms Johnson's claim that money was not an issue, the evidence is that she was the person who changed the main driver from the programme of works to value for money {Cash: T48/167; Phillip: T50/11-12},

"In the intervening period and following a meeting the TMO held with Laura Johnson of Royal Borough of Kensington & Chelsea in week commencing 13th May 2013, the TMO have clarified their position relating to a number of contributory factors to the scheme: " Value for money is to be regarded as the key driver for the project ."

131. Ms Johnson and RBKC were the budget holders and what they wanted prevailed. The TMO had little choice but to bow to their wishes {Cash: T48/163-164}.

132. Other elements of the refurbishment of Grenfell Tower were hit by resources. For instance, the programme to replace door closers was extended from three years to five due to financial constraints. Defective door closers were a factor in the spread of the fire.

133. To compound the financial difficulties of the local authority, the main building contractor, Rydon, had made an error in their quotation and were also looking to recoup this through 'value engineering' and savings; {Blake: T28/155-156}.

134. The use of the cheap cladding that caused the fire was due to the need to save money and keep the refurbishment within budget. This, in turn, was a consequence of central government policy restricting the funds that could be used for capital works in council housing. The decay and neglect of social housing by central government did not just mean that the occupants of Grenfell Tower had poor quality homes. We say it materially contributed to costing 72 of them their lives.

<u>The Building Control Department</u>

135. RBKC Building Control Department had also been hit by public expenditure cuts and austerity, again, a direct consequence of Central Government policy.

(a) Mr Hoban referred to austerity measures in his department including that special projects were distributed through the patch system from 2013. He said Grenfell Tower was an example of a special project {Hoban: T45/102-4};

(b) the number of area surveyors was reduced from 12 to 4/5 {Hoban: T45/107-108}. He also told the hearing that between 2013 and 2017 the Building Control department lost 10 surveyors with 230 years of experience and gained just one graduate replacement {Hoban: T46/216};

(c) Mr Hoban's workload increased. In 2016 he was overseeing between 120-130 projects {Hoban: T45/111};

(d) Mr Hoban was covering the workload of two other colleagues up to 2015. This increased to three colleagues in October 2015 {Hoban: T45/112-113}.

136. Prior to this, local authority Building Control Services had been weakened by the introduction of competition in the form of the 'Approved Inspectors'. Ms Beryl Menzies (Building Control Expert) referred to this saying the arrival of 'Approved Inspectors' created commercial challenges for local authorities as 'Approved Inspectors' could set their own costs to cover works {Menzies: T60/41/-3}. They also created an element of confusion {Menzies: T60/45}.

137. We submit that the cuts to building services and impact of part privatisation also contributed to the disaster in that,

(a) it meant there was inadequate supervision. Mr Hoban told the hearing he could not do his job as he would have wanted to {Hoban: T45/110};

(b) as a result of austerity cuts, Mr Hoban's patch size increased and he could not visit sites as often as previously {Hoban: T45/110};

(c) building control was swamped with Mr Hoban having to come in at weekends {Hoban: T45/116};

(d) as a consequence of Mr Hoban's workload, he may well have missed important documents concerning the use of cladding {Hoban: T46/26-27}. He also struggled with site visits {Hoban: T46/156-158}. When asked why he did not undertake an inspection when the mast climbers were in place, he responded,

> *"I can only spend so much time on a job , as I mentioned previously. I 'm not there every day. You have to - - I have to make judgements on whether I go to this particular job or that particular job where there's problems and I can see that there are major issues . I didn't see that here. So I'm making judgements on what I consider to be an immediate priority to deal with at a given time."* (Hoban: T46/192)

138. Cutting back public services can have serious consequences. They were established for a reason. So does privatising them. Professor Bisby comments on the marketisation of Building Control at §968 of his report,

> *"It is my opinion that fundamental changes in the role of (and approach taken by) building control authorities need to be considered in any root cause analysis of the factors conspiring to eventually yield the Grenfell Tower fire. This can be summarised as a change from a stance that was viewed by many as obstructive, to a stance that was proactively client-driven- working with clients so as to compete with private approvers. I also believe it is worth reiterating that the move to allow private certification was a political choice that was facilitated by the Construction Industry Council, and that the resulting changes in building control culture and practice were, in my opinion, entirely predictable."* {LBYP20000001/176, §968}

139. As elsewhere, private profit was given precedence over public service by Central Government policy with consequences that were 'entirely predictable'. If a future Grenfell Tower type disaster is to be avoided it is the policy of privatisation and deregulation that has to change. We need a culture that puts people and safety first. We need to end the culture of greed and profiteering from what remains of our public services.

Conclusion

140. The central state has a fundamental responsibility for the safety of its citizens in a modern democracy. We submit that Central government has failed woefully in this task.

(a) they have failed to regulate HRRBs and specifically the foreseeably hazardous, albeit desirable, process of insulating them against the cold and rain by installing rainscreen cladding systems;

(b) they have cut back regulations and allowed businesses to ignore safety rules as part of a '*war on health and safety'* culture and to prioritise profit over safety;

(c) they have abdicated the duty to research and develop emerging fire risks and protection measures. Whereas for half a century Central Government had an authoritative, statutory fire and rescue advisory body that strategically assessed the risks and provided ministers with reliable expertise, that was abolished as part of deregulation at a time when the built environment was increasing in complexity.

(d) a philosophy of deregulation has blighted efforts to improve, and has actually worsened, the living conditions of millions of people.

141. Grenfell Tower was the culmination of a generation's worth of these policies. Those who lost their lives were also the victims of big business and an economic and social system that only values wealth and money. In the scramble for profits they were collateral damage. Central Government and the economic system over which they preside bear ultimate responsibility for the Grenfell Tower fire.

Martin Seaward

Nick Toms

Counsel for the FBU

19 November 2021