

Witness statement of: Andrew Stuart Jack

No. of statement: 3

Date of statement: 5 February 2021

GRENFELL TOWER PUBLIC INQUIRY

WITNESS STATEMENT OF ANDREW STUART JACK

I, Andrew Stuart Jack, will say as follows:

1. I give this statement following a request to the London Fire Brigade ("LFB") from the Grenfell Tower Inquiry ("GTI") dated 15 December 2020 ("the Rule 9 Request").
2. I have made two separate statements in relation to the Grenfell Tower fire. The Inquiry is aware of my statement Metropolitan Police Service ("MPS") [MET00040001], and I made a previous statement to the GTI [LFB00032244] in response to an earlier request under Rule 9 of the Inquiry Rules 2006, dated 29 January 2019. Consequently, exhibits I produce for the purposes of this statement are numbered to follow on from the exhibits produced previously and start at **ASJ/86**. Where I produce documents I have discovered through my own online researches I make that clear. All other documents have been obtained from those held by the LFB.
3. I set out my background in paragraphs 1 – 3 of my statement to the MPS, and at paragraphs 1-4 of my first witness statement to this Inquiry, dated 29 January 2019. I am currently temporarily working for the LFB as Specialist Technical Adviser to the Assistant Commissioner for Fire Safety Regulation at the LFB. I have been fulfilling this role since 17 February 2020. My base posting remains as Head of Regulatory Enforcement.
4. I have sought to provide as accurate an account of the thinking within LFB on these issues at the time as possible. My evidence is based on my own recollection, and my

review of contemporaneous documents and therefore may not represent a complete account of the corporate view of the LFB. Where I have been able to refer to written records within my knowledge which were made by the then Commissioner or other officers on any particular issue, I have done so.

5. I will address each of the questions within the Rule 9 Request of 15 December 2020 in turn.

Email of 26 September 2016 to Lynsey Seal, Rebecca Burton, David Kennett and others
(included on the email chain at [LFB-000137263]):

"I believe this incident is an archetypal example of the issue faced across the residential built environment due to lack of adequate guidance and consequent historic misinterpretation by building control bodies of function B4(1) to the Building Regulations.

From other investigations it is apparent that while the second limb of B4(1) (fire spread between buildings) is known and applied, the first limb ('resist the spread of fire over the walls') is not... "

1. Please state in what ways specifically the LFB considered, at the time of that email, that:

- a. The existing guidance in relation to B4(1) of the Building Regulations was inadequate?
- b. Building control bodies had adopted a "misinterpretation" of B4(1)? What, in the LFB's view, was incorrect about building control bodies' approach to B4(1)?

The LFB's view that the existing guidance in relation to B4(1) of the Building Regulations was inadequate

6. This question refers to a series of emails sent between 1 September 2016 and 6 October 2016 in an exchange including myself, Spencer Sutcliff (then Group Manager of the

South West Area Fire Safety Regulation), David Kennett (then Fire Safety Enforcement Team Leader), Lynsey Seal (then one of two heads of the Fire Engineering Group), Charlie Pugsley (then Group Manager, Fire Investigation Team) and Charles-Elie Romeyer, a Fire Engineer within the Fire Engineering Group. I exhibit this email chain as **ASJ/86 ()**.

7. The guidance referred to was to B4(1) within Schedule 1 of the Building Regulations 2010 ("B4(1)"). The version which applied at the time of my email of 26 September 2016 was the 2006 edition of "The Building Regulations 2010 Fire Safety Approved Document B – Volume 2 – Buildings other than dwellinghouses" ("ADB"), incorporating the 2007, 2010 and 2013 amendments. It has already been exhibited to the Inquiry as **SFD/6** to Suhail Dadabhoy's second witness statement to the Inquiry dated 2 August 2019.
8. I will address first the passage in my email of 26 September 2016 highlighted by the Inquiry.
9. My reference to the "lack of adequate guidance" in respect of B4(1) was a reference to the view within the LFB that the guidance offered by B4(1) was insufficiently clear on the issue of whether Schedule 1 B4 (1) of the Building Regulations imposed a stand-alone requirement to "adequately resist the spread of fire over walls". My comment at this time did not relate to whether or not enforcement action might be taken in particular, but was directed at a growing concern within LFB at the time about standards within the built environment. The fact that the fire at Shepherd's Court had spread up the face of the building raised the question as to whether there had been a proper interpretation of the requirements of Schedule 1, B4(1) of the Building Regulations 2010 by the relevant building control body.
10. My reference in the email of 26 September 2016 to "other investigations" was a reference to the Lakanal House Inquest, and in particular the report of Adrian Prest dated 18 October 2010, which advises the LFB of the interpretation of B4(1). I chose deliberately opaque language when referring to the Lakanal case because at the time of writing the email I was not sure whether it would be appropriate to comment on evidence heard in the inquest, in light of the ongoing criminal proceedings.

Consequently, I decided to err on the side of caution and not refer to the specific investigation or evidence. I exhibit a copy of Mr Prest's report as **ASJ/87** ().

11. I have reviewed a copy of this report for the purpose of producing this statement. At page 5, Mr Prest sets out his opinion on the scope of B4, concluding that "Although there are requirements relating to fire spread, including in cavities of external walls, AD B does not clearly indicate that resistance or prevention of fire-spread over external walls, from an internal fire, is an objective in its own right."
12. Mr Prest's reasoning in respect of B4(1) sets out clearly why, in my view, the guidance itself was inadequate. The guidance leads the reader into section 13 and generates an impression that the entirety of B4 related to the spread of fire from building to building, as opposed to containing two related, but separate provisions addressed at the spread of fire over the building itself and, separately, the spread of fire from building to building. Although paragraph 12.7 of ADB does reflect the true effect of B4(1), so little emphasis was placed on preventing the spread of fire across the face of the building as a provision in its own right, that it did not seem to make clear the full extent of the obligations on those responsible for fire safety in the construction of residential blocks.
13. David Kennett's email in reply to me on 26 September (**ASJ/86**) illustrates the view that Adrian Prest's analysis of B4(1) indicated a wider misunderstanding, and that this was a concern both to the LFB and the DCLG:

"We...took the view that the FR of the external face was a requirement in its own right. Hence the letter to Brian Martin...Brian was also horrified that such an experienced BCO should misinterpret B4 in this way. I wondered at the time....whether his view was commonly held. Indeed, Adrian had checked his view with another senior colleague before providing us with written advice".
14. I am unable to say when the LFB first became aware that the guidance to B4(1) was inadequate. However, the adequacy of the AD B in respect of B4(1) was a live issue for the investigation of offences in respect of Lakanal House and during the preparation for, and the hearing of the Lakanal House inquest. Certainly, following the Lakanal Inquest and the Rule 43 recommendations made by the Coroner on 28 March 2013, it

was a commonly held view at the LFB that the guidance to B4(1) was insufficiently clear.

15. The ongoing concern in 2016 for standards within the built environment was based on the LFB's experience that sub-standard workmanship, which often led to breaches of the Fire Safety (Regulatory Reform) Order 2005 ("RRO"), was not always being identified and corrected through building regulation control as it should have been. An example of these types of failings would be missing or incorrectly installed compartmentation in a range of buildings including blocks of flats and hotels. An extreme example of the type of failing would be those identified at Pacific Wharf in 2008, in which there were failings in the construction of the building, which had nevertheless received approval from the relevant building control body.
16. The LFB was concerned that this type of failure in the construction of buildings, which ought to have been identified and rectified by building control bodies when implementing the Buildings Regulations, were only being identified through audits or risk assessments. It was this question of deficiencies in the construction and building control sectors which I know was going to be the subject of a meeting in 2017 between the Commissioner and the Minister for Housing who at that time was also the Minister for Building Regulations/Control. The meeting did not take place due to the timing of the 2017 General Election.
17. Although some Building Regulation defects, such as compartmentation, could be remedied through enforcement action under the RRFSO, the LFB's understanding at the time was that was not the case for some other defects such as the external walls and structure.
18. The Government had clearly advised the LFB, in 2013, following the fire at Lakanal House that the requirements and powers of the RRO were not applicable to the external surfaces and structure of residential buildings, and that fire safety standards in respect of those external surfaces were sufficiently protected by the Building Regulations 2010, as supplemented by the Local Authority Coordinators of Regulatory Services guidance on fire safety in residential buildings published in 2008. This advice was provided to the LFB in a letter from Louise Upton sent on 6 February 2013. I produced the 6 February letter and a covering email in my first witness statement to the Metropolitan

Police as exhibits **ASJ/52** and **ASJ/53**. Nonetheless, the potential danger posed to the public by the spread of fire across the external surface of high-rise buildings was a relevant concern to the LFB. I address the LFB's approach to the issue of external cladding and scope of the LFB's regulatory powers in further detail in paragraphs 46 to 64 of this statement.

19. The LFB sought guidance from the Government as to the scope of Requirement B4(1) and the guidance in Approved Document B following Adrian Prest's report on the fire at Lakanal House in 2010. On 14 February 2011, the LFB wrote to Brian Martin of the DCLG "to ensure that we have correctly understood requirement B4 of the Building Regulations, particularly with regards to vertical fire spread". The LFB sought clarification on five issues relating to B4(1), namely: whether the first objective of B4(1) is an objective in its own right, whether the ability of the fire service to intervene was a relevant factor in controlling combustibility, what the requirements of B4(1) were with regards to the insulation on the external walls of a building over 18 metres in height, whether the external surfaces of a building of more than 18 metres should meet Class O classification, and how to interpret the requirements of "Diagram 40" within Approved Document B. Mr Martin at the time was the Principal Construction Professional at the DCLG and was viewed as an authority on the Building Regulations. It was well known that he was one of the authors of Approved Document B ("ADB"), indeed I have known him professionally in this context for many years. I exhibit the letter sent from the LFB to Mr Martin on 14 February 2011 as **ASJ/88**(). I exhibit the response received from Mr Martin to the LFB on 23 February 2011 as **ASJ/89**().

20. The response from Mr Martin on 23 February 2011 stated that "The two objectives that form the requirements in paragraph B4(1) of Schedule 1 of the Building Regulations are closely linked, but are independent of each other, both need to be considered having regard to the height, use and position of the building" (**ASJ/89**). It was the LFB's view that so long as the guidance in AD B failed to make it clear that B4(1) contained two "linked, but independent" requirements, it was inadequate.

21. In 2012 and 2013, the then Commissioner, Ron Dobson, wrote further letters seeking clarity on B4(1) and the guidance in Approved Document B to Brandon Lewis MP. The

first of these was written by Commissioner Ron Dobson to Mr Lewis on 11 December 2012 and is exhibited in the first witness statement of Ron Dobson dated 28 January 2019, at paragraph 16 as **RJD/4**. The second letter, sent to Mr Lewis on 26 September 2013 was exhibited to the first witness statement of Ron Dobson dated 28 January 2019 at paragraph 27, as **RJD/4** and **RJD/11**.

22. Appendix One of the letter of 11 December 2012 outlines the LFB's concerns about the adequacy of the guidance in B4(1) under the heading "Recommendation 5" as follows:

"The investigation has highlighted that the intentions of Building Regulations with regards to restricting the spread of fire over the external face of the building may not be fully understood. We do not think that Approved Document B is particularly clear on this matter. Additionally, there are a number of recognised publications that provide guidance and commentary on the Building Regulations, namely: Guide to part B of the Building Regulations: 2006 edition by Fire Safety Engineering Consultants Ltd; Guide to the Building Regulations: 2011 Edition, by Huw Evans and the Building Regulations: Explained and illustrated: 12th edition. Other than repeating the recommendations that are contained within Approved Document B, they do not explain or comment on the requirement to restrict the spread of fire over the external envelope of the building."

23. I contributed to the drafting of the 11 December 2012 letter. I believe that the Commissioner was referring to Adrian Prest's 2010 report and the subsequent letters received from Brian Martin in 2011 but did not refer directly to it as a criminal investigation was still underway at that point.

1(b) The misinterpretation of B4 in the residential construction industry and practice

24. At the time of the email exchange between myself and colleagues on the Fire Safety and Fire Engineering teams (**ASJ/86**), it was a commonly held view at the LFB that there was widespread misunderstanding by building control bodies and industry stakeholders of the scope of B4(1) as it applied to the regulations governing spread of

fire over the surface of a building and that this misunderstanding was fostered by a lack of clarity within the guidance. That is evident from the letters of the then Commissioner Ron Dobson to the DCLG on 11 December 2012 (**RJD/4**) and 26 September 2013 (**RJD/11**).

25. The fact that Adrian Prest, had stated the view in his 2010 report on the Lakanal House that B4(1) did not impose a stand-alone requirement to restrict the spread of fire over the external envelope of a building was an indicator of the extent of the misunderstanding of B4(1) in 2010. Mr Prest had previously been the head of building control for several local authorities and was a senior and respected building control professional, and as David Kennet noted in his email of 26 September 2016 (**ASJ/86**), it was understood at the LFB that Mr Prest had checked his view with another senior colleague.
26. The Commissioner's letter of December 2012 identified in Annex 1, "Recommendation 5" three examples of recognised publications that provided guidance and commentary on the Building Regulations which failed to explain or comment on the requirement to restrict the spread of fire over the external envelope of the building. (See **RJD/4**) I have identified further examples of this type of guidance, issued between 2012 and 2015.
27. I have produced further examples of industry publications from 2015 demonstrating the misconceptions as to the scope of B4(1). I exhibit a "How To" guide produced by Eurocell (a manufacturer and distributor of UPVC products) in 2015 on compliance with the Fire Safety elements of the Building Regulations as **ASJ/90** (). On downloading this document on 18 January 2021 from the Eurocell website, I examined the metadata "properties" for this document which indicate that it has not been modified since 2015. I also exhibit a document produced by Engineered Panels in Construction ("EPIC"), which I also downloaded from the EPIC website on 18 January 202. This document states on its face that it was issued in 2012 and revised in 2015 as **ASJ/91** ().
28. Neither of these documents refers to the requirement that external walls should be constructed so as to resist the spread of fire over their surface as an obligation which is distinct from the requirement to ensure that the external walls resist the spread of fire

from one building to another. By way of example, the “EPIC” guidance states at paragraph 3.1.4 that “Requirement B4 is primarily intended to prevent the spread of fire from one building to another as a result of heat radiation or airborne burning brands”.

29. As against those examples, there was an effort by the Building Control Alliance (“BCA”) to draw attention to the correct test to be used for external walls. In 2015, the BCA published guidance on section 12 of AD B, which is the section directed at the provisions in B4(1) of Schedule 1 to the Building Regulations. The guidance stated that “AD B2 recommends (for the entire wall area both below and above 18m) either the use of materials of limited combustibility for all key components or to submit evidence that the complete proposed external cladding system has been assessed according to the acceptance criteria in BR135 - Fire Performance of External Thermal Insulation for Walls of Multistorcy Buildings”. I exhibit the BCA guidance as **ASJ/92** ().

30. I recall that at some point around 2013 to 2015 I attended a meeting between the LFB and DCLG with Brian Martin in which B4(1) was discussed. I recall the point being made that AD B offered significantly less guidance in respect of the first limb of B4(1), the requirement for fire resistance across the face of a building, than for the second limb, the requirement to resist the spread of fire from one building to another. However, I do not have a clear recollection of this meeting, nor a written record. I believe that it was as a result of this meeting that I formed the impression a new version of the AD B might be forthcoming, as I stated in my email of 26 September 2016.

31. From informal discussions I had over the course of my employment at LFB, it seemed apparent to me that there was a view amongst building control professionals that the guidance to B4(1) meant that the fire resistance requirements of B4(1) only related to preventing the spread of fire between buildings, as opposed to preventing the spread of fire across the face of single buildings, or buildings spaced apart according to the guidance on the second limb of B4(1). I am unable to recall particular conversations and have no written record of these discussions.

2. Please:

- a. Identify the scope and purpose of the “other investigations” referred to and disclose any consequential report;**
- b. Explain the conclusions of these “other investigations” that had indicated to the LFB, at the time of the email, that the “first limb” of B4(1) was not “known and applied”. If those “other investigations” concerned other fires, please give details of when these fires occurred and what the LFB knew about them.**

32. As I have stated at paragraph 10 above, I was referring to the Lakanal House investigation alone. I used “investigations” in the plural as a way of avoiding the identification of that particular investigation. I had in mind in particular the fact that criminal charges had not at that point been laid in Lakanal and as I have stated, wished to err on the side of caution.

In relation to Gareth Steele’s email of 1 December 2016 [LFB-000210544], which states:

“ We (Fire Safety) are preparing a response to Hammersmith and Fulham which will include recommendation on investigation/assessment/remedial works regarding the external cladding and its performance in fire. Any direction we provide to H&F will be equally applicable to most other local authorities and private blocks and could involve significant expenditure. This could be the proverbial ‘cat out of the bag’ on this issue and AC Daly has asked that we consider what the advice should be, the implications of the advice, if we enforce or advise, and how we get the message out; amongst other things.”

3. Please state:

- a. What recommendation or direction was provided to Hammersmith and Fulham, and/or to other London local authorities or private building owners following the Shepherd’s Court fire, in addition to AC Dan Daly’s letter of 7 April 2017? Please provide the details**

of any discussions and/ or meetings held between the LFB and Hammersmith and Fulham, including:

- (i) the meeting that had been scheduled to take place between Rebecca Burton and Nigel Whyte on 3 November 2016 [LFB-000033359] and
- (ii) any communication with Colin Todd and Steve Robinson following their engagement by Hammersmith and Fulham, as referred to in Gareth Steele's email of 11 April 2017 [LFB-000033422]

33. To the best of my recollection, I was not party to any meetings or face to face discussions with Hammersmith and Fulham in respect of Shepherd's Court between the date of the fire and the letter sent by Dan Daly on 7 April 2017. It may be that I was contacted by officers from Hammersmith and Fulham during this time by telephone in respect of other cases, but I cannot recall any such phone calls, nor discussing Shepherd's Court by telephone with any officers of Hammersmith and Fulham.

34. I set out as follows to the best of my ability the communications between the LFB and Hammersmith and Fulham, in respect of Shepherd's Court between October 2016 to February 2017, in advance of the letter sent by Dan Daly to housing providers on 7 April 2017. AC Dan Daly took the lead on the LFB's response to Shepherd's Court, and on the communications with Hammersmith and Fulham. I provided input from the perspective of my role as Head of Regulatory Enforcement and as far as I am able, I have explained in this statement the context in which the decisions in respect of Shepherd's Court were made.

35. In summary, three letters were exchanged between the LFB and Hammersmith and Fulham. The first, from the LFB to Hammersmith and Fulham, was sent on 18 October 2016. Hammersmith and Fulham replied on 3 November 2016 requesting the results of the Bureau Veritas test on the cladding at Shepherd's Court and the LFB responded to that letter with recommendations and advice on 8 February 2017. I address these as follows.

36. Before the letter of 18 October 2016 was sent, there would have been a meeting between the recipients of the 6 October email (**ASJ/86**) at desk, by telephone or in a meeting room to discuss the issues raised at that point by email and to agree next steps. On 6 October I tasked Stephen Wood with setting up a case conference to discuss Shepherd's Court. Although I have been able to locate a calendar meeting sent by Stephen, for a meeting dated 12 October 2016, I cannot now recall attending that case conference although I was aware at the time that the letter to be sent on 18 October 2016 was being prepared. I exhibit the calendar invitation as **ASJ/93**().
37. The 18 October 2016 letter informed Hammersmith and Fulham that testing had been carried out by Bureau Veritas on an unaffected façade panel removed from the building at Shepherd's Court and that the façade system may have contributed to the external spread of the fire. The letter further invited Hammersmith and Fulham to demonstrate compliance with the "applicable regulation and guidance" and requested a series of documents. Although I cannot recall being directly involved in the drafting of this letter, the documents requested reflect the list of documents I proposed that the LFB request from Hammersmith and Fulham in my email of 6 October 2016 (within **ASJ/86**). I exhibit the 18 October 2016 letter from the LFB to Hammersmith and Fulham as **ASJ/94** ().
38. I understand from reviewing an email I received at the time that a meeting was subsequently set up between Rebecca Burton, Group Manager Spencer Sutcliffe and Nilvara Mukerji, the then Director of Housing Services at Hammersmith and Fulham on 3 November 2016. Rebecca Burton emailed me, Lynsey Seal, GM Spencer Sutcliffe, GM Charlie Pugsley and Deputy Assistant Commissioner Andy Hearn on 3 November 2016 to inform that the meeting had been cancelled by Nilvara Mukerji that day, and that a letter had been received from Hammersmith and Fulham. I exhibit the email as **ASJ/95** (). I do not know whether the meeting cancelled by Nilvara Mukerji was the same meeting as that referred to in Rebecca Burton's email of 18 October in which she informed Nigel Pallace that she would be meeting Norman Whyte, Health and Safety Manager, Compliance and Health & Safety Team on 3 November, as referred to in question 3(a)(i) of this Rule 9 request.

39. The letter received from Hammersmith and Fulham on 3 November 2016 was a response to the letter of 18 October 2016 from the LFB. The letter was sent by Nilvara Mukerji (then Director of Housing Services at Hammersmith and Fulham), who requested a copy of the Bureau Veritas report on the testing of the panels in use at Shepherd's Court. I was not copied in to the letter. However, I have been shown a copy and I exhibit the letter from Hammersmith and Fulham to the LFB dated 3 November 2016 as **ASJ/96** ().
40. Following Hammersmith and Fulham's letter of 3 November 2016, I believe that a meeting took place in order to agree the LFB's response. On 14 November 2016 Charles Romeyer sent an email to me, Andy Hearn, Charlie Pugsley, Spencer Sutcliff, Rebecca Burton, Gareth Steele and Lynsey Seal referring to what was "agreed last week" and seeking input on the response to Hammersmith and Fulham Council. In that email he proposes sending a version of the "Post Fire Report" into Shepherd's Court, with the Bureau Veritas Report to be included as an annex. I exhibit the email from Charles Romeyer sent on 14 November as **ASJ/97** () and the attached Post Fire Report as **ASJ/98** ().
41. I responded to the above email on 16 November 2016, proposing that the Post Fire Report was too detailed and complex, and "what we discussed at the meeting and afterwards at the desk" would be more accurately reflected by a covering report, or cover letter. I suggested that this document should describe the fire, summarise the testing performed and subsequent conclusions, explain that the LFB expected that the UPVC window panels should comply with the requirements of B4 in that they should not contribute to the rapid spread of fire, and that the use of such panels should be urgently reviewed by way of a fire risk assessment with advice from a suitably qualified fire risk assessor and the council's own building control department. I exhibit this email as **ASJ/99** ().
42. I do recall contributing to the drafting of what was then to become a letter to Hammersmith and Fulham sent by AC Dan Daly on 8 February 2017. In addition to the meeting prior to 16 November, I would have worked on it in consultation day to day with AC Dan Daly and Charles Romeyer with whom I shared a floor, and others, either by email or in person. I do not have a comprehensive record of my contribution, but an

example of this would be an email I sent to Charles Romeyer, AC Dan Daly, DAC Andy Hearn, GM Spencer Sutcliff, GM Charlie Pugsley, Rebecca Burton, Nicholas Coombe, Gareth Steele and Lynsey Seal on 7 December 2016 in which I made drafting proposals and suggest that the LFB state in the letter that we would also be writing in general terms to public and private sector housing providers. I exhibit this email as **ASJ/100** ().

43. The LFB responded to Hammersmith and Fulham's 3 November 2016 letter on 8 February 2017. I exhibit that email as **ASJ/101** () and its attached letter as **ASJ/101A** ().

44. To my knowledge, no reply was received to the letter of 8 February 2017. There may have been subsequent communication between Hammersmith and Fulham Borough Council, the LFB's Borough Commander for Hammersmith and Fulham and potentially between LFB's Fire Engineering department or the local Fire Safety Team, but I do not recall being directly party to, or aware of any such discussions.

45. In respect of Question 3(a)(ii), I have known Colin Todd for over twenty years and Steve Robinson since around 2003 and it is possible that I would have spoken to either one of them between September 2016 and May 2017 in relation to a number of different matters. However, I cannot recall being party to any meetings or discussions in relation to work that Colin Todd or Steve Robinson did in respect of Shepherd's Court.

d. Whether a view was ever reached within the LFB as to whether or not enforcement action could or should be taken in this context?

46. I will address this question in three parts:

- a. The methodology, policies and scope of enforcement action at the LFB;
- b. Whether a view was ever reached within the LFB as to whether or not enforcement action could or should be taken in respect of failings within the scope of the RRO;

- c. Whether a view was ever reached within the LFB as to whether or not enforcement action could or should be taken in respect of the external cladding on the building at Shepherd's Court.

The methodology, policies and scope of enforcement action at the LFB

47. The decision making process for whether to take enforcement action, or whether to bring a prosecution is set out in the section entitled "Methodology and policy for enforcement" at paragraphs 17 – 24 of my witness statement to the Inquiry dated 29 January 2019.
48. Paragraphs 17 – 20 identify the policies which would have informed the LFB's enforcement work at the time. As Shepherd's Court was audited on 24 August 2016 following the fire on 19 August 2016, the applicable policy would be that contained within FSIGN 201. Any decision to enforce would have resulted from the findings of the post fire audit, which I exhibit as ASJ/102 ().

Enforcement action in respect of failings within the scope of the RRO

49. The conclusion of the post fire audit was that the premises was "Broadly compliant". The audit noted that "fire safety systems in the common parts appeared to have worked as designed allowing the common parts to have been used safely" and that "Ventilation arrangements worked to maintain stair clear of smoke." [*sic*]. It was noted that "No further action required in relation to internal fire safety matters."
50. FSIGN 201 "The Fire Safety Audit: Overview of principles and enforcement action" describes the enforcement action that may be taken according to the outcome of an audit. I exhibited a copy of FSIGN 201 to my 29 January 2019 statement at paragraph 20 as ASJ/75. FSIGN 201 states at paragraph 2.3 that:

"If the general fire precautions and management arrangements are all adequate and there are no (or only very minor) risks to persons the relevant articles can

be evaluated and 'scored as 'Broadly Compliant' with the Fire Safety Order (FSO) on the Audit Form on the Tablet. In these cases verbal advice can be provided and the audit completed at that point."

51. Paragraph 7 of FSIGN 201 explains the status of "verbal advice". It is the lowest level of enforcement action. In this case, based on the findings of the audit and the limitations on the scope of the RRO as understood at the time, the level of enforcement action taken was well within the LFB's policy.

Enforcement action in respect of the external UPVC window panels

52. The position at the LFB at the time was that the LFB had no power to take regulatory enforcement action or bring prosecutions in respect of fire safety failures relating to the external panels such as those in use on the exterior of Shepherd's Court.
53. This position is explained in paragraph 75 of AC Dan Daly's witness statement, which I have been shown, in which he states that "the exterior walls of blocks of flats are not within the reach of LFB's regulatory enforcing role under the Regulatory Reform (Fire Safety) Order 2005". I have also been shown paragraphs 14 – 23 of the witness statement of Lynsey Seal dated 4 February 2019 which describes the LFB's role within the Building Regulations system. Both of these statements accord with my understanding at the time.
54. This position had been confirmed in two letters from Louise Upton of the DCLG, sent to the LFB on 6 February 2013 and 13 December 2013. The 6 February letter has already been exhibited to the Inquiry as **RJD/5** and the 13 December letter as **ASJ/52** and **ASJ/53**).
55. It is because this position was well established that I believe I said in my email of 6 October 2016 (**ASJ/86**) that "there is no certainty that a prosecution will ensue", and why I advised that the "request to the LA should be made...on a 'request basis' and **not** by Article 27 letter". An "Article 27 letter" is a formal request for the production of records or information made under Article 27 of the RRO.

56. As I state in my email of 6 October 2016, the list of documents I proposed the LFB request, and which were requested in the 18 October 2016 letter were for the purpose of initial enquiries. I believe that at the time I thought it would be prudent to make those enquiries and assess any information received with an open mind. My suggestion that it might be possible to “put the issues to responsible persons for such blocks and to others such as the construction industry; the building control fraternity and the government” was in anticipation that information provided in response to that request might have informed the LFB’s consideration of general building standards, which in turn may have informed any future dialogue with those stakeholders in respect of building standards. My reference to considering the “use of formal powers under Article 27” of the RRO and “instituting a formal investigation” was a reference to the fact that in the event that evidence did arise which could lead to enforcement action within the well understood scope of the RRO, that would be the route that we could follow.
57. The issue of whether or not there was the potential for enforcement action, or a prosecution, would have been discussed with the recipients of Stephen Wood’s calendar invitation (**ASJ/93**). Even if a case conference did not take place as scheduled, the substantive issues which would have been covered were addressed in discussion. The post fire audit is likely to have been discussed at any such discussion or case conference, but in any event, I am certain that I would have seen it by the time I participated in the drafting of the 6 February 2017 letter to Hammersmith and Fulham.
58. Although I do not have a clear recollection, given the findings and conclusion of the audit and the cooperation of Hammersmith and Fulham evidenced in the letter of 3 November 2016, I am reasonably certain that it was decided that it would be appropriate to deal with the matter for the time being by way of ongoing correspondence and assistance as demonstrated by the letters of 18 October and 3 November 2016 and 6 February 2017, and in subsequent dealings with Hammersmith and Fulham in respect of Shepherd’s Court.
59. Notwithstanding the clear guidance from the DCLG set out in the letter from Louise Upton of 13 December 2013 (**ASJ/53**), the LFB continued to consider whether there was a credible way to challenge the status quo regarding the scope of the application of the RRO for the benefit of public safety.

60. In the latter part of 2016 through to 2017 the LFB worked towards determining whether there was a way to challenge the established DCLG view on the scope of the RRO. In respect of Shepherd's Court, the LFB proceeded on the basis of the then current legal and governmental advice that there was no existing power to enforce the RRO in respect of the UPVC window panels while at the same time considering how the established view on the scope of the RRO might be challenged.
61. On 1 December 2016, I emailed Gareth Steele, Charlie Pugsley, Lynsey Seal, Charles Romeyer, Spencer Sutcliffe and Andy Hearn in response to an invitation from AC Dan Daly via Gareth Steele to "consider what the advice should be...if we enforce or advise" in respect of Shepherd's Court. In that email, in response to the issue as to the appropriate action to take in respect of Shepherd's Court, I refer to a "paper on compartmentation between flats", state that the "scope of the paper extends to the envelope of the building" and that the "paper does cover options for education/enforcement". This paper was a draft document entitled "Fire Resisting Compartmentation – Flats", dated 23 August 2016. This was part of a wider piece of policy work I had started with AC Dan Daly some months earlier. This policy work ran parallel to the work we were doing in respect of Shepherd's Court. The paper had been drafted for the consideration of the Commissioner's Management Board ("CMB"). The Commissioner's Management Board was a meeting usually chaired by the Commissioner and attended by senior management of the LFB. The draft I was referring to in my email of 1 December had been considered already by the Principal Management Board ("PMB") and had been amended following their comments. The Principal Management Board was a regular meeting to consider policies and departmental issues which was chaired by the Assistant Commissioner for Fire Safety Regulation. At the time of sending the email, it had not yet been considered. I cannot now remember whether or not it was considered by the CMB. I exhibit the email chain between myself and Gareth Steele on 1 December 2016 as **ASJ/103** () and I exhibit the paper to which I refer as **ASJ/104** (). In the paper I refer to, and include excerpts from, Advice received from Counsel dated 5 May 2011. I exhibit that Advice as **ASJ/104A** ().

62. By March 2017 there had been no change in the LFB's interpretation of the RRO, and as such, the position remained that the LFB did not then have the power to bring enforcement action in respect of external cladding. The LFB was in a position to raise awareness, which I believe is reflected in the email of AC Dan Daly sent on 29 March 2017 in which, referring to the letter to housing providers which was to be sent, he stated: "I want the letter to be about raising awareness of the issue in the first instance."
63. The draft AC Dan Daly attached to that email contained track changes and comments he had made to the document. One of the amendments he made was to delete a passage that I and Roger Giess of the LFB Legal Department had included in an earlier draft, which outlined the limitations of the RRO understood by the LFB at the time. The draft contains a comment from Dan Daly setting out the reason for this deletion as follows:

"I understand why we might want this section in here but the purpose of this letter is to raise awareness of the issue – what may or may not be enforceable is something we will look at and depending on the outcome will consider our measured approach to the issue. We can advise on that at a later date. Here I feel it clouds the information sharing part of this message."

I understood at the time that as the extent to which the RRO extended had yet to be tested in the courts, that AC Daly had decided that reference to the regulatory powers of the LFB might distract focus from the purpose of the letter, which was to raise awareness. I exhibit the email from Dan Daly on 29 March 2017 as **ASJ/105** () and the attachment as **ASJ/106** ().

64. I believe that the approach of the LFB at the time was that in the event that the advice on the scope of the RRO changed, there would still be the potential for an investigation into possible offences under the RRO in respect of the failures of the UPVC panels at Shepherds Court. This is reflected in an email I sent on 29 March 2017 to AC Dan Daly, Rebecca Burton, Gareth Steele, Nicholas Coombe and Spencer Sutcliff in which I state:

"there is an issue here that we have not determined whether there will be further investigation of any possible offences – that being held over pending the somewhat overdue decision on application of the RRFSo to the external façade


of this and other blocks of flats. It remains possible for us to investigate the builder and others...it may be that we will wish to consider a whole or partial (temporary) exemption until the legal matters have been concluded”.

I exhibit this email as **ASJ/107** ().

65. The LFB then sought further advice from counsel on the same issue at around the same time. That advice was received on 31 March 2017. I exhibit the advice as **ASJ/108** (). The LFB were in the process of considering the outcome of that advice and the issue of the scope of the RRO in general, but had not yet reached a positive conclusion at the time of the fire at Grenfell Tower, after which the view within the LFB was that any challenge should not take place until the conclusion of this Inquiry.

Statement of truth

I believe that the facts stated in this witness statement are true. I confirm that I am willing for the statement to form part of the evidence before the Inquiry and be published on the Inquiry website, save for redactions applied by the Inquiry.

Signed: 

Dated: 5 February 2021