

GRENFELL TOWER INQUIRY
PHASE 2 MODULES 1 AND 2 CLOSING STATEMENT
ON BEHALF OF THE ROYAL BOROUGH OF KENSINGTON & CHELSEA

Introduction

1. The Council has adopted the Charter for Families Bereaved through Public Tragedy and made formal public commitments to candour in its approach to the Grenfell Tower Inquiry. The Council has reflected on the evidence heard by the Inquiry in Modules 1 and 2 in accordance with the commitments to candour that it has made.
2. This Closing Statement sets out the Council's considered position on the following topics.
 - The challenges facing an organisation embarking on a project to overclad a high-rise building
 - The Grenfell Tower refurbishment project – cost related issues
 - Building Control
3. The Council's monitoring of the TMO's performance, including the TMO's performance as 'Client' during the Grenfell Tower refurbishment project, will be addressed in its Module 3 Closing Statement. Failings in the Council's systems for monitoring the TMO will therefore be addressed in that Closing Statement rather than in this one.
4. In its Module 1 Opening Statement, the Council set out a number of failings that it had identified in the way the Council's building control service ("Building Control") processed and considered the application for building control approval during the refurbishment of Grenfell Tower. The Council considers that those "*unqualified admissions*"¹ were rightly made and it stands by them. The Council apologises unreservedly for its failings. The Council is truly sorry for what happened at Grenfell Tower on 14 June 2017.

¹ This is how Counsel to the Inquiry (correctly) described them – Day 1 page 17 lines 17-21

Overcladding a high-rise building – the challenges

5. Grenfell Tower was far from being the first high-rise building to be retrofitted with rainscreen cladding. By May 2012, when the Cabinet approved the TMO’s proposal to refurbish it, a small industry had grown up around the increasingly common practice of overcladding buildings. The principal reason for overcladding buildings such as Grenfell Tower was to improve their thermal performance – a “*laudable*”² aim in tune with an increasing environmental awareness shared by the public and the Government.
6. The Council acknowledges that one of the rationales for refurbishing and overcladding Grenfell Tower was improving the external appearance of the tower.³ But this was only one of a number of factors in the decision, the most significant of which were the desire to improve the heating system and the thermal performance of the tower. The May 2012 report to Cabinet stated that: “*An assessment of estate investment need places Grenfell Tower energy efficiency, external fabric, heating system and windows as the top priorities.*”⁴ The evidence indicates that the heating system was a known problem. For example, at a meeting with residents regarding KALC in July 2011, Cllr Judith Blakeman: “*Raised the issue of the heating in Grenfell Tower and available resources for the estate as a result of the development*”.⁵ Further, the Council was “*looking at opportunities in order to reduce heat loss from buildings and take advantage of community heating systems where possible*”.⁶ In Hyett’s opinion: “*Of the options available in terms of upgrading the thermal performance of the building, the decision to apply thermal insulation to the outside of the existing external concrete walls was a good one.*”⁷ Thermal insulation applied to the outside of the tower would need to be overclad to protect it from rain.
7. One would hope, and in our submission it would be reasonable to expect, that an organisation wishing to join the list of those seeking to overclad a high-rise building

² Hyett report {PHYR0000002/55} para 2.8.19

³ {RBK00015869/4} and Laura Johnson Day 128 page 67 line 17 to page 68 line 4

⁴ {RBK00000380/8}

⁵ {RBK00030102/3}

⁶ Laura Johnson Day 128 page 54 lines 15-20

⁷ Hyett report {PHYR0000002/52} para 2.8.3

would be entering a market that was sufficiently well regulated to ensure that there was minimal risk of unsafe products being proposed for use on its building.

8. One would further hope, and in our submission it would again be reasonable to expect, that such an organisation could eliminate that residual risk by the combination of engaging an award winning architect,⁸ a reputable Design and Build contractor and a “*top tier*”⁹ fire safety engineering firm.

9. The hard truth, which was starkly illustrated by the evidence heard in Modules 1 and 2, is that the overcladding market was dysfunctional and poorly regulated.¹⁰ A building owner entering it was entering a world full of potential snares and pitfalls. Some of these were present through the deliberate actions of leading industry players. Others existed because the relationship between manufacturers and those involved in testing and certifying their products lacked the open, collaborative character that could, and should, have been present. Many examples could be cited from the evidence heard in Module 2 but the following are sufficient to prove the point.
 - A European classification report for Reynobond PE dated 31 January 2014 classified the product with an overall classification of Class E whether used in a rivetted system or a cassette system.¹¹ This report was circulated internally within Arconic with the comment: “*The previous ‘B’ class report done for Reynobond PE in riveted system can no more be used from now. Indeed, this new report cancel (sic) all the previous reports.*”¹² The BBA were never sent the European classification report or told that all previous reports had been cancelled.

 - On 9 March 2015, Arconic provided a potential UK customer with European classification reports stating that its Reynobond ACM product was Class B

⁸ Andrzej Kuszell WS {SEA00014271/5} para 18 lists awards won by Studio E

⁹ Lane, Module 3 report, {BLARP20000003/41-42} at para 4.3.22. Hyett described Exova as “an expert organisation” Day 65 page 53 line 12

¹⁰ Sakula was not aware from his own experience or from his involvement in the industry of any situation in which ACM panels with a PE core were rejected because they were thought not to comply with Building Regulation B4 – Day 125 page 208 lines 12-17

¹¹ {MET00053173/82}

¹² {MET00053173/81}

when used with an FR core, Class C when used with a PE core in a rivet system and Class E when used with a PE core in a cassette system.¹³ Arconic never shared this information with CEP (the fabricator who received the PE55 panels from Reynobond and shaped them for Grenfell Tower before supplying them to Harley) or any other organisation involved in the project¹⁴ although it had previously been informed by email that the Grenfell Tower refurbishment project was to proceed using Reynobond with cassette fixings.¹⁵

- Celotex’s first attempt at subjecting a cladding system incorporating Celotex RS5000 to a BS 8414-2 test was unsuccessful.¹⁶ Celotex’s response to this setback was to change other parts of the system for the next test. As Celotex acknowledged internally, this meant that the cladding system tested was not representative of what was commonly specified¹⁷ but the result was that the amended system passed the test.¹⁸ Celotex did not share with others the fact of the initial unsuccessful test.
- NHBC raised concerns with Celotex about the successful BS 8414-2 test. NHBC was concerned that the *“test installation was not sufficiently representative of typical rainscreen designs normally found on high-rise residential buildings.”*¹⁹ These concerns were repeated at a meeting on 19 May 2015.²⁰ Notwithstanding these concerns, in July 2016, NHBC issued updated Guidance stating that it would accept as compliant, without further specific assessment, systems incorporating Celotex RS5000 or Kingspan K15 used in conjunction with ACM panels (which were Class 0 and Euroclass B) and other materials as set out in the Guidance.²¹ The NHBC only withdrew this Guidance after the Grenfell Tower fire.²²

¹³ {MET00053173/135}

¹⁴ Deborah French of Arconic met Studio E in connection with the project and also had email communication with Studio E and Harley.

¹⁵ {MET00053173/404}

¹⁶ Jonathan Roper WS {CEL00010052/12} para 5.27

¹⁷ {CEL00001273}

¹⁸ {CEL00000374}

¹⁹ {NHB00000784}

²⁰ Deborah Berger WS {CEL00010055/61} paras 228-235

²¹ {NHB00000065/4}

²² {NHB00000108}

- Kingspan adopted a new production technology for K15 in 2006.²³ This “New Technology” as Kingspan describe it did not pass a BS 8414 test until June 2019.²⁴ Nevertheless, Kingspan sold the New Technology on the basis of a 2005 BS 8414 test that had been undertaken on what it describes as “Old Technology”.²⁵ The New Technology failed a BS 8414-2 test in December 2007, but Kingspan continued to market it for use over 18m.²⁶ In 2014, Kingspan carried out two further BS 8414-2 tests. The K15 used in these tests was a research and development formulation that was different to the New Technology which was being sold in the UK. The divergence from the standard K15 was not made clear to the BRE who conducted the tests and the test reports did not specify non-standard K15 was used. One of the systems passed and this test was used in the BBA and LABC certificates for K15 despite the tested insulation differing from the product sold to the market.²⁷ Before the fire at Grenfell Tower, Kingspan had no test evidence capable of supporting the use of the New Technology K15 over 18m but marketed and sold it for that use anyway.

10. In the Grenfell Tower refurbishment project, organisations with experience of similar projects, and organisations involved in one for the first time, proved equally incapable of evading the potential snares and pitfalls.

- Rydon and Harley had previously both worked on projects involving the overcladding of high-rise buildings. In particular, they had worked together on the Chalcots Estate in the London Borough of Camden and at Ferrier Point in the London Borough of Newham. Reynobond PE55, supplied by CEP, was used on both of those projects.
- It is not clear whether Exova had previously worked on high-rise overcladding projects but, as a “*top tier*” fire safety engineering firm with extensive experience and an international practice, it should be regarded as having

²³ Kingspan Opening Statement for Module 2 {KIN00023794/15} para 36

²⁴ Kingspan Opening Statement for Module 2 {KIN00023794/17} para 45

²⁵ Kingspan Opening Statement for Module 2 {KIN00023794/17} para 44

²⁶ Kingspan Opening Statement for Module 2 {KIN00023794/18} para 46

²⁷ Kingspan Opening Statement for Module 2 {KIN00023794/20} para 51

corporate knowledge of previous high-profile fires in high-rise buildings overseas.²⁸ We invite the Panel to agree with Dr Lane’s opinion that, by appointing Exova, “it would be entirely reasonable for KCTMO and Artelia, indeed any party, to assume that the Grenfell Tower primary refurbishment project team had access to and could rely on highly competent experts for all aspects of fire safety design and compliance.”²⁹

- Studio E had no previous experience of overcladding high-rise residential buildings.

The Grenfell Tower refurbishment project - cost related issues

11. An issue which has attracted a considerable amount of attention both within and outside the Inquiry is whether cost-cutting on the part of the Council was to blame for the Grenfell Tower fire. For example, BSR Team 2 stated in its Module 3 opening statement:

“The truth was that the building’s safety was not at the centre of TMO/RBKC considerations. Their minds were pre-occupied with profit margins, cost cutting and a race to the bottom. This characterised their thinking and in no small part drove their policies.”³⁰

12. The Council provided the funding for the refurbishment project but its Housing Department was not heavily involved in the detail of the project.³¹ In the circumstances, we have taken the view that it would assist the Inquiry for our submissions on the refurbishment project to focus in particular on cost related issues and that is the approach that we have adopted in this section. In it we address the cost-cutting allegation and set out the Council’s position in response to it. We conclude the section by setting out some findings which we invite the Panel to make in its Final Report.

²⁸ Ashton Day 17 page 74 lines 5-11 and page 76 lines 10-14

²⁹ Lane, Module 3 report, {BLARP20000003/44} at paras 4.3.30-31

³⁰ BSR Team 2 Opening Statement for Module 3 {BSR00000068/49} para 242

³¹ Under the MMA, the TMO was responsible for ‘Major Works’. The TMO was the ‘Client’ for the purposes of the CDM Regulations and the ‘Employer’ for the purposes of the Design and Build contract with Rydon.

13. The Council wishes to make it clear that it considers it entirely right that important and serious allegations of this nature are explored in, and resolved by, the Inquiry. The law is clear that this is one of the fundamental purposes of an investigation that seeks to fulfil the State's obligations under Article 2 ECHR. In R (Amin) v Secretary of State for the Home Department [2003] UKHL 51, Lord Bingham stated:

*“The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”*³²

Public money and value for money

14. Before addressing the specific issues which arise in relation to the Council, the TMO and the Grenfell Tower refurbishment project, we wish to make some background points that apply to all public sector organisations and, in particular, to local authorities.
15. Public sector organisations are funded by the public. The money that they have is public money and should be managed and spent in the awareness that it is the public's money. When asked why he had queried an increase in the budget for the refurbishment, Rock Feilding-Mellen said: *“I think it would have been remiss of me not to ask why it was going to go to cabinet asking for an increase of over 50%. It's public money.”*³³ It is because it is the public's money that, as a matter of principle, it should be managed and spent prudently. It should also be seen to be managed and spent prudently. Philip Booth of Artelia commented that particularly with public sector funding *“value for money is exceptionally important, and being able to demonstrate and audit that”*.³⁴
16. Where a public sector organisation purchases goods or services it is, as a general principle, expected to seek to achieve 'value for money'. This phrase, properly

³² See paragraph 31. The case involved a death in custody.

³³ Feilding-Mellen Day 131 page 154 lines 7-10

³⁴ Booth Day 50 page 12 line 25 to page 13 line 2

understood, is not a synonym for ‘cheapest’. This is because the concept of value for money requires consideration not only of cost but also of quality. The National Audit Office states that: “*Good value for money is the optimal use of resources to achieve the intended outcomes. ‘Optimal’ means ‘the most desirable possible given expressed or implied restrictions or constraints’.* Value for money is not about achieving the lowest initial price.”³⁵

17. In relation to the building control service which every local authority is required by law to provide, there was an additional national requirement, imposed by central government on all local authorities, that the service be ‘cost neutral’ (see paragraph 148 below).

The financial environment within RBKC and the TMO

18. It is a matter of record that the neighbourhoods of Kensington and Chelsea are home to many affluent residents and that property values in Kensington and Chelsea are much higher than the national average. In these respects, it is legitimate to describe the Royal Borough of Kensington and Chelsea as one of the wealthiest boroughs in the UK. But that does not, and did not, mean that the concepts of ‘public money’ and ‘value for money’ do not apply to its Council.
19. The TMO was an independent organisation separate from the Council. It was not, strictly speaking, a public sector organisation but it was a not for profit organisation which derived all of its funding from the Council. The principles of ‘public money’ and ‘value for money’ therefore applied equally to it.³⁶

The Council’s willingness to spend money on safety

20. The Panel is invited to accept the following clear evidence that the Cabinet would have authorised an increase to the budget for the Grenfell Tower refurbishment project had it been advised that it was necessary to do so in order to ensure the safety of residents.

³⁵ {RBK00064250}

³⁶ See Laura Johnson WS {RBK00034943/15} para 61

21. Feilding-Mellen states:

“The safety of residents was always of the utmost concern to the Council. There was never any suggestion that the Cabinet was being asked to make a decision that could put their safety at risk. The Cabinet approved all requests for increases to the budget, and we would have been even more willing to increase the budget had we been told it was necessary to ensure residents’ safety. While I was on the Cabinet, we were never advised that there might be any conflict between budget constraints and the fire safety of the tower resulting from its refurbishment. Safety was always a priority, and had savings to the budget been required, we were told they could have been found elsewhere on the specification, for example by reducing the number of Hidden Homes.”³⁷

“The Cabinet did not become involved in attempts at ‘value engineering’ as the project progressed. To my knowledge, there was never any suggestion that the safety of the building would be undermined in order to save money. This was not RBKC’s way. We had committed to spend a lot of the HRA’s money on this project and we expected the job to be done well without corners being cut.”³⁸

22. Laura Johnson states:

“I do not recall there ever being any conversations with the Cabinet Member where it was stated or insinuated that there would not be additional resources/money for the refurbishment if it was required. I was of the view that if more funds were required, we would have made a recommendation to Cabinet for more funds, and they would have been made available.”³⁹

23. In fact, the issue never arose because the Cabinet members were never advised that additional expenditure was necessary for safety reasons. As Feilding-Mellen says: *“At no point was I or the wider Cabinet warned that the safety of the tower might be put at*

³⁷ Rock Feilding-Mellen WS {RBK00033403/16} para 58

³⁸ Rock Feilding-Mellen WS {MET00078098/5}

³⁹ Laura Johnson WS {RBK00034943/21} para 84

*risk if the increase in budget was not approved.*⁴⁰ In oral evidence, when asked whether there might have been room for a further increase in the budget from £10.3m, Feilding-Mellen replied: *“I’m very confident that, had a sound case been made for another increase, cabinet would have approved one.”*⁴¹ Timothy Coleridge states: *“the borough was very supportive of the project and if justifiable additional costs had been requested and presented I am sure they would have met with a receptive cabinet.”*⁴²

24. The Council could and would have found the money to increase the budget if advised that doing so was necessary to ensure the safety of residents.

The Grenfell Tower refurbishment project – the TMO’s role and resources

25. The Council’s Procurement Framework Contract Regulations stated: *“Contracts let by the TMO will not normally be key decisions. Under the terms of a statutory delegation by the Council under Section 27 of the Housing Act 1985 (as amended) the procurement decisions affecting these contracts are the sole responsibility of the TMO.”*⁴³
26. It was well understood within the Council that the TMO had authority to choose and appoint contractors and to manage capital works projects.
27. Feilding-Mellen stated that *“the TMO was responsible for specifying, procuring and implementing the Grenfell Tower refurbishment project”*⁴⁴ and *“Councillors understood that the Grenfell Tower refurbishment project was being managed by the TMO and not by the Council itself.”*⁴⁵
28. In her witness statement, Laura Johnson stated:

*“The TMO procured, contracted and performance managed contractors directly for the services they provided to tenants, for example day to day repairs, planned maintenance and major works programmes.”*⁴⁶

⁴⁰ Rock Feilding-Mellen WS {RBK00033403/14} para 50

⁴¹ Feilding-Mellen Day 131 page 163 lines 1-2

⁴² Coleridge WS dated 3.6.21 para 49

⁴³ {RBK00013286/6}

⁴⁴ Feilding-Mellen WS {RBK00033403/12} para 43

⁴⁵ Feilding-Mellen WS {RBK00033403/8} para 31

⁴⁶ Laura Johnson WS {RBK00034943/5} para 24

“The Cabinet approved the recommendation for the Grenfell Tower refurbishment project, with a budget of £6 million. This decision released the funding needed by the TMO to take the project forward. Thereafter, the TMO proceeded to manage the project including tendering, appointment/management of contractors, resident liaison, budget management and the project specification.”⁴⁷

29. This point was also covered in her oral evidence:

“Is it right that, as a delegated project run by the TMO, there was no SRO for the Grenfell Tower refurbishment?”

A. That’s correct.

Q. Yes. As such, do you agree that you, in any capacity, had no decision-making power in respect of the Grenfell Tower project?”

A. That’s correct.

Q. How would you describe RBKC’s role in respect of the Grenfell Tower project?”

A. RBKC were the holders of the housing revenue account, the HRA, and as such we were the funders of the project, and we regularly liaised with the TMO on a number of matters across housing management, housing maintenance, housing repairs, so we had oversight in terms of how the Grenfell Tower project was being undertaken.”⁴⁸

30. The Council provided the TMO with the funding for the refurbishment project. The TMO used its employees to perform its role as Client for the project. The Report to Cabinet by the Director of Housing on 19 June 2014 stated:

“KCTMO has confirmed that it has the staffing resources within their establishment to carry out this work.”⁴⁹

⁴⁷ Laura Johnson WS {RBK00034943/14} para 57

⁴⁸ Laura Johnson Day 128 page 8 line 22 to page 9 line 12

⁴⁹ {RBK00000409/7} para 6.1

Significant decisions in relation to the Grenfell Tower refurbishment project

31. In this section, we analyse the following decisions made, and matters which occurred, during the refurbishment project.
- (1) The decision in principle to use ACM cladding material rather than another cladding material e.g. zinc
 - (2) The decision to select Reynobond PE rather than Reynobond FR
 - (3) The decision to select cassette fixing rather than rivet fixing
 - (4) The design of the Crown
 - (5) The choice of insulation material
 - (6) The choice of cavity barrier strategy
 - (7) The decision not to proceed with Leadbitter
 - (8) The choice of Rydon as principal contractor
 - (9) The setting of the budget
 - (10) The choices made in relation to the scope of the works
 - (11) The choice of Studio E as architect
 - (12) The fact that no façade engineer was engaged
 - (13) The decision not to accept Artelia's CDA proposal
 - (14) The decision to use RBKC Building Control rather than an Approved Inspector
 - (15) The extent to which Exova's services were used
32. As can be seen, they relate not only to the choice of materials used but also to the choices made in respect of contractors / professional advisers / building control service and aspects of the design itself. In drawing up this list, we have sought to identify not only matters which clearly were of causative significance but also matters which in our view were not of causative significance but where we recognise that others might wish to argue the contrary.
33. Before addressing this list item by item, the Council wishes to acknowledge that an analysis of the contemporaneous documents indicates that the officers of the TMO and the Council who had an involvement in the refurbishment project devoted a significant amount of time to thinking about cost related issues. In our submission, there are a number of reasons why those officers operated in the way that they did. First, all of those involved from the Council, and most of those involved from the TMO, did not

have any relevant technical background or expertise. As a result, it is unsurprising that they were less inclined to involve themselves in technical issues. Secondly, all of them assumed, understandably but wrongly, that products would not be selected unless it was safe to use them on the building. Thirdly, all of them were conscious that a large, and apparently reputable, team of paid professional advisers and contractors had been assembled to provide the necessary technical expertise including design and fire safety expertise. Fourthly, ensuring that the project represented value for money and monitoring the budget were legitimate activities which more naturally fell within their roles and previous experience. Fifthly, value engineering exercises tend to be time consuming – Chweecheen Lim’s experience was that value engineering “*frequently involves a lot of time and effort; in this respect, the Project was no different from any other project.*”⁵⁰

34. We consider that Lim’s witness statements⁵¹ provide a very detailed and helpful assessment of the approach taken to cost related issues in the Grenfell Tower refurbishment project and in the construction industry more generally. The Panel is invited to accept her evidence on these issues.

The decision in principle to use ACM cladding material

35. It is right to acknowledge that the choice of ACM cladding material rather than another cladding material, such as zinc, was intended to save money. This decision was taken by the TMO not the Council.⁵² At no stage did any of the TMO’s professional advisers or contractors suggest that the use of ACM carried any fire safety risk and/or might not comply with the Building Regulations or ADB.

36. We invite the Panel to agree with Lim’s opinion on the TMO’s motivation:

“I did not think that it was the TMO’s aim to find the ‘cheapest’ cladding. I thought that the TMO wanted to find a cladding option that was cheaper but would still meet the specification.”⁵³

⁵⁰ Lim WS {ART00005817/4} para 11

⁵¹ {ART00005817} and {ART00009428}

⁵² Maddison Day 57 page 30 line 22 to page 31 line 3 and page 31 line 21 to page 32 line 5

⁵³ Lim WS {ART00009428/28} para 90

37. An initial point of detail that needs to be made is that, whilst it would be correct to say that a cladding system with zinc panels was at one time proposed, it would not be correct to say that a decision to install such a system was ever taken. Conditional planning permission was granted by RBKC Planning on 10 January 2014.⁵⁴ The effect of Condition 3 was that the decision on the question of the materials to be used on the external façade of the cladding system was left open for future consideration.
38. By the time of the meeting with Planning on 8 May 2014,⁵⁵ the decision in principle to use ACM cladding had already been made, subject to planning approval being granted.⁵⁶ This is illustrated by the fact that the 5 sample panels shown to Planning at the meeting were all ACM panels.⁵⁷ The discussions in which Feilding-Mellen was involved in July 2014 related solely to the colour of the cladding and the method of fixing because these were the only matters left to be decided at that time. The aim of his intervention, as illustrated by his email comment “*what matters is to get cracking*”⁵⁸ was to try and unblock the delay which had arisen as a result of comments Planning had made about the proposed colour and fixing method.⁵⁹
39. The possibility of using ACM cladding material had been mentioned by Leadbitter before March 2013.⁶⁰ In due course, each of the following organisations had some involvement in encouraging the TMO to choose ACM cladding: Studio E, CEP, Harley and Rydon. From February / March 2013, Geof Blades (CEP) was trying to get Reynobond PE ACM panels onto Grenfell Tower.⁶¹ Following direct communication between Studio E and Arconic⁶², on 17 April 2013 Studio E sent its client (the TMO) details of cladding options which included 5 different ACM panels.⁶³ Harley made no

⁵⁴ {ART00001999}

⁵⁵ The meeting with Planning was attended by representatives from Studio E, Artelia, Rydon, IBI Taylor Young and the TMO.

⁵⁶ {TMO00833991} {RYD00004142} Blake Day 29 page 39 line 22 to page 40 line 15; Lawrence Day 24 page 31 line 24 to page 32 line 6

⁵⁷ They were in 5 different colours. The purpose of showing the panels to Planning was to enable Planning to express a view on visual appearance which is a planning consideration.

⁵⁸ {RBK00003508/1}

⁵⁹ Feilding-Mellen WS {RBK00033403/16} paras 60 and 61; Feilding-Mellen Day 131 page 179 line 19 to page 183 line 23, Day 131 page 187 lines 10-16, Day 132 page 14 lines 3-15

⁶⁰ {SEA00007298}

⁶¹ Blades, Day 41 page 117 line 20 to page 118 line 2

⁶² {SEA00007527}

⁶³ {SEA00007563}

secret of the fact that they had a preference for ACM which they described as “*tried and tested*”.⁶⁴ On 30 January 2014, Studio E issued the final version of the NBS Specification, which was issued as part of the Employer’s Requirements.⁶⁵ The Specification expressly requested that those submitting tenders provide prices for specified alternatives to a cladding system with zinc panels. One of those specified alternatives was a cladding system with ACM panels.

40. Studio E, Artelia and Rydon all identified the use of ACM cladding material as a potential cost saving to the TMO. None of them advised the TMO that the use of ACM carried any fire safety risk and/or might not comply with the Building Regulations or ADB.
41. Rydon’s motivation for favouring the use of ACM cladding material was not merely to save the TMO money. Rydon was also hoping to increase its profit margin because it was planning not to pass on to the TMO the full cost saving that it would achieve in the event that ACM was chosen.⁶⁶
42. The decision to select a cladding system comprising ACM panels was taken by the TMO, which had responsibility for Major Works under the MMA.
43. In summary, (i) the project never reached the stage where zinc cladding had been ‘chosen’ (ii) a number of organisations suggested to the TMO that ACM cladding material be used (iii) those organisations made the point to the TMO that using ACM would save money (iv) at least one of those organisations had ulterior motives for wanting the TMO to choose ACM (v) the formal decision to select a cladding system comprising ACM panels was taken by the TMO (vi) at no stage did any of the TMO’s professional advisers or contractors suggest that using ACM carried any fire safety risk and/or might not comply with the Building Regulations or ADB.

The decision to select Reynobond PE rather than Reynobond FR

44. Any attempt to suggest that the TMO selected Reynobond PE rather than Reynobond FR on the grounds of cost would be wholly wrong. This is because the TMO were never

⁶⁴ {SEA00009736}

⁶⁵ {SEA00000169/64}

⁶⁶ Compare {RYD00003316} and {RYD00003491}

informed that Reynobond was available in an FR core as well as a PE core. As a result, the TMO was never put in the position where it had the opportunity to choose Reynobond FR.

45. Arconic manufactured and sold Reynobond in an FR core and a PE core. For reasons known only to it, it appears to have decided that the UK was a 'PE market'. Peter Froehlich states: "*At the time of Grenfell Tower project, based on my experience and my market knowledge, I thought Great Britain in general was a 'PE market', in which most projects required PE.*"⁶⁷ As a result, Arconic took no steps actively to market the FR core in the UK or to draw the UK market's attention to the obvious potential benefit that it offered – a core with better fire performance.⁶⁸
46. All the evidence suggests that Reynobond PE was the default option supplied by Arconic to customers in the UK market. Blades said that customers never asked for the FR core. He did not tell potential customers about it and, unless they specifically asked for it, would supply them with the PE core as the default option.⁶⁹
47. The difference in cost between the PE core and the FR core appears to have been modest (approximately €2 per m²).⁷⁰ In the event, the TMO was never given the opportunity to make an informed choice between the two cores; it was never even told that there was a choice to be made.

The decision to select cassette fixing rather than rivet fixing

48. The decision to select cassette fixing was made after Planning had stated that it would not accept rivet fixing and required concealed or cassette fixing to be used.⁷¹ Rivet fixings were considered unacceptable by Planning because of the perceived effect on the smooth surface of the panels and evidence of weathering badly that was apparent on viewing an earlier Rydon installation at Chalk Farm.⁷² Cassette fixing cost

⁶⁷ Peter Froehlich WS {MET00053115/11} para 34

⁶⁸ Deborah French Day 87 page 68 line 16 to page 69 line 7 and page 104 lines 10-18; Ray Bailey Day 32 page 176 line 16 to page 178 line 15

⁶⁹ Geof Blades Day 41 page 39 lines 18-25, page 131 lines 5-12, page 156 line 20 to page 157 line 14 and page 159 line 20

⁷⁰ Claude Schmidt WS {MET00053187/13} para 37

⁷¹ {RBK00003442/2}

⁷² {SEA00011344} and {SEA00011373}

approximately £80,000 more than rivet fixing and the decision was therefore clearly not cost related.

The design of the Crown

49. The Crown was an architectural feature. The design of it was the responsibility of the architect, Studio E. There is no evidence that cost considerations influenced its design.

The choice of insulation material

50. The use of Celotex FR5000 was first suggested by Andrew McQuatt in August 2012.⁷³ His focus at the time was on finding a material with a suitable U value.⁷⁴ Cost played no part in his suggestion that Celotex FR5000 would be suitable.
51. On 30 January 2014, Studio E specified Celotex FR5000 in the final version of the NBS Specification, which was issued as part of the Employer's Requirements.⁷⁵ Studio E appear to have done so based on McQuatt's suggestion.⁷⁶ Studio E never properly considered the fire performance of Celotex FR5000 or whether its use over 18m would be compliant with the Building Regulations or ADB.⁷⁷
52. Subsequently, Celotex RS5000 was selected in place of Celotex FR5000. The selection of Celotex RS5000 was made by Harley. The catalysts for Harley making this selection were (i) the fact that Celotex FR5000 had been specified in the NBS specification (ii) Harley's long-standing relationship with Celotex and (iii) Harley's belief that Celotex RS5000 was an equivalent product to Kingspan K15 and was suitable for use over 18m.⁷⁸ There is no evidence that cost played any part in Harley's decision to select Celotex RS5000 in place of Celotex FR5000. The chemical composition of the two products was in any event identical.

⁷³ {SEA00005840}

⁷⁴ McQuatt Day 42 page 81 line 15 to page 83 line 17 and page 84 line 19 to page 87 line 2. The u-value is the thermal resistance of a building element where the lower the value, the better the thermal efficiency.

⁷⁵ {SEA00000169/73}

⁷⁶ Sounes Day 12 page 181 lines 12 - 23

⁷⁷ Sounes Day 20 page 42 line 6 to page 43 line 6 and Day 20 page 71 line 20 to page 72 line 4. Sounes and Ray Bailey have different recollections about whether Sounes asked Ray Bailey a question about the acceptability of using rigid foam insulation on a high-rise building at the Hay's Galleria meeting on 27.9.13 but, even if he did, that would not constitute giving the matter proper consideration.

⁷⁸ Ben Bailey Day 39 page 108 lines 8-19

53. A comparatively small amount of Kingspan K15 was delivered to site as a replacement for Celotex RS5000.⁷⁹ This seems to have occurred because Harley had a short-term problem with sourcing the necessary supply of Celotex RS5000.⁸⁰ Harley appear to have believed that Kingspan K15 and Celotex RS5000 were interchangeable products.⁸¹ This had also been McQuatt's view.⁸²
54. Neither the TMO nor the Council were ever informed that Celotex RS5000 had been substituted for Celotex FR5000 or that Kingspan K15 had been used. There was no discussion of the insulation material during the value engineering exercise. In summary, cost considerations played no part in the choice of insulation material.

The choice of cavity barrier strategy

55. There was no discussion of the cavity barrier strategy during the value engineering exercise which took place in 2014.
56. In March and April 2015, Rydon, Studio E and Harley were involved in discussions about the cavity barrier strategy and in particular whether 30 minutes or 120 minutes fire integrity was required. The communications between those parties included discussion of whether 120 minutes fire integrity was required for compliance with Approved Document B and the delay and additional costs which would result from ordering cavity barriers with 120 minutes fire integrity.⁸³ The Council's building control service was brought into the discussions on whether 30 minutes or 120 minutes fire integrity was required in order to achieve compliance but there is no evidence that its views on the issue were influenced by cost considerations. The TMO was not involved in these discussions.

The decision not to proceed with Leadbitter

57. The TMO's decision to re-procure was formally communicated to Artelia on 12 July 2013. The letter from David Gibson stated: "*I confirm the TMO's decision based on*

⁷⁹ K15 accounted for less than 7% of the total thermal insulation used on spandrel sections of the building – see Luke Bisby, Phase 1 Final Expert Report {LBYS0000001/84} para 346

⁸⁰ {SIG00000013}

⁸¹ Ray Bailey WS {HAR00010184/29} para 114 and Ben Bailey, Day 39, page 108 line 8 to page 109 line 20

⁸² McQuatt Day 42 page 64 lines 1-2

⁸³ {SEA00013022}

*Appleyards recommendations is to procure a lead contractor via an OJEU procurement route and competitive tender”.*⁸⁴

58. The TMO’s decision was not taken hastily or lightly. The advantages and disadvantages of continuing with Leadbitter or re-procuring had been under consideration for approximately 6 months by July 2013. The Council acknowledges that it was aware of the TMO’s decision in advance of it being made and that it supported it.
59. In the early part of 2013, both the TMO and Artelia on its behalf experienced real difficulties in negotiating with Leadbitter over costs and developed real doubts about whether Leadbitter was a suitable organisation to undertake the Grenfell Tower refurbishment.
60. Anderson told the Inquiry that Leadbitter’s tone when pressed for information *“became quite defensive, almost adversarial”*.⁸⁵ The belief that Leadbitter was being uncooperative and was overcharging is not something that has developed after the event. It existed and was recorded at the time. Alun Dawson (Artelia) said in an email to Anderson: *“I was of course disappointed to note yet another last minute cancellation from Colin [Chiles of Leadbitter] last week ... so this would prove to be his 3rd last minute cancellation in as many weeks”*.⁸⁶ The minutes of the TMO Programme Board on 25 March 2013 bluntly stated: *“It needs to be thoroughly explained that Leadbitters are trying to overcharge”*.⁸⁷ The minutes also stated: *“The recommendation from Peter is for us to re-procure. We will wait till next weeks deadline for Leadbitters to come back with breakdown and reason for gaps in costs. If the information is not forthcoming or we still cannot reach an agreement that we should proceed by using an existing framework”*.⁸⁸
61. The concerns about Leadbitter were not only about its proposed costs. Gibson’s evidence was that Leadbitter *“didn’t seem engaged in the project, didn’t seem to want the project”*.⁸⁹ Peter Maddison spoke of *“a lack of urgency and a lack of commitment*

⁸⁴ {ART00008799}

⁸⁵ Anderson Day 52 page 155 lines 15-17

⁸⁶ {TMO00848811}

⁸⁷ {TMO10038883/2}

⁸⁸ {TMO10038883/2}

⁸⁹ Gibson Day 53 page 94 lines 3-4

to the project”; he was also concerned about Leadbitter’s lack of experience of projects of this nature and of working on sites with residents in occupation.⁹⁰ It is of note that two of the Leadbitter employees who were involved in the potential Grenfell project left Leadbitter’s employment in May 2013, presumably after working out their periods of notice.⁹¹

62. As the Artelia quantity surveyor working on the project, Lim was ideally placed to form a view on Leadbitter’s approach to the negotiations. Lim’s witness statement states⁹²:

“My impression of Leadbitter was that, because they had been procured through the IESE two stage process, they thought that they were certain to get the work and saw no reason to provide transparent competitive prices. I believed that Leadbitter were trying to maximise their profits, and when I tried, as any QS would, to engage with them to provide back up to their figures or to explain how they had arrived at a particular rate, they were slow and sometimes difficult in providing that information to me. This caused me to be suspicious. I was aware that Leadbitter might be taking a cautious approach and including contingency in their rates to account for the fact that the scheme was fluid and changing. Nonetheless, I was still suspicious of them because they failed to provide any proper breakdowns or quotations despite my requests for this information, and this is information I would have expected them to provide.”

63. Laura Johnson had experienced difficulties with Leadbitter in her role as Senior Responsible Officer on the KALC project where there were significant problems in agreeing a financial close figure.⁹³ This had resulted in her writing to Cliff Thomas at Leadbitter on 3 January 2013: *“RBKC will now no longer be recommending the TMO proceed with you ... and will advise to re-tender the works to a list of contractors not including Leadbitter.”*⁹⁴ It was clear from Laura Johnson’s oral evidence that her email to Leadbitter was a *“negotiating ploy”* or *“negotiating stance”* aimed at progressing negotiations with Leadbitter over the KALC project.⁹⁵ Her evidence was that: *“Beyond*

⁹⁰ Maddison Day 58 page 37 line 17 to page 39 line 1

⁹¹ Colin Chiles WS {LBI00003936/2} para 6; Mohit Kotecha WS {LBI00003938/7} para 21

⁹² {ART00009428/12} paras 30 and 31

⁹³ Laura Johnson WS {RBK00034943/17} para 68

⁹⁴ {RBK00001093}

⁹⁵ Laura Johnson Day 128 page 118 line 23 to page 119 line 15, Day 128 page 125 line 23 to page 127 line 1

the email I wrote to Leadbitter in January 2013 ... I was not involved in any further discussions with Leadbitter about bringing the scheme within budget.”⁹⁶ Laura Johnson did not share her email to Thomas with Maddison⁹⁷ but she did tell him about the difficulties she had experienced with Leadbitter on the KALC project.⁹⁸

64. The clear evidence of both Maddison and Laura Johnson was that the decision to re-procure was taken by the TMO and was not instructed by Laura Johnson.

65. In her witness statements, Laura Johnson stated:

*“It made sense originally to achieve economies of scale for the same contractor to share the worksite with KALC. However, the TMO concluded it was not going to be possible and that the best option would be to go to tender.”*⁹⁹

*“The TMO advised us that conversations with Leadbitter were not providing the correct level of comfort. We agreed with them that the better course of action would be to go out to tender. I took the advice of the TMO as they felt that that was the best option to deliver the project.”*¹⁰⁰

66. Laura Johnson’s oral evidence on this issue was as follows:

“Q. Did you recommend to him that the project be re-procured?”

A. No.

Q. Did Peter Maddison seek to persuade you that the project should be re-procured?”

*A. I don’t think he sought to persuade me, I don’t think I required persuading, I think he was advising me as a professional that this was in his opinion what needed to take place.”*¹⁰¹

⁹⁶ Laura Johnson WS {RBK00054420/3} para 12

⁹⁷ Laura Johnson Day 128 page 121 line 22 to page 122 line 9

⁹⁸ Laura Johnson Day 128 page 121 lines 17-20

⁹⁹ Laura Johnson WS {RBK00054420/4} para 12

¹⁰⁰ Laura Johnson WS {RBK00054420/5} para 16

¹⁰¹ Laura Johnson Day 128 page 140 line 25 to page 141 line 8

“Is the reality that it was you who was the person who was going to make the ultimate decision on whether the project would be re-procured or not?”

A. No.

Q. And that your reaction to whatever proposal they came back with would be dominant in that process?”

A. No.

Q. Or extremely influential in that process?”

A. It would possibly be influential, but it wouldn't be dominant and I would not direct it.”¹⁰²

“Q. Did you overrule Peter Maddison on the issue of re-procurement?”

A. No.

Q. Did you tell Peter Maddison that value for money was more important than preserving the programme of works?”

A. No.”¹⁰³

67. Maddison's oral evidence confirmed that at no time did Laura Johnson instruct the TMO not to proceed with Leadbitter.

“Q. Did you get the impression from your discussion with Laura Johnson that she was very firmly of the view that there should be a re-procurement of the Grenfell Tower project?”

A. I think she was very clear that it was ultimately my decision, but she gave me some information that I would use in forming that decision.

Q. Did you have any reason to think that she was in any doubt about whether there should be re-procurement? I mean, were you clear in your mind that that's what she wanted?”

A. No, I think she was just giving me the benefit of her experience of negotiating with Leadbitter.”¹⁰⁴

¹⁰² Laura Johnson Day 128 page 143 lines 8-17

¹⁰³ Laura Johnson Day 128 page 146 lines 19-24

¹⁰⁴ Maddison Day 58 page 75 lines 8-20

68. It is right to observe that, notwithstanding the well documented difficulties in negotiating with Leadbitter, it was not until May 2013 that Artelia changed its position and formally advised that the refurbishment project should be re-procured.¹⁰⁵ The reason why Artelia changed its position is that it was informed by the TMO that ‘value for money’ rather than ‘programme’ had become the “*main project driver*” for the TMO. Properly understood, there was nothing sinister or inappropriate in the TMO’s change of priorities. There had been a time when completing the work in conjunction with the KALC project (i.e. programme) had been the highest priority. It is likely that in practice this approach would have involved paying more in order to get the work completed quicker. Once value for money replaced programme as the highest priority, logic dictated that there be a competitive procurement exercise. This is because such a process is likely to be the best way of achieving value for money and is certainly the best way of demonstrating value for money.¹⁰⁶
69. As explained above, value for money is not a synonym for ‘cheapest’ - the concept of value for money requires consideration not only of cost but also of quality.
70. The Panel is invited to adopt Lim’s analysis:

“As the TMO’s key project driver had changed from programme to achieving value for money, I believe that it was a reasonable decision by the TMO to disengage Leadbitter.”¹⁰⁷

71. One of the reasons why the re-procurement was conducted using the OJEU procedure was to give Leadbitter the opportunity to tender¹⁰⁸ but, in the event, Leadbitter did not do so. The value of the Grenfell Tower refurbishment contract was approximately 20% of the value of the KALC project. Further, a new build project like KALC is likely to have been a better fit with Leadbitter’s previous experience than a refurbishment project like Grenfell. In the circumstances, there are good reasons to doubt whether Leadbitter really wanted to win the Grenfell Tower contract; or whether it was only interested in doing so if it could be confident that the profit margin would be unusually high.

¹⁰⁵ {ART00006232}

¹⁰⁶ Booth Day 50 page 20 lines 4-23

¹⁰⁷ Lim WS {ART00009428/24} para 76

¹⁰⁸ Maddison Day 58 page 156 lines 16-22

72. In summary, cost related issues were clearly a factor in the TMO’s decision to re-procure but they were not the only factor. Further, there was nothing inappropriate in principle in seeking to achieve value for money.

The choice of Rydon as principal contractor

73. The decision to appoint Rydon as preferred principal contractor was taken by the TMO Board at a meeting on 27 March 2014. The minutes state:

“The Board noted the outcome of the procurement for the Grenfell regeneration project, and agreed to appoint Rydon Construction Ltd for the project. It was also agreed to enter into a pre-contract agreement with Rydon Construction Ltd, and incur costs up to a value of £350k, and then to enter into contract with Rydon Construction Ltd for the refurbishment of Grenfell Tower with a total cost of £9,700,000 (inclusive of fees).”¹⁰⁹

74. Subsequently, on 22 May 2014, the TMO and Rydon entered into a Pre-Construction Agreement.¹¹⁰ The Council was kept informed about the tender process and the decision to appoint Rydon. The report for the meeting of the Cabinet on 19 June 2014 stated: *“Rydon submitted the most economically advantageous tender, scoring highest on both price and quality.”¹¹¹*
75. The TMO did not need formal approval from the Council to appoint Rydon, nor did it seek such approval.¹¹² Laura Johnson’s written and oral evidence was very clear on this point.¹¹³

¹⁰⁹ {TMO10017731/3}

¹¹⁰ {TMO00829114}

¹¹¹ {RBK00000409/2} para 2.10

¹¹² If the proposed contract with Rydon had required the overall budget for the refurbishment project to be increased, the TMO would have needed formally to request an increase in the budget from the Council before appointing Rydon – see the report prepared for the TMO Board meeting on 27.3.14 {TMO10005583/7} para 3.5.

¹¹³ Laura Johnson WS {RBK00034943/17} para 71; Laura Johnson WS {RBK00054420} paras 8, 9 and 15; Day 128 page 81 lines 14-21; and Day 128 page 171 lines 20-22

76. The Council acknowledges that the Artelia Final Tender Report¹¹⁴ included ‘Sign off from RBKC Board’ as a step in the programme for the management and evaluation of the tender and that the Notice of Preferred Bidder Status sent to Rydon by Artelia on 18 March 2014¹¹⁵ stated that formal approval was needed from “*KCTMO Board and the Royal Borough of Kensington and Chelsea Council (RBKC)*”. These documents which were drafted by Artelia (and to the best of our knowledge not seen by the Council in draft) were inaccurate. There was no ‘RBKC Board’ at the relevant time. As stated above, the TMO did not require approval from the Council to enter into contract with Rydon and approval was not sought.
77. The TMO’s decision to appoint Rydon was taken following an OJEU procurement process which was run by the TMO with assistance from Jenny Jackson¹¹⁶ and Artelia. The procurement exercise was set up so that quality factors and cost factors were weighted as follows: 60% quality, 40% cost.¹¹⁷ Such a ratio captures well the concept of ‘value for money’ and at the same time ensures that quality considerations are given priority over cost considerations. By using it, an organisation gives appropriate, rather than inappropriate, weight to cost considerations. The Panel is invited to accept Booth’s opinion on the ratio:

“So 40% of the score to determine who would win was based on price. That’s not an unusual ratio, and we discussed that with the client at the beginning of any tender exercise, depending on how price sensitive they are and how quality sensitive they are. I mean, that’s actually quite quality, like, focused, 60% of the score ...”¹¹⁸

78. In the event, the final choice was between Rydon and two other companies. Rydon scored highest on both quality (76.64 compared to 62.23 and 58.42) and price (tender of £9.2m compared to £9.9m and £10.4m). Rydon also scored highest at the interview.¹¹⁹

¹¹⁴ {ART00002188/6}

¹¹⁵ {ART00008632}

¹¹⁶ Jenny Jackson worked as a procurement adviser to the TMO on an intermittent basis from 2012 to 2014 – see Jennifer Jackson WS {TMO00840344/1} para 5

¹¹⁷ The 60% for quality comprised tender quality (55%) and interview (5%); the 40% for cost comprised tender price (34%) and alternative price (6%) – {TMO10005583/6}

¹¹⁸ Booth Day 50 page 33 lines 8-14

¹¹⁹ {ART00002205/23}

79. The Council acknowledges the evidence that there was a ‘secret meeting’ between Rydon and David Gibson, Peter Maddison and Claire Williams from the TMO on 18 March 2014.¹²⁰ Nobody from the Council attended the meeting. Further, nobody from the Council knew that it would be taking place or was informed about it after it had taken place.

The setting of the budget

80. The TMO had assistance from independent professionals when setting the construction budget. Initially, the assistance was informal – Anderson met Hunters and obtained indicative costings from them.¹²¹ Anderson used the figure obtained from Hunters (£5.5m) in his report to the TMO Operations Committee in January 2012.¹²²
81. The report submitted by Anderson for the TMO Board meeting on 29 March 2012 recommended that the TMO Board approve the submission of an HRA Regeneration Bid for Grenfell Tower in the sum of £6m. The TMO Board decided to submit such a bid.¹²³ On 2 May 2012, the Cabinet took the decision to proceed with the project which, at the time, had an estimated budget of £6m.
82. The figure of £6m was treated as very much a rough estimate. When asked about the subsequent increase to £9.7m, the former Leader of the Council, Nicholas Paget-Brown, said: *“I don’t think it would have been a big surprise, because I think the 6 million was an initial allocation to get the project rolling and start hiring people, and at some point you’d go out to tender and that’s when the bill becomes a lot clearer”*.¹²⁴ Feilding-Mellen told the Inquiry that *“none of us would have been particularly surprised when it came back to be revised.”*¹²⁵

¹²⁰ Simon Lawrence WS {RYD00094220/5} para 22; David Gibson Day 54 page 31 lines 23-24; Peter Maddison Day 59 page 7 line 22 to page 8 line 16; Claire Williams Day 54 page 185 line 20 to page 187 line 1

¹²¹ See Day 52 page 46 line 15 to page 48 line 17 and {RBK00002335}

¹²² {TMO10001001/110}

¹²³ {TMO10037603/3}

¹²⁴ Paget-Brown Day 132 page 164 lines 14-18

¹²⁵ Feilding-Mellen Day 131 page 152 lines 18-19

83. This issue was also covered in Laura Johnson's oral evidence:

“Q. Were you not concerned that the original budget figure of £6 million, which was itself a rounded-up number, was so dramatically an underestimate when you had asked for approval the previous year?”

A. No, because cost estimates on building projects, in my experience, often at the start of the project vary with some great degree to what they actually turn out to be, and what Hunters were asked to do at the outset was a very, very basic description of what they thought the costs would be for the refurbishment of Grenfell Tower, and as a project progresses in some considerable detail about what you can actually - - what you actually want as the project, then there was bound to be a considerable cost variance.

Q. I think your evidence so far is that although you noted the difference between £6 million and £9.7 million, you weren't shocked about it, surprised about it, and yourself didn't ask for the reasons for it?

A. Oh, no, I would have asked the reasons for it, but I wasn't shocked, you know, because I've worked on many projects, development projects, and seen cost variances of this type before.

Q. Right. What were the reasons you were given?

A. That the original cost estimates were just that, they were very basic cost estimates for windows, for heating systems and for overcladding of the building, and actually when you started to go into detail about what was required on the project and really breaking down the costs properly, it built up to a significantly different figure.”¹²⁶

84. A further point to be made about the increase in the budget after May 2012 is that the scope of the project had not been finalised in May 2012. For example, the report to Cabinet at that time referred to the “*delivery of between four and six new family sized affordable homes on the lower levels of Grenfell Tower*”¹²⁷ but this was later increased to nine.

¹²⁶ Laura Johnson Day 128 page 167 line 4 to page 168 line 8

¹²⁷ {RBK00017738/9}

85. Under the contract between the TMO and Artelia, one of Artelia's roles was to provide quantity surveyor services. As such, Artelia provided expertise in estimating construction costs and advice on ways of controlling costs and enhancing value for money.¹²⁸ Artelia regularly provided the TMO with reports and advice on projected costs. The TMO relied on Artelia's advice when deciding to seek increases to the budget.¹²⁹ In her oral evidence, Laura Johnson referred to the fact that *"the figures from the TMO were based on the costs plans that they had drawn up by professional costs estimators"*.¹³⁰
86. The TMO should not have begun discussions about value engineering with Rydon before the procurement exercise had been concluded. But, in principle, there was nothing wrong or unusual about the TMO's desire to undertake a value engineering exercise. In our Module 1 Opening Statement, we invited the Inquiry to accept the evidence of its expert architect, Hyett, that competitive tendering and on-going value engineering are themselves intrinsic parts of most UK construction projects.¹³¹ Many witnesses who gave evidence in Module 1 confirmed that, based on their previous experience, it was standard practice for construction projects to go through a value engineering exercise.¹³² In our submission, there was nothing sinister or out of the ordinary in the TMO's approach to the cost of the refurbishment project. Lim states:

*"I was aware, through conversations with the TMO and particularly Claire Williams, that cost was an important issue as the budget needed to be met. I did feel that Claire Williams was under pressure on costs. In my experience, it is quite common for a client to want, as the TMO did, a project to come in at the lowest price possible, and within its budget. I did not feel that Claire Williams put any great or inappropriate pressure on me, or that her approach on costs was different from what I had experienced on other projects."*¹³³

¹²⁸ {ART00006544} at paras 10 and 11.

¹²⁹ Anderson Day 52 page 149 line 19 to page 150 line 12 and {TMO10001766/92}

¹³⁰ Laura Johnson Day 128 page 166 lines 11-13

¹³¹ RBKC Opening Statement for Module 1 page 16 para 67(i); Hyett {PHYR0000002/54} para 2.8.13

¹³² Lim WS {ART00005817/4} para 10; Terrence Ashton Day 18 page 174 lines 9-18; Bruce Sounes, Day 20 page 98 lines 18-23; Claire Williams Day 55 page 53 line 23 to page 54 line 2

¹³³ Lim WS {ART00009428/36} para 121

87. Nor was there anything sinister or out of the ordinary in the Council’s approach to the cost of the refurbishment project. The TMO’s Executive Director of Operations, Sacha Jevans, stated: *“I would say that there was a normal level of pressure from RBKC to keep to budget and programme, as with any capital project. I would not say there was any excessive pressure to make savings or rush things.”*¹³⁴
88. The Council acknowledges that at a Housing and Regeneration Policy Board, held on 20 March 2014, the Director of Housing reported that *“officers will need to do some value engineering as the bid has come in £500,000 higher than the budget”*¹³⁵. Laura Johnson confirmed in oral evidence that the officers referred to in that statement were TMO officers.¹³⁶ She told the Inquiry: *“I wasn’t part of the procurement process. I didn’t see the returned bids and I wasn’t part of the value engineering exercise.”*¹³⁷
89. After March 2014, the Cabinet agreed a further increase to the budget from £9.7m to £10.3m. In oral evidence, when asked whether there might have been room for a further increase in the budget from £10.3m, Feilding-Mellen replied: *“I’m very confident that, had a sound case been made for another increase, cabinet would have approved one.”*¹³⁸

The choices made in relation to the scope of the works

90. The scope of the works was not set in stone from the outset. Discussions about altering the scope of the works took place in parallel with the value engineering exercise and were seen as another possible method of reducing the project’s costs.
91. There was fresh consideration within the TMO to the scope of the proposed works after Maddison joined the TMO in January 2013. At the TMO Programme Board on 25 March 2013,¹³⁹ Maddison highlighted that *“within scope there is no allowance for kitchen and bath renewal and no decent homes items such as entry doors have been accounted for”*. He also stated that *“the relocation of the boxing club is estimated to*

¹³⁴ Jevans WS {TMO00000893/11} para 59

¹³⁵ {RBK00003538/2}

¹³⁶ Laura Johnson Day 128 page 171 line 23 to page 172 line 2

¹³⁷ Laura Johnson Day 128 page 173 lines 11-13

¹³⁸ Feilding-Mellen Day 131 page 163 lines 1-2

¹³⁹ {TMO10038870}

cost 400k. This cost is high for an income stream that is quite low”. The minutes record that: “We need to Challenge (sic) Appleyards of (sic) relocation of the boxing club and nursery” and noted “It is important that we understand the political dimensions for the boxing club and the nursery”.¹⁴⁰

92. The TMO were right to recognise that any proposals affecting the boxing club and the nursery raised broader or ‘political’ considerations. The boxing club¹⁴¹ and the nursery were both available for use by the wider local community. They were places that were important to the local community and also to the Council. Thereafter, Maddison discussed what should be included in the project with Laura Johnson. The following passage from his oral evidence explains what happened¹⁴²:

“Q. What was it that you discussed with her that led to the view as recorded here that she wanted to keep the works for the boxing club and nursery and doesn't want to progress the kitchens and bathrooms at this stage necessarily? Was it that on which you had been, as it is said, overruled by Laura Johnson?”

A. I wasn't overruled, Robert's¹⁴³ incorrect in his terminology there. I discussed the issue of the costs of the boxing club and the nursery and wanted to check with Laura that she was comfortable that they were a priority. Laura clearly communicated to me that she saw that as part of the social value, the infrastructure of the area, and wanted this to be a great place, so wanted the boxing club and the nursery as part of that wider regeneration of this area and wanted it to be a great place for people to live.

Q. Right.

A. And the -- in a way, my question to her was: we're going to do all of this work but we'll not have finished the kitchens and bathrooms, and therefore there may be some -- a large level of investment and we still don't meet Decent Homes,

¹⁴⁰ {TMO10038870/2}

¹⁴¹ The Dale Boxing Club was a well-established club. Paragraph 72 of the statement of Nicholas Paget-Brown (RBK00035001/16) states: “I was particularly keen to support the replacement of the nursery and the Dale boxing club.”

¹⁴² Maddison Day 58 page 100 line 14 to page 101 line 20

¹⁴³ The reference to ‘Robert’ is to Robert Powell. It was Powell’s email {ART00006252} which described Maddison as being over-ruled by Laura Johnson. Powell did not give oral evidence and was therefore never questioned about this phrase. It should be noted that his colleague, Philip Booth, observed when asked about a different phrase used by Powell that “he was quite flamboyant with his language sometimes” – Day 50 page 16 lines 6-11

and her view was, well -- you know, she heard that point but said we can pick that up at a later date, and I think in hindsight that was very sensible advice.

Q. Was the point of difference, then, between you -- or was there a point of difference between you about whether you should or shouldn't progress the kitchens and bathrooms within the flats at this stage?

A. No, Laura and I agreed. I wasn't overruled. I came with some suggestions and proposals and options for Laura. We discussed them and agreed a way forward,”

93. This is consistent with the minutes of the TMO Programme Board meeting on 23 May 2013 which stated: *“Re-configuration of the project was still underway as RBKC wanted the boxing club and the nursery to remain in the project ... ”*¹⁴⁴

94. It is also consistent with Laura Johnson’s evidence. She said that the Council had very specific requirements about the refurbishment of the nursery, the new units and the boxing club.¹⁴⁵ She had the ability to exercise influence but she did not have the power to over-rule Peter Maddison, nor did she do so.¹⁴⁶

95. Another potential option for altering the scope of the works was the plan to create a number of ‘Hidden Homes’ within the lower floors of the tower.¹⁴⁷ The June 2014 Report to Cabinet sought an increase in the budget from £9.7m to £10.3m and explained to the Cabinet the possible consequences of it refusing such an increase. The report stated that Option 1 was to increase the budget to £10.3m and that Option 2:

“Is not to increase the budget to £10.3m but for it to remain as agreed at £9.7m, this would mean that there would be no contingency, which would not be recommended, and therefore a reduction is made in the specification of the project to accommodate this budget risk, e.g. the seven hidden homes are not

¹⁴⁴ {TMO10049960/5}

¹⁴⁵ Laura Johnson Day 128 page 131 line 17-22

¹⁴⁶ Laura Johnson Day 128 page 144 line 17 to page 146 line 21 and Day 128 page 148 line 18 to page 149 line 22

¹⁴⁷ The initial plan was for 7 but this was later increased to 9 – see {RBK00000457}, {RBK00030346}, {RBK00019248} and {RBK00028440}

*provided as part of the scheme. However, if the scope of works is reduced significantly, it is likely that the scheme would need to be retendered.”*¹⁴⁸

96. In the event, the Cabinet decided to increase the budget to £10.3m. But the point to note under this heading is that the context of all of these discussions about the scope of the project was that, if it became necessary for whatever reason to limit the cost of the project, this could be done by removing whole items from the scope of the project. The result of doing so would not have been a reduction in the quality or safety of the refurbishment but a reduction in, for example, the quantity of additional social housing units delivered.

The choice of Studio E as architect

97. The decision to appoint Studio E as architect for the Grenfell Tower refurbishment project was taken by the TMO Board at a meeting on 29 March 2012. The minutes state:

*“The Board unanimously agreed to the submission of an HRA Regeneration Bid to RBKC for the external over-cladding, open area enclosure, hidden homes provision and communal and office area rationalisation to Grenfell Tower. The Board also agreed the appointment of the Kensington Academy & Leisure Centre (KALC) consultant project team.”*¹⁴⁹

98. A report to the TMO Board for its meeting on 15 November 2012 stated:

“The project team members including the contractor have been procured through a European Union (EU) compliant competitive process by RBKC for the immediately adjoining KALC project and as proposed to Board in March it is intended to utilize these project team members to deliver the Grenfell Tower Regeneration Project. The Grenfell Tower Regeneration Project design team has been commissioned by KCTMO under its own contract regulations and fees are capped at the EU Procurement threshold of 174k as the design team

¹⁴⁸ {RBK00033447/6}. Feilding-Mellen makes the same point in his witness statement {RBK00054433/5} para 12

¹⁴⁹ {TMO00847333/3}

procurement for KALC did not include provision to incorporate the Grenfell Tower Regeneration Project.”¹⁵⁰

99. As indicated in the passages quoted above, the TMO’s decision was clearly influenced by the fact that Studio E had already been selected by the Council (following an OJEU procurement process) to work on the KALC project next door to Grenfell Tower. It is acknowledged that officers from the Council spoke to officers from the TMO about the opportunity to use the KALC team on the Grenfell project. In oral evidence, Laura Johnson said:

“Did you yourself express a strong desire that TMO make use of the pre-construction professional team on KALC, as Mr Anderson - -

A. I think “strong desire” is probably too strong a word for it, but I would have expressed that there were definite benefits in such - - where the projects were linked so closely together, both geographically and in terms of benefits, that there was an opportunity to use the pre-construction team.

Q. Were you aware of others at RBKC expressing a strong desire, or a desire, even if not a strong desire, for TMO to use the same pre-construction professional team?

A. I would have been aware of that, yes.

Q. And who were they?

A. So, as Mr Anderson says, Peter Wright, who was the project manager for the KALC project.

Q. Is that for the reasons that you gave earlier about synergies and - -

A. Yes.

Q. - - economies of scale, et cetera?

A. Yeah, and about - - that there were two very large construction - - well, there was a very large construction project taking place in an area which I believe was around 0.2 hectares of land. The Grenfell Tower sits very cheek-by-jowl with the school and the leisure centre, and so if you have got these two very

¹⁵⁰ {TMO10001766/91}

large construction projects taking place, it makes sense that the team - - that if you can, you will try and get the same team working on both projects."¹⁵¹

100. The evidence indicates that the perceived advantages of using the KALC design team, of which Studio E was a part, included: ‘synergy’ from having one rather than two teams working on the two sites which were in very close proximity to each other; economies-of-scale; and the ability to co-ordinate the programming of the two adjacent projects, which would have the potential to reduce the disruption to residents.¹⁵²
101. Studio E had experience of designing and cladding schools but did not have experience of overcladding high-rise residential buildings. Neither the TMO nor the Council asked whether Studio E had experience of overcladding high-rise residential buildings – this was a missed opportunity.
102. When considering the significance of this missed opportunity, the Panel should bear in mind Hyett’s clear evidence on: Studio E’s track record and standing within the profession;¹⁵³ what Studio E should have been capable of doing; and what any reasonably competent architect should have been capable of doing. In oral evidence, Hyett made the following points:
- He confirmed the opinion expressed in his report¹⁵⁴ that it was reasonable for Studio E to accept the commission to work on the Grenfell project.¹⁵⁵
 - When asked whether the requisite standard of service could ever realistically be achieved by CPD or research alone, he said “*Yes, I’m in no doubt that it could*”.¹⁵⁶
 - He would expect a reasonably competent architect to obtain a level of familiarity with an overcladding structure as they began to prepare their work on a project.¹⁵⁷

¹⁵¹ Laura Johnson Day 128 page 59 line 2 to page 60 line 5

¹⁵² Anderson Day 52 page 50 line 25 to page 51 line 24; Laura Johnson Day 128 page 56 line 23 to page 61 line 1

¹⁵³ Hyett {PHYR0000002/19} section 2.5 and {PHYR0000002/21} para 2.5.12(a)

¹⁵⁴ Hyett {PHYR0000002/21} para 2.5.12(b)

¹⁵⁵ Hyett Day 63 page 78 line 10 to page 82 line 2

¹⁵⁶ Hyett Day 63 page 82 lines 4-10

¹⁵⁷ Hyett Day 64 page 43 lines 6-14

- A reasonably competent architect is expected to be capable of interpreting and applying the guidance in ADB as far as it relates to an overcladding system.¹⁵⁸

103. In his report, he stated:

“Accordingly, it is my opinion that at the time of the appointment Studio E would rightly have considered themselves well able to undertake a project of the type, size and complexity of the Grenfell Tower refurbishment and overcladding, albeit I would expect that they should have recognised that their then current levels of knowledge and skill would need to be expanded. This could have been done by undertaking research into the discrete characteristics of the project that they were about to undertake and, if necessary, making some strategic hires. Such approaches are common amongst architects when undertaking new commissions.”¹⁵⁹

104. This evidence about how architects approach undertaking new commissions ties in with Laura Johnson’s answers to questions about why she did not ask whether Studio E had any experience or expertise in refurbishing or overcladding high-rise residential buildings:

“I think I would probably have assumed that because they were an architects practice of a sufficient scale and size and had considerable experience, I understood, worldwide in doing design projects, and I also know from working in development for a number of years that if an architects practice doesn’t have that experience in a particular type of building, they would bring somebody in who did have that experience to undertake that work.”¹⁶⁰

105. As stated above, an economies-of-scale benefit¹⁶¹ was one of the perceived advantages of choosing Studio E as architect for the Grenfell project. It is acknowledged that, in this respect, cost related considerations indirectly played a part in the decision to

¹⁵⁸ Hyett Day 64 page 58 lines 5-9

¹⁵⁹ Hyett {PHYR000002/22} para 2.5.14 – covered in his oral evidence Day 63 page 82 line 11 to page 83 line 3.

¹⁶⁰ Laura Johnson Day 128 page 70 line 21 to page 71 line 15

¹⁶¹ {RBK00033739/3}

appoint Studio E. No other architects were considered by the TMO and therefore the question of whether Studio E were more or less expensive than other architects did not arise.

The fact that no façade engineer was engaged

106. The TMO did not include a façade engineer within its professional team. This was not out of any desire to save money. The TMO could not reasonably have been expected to appoint a façade engineer unless the possibility of appointing one was raised with it by one or more of Studio E, Curtins Consulting, Rydon or Harley. There is no evidence of Studio E, Curtins Consulting, Rydon or Harley recommending the appointment of a façade engineer or raising this as an option for consideration.
107. Sakula's evidence is consistent with this analysis - the TMO would not necessarily have known about the availability of façade engineers; it would have been for Studio E to inform them about this potential resource and to initiate a discussion about whether one should be appointed.¹⁶²

The decision not to accept Artelia's CDA proposal

108. The following facts are uncontroversial. Artelia made a proposal to the TMO in which it offered to perform the additional role¹⁶³ of Client Design Adviser ("CDA") for an additional fee of approximately £30,000. The TMO declined Artelia's offer.
109. We invite the Panel to accept the clear evidence of the TMO witnesses involved in the decision that it was not motivated by financial considerations.
110. Gibson said he "*didn't think there was a need for it*" and "*I don't think price was a consideration*". He gave the impression that he would not necessarily have accepted the service even if it had been offered for free.¹⁶⁴

¹⁶² Sakula Day 125 page 130 lines 4-20

¹⁶³ Under Artelia's existing contract with the TMO it was already performing the roles of Employer's Agent, Quantity Surveyor and CDM Co-ordinator.

¹⁶⁴ Day 53 page 79 line 15 to page 80 line 15

111. Williams stated: *“Having understood what they did, I couldn’t think of anything positive about it ... the design adviser seemed to be untenable role”*.¹⁶⁵ For her the issue *“was never to do with cost”*.¹⁶⁶ She disliked the proposal because she believed it would dilute contractual responsibility.¹⁶⁷
112. From the conversation that Maddison had with Gibson about the issue, he understood that the basic reason why the TMO was not appointing a CDA was *“in short, that it wasn’t necessary”*.¹⁶⁸
113. The only witness evidence to the contrary was given by Philip Booth of Artelia.¹⁶⁹ However, he was not personally involved in the decision¹⁷⁰ and the contemporaneous TMO documents do not suggest that a desire to save costs motivated it.¹⁷¹ Booth’s evidence in any event confirms the reasons given by the TMO witnesses for declining the proposal: *“I think they genuinely believed that they could do the role themselves and were best placed for it too”*.¹⁷²
114. The Council had no involvement in the TMO’s decision to reject Artelia’s offer to perform the role of CDA. There is no evidence that the Council was made aware of Artelia’s offer.

The decision to use RBKC Building Control rather than an Approved Inspector

115. There is no evidence of whether using an Approved Inspector would have been more or less expensive than using the Council’s building control service. Nor is there any evidence of anyone believing it would save money not to use an Approved Inspector.
116. In short, there is no evidence that the decision to use the Council’s building control service rather than an Approved Inspector was in any way cost related.

¹⁶⁵ Day 54 page 123 lines 21-22 and page 124 lines 8-9

¹⁶⁶ Day 54 page 143 lines 1-2

¹⁶⁷ Day 54 page 143 lines 7-17

¹⁶⁸ Day 58 page 8 lines 18-25

¹⁶⁹ Day 49 page 180 lines 14-22

¹⁷⁰ The decision was made internally within the TMO following a meeting on 19 August 2014 – see Day 49 page 180 line 25 to page 182 line 6, {ART00002752} para 3.1 and {TMO10049891/4}

¹⁷¹ There is no mention of cost in the email communicating the TMO’s rejection of Artelia’s proposal {ART00006464/2} and no evidence that the TMO ever sought to negotiate with Artelia over the proposed fee.

¹⁷² Day 49 page 193 lines 4-6

The extent to which Exova's services were used

117. The TMO engaged Exova to provide it with fire engineering services. In the event, the service provided by Exova to the TMO was limited. The most notable example of this is that Exova never issued a final version of its Outline Fire Safety Strategy. All three draft versions of the report issued by Exova included the same sentence: *"It is considered that the proposed changes will have no adverse effect on the building in relation to external fire spread but this will be confirmed by an analysis in a future issue of this report."*¹⁷³
118. In the circumstances, it is right to consider whether Exova's failure to provide the TMO with a final report which contained a proper analysis of B4 issues was caused by cost related matters. In our submission, it was not.
119. The negotiations which led to the agreement between the TMO and Exova are relevant in two ways. First, it was Exova who wrote the brief setting out the scope of services which it would provide.¹⁷⁴ Secondly, it was Exova who proposed the fee structure for providing these services.¹⁷⁵ The TMO accepted the brief and the proposed fee structure.
120. We acknowledge that in Dr Lane's opinion the fee proposed by Exova was low to the point of being *"wholly inadequate"*¹⁷⁶ because the number of hours which would be required to complete the work would be inconsistent with the fee proposed given Exova's usual hourly rates. Be that as it may, the TMO can hardly be held responsible for agreeing the proposed fee – as Lane commented *"human nature is if you're offered a low fee, you're going to take it"*.¹⁷⁷ Exova was never formally stood down from the project by the TMO¹⁷⁸ and, as Terry Ashton accepted, Exova was entitled to move from one RIBA stage to another unless it was told otherwise by the TMO (which it was not).¹⁷⁹ Of particular significance to this analysis of cost related issues is the fact that the total fee charged by Exova on the project was lower than that stated in the original

¹⁷³ {EXO00000519}, {EXO00000430} and {EXO00001107}

¹⁷⁴ {EXO00000164} – paragraph 166 on page 39 of the Module 1 Opening Statement of BSR Team 2 said of the fee proposal: *"This was an unobjectionable document and, if fulfilled, would have provided a comprehensive service."*

¹⁷⁵ {EXO00000164}

¹⁷⁶ Lane, Exova report, page 74, para 4.3.122 {BLARP20000017/74}

¹⁷⁷ Lane Day 61 page 75 lines 24-25

¹⁷⁸ Lane Day 62 page 16 lines 5-11

¹⁷⁹ Ashton Day 16 page 117 lines 2-10; Ashton Day 18 page 62 line 23 to page 63 line 1

fee proposal.¹⁸⁰ In the circumstances, it is not open to Exova to suggest that financial considerations provide any explanation for the fact that it failed to complete the agreed brief.¹⁸¹ Exova should have completed the brief which it had agreed with the TMO and should have been used more on the project. There are a range of reasons why it was not but the evidence does not indicate that a desire by the TMO (or the Council) to save money was one of them.

Findings sought by the Council

121. We invite the Panel to make the following findings in relation to this issue.

- (1) As a general principle, public money should be, and should be seen to be, managed and spent prudently.
- (2) The concept of ‘value for money’ requires consideration not only of cost but also of quality; it is not a synonym for ‘cheapest’.
- (3) Ensuring that the Grenfell Tower refurbishment project represented value for money and monitoring the budget were legitimate activities.
- (4) The Council acted appropriately in the instances in which it sought, directly or indirectly, to control or influence the budget for the Grenfell Tower refurbishment project.
- (5) The Cabinet unanimously decided to increase the budget as requested on the two occasions on which it was asked to do so: 18 July 2013 when the budget was increased to £9.7m¹⁸²; and 19 June 2014 when the budget was further increased to £10.3m.¹⁸³
- (6) Neither the TMO nor any of its contractors, subcontractors or professional advisers ever suggested to the Council that, for safety reasons, it was necessary to spend more money on the refurbishment.

¹⁸⁰ {EXO00001353}; Ashton Day 18 page 176 line 18 to page 179 line 9, Ashton Day 17 page 187 lines 7-10 and Ashton Day 18 page 53 lines 15-20

¹⁸¹ Ashton Day 17 page 132 line 12 to page 133 line 2; Ashton Day 18 page 165 line 10 to page 166 line 14; Lane Day 61 page 221 line 20 to page 223 line 1

¹⁸² Feilding-Mellen Day 131 page 150 line 25 to page 151 line 17, page 157 line 22 to page 158 line 3; {RBK00013783/7}; {RBK00059321}

¹⁸³ Feilding-Mellen Day 131 page 162 lines 7-15; {RBK00000409/8}; {RBK00059345}

Building Control

122. In our Module 1 Opening Statement we identified a number of failings on the part of Building Control. As stated in paragraph 4 above, the Council's position has not changed. It considers that the "*unqualified admissions*" were rightly made and it stands by them. In the interests of convenience, they are repeated in paragraphs 123 - 132 below.
123. Building Control failed to retain sufficient records for the Grenfell Tower refurbishment project.
124. Building Control did not have a formal procedure for tracking the progress of applications for building control approval. There was no requirement for it to have such a procedure but the Council accepts that Building Control should have had one and that, had one been in place, it would have reduced the likelihood of aspects of the application or the building control approval process being overlooked.
125. Construction work commenced on site on 2 June 2014. The Full Plans Application form was submitted by email by Studio E on 4 August 2014; no drawings were attached to that email. The first drawings submitted in support of the application were emailed to Building Control on 29 September 2014. Those responsible for the submission of the application failed to provide Building Control with sufficient information presented in a structured, easily accessible format and in a timely fashion.
126. The Council acknowledges that Building Control bears some responsibility for the fact that the application process continued to suffer from a failure by those acting on behalf of the applicant to provide sufficient information and to present it in a structured, easily accessible format.
127. Building Control failed to issue a Decision Notice following receipt of the Full Plans Application.
128. Building Control failed to ask for comprehensive details of the cladding system, including the Crown.

129. The last Exova Fire Safety Strategy received by Building Control was Issue 3 dated November 2013 (submitted to it by Studio E on 29 September 2014). Building Control failed to request an up to date version of this document.
130. Building Control failed to identify that the insulation materials / products used in the cladding system were not of limited combustibility and therefore did not satisfy the requirements of paragraph 12.7 of ADB 2013.
131. Building Control failed to recognise that insufficient or no cavity barriers to seal the cavities at openings within the walls, including around the windows, had been indicated on the plans submitted to it.
132. Building Control issued a Completion Certificate on 7 July 2016. It should not have done so.
133. In the remainder of this section, we address (i) the role of building control in construction projects generally (ii) the role of RBKC Building Control in the Grenfell Tower refurbishment and (iii) resourcing issues and RBKC Building Control's processing and consideration of the application for building control approval.

The role of Building Control in construction projects

134. Local authorities are required by the Building Act 1984 to provide a building control service. Building control provides an important but limited role in construction projects. The role is limited because, as we have previously submitted, there is a fundamental conceptual distinction between a person who creates a design and a person who checks it. Designers create designs. Building control professionals check designs. This is true of both local authority building control professionals and Approved Inspectors.
135. Menzies confirmed this principle in the following exchange with the Chairman.
- “SIR MARTIN MOORE-BICK: Sorry, can I just ask this: the question whether someone is designing or not, the answer to that question might depend on the purpose for which it's asked, but is it your evidence that building control bodies or building control surveyors don't understand themselves generally to be involved in design?”*
- A. Correct. They are told not to.*

SIR MARTIN MOORE-BICK: Yes, and they don't think they're doing it?

*A. I've never heard one say, "I'm part of the design team, I do this as part of the design". You are there to check somebody else's work, not to add your design in."*¹⁸⁴

136. In fact, Hyett had reservations about describing building control as 'checking'. He said: *"I don't like 'checking' because it suggests transferring of responsibility."*¹⁸⁵ In Hyett's view, the role of a designer is to produce a compliant design independent of, and regardless of, building control's views.

*"There's no point in taking the question to building control because it's an unacceptable weak link, and a competent architect or designer, cladding specialist, should know it's a weak link, it's a non-starter. It doesn't matter whether building control - - actually, that's the answer: it doesn't matter whether building control pass it or not. That's the minimum standard. They may have made a mistake. Our job is to comply with the guidance in ADB2 if that's the route we're going. It doesn't comply. So even if the building control officer said, "Fine, you do it", I wouldn't do it."*¹⁸⁶

137. Prior to the Grenfell Tower fire, the construction industry operated on, and was structured on, the common understanding that designers were responsible for producing designs that complied with the Building Regulations and that, if they failed to do so, those financially affected should look to designers, rather than local authority building control services, for compensation.¹⁸⁷
138. Menzies confirmed that contractors and architects cannot reasonably rely on building control to fill the role that might otherwise be filled by a fire engineer.¹⁸⁸ She also considered that the role of building control was clearly understood in London by Design & Build contractors.¹⁸⁹

¹⁸⁴ Menzies Day 60 page 67 lines 4-16

¹⁸⁵ Hyett Day 64 page 50 lines 20-21

¹⁸⁶ Hyett Day 65 page 87 lines 6-16

¹⁸⁷ These points are developed in more detail in para 21 of RBKC's Phase 1 Opening Statement and paras 81-93 of RBKC's Module 1 Opening Statement

¹⁸⁸ Menzies Day 60 page 71 line 20 to page 73 line 6.

¹⁸⁹ Menzies Day 60 page 73 lines 8-23

139. Hyett cited the advice from the Royal Institute of British Architects that was current at the time of the fire (*“the architect may produce design documentation that is approved by the building control service, but the architect must still comply with the requirements of the Building Regulations themselves and not rely solely on this approval”*)¹⁹⁰ and stated that, in his view, it was not reasonable for an architect to rely on building control as the only check on whether a design complies and must check for himself.¹⁹¹

The role of RBKC Building Control in the Grenfell Tower refurbishment

140. In the Council, the building control service fell within the Planning and Borough Development Directorate. This does not alter the fact that the building control function, which is highly technical in nature, is both conceptually and in practice wholly separate from planning. Both are purely statutory functions which arise under wholly separate statutory regimes. We invite the Panel to accept the evidence of Hyett and Menzies on this issue.

141. Hyett’s report stated:

*“... the Planning and Building Regulation Departments are effectively separate entities within a local authority and applications for consent under Planning and Building Regulations are quite separate processes. In my experience external agencies deal with the Planning and Building Regulations Departments on an individual basis, and in discharging their statutory duties in relation to the Planning Act and Building Regulations for which they are independently responsible, the departments do not have any direct dialogue with each other around an application.”*¹⁹²

142. Menzies’ oral evidence was as follows:

*“... generally the building control department is within the planning development department, but not always. Generally in my experience there’s very little integration of the departments.”*¹⁹³

¹⁹⁰ Law in Practice – The RIBA Legal Handbook, 2nd edition, 2013 @ para 7.5.1

¹⁹¹ Hyett Day 65 page 131 line 14 to page 132 line 11

¹⁹² Hyett’s report {PHYR0000030/20} para 5.2.8

¹⁹³ Menzies Day 60 page 57 lines 9-13

“Q. You tell us - - this is paragraph 262 of your report on page 67 {BMER0000004/67} -- that there is no indication in this case that there was any interaction between RBKC building control and the RBKC planning department. Would you have expected to have seen any interaction in terms of - -

A. At that time, no.”¹⁹⁴

“Q. ... Just to pick up on a couple of points from this morning’s evidence, we were talking before the break about the potential for interaction between a building control department and a planning department, and you have explained that that certainly wasn’t your experience, certainly pre-fire. But can you give us any good examples of where you have been aware of interaction occurring between a planning department and a building control department?

A. To be quite honest, no.”¹⁹⁵

143. There is no evidence that the fact that the Council owned Grenfell Tower influenced the way in which the application for building control approval was dealt with by Building Control. John Hoban was the officer with primary responsibility for the application. His evidence in relation to this issue was as follows:

“Grenfell Tower is owned by RBKC/ TMO; did this influence the manner in which the application/project was dealt with? From my involvement, no.”¹⁹⁶

144. Building Control were not part of the ‘professional team’ engaged by the TMO and in practice were not treated by the members of the team as fellow members of it. A good example of this is the emails between Terry Ashton and Tony Pearson (both of Exova) in which Ashton stated:

“I told Mags to send the report out without reading what you’d added. Had I been able to read it, I would not have agreed to the amendment as what you’ve

¹⁹⁴ Menzies Day 60 page 58 line 21 to page 59 line 2

¹⁹⁵ Menzies Day 60 page 60 lines 11-20

¹⁹⁶ Hoban WS {RBK00050416/6} para 19

said highlights the non compliance with codified guidance but, more importantly, is debatable. Let's hope that Paul Hanson doesn't pick up on it."¹⁹⁷

145. If Ashton had considered Hanson (of RBKC Building Control) to be a fellow team member he would surely not have been hoping that he would fail to pick up on non-compliance with guidance. Building Control services have a difficult job to do and it is made more difficult when contractors and construction professionals fail to engage with them in an open and collaborative manner.
146. We invite the Inquiry to accept the following evidence of Hyett about the respective roles of Studio E, Building Control and the TMO.

"I don't see building control as part of the design team. I would wish to have my ducks in a row and then go to see building control and say, "This is what we're proposing, this is the basis".

Q. What about engaging the client with the question about the solution here? Would you expect the reasonably competent architect to go to his client and explain what's going on?

A. I wouldn't expect -- well, the clients that I deal with wouldn't be particularly pleased to have me coming and bothering them with issues like this; they would expect me to design something competently that complied with legislation."¹⁹⁸

"Q. And would that authority include taking formal authority from the ultimate client, the TMO in this case, or not?

A. No, because it's a technical issue of compliance. The TMO expect their team to deliver a competent building that's complying with the Building Regulations. They're not checking their work. The team had the responsibility to make sure that it was compliant."¹⁹⁹

147. Sakula acknowledged the same point when explaining that he would expect 'the team' to resolve matters before approaching building control.²⁰⁰

¹⁹⁷ {EXO00001444}

¹⁹⁸ Hyett Day 65 page 81 lines 2-14

¹⁹⁹ Hyett Day 65 page 97 lines 4-11

²⁰⁰ Sakula Day 125 page 166 line 13 to page 167 line 9

Resourcing issues and RBKC Building Control’s processing and consideration of the application for building control approval

148. It is important to recognise that, whether it wished to or not, the Council was required by law to run a ‘cost neutral’ building control service. This requirement arose out of the of the Building (Local Authority Charges) Regulations 2010²⁰¹ and was a national requirement imposed by central government on local government. It was explained in a circular dated 25 February 2010 sent by DCLG to all local authorities.²⁰² The circular stated:

*“The 2010 Regulations revoke and replace the Building (Local Authority Charges) Regulations 1998 (SI 1998/3129) (the 1998 Regulations) and come into force on 1 April 2010. They make new provision authorising local authorities (LAs) in England and Wales to fix their own charges in a scheme, based on the full recovery of their costs, for carrying out their main building control functions relating to building regulations.”*²⁰³

*“Under the 2010 Regulations, LAs are required to set their charges with the aim of achieving the overriding objective of ensuring that “taking one financial year with another” their income from their charges “as nearly as possible equates to the costs incurred” of carrying out their chargeable functions (and providing chargeable advice related to those functions), i.e. year on year they should always aim to ‘break-even’.”*²⁰⁴

149. It was clear from the evidence of the Council’s Building Control Manager, John Allen, that he was very conscious of the requirement to break-even.²⁰⁵ He explained to the Inquiry that the restructuring of the department in 2013 was linked to it.²⁰⁶ He told the Inquiry that:

“the reason for those changes in 2013 was because the -- I think the year before the Building Control department on the Building Regulation account made a £500,000 loss, which clearly isn’t sustainable. There is a Government requirement, and I -- sorry, when I was Building Control manager, I had to do

²⁰¹ SI 2010/404

²⁰² {RBK00059036}

²⁰³ {RBK00059036/1}

²⁰⁴ {RBK00059036/10} para 33

²⁰⁵ Allen Day 47 page 99 line 14 to page 100 line 4

²⁰⁶ Allen Day 47 page 105 line 22 to page 106 line 8

a report each year to say, over a three-year rolling period, that you'll break even. So clearly if you have lost 500,000, you need to address the balance. And the work wasn't there either, you know, because the work was reducing because of market forces."²⁰⁷

150. On several occasions, Allen made the point that there were ebbs and flows in workload.²⁰⁸ He explained that the reason for this was that *"unlike approved inspectors, local authorities are required to take whatever application comes in"*.²⁰⁹ We invite the Panel to accept his evidence that, whilst there were periods of high workload which Allen sought to manage, the department was generally not overstretched.²¹⁰ When Menzies was asked about this she said that she *"could not say"* whether the department as a whole was overstretched and could not categorically say that Hoban was overburdened.²¹¹

151. The Panel is also invited to accept the evidence of Menzies in the following exchange with the Chairman.

"SIR MARTIN MOORE-BICK: [Hoban] also told us or gave us a fair idea of the number of different projects that he was juggling at any one time. Some of them would require immediate action, some wouldn't. I think he said at one stage he might have had as many as 130 projects on the books, so to speak. Did that strike you as unusual or not?"

*A. Not really, on the basis, as you said, some could be dormant, some could be a matter that would take, you know, one visit and that would be it, others would be in progress. I think for that number you would need to be well organised, have very good means of tracking what you were doing, and a very good diary system or however you chose to do that, to control that number, and your manager should be monitoring how you were dealing with that number."*²¹²

²⁰⁷ Allen Day 47 page 100 lines 12-22. {RBK00059964} supports Allen's evidence on this issue (see in particular pages 2-4 and 13-15).

²⁰⁸ Allen Day 47 pages 109, 122, 123, 130, 142 and 195

²⁰⁹ Allen Day 47 page 46 lines 15-17

²¹⁰ Allen Day 47 page 46 line 5 to page 47 line 3, page 105 lines 8-10, page 130 lines 16-19 and page 195 lines 12-20

²¹¹ Menzies Day 60 page 196 line 19 to page 197 line 12

²¹² Menzies Day 60 page 115 line 22 to page 116 line 12

Final observation

152. This Closing Statement is intended to be read together with the Module 3 Closing Statement which the Council will serve following the conclusion of the Module 3 hearings. Failings in the Council's systems for monitoring the TMO's performance, including the TMO's performance as 'Client' during the Grenfell Tower refurbishment project, will be addressed in that Closing Statement. The Council apologises unreservedly for its failings and remains wholly committed to supporting the work of the Inquiry.

JAMES MAXWELL-SCOTT QC
KATIE SAGE
BETHANY CONDRON

3 June 2021