

- (5) The evidence is that between 2013 and 2014, it was primarily NHBC staff challenging Kingspan, requesting test evidence and ultimately driving the industry away from reliance upon certificates which it is now known were issued in error and based upon deception by Kingspan. It was Brian Martin's evidence that he believed NHBC was "*taking the lead*" on challenging Kingspan and that Government thought this was the best way for the problem to be addressed (see paragraph 75 below). NHBC, however, never sought this role and was never informed by Government that it had decided that NHBC should take on this responsibility.

A spotlight has been thrown upon NHBC in this Inquiry because it was acting upon its concerns and challenging Kingspan. Whilst NHBC accepts it should have done more, and acted more quickly, the Panel should ask what other industry groups and BCBs were doing at the relevant time before drawing adverse conclusions against NHBC;

- (6) NHBC has always recognised that the use of testing or desktop reports was only evidence that could assist in showing whether minimum standards had been met as required. Wherever NHBC considered such reports as a means of showing compliance, NHBC's own fire engineers and their line managers would critically evaluate the reports against the background of their own professional knowledge and experience. Further information would be required from the builder and or its fire engineer as necessary before NHBC would reach a conclusion as to whether all of the evidence showed that the minimum standards had been met; and
- (7) Whilst the actions of NHBC and its staff have been closely scrutinised during Module 6, it is important not to lose sight of the fact that NHBC was not involved at any stage in the refurbishment of Grenfell Tower. The evidence is one way: neither the guidance issued by NHBC nor that issued by the industry group, the Building Control Alliance (BCA) was applied, referred to or contemplated by the Royal Borough of Kensington and Chelsea Council (RBKC) or the relevant architects and contractors when considering the cladding that was used at Grenfell

Tower. The suggestion put in questioning that the NHBC 2016 guidance was “*central to the Grenfell Fire*” must be viewed in this context.⁵

5. NHBC has undergone a period of considered self-reflection since the fire, including in the wake of evidence heard by the Inquiry, to consider what it could have done differently during the relevant period and what it could do in the future to promote safer house building.

6. NHBC accepts the following:

(1) It should not have placed the level of reliance it did upon the Kingspan K15 BBA certificates. The evidence shows that there was over-reliance throughout the industry upon these as directed and endorsed by Government. The potential for an error within a certificate and the consequences of this should have been far clearer to the whole industry, including NHBC.

As a result of learning from this Inquiry, NHBC has reemphasised to its surveyors and managers the need to maintain a strict focus upon the functional requirements to ensure that there is a robust challenge process in place where NHBC has concerns about such certificates. There is tight management oversight of this, and on fire-safety matters generally

The Panel might think that a particularly unsatisfactory element of the current regime is that independent certification is capable of showing evidence of compliance with the regulations but the test evidence behind those certificates is confidential to the manufacturer and not available to builders or BCBs who seek to rely upon that certificate. Instead, the BBA refers builders and BCBs to the manufacturer for any additional or supporting evidence they require.

NHBC submits that this has created the opportunity for unscrupulous manufacturers to exploit certificates issued in error to an alarming degree. Had the BBA and others had a system whereby NHBC had been able to obtain the (it transpires illusory) test evidence upon which some BBA certificates were based, this would have exposed Kingspan’s misconduct far earlier;

⁵ Diane Marshall 226/101/6 – 226/102/6

12. Whilst appropriate scrutiny has been brought to bear upon the role of BCBs, it is the sole responsibility of the builder to ensure that the Building Regulations are complied with. An AI such as NHBC BCS is “*far removed from the provision or creation of a dwelling*” and has limited powers which allow only the performance of an essentially negative role of checking for compliance (*Heron's Court v Heronslea* [2019] EWCA Civ 1423, [2019] BLR 600 at [42- 43, 53- 57]. See further at paragraph 68 below).
13. An AI cannot be an expert in every single element of a complex construction build. It is for the builder and their engineers to determine how all the various different materials and elements within a complex build fit together. It is also the builder’s responsibility to consider carefully whether all elements will comply with the Building Regulations in that configuration and to provide evidence to support that assessment. The AI’s role is to consider whether, based on the evidence presented, he or she is satisfied using professional skill and judgment that the building will comply with the Building Regulations such that a final certificate can be issued.¹¹
14. NHBC’s reputation, built over more than eighty years, is grounded in public, industry and customer confidence in the safety of the buildings that it is involved with (whether it provides warranty or building control services). Upholding standards is a key part of ensuring that reputation is maintained. Put another way, there is no incentive or driver for NHBC to cut corners or lower standards; that would be damaging to both its reputation and its business, as well as being the antithesis of the reason for its existence.¹²
15. Each NHBC witness was questioned about their expertise and qualifications. It is submitted that those in key positions at NHBC were suitably qualified and experienced to perform the roles required of them. The nature of the industry is such that expertise is frequently gained on the job. By way of example, Mr Martin was not a qualified fire engineer and had no technical training, relying on his experience to understand compliance with the Building Regulations and the Approved Documents for which he was responsible.¹³

¹¹ John Lewis second witness statement, {NHB00001332/2} at [5a]

¹² Steve Evans witness statement, {NHB00003020/7} at [22]

¹³ Brian Martin 250/4/20-25, 250/16/15-24, 250/33/24 – 250/34/8

solution to this problem to protect NHBC's -- either its integrity or its historic buildings... if anyone had, I would not be working for that employer.”²⁰

This typified the reaction of all NHBC staff when such suggestions were put to them;

- (2) There is no evidence that could reasonably and safely lead to a conclusion that NHBC's actions were in some way designed to “cover up past mistakes.” NHBC has disclosed all relevant communications from key personnel over an extensive period. The disclosure exercise has been thorough and overseen by both internal and external lawyers. The correspondence in question covers every aspect of the subject matter of this Inquiry insofar as it relates to NHBC. Many of the internal communications are unguarded and frank and have on occasions been embarrassing to NHBC and the authors of the emails who would have been unaware that the content would be published. No email has been identified which supports any posited theory that evidence now being given is a “recent invention,” far less that NHBC was acting out of a desire to secure a commercial advantage. The emails in fact show clear and candid concern on the part of NHBC about, in particular, the actions of Kingspan and a determination to get to the bottom of whether K15 was safe for use above 18 metres and, if so, in what circumstances.

Whilst with hindsight NHBC acknowledges it should have moved faster, there is no basis to suggest that this was due to any form of complicity or cover-up. The absence of any such admissions in the extensive disclosure provided is telling in this regard;

- (3) As to being driven by profits, the Panel has heard that NHBC's approach led to projects being rejected and negative commercial consequences for NHBC.

One example of this is the Apex Project (a warranty proposal) where a desktop report was provided by the builder supporting the use of ACM PE cladding.²¹ NHBC refused to provide a warranty for the building as its own internal procedures suggested that the cladding makeup was not compliant. This refusal was made notwithstanding the very full evidence provided from Dr Raymond Connolly who provided further updated reports insisting that the cladding was compliant with the Building Regulations and presented an acceptable risk. NHBC was also aware that the project had received a final

²⁰ Steve Evans 220/105/25 – 220/106/18

²¹ John Lewis second witness statement, {NHB00001332/28} at [100 - 105] and Steve Evans witness statement, {NHB00003020/47} at [130]

certificate from the relevant local authority (Ealing Borough Council) who provided building control for the project. Following this refusal, a different warranty provider was content to offer a warranty and took a fee for doing so notwithstanding the presence of 100% PE ACM cladding in the façade;²²

More generally, it was the evidence of Steve Evans that the letter sent to NHBC's builder customers in March 2015²³, informing them of the change in NHBC procedure (to require compliance with the BCA Guidance Note), caused difficulties with clients.²⁴ John Lewis also said that NHBC's builder customers were complaining that NHBC was requiring more than (their interpretation of) ADB required.²⁵

Due to its own actions in challenging Kingspan, NHBC moved from a position in which the K15 BBA certificate was being accepted as proof of compliance across the industry to requiring a full desktop or later Option 4 report (see below at paragraph 76). This was implemented across the industry because of NHBC raising the matter with the BCA, which in turn issued the BCA Guidance Note. It was the evidence of John Lewis that the increased cost and complexity involved in this process drove many builder customers away from using combustible materials;²⁶

- (4) CTI has established from each of NHBC's witnesses that NHBC interpreted ADB as requiring compliance with both paragraph 12.7 and diagram 40, thus requiring that all elements of the cladding makeup (including "filler" materials) were materials of limited combustibility.²⁷ As the Inquiry has established, this was far from the universal approach adopted across the industry with some designers, manufacturers and builders considering only the combustibility of the outer face of the panel and not its core.²⁸ Had NHBC been attempting to apply lower standards for commercial advantage then it could have chosen to interpret ADB as requiring compliance with either paragraph 12.7 or diagram 40, which would have enabled combustible materials to be used in a wider variety of makeups without desktop reports (which were themselves more time consuming options for NHBC's builder customers and required a greater degree of scrutiny to demonstrate compliance).

²² John Lewis 225/62/20 - 225/64/10

²³ {NHB00001032}

²⁴ Steve Evans 221/233/19 - 221/234/3

²⁵ John Lewis 224/76/4-14

²⁶ John Lewis 224/44/15-18

²⁷ Steve Evans 220/180

²⁸ Brian Martin 252/19/19-23

It is untenable to suggest that these were the actions of an organisation seeking to lower standards for commercial advantage.

C. LEGAL FRAMEWORK AND GUIDANCE

21. This Inquiry has clearly confirmed that the building regulation regime, and in particular the law and guidance which was in force before the Grenfell fire, is complex and non-prescriptive with a deficit of clear guidance.²⁹ Brian Martin has accepted he made mistakes in relation to ADB. The extensive reform of fire safety and building safety regulation and guidance following the fire at Grenfell Tower amply demonstrates the pressing need for reform which existed in 2017. One of Dame Judith Hackitt’s key findings was that “*the package of regulations and guidance (in the form of Approved Documents) can be ambiguous and inconsistent.*”³⁰ NHBC, other BCBs and the industry as a whole had to work within that imperfect framework.

a. The Building Regulations

22. The Building Regulations govern the design and construction of buildings with a focus on how a building should perform by setting functional requirements. References to Regulations below are to the Building Regulations 2010 unless indicated otherwise.

23. By Regulation 4(1) building work is to be carried out in accordance with the substantive requirements set out in Schedule 1 thereto. Part B of Schedule 1 addresses fire safety under five sub-Parts B1 to B5 (the functional requirements). Regulation 8 provides the purpose of the regime is that, inter alia, Part B of Schedule 1: “*shall not require anything to be done except for the purpose of securing reasonable standards of health and safety for persons in or about buildings...*”.

24. Section 7(1) and (4) of the 1984 Act provide that if:

²⁹ Brian Martin 252/162/6-11

³⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf Executive Summary

(1) *“it is alleged that a person has contravened a provision of building regulations- (a) a failure to comply with a document that at that time was approved for the purposes of that provision may be relied upon as tending to establish liability and (b) proof of compliance with such a document may be relied on as tending to negative liability.”*

(4) *“A certificate given in accordance with this regulation shall be evidence (but not conclusive evidence) that the requirements specified in the certificate have been complied with.”*

25. A person intending to carry out building work must give notice and deposit specified plans of the work with the local authority³¹ which a local authority shall pass unless *“they are defective”* or *“they show that the proposed work would contravene any of the building regulations.”*³² Local authorities may reject the plans, pass them, or pass them subject to conditions including making such modifications to the plans as they may specify. A local authority shall give a completion certificate where they have been able to ascertain, *“after taking all reasonable steps”*, that, following completion of building work carried out on it, a building complies with the relevant provisions.³³

26. AIs may carry out some of the statutory functions of local authorities in relation to building control.³⁴ An AI shall, if requested to do so by the person intending to carry out the work, give a plans certificate where the plans neither *“are defective”* nor *“show that work carried out in accordance with them would contravene any of the building regulations”* (subject to certain further procedural requirements).³⁵ The AI is required to take such steps as are reasonable to enable them to be satisfied, within the limits of professional skill and care, that the building works in question comply with the relevant part of the Building Regulations.³⁶

³¹ Part 3 of the 2010 Regulations

³² Section 16(1) of the Building Act 1984

³³ Regulation 17

³⁴ Part II of the 1984 Act and the Building (Approved Inspectors etc.) Regulations 2010

³⁵ Section 50(1) of the 1984 Act

³⁶ AI Regulation 8(1)

27. Unlike local authorities, AIs do not have the power to impose sanctions. AIs can only cancel an initial notice or refuse to issue a final certificate if the AI is not satisfied the minimum requirements of the Building Regulations have been complied with.
28. Where AIs are satisfied that any work to which an initial notice they issued relates has been completed, they must give to the local authority by whom the initial notice was accepted a final certificate with respect to the completion of the work and the discharge of their functions as may be prescribed.³⁷ However, it remains the builder's sole responsibility to ensure those works do comply with the Building Regulations. A BCB cannot provide a guarantee of compliance with the Building Regulations and the process does not remove the obligation of the person carrying out the work to achieve compliance with the Building Regulations.³⁸
29. An AI cannot insist on a higher standard than that set out in the Building Regulations and its decisions would be vulnerable to judicial review (by dint of performing the statutory function of a local authority) in the event that it sought to issue and apply its own standards above and beyond those issued by Government.
30. An AI cannot therefore withhold the issue of a plans certificate or a final certificate where (in the latter case) the works are complete and the AI, having carried out its functions to the standard prescribed in Regulation 8 of the Building (Approved Inspector etc.) Regulations 2010, is of the view that the minimum requirements of the Building Regulations are satisfied.³⁹

b. Approved Documents

31. As compliance with Approved Documents is deemed to be evidence of compliance with the Building Regulations,⁴⁰ the Approved Documents are critical to the industry's understanding of the regime.

³⁷ Section 51(1)

³⁸ *Hérons Court, the Lessees And Management Company of v Heronslea Ltd & Ors* [2019] EWCA Civ 1423 confirms that the liability in Section 1(1) of the Defective Premises Act 1972 does not extend to Approved Inspectors

³⁹ Section 50 and 51 of the Building Act 1984

⁴⁰ Section 7(1) Building Act 1984. See also preamble at page ii that “*there may be other ways to comply with the requirements- there is no obligation to adopt any particular solution contained in an approved document. If you prefer to meet a relevant requirement in some other way than described in an approved document, you should discuss this with the relevant building control authority.*” This is re-stated at paragraph 1.1 of AD7.

32. The Approved Documents⁴¹ are supposed to be “*For the purpose of providing practical guidance with respect to the requirements of any provision of building regulations...*” as opposed to providing prescriptive details on how a project must reach that outcome. There is no single, compulsory route to demonstrating compliance with the Building Regulations so a builder can consider a range of methods.
33. There has long been confusion over the application of ADB, so much so that the Coroner in the Lakanal Inquests, HHJ Frances Kirkham CBE, made recommendations in 2013 to Government⁴² in which she concluded that “*ADB is a most difficult document to use.*” Her recommendations included that clear guidance in relation to Regulation B4, with particular regard to the spread of fire over the external envelope of the building, was provided and expressed in words intelligible to the wide range of people engaged in construction, maintenance and refurbishment of buildings.
34. The Secretary of State responded:
- “Finally, in relation to Building Regulations, I have noted your concerns about the difficulties that some of those involved in the Inquests had with the interpretation of Approved Document B. I can assure you that my Department is committed to a programme of simplification. However, the design of fire protection in buildings is a complex subject and should remain, to some extent, in the realm of professionals. We have commissioned research which will feed into a future review of this part of the Building Regulations. We expect this work to form the basis of a formal review leading to the publication of a new edition of the Approved Document in 2016/17. The revision would be drafted in accordance with a new ‘style guide’ for Approved Documents, aimed at ensuring the guidance is capable of being more easily understood, and that the need to cross-reference is reduced”* (emphasis added).⁴³
35. The reality, however, was that the recommendation within the Lakanal House report to prevent future deaths was not acted upon before 2017 and instead Government relied upon the industry to issue guidance in the interim.

⁴¹ Section 6(1) Building Act 1984

⁴² <https://www.lambeth.gov.uk/sites/default/files/ec-letter-to-DCLG-pursuant-to-rule43-28March2013.pdf>

⁴³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205567/Annex_B_-_SoS_DCLG_Rule_43_response.pdf

c. Industry guidance

36. Industry guidance does not have the same status as statutory guidance. Nonetheless, MHCLG's approach was to rely on industry guidance to fill at least a temporary gap where interpretation was required because it did not have:

“a mechanism for changing the approved documents very quickly. So this was something that became the way we worked on a range of issues, where we'd try to get industry guidance to resolve problems that might have arisen in between reviews.”⁴⁴

37. In light of the acknowledged problems with the regulations and guidance issued by the Government, the industry had little option but to issue guidance itself to fill the gap left by the long delay in new Government guidance being issued.

38. For example, Arup Fire was proposing its own guidance in relation to the use of combustible insulation above 18 metres.⁴⁵ As Mr Lewis told the Inquiry of his meeting with Arup: *“Arup's view was that ADB was largely out of date”*.⁴⁶ According to Mr Martin:

“Most of the trade bodies across the industry produce guidance for their members, often in relation to achieving compliance with Building Regulations. So they would provide an extra layer of detail on the guidance that was in the approved document, and so we could work with those bodies to fill in the blanks and assist interpretation where there was confusion or some other reason why you might want to extend that.”⁴⁷

39. Mr Martin counted industry guidance as amongst the appropriate steps relevant to B4.⁴⁸ To a significant extent the Government was relying upon the industry to issue guidance to fill the void left by its own guidance. The evidence was that had industry not sought to adopt a consistent application of the Building Regulations through guidance, there would have been a *“really big problem, bigger than the one we are dealing with now.”*⁴⁹

⁴⁴ Brian Martin 254/48/17 – 254/49/3; 254/185/15 – 254/186/22

⁴⁵ Steve Evans 220/164/5-17

⁴⁶ John Lewis 224/67/2-4

⁴⁷ Brian Martin 250/47/18-25

⁴⁸ Brian Martin 252/159/12-19

⁴⁹ Brian Martin 252/166/16-19

40. Mr Martin went on to say that he was desperately trying to revise ADB but lacking the resources to action this. The answer was (in relation to the problem with K15 in particular) the BCA Guidance Note (see below at paragraph 100) which he saw as the best and only way to solve the problem. He described the situation as ridiculous.⁵⁰ NHBC submits that the house-building industry should not have been placed in this position and the Panel should be slow to criticise those who used their best efforts to ensure consistency and drive improved standards whilst working within such an imperfect system.

D. KINGSPAN AND THE BBA CERTIFICATE

41. The use of combustible materials in construction is not new. MHCLG was well aware of the issues concerning external cladding systems throughout the review of ADB which led to the 2006 edition being published.⁵¹

42. Regulation 7 requires that building work shall be carried out with adequate and proper materials. Approved Document 7 (AD7) provides guidance towards compliance with Regulation 7. If AD guidance is followed, there will be a rebuttable presumption of compliance with this Regulation.

43. Paragraph 1.2 of AD7 permits the assessment of “*the suitability of a material for use for a specific purpose in a number of ways, as described in paragraphs 1.3 to 1.21.*” These include by paragraph 1.14:

“Other national and international technical specifications” that: “An international technical specification...may be used to demonstrate that a product not covered by a harmonised European standard meets the performance requirements of the Building Regulations” where the “material is covered by a national or European certificate issued by a European Technical Approvals issuing body, and the conditions of use are in accordance with the terms of the certificate.”

44. BBA was (before Brexit) a European Technical Approvals issuing body.⁵² These also include “*Independent certification schemes*” as defined in paragraph 1.15: “*Such*

⁵⁰ Brian Martin 254/185/2 – 254/186/22

⁵¹ {CLG00019469_35} at [106]

⁵² <https://www.bbacerts.co.uk/2021/02/22/the-bbas-ongoing-purpose-in-a-post-brexit-world/>

schemes certify that a material complies with the requirements of a recognised document and indicates it is suitable for its intended purpose and use.” These certification bodies are to be accredited by the United Kingdom Accreditation Service (UKAS). BBA is accredited with UKAS.

45. Under the heading “*Limitation on Requirements*” and sub-heading “*Independent certification schemes*” there is general guidance endorsing the use of independent schemes of certification and accreditation of installers and maintenance firms which:

“will provide confidence in the appropriate standard of workmanship being provided. Building Control Bodies may accept the certification of products, components, materials or structures under such schemes as evidence of compliance with the relevant standard. Similarly, Building Control Bodies may accept the certification of the installation or maintenance of products, components, materials or structures under such schemes as evidence of compliance with the relevant standard. Nonetheless, a Building Control Body will wish to establish, in advance of the work, that any such scheme is adequate for the purposes of the Building Regulations” (emphasis added).

46. The status of a BBA certificate has been the subject of judicial consideration. In *Skinner v Crest Nicholson Residential (South) Limited* [2003] EWHC 2984 (TCC), at [71]:

“The reference to the Agrément Certificate was to Agrément Certificate No. 91/2608 issued by the British Board of Agrément that in the opinion of the Board was satisfactory if used as set out in the Certificate. The Certificate was issued on 21 March 1991. A certificate of the Board is generally considered evidence that a product used in accordance with the methodology set out in the certificate is a suitable one to use for the application the subject of the certificate” (emphasis added). And in *Resistant Building Products Ltd v National House Building Council* [2020] NICH 6 the Recorder of Belfast said (at [5]): “*The British Board of Agrément (“BBA”) is a building product certification authority...the certificate contained a statement that the products were fit for purpose for their intended use provided they are installed used and maintained as set out in the body of the certificate*” (emphasis added).

47. At some points in evidence, it was suggested to NHBC witnesses that reliance upon the BBA certificate was an *ex post facto* justification for NHBC accepting K15.⁵³ This is strongly refuted. As the above demonstrates, reliance on an independent certificate as evidence of compliance was wholly permissible and the use of BBA certificates has long been a part of industry-wide building control processes in the UK (as it remains today).

48. NHBC accepts that, in its role as an AI, NHBC BCS is concerned with whether there is compliance with a specific or functional requirement of the Building Regulations in order to fulfil the Regulation 8 purpose of the regime to secure reasonable standards of health and safety for persons in or about buildings. NHBC also accepts that NHBC BCS, in its role as an AI, is required to take reasonable steps to satisfy itself of this within the limits of its professional skill and care. In doing so, it is clear that BBA certificates may be relied upon by a BCB in carrying out its function in circumstances where the BBA is an accredited and trusted organisation and where NHBC has no reason to doubt its competency.

49. In answer to the Chair's question:

“can I just ask you this: your answers suggest that it may have been beyond anyone's contemplation that a BBA certificate might include an inadvertent mistake. Did you ever think that was possible?”

Ms Marshall told the Inquiry:

*“At the time, no, because of the rigour of UKAS accreditation and the process it would have to go through to get produced. So, no, at that time there was no reason to question the validity or the content of a BBA certificate.”*⁵⁴

50. The actions of NHBC in respect of the various versions of the BBA certificates do not, however, suggest that it blindly relied upon the certificate without question. This needs to be considered against the context that NHBC had no reason to suspect that the BBA did not thoroughly investigate K15 before issuing the certificate that it did. The following exchange between Mr Evans and CTI is apposite:

⁵³ Steve Evans 219/146/21 – 219/147/12

⁵⁴ Diane Marshall 225/134/21 – 225/135/5

“Q. So does that tell us -- we’ll come to regulation 7 shortly -- that the NHBC, in relying simply on the BBA certificate up to this time, was approving the use of K15 above 18 metres without seeing the full test data, without seeing the details of the wall build-up, without seeing any BR 135 report, for what it’s worth, and without any of the data indicated by Approved Document B?”

A. So at that time we would refer to the BBA certificate, and the BBA certificate, we would assume at that time, would have looked at all of that information in order to make the statements it did.”⁵⁵

51. If it had been the case that NHBC was blindly following the certificate, it would not have needed to have undertaken its own investigation of K15, which took up a significant period of time between 2014 and 2015.
52. The Inquiry must be cautious to put out of its mind what is now known about Kingspan’s lies and deception when considering why NHBC took the approach that it did. This Inquiry has shown that many reputable organisations were taken in by Kingspan and its apparent standing in the industry. NHBC did not, for example, know that K15 had failed a previous test as Kingspan had hidden this from NHBC when asked.
53. The BBA certificate for K15 had been in use and accepted by other BCBs since 2008. Prior to 2013, no concerns had been raised in industry or by Government about it.⁵⁶ Mr Evans told Mr Martin of MHCLG, in reply to Mr Martin’s email to Neil Smith on 2 July 2014 (the ‘friendly warning’ email), that on the basis of the BBA certificate of 2008, NHBC and other BCBs had accepted the use of K15.⁵⁷ This did not cause Mr Martin to contact Mr Evans and raise concerns over this. Mr Martin could have contacted Kingspan which he did not. Whilst he did contact the BBA, he made no meaningful attempt to find out why it was the BBA had issued a certificate in these terms.
54. That other BCBs accepted the BBA certificate at face value, and that this was standard practice within the industry, is beyond dispute. This was the evidence of Steve Evans

⁵⁵ Steve Evans 219/86/6-17; 219/142/10-13

⁵⁶ Steve Evans 219/137/10-20, John Lewis 223/141/1-18

⁵⁷ Steve Evans 220/69/3-20; Email Steve Evans to Brian Martin, 11 July 2014{NHB00000732}

59. There were also real problems with a major BCB suddenly taking a unilateral stance to refuse to accept the certificate.
60. As Mr Evans explained to the Inquiry, had NHBC refused to accept K15, its only real power as an AI would have been to refuse to issue a final certificate so that development would revert back to the local authority for them to take action. Mr Lewis stated that NHBC, however, knew that a local authority BCB would regard the use of K15 as compliant (given the existence of the BBA certificate and/or LABC registered detail) and consequently would not take enforcement action.⁶⁴ NHBC's refusal would not have stopped the use of K15 and was likely to have created more confusion in the industry especially if a local authority would subsequently accept its use.⁶⁵ This underlines both the inability of a BCB to impose higher standards than the minimum required and the need for consistency in interpretation. The Building Regulations cannot function if there is a disconnect between the standards applied at the building control and enforcement stage (or a different interpretation of those standards).
61. The problem therefore required action across the industry which was provided by the BCA through the BCA Guidance note (as described below).
62. The above was the context in which the BBA certificate was relied upon. In answer to the Chair's question "*on what basis did you think it was proper to accept its use?*" Mr Evans explained:

"Until we had that information -- we didn't have information either way, I suppose. We had the -- the information we did have was positive towards the use of the material; we had the BBA certificate and we had one report. We didn't at that time have any information which said -- so we had no failed test reports, we had no information that said anything different. So we wanted to -- before we actually said, "We can't use this material, we're not going to accept this material", as we would with other -- not just Kingspan, but any other material where we don't have all that information, we would generally try

⁶⁴ Steve Evans 220/102/22 – 220/103/11

⁶⁵ John Lewis 224/19/1-24

“If we’d taken a knee–jerk reaction and said, “We’re not accepting it on any building which is presently under design or build or indeed new–build”, that would have meant at that point a great deal of upheaval for those designers, builders , for the industry as a whole, which could, in three months’ time, have actually been demonstrated was the wrong action. So taken that these buildings actually take a great deal of time to actually design and get to site, you’ve got something like, you know, 18 months from starting to design a building to actually getting it on to site to start to build, there was time to actually allow industry to do that research to provide that information.”⁷¹

66. Fourthly, the time Kingspan was taking did not initially seem unreasonable. NHBC was aware that, given the limited testing facilities available in the UK, there could be a wait of up to five months to book a test rig and longer to get the results.⁷² NHBC now understands that Kingspan was lying to NHBC about its plans to undertake testing and show compliance with the Building Regulations.

67. Fifthly, as set out above, refusal to issue a final certificate would lead to a disconnect with the BCB refusing to accept K15 but the enforcement body regarding it as compliant.

68. NHBC as an AI has very limited powers and performs an essentially negative role of checking for compliance. As per Hamblen LJ in the *Hérons Court* case (at [42- 43]):

“The powers of the AI are confined to refusing to issue a plans certificate or final certificate in the face of non-compliant work. Moreover, unlike the local authority, the AI has no power to impose conditions or prescribe modifications to the works and the relevant enforcement powers are left entirely with the local authority.

An AI therefore has no statutory power to influence the design or construction of a building in any way, save to stipulate that it must comply with the law. In certifying, or refusing to certify, plans and works, the AI is not engaged in the positive role of the provision or creation of the relevant building, but performs

⁷¹ Steve Evans 219/175/8-21; 219/197/1-14

⁷² Steve Evans 219/180/10-22

the essentially negative regulatory role of checking for compliance against prescribed criteria.”

69. It is for the builder to provide to the AI the evidence necessary for the AI to confirm if the guidance in the Approved Documents and, ultimately, the Building Regulations are complied with. If there is a suspicion that the evidence presented does not support compliance, this should be raised with the builder whose responsibility it is to then take steps to have that suspicion resolved or provide alternative evidence demonstrating compliance with the Building Regulations. In this particular scenario, as NHBC was not concerned with a specific build, there was no builder as such to go back to. As the BBA would not provide the information used in its assessment, NHBC took the only available route it had and raised its concerns and requests for evidence directly with Kingspan. Brian Martin’s evidence was that in this difficult situation *“I thought NHBC waiting for more tests to come back was the best available answer we had.”*⁷³

70. NHBC was not permitting Kingspan to ‘*mark its own homework*’; what it was doing was investigating the evidence to support Kingspan’s claims. The fact that Kingspan prevaricated and lied to NHBC significantly contributed to the length of this process.

71. There was a suggestion in the questioning of NHBC’s witnesses that NHBC could have sought information from the BBA. The reality is that the BBA would not have provided such information to NHBC on the basis of confidentiality to Kingspan and would have referred NHBC to Kingspan with whom it was already in dialogue. As Ms Marshall told the inquiry:

*“..the most direct route for investigation was to go to the product manufacturer, who would have had all of the information available that they sent to BBA. From previous experience, BBA have a commercial arrangement with any company that they certify, so they wouldn’t generally release any confidential or commercial information to a third party. So the decision was taken to go direct to the manufacturer.”*⁷⁴

⁷³ Brian Martin 253/185/15

⁷⁴ Diane Marshall 225/121/22 – 225/5

- (4) Chartered Association of Building Engineers (CABE); and
- (5) Local Authority Building Control (LABC).

79. Mr Evans explained that one of the reasons for the formation of the BCA was because as a profession BCBs:

“..didn’t want to compete on technical standards... So the technical group was formed between the two sides of the profession, so public and private sector, to form consistent interpretations which informed building control bodies what the BCA would consider would be a benchmark to go by, but would also give our customers, you know, the view that actually whichever – – whether they went to public or private sector building control, they would get the same interpretation. They shouldn’t be shopping around for lower standards.”⁸⁵

80. The BCA produced two guidance notes of relevance to the Inquiry in relation to combustible materials on buildings over 18 metres:

- (1) Technical Guidance Note 18 “Use of combustible cladding materials on residential buildings”, June 2014 (BCA Guidance Note 2014),⁸⁶ and
- (2) Technical Guidance Note 18 “Use of combustible cladding materials on residential buildings”, June 2015 (BCA Guidance Note 2015),⁸⁷
(together, the BCA Guidance Notes).

81. The Panel must of course be careful to differentiate between NHBC and the BCA. This is not a matter of semantics nor NHBC hiding behind the cloak of another legal person. The two organisations are separate and perform different functions from one another. The importance of not conflating NHBC with the BCA, especially when considering guidance approved by the BCA technical committee, was clearly explained by Mr Martin.⁸⁸

82. It is unsurprising that NHBC is not a member of the BCA. NHBC is represented at the BCA through ACAI’s membership of the BCA in the same way that individual local authorities are not members of the BCA but are represented through LABC’s membership. It is also unsurprising that NHBC’s staff would hold positions within the

⁸⁵ Steve Evans 219/52/3-22; 220/33/2-5

⁸⁶ {NHB00000760}

⁸⁷ {NHB00001145}

⁸⁸ Brian Martin 254/39/10-20

ACAI, CABE and the BCA, given NHBC's role in the industry. This was the case in relation to Steve Evans and Diane Marshall during the relevant period.

83. The BCA's members are represented on its committees by professionals working within the building control industry with the expertise to contribute to and review proposed guidance independently. Whilst the first drafts of the BCA Guidance Notes were written by Steve Evans and John Lewis, neither this nor other BCA guidance notes were NHBC guidance "rubber stamped" by the BCA. In 'putting their names' to the guidance under the BCA umbrella, each member had an obligation to its own organisation to ensure it reviewed and agreed with the terms of that guidance. As set out above the members included bodies with a regulatory function such as RICS which has its own independent regulatory board.
84. The BCA did not (and could not) have "customers" and it is not correct (as was suggested to Brian Martin) that BCA guidance only applied to NHBC or BCA customers. This has not at any time been suggested to be the case by any witness from the BCA or NHBC.⁸⁹ It is also incorrect to state that BCA advice is limited to BCA *members* as has been suggested. This was not Mr Evans' evidence.⁹⁰ The "members" of the BCA are the industry groups set out above. Guidance issued by the BCA would be of general applicability to the industry and it would be for those in the industry to decide whether to follow it or not.
85. Beyond representatives of the BCA's members reviewing and approving the guidance notes, draft guidance was provided to the MHCLG as a 'papers only' member of the BCA. Aside from receiving relevant documents, MHCLG could and would occasionally attend meetings. Mr Evans, when asked, was confident that "*they were the type of people that if they did see something which they were unsure of or had an objection to, they would pick up the phone and contact me or contact a member of the group to say they had some views on that.*"⁹¹

⁸⁹ cf question to Brian Martin 252/159/20-23

⁹⁰ cf question to Brian Martin 254/44/14

⁹¹ Steve Evans 219/55/16 – 219/2; 220/38/10-20

upon test data which BRE already has in its possession and so this option will be of no benefit if the products have not already been tested by BRE in multiple situations / arrangements. Other test bodies (Chiltern, Warrington Fire etc would also be acceptable but these bodies are not known to have any test data)."

90. Mr Lewis, was asked about his note of the meeting and he confirmed:

*"Yes, I believe that was the first time that I'd heard of it, and I believe that Wintech stated it because they had -- on some other schemes, not ones that we'd been involved with that I was aware of, that is how it had been accepted by other building control bodies. Q. Right. So to shorten that answer, you'd understood from that that Wintech had got a desktop from BRE that other inspectors had approved? A. Maybe not Wintech, but, you know, they were obviously aware that a scheme had been approved on the basis of a desktop study from BRE on some other scheme."*⁹⁷

91. This accords with the evidence of Stuart Taylor of Wintech who states that:

*"To comply with the Building Regulation B4(1) I was aware that there were potentially alternative ways of demonstrating compliance. Page 5 of ADB2 (2007) states that "The Approved Documents are intended to provide guidance for some of the more common building situations. However, there may well be alternative ways of achieving compliance with the requirements". I was aware that the BRE were conducting desktop assessments in 2013 as an alternative means of demonstrating compliance with the requirements of Part B of the Building Regulations. I cannot recall when I first became aware of BRE desktop assessments, it may have been slightly before 2013. Up until this point in time, this method of demonstrating compliance with the requirements of Part B of the Building Regulations had not been seen by Wintech.."*⁹⁸

92. BRE was therefore already issuing desktop reports as evidence of compliance with the Building Regulations and Wintech was aware of the same before 2013. It is

⁹⁷ John Lewis 223/66/6-22; 223/107/6-14; 223/109/5-11; 223/190/17-24

⁹⁸ {WIN00000002/22}

escalation process to decide whether the proposal met the requirements set out in the Building Regulations.

98. It was not NHBC's role within the industry to police how other BCBs operated or to assess whether they had equivalent safeguards in place. While other bodies should have had similar procedures, NHBC could not know whether that was the case. The fact that there was some industry-issued guidance, such as the BCA Guidance Note, did not change this, as it was not the role of the BCA to investigate the policies and procedures of BCBs.

99. Whilst some BCBs might not have their own internal fire engineers, they would of course be able to use external experts to assess the desktop reports received. This was Mr Evans' experience of practice when working as a building control surveyor for a local authority before his employment at NHBC.¹⁰⁸

100. It is correct that Mr Martin discussed with NHBC concerns regarding some desktop assessments being produced within the industry, in particular by email and at a meeting held before the NHBC Facades to Tall Buildings Conference on 7 July 2016.¹⁰⁹ In that email chain, Mr Martin explains that his concern was how specific reports were produced, but that this did not relate to sites for which NHBC was the BCB. In evidence Mr Martin said that raising this was more a "*lever*" he was using to encourage the industry to apply scrutiny to the reports than a concern about the reports being issued.¹¹⁰ Mr Martin says of the conference that he was happy with how Mr Evans (speaking on behalf of the BCA) addressed the issue during his own presentation and he "*hoped that this would improve the industry's understanding and provide clarity until the issue could be addressed by way of a review of ADB.*"¹¹¹ Steve Evans confirmed that part of the purpose of the presentation was to address concerns about the standard of some desktop assessments.¹¹²

101. NHBC has been questioned about its motives in "*alighting on and then publishing option 3 as a further alternative means to compliance.*"¹¹³ It is important to repeat that

¹⁰⁸ Steve Evans 220/201/1-14

¹⁰⁹ Email Brian Martin and Steve Evans, 27 June 2016 {NHB00001325/5}

¹¹⁰ Brian Martin 255/111/12-15

¹¹¹ Brian Martin witness statement, {CLG00019469/52} at [145]

¹¹² Steve Evans 221/128/22- 221/129/4

¹¹³ John Lewis 223/193/22-25

combinations of supporting structure, insulation and cladding finishes that were being specified. A wider range of façades was being used within the industry and it was necessary regularly to consider whether these were compliant with the Building Regulations. Therefore, the BCA Guidance Note was developed to explain what the range of industry bodies involved in the BCA considered were acceptable ways, in accordance with ADB, of providing evidence that could demonstrate compliance with the Building Regulations.

106. It has been suggested that, rather than produce guidance, the Government could have been asked to review and amend ADB. As Mr Evans explained, this was not a simple or quick task:

*“the process of changing an approved document is quite a lengthy process, which involves, first of all, undertaking research, carrying out consultations. So had we waited for a change in the approved document, had a change in the document been necessary for this, that could have been two, three years down the line.”*¹¹⁵

107. As set out above, Mr Martin said that he found himself in an impossible position with the Government unable or unwilling to issue new guidance and MHCLG having to rely upon bodies such as the BCA to issue guidance to fill the gap.

108. Moreover, when NHBC had raised questions about the interpretation of ADB, for example in relation to the meaning of ‘filler’, it had been told by Mr Martin, *“I can’t offer a formal view as such. Specific projects are a matter for the relevant building control body...”*¹¹⁶ A similar response was received when NHBC sought clarification as to the ambit of paragraph 12.7. Mr Martin admitted that the policy of MHCLG was not to give such answers.¹¹⁷

109. The desktop assessments relied upon the underlying testing being conducted properly. NHBC is now aware, based on evidence submitted to the Inquiry, of how some manufacturers approached those BS8414 tests. The Inquiry has heard, for instance, how Kingspan's 2005 test used a different version of K15 to that which was available on the market. NHBC can see, with hindsight, how Option 3 was capable of abuse if

¹¹⁵ Steve Evans 220/31/3-8

¹¹⁶ Steve Evans 221/67/20-22; Brian Martin witness statement {CLG00019469_0047} at [133]

¹¹⁷ Brian Martin 254/128/20- 254/129/12

unscrupulous manufacturers went to such lengths. Used appropriately, and with the rigour that a BCB should apply, Option 3 was, however, a valid approach to compliance with the Building Regulations.

110. There became a concern about the capacity of UKAS accredited testing houses to deal with the volume of requests for Option 3 reports as reported by BRE to NHBC.¹¹⁸ This resulted in the BCA Guidance Note 2014 being amended in June 2015 to allow Option 3 desktop assessments to be undertaken by any suitably qualified fire specialist. As with previous BCA guidance this was agreed by all BCA members. In addition, a more restrictive approach would have precluded organisations with the right kind of experience such as International Fire Consultants who had undertaken a lot of testing over the years and understood the way materials behave.¹¹⁹
111. Neither MHCLG nor members of the BCA Technical Group raised the possibility that the term ‘fire specialist’ might be misunderstood and lead to less qualified people undertaking the assessments. As far as NHBC was concerned, any review by it of a desktop assessment would have picked up any deficiencies including in the expertise of the author(s).¹²⁰ There is no evidence that the change in language led to a dilution in standards. It should be noted that “fire engineer” is not a protected title and those without the qualifications of John Lewis, for instance, would have been able to use this title. Even the post-Grenfell (2022) government guidance PAS 9980¹²¹ speaks of fire engineers “or other competent building professionals”. It neither defines “competent” nor requires that such professionals hold any particular qualifications. The only way for this problem to be remedied is for regulation of this field of work by Government.
112. It was suggested to John Lewis that BRE Trust BR135 guidance¹²², if read “side by side” with ADB, would suggest that Option 3 was not a valid form of compliance as there was no means of *extrapolating* BS8414/1/2 data. This was based upon wording within the BR135 guidance which states:

“This classification applies only to the system as tested and detailed in the classification report. The classification report can only cover the details of the

¹¹⁸ Seve Evans 220/207/5-21

¹¹⁹ Brian Martin 254/151/7 – 254/12/15

¹²⁰ Steve Evans 221/3/17-23; John Lewis 224/123/23-25 – 224/125/7

¹²¹ <https://www.bsigroup.com/en-GB/standards/pas-9980/>

¹²² {LFB00031969}

system as tested. It cannot state what is not covered. When specifying or checking a system it is important to check the classification documents cover the end use application.”

113. That this wording could preclude the use of Option 3 is not accepted. The restriction set out above is a stricture that applies to what the BCA termed Option 2. The effect is that if the composition of a proposed external wall make-up varies from the tested wall make up then the builder would not be able to rely upon that BS8414 test directly. This has always been the case when relying upon testing under BS8414.

114. That this could not, when read side by side with ADB, preclude Option 3 from being a route to compliance is clear from the following:

(1) If ADB precludes the use of such reports in lieu of testing, then Appendix A Paragraph 1 (a) and (b) would be rendered meaningless where it states (emphasis added):

*“the material should be in accordance with a specification or design which has been shown by test to be capable of meeting that performance; or **Note** for this purpose, laboratories accredited by UKAS for conducting the relevant tests would be expected to have the relevant expertise.*

*...have been assessed from test evidence against appropriate standards, or by using relevant design guides, as meeting that performance or; **Note** for this purpose, laboratories accredited by UKAS for conducting the relevant tests **and suitably qualified fire engineers** might be expected to have the relevant expertise”*
(emphasis added);

(2) ADB sets out possible, as opposed to, exhaustive or prescriptive routes to compliance. Paragraph 0.21 expressly states that there may be alternative ways of achieving compliance with the Building Regulations than provided in the guidance in ADB; and

(3) If it were the intention of Government to exclude an (otherwise standard) route to compliance, then this would be explicit. To the contrary, the effect of Appendix A (i) is to allow desktop assessments. This was Brian Martin’s understanding of the wording of BR135 as explained to the Inquiry.¹²³

¹²³ Brian Martin 255/157/4-18

ultimate goal when considering the functional requirements of the Building Regulations).

120. The BCA Guidance Note 2015 stated:

*“If none of the above options are suitable, the client may consider addressing this issue via a holistic fire engineered approach taking into account the building geometry, ignition risk, factors restricting fire spread etc. Such an approach would be expected to follow a recognised design code such as the BS 7974 Application of fire safety engineering principles to the design of buildings suite of documents and be supported with quantitative analyses where appropriate.”*¹³¹

121. For Option 3, the fire engineer's focus was limited to the external wall make-up. In Option 4, he or she would consider the whole of the building and, therefore, how other factors would impact on the external walls.

122. Both BCA Guidance Notes were available on the BCA's website and were disseminated by the representative organisations of the BCA within their own organisations. NHBC referred to the BCA Guidance Notes in its internal guidance B500 and its external guidance to its own builder customers (the 2016 NHBC Guidance Note).¹³² Whilst the BCA was an industry association whose members comprised a significant part of the BCB market, its influence was not so widespread as to make it the norm for builders and building control professionals to look to the guidance and follow it.

123. Option 4 has not been the subject of any sustainable criticism in the Inquiry.

124. As with Option 3, there is no basis to suggest that the introduction of Option 4 had any impact upon the acceptance of the cladding used at Grenfell Tower. No Option 4 report was completed, and no reputable fire engineer could have assessed the cladding on Grenfell as compliant through that route given the factors set out at paragraphs 0.32 to 0.34 of ADB.

¹³¹ BCA Technical Guidance Note 18 - Use of Combustible Cladding Materials on Buildings Exceeding 18m in Height, Issue 1 {NHB00001145/2}

¹³² B500: {NHB00001017}; 2016 NHBC Guidance Note: {NHB00000065}

F. NHBC GUIDANCE

125. Unlike the BCA Guidance Notes, NHBC's external guidance was not for use by the industry as a whole; rather it was solely for use by NHBC's own builder customers. It is accepted that this was a large section of the residential market. The purpose of NHBC's external guidance was to set out in a transparent manner that if the builder could show it had followed NHBC's guidance, NHBC BCS was likely to accept the project in question for building control purposes. That was not a foregone conclusion because NHBC would always check each project on a case-by-case basis.

126. NHBC's guidance was just that; guidance for its surveyors or builders rather than a prescriptive set of requirements. If a builder came to NHBC with an alternative way of demonstrating compliance with NHBC Standards or the Building Regulations, NHBC would consider the available evidence and make an assessment regarding how appropriate and robust that evidence was in demonstrating compliance.

127. NHBC has its own in-house expertise to produce its guidance. Whilst it was willing to listen to companies and consultants in the industry, and it did take a collaborative approach, including reflecting on the views expressed by other industry bodies to its employees via the BCA, NHBC ultimately reached its own conclusions in order to draft its guidance.

128. The 2016 NHBC Guidance Note entitled '*Acceptability of common wall constructions containing combustible materials in high rise buildings*' was launched at the July Façades to Tall Buildings conference at which Brian Martin was present. He raised no comments nor criticisms of it.¹³³

129. The 2016 NHBC Guidance Note was based upon NHBC experience of reviewing Option 3 and 4 reports. As Ms. Marshall said:

*"it was based on the evidence we had seen. I don't know what other evidence other building control bodies would have seen and what guidance they would have given to their staff to adopt or approach the BCA guidance note."*¹³⁴

130. Brian Martin's view was that this was in principle a permissible approach:

¹³³ Steve Evans 221/181/5-10

¹³⁴ Diane Marshall 226/65/15-20

to aid consistency from NHBC's surveyors and builder customers in applying the NHBC Standards and ADB in respect of external walls on buildings with a floor over 18 metres. B600 was subsequently updated in December 2018.

136. The 2016 NHBC Guidance Note could not have been used when considering whether the cladding used on Grenfell Tower was compliant. First, RBKC should not have used documents such as this to complete their own work and the evidence is that they did not do so. Secondly, the publication date of this guidance note was after John Hoban issued a final certificate for the refurbishment work on Grenfell Tower. Thirdly, John Lewis stated in evidence that if Grenfell Tower had been a NHBC project it would have been referred to him and he would not have accepted it.¹⁴¹

G. REVIEWS

137. As has been well established, NHBC conducted various reviews into projects where NHBC provided either building control services or warranty insurance that are relevant to combustible cladding.

138. The first was the 2015 review (known as the Combustible Cladding Review) which looked at schemes that were registered (for building control or warranty insurance) from 1 January 2014, and projects still in build registered prior to that date.¹⁴² The review required that for all projects which had commenced (where an initial notice had been issued) pre 2014 there was confirmation from the manufacturer that the product was suitable for use over 18 metres.

139. For all projects where the notice was issued in 2014 or 2015, NHBC ensured that one of the routes in the BCA Guidance Note had been followed which included the internal escalation procedure set out above.

140. None of the buildings in the 2015 review had specified the use of ACM cladding with a PE core.¹⁴³

141. The second key review conducted after the fire (the 2017 review) looked initially at projects which had been accepted under the 2016 NHBC Guidance Note as the basis

¹⁴¹ John Lewis 225/56/10 to 225/58/6

¹⁴² Diane Marshall 225/109/14-18

¹⁴³ Diane Marshall 225/112/2-22

for compliance. A small number of buildings were identified which specified ACM cladding, however, none of these had used the 2016 NHBC Guidance Note to show compliance and none had a PE core.

142. The buildings specifying ACM were then investigated under the terms of NHBC's internal guidance B600 which took account of new MHCLG test evidence.

143. Once the above process had been completed this was extended to a review of all projects under construction to ensure that wherever Options 3 or 4 had been used as a route to compliance, they met the required standard. These too were checked under the revised procedure under B600.

144. CTI has pressed NHBC witnesses as to why the reviews did not cover historical projects where NHBC had provided building control services, as the high market share enjoyed by Kingspan K15 would suggest a large number of projects will have been completed with this product. There are essentially four answers to this:

- (1) An AI has no power to impose conditions or prescribe modifications to completed works. The powers of an AI are limited and cease completely after a final certificate has been issued.¹⁴⁴

In relation to buildings that had been constructed between 2008 and 2014 where K15 had been specified, NHBC would have issued a final certificate (assuming all other matters were compliant) if K15 had been used in accordance with the BBA certificate including reference having been made by the builder to Kingspan as the manufacturer.

Once the final certificate had been issued, NHBC would have no power to contact the builder and require or request that the cladding used be checked. The responsibility to ensure compliance with the Building Regulations rests at all times with the builder;

- (2) There remained in any event a practical problem. Even if NHBC had wished to conduct a review of all historic projects, there is no central searchable record of each of the thousands of projects NHBC has acted upon either by building height or by which material has been used (the number of such products that could be specified is practically without limit). The reality is that NHBC would have had to make inquiries in relation to every project in the date range (subject to setting rough parameters over,

¹⁴⁴ John Lewis 224/159/11 – 224/160/16

for example, number of floors) in order to manually check the thousands of files and see what material had been specified. Such a process is impractical.

Even if it were possible to draw up a list of each and every building which had specified K15, NHBC BCS as an AI does not act as a clerk of works. Whilst an AI would undertake inspections at various stages, no AI is on site regularly enough to guarantee that the specified product has been used or that a different combustible or non-combustible product has not been swapped out during the construction of the building. It is the responsibility of the builder or developer to maintain records of the products used and ensure compliance with the Building Regulations.

- (3) The above must take into account what has happened since 2017. The reality is that BCBs and warranty providers are not best placed to detect and or raise potential problems with cladding on sites where they have previously acted.

There has been extensive publicity about K15 and combustible cladding generally since the tragic fire at Grenfell. This has led to homeowners, mortgage providers and insurance companies making inquiries with builders and warranty providers in order to establish whether the cladding that has been used was compliant. Frequently claims are made to cover the cost of replacing that cladding where there was non-compliance with the Building Regulations.

To this end, NHBC has (notwithstanding the difficulty summarised at (2) above) conducted a further review of projects over 18 metres including completed projects.

This was known as the Section 4 Exposure Review (a reference to the relevant section of the warranty policy document). NHBC contacted all of its builders in order to determine if they intended to deal with cladding issues (in which case NHBC would not need to consider these as part of its exposure for any claims).¹⁴⁵ This related to projects where NHBC had provided both building control and warranty cover.¹⁴⁶

- (4) The above must also be read against the background of central and local Government having conducted its own review into properties which might have combustible cladding. As the panel is aware after the Grenfell Fire, a letter was sent to all local

¹⁴⁵ Steve Evans 221/210/21 - 221/211/9

¹⁴⁶ Steve Evans 221/211/10 - 221/211/20

authorities asking them to assess all buildings over 18 metres within their region and noting the potential risk of ACM cladding.

H. CONCLUDING REMARKS

145. NHBC reiterates its commitment to assisting the Inquiry to ensure that what occurred at Grenfell Tower never happens again.

146. At all times, NHBC acted with its core purpose in mind to improve standards in house-building. At no time did it act with any intention to increase profits and nor has it retrospectively created explanations to seek to justify why it acted in the way that it did.

147. Improving standards in the UK house-building industry was and will always be part of NHBC's core purpose. NHBC is keen to learn any lessons it can and to play its full part in ensuring an improved fire safety system in the UK house-building industry for the future.

Matthew Butt Q.C.

6 June 2022

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