



GRENFELL TOWER INQUIRY RT

Day 238

February 24, 2022

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Thursday, 24 February 2022

1
2 (10.00 am)
3 SIR MARTIN MOORE—BICK: Good morning, everyone. Welcome to
4 today's hearing.
5 Well, today we're going to begin by hearing further
6 evidence from Dr Debbie Smith, and then we shall move on
7 to other witnesses after her.
8 So could I ask Dr Smith to come back in, please.
9 DR DEBBIE SMITH (continued)
10 SIR MARTIN MOORE—BICK: Good morning, Dr Smith.
11 THE WITNESS: Good morning.
12 SIR MARTIN MOORE—BICK: Right. Ready to continue?
13 THE WITNESS: Yes, thank you.
14 SIR MARTIN MOORE—BICK: Thank you very much.
15 Yes, Mr Millett.
16 Questions from COUNSEL TO THE INQUIRY (continued)
17 MR MILLETT: Yes, good morning, Mr Chairman. Good morning,
18 members of the panel.
19 Dr Smith, good morning to you.
20 A. Good morning.
21 Q. I'd like now to turn, please, to some internal
22 correspondence in February 2008.
23 {BRE00011323}, please. I'd like to look at page 1,
24 second email down, 19 February 2008, from Julie Bregulla
25 to a number of people, including you, as you can see

1

1 there; yes?
2 A. Yes.
3 Q. You're the last named recipient on the list.
4 A. Yes, yes.
5 Q. The subject is "Kingspan meeting today". Do you see
6 that?
7 A. Yes.
8 Q. If you go down to the second paragraph of the email, it
9 says:
10 "Just wanted to write down the action points and
11 deadlines agreed to make sure we have a record of our
12 discussions with them. Let me know whether you want to
13 amend any of the points or clarify issues, I will
14 incorporate your comments and I will forward the main
15 points over to Kingspan for their records."
16 Then if you look at item 3, please, on page 2
17 {BRE00011323/2}, towards the top of your screen, there
18 is a title, "Façade testing to BS8414", and then it says
19 this:
20 "Debbie to clarify with Sarah Colwell and team as to
21 how a staged testing programme could be completed to
22 enable Kingspan to maximise resources on facade testing.
23 Testing schedule of 6 tests already committed. Ideally
24 testing configurations chosen should be helping to find
25 worst case scenarios and give Kingspan as much

2

1 flexibility as possible with the state of knowledge
2 (also with the new standard) at the moment."
3 Now, is the reference there to the new standard
4 a reference to BS 8414—2, which had been published in
5 2005?
6 A. I'm not sure. I mean, if it's referring to the 2005
7 standard, then it wasn't actually a new standard.
8 Q. So what was it?
9 A. I can't be certain what Julie's referring to there. It
10 may be, but I can't be definitive about that.
11 Q. Right.
12 Why were the test configurations to be chosen for or
13 perhaps with Kingspan ideally to be helping to find
14 worst—case scenarios?
15 A. I don't know.
16 Q. What was the purpose?
17 A. Yeah, I don't know exactly. I mean, presumably it looks
18 as though this was a discussion around certification,
19 looking at the people that were present.
20 Q. Do you remember anything about this or —
21 A. I don't remember this in detail, no.
22 Q. — are you just reading from the email?
23 A. No, I'm reading from the email —
24 Q. Right. Well, can you help —
25 A. — to try and help me understand what the context to it

3

1 is.
2 Q. Because clearly this is for you to do. Can you help?
3 What did it mean when it said that Kingspan was to be
4 given as much flexibility as possible with the state of
5 knowledge? What was that about?
6 A. I can't remember what that would have been. It's an odd
7 turn of phrase.
8 Q. What did you understand? You received this email.
9 A. Yeah, I don't recall at the time —
10 Q. Right.
11 A. — I mean, what the discussion was about. I mean,
12 clearly they were planning to do a number of tests,
13 presumably for different types of systems. They would
14 have all needed to have been scheduled, as it's saying,
15 and booked in. I don't know if any of them were to be
16 render—type systems, even, which obviously had different
17 requirements in terms of rig time.
18 Q. What I'm really seeking to understand —
19 A. Yeah.
20 Q. — is the underlying policy of the BRE in carrying out
21 these functions, helping to find worst—case scenarios,
22 giving Kingspan as much flexibility as possible with the
23 state of knowledge. What was the BRE up to —
24 A. Yeah, I don't think —
25 Q. — with its client?

4

1 A. Yeah, it wasn't for us to find the worst-case scenarios,
2 because we wouldn't know necessarily what they were
3 going to be testing. That's for the customer to bring
4 forward the configurations that they wish to test.
5 Q. Well, we can read the email for ourselves —
6 A. And the application — yeah.
7 Q. — but I think you've answered my question so far as
8 you're able to.
9 Let's see your reply, please, top of page 1
10 {BRE00011323/1}. This comes back from you, same day, to
11 Julie Bregulla and the other recipients of the email,
12 copied to yourself, I think, in the way one sometimes
13 does.
14 If you look at the first paragraph, it says this,
15 first of all:
16 "I have spoken with Sarah about bullet point 2 under
17 item 1 ..."
18 We don't need to look at that; that's about
19 cavity barrier work:
20 "In relation to item 3, again I have spoken with
21 Sarah and there is no reason why we can't sit down with
22 Kingspan and draw up a matrix of combinations that are
23 used in their systems and work with them to design
24 a progressive programme of testing (assuming the systems
25 pass the test). However, there would be a cost involved

5

1 in doing this as it would require some effort."
2 Now, let's just break that up.
3 First of all, a matrix of combinations; combinations
4 of what?
5 A. I don't recall. I mean, I can only assume it's
6 a combination of the different sort of components.
7 Q. Yes, components.
8 Would the requirements of independence and
9 impartiality which we've seen at least twice now in your
10 2014 policy document, perhaps as they stood in 2008, not
11 be reasons why you shouldn't be collaborating with your
12 client on the matrix of combinations of components in
13 a test and in a progressive programme of testing?
14 A. Yeah, I mean, I don't recall this and obviously
15 I wouldn't have been directly involved in doing this,
16 because that was not my area of knowledge. But
17 I suppose this could have been akin to the sort of work
18 that does go on in relation to, for example,
19 fire resistance testing, where the direct field of
20 application is such that it's necessary to — if
21 manufacturers and customers want to extend the scope of
22 the application, they have to basically carry out tests
23 that will cover that scope of application that they wish
24 to pursue, and, you know, it's commonly done,
25 for example, with fire doors and partitions.

6

1 Q. Well, I'm so sorry to cut across you, I do apologise,
2 but do you know that reaction to fire and field of
3 application was actually the topic under discussion here
4 or not?
5 A. Well, I don't know for certain, no, but I'm — that's
6 the conclusion that I'm drawing, having just seen this
7 email.
8 Q. Can you just help me, then. We discussed yesterday why
9 you were of the view that the BRE was unable, for
10 reasons of impartiality and confidentiality, to make
11 records sufficiently to verify independently the
12 components and configurations of full-scale tests, but
13 on the other hand we see here that it was acceptable to
14 assist and sit down with the client and design a matrix
15 of combinations of components with them? Can you
16 explain how those two sit together?
17 A. So I don't think that's quite what I said yesterday.
18 I did say that the test report contains a detailed
19 description that our engineers have recorded during the
20 construction of the rig, and then that is what is
21 included in the BS 8414 test reports in the text. So
22 there is a detailed description of the components that
23 were put onto the rig.
24 Q. Right. Let me try it again —
25 A. Yeah.

7

1 Q. — because I don't want to misrepresent your evidence.
2 I think I did put it to you yesterday, I asked you
3 whether there was any good reason why the BRE and the
4 client wishing to conduct the test couldn't co-partner
5 or jointly build the rig and ensure that it was
6 consistent with the list of components and the diagrams,
7 the drawings for the rig. Do you remember that?
8 A. Yes.
9 Q. Yes, and your answer was — and again, I'm paraphrasing,
10 correct me if I'm wrong — your reason was that that
11 would in some way undermine client confidentiality
12 because of the risk of giving advice.
13 A. Yes, and that was in the context of being involved in
14 doing the actual installation on the system, where
15 inadvertently there might be the transfer of one
16 person's proprietary knowledge and information to
17 another client's.
18 Q. Indeed. So I think we're agreed about what you told us
19 yesterday.
20 Now, can you explain how what you told us yesterday,
21 as we've just discussed, is consistent with the proposal
22 to "sit down with Kingspan and drawing up a matrix of
23 combinations that are used in their systems and work
24 with them to design a progressive programme of testing"?
25 How are those two concepts consistent with each other?

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1 A. Well, as I say, I can't be definitive about the context
2 of this and what this means, having just seen this this
3 morning. However, my impression, sitting here now, is
4 that it seems that this is probably relating to
5 something similar and the process that is gone through
6 with customers in defining a field of application and
7 an extended field of application for their particular
8 systems.

9 Now, in so doing, you are not telling the customers
10 what the systems are that they need to test. They are
11 coming to you and saying, "This is what we want to do",
12 and then the engineers, so in the case of fire doors,
13 for example, will say, "Well, you won't get that field
14 of application with what you're proposing to do,
15 you know, you need to basically look at — bring forward
16 other systems and then we can look and we can tell you
17 what that would enable you to do".

18 Q. So —

19 A. And that's all laid down in standards in the
20 fire resistance area. It's — you know, there are
21 extended field of application standards that are
22 published, there are EN standards that sort of govern
23 the rules and the principles for all of that.

24 So sitting here now and looking at this, my
25 impression is that this is probably relating to

9

1 something similar.

2 Q. That's your impression?

3 A. Yes, it is.

4 Q. What's your recollection?

5 A. Well, I don't recall this specifically.

6 Q. Is it your impression because that is the only thing
7 that you can think of that would be allowed? In other
8 words, are you using that, sitting there now, as
9 an excuse for this, the field of application exception
10 to the advice?

11 A. It's not an excuse, that's all I can assume that this
12 could relate to.

13 Q. Can we look at your witness statement, please. We will
14 come back to this document if we need to in a moment,
15 but let's look at your statement, page 20
16 {BRE00005624/20}, please, and let's look together at
17 paragraph 72.

18 Here's the question:

19 "What advice or guidance, if any, does or should the
20 BRE give to test sponsors in respect of the design and
21 installation of test rigs for BS 8414 testing?"

22 Now, I'll read it to you.

23 A. Yes.

24 Q. "BRE does not, and should not, give any advice or
25 guidance to test sponsors in relation to the design,

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1 specification, procurement or installation of a cladding
2 system test specimen, beyond making the requirements of
3 the standard known to the sponsor. In the case of
4 testing contracts, BRE is not involved in designing,
5 selecting, installing or sampling materials for use in
6 a test specimen. It is entirely the responsibility of
7 the test sponsor to design, select, install and supply
8 the product(s) to be tested. This is important in order
9 to maintain the independence and impartiality of the
10 test laboratory as required by the standard BS EN ISO
11 IEC 17025 ('General requirements for the competence of
12 testing and calibration laboratories' ...) against which
13 BRE is accredited by UKAS."

14 A. Yes.

15 Q. Now, that's pretty clear, isn't it?

16 A. Yes, it is, and I stand by that.

17 Q. And you stand by that.

18 Then when we look back at the email exchange which
19 we've just looked at {BRE00011323}, in that exchange in
20 February 2008, there's no —

21 SIR MARTIN MOORE-BICK: Can we have it back on the screen,
22 please.

23 MR MILLETT: Yes, let's have that back, please.

24 Looking at that second paragraph, is that not
25 a proposal to give advice or be involved in designing or

11

1 selecting, at least, or sampling materials for use in
2 a test?

3 A. No, it is not.

4 Q. Why is that?

5 A. There is nothing there that talks about the sampling,
6 there is nothing there that's talking about design in
7 the context of where you put fixings, how you put
8 fixings and so on, because that competence just did not
9 exist within BRE to undertake that.

10 Q. Well, help me, please —

11 A. You know, our engineers or our fire scientists were not
12 architects, they were not designers, they were not
13 structural engineers, and, you know, it would not be
14 possible. It just wouldn't.

15 Q. So let's just analyse your words a little bit more
16 carefully: "there is no reason why" — that's clear —
17 "we can't sit down with Kingspan". Now, what was that
18 about? What would sitting down with Kingspan, apart
19 from the obvious physical position of the participants,
20 involve?

21 A. Well, I can only assume, sitting here now and reading
22 this now, that that relates to some kind of meeting,
23 round-the-table meeting.

24 Q. Collaboration?

25 A. Well, a meeting. That doesn't —

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1 Q. Collaboration.
 2 A. No, it doesn't mean it's collaboration, I don't agree
 3 with you on that.
 4 SIR MARTIN MOORE—BICK: Well, would you accept discussion?
 5 A. Yes, yes.
 6 MR MILLETT: All right.
 7 A. I think there's a big difference between, you know,
 8 routinely sitting down with a customer, whoever it might
 9 be, which was not uncommon, and having a discussion with
 10 them about, you know, accessibility to test rigs,
 11 scheduling their work, so on and so forth, and that's
 12 not the same as collaborating, in my understanding
 13 anyway.
 14 Q. Sitting down with Kingspan, so discussing with Kingspan,
 15 and then the next bit, "and draw up a matrix of
 16 combinations that are used in their systems". Just
 17 pause there. What was that about? What would be
 18 involved in discussions with Kingspan about drawing up
 19 a matrix of combinations?
 20 A. So you would expect a customer to come to a meeting with
 21 a list of the types of systems that they were looking to
 22 test.
 23 Q. Who would do the drawing up of the matrix of
 24 combinations?
 25 A. Well, they would come with their different options that

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1 they were looking at to test.
 2 Q. And you would discuss those options? This was the
 3 proposal, was it: to sit down with Kingspan and
 4 discuss —
 5 A. Well, as I say, I can't remember this first-hand, so
 6 I can't say what the proposal was, but reading this now,
 7 this is what I am reading from this. They would come to
 8 the table, they would say, "These are the different
 9 systems that we are thinking of testing, this is the
 10 scope of the certificate that we're looking to have at
 11 the end", and then the people that are expert in these
 12 areas would say, "Well, you're not going to get that
 13 scope of application with what you're proposing", or,
 14 "You potentially could, applying the field of
 15 application rules", and then it would be up to them to
 16 decide if that was adequate or whether they actually
 17 needed to go away and —
 18 SIR MARTIN MOORE—BICK: I'm sorry, I'm having difficulty in
 19 understanding these references to fields of application,
 20 because as I understood it, each BS 8414 test was
 21 relevant to the specific combination of materials and
 22 structures that were applied in that test.
 23 A. Yes.
 24 SIR MARTIN MOORE—BICK: So it has a very, very limited field
 25 of application and is not capable of being extended; is

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1 that right?
 2 A. Well, so the types of extensions that are potentially
 3 permissible are if you tested, for example, a system
 4 with its relevant components, whatever, and
 5 an insulation thickness of, let's say, 100 millimetres,
 6 and then you did a test with an insulation thickness of
 7 300 millimetres, then, in principle, you can — and they
 8 both pass, they both get, you know, the same
 9 classification, then you can say, "Well, okay, the field
 10 of application can be extended so that you can use any
 11 insulation thickness between the 100 and the 300 that
 12 you've tested".
 13 SIR MARTIN MOORE—BICK: But that's not consistent with the
 14 principle underlying BS 8414, is it, which is that you
 15 have to test a specific system and that the test is good
 16 for that system alone?
 17 A. It is good for that system alone but, as I say, that's
 18 applying the same extended application rules and
 19 principles that are applied elsewhere in the fire area.
 20 Because you could say the same about fire resistance,
 21 you can say the same about reaction to fire.
 22 SIR MARTIN MOORE—BICK: Well, that may or may not be
 23 correct —
 24 A. Yes.
 25 SIR MARTIN MOORE—BICK: — in relation to other types of

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1 testing, but from the evidence that we've been hearing,
 2 I had reached the conclusion that it's critical, in
 3 a sense, to understanding the nature of the BS 8414 and
 4 BR 135 testing method that it relates only to the
 5 specific configuration of the sample tested and cannot
 6 be extrapolated to any system with different products of
 7 any kind, or a different structure of any kind. Is that
 8 right?
 9 A. Well, it can't be, unless there is test evidence to
 10 support that, and actually there is — I can't actually
 11 remember anybody doing that type of work in a systematic
 12 way, but in principle you could do that. So if
 13 everything else about the system was identical and you
 14 did two tests, with just one variation within that test,
 15 then — and you got the — obviously you passed the
 16 test, you got the classification, then you could in
 17 principle cover that whole range of systems between,
 18 provided that all of the component parts and the
 19 ventilation, cavities and the cavity barriers are the
 20 same.
 21 SIR MARTIN MOORE—BICK: That sounds to me very much like
 22 a desktop study.
 23 A. Well, it's not a desktop study, in the sense that it is
 24 based on test results and test evidence.
 25 SIR MARTIN MOORE—BICK: Yes, but it's applying existing test

16

1 results obtained from different systems to a third
 2 untested system.
 3 A. Yes, it is. It is, yes.
 4 SIR MARTIN MOORE—BICK: Thank you. Well, I'm grateful to
 5 you for clarifying my understanding on that.
 6 I'm sorry to interrupt your line of questioning,
 7 Mr Millett.
 8 MR MILLETT: No, that's quite all right.
 9 I'm very puzzled, I have to say, Dr Smith, by this.
 10 Can we go back to page 2 {BRE00011323/2}, please,
 11 and I want to put two things to you.
 12 First of all, item 3 there says:
 13 "Facade testing to BS8414."
 14 I'm sorry to prolong this, I don't think I intended
 15 to spend quite so long on this, but you've introduced
 16 the concept of reaction to fire and extended
 17 applications.
 18 What is there in that paragraph under the heading
 19 "Facade testing to BS8414" that suggests to the reader,
 20 of which you were one, that this was anything to do
 21 either with resistance to fire or with extended fields
 22 of application? What is there in the words there that
 23 would indicate that?
 24 A. Well, I'm giving you my impression and understanding of
 25 reading this, because I don't recall it first —hand.

17

1 Q. Secondly, can I ask you, please, to look at
 2 {CEL00003364}. Now, this is the third edition. I know
 3 we've jumped forward a few years, but I just want to —
 4 because you gave some evidence about this.
 5 If we go, please, in this document to — we might as
 6 well take appendix A, if we can find it — page 22, and
 7 I'd like to go further into the document, please, at
 8 page 27 {CEL00003364/27}. We looked at this before in
 9 your evidence. It appears in two parts, first in
 10 appendix A and secondly in appendix B, and we examined
 11 it together, but I want to go back to it, please, in
 12 light of your evidence just now.
 13 You will see the three bullet points on the
 14 left —hand side there. Do you see those?
 15 A. Yes.
 16 Q. Under "performance of the system"?
 17 A. Yes.
 18 Q. Under that it says:
 19 "The classification applies only to the system as
 20 tested and detailed in the classification report. The
 21 classification report can only cover the details of the
 22 system as tested."
 23 A. Yes.
 24 Q. "It cannot state what is not covered. When specifying
 25 or checking a system it is important to check that the

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1 classification documents cover the end—use application."
 2 First of all, this is about reaction to fire.
 3 That's what BS 8414 and BR 135 are about; yes?
 4 A. Well, it sits between reaction to fire and
 5 fire resistance, I think, which is why there was
 6 an interest when it was developed as a standard between
 7 both the fire resistance and the reaction to fire
 8 committees.
 9 Q. Well —
 10 A. I mean, it's not purely reaction to fire, but anyway.
 11 Q. Well —
 12 A. Because it's — you know, the structural loading is —
 13 influences the outcome of the results.
 14 Q. Whether it is or it isn't, the classification under 135,
 15 which is something referred to, certainly by 2013, in
 16 Approved Document B —
 17 A. Yes.
 18 Q. — as an alternative route to compliance, can only
 19 apply, as it says here, to the system as tested and
 20 detailed in the classification report. Is that correct
 21 or not?
 22 A. Yes. Yes, what's written here is correct.
 23 Q. Yes, and there are no exceptions to it that we can see
 24 there, are there?
 25 A. Well, not in BR 135.

19

1 Q. No. No. And so the idea that you could take a system
 2 to which the classification report applies and then
 3 opine on or devise a broader scope of application would
 4 be wholly outside the classification under BR 135,
 5 wouldn't it?
 6 A. Well, obviously when that was being talked about, it
 7 wasn't this version of BR 135.
 8 Q. No, but you accepted in your evidence, I think on
 9 Monday, when I put this to you, that even though this
 10 paragraph did not appear in the 2003 second edition,
 11 nonetheless the principle expressed by this paragraph
 12 applied and was known by everybody at the BRE, at least,
 13 to apply. That was your evidence. We can find it —
 14 A. Yes, to my knowledge, that's what is put into the
 15 classification reports.
 16 Q. So please help explain to us how it comes about that
 17 there could be any scope for extended applications of
 18 the results beyond the system tested?
 19 A. Well, I mean, I think that there was probably
 20 discussions going on at the time around what I have just
 21 explained to you, in the context of extended
 22 application. However, that said, as I've just said, I'm
 23 not aware of people doing systematic work in that way to
 24 extend the scope, actually, of their systems.
 25 Q. Let's go back to —

20

1 A. But I may be wrong on that. I mean, you would have
 2 to —
 3 Q. Let's go back to the —
 4 A. — (inaudible) tests.
 5 Q. — email, then, please, that we were on this morning
 6 where we started, which is {BRE00011323}, and I'm sorry,
 7 Dr Smith, to have taken you on something of a journey
 8 away from it, but let's look at page 1 again, second
 9 paragraph.
 10 We've covered the words "sit down with Kingspan and
 11 draw up a matrix of combinations that are used in their
 12 systems", and then we see the phrase, "work with them to
 13 design a progressive programme of testing".
 14 Now, just explain, please, why working with Kingspan
 15 to design a progressive programme of testing is not the
 16 giving advice or guidance to test sponsors in relation
 17 to the design, specification, procurement or
 18 installation of a cladding test specimen as cited by you
 19 as forbidden in paragraph 72 of your witness statement?
 20 A. Yeah, I mean, to me, this is — I think this is just
 21 about the work and the scheduling and the devising of
 22 the, you know, most appropriate way to carry out the
 23 tests. As I say, you know, if they were considering
 24 potentially testing some render systems and so on,
 25 they're on the rigs for a significant period of time.

21

1 I don't recall this at the time, and it's very difficult
 2 to put this into context with just this email in
 3 isolation —
 4 Q. Well, Dr Smith, I'm going to put it to you one more
 5 time —
 6 A. — without any background.
 7 Q. — that the language used by you in this second
 8 paragraph in this email is consistent and only
 9 consistent with a collaborative exercise whereby you are
 10 sitting down with the client, co-working together to
 11 design a progressive programme of testing, completely at
 12 odds with the policy of the BRE that you set out in your
 13 statement.
 14 A. Well, I don't recall that ever happening, and I'm,
 15 you know, not aware of that, and I stand by what I put
 16 in my witness statement. I can understand how you are
 17 reading it in that way, but I don't think that was what
 18 was going on at BRE at the time.
 19 Q. Some people reading that email might think that here was
 20 the BRE cosying up to its clients for financial gain.
 21 Do you have a comment on that?
 22 A. No, I don't believe that to be the case.
 23 Q. Would you have been prepared to adopt this collaborative
 24 approach in relation to other manufacturers?
 25 A. No, I don't believe we adopted a collaborative approach

22

1 with any of our customers.
 2 Q. So you disagree with the premise of my question,
 3 notwithstanding the plain words of this —
 4 A. I do.
 5 Q. — your own email?
 6 A. I do.
 7 Q. Let's go to {BRE00011329}, which is a little bit later
 8 in the correspondence on this topic from Julie Bregulla
 9 to you and others.
 10 If we go to the beginning, I just want to show you
 11 the context. This is an email from Julie Bregulla to
 12 a number of people, including you, Dr Smith. So you're
 13 a direct recipient of this email, not just copied.
 14 "FW: Kingspan meeting today", and here is the beginning
 15 of the email:
 16 "Just to remind you where we are with Kingspan.
 17 Have sent a status report to them today. They do not
 18 seem to have a good overview as to what was provided to
 19 them so far, slightly worrying.
 20 "Below I have marked which actions we have completed
 21 and where we are with outstanding bits of work. This
 22 week we need to work through the attached table. Would
 23 like to be able to compile status by end of this week
 24 and forward information to Kingspan beginning of
 25 next week."

23

1 Then I think I don't need the next paragraph.
 2 If we then go, please, to page 2 {BRE00011329/2}, we
 3 can see item 3, "Facade testing to BS8414". Under that,
 4 there's the bullet point we've been studying before.
 5 That was on page 2 of the original email we looked at
 6 earlier this morning. And then in red, it looks like
 7 Julie Bregulla's text as an addition:
 8 "Thanks Debbie for clarifying with Sarah and team
 9 that this is possible. Suggested to Kingspan that
 10 I could set-up a meeting for us all to find out how we
 11 are going to go about this. They will provide dates and
 12 I will try to liaise with you to find the best way
 13 forward. Slightly worried that testing is ongoing now
 14 and we might miss the chance to influence in any major
 15 way. So timing will be crucial. Debbie if you think
 16 this can be dealt with via correspondence, even better,
 17 please let me know how best to proceed."
 18 Now, could you tell us about the discussions that
 19 you had with Sarah Colwell and team to clarify that this
 20 was possible?
 21 A. I don't — I can't recollect this, and I'm not really
 22 aware that there was a — that this was pursued.
 23 Q. Well, who was on the team? Who was on Sarah's team?
 24 You clarified something with Sarah and team.
 25 A. Yes, I don't know who —

24

1 Q. Right.
 2 A. — Sarah would have discussed this with.
 3 Q. Did either you or, to your knowledge, Sarah Colwell,
 4 from what you could see, give any consideration to
 5 matters of impartiality or the need not to give advice
 6 during these discussions?
 7 A. Well, as I say, I can't recollect any time when BRE has
 8 provided advice within that context, and I also can't
 9 recollect that this work actually went forwards.
 10 Q. What did you understand Julie Bregulla to mean by
 11 "slightly worried that testing is ongoing now and [here
 12 are the words] we might miss the chance to influence in
 13 any major way"? What did you understand her to mean by
 14 that?
 15 A. I don't know what I understood that to mean at the time,
 16 and if testing was already under way, then, you know,
 17 they were already bringing what they wanted to test to
 18 the table and doing the work in any case.
 19 Q. What was the BRE's interest in influencing the testing
 20 programme, whether in a major way or at all?
 21 A. Yeah, I mean, I don't think we would have been
 22 particularly influencing it. As I say, the only context
 23 that I can offer that this might have been relating to
 24 would have been related to field of application, because
 25 this is, as I said earlier, judging from the recipients,

25

1 et cetera, about certification of products and systems,
 2 rather than just testing and classification.
 3 Q. Right. Did you not go back to her and ask her what she
 4 meant by "miss the chance to influence in any major
 5 way"?
 6 A. I don't recall. I may have had a discussion with her.
 7 I don't know. I don't recall. I'm sorry.
 8 Q. Did you ever discuss with Ivor Meredith the field of
 9 application for K15?
 10 A. No, I didn't really know Ivor, as far as I can
 11 recollect, at that time.
 12 Q. Did you ever discuss with anybody else at Kingspan the
 13 field of application for K15?
 14 A. Not that I can recall, no.
 15 Q. No.
 16 Had you read any BBA certificate for K15 at any time
 17 before June 2017?
 18 A. I don't recall having done so, no.
 19 Q. Why is the BRE here at this time, February 2008, wishing
 20 to influence the testing at all?
 21 A. Yeah, I don't know what that relates to. I mean, as
 22 I say, this was a certification project, so I too,
 23 I think, would have been slightly worried that testing
 24 was ongoing because, for certification, you need to have
 25 an audit trail back to the products that are

26

1 incorporated within the systems. So if testing was
 2 ongoing, and it hadn't been subject to appropriate audit
 3 or whatever, that would have been an issue.
 4 Q. In fairness to you, I should ask you, if we go to the
 5 top of page 1 {BRE00011329/1}, who the individuals are
 6 other than you. Paul Sims, Roger Sadgrove and
 7 David Richardson, what was their role?
 8 A. So they worked in the construction division at BRE, and
 9 certainly I think both Paul Sims and Roger Sadgrove were
 10 construction experts, but also I think at the time
 11 working in the certification area. And I think
 12 David Richardson was their line manager, but I'm not
 13 entirely sure about that.
 14 Q. Yes.
 15 Looking at item 1:
 16 "Kingspan (KBS) certificate Ireland ...
 17 "Paul and Roger to review current status of
 18 document ..."
 19 Nothing to do with testing, all about certification;
 20 yes?
 21 A. It is, but obviously in order to prepare a certificate,
 22 it's their responsibility to have all of the — to
 23 validate all of the information that they're relying
 24 upon, and they need test evidence and so on and so forth
 25 in order to be able to do that.

27

1 Q. Yes, and, in fact, the whole of item 1 is about
 2 certificates and the whole of item 2 is about
 3 certificates, isn't it?
 4 A. Yes, yes.
 5 Q. Yes. So there was a good reason for this email to go to
 6 them, wasn't there?
 7 A. Yes, absolutely.
 8 Q. And a good reason for this to come to you because of
 9 item 3, façade testing?
 10 A. It appears so, yes.
 11 Q. Yes, thank you.
 12 Let's go back to the BBA certificate question, then.
 13 I've just asked you about when you first saw it.
 14 Let's go to {BRE00011803}, please. Let's go
 15 straight to the second email in the chain on the page.
 16 It's from Mark Stevens of Kingspan Offsite to Sarah
 17 Colwell, 17 November 2008, and you can see from the top
 18 email on the page that it came to you under the flag:
 19 "Could we discuss on Wednesday before I respond."
 20 You can see that he attaches, I should say, the
 21 latest version of Kingspan's K15 BBA certificate. You
 22 can see that from the first line of Mark Stevens' email;
 23 yes?
 24 A. Yes, yeah.
 25 Q. And he says to Sarah Colwell:

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1 "I would be interested in your comments on
2 section 7; in particular with regards to use on
3 buildings with upper floors over 18m above ground level.
4 Clearly if this is a route to approval for us, I would
5 be quite pleased; if not, I need to understand the
6 reasons why not from an outside body perspective so that
7 I am better able to communicate the issues and have the
8 message understood."
9 Do you see that?
10 A. Yes, I do, yes.
11 Q. Now, at that stage, had you ever met or communicated
12 with Mark Stevens of Kingspan Offsite?
13 A. I don't think I have, no. I don't think I've ever met
14 him.
15 Q. Right. As we can see from the top email I've just shown
16 you, it's clear that Sarah Colwell sends it to you the
17 same day and asks for a discussion on Wednesday. Do you
18 remember receiving that email at all?
19 A. I don't.
20 Q. Do you remember any discussion with Sarah Colwell about
21 it?
22 A. No, I don't, not first-hand.
23 Q. You don't.
24 Now, Tony Baker told the Inquiry -- and, again, for
25 our reference, it's {Day100/55:3-13} -- that he

29

1 remembered concerns in the BRE about the Kingspan LABC
2 certificate as well as the BBA certificate. Do you
3 remember him having concerns about those documents?
4 A. Not specifically, no.
5 Q. Had you read -- well, when you opened this email, did
6 you look at the attachment that Mark Stevens had sent
7 Sarah Colwell?
8 A. I'm not sure I would have done at that particular moment
9 in time. Again, as we already covered, you know, the
10 attachments to emails, I would only sort of discuss them
11 with people if they brought a particular issue to me
12 that they had a concern about. I mean, you know, you
13 can't read voluminous quantities of everything.
14 Q. No.
15 A. You just have to rely on what is brought to you and
16 discussed.
17 Q. Isn't this a good example of that? Sarah Colwell
18 receiving a message from --
19 A. Potentially, but I --
20 Q. Well, can I just finish the question, please.
21 A. Sorry.
22 Q. Thank you.
23 Isn't this a good example of that? Here is
24 Mark Stevens, of an existing client of BRE, sending
25 Sarah Colwell a document and asking for specific

30

1 technical advice on it. She sends this to you, because
2 she wants your assistance before she responds.
3 Is there any reason at all why you wouldn't have
4 opened the attachment and looked at the BBA certificate
5 that Mr Stevens had sent her?
6 A. Yeah, I mean, the reasons may be that I was dealing with
7 other things at the time. So, you know, there were very
8 many things going on at BRE in the areas that I was
9 responsible for aside from BS 8414. So, you know,
10 unless people actually come to you and say, "There's
11 a particular issue I need to discuss with this in
12 relation to that" and explain their concerns to you --
13 I mean, I did not have capacity to read absolutely
14 everything that landed in my inbox.
15 Q. But you have told us your way of working, and you've
16 just said unless people actually come to you and say,
17 "There's a particular issue I need to discuss with
18 you" -- this was one, wasn't it, so can we proceed --
19 A. It appears so, yes.
20 Q. Yes. So can we proceed, therefore, on the basis that
21 although you don't remember it now, at the time when you
22 received this email, you opened the attachment that
23 Sarah Colwell had received from Kingspan? Can we
24 proceed on that basis?
25 A. Well, I don't recollect it specifically, but I received

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1 the email.
2 Q. Thank you.
3 Let's look at the certificate which was attached.
4 It's at {BRE00011804}, and you can see from the first
5 page that it relates to K15.
6 A. Yes.
7 Q. I wonder if this might trigger a recollection:
8 "Product scope and summary of certificate.
9 "This Certificate relates to Kooltherm K15
10 Rainscreen Insulation Board, a rigid phenolic board with
11 foil composite facings, for use as external thermal
12 insulation on new and existing steel frame or masonry
13 walls. The board is used in domestic and non-domestic
14 buildings in conjunction with masonry or weathertight
15 ventilated cladding systems."
16 And there is an image, I think a computer-generated
17 image, of what looks like a steel-frame system; is that
18 right?
19 A. Yes, probably.
20 Q. Yes.
21 A. It's a bit difficult to see.
22 Q. You can certainly see the reference in the text to --
23 A. Yes.
24 Q. -- new and existing steel-frame or masonry walls.
25 A. Mm.

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1 Q. If you scroll down to the bottom, you can see that in
 2 the grey box there, there's a date of first issue:
 3 27 October 2008; yes?
 4 A. Yes, yes.
 5 Q. Yes.
 6 Now, in Mark Stevens' email, he had specifically
 7 asked for Sarah Colwell's comments on section 7; yes?
 8 We saw that.
 9 A. Yes.
 10 Q. Yes, so let's go to that. That's at page 5
 11 {BRE00011804/5}, towards the bottom of the page.
 12 At 7.1, the heading is "Behaviour in relation to
 13 fire"; yes? You can see that the certificate gives some
 14 details there of the test that was carried out under
 15 BS 8414—1 on a system incorporating K15; yes?
 16 A. Yes.
 17 Q. Yes.
 18 At the very end of that paragraph of the text, the
 19 certificate says this:
 20 "... the product meets the criteria stated within
 21 BRE 135."
 22 Yes?
 23 A. Yes, yeah, the last line, yes.
 24 Q. Now, first, do you agree that BR 135, as it then stood,
 25 which was the 2003 second edition, related to systems

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1 and not products?
 2 A. Absolutely.
 3 Q. Yes, and therefore that statement there is incorrect,
 4 isn't it?
 5 A. Correct.
 6 Q. Did you notice that at the time?
 7 A. I don't recall. I mean, I'm assuming that I had
 8 a discussion with Sarah about this and she would have
 9 pointed out what her concerns were, and, I mean, that
 10 may very well have been what her concern was. I don't
 11 recall.
 12 Q. Do you remember what her concerns were that she pointed
 13 out to you?
 14 A. No, no, I don't, as I say.
 15 Q. You can also see that there's only one test and it's
 16 done under the 2002, part 1 version of BS 8414 relating
 17 to masonry; yes?
 18 A. Yes, that's correct.
 19 Q. Did it not twig with you that, in fact, Kingspan, or
 20 rather the BBA, was stating that the product was for use
 21 not only with masonry wall constructions, but also
 22 structural steel frames?
 23 A. Okay, well, it may well have done, but I don't recall
 24 the details of any discussion with Sarah over it. But
 25 we may very well have spotted that, I don't know.

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1 Q. Now, if we look at the very end of page 5 and go to
 2 page 6, you can see section 7.2:
 3 "The product is classified as Class 0 or 'low risk'
 4 as defined in the documents supporting the national
 5 Building Regulations. The product, therefore, may be
 6 used in accordance with the provision of ..."
 7 And if we turn the page {BRE00011804/6}:
 8 "England and Wales. Approved Document B,
 9 paragraph 8.4, Volume 1 and paragraphs 12.5 and 12.6,
 10 Volume 2 (see also Diagram 40)."
 11 Now, I don't think we need to go back to it — we
 12 can if you like — but in 2008, you were using the 2006
 13 edition of Approved Document B, which dealt with
 14 external surfaces for buildings with a storey over
 15 18 metres; yes?
 16 A. Mm—hm.
 17 Q. What would be the relevance of a classification to
 18 class 0 for an insulation product such as K15?
 19 (Pause)
 20 A. Sorry, I'm not following where it says that class 0 —
 21 Q. You're right. At the foot of page 5 {BRE00011804/5} and
 22 also top of page 6. Foot of page 5:
 23 "The product is classified as Class 0 ..."
 24 Yes?
 25 A. Yes.

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1 Q. And:
 2 "... therefore, may be used in accordance with ..."
 3 If we flip back to page 6 {BRE00011804/6}, Approved
 4 Document B, et cetera, et cetera, there is a reference
 5 to 12.6 there and diagram 40; yes?
 6 A. Yes.
 7 Q. Yes, and of course you know, I think —
 8 A. Yes, yes.
 9 Q. — that 12.6 and diagram 40 are about external
 10 surfaces —
 11 A. Absolutely, yes.
 12 Q. — or walls, or of walls, depending, and class 0 is
 13 class 0.
 14 Now, my question, again: what was the relevance of
 15 a classification to class 0 of an insulation product
 16 such as K15?
 17 A. Well, within this context here, it wasn't relevant.
 18 Q. No. K15 would never be used as an external surface on
 19 a building, would it? You don't put —
 20 A. It shouldn't be, no.
 21 Q. You don't put insulation —
 22 A. No, it shouldn't be.
 23 Q. — phenolic insulation as the external product.
 24 A. No.
 25 Q. No.

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1 Do you agree, on its face, that the clear
 2 implication of this wording was that K15 was suitable
 3 for use above 18 metres?
 4 A. I suppose, taken with the BS 8414 result, that is what
 5 they were seeking to achieve, yes.
 6 Q. Just looking at what I've read to you, do you agree that
 7 this section this of certificate could very easily
 8 create the wholly misleading impression that K15 could
 9 be used above 18 metres in a generic sense, in other
 10 words on any building above 18 metres?
 11 A. Potentially.
 12 Q. Yes. Did you pick that up at the time?
 13 A. I'm not sure. I don't recall whether we did or not.
 14 Q. It would have been quite a moment to realise that that
 15 is what K15 was claiming, through the BBA, for its
 16 product, wouldn't it? You have no recollection of that?
 17 A. I don't have a recollection of that. I mean, I do
 18 know — I mean, obviously there were concerns, and
 19 I think that it was at this sort of time, but, I mean,
 20 I would defer to Sarah's recollections on that, that she
 21 actually gave presentations and so on to BBA around the
 22 application and use of BR 135.
 23 But at the end of the day, I mean, we can only
 24 express concerns and could only express concerns to
 25 organisations such as BBA and others, but we had no

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1 authority. At the end of the day, you know, the content
 2 of their certificates is theirs, you know, and it's for
 3 them to satisfy themselves that what they are including
 4 within the certificate is correct and valid.
 5 Q. Right.
 6 A. So, you know, you can make a representation to them, you
 7 can explain, you know, what — flag a concern, which
 8 I suspect probably is what happened as a consequence of
 9 the contact from Sarah, but the way that they respond to
 10 that is beyond our control.
 11 Q. Well, that's a statement of your belief. What I want to
 12 know is: did you have a conversation with Sarah Colwell
 13 at the time about these manifest, I put it to you,
 14 defects in this BBA certificate?
 15 A. I don't recall. I can't say categorically.
 16 Q. Now, Sarah Colwell told us — {Day233/25–33} — she met
 17 with George Lee about section 7.1 of the certificate on
 18 22 December 2008. She told us that she discussed that
 19 with him, didn't turn the page and didn't follow up with
 20 the BBA at any time after that.
 21 My question for you, Dr Smith, is: what, if
 22 anything, did you know about that meeting?
 23 A. I don't recall. I mean, if you say that and that is
 24 what happened, then that would have been the outcome of
 25 the discussion that I had with Sarah, inevitably,

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1 because you saw the email where she was saying, "Can we
 2 discuss this", so —
 3 Q. Right.
 4 A. — piecing the bits the jigsaw together as presented, it
 5 appears that we would have had a meeting and then she
 6 went and spoke to BBA about the concerns that we had
 7 observed.
 8 Q. Well, no, she didn't. That's the point.
 9 A. I thought you said she did talk to him about 7.1.
 10 Q. She didn't follow up with the BBA.
 11 A. I thought you said she met with George Lee.
 12 Q. Well, we can —
 13 A. Sorry.
 14 Q. — look at the transcript ourselves, Dr Smith. I'm
 15 putting to you the gist of her evidence.
 16 Let me ask you in a slightly different way, then.
 17 Can you remember either you or Sarah Colwell
 18 following up with the BBA at any time after having seen
 19 this certificate and pointing out to them the errors in
 20 it?
 21 A. Not to follow it up beyond that, no.
 22 Q. No.
 23 Is it right that you had a reasonably cordial
 24 working relationship with the BBA?
 25 A. Erm ...

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1 Q. You had people you could talk to there if you wanted to?
 2 A. Well, not particularly, no. I mean, we — I think there
 3 were one or two points of contact with BBA, but we
 4 didn't have a relationship with BBA at all.
 5 Q. Right. So you don't know anything about the BBA
 6 contacting Sarah Colwell for particular advice about the
 7 contents of certificates?
 8 A. I think they did contact her from time to time, but it
 9 wasn't a regular relationship and, you know, there was
 10 no — you know, there wasn't regular meetings or
 11 anything like that, it was a very ad hoc relationship,
 12 and I think they got the vast majority of their fire
 13 input from elsewhere, not from BRE.
 14 Q. The BRE was at Garston, wasn't it?
 15 A. Yes, it was, yes.
 16 Q. The BBA was also at Garston.
 17 A. Yes, it was.
 18 Q. In fact, I think it was opposite the BRE, wasn't it?
 19 A. Well, it occupies a building at BRE, but it's a private
 20 building that's locked just like, you know, an office
 21 adjacent to this building. I mean, it's a separate
 22 entity.
 23 Q. Yes. But not difficult if you wanted to knock on the
 24 door and gain admission and talk to somebody about
 25 a potentially misleading and extremely dangerous

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1 certificate , for example, which was circulating in the
2 public domain?
3 A. Well, I mean, in terms of proximity, they were close by,
4 but, as I say, there was no working relationship, as
5 such, it was just ad hoc.
6 Q. Now, can I ask you, then, to stick with page 6
7 {BRE00011804/6} and look at paragraph 7.3. It says
8 this:
9 "In buildings with a floor more than 18m above
10 ground level, advice should be sought from the
11 Certificate holder."
12 Making allowances for your recollection, Dr Smith,
13 of course, but when you looked at this certificate ,
14 assuming you read it, were you not struck by that
15 clause?
16 A. Not particularly. I don't think I would have been.
17 Why ... what's the concern?
18 Q. Is it something you've ever seen before?
19 A. Erm ...
20 Q. Go back to the manufacturer and seek advice where you're
21 dealing with a building with a floor more than 18 metres
22 above ground level?
23 A. Yeah, I don't think it's that unusual in these types of
24 certificates from BBA.
25 Q. Right. So is your evidence that you'd seen that kind of

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1 statement in a BBA certificate before this one?
2 A. I can't be definitive about that, but it's not — as
3 I sit here today, it's not something that is unique,
4 I think, to this certificate .
5 Q. Go back to your statement, please, at {BRE00005624/29},
6 paragraph 107. You say there, in the fourth line :
7 "BRE has no subsequent role or responsibility in
8 relation to any performance claims which the test
9 sponsor may make for the products or systems which they
10 sell into the market (such claims effectively being
11 'policed' by Trading Standards as the market
12 surveillance authority in the UK)."
13 A. Yes.
14 Q. Was there anything at the time that precluded the BRE in
15 some way from notifying Trading Standards about
16 misleading or inaccurate performance claims, whether in
17 the manufacturer's performance claims or whether in
18 a BBA certificate itself ?
19 A. I mean, this would typically be the route that you would
20 go with a manufacturer. I'm not sure we would have ever
21 considered approaching Trading Standards in relation to
22 BBA certificates or whatever. As I say, you know, you
23 draw it to people's attention and then allow them to
24 carry out their work accordingly, looking at the
25 evidence and whatever that they have available to them.

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1 I mean, the fact —
2 Q. Did —
3 A. The point here really, sorry, is that, you know, BRE is
4 not the policeman of the industry. I mean, we didn't
5 have the resources or the capacity to do that. As we —
6 if we became aware of things, then, you know, you could
7 make a direct approach to BBA and say, "Look, I think
8 there might be an issue with this you need to
9 understand", and then it would be left with them to make
10 their decision as to what they wanted to do about that.
11 Q. Why was it resource-intensive to send an email to the
12 relevant Trading Standards officer enclosing the
13 BBA certificate and identifying the three or four ways
14 in which this BBA certificate was manifestly wrong
15 and —
16 A. Well —
17 Q. — if used by Kingspan, manifestly misleading? Why was
18 that resource-intensive?
19 A. Well, no, the whole point of looking at all certificates
20 and so on would be resource-intensive.
21 Q. But I'm only asking you about this one?
22 A. Well, yes, and, I mean, I don't know — I mean, I'm not
23 sure it was an option that we considered at the time,
24 and it didn't happen, obviously.
25 Q. Did you consider that the BRE was in some way precluded

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1 from notifying the BBA that their certificate was
2 inaccurate and misleading?
3 A. No, and I, as I say, sat here right now, I thought that
4 had happened.
5 Q. Did you consider that the BRE was in some way precluded
6 from notifying Kingspan that their BBA certificate they
7 were using to sell K15 was inaccurate and misleading?
8 A. No, and again, I don't know, I haven't seen the email
9 trails and so on, but presumably Sarah responded to the
10 email that you showed earlier.
11 Q. Did you consider that you thereafter, after
12 November 2008, ought to be treating your client,
13 Kingspan, with a very considerable degree of
14 scepticism —
15 A. Well, I think we did.
16 Q. — given the contents of this certificate?
17 A. Well, I think we did.
18 Q. You think you did?
19 A. Yes.
20 Q. In what way?
21 A. In all ways. As I say, we'd had a very ... we
22 considered all of the insulation industry to be needed
23 to be treated carefully and sceptically .
24 Q. But you still continued to sit down with them, work with
25 them, and take their money?

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1 A. In the same way that you do with any customer. It
 2 doesn't mean that you can't work with somebody if you're
 3 applying the right rules and principles around the work
 4 that you undertake, and, I mean, it was my belief that
 5 we were acting properly and appropriately and
 6 independently and impartially in every piece of work
 7 that we undertook. And obviously, if you undertake
 8 a test for somebody, then of course they've got to pay
 9 for it. I mean, that's ... you can't afford to do
 10 testing for free for people, and actually if you did,
 11 I mean, that would demonstrate a lack of impartiality
 12 anyway.
 13 So, I mean, the whole thing is bound up with those
 14 principles, and I have no evidence or belief that BRE
 15 deviated from those principles.
 16 Q. Can we just go back to Mr Stevens' email, please, which
 17 is at {BRE00011803}, where what he asks for is
 18 Sarah Colwell's view, in the second line:
 19 "... in particular with regards to use on buildings
 20 with upper floors over 18m above ground level. Clearly
 21 if this is a route to approval for us, I would be quite
 22 pleased ..."
 23 Now, I showed you clause 7.3, the provision that
 24 said for buildings over 18 metres, seek the advice of
 25 the manufacturer. What, do you know, was the BRE's

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1 answer to the question about whether that was a route to
 2 approval?
 3 A. Have you got a response from Sarah to Mr Stevens?
 4 Q. Well, that's why I'm asking you, you see. Do you know?
 5 A. I don't, sat here now.
 6 Q. Rather than asking me about what's in the documents,
 7 Dr Smith --
 8 A. Yeah, but I --
 9 Q. -- do you know from your own knowledge sitting here?
 10 A. No.
 11 Q. That's what I'm after.
 12 A. Okay.
 13 Q. If there was a document, I would be putting it to you,
 14 you see.
 15 A. Okay. So I don't know.
 16 Q. That's how this works. Right, you don't?
 17 A. No.
 18 Q. Do you accept, as a general proposition, that the BRE
 19 ought to have gone back to Kingspan and told them that
 20 merely getting Kingspan's approval was not a route to
 21 approval covered by Approved Document B?
 22 A. Yeah, I mean, I don't know what happened as
 23 a consequence of this email, so I can't really comment.
 24 Q. Let's go to 2009, please, {BRE00003313}. This is
 25 another series of internal emails from May 2009.

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1 Now, I'm sorry to say it's a fairly long chain, but
 2 I don't think we need to look at all of it. We can
 3 certainly look at more of it than I intend to show you
 4 if you like.
 5 But can we start on page 3 {BRE00003313/3}. We find
 6 there an email of 11 May 2009 from Sarah Colwell to you
 7 and John Raybould at 10.50 in the morning, copying in
 8 Stephen Howard and Tony Baker; yes?
 9 A. Yes.
 10 Q. Yes. Who is John Raybould?
 11 A. John Raybould is the manager of the BRE north east
 12 facility up in Middlesbrough.
 13 Q. Right.
 14 Now, in the opening paragraph of her email, she says
 15 this:
 16 "I see from your sales report that you have met with
 17 Wetherbys and Kingspan but unfortunately you have not
 18 contacted either myself or Tony to provide any feedback
 19 -- as we are currently working with both parties it would
 20 be most helpful as we need to look like a 'joined up'
 21 group."
 22 Then in the third and fourth paragraphs she says
 23 this:
 24 "We know Kingspan have a number of finishes that
 25 they would like to be included in their scope but they

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1 do not have the resource for 20 BS 8414 tests.....
 2 "Please let me know when you can next be in the
 3 office so we can sit down and agree your sales plan for
 4 this area so we have some effective two way
 5 communication and keep the activity focused."
 6 Now, first of all, the reference to the words "sales
 7 plan" there in the last paragraph, what was that? What
 8 was being sold?
 9 A. Sales plan? So part of John's role was business
 10 development, so he would be selling the services and --
 11 that he had available to him up in BRE north east, which
 12 might be -- so it included things such as sandwich panel
 13 testing for LPCB approval, and also intumescent
 14 coatings, the steel preparation areas up there. They
 15 didn't actually do testing of intumescent coatings up
 16 there, but the preparation for testing.
 17 Q. Yes, thank you.
 18 Now, you note the words in the third paragraph, that
 19 "Kingspan have a number of finishes that they would like
 20 to be included in their scope but do not have the
 21 resource for 20 BS 8414 tests".
 22 Then if we go up to page 2 of the email chain
 23 {BRE00003313/2}, we can see John Raybould's response on
 24 11 May, same day, back to Sarah Colwell and
 25 Stephen Howard, copied to you, subject "Wetherby &

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1 Kingspan"; yes?
 2 A. Mm—hm.
 3 Q. If you look at the second paragraph under the heading
 4 "Wetherby", he writes as follows:
 5 "No mention of Panaloc — I briefly discussed his
 6 teaming with Panablok ..."
 7 And then the next paragraph:
 8 "His big question was, — having tested his 50mm
 9 system in an 8414 test, which then allows him to use
 10 this system with Kingspan phenolic within for [sic]
 11 heights from zero to over 18m. He wants to know how he
 12 can apply a thicker insulation to lower buildings — i.e.
 13 Schools. This is because Zurich will only accept
 14 non combustible products and the 8414 appears to pass
 15 the phenolic as a non combustible material (my post
 16 meeting words).
 17 "Do we suggest an 1181 or some other test."
 18 Just pausing there, is 1181 an LPC test?
 19 A. Yeah, it's an LPS.
 20 Q. LPS, so Loss Prevention Standard used by —
 21 A. Yeah, certification standard, yes.
 22 Q. Yes, I see, and that's because of Zurich, presumably, as
 23 insurer?
 24 A. Yes, I would assume so.
 25 Q. Yes.

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1 Now, then he goes on:
 2 "Kingspan.
 3 "Although Kingspan are testing in the near future,
 4 Mark said that this is another project specific, so
 5 I have agreed with Mark that I will come back to him in
 6 a few weeks after discussing internally. He will be out
 7 of the office in Dubai for the next week."
 8 Now, pausing there, that's a reference, I think, to
 9 Mark Stevens of Kingspan Offsite, is it?
 10 A. I don't know. It could be, but it — I think there are
 11 a number of people called Mark that work at Kingspan.
 12 Q. That may very well be.
 13 Now, it goes on:
 14 "The guidelines that I want to ask you all are ..."
 15 Then there are some questions:
 16 "1) If we test thick and thin insulation with no
 17 other changes can we accept any insulation thickness
 18 within that range.
 19 "2) Can we decide what cavity space would be the
 20 worst so that they can carry out the thick and thin test
 21 with the worst cavity.
 22 "3) We know that fire seals are critical, both type
 23 and position so initially we are unsure as to what to
 24 offer as any guidance re differing floor heights.
 25 I would like to give some more definite options.

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1 "4) We know that spontaneous ignition of the
 2 insulation above a fire break is critical to its success
 3 or failure so is there any way we can access the 20—30
 4 outer systems in a more technical manner.
 5 "a) We know it is either the fire breaking through
 6 the outer barrier or the radiative heat coming through
 7 and igniting the insulation surface.
 8 "b) So could we carry out some small scale sorting
 9 tests using both resistance type tests but adding some
 10 heat flux meters to try to better understand which
 11 systems are prone to letting a lot of heat through.
 12 "c) This would help us group the outer systems into
 13 say 3 groups and through those 3 into full scale tests
 14 to hopefully confirm our guidelines.
 15 "This is as far as my defining guidelines went as
 16 I really need to talk to people at base to consider more
 17 sorting options."
 18 Now, what were those defining guidelines? What were
 19 they?
 20 A. I don't know, I mean, this ... I mean, I don't
 21 understand what John's talking about in a lot of this.
 22 Q. Did you go back and ask him?
 23 A. We may very well have done, or Sarah may very well have
 24 done. I mean, John was not an expert in the matters
 25 that, of course, Sarah and others were.

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1 Q. I don't want to be unfair to you. You do actually
 2 respond to this email —
 3 A. Okay, okay.
 4 Q. — and I'm going to show you the response in a moment.
 5 So park my question, if we can, I will come back to it.
 6 A. Okay.
 7 Q. But looking at what he is proposing there, he's
 8 proposing some guidelines. You can't tell us what the
 9 purpose of those guidelines was, sitting here?
 10 A. Not sat here, looking at that now in isolation, no.
 11 Q. Who is the "we" that you would understand in the first
 12 bullet point, "If we test thick and thin"?
 13 A. I presume he's talking about BRE.
 14 Q. Yes. Are these attempts on the part of BRE to put in
 15 place some sort of field application parameters for
 16 Kingspan?
 17 A. It looks as if that is the case. I mean, okay, I hadn't
 18 seen this, but this was what I was sort of alluding to
 19 earlier.
 20 Q. Now, just looking at it, would it be fair to say that
 21 John Raybould here is trying to understand how to
 22 arrange test rigs for Kingspan in a way that would give
 23 those tests the best chance of success, for example by
 24 pre-testing some of the components by small-scale tests?
 25 A. Yeah, I don't know what he is trying to do, to be

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1 honest.
 2 Q. Right.
 3 A. I mean, we know that there is no correlation from one to
 4 the other, so ...
 5 Q. Right.
 6 A. The usefulness of it, I can't comment on —
 7 Q. Right. There is a post-meeting note.
 8 A. Yeah.
 9 Q. Yes. There's a post-meeting note:
 10 "I am not siding with either party at the moment but
 11 2 things are for sure:
 12 "1) Kingspan have 30 different systems of which they
 13 know they will have to test 10–20 to get them all
 14 through, but would like to do [it] as cost effective as
 15 possible. This still is a lot of money to spend.
 16 "2) Kingspan's is of the opinion that we are not
 17 coordinating this package of work and that they are
 18 being left floundering without any real guidance other
 19 than keep testing and then we will offer application
 20 guidance."
 21 Then if we turn the page, please, to page 3
 22 {BRE00003313/3}:
 23 "I did suggest to Mark that I would coordinate (pull
 24 together) these activities of the package programme like
 25 I did in the old resistance package, without stopping

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1 the existing direct contact between various parties."
 2 First of all, siding with either party, in what, did
 3 you understand he was —
 4 A. I don't know.
 5 Q. — not siding? What was the —
 6 A. No, I don't know.
 7 Q. — division?
 8 A. And I don't know what parties he is referring to.
 9 Q. Maybe he was referring to Kingspan on the one hand and
 10 BRE on the other. Is that the way you might have
 11 understood it at the time, doing the best you can?
 12 A. I don't know. I mean, I don't know why he would side
 13 with Kingspan or BRE. I mean, he was a BRE employee,
 14 so ...
 15 Q. Right.
 16 A. It's very odd.
 17 Q. Right.
 18 Looking at paragraph 2 at the bottom of page 2
 19 {BRE00003313/2} again, under the post-meeting note, he
 20 says that Kingspan was of the opinion that the BRE:
 21 "... are not coordinating this package of work and
 22 that they are being left floundering without any real
 23 guidance ..."
 24 A. Okay.
 25 Q. "... other than keep testing and then we will offer

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1 application guidance."
 2 On what basis was Kingspan, do you know, being
 3 offered application guidance, or might be?
 4 A. Well, again, I think this relates to — they hadn't been
 5 offered any, but it would relate to the field of
 6 application and the potential to extend the field of
 7 application.
 8 Q. But, again — and we have been through this before —
 9 there isn't a field of application for an 8414 test
 10 meeting criteria to 135, is there?
 11 A. There wasn't at the time, no.
 12 Q. No. It looks as if, and help me, would it be right to
 13 take from paragraph 2 there that Kingspan, at least,
 14 were complaining that the BRE wasn't co-ordinating the
 15 package and giving guidance?
 16 A. Correct.
 17 Q. Yes. So their expectation was that the BRE would do.
 18 If that is the case, can you explain how it was that
 19 Kingspan was able to have that expectation?
 20 A. I don't know, but, I mean, in some ways it's reassuring,
 21 because it means they weren't getting what they had
 22 understood to be getting and that there was potentially
 23 some miscommunication that had been going on.
 24 Q. Let's go up to the bottom of page 1 {BRE00003313/1} and
 25 your response email on 11 May, so same day, a little bit

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1 later in the day, in the afternoon, and you respond to
 2 John Raybould, Sarah Colwell and Stephen Howard, copied
 3 to Tony Baker and Norman MacDonald:
 4 "John
 5 "I am not going to answer to the technical points
 6 except to say that phenolic is not 'non combustible' and
 7 never will be. BS 8414 can't pass anything as
 8 non combustible as this is a defined class in the
 9 building regulations (AD B table A6) which makes no
 10 reference to BS 8414. I am happy to contribute to
 11 discussions on the technical issues but would suggest
 12 a short focussed meeting would be the most cost
 13 effective approach."
 14 Now, I think you're correcting there what
 15 John Raybould had written in the third paragraph of his
 16 email on page 2, where he said that — and I think
 17 entirely wrongly, as you say — 8414 appears to pass the
 18 phenolic as a non-combustible material; yes?
 19 A. It appears so, yes.
 20 Q. What other technical issues did you want to contribute
 21 to the discussions on?
 22 A. I don't recall that. I mean, it was probably to discuss
 23 that in more detail with him.
 24 Q. Right.
 25 Now, I just want to show you the entirety of your

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1 response before I ask the question, but if you can look
 2 back at page 1, please, there is a bold, italicised ,
 3 underlined paragraph or sentence which says this:
 4 "In terms of a future work programme, we must not
 5 follow the same project management approach that was
 6 used for the previous package of work for Kingspan for
 7 the fire resistance tests etc as this has been
 8 an unmitigated disaster."
 9 Do you see that?
 10 A. Yes, I do.
 11 Q. What was the unmitigated disaster?
 12 A. I don't recall . I mean, reading the next bit, it says
 13 they've not paid for some of the work, so — but I don't
 14 know.
 15 Q. Right. So an unmitigated commercial disaster for BRE
 16 rather than an unmitigated technical disaster?
 17 A. Well, that may have been wrapped up in it, I don't know.
 18 Q. You don't know?
 19 A. No, I don't recall .
 20 Q. Right.
 21 What we don't see here — and please do read the
 22 rest of that page and over to page 2. I summarise that
 23 the topic here is about contracts and money.
 24 A. It appears so, yes.
 25 Q. Yes.

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1 What we don't see in your response is a question
 2 back to John Raybould saying, "What are you doing? We
 3 can't provide application guidance from testing to
 4 BS 8414 to 135 because that would compromise our
 5 impartiality and independence enshrined in our
 6 protocols". We don't see that, and my question is: why
 7 not?
 8 A. Well, I mean, I could have written a lengthy response in
 9 relation to every single point that he had raised but,
 10 as I say early on in the response, I'm not going to
 11 answer to all the technical points, you know, that's
 12 being left for others to have that discussion in
 13 relation to BS 8414, and I can only assume that — the
 14 way I'm reading that now, that's what that — that was
 15 my approach.
 16 MR MILLETT: Mr Chairman, I'm not quite as far ahead as
 17 I would like to have been by this time, but I am very
 18 close to being where I wanted to be. This is
 19 an opportunity, I think, for a break.
 20 SIR MARTIN MOORE—BICK: Well, then, we ought to take it.
 21 MR MILLETT: Yes.
 22 SIR MARTIN MOORE—BICK: Yes.
 23 We'll take a break at this point, therefore,
 24 Dr Smith. We will resume, please, at 11.35.
 25 THE WITNESS: Yes.

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1 SIR MARTIN MOORE—BICK: Again, please don't talk to anyone
 2 about your evidence while you're out of the room.
 3 Thank you very much.
 4 (Pause)
 5 Thank you, Mr Millett. 11.35, please.
 6 (11.18 am)
 7 (A short break)
 8 (11.35 am)
 9 SIR MARTIN MOORE—BICK: All right, Dr Smith, happy to keep
 10 going?
 11 THE WITNESS: Thank you, yes.
 12 SIR MARTIN MOORE—BICK: Good, thank you.
 13 Yes, Mr Millett.
 14 MR MILLETT: Thank you, Mr Chairman.
 15 Dr Smith, I want to turn to a slightly different
 16 topic, which is the Kingspan LABC certificate.
 17 Can we start, please, with {BRE00012252}. This is
 18 another internal exchange of emails, slightly later in
 19 May 2009, but if you look at the second email down on
 20 the page, you can see that this is an email from
 21 John Raybould to Tony Baker, Sarah Colwell and
 22 Stephen Howard, copied to you. "Cladding test — LABC
 23 assessments" is the subject:
 24 "Hi Folks
 25 "I have managed to get an LABC certificate — from

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1 Hertfordshire, that says the Kingspan K15 insulation can
 2 be used in a mixture of insulation thicknesses, masonry
 3 or steel framed substrates, a min cavity gap of 50mm
 4 with a range of rainscreen claddings.
 5 "I am sure that this will be sent to us officially
 6 by [Kingspan] when Mark Stevens gets back from the
 7 Middle East. I would like to think we have tried to
 8 establish some guide lines like I was proposing, so that
 9 we could at least give Mark some help with his system
 10 configurations.
 11 "Also note that this appears to give automatic
 12 acceptance for [systems] over 18m.
 13 "Let me know how we want to move forward."
 14 Above that we can see that Sarah Colwell sends
 15 a message to you and Stephen Howard the same day,
 16 7 minutes later, in fact:
 17 "Debbie/Steve
 18 "We need to discuss this urgently.
 19 "Regards
 20 "Sarah."
 21 A. Mm—hm.
 22 Q. Now, attached to John Raybould's email was LABC's system
 23 approval certificate and certificate summary for K15.
 24 Let's go to that. It's at {BRE00012253}. There it is,
 25 and it's entitled:

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1 "LABC Type Approval Service.
 2 "System Approval — External Walls of Rainscreen
 3 Cladding Incorporating Kingspan Kooltherm K15 Insulation
 4 Board."
 5 My first question is: when you got the email or got
 6 the message from Sarah Colwell 7 minutes later, did you
 7 open the attachment and read this document?
 8 A. I don't recall. I mean, whether I opened it right then
 9 or — I don't recall when I would have opened it.
 10 Q. Right.
 11 The message in Mr Raybould's email in the
 12 penultimate paragraph is that it appeared to give
 13 automatic acceptance for K15 over 18 metres, and
 14 Sarah Colwell wanted to discuss it with you urgently.
 15 Can we assume, given those two features of the
 16 correspondence sent to you, that you did open the
 17 attachment and look at this document?
 18 A. Well, at some point I guess I would have done, yes, but
 19 I don't recall when that was.
 20 Q. Let's look at page 2 of this document {BRE00012253/2},
 21 this document here on the page. If we go halfway down
 22 page 2 under the heading "Requirement B — Fire Safety
 23 Considerations" — can you see?
 24 A. Yes.
 25 Q. It's now at the top of your screen:

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1 "K15 has been tested in accordance with:
 2 "BS 8414—1; 2002 [which is self-explanatory] ...
 3 "BS EN 1364—1; 1999 (Fire resistance ...)
 4 "BS 476—6 ...
 5 "BS 476—7 ..."
 6 Yes?
 7 A. Yes.
 8 Q. And it says then:
 9 "From the results, it can be considered as
 10 a material of limited combustibility and meets the
 11 criteria for Class 0 classification for surface spread
 12 of flame."
 13 Now, where it says, "From the results, it can be
 14 considered as a material of limited combustibility",
 15 that was entirely wrong, wasn't it?
 16 A. Yes, it is.
 17 Q. None of those tests could lead to a conclusion that K15
 18 could be considered a material of limited
 19 combustibility, could they?
 20 A. No.
 21 Q. There were no circumstances in which Kingspan's K15
 22 phenolic insulation board could ever be considered
 23 a material of limited combustibility, could it?
 24 A. No.
 25 Q. No. Did you appreciate that at the time?

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1 A. I would have done, yes.
 2 Q. Was this claim of serious concern to the BRE?
 3 A. Well, if we read this at the time and reviewed this,
 4 then yes, it would have been.
 5 Q. I mean, presumably it must have been of some concern, is
 6 it right, because Sarah Colwell wanted to discuss this
 7 urgently with you and Stephen Howard?
 8 A. Yes, she wished to discuss some aspect of this with me,
 9 yes.
 10 Q. Do you remember having a discussion about this document
 11 with Stephen Howard and/or Sarah Colwell?
 12 A. I don't recall it, no, I don't, but, I mean, I can only
 13 assume that we did.
 14 Q. Yes. Tony Baker told us — {Day100/55:3—15} — that he
 15 recalled concerns within the BRE about the Kingspan LABC
 16 certificate as well as the BBA certificate. Do you
 17 remember that? Does that help you?
 18 A. I do recall some issues with the LABC certificates, yes.
 19 Q. We have no record of any further correspondence on this
 20 at all. If that's right, but that is all we have, can
 21 you explain why that is?
 22 A. Not definitively, no, I can't, other than, I mean, there
 23 was ongoing discussions between BRE and LABC around this
 24 time that were taking place with the CEO of BRE Global
 25 and the technical director, so Carol Atkinson and

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1 Philip Field, and I would have referred any concerns
 2 that we had, that we had identified, up to them to have
 3 raised in their discussions that they were having.
 4 Q. What were the ongoing discussions between BRE and LABC
 5 at this time that you've just referred to?
 6 A. So —
 7 Q. Were they on this topic or —
 8 A. Not specifically on this, but in — you know, they were
 9 talking about opportunities for working more closely
 10 together at that time, as I understand it.
 11 Q. What, BRE and the LABC?
 12 A. Yes. For BRE to provide some degree of technical
 13 support to them. But I think in the end that didn't
 14 actually go anywhere. It didn't manifest itself in any
 15 sort of working relationship. But the discussions were
 16 certainly going on around that time.
 17 Q. Did the BRE raise its concerns about the content of this
 18 certificate that we've just seen with Kingspan?
 19 A. I can't be definitive, but that would be my expectation,
 20 yes.
 21 Q. Well, that may be a fair observation now. We haven't
 22 seen any communication with Kingspan to take it up with
 23 them. Are you able to explain why that is?
 24 A. With Kingspan or LABC?
 25 Q. With Kingspan.

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1 A. Okay, no, I don't know what happened in relation to
 2 Kingspan, no.
 3 Q. Why is that?
 4 A. I don't recall. I don't recall if we would have
 5 discussed it with Kingspan or not.
 6 Q. Did BRE raise any concerns about the content of this
 7 certificate with Trading Standards?
 8 A. Not to my knowledge, no.
 9 Q. Did the BRE raise any concerns about this content of the
 10 certificate here with Anthony Burd or Brian Martin or
 11 anybody else at the department?
 12 A. I think the department were probably aware of this, but
 13 you can — obviously you can explore that directly with
 14 them.
 15 Q. Well, that is entirely something we can do, but what is
 16 the basis for your evidence that you think the
 17 department were probably aware of this? Why do you say
 18 that?
 19 A. I think there were, as you said earlier, concerns around
 20 the claims that were being made in relation to just the
 21 insulation in isolation at that time.
 22 Q. Who had those concerns? Who in government had those
 23 concerns?
 24 A. I think it was an industry concern.
 25 Q. Well, I'm asking about government.

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1 A. Okay, well, I can't be specific about that, but I think,
 2 you know, people were aware that there were some
 3 misleading claims that were being made, and I think this
 4 is probably around the time as well that Advertising
 5 Standards were also looking at this.
 6 Q. Can you be specific about who you mean by "people"?
 7 "People were aware"; what kind of people?
 8 A. Well, as I say, in the department at the time, it would
 9 have been probably Anthony Burd.
 10 Q. Right. He certainly was in the department at the time.
 11 Do you remember a specific instance, sitting here
 12 now, which you can recall which could tell us that
 13 Anthony Burd knew that Kingspan were relying on this
 14 certificate in order to sell K15?
 15 A. No, I can't, no. Not a specific instance.
 16 Q. What about others in the industry?
 17 A. Well, insofar as, as I say, we were contacted by the
 18 Advertising Standards people.
 19 Q. And what did you tell them?
 20 A. I think I've already reported that. They were asking
 21 about definitions of limited combustibility and
 22 non-combustible and those things, which — I mean, they
 23 didn't mention, and I said that in my statement, to my
 24 recollection, any particular company. But, I mean, it's
 25 kind of — when you see this written here like this now,

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1 I think it's pretty clear that it was probably linked to
 2 these claims, these types of claims that were being
 3 made.
 4 Q. Did you give any consideration at the time to the fact
 5 that Kingspan, one of your clients for some years by
 6 now, was making, through this certificate, potentially
 7 dangerous and misleading statements to the industry, to
 8 the market?
 9 A. I think we did and, as I say, I think from my
 10 recollection, anyway, we did share those concerns with
 11 LABC through other colleagues, and I think the — and
 12 I'd understood as well that we were also sharing such
 13 concerns with BBA.
 14 Q. Did you? Really? When was that?
 15 A. I don't know exactly when that was, but, you know, it
 16 was my understanding that Sarah was speaking to BBA on
 17 an ad hoc basis, and the purpose of those discussions
 18 was to explain, you know, the context of BR 135 and the
 19 BS 8414 testing, and how it applied to a system rather
 20 than to an individual material.
 21 Q. When were those conversations?
 22 A. Well, they went on, I think, for a few years. I'm aware
 23 that Steve Howard also gave presentations to BBA, but
 24 I can't tell you the exact dates of those.
 25 Q. The reason I'm pressing you on this, Dr Smith, is

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1 because, in the earlier session this morning, when
 2 I asked you about the proximity of the two organisations
 3 and the ability for you to take up the 2008
 4 BBA certificate for Kingspan K15, you gave us at least
 5 the impression that that wasn't something that the BRE
 6 did or, as you might put it, would have done. Is that
 7 not right?
 8 A. Well, I also said that there were — there was an ad hoc
 9 relationship between the two. So if we were contacted
 10 or asked for information or whatever, then, you know,
 11 that would be dealt with. But it wasn't a formal
 12 sort of ongoing relationship where we met with them
 13 every month and, you know, discussed things. It was
 14 very much ad hoc, based on issues, if you like, that —
 15 if and when they did occur. But it was no more than
 16 that.
 17 Q. I understand.
 18 So in fact, is this right, just so that we have your
 19 evidence clear about this, there was an open channel of
 20 communication that would be used informally on
 21 an as-and-when-needed basis between the BBA and the BRE?
 22 A. Potentially, yes, as indeed with any other organisation.
 23 Q. Well, that might depend. But I've just put it to you,
 24 you have said "Potentially, yes"; I mean, actually yes?
 25 I'll put it again, so we've got your evidence clear:

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1 was there an open channel of communication, let's take
 2 the date, from 2008, between the BRE and the BBA that
 3 could be used informally on an as-and-when-needed basis
 4 to discuss particular questions?
 5 A. Well, I suppose I'm struggling to understand what you
 6 mean by an open channel. I mean, it's open in the same
 7 way that it is with any organisation. It wasn't
 8 special. There was no special relationship with BBA.
 9 Q. Okay.
 10 Let's go, then, to page 4 of this certificate
 11 {BRE00012253/4}. Now, you can see that one of the other
 12 documents referred to on which the certificate was based
 13 was the BBA certificate itself, 08/4582. Take it from
 14 me that that's the certificate we looked at this morning
 15 dated 27 October 2008, signed by the BBA for
 16 Kingspan K15; yes?
 17 A. Mm—hm.
 18 Q. Did you notice that at the time?
 19 A. I don't recall.
 20 Q. Right. Did that not then prompt a discussion with the
 21 BBA that their certificate was engendering other
 22 manifestly erroneous and misleading certificates?
 23 A. I can't remember that. I don't recall.
 24 Q. Can you explain why, given the manifestly erroneous and
 25 misleading content of this certificate in the way you

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1 and I have, I think, agreed, we never see in the records
 2 that we have seen from the BRE a strong letter that goes
 3 to Kingspan to ask them about how it is that they have
 4 allowed LABC to labour under this clearly wrong
 5 impression and what they propose to do to correct it?
 6 Can you explain why we see no such communication?
 7 A. No, I can't.
 8 Q. There should have been one, shouldn't there?
 9 A. On reflection, yes, we should have done that.
 10 Q. But nonetheless, for the years that followed, it looks
 11 as if BRE was continuing to treat Kingspan as its client
 12 without the degree of scepticism that might have been
 13 required, given the knowledge that you had about what it
 14 was telling the market through these certificates.
 15 A. Well, as I say, we did have a degree of scepticism
 16 and — around all of the — this sector of the industry.
 17 Q. I'd like to move next to some questions about the
 18 testing carried out by Kingspan at BRE in 2014 under
 19 BS 8414—2.
 20 Now, by 2014, or perhaps in 2014, Dr Smith, what was
 21 your role in relation to testing to BS 8414?
 22 A. 2014?
 23 Q. Yes, and particularly —
 24 A. So I was heading up the fire and security area at BRE at
 25 that point, so I was the director for, I think, BRE fire

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1 and security.
 2 Q. Did that have any role in relation to testing?
 3 A. Yes.
 4 Q. Testing to BS 8414?
 5 A. Yes, it would have done. So that would have sat under
 6 there with all of the other testing areas that came
 7 under BRE fire and security, so security testing and so
 8 on and so forth.
 9 Q. Now, take one or two things from me. We know that
 10 Kingspan carried out a test to part 2 of BS 8414 on
 11 a system incorporating K15, or a version of that
 12 product, and Trespa panels as the rainscreen on
 13 19 March 2014. We've also heard evidence from witnesses
 14 about Kingspan's complaint or appeal against the BRE's
 15 decision as a result of that test, which was that it had
 16 been terminated early and therefore couldn't be
 17 classified to BR 135.
 18 I've just given you some information there. Do you
 19 recall any of this?
 20 A. I do recall that, yes.
 21 Q. Right.
 22 A. Because it was very unusual.
 23 Q. Right. And what was unusual about it?
 24 A. It was unusual for a test result to actually be
 25 contested.

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1 Q. I see.
 2 If we go, then, to {BRE00015526}. I think we could
 3 probably take it quite quickly. If you go to the top
 4 email in the chain, you can see that here is an email
 5 from Stephen Phillips to some recipients, copied to you
 6 as well as Stephen Howard, 7 May 2014, subject,
 7 "Complaint — FW: Cladding test result". Yes?
 8 A. Yes.
 9 Q. Now, we don't need to go through the whole chain, but if
 10 we scroll through it, you will see that the emails cover
 11 the fact that Kingspan will be complaining about the
 12 BRE's decision that the 19 March 2014 test had failed to
 13 meet the BR 135 criteria. Take that from me.
 14 If we go to the foot of page 2 of the email run,
 15 over to page 3 {BRE00015526/3}, we can see an email from
 16 Tony Millichap right at the foot of 2, 7 May 2014, to
 17 Stephen Howard. If we turn the page, please, we can see
 18 that he says this:
 19 "Hello Stephen,
 20 "We write further to our ongoing correspondence and
 21 prior to our meeting later this week in connection with
 22 the above, we would confirm the following."
 23 Then if you look at the paragraph after the longer
 24 one, which starts "For clarity", he says this:
 25 "For clarity based upon data received we would

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1 interpret this as a positive result against the BR135
2 assessment criteria and should this be interpreted any
3 other way by yourselves we would intend to appeal the
4 result formally."

5 Now, I don't know whether you would have noticed at
6 the time that one of the people copied in to this email,
7 if you look right at the top of your screen, was
8 somebody called T Randle at Fenwick Elliott, who were
9 Kingspan's solicitors at the time.

10 A. Yes.

11 Q. Did you notice that?

12 A. I think it was actually brought to my attention for that
13 very reason.

14 Q. Do you know at the time why that had been done?

15 A. Well, no, but the intimation was that they were likely
16 to pursue it legally if they didn't get the result that
17 they wanted.

18 Q. Yes. So —

19 A. It was almost like a threat, was our interpretation of
20 that.

21 Q. Yes.

22 I need to show you a different email chain,
23 {BRE00015592}, and if you go to the first page there,
24 Stephen Howard sends the email run to you in a slightly
25 different format on 23 May, and says:

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1 "Please see the bit in yellow."

2 Yes?

3 If you go down, please, to page 2 {BRE00015592/2},
4 you can see there what the bit in yellow is. This is
5 from Tony Millichap, it's a longer email, and he says:

6 "This issue is of such significance to Kingspan's
7 business that we have consulted with our lawyers who
8 have confirmed that in their view BRE's current position
9 cannot be justified. We recognise the influential
10 position BRE hold and do not wish to contradict its
11 views however our conviction is such that we may have no
12 other option."

13 Now, did you read that passage there from
14 Tony Millichap as a threat?

15 A. Yes, we did.

16 Q. If we go, then, to {BRE00004980}, this is an email chain
17 of the next day, 24 May 2014. If we go to the second
18 email in the chain, this is from you to Stephen Howard
19 and Richard Hardy. You say:

20 "Steve

21 "Obviously I am unaware of the background to this.
22 It appears as if Kingspan are challenging a test failure
23 based on our interpretation of br135 — is this correct?
24 If so, what is the specific problem?"

25 He comes back to you, at the top of the screen, on

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1 26 May, and he says, does Stephen Howard:

2 "There were flames over the top of the rig at around
3 43mins. This in our view means that the test at that
4 point is terminated and if you do not run for the full
5 60 mins you cannot be classified against BR135.

6 "Kingspan Insulation are contesting the
7 interpretation.

8 "The email was send for info really. I suspect that
9 they will get A. N other to offer a classification
10 against the test report."

11 Now, Stephen Howard gave some evidence about that
12 what he came to give evidence to the Inquiry on
13 {Day98/92:18–24}, and he said that that is what he
14 expected at the time, namely that Kingspan would go
15 elsewhere to get a classification test. Did you think
16 that that was a realistic possibility?

17 A. I don't think that would have been at the forefront of
18 our minds at that time. At the forefront of our minds
19 was: was the interpretation of what we'd done correct,
20 and, if so, we needed to stand firm.

21 Q. Right. Did it concern you that Kingspan might go to
22 AN Other to get a classification against the test
23 report?

24 A. I don't recall particularly thinking about that at the
25 time. As I say, it was more a case of —

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1 Q. Right.

2 A. — have we carried out the test and the classification
3 decision appropriately, and, as a consequence of that,
4 are we standing firm on this? Because, at the end of
5 the day, it's our decision whether we wish to classify
6 or not.

7 Q. What were your thoughts about that at the time?

8 A. Well, obviously then there was a proper investigation by
9 the compliance team to look into all of this. On the
10 face of it, from what Steve says there, then it appears
11 everything's in order, but you need to have all of that
12 properly investigated. So there was a full
13 investigation carried out, and then it was discussed,
14 obviously, with Richard Hardy, who was the managing
15 director of BRE Global at the time, and we absolutely
16 took the view that we were going to stand firm, that,
17 you know, it was our decision, we had followed the test
18 and we were not going to give them a classification
19 report.

20 Q. Can we go to {BRE00002516}, please. This is
21 a BRE Global test report —

22 A. Yes.

23 Q. — dated 26 June 2014 for a K15 insulated system with
24 a ventilated Trespa rainscreen; yes?

25 A. Mm.

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1 Q. If you turn, please, to page 2 {BRE00002516/2}, you can
 2 see that it was prepared by Phil Clark as the senior
 3 consultant and authorised by Stephen Howard that day.
 4 A. Yes, yes.
 5 Q. If the decision was to stand firm and we're not going to
 6 give them a classification report, are you able to
 7 explain how this document came into being?
 8 A. This is a test report.
 9 Q. But not the classification report?
 10 A. Correct.
 11 Q. Did it occur to you that the test report might be used
 12 by Kingspan to create the impression that the system
 13 tested on 19 March had actually met the criteria in
 14 BR 135?
 15 A. No, in the sense that all of the parameters that are
 16 required for issuing a BR 135 classification report were
 17 not met, and they are reported factually in the test
 18 report.
 19 Q. Given that you were going to stand firm on
 20 classification, why did you go ahead nonetheless and
 21 issue a test report?
 22 A. Because a test report — well, I mean, I wasn't involved
 23 in issuing it, but a test report is basically
 24 a statement of fact, it is what happened, and there are
 25 test reports for a number of systems that fail the test,

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1 you know, and that applies to many, many tests. There
 2 is nothing that says you shouldn't issue a test report.
 3 The data is there and people looking at the data should
 4 be taking that into account before they issue any
 5 classification.
 6 Q. Did the BRE issue test reports as a matter of course,
 7 even where a system failed to meet the criteria in
 8 BR 135?
 9 A. So I think that has probably changed over the years, and
 10 to some extent it does also depend on, I think, the
 11 nature of the performance.
 12 Q. This was a termination.
 13 A. Yes, it was a termination.
 14 Q. So when you say it might depend on the nature of the
 15 performance, what is it about that performance that
 16 would nonetheless either require or encourage the BRE
 17 nonetheless to issue a test report like this?
 18 A. I think in the main we would issue test reports —
 19 Q. Right.
 20 A. — of the data.
 21 Q. Right, even though a test had failed?
 22 A. Even if a test had failed. There would be some
 23 occasions where a test sponsor would say, "Oh, don't
 24 bother with a test report", you know, in the
 25 circumstances. But, you know, we were — as part of the

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1 contract, we were committed to issuing a test report,
 2 unless they actually said to us, "Look, you know, please
 3 don't bother, you know, we don't want one, we don't need
 4 one".
 5 Q. Can we go, please, to {BRE00018037/4}, middle of page 4.
 6 This is an email from Phil Clark on 16 January 2015
 7 where he is corresponding with somebody called
 8 Amaury Queuille — I think that's probably how you
 9 pronounce it — who is from Carea Façades in France, and
 10 he or she is asking for a report. Phil Clark's
 11 response, as you can see there, is:
 12 "Good morning Amaury, I hope you are well, I would
 13 suggest that you discuss the issuing of a report with
 14 Mr Howard as we do not issue BS8414 reports [if] the
 15 system did not complete the test requirements. I am
 16 happy to draft a quick letter report showing the data
 17 which Steve may be able to forward to you."
 18 Now, that was, I think on what you're telling us,
 19 untrue, wasn't it, because as we've seen, you did issue
 20 one for Kingspan the previous year for its terminated
 21 Trespa test and, as you have told us, you would
 22 regularly, if not routinely, do so?
 23 A. That was my understanding anyway, yes.
 24 Q. Can you please tell us, then, whether what Mr Clark is
 25 telling Amaury Queuille here, when he says, "we do not

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1 issue BS8414 reports [if] the system did not complete
 2 the test requirements", was true or not?
 3 A. Well, insofar as Phil Clark was working in the
 4 laboratory at this particular time when he sent this
 5 email, I can only assume that this was true, and they
 6 appear to be issuing a — or suggesting to issue, like,
 7 a summary or something showing the data, providing the
 8 data. I mean — but I can't comment beyond that. I'm
 9 not entirely sure.
 10 Q. Phil Clark told us — {Day97/60:17} to {Day97/61:9} —
 11 that the BRE's general policy was not to issue a test
 12 report if the system failed the test requirements, but
 13 would do so if the client asked. Is that correct?
 14 A. It may very well be. To be honest, I'm not entirely
 15 sure.
 16 Q. Well, you see, you've given evidence this morning, in
 17 the last few minutes, that — and I don't want to
 18 misquote you — there are many, many tests which fail
 19 and there is nothing to say you shouldn't issue a test
 20 report. Is that right? Looking at what Mr Clark says
 21 here, that does not appear to be right.
 22 A. Well, there's no — there's nothing in any of the
 23 accreditation standards, et cetera, or the
 24 British Standard for the test method that says whether
 25 you should or should not issue a test report. I mean,

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1 it's very much a local decision, and I was not sure what
 2 the custom and practice was in January 2015. As I say,
 3 it appears here, and I've no reason to dispute what Phil
 4 has said here, that their custom and practice was not to
 5 issue reports other than if they were requested to do
 6 so, and it looks as though they're offering to provide
 7 a summary report. But there was no sort of overarching
 8 policy, as you suggest, one way or the other. That
 9 would very much be down to the local area.
 10 Q. So is your evidence that Phil Clark was wrong in this
 11 email and wrong in what he told the Inquiry?
 12 A. No, I didn't say that at all.
 13 Q. No, you didn't, and I'm suggesting to you that, as
 14 a result of what you've told us, that must be the case,
 15 mustn't it?
 16 A. No. No, I don't follow. I don't think that's
 17 contradictory at all, what I've just said.
 18 Q. Let me try it slightly differently.
 19 Look at the words, "we do not issue BS8414 reports
 20 [if] the system did not complete the test requirements".
 21 Was that true or was it not true?
 22 A. I can only read what's written here.
 23 Q. And was it true or was it not true?
 24 A. I'm not going to say that this was not true in
 25 January 2015, so ...

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1 Q. Right. So when did that become the policy?
 2 A. I don't know when that became the policy. It wasn't
 3 a policy per se. It was custom and practice within the
 4 different areas. So in BS 8414, I mean, they may be --
 5 I couldn't tell you when they decided to do what they
 6 decided to do. So I can't give you dates as to when
 7 they may have changed what they did or evolved what they
 8 did. They would be better qualified to answer that for
 9 you, people such as Phil Clark and Stephen Howard.
 10 I was not sort of in that environment and working with
 11 them on a daily basis.
 12 Q. If there had been a change in policy between May and
 13 June 2014, from a policy of giving clients test reports
 14 for failed tests if they asked to not giving clients
 15 test reports if the system didn't complete the test
 16 requirements, you would have known about it, wouldn't
 17 you?
 18 A. Not necessarily, no. I mean, why would I?
 19 Q. Well, that's a question I would like to ask you. Why
 20 wouldn't you?
 21 A. Well, I was not involved in the day-to-day running, and
 22 those responsibilities were delegated to the business
 23 group managers in the area to deal with their own local
 24 procedures. Now, in the context of BS 8414, that would
 25 have been Stephen Howard that would have taken those

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1 decisions, and there would be no reason for me to be
 2 involved in that. He would work with the quality and
 3 compliance team, if that was necessary. But, you know,
 4 I was not involved in the day-to-day procedures within
 5 all of the different local areas within the business.
 6 Q. In issuing the test report to Kingspan in respect of the
 7 failed test, was the BRE doing Kingspan a special favour
 8 as a valued client?
 9 A. I doubt that very much.
 10 Q. Why?
 11 A. I have no evidence one way or the other, but that's not
 12 my experience, that that was the way that we worked or
 13 operated. We weren't there to do favours for anybody.
 14 Q. In giving them the test report against the historic
 15 background of marketing material that claimed that K15
 16 could be used generically above 18 metres, and two
 17 certificates, the LABC certificate and the
 18 BBA certificate, that contained fundamental errors in
 19 the claims for reaction to fire performance, why wasn't
 20 the BRE extremely sceptical of the uses to which
 21 Kingspan would put this test report before issuing it?
 22 A. I can't answer that, I don't know.
 23 Q. I'm now going to turn to some questions about the period
 24 immediately following the fire at Grenfell Tower.
 25 Can we start, please, with {CLG00036408}. If we go

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1 to the last email on the first page there, it's about
 2 three-quarters of the way down your screen, Dr Smith,
 3 you can see that there is an email of 16 June 2017 at
 4 15.32.
 5 Now, doing the best you can with your recollection,
 6 16 June 2017 was a Friday. Was this the first contact
 7 that you had had with Brian Martin after the fire at
 8 Grenfell Tower on the 14th?
 9 A. I don't recall, but probably.
 10 Q. So it's probable that, is this right, you hadn't spoken
 11 to him or corresponded with him between the fire and the
 12 receipt of this email?
 13 A. Probably not. I mean, there would have been an email --
 14 if there was an email, I'm sure it would have been
 15 evidenced.
 16 Q. In the email, we can see that he says to you:
 17 "Debbie/Dave/Sarah
 18 "I've been asked to prepare a rebuttal of the
 19 assertion that PE cored ACM panels comply with the
 20 guidance in ADB.
 21 "I've also been asked if an independent expert would
 22 be willing to say this or something similar in public?"
 23 Then if you turn the page to page 2 {CLG00036408/2},
 24 please:
 25 "Can you consider the attached and let me know

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1 please.
 2 "Brian."
 3 If you look right at the bottom of page 2, you can
 4 see that there is a little insignia which says "Rebuttal
 5 of Times Article.docx". Yes?
 6 A. Yes.
 7 Q. So there was an attachment. Did you read the
 8 attachment?
 9 A. In all likelihood, yes. I don't recall specifically
 10 now, but yes.
 11 Q. Now, before we look at it, do you remember, what was
 12 your reaction to this email?
 13 A. Very unusual.
 14 Q. Surprised?
 15 A. Yes.
 16 Q. What did you think he meant by — just looking at the
 17 text, let's go back to it, page 1 {CLG00036408/1} —
 18 "the assertion that PE cored ACM panels comply with the
 19 guidance in ADB"?
 20 A. I can't recall the detail of The Times article, but
 21 potentially I would guess it was suggesting that they
 22 didn't comply with ADB.
 23 Q. Did you understand that immediately to be a reference to
 24 the guidance in paragraph 12.7 of Approved Document B?
 25 A. Well, I wouldn't have immediately understood that, no,

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1 but obviously it was relating, I guess, to chapter 12 in
 2 general, yeah.
 3 Q. Right.
 4 Now, was that assertion, that PE-cored ACM panels
 5 comply with the guidance in ADB, one which you had ever
 6 heard expressed previously before seeing this email?
 7 A. No.
 8 Q. No.
 9 A. Not that I can recall, no.
 10 Q. Or ever been made aware of anyone else expressing?
 11 A. No, not that I can recollect, no.
 12 Q. Now, I'm asking you that because your evidence so far,
 13 I think, has been that you were wholly unaware of any
 14 debate at all about the meaning of ADB in respect of
 15 PE-cored ACM panels, or any concerns about it or any
 16 difference of interpretation before this moment.
 17 A. Correct.
 18 Q. What was your reaction when you discovered that that
 19 assertion was being made, even though by The Times?
 20 A. Well, as we've already said, surprise.
 21 Q. Shocked?
 22 A. Well, yes, yeah.
 23 Q. Did you ask anybody what this was all about when you
 24 read this?
 25 A. What, have I read the article?

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1 Q. Well, when you got the email, whether or not you read
 2 the article — I'm just focusing on the fact of the
 3 assertion being brought to your attention and your
 4 reaction to it — did you then go and ask other people
 5 what this was about?
 6 A. I'm sure it would have been — because it wasn't just
 7 sent to myself, so in all likelihood I would have
 8 discussed it with — is that David Crowder?
 9 Q. Yes, I think so.
 10 A. And Sarah, yes.
 11 Q. He's certainly on the email chain higher up, so let's
 12 proceed on that assumption, yes.
 13 A. Yes.
 14 Q. Did you discuss it with them?
 15 A. In all expectation, I probably did. However, I would
 16 say that around this time David Crowder was possibly
 17 on site carrying out fire investigation work during this
 18 sort of window of time, so ...
 19 Q. Did you have a conversation with Sarah Colwell about the
 20 assertion that PE-cored ACM panels comply with the
 21 guidance in ADB?
 22 A. I can't recall it, but I will be — I'm pretty certain
 23 that would have happened, yes.
 24 Q. Would that not have been the first thing you did, ask
 25 her: what's this about?

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1 A. Yes. I mean, there was an awful lot going on at this
 2 particular time, yes.
 3 Q. Yes, and do you remember what she told you?
 4 A. No, I don't recall at that time, no.
 5 Q. Do you not remember her — well, let me put it this way:
 6 did she tell you that it was her view that PE-cored ACM
 7 panels don't comply with the guidance in ADB, but that
 8 there had been a raging debate about it for at least the
 9 previous three and a quarter years?
 10 A. I don't recall that, no.
 11 Q. Let's go to the document that Brian Martin sends you.
 12 It's at {NHB00001458}, and it reads as follows:
 13 "In the Times.
 14 "The Times asserts that cladding on the
 15 Grenfell Tower was formed using a composite aluminium
 16 panel with a polyethylene core. It claims that such
 17 panels conform to UK standards but are prohibited in
 18 other countries.
 19 "We cannot comment on what has or has not been used
 20 on Grenfell Tower but we would dispute the assertion
 21 that a polyethylene cored panel is acceptable for use
 22 under current building regulations.
 23 "Requirement B4 of the Building Regulations 2010
 24 provides that 'the external walls of the building shall
 25 adequately resist the spread of fire over the walls and

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1 from one building to another' (Paragraph 12.5).
 2 "The Guidance in Approved Document B that supports
 3 this requirement says that the external envelope of
 4 a building should not provide a medium for fire spread.
 5 It goes on to provide detailed advice that 'in a
 6 building with a storey over 18m or more above ground
 7 level any insulation product, filler material (not
 8 including gaskets, sealants and similar) etc. used in
 9 the external wall construction should be of limited
 10 combustibility' (Paragraph 12.7).
 11 "Unmodified polyethylene would not meet the
 12 definition of 'limited combustibility'. So a composite
 13 panel formed with a polyester core would not be
 14 considered to comply with this guidance. As such it
 15 should not be used as a cladding material on buildings
 16 over 18m in height."
 17 Do you remember reading that as the attachment to
 18 the email that he sent you?
 19 A. Yeah, I mean, I don't remember that specifically, but,
 20 I mean, a lot of the text is text that has been seen
 21 elsewhere. So, I mean, it's familiar. A lot of the
 22 text is familiar.
 23 Q. At the time, did you agree or did you disagree with the
 24 contents of Brian Martin's pre-prepared statement?
 25 A. Is this The Times article or is this Brian's proposed

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1 statement? Sorry, I'm —
 2 Q. This is his proposed statement.
 3 A. Oh, okay.
 4 Q. I'm sorry, would you like to go back to the email so we
 5 can —
 6 A. Yeah, no, no, I understand that. I thought this to
 7 start with was the text that The Times were — in
 8 The Times article.
 9 No, I mean, I think this pretty much summarises what
 10 I had understood.
 11 Q. Did you discuss this text with either Dr Colwell or
 12 Dr Crowder?
 13 A. As I say, I can't recall whether David was actually
 14 around at the time, and I wasn't actually in the office,
 15 because — as you can see from the email trail. But I'm
 16 sure this would have been discussed with Sarah, yes.
 17 Q. And what were her views? What did she tell you?
 18 A. I don't recall, but I don't — I would have imagined
 19 that she would have agreed with what was written.
 20 Q. Did she say anything else?
 21 A. Well, I don't recall, I don't —
 22 Q. You really don't?
 23 A. No, I don't.
 24 Q. You don't recall her referring to a meeting at CWCT
 25 three years before or —

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1 A. No.
 2 Q. — the fact that government had accepted that the
 3 wording of 12.7 was unclear or misleading and should be
 4 changed?
 5 A. No, I don't, I don't.
 6 Q. You don't?
 7 A. As I say, and there was, you know, an awful lot of
 8 activity going on around that time.
 9 Q. But this particular activity is one in which government
 10 has specifically sought you out as an expert for its
 11 assistance.
 12 A. Yes, and indeed —
 13 Q. Just try and remember —
 14 A. Sorry.
 15 Q. — as best you can, in those days after the fire, this
 16 particular text. Can you really not remember what
 17 Sarah Colwell told you?
 18 A. No, I can't. Not specifically, I cannot.
 19 Q. No.
 20 As far as you were aware, was the content of this
 21 proposed rebuttal consistent with the department's
 22 historic position on polyethylene-cored ACM panels for
 23 use in the external wall systems of buildings above
 24 18 metres?
 25 A. I don't know. It was certainly consistent with my

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1 understanding.
 2 Q. Was it consistent with your understanding of the
 3 department's understanding?
 4 A. I mean, only the department can relay what their
 5 understanding was, but this is what my belief was, that
 6 this was their understanding.
 7 Q. Yes, that's not an answer to my question. Let me try it
 8 slightly —
 9 A. Well, I don't think I can answer your —
 10 Q. Absolutely.
 11 A. Yeah.
 12 Q. I know it's difficult.
 13 Let me just see if I can get at it this way: when
 14 you saw this, was your reaction, "Well, I know that's
 15 always been Brian Martin's view, that comes as no
 16 surprise", or was your reaction, "Gosh, he agrees with
 17 my view, how interesting, I didn't think he did", or
 18 something else?
 19 A. No, I thought Brian's understanding was similar to my
 20 understanding.
 21 Q. And had always been so?
 22 A. That had been my view, yes.
 23 Q. It had been your view; was it always your understanding
 24 that his understanding expressed here had remained
 25 constant throughout history, or at least back to 2006?

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1 A. Well, I'd had no reason to doubt that.
 2 Q. And what about the department more generally? Was the
 3 position expressed here consistent with the department's
 4 historic position on PE-cored aluminium composite
 5 material panels above 18 metres or did it diverge?
 6 A. I don't know.
 7 Q. Did you plan to decline to issue the rebuttal?
 8 A. It was — it would not be appropriate for BRE to be
 9 issuing a rebuttal. We would not have issued a rebuttal
 10 to the article on behalf of anybody else. We would only
 11 issue a comment to something if it directly applied to
 12 BRE.
 13 Q. Looking at the last paragraph, it says "Unmodified
 14 polyethylene would not meet the definition of 'limited
 15 combustibility'". What did you understand him to mean
 16 there by "unmodified polyethylene"?
 17 A. One without any fire retardant additives.
 18 Q. Any?
 19 A. Yes.
 20 Q. How much is any?
 21 A. Well, that's what unmodified generally means in relation
 22 to any polymeric material. It's the raw polymeric
 23 material without anything —
 24 Q. And what quantity of mineral additive would be required
 25 to turn an unmodified polyethylene panel which was not

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1 of limited combustibility into a panel which was of
 2 limited combustibility?
 3 A. Yeah, so, I mean, the modification isn't just about
 4 adding materials of limited combustibility, it's also
 5 about adding fire retardance. So it's not necessarily
 6 a percentage of a material. It's just not quantifiable
 7 in that sense. The way that this is understood and is
 8 dealt with is anything that you add with the intention
 9 of improving its fire performance.
 10 Q. Right.
 11 John Lewis of the NHBC told us that, in his view,
 12 a percentage of about 70% of mineral additive would make
 13 the difference between limited combustibility and not
 14 limited combustibility. Is that right?
 15 A. It depends. No, I mean, I can't comment on that.
 16 I mean, it's basically — as I say, unmodified is the
 17 raw polymeric material, and then there are various
 18 things that manufacturers can do with the intention of
 19 improving its fire performance. And I think,
 20 you know — and that can be addition of chemicals, in
 21 terms of fire retardant chemicals, as opposed to adding
 22 mineral content which, in effect, is diluting the
 23 thermoplastic and mixing it with a non-combustible or
 24 limited combustible —
 25 Q. Do you know why Brian Martin sought you out, you,

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1 Dr Crowder and Dr Colwell, for assistance here?
 2 A. Well, no, not directly, no.
 3 Q. Do you know of any reason why Brian Martin thought that
 4 you or Dr Crowder or Dr Colwell would support him in
 5 this rebuttal?
 6 A. No, I can't answer that.
 7 Q. Did you ask him?
 8 A. I don't remember if we asked him that direct question.
 9 Q. We don't see any email traffic, at least, in which you
 10 contacted him and said, "Well, you've made a mistake,
 11 we're not experts on the Building Regulations and the
 12 guidance in ADB and we can't speak to the correct
 13 interpretation of those provisions". We can't find
 14 a record of you or Dr Crowder or Dr Colwell doing that.
 15 Why is that?
 16 A. Well, that may very well be the case, then, but I think
 17 you will see that there was probably telephone
 18 conversations around this.
 19 Q. I'll come to those in a moment.
 20 A. Yeah.
 21 Q. Is your recollection that you'd told him that you were
 22 the wrong people to ask because of your lack of
 23 expertise on the Building Regulations and Approved
 24 Document B, and this was all a matter for the
 25 department?

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1 A. I think we would have said that, you know, "We can't
 2 issue this on your behalf, it's not our role to do so".
 3 Q. Do you know of any reason why Brian Martin would have
 4 felt it necessary to provide you, Dr Crowder and
 5 Dr Colwell with a pre-prepared script, rather than
 6 simply asking you to express your own views as
 7 independent fire safety experts, or fire experts?
 8 A. No, I don't.
 9 Q. Did you consider it appropriate that a government
 10 official was approaching you with a pre-prepared script
 11 to be sent to The Times in support of the government's
 12 interpretation of its own guidance?
 13 A. Did we think that was appropriate? Well, no, because we
 14 didn't feel that we ought to be sending that.
 15 Q. Did you think it appropriate that the government
 16 official was approaching you with a finished,
 17 pre-prepared script to be presented as though it were
 18 the independent view of an independent expert in support
 19 of the government's interpretation of its guidance?
 20 A. It's not appropriate, no.
 21 Q. Did you tell him at the time, "That's not appropriate,
 22 no"?
 23 A. Well, insofar as we did not — I don't recall the exact
 24 conversation, but insofar as we did not do it, then
 25 clearly there was a conversation around that.

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1 Q. I'm going to show you the emails again. I just want to
 2 ask you, in light of your earlier evidence: was this the
 3 first time that you learnt that ACM panels with a 100%
 4 polyethylene core, unmodified polyethylene core, existed
 5 in the United Kingdom's built environment?
 6 A. For use above 18 metres?
 7 Q. Yes.
 8 A. Yeah. The first time that I was aware that they were
 9 actually on a building, you mean, or potentially on
 10 a building?
 11 Q. Well, yes.
 12 A. Yes.
 13 Q. Given your evidence to the Inquiry that from 2001, at
 14 least, ACM panels with a PE core should never ever be
 15 used above 18 metres, the discovery that those used on
 16 Grenfell Tower might have been must have come as
 17 a considerable shock to you.
 18 A. Absolutely.
 19 Q. Did you go to Brian Martin and ask him how on earth that
 20 could have happened?
 21 A. There was discussion around that particular topic, and
 22 that's indeed what led then to the screening programme
 23 that the government carried out for other buildings, and
 24 it certainly was my expectation at the start of that
 25 that we wouldn't be looking at more than a handful of

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1 potential buildings with the unmodified or 100%
 2 polyethylene ACM panels on them, and --
 3 Q. Notwithstanding the warnings given the previous year by
 4 people like Nick Jenkins of Booth Muirie --
 5 A. Well, you know, that was my view at the time, and that
 6 was my genuine belief, that the screening programme
 7 would not unearth very many buildings that indeed had
 8 polyethylene-cored ACM on them, which --
 9 Q. Did Sarah Colwell not tell you that she had been told
 10 that many buildings were clad in ACM PE?
 11 A. No, I was not aware of that.
 12 Q. Let's go back to the email, {CLG00036408}. We can see
 13 from the third email down in the chain that you respond
 14 to Brian Martin at 16.32, just below halfway down your
 15 screen, copied to David Crowder and Sarah Colwell:
 16 "Hi Brian
 17 "Just spoken to David and it is my understanding
 18 that this is now no longer live? If this is wrong
 19 and/or you need to discuss, please let me know.
 20 "Debbie."
 21 What did you mean by "no longer live"?
 22 A. I'm not entirely sure, but it might mean that the link
 23 that he'd sent to the article wasn't live, so we
 24 couldn't look at the article that had been written.
 25 Q. Or did it mean that his requirement for your services

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1 was no longer needed?
 2 A. Yeah, I can't be sure. I'm not sure.
 3 Q. Now, it's clear from this email that you had spoken to
 4 David Crowder, Dr Crowder, in the exact hour between
 5 15.32 and 16.32, as you can see --
 6 A. Yes, yes.
 7 Q. -- when Brian Martin first emailed you.
 8 What did you discuss with Dr Crowder?
 9 A. I don't recall, but, I mean, it would have been the
 10 content and what we were being asked to do, I guess.
 11 As I say, I wasn't at BRE and it doesn't -- and I don't
 12 suspect that David was either, so it would have been
 13 a telephone conversation, I guess.
 14 Q. Right. Well, it says "Just spoken to David".
 15 A. Yes.
 16 Q. And given that, as you say, it's likely that he was
 17 on site at Grenfell Tower itself at that time --
 18 A. Yes.
 19 Q. -- and I think, in fact, as we see later, you were on
 20 the Eurostar, it must have been a telephone
 21 conversation.
 22 A. Yes, yes.
 23 Q. Can you give us at least the gist of that conversation?
 24 A. I can't recall it, and I don't know if I phoned David or
 25 David phoned me, so I don't know.

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1 Q. You don't know.
 2 Going back to the emails, we can see at the second
 3 email down in the chain that Brian Martin responds to
 4 you, and he says:
 5 "Hi Debbie."
 6 This is at 17.34:
 7 "I still need an expert but it can't be an employee
 8 of BRE. That's the approach I agreed with
 9 the Met Police.
 10 "See you in the morning.
 11 "Brian."
 12 Now, can we take it that you were aware, looking at
 13 Brian Martin's "See you in the morning" message, that
 14 you knew that you would be meeting him the next day,
 15 which was Saturday, 17 June; yes?
 16 A. Yes, I had been requested to attend a meeting at DCLG on
 17 the Saturday with the Housing Minister and a number of
 18 other fire people.
 19 Q. Yes, and we're going to come to that meeting in
 20 a moment.
 21 First, do you remember, when had you been made aware
 22 that you would be attending that meeting?
 23 A. Well, it was probably on that day. It was all very
 24 short notice, and obviously --
 25 Q. Who invited you to it? Who told you that you would be

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1 coming or you were needed at a meeting on Saturday with
 2 the minister?
 3 A. It was probably Brian.
 4 Q. Right.
 5 Going back to the emails, if we can, at the top, we
 6 can see that you respond at what looks like 15.52, and
 7 it's difficult to tell. You say:
 8 "Brian
 9 "Can I call you or you call me? I'm on the Eurostar
 10 so may be patchy coverage."
 11 A. Yes.
 12 Q. Now, why did you want to speak to Brian Martin at that
 13 time?
 14 A. I mean, I maybe needed to know, you know, more details
 15 about the meeting on Saturday.
 16 Q. Right. Did you speak to him?
 17 A. I would guess I probably did, but I don't recall.
 18 Q. What did you discuss, do you remember?
 19 A. No, no.
 20 Q. Did you discuss the content of his draft rebuttal, or
 21 did you discuss the historic position, or did you
 22 discuss your shock at having discovered that it was
 23 possible, at least, that ACM PE-cored panels were being
 24 used in the built environment in this country?
 25 A. I doubt that. I doubt that. I think the — and any

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1 discussion would have been very focused in terms of what
 2 was going on at the time, you know, the meetings that
 3 were being hurriedly called, and maybe in terms of what
 4 he'd been asking us to do, although it looks as though
 5 the need for that had gone away by then.
 6 Q. Do you know why there had been an agreement between
 7 Brian Martin and the Metropolitan Police that the BRE
 8 should not be asked to act as the independent experts
 9 putting the BRE's name to a rebuttal of The Times
 10 article?
 11 A. No, I don't for certain, but it may be that at that
 12 time — and I'm trying to recollect — I think David was
 13 potentially being approached by the Metropolitan Police
 14 to assist them in terms of their fire investigation.
 15 Q. Did you have any further discussion with Brian Martin or
 16 Sarah Colwell or Dr Crowder about any aspect of that
 17 Times article or the rebuttal to it before the meeting
 18 on the Saturday morning with the minister?
 19 A. I don't recall that, no, and I doubt it, to be honest.
 20 Q. Right.
 21 You have told us, and we can see in a moment, that
 22 you were invited to join a group of fire experts to
 23 provide immediate advice to the government on various
 24 aspects of the fire and, in particular, the steps to be
 25 taken in terms of fire safety checks on other buildings.

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1 A. Yes.
 2 Q. Yes. Do you know how you came to be included in that
 3 group?
 4 A. No, I don't.
 5 Q. Did you understand what your role or contribution was to
 6 be?
 7 A. Well, not until the meeting, no —
 8 Q. Right.
 9 A. — and the discussion.
 10 Q. Let's go to {CLG00003356}, please. We can see here some
 11 internal emails between various officials within the
 12 department on 16 June 2017, and I would like to show
 13 you, please, the third email down in the chain. This is
 14 at 11.47, from Brian Martin to Helen MacNamara and
 15 Sally Randall, copied to Grenfell Tower Team and
 16 Shayne Coulson, "Urgent expert advice". It says:
 17 "I have been asked for a draft Cast List for the
 18 urgent meeting of experts — most have confirmed
 19 availability.
 20 "Currently as follows."
 21 Then we can see a list of names, I think all of whom
 22 are familiar to the Inquiry, as we can see there, and
 23 top of the list is yours, do you see?
 24 A. Yes.
 25 Q. And you are credited with being chief executive of the

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1 BRE and chair of the European committee for fire safety.
 2 That meeting then took place, I think, didn't it, on
 3 the morning of Saturday, 17 June at Marsham Street?
 4 A. Yes, I believe so.
 5 Q. Let's go to {CLG00005247}. This is the — well, have
 6 you seen this document before? I should ask you.
 7 A. No, I don't recall seeing this before.
 8 Q. Right. Well, it looks like a briefing note for the
 9 minister. Attendees: Alok Sharma MP as the chair,
 10 Minister of State, DCLG, and then immediately underneath
 11 that you can see your photograph and four lines of
 12 description about your background; yes?
 13 A. Yes, you can.
 14 Q. Then underneath that we have other names and
 15 photographs.
 16 If we go to page 3 {CLG00005247/3}, we can see other
 17 attendees from the department: Bob Ledsome,
 18 Brian Martin, Louise Upton, among others; yes?
 19 A. Yes.
 20 Q. If we go to page 4 {CLG00005247/4}, we can see the
 21 purpose of the meeting. It's summarised for the
 22 minister in the first paragraph:
 23 "We have called together the group of fire safety
 24 experts to advise us on advice for local authorities and
 25 housing associations on how to identify risks in similar

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1 high rise buildings risks [sic] which have been
 2 refurbished with cladding, and the process for assessing
 3 those risks and taking necessary action to provide
 4 reassurance for tenants."
 5 Does that align with your understanding of the
 6 purpose of the meeting?
 7 A. That certainly coincides with my recollection of what
 8 was discussed at the meeting.
 9 Q. Can we go to page 5 {CLG00005247/5}, please, where we
 10 can see further detail set out for the minister in
 11 relation to the purpose of the meeting. This looks like
 12 speaking notes for him, pretty much a verbatim script.
 13 If you go to item 2, "Purpose of the meeting", we
 14 can see, starting at the fourth bullet point, that the
 15 minister was advised by his officials to say this,
 16 fourth bullet point down:
 17 "We are asking for your advice on how local
 18 authorities and housing associations can identify risks
 19 in similar high rise buildings which have been
 20 refurbished with cladding, and the process for assessing
 21 those risks and taking necessary action."
 22 A. Yes.
 23 Q. Then it says:
 24 "Please provide your frank advice to me and my
 25 officials. We really need to know what you think we

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1 should be doing."
 2 Then it says:
 3 "Clearly as we go forward, we will need to be very
 4 careful about saying or doing anything which could cut
 5 across the investigation. But at this point we need
 6 your frank advice."
 7 Was it made clear to you, Dr Smith, during this
 8 meeting, that the minister, Alok Sharma, was asking for
 9 your full and frank advice, as well as that of others?
 10 A. I don't recall it being explicit in that sense, but,
 11 I mean, you know, why would you not provide your frank
 12 advice? So that would be my expectation, that we were
 13 there to, you know, answer the questions that were posed
 14 to us and to provide, you know, the technical assistance
 15 where we were able to.
 16 Q. Did you understand that your role was not only to
 17 provide full and frank advice on matters on which you
 18 were asked, but also candid and open insights into
 19 circumstances which perhaps you weren't being asked
 20 about? Was that your understanding?
 21 A. I don't recall at the time. I mean, obviously the
 22 meeting, when it took place, was a very focused meeting,
 23 and the opportunities for talking about broader and
 24 wider issues were limited, I would say. I mean,
 25 you know, it was very, very focused in terms of the

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1 challenges that they were facing there and then on that
 2 day.
 3 Q. But nonetheless, it appears from this document that the
 4 minister, who I think had only been in post some
 5 ten days and was new to the Building Regulations as the
 6 minister, was heavily reliant on everybody at the
 7 meeting, including you, for your frankness and candour.
 8 Did you understand that?
 9 A. Well, that was my purpose for being there, would be to,
 10 you know, participate and give what information —
 11 impart what information I could, yeah, in terms of the
 12 discussions that were taking place.
 13 Q. Let's go to page 6 {CLG00005247/6}, then, "Possible
 14 Questions", and this is under the heading "Developing
 15 Next Steps Discussion", and the first bullet point reads
 16 as follows:
 17 "Do you think this is an isolated incident or
 18 something peculiar to this building? Recognise the need
 19 to be very careful about speculation and comment given
 20 that there is a criminal investigation underway."
 21 Do you recall the discussion on that topic?
 22 A. I don't recall the detail. As I say, it was a very
 23 focused meeting, I do remember that. It was done in
 24 a very efficient way, as you'd expect, very much led by
 25 the government officials.

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1 Q. Do you remember what advice or answers were given to
 2 that question?
 3 A. I don't recall that specifically. I do recall
 4 discussion, and that's where we became heavily involved,
 5 in the identification of the cladding and the cladding
 6 types to identify where the problem might be on other
 7 buildings, and that was very much the focus of what we
 8 were trying to do.
 9 Q. Did you candidly and frankly tell the group that it was
 10 most unlikely to be peculiar to this building?
 11 A. No, I wouldn't have done, because my view and belief
 12 was, at that moment in time, as I've said on a number of
 13 occasions during my evidence, that the
 14 polyethylene-cored ACM should not and could not have
 15 been used on buildings over 18 metres if they complied
 16 with the requirements in Approved Document B, and that
 17 was my genuine belief.
 18 Q. And did you tell the minister that?
 19 A. Potentially. I don't remember saying that. I mean,
 20 other people were there expressing opinions around this
 21 also. So I don't remember that specific conversation,
 22 but that I do know was my specific belief at that time.
 23 Q. So did you tell the minister that, yes, this was
 24 an isolated incident, or very likely to be, because, so
 25 far as you were concerned, your view was that ACM PE

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1 should never ever be used above 18 metres, and so far as
 2 you were concerned, that had been stuck to and very well
 3 understood by industry? Did you say that?
 4 A. No, I would not have said anything within the terms that
 5 you've just described there, because I wouldn't have had
 6 the knowledge to have made such a statement.
 7 Q. Did you on the other hand tell the minister that you had
 8 been aware that ACM PE was in use in external wall
 9 systems of high-rise buildings in the public sector from
 10 as early as 2001 because you had used that material on
 11 a publicly-funded or partly publicly-funded project in
 12 2001, the testing programme cc1924?
 13 A. No, I don't believe that there was any such discussion.
 14 Q. Why didn't you tell the minister that you had carried
 15 out tests on ACM with a polyethylene core on the basis
 16 that the Architect's Journal had identified it as
 17 a relevant product back in 2001?
 18 A. I just don't think that that was the focus and the
 19 nature of the discussion. I mean, I contributed to the
 20 discussions as they took place during this meeting and,
 21 you know, the focus, from my recollection, is that this
 22 was on — predominantly on: we are here and now, do we
 23 have a problem and how can we identify what that problem
 24 is and how big that problem is? And that was the
 25 primary sort of objective of the meeting: is there

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1 an issue, and if there is an issue, how are we going to
 2 identify if there is an issue? Because it's not
 3 necessarily a simple thing to do it definitively and to
 4 answer that question.
 5 Q. Was it not of the utmost materiality to the minister's
 6 understanding of the background, at least, that the
 7 government had itself sponsored and the BRE carried out
 8 14 tests in 2001, one of which demonstrated that ACM
 9 with a PE core performed appallingly and, as a result,
 10 should never ever be used above 18 metres in your view?
 11 Why not tell the minister that tests had been carried
 12 out?
 13 A. Well, I just don't think there was — that it came — it
 14 wouldn't have come into my mind because that wasn't what
 15 we were discussing. As I say, the discussions were
 16 very, very focused in terms of the here and now: this is
 17 where we are, what does this mean, what are we going to
 18 do, and how can we address this going forwards?
 19 Q. Did you mention to the minister your knowledge at any
 20 time during the government's programme of checks after
 21 this meeting that, in fact, the government had carried
 22 out these tests in 2001 and ACM panels with a PE core
 23 had been found to have failed spectacularly?
 24 A. I don't believe I met the minister again. I don't
 25 recall meeting Mr Sharma again.

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1 SIR MARTIN MOORE-BICK: Well, I think the answer is probably
 2 no to this question, but did it occur to you to say to
 3 the minister, as a result of the tests which you had
 4 done in — I forget when the date was, but on the panels
 5 which included ACM cored rainscreens, that you had
 6 tested some of those panels because you had been told
 7 that they were available in the market?
 8 A. No, I just don't think that came up in the thought
 9 process —
 10 SIR MARTIN MOORE-BICK: No.
 11 A. — because it was very focused, as I say, on the here
 12 and now, and, you know, how can we identify if there are
 13 any other buildings with this material on in
 14 an absolutely conclusive and definitive way?
 15 MR MILLETT: Wasn't the fact of the tests in 2001 and the
 16 reason for testing ACM PE core all those years ago
 17 a fact which would have helped the minister understand
 18 the answer to the question I've just read to you in the
 19 first bullet point there: is this an isolated incident
 20 or something peculiar to this building?
 21 A. Well, when you look at it now, in retrospect, then it
 22 might have been, but I still don't think it would have
 23 altered the here and now situation, where we don't know
 24 what buildings have in terms of their external cladding
 25 system. There is no centralised database or whatever

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1 that government had. So how can we, from today,
 2 understand what is out there and how we can then analyse
 3 what is out there to know if it's similar or different?
 4 And, you know, it was the here and now. And would it
 5 have made a difference to have said that to him at that
 6 meeting? I suspect it wouldn't have made any difference
 7 at all.
 8 Q. Can we go to the minutes of the meeting, which are at
 9 {CLG00016581}. You can see them there set out and the
 10 attendees. You are second on the list there.
 11 If we go to page 1 at the bottom there, the last
 12 bullet point on page 1, over to page 2, it says this:
 13 "From the available information, it was understood
 14 that a PE cored Aluminium Composite Material (ACM)
 15 cladding system had been used on Grenfell Tower. While
 16 the exact reasons for the speed of the spread of fire
 17 have yet to be determined, it was agreed that additional
 18 tests should be undertaken with regard to this type of
 19 cladding."
 20 During this discussion or at any other time during
 21 this meeting, did you tell the minister or anybody else
 22 present that you yourself might have a very good idea as
 23 to the exact reasons for the speed of the spread of the
 24 fire, namely what the BRE had witnessed in the 2001
 25 cc1924 tests?

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1 A. No, because that would not have been appropriate at that
 2 time, because an investigation was ongoing, and it would
 3 have been pure speculation, really .
 4 Q. No, it wouldn't, Dr Smith. It wouldn't have been
 5 speculation. It was a fact, and it was a material fact,
 6 highly material to the very issue of the exact reasons
 7 for the speed of the spread of fire . The BRE had
 8 conducted an experiment on ACM PE—cored cladding and it
 9 had failed spectacularly. Why not tell the minister
 10 that that had happened and that the government had the
 11 records of that?
 12 A. As I say, it didn't occur at the time, but also, I mean,
 13 you have to factor in the fact that that research was
 14 just that, and it was not a complete system that was
 15 tested, and the similarities to what was tested back in
 16 2001 anyway, if it had have been presented, would not
 17 have been representative of the system that was designed
 18 and installed on Grenfell. But at the time, on that day
 19 that we were sat there, we did not know the details
 20 about what was on Grenfell. So, you know, I don't agree
 21 with what you're saying.
 22 Q. Did you —
 23 A. There were too many unknowns, is basically what I'm
 24 saying.
 25 Q. Did you tell the minister that, so far as you were

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1 concerned, the department very well understood that
 2 ACM PE—cored rainscreen panels should never ever be used
 3 on the external face of high—rise buildings?
 4 A. No, because that wasn't the discussion that was taking
 5 place on that day at that time.
 6 Q. Did it not occur to you that that might have been
 7 a helpful thing for the minister to know in the exercise
 8 of the obligations of candour and frankness that were
 9 the conditions for this meeting?
 10 A. I don't think that would have been really of any value
 11 at all, given that they wanted to know whether there
 12 were any other buildings that had this type of cladding
 13 on them, and how to identify those buildings that had
 14 that cladding on them. That was the issue. That was
 15 what was being explored on that day, and then
 16 subsequently.
 17 Q. Did you tell the minister that the BRE had in fact
 18 designed the criteria in BR 135, certainly in its second
 19 edition in 2003, to ensure that ACM PE products could
 20 not pass the test?
 21 A. No, because, again, I don't think there was a discussion
 22 about BR 135 or BS 8414. As I say, the discussions were
 23 very focused, and you can see the extent to which they
 24 were focused around identifying what was out there.
 25 Q. Did you tell the —

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1 A. The here and now.
 2 Q. — minister that ACM PE panels had, in separate testing
 3 also carried out in 2001, achieved class 0, and
 4 therefore would satisfy the Building Regulations,
 5 despite their catastrophic performance at full scale in
 6 the cc1924 tests?
 7 A. No, and insofar as Brian Martin was there and was also
 8 party to that research project, you know, he would have
 9 known that, and we just weren't talking about those
 10 broader issues.
 11 Q. Did you tell the minister that, as a result of the
 12 ability of ACM PE—cored panels to achieve class 0, such
 13 panels would have been perfectly compliant with the
 14 guidance in Approved Document B at the very least — at
 15 the very least — up until the publication of the 2006
 16 edition of Approved Document B in April 2007?
 17 A. Not that I can recall, no.
 18 Q. Why is that? Why is that?
 19 A. Again, for the reasons that I've already outlined.
 20 Q. Was it not relevant exactly in answer to the question
 21 for the minister to know that up until 2006 there was at
 22 the very least a real possibility of a legacy of
 23 buildings which had ACM with a polyethylene core on
 24 them, because the regulations at that stage permitted
 25 them?

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1 A. Okay, but, I mean, what was being discussed was about
 2 finding facts and about knowing exactly the numbers and
 3 where they were.
 4 Q. It would have been a direct answer to a direct question:
 5 is Grenfell a one—off? Why didn't you say it can't have
 6 been a one—off because the regulations were only
 7 tightened up in 2006 to ban all combustible materials
 8 from the external wall?
 9 A. Okay, well, again, it's not something that occurred to
 10 me at the time, given the nature of the discussions that
 11 were going on in that meeting.
 12 Q. Did Brian Martin —
 13 A. And the imperative that was being placed on doing a —
 14 you know, obtaining the facts about the building stock.
 15 Q. Did Brian Martin mention any of the matters I've just
 16 asked you whether you mentioned, to the best of your
 17 recollection?
 18 A. Well, I don't think so at the meeting, but whether there
 19 were discussions outside of the meeting with the
 20 minister and the government officials, I can't answer
 21 to, I don't know.
 22 Q. Did you reach an agreement with Brian Martin before this
 23 meeting that you would speak only when spoken to and
 24 give away the barest minimum of information to the
 25 minister —

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1 A. Absolutely not.
 2 Q. — that you could?
 3 A. Absolutely not.
 4 Q. Did you reach an agreement with him that you wouldn't
 5 mention the 2001 tests?
 6 A. Absolutely not.
 7 Q. Did you reach an agreement with him that you wouldn't
 8 tell the minister about the debate that had raged at
 9 least, as we've seen, since July 2014 about the scope
 10 and ambit of 12.7?
 11 A. No, absolutely not.
 12 Q. Have you discussed any aspect of what I've just put to
 13 you with Brian Martin at any time between the
 14 Grenfell Tower fire and today? Well, before you started
 15 giving your evidence.
 16 A. Not that I can recall, no.
 17 MR MILLETT: Mr Chairman, it's 1 o'clock.
 18 SIR MARTIN MOORE-BICK: Yes.
 19 MR MILLETT: And I have come to the end of my prepared
 20 questions.
 21 SIR MARTIN MOORE-BICK: Well, that means we can do one of
 22 two things. We can either have the usual break at this
 23 point and see whether there are any more questions and
 24 take a late lunch break, or we can take the lunch break
 25 and do the questions.

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1 Now, I'm sure you would like to get away fairly
 2 promptly, but we have to have a break at this stage so
 3 that Mr Millett can check that there is nothing that he
 4 had failed to put to you, and also to allow other people
 5 to suggest questions that perhaps we should have put to
 6 you and haven't yet. So there has to be a break. The
 7 question is whether it's inconvenient for you to stay
 8 over lunch and see if there are any more questions after
 9 lunch, or whether we should try and push through now.
 10 Do you have a view about that?
 11 THE WITNESS: I'm prepared to do whatever you require of me.
 12 SIR MARTIN MOORE-BICK: That's very helpful, thank you.
 13 I think it might be better, then, to take the break
 14 for lunch, and we can pick up the questions over the
 15 lunch period.
 16 MR MILLETT: I think that would be best, so long as those at
 17 least physically outside this Inquiry know that the
 18 lunch break is for the provision of questions.
 19 SIR MARTIN MOORE-BICK: I hope I have made that clear.
 20 MR MILLETT: Well, sometimes ...
 21 SIR MARTIN MOORE-BICK: I will say it again: any questions
 22 which people wish to suggest to be put to Dr Smith must
 23 be provided to Counsel to the Inquiry by —
 24 MR MILLETT: Let's say 13.45.
 25 SIR MARTIN MOORE-BICK: I was going to say 1.45, in old

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1 money.
 2 MR MILLETT: Yes.
 3 SIR MARTIN MOORE-BICK: Well, we will have a break now for
 4 lunch, Dr Smith. We will come back at 2 o'clock, and at
 5 2 o'clock we'll see if there are any more questions for
 6 you. All right?
 7 THE WITNESS: Okay, yes.
 8 SIR MARTIN MOORE-BICK: As before, please don't discuss your
 9 evidence with anyone over the break. All right?
 10 THE WITNESS: Okay. Thank you.
 11 SIR MARTIN MOORE-BICK: Thank you very much.
 12 (Pause)
 13 Thank you, Mr Millett. 2 o'clock, please.
 14 (1.02 pm)
 15 (The short adjournment)
 16 (2.00 pm)
 17 SIR MARTIN MOORE-BICK: All right, Dr Smith. Well, we'll
 18 see if there are any more questions for you, shall we?
 19 THE WITNESS: Thank you.
 20 SIR MARTIN MOORE-BICK: Yes, Mr Millett.
 21 MR MILLETT: Yes, Mr Chairman, thank you.
 22 Yes, one short run of questions for you, Dr Smith.
 23 Now, in his evidence on Day 96, when he came to
 24 assist the Inquiry, Phil Clark told us — and I'm
 25 summarising his evidence at {Day96/104–115} — that he

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1 was given unsupervised access to the BRE files for some
 2 three days in order to allow him to prepare his witness
 3 statement for the Inquiry, after a time when his
 4 employment at the BRE had ceased, and he — and I'm
 5 summarising — told us that he had obtained access to
 6 the Celotex hard copy file and the electronic systems,
 7 namely the S drive, the V drive and Anvil, among others,
 8 I think, and believed that the searches hadn't retrieved
 9 everything.
 10 Now, he said that you were the one who afforded him
 11 access to those documents; is that right?
 12 A. We did arrange, yes, and Phil Clark did come to site.
 13 However, he didn't have unrestricted access to the
 14 electronic files. The IT team retrieved the files and
 15 copied them into the — you know, a new area on the
 16 electronic system. So he wasn't accessing the, like,
 17 originals, if you like, they were copies.
 18 Q. I see. And who supervised the IT team retrieving the
 19 files and copying them?
 20 A. Well, the IT director at the time.
 21 Q. And where were the hard copy files, where were they
 22 kept?
 23 A. Well, they were kept on the system — oh, sorry, the
 24 hard copy files. So the hard copy files were kept in
 25 secure filing cabinets within a different area of the —

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1 to where he was sitting, yes.
 2 Q. Was Phil Clark afforded access to the hard copy files?
 3 A. He would have seen — yes, he would have seen some of
 4 the hard copy files.
 5 Q. Was he afforded unsupervised access to the hard copy
 6 files?
 7 A. No, it wasn't unsupervised access. He was in an office
 8 that was an empty office with a desk, chair and
 9 a desktop computer that was — so he could access the
 10 electronic files. I think he also had a video recorder
 11 so that he could watch — although the video files were
 12 probably on USB sticks, actually, that he could watch on
 13 the computer as well. And at all times he was — when
 14 he was in that office, there were people that were
 15 on site and stationed outside of the office. It was on
 16 the top floor, which was the management floor, in BRE,
 17 and he was escorted to lunch and so on and so forth.
 18 I mean, he wasn't given free rein and free access to
 19 come and go as he pleased or any such thing.
 20 Q. How was he afforded access to the hard copy files?
 21 A. I think —
 22 Q. Did he go to the cupboard and pull them out?
 23 A. No, he did not.
 24 Q. Did somebody go and help —
 25 A. No, no, they were remote from where he was, so —

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1 Q. So how did he access the hard copy files?
 2 A. So they would have been requested and then they would
 3 have been retrieved by an administrator, or the other
 4 person that was involved in supervising him was
 5 Angela Richards, who was a very senior administrator
 6 involved with the compliance and quality team.
 7 Q. During Phil Clark's physical possession of any hard copy
 8 files, was he at all times accompanied and supervised by
 9 somebody from the BRE?
 10 A. He was supervised insofar as people were there, but
 11 whether they were sat there watching him, you know,
 12 I can't — I don't know. I don't know whether that —
 13 they would have been sat there sort of watching him,
 14 you know, every move that he made.
 15 Q. Right. Were you aware that he obtained and reviewed the
 16 Celotex hard copy test file?
 17 A. I don't know specifically which files he did request and
 18 review. I mean, obviously he had to access the
 19 necessary materials in order to, you know, prepare and
 20 respond to his witness statement.
 21 Q. Did you discuss the Celotex test file or any other hard
 22 copy or electronic files with him?
 23 A. Not at that time, no.
 24 Q. At that time being the three days he was afforded
 25 access?

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1 A. Yes, correct.
 2 Q. Right.
 3 What safeguards were put in place to ensure the
 4 integrity of the files he was given access to? Start
 5 with hard copy. What safeguards were put in place to
 6 ensure the integrity of the hard copy files to which he
 7 was afforded access?
 8 A. Could you please explain what you mean?
 9 Q. Yes. What system was put in place to make sure that
 10 Phil Clark didn't take things out of the hard copy files
 11 and destroy them, to be blunt?
 12 A. Well, I don't know how he could possibly have done that
 13 anyway, because, as I say, he was in a room with nothing
 14 in there other than a desk and a chair.
 15 Q. Right. Where was he when he had access to the physical
 16 hard copy files?
 17 A. In that room.
 18 Q. So they were brought to him, were they?
 19 A. Yes.
 20 Q. And those files having been brought to him and put on
 21 the desk — one assumes the desk —
 22 A. Yes, yes.
 23 Q. — what safeguards were put in place to make sure that
 24 what was brought to him remained intact so that what was
 25 taken away was the same?

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1 A. Well, he was in that room for all of the time, and when
 2 he had finished with the files, they were retrieved from
 3 him and returned —
 4 Q. Yes.
 5 A. Yes.
 6 Q. So when he was in that room for all of the time with the
 7 files, what safeguards did the BRE put in place to make
 8 sure that the integrity of the files, their completeness
 9 as they had been brought to him, remained intact?
 10 A. Other than somebody being stationed there and ensuring
 11 that he remained in the room with the files, I mean,
 12 that's — that was the nature of —
 13 SIR MARTIN MOORE-BICK: I think the point Mr Millett is
 14 inviting you to consider is this: what was there to
 15 prevent Phil Clark from taking a piece of paper out of
 16 the file and slipping it into his pocket?
 17 A. Well, insofar as nobody sat there and actually watched
 18 him 100% of the time, I can't — you know, I can't
 19 comment on that. You know, that wasn't — nobody sat
 20 there and watched him 100% of the time.
 21 MR MILLETT: Right. And was the hard copy file not checked
 22 before he had access to it and then reviewed again
 23 afterwards to make sure it was the same as —
 24 A. Well, they were certainly reviewed in the course of
 25 other people preparing their witness statements ahead of

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1 Phil Clark using them.
 2 Q. Why did you allow him unsupervised access to the test
 3 records of a test that was to be examined as part of the
 4 Inquiry after such time as he had ceased to be
 5 an employee of the BRE?
 6 A. Well, as I say, it was done under restricted conditions,
 7 and we had no reason to believe that he would act in the
 8 way that you're suggesting.
 9 Q. Yes, thank you very much.
 10 Dr Smith, those are all the prepared questions
 11 I have for you, other than one, and it's a question we
 12 sometimes ask witnesses of a particular status or
 13 stature in this Inquiry, and it's this: you have sat
 14 there patiently answering my questions now for the best
 15 part of a week; looking back on all of the material
 16 we've covered and looking back on your whole time at the
 17 BRE, is there anything, in light of the Grenfell Tower
 18 fire, that you, sitting there now, on reflection, would
 19 have done differently?
 20 A. I think I'd like to further reflect on that and —
 21 rather than just sort of make some off-the-cuff remarks
 22 here and now, if I may. It has been quite tiring and
 23 a long process, so I would prefer to reflect on that and
 24 maybe make a submission later.
 25 Q. I don't think a submission will answer my question.

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1 I would like to have your reflections, even though they
 2 may be off-the-cuff, on oath in public now, please.
 3 A. Well, I really — I'm not prepared — I haven't prepared
 4 an answer to that, and I'm ... I just feel sort of
 5 exhausted by this process, and I don't feel that
 6 that's — that I can really directly answer you right
 7 now.
 8 MR MILLETT: Very well.
 9 Well, it remains for me to thank you very much,
 10 Dr Smith, for coming to the Inquiry and assisting us
 11 with your evidence. It's been extremely helpful to us
 12 in our investigations, so on behalf of my entire team,
 13 thank you very much.
 14 THE WITNESS: Thank you.
 15 SIR MARTIN MOORE—BICK: Dr Smith, it's right that I should
 16 thank you as well on behalf of all the members of the
 17 panel. We learn a lot from hearing particularly from
 18 senior people in organisations about what happened, and
 19 it's very helpful to us to have your evidence, so we
 20 really are very grateful to you for coming along.
 21 I am sorry that it has gone on a long time, and I'm
 22 sure it must have been tiring and, at times, difficult,
 23 but you should rest assured that we have found it very
 24 useful. Thank you very much indeed.
 25 THE WITNESS: Okay, thank you.

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1 SIR MARTIN MOORE—BICK: All right? Thank you very much, and
 2 now you're free to go, of course.
 3 THE WITNESS: Thank you.
 4 (The witness withdrew)
 5 SIR MARTIN MOORE—BICK: Right, Mr Millett. Now, I think we
 6 have another witness to come, do we not?
 7 MR MILLETT: We do. We do, but I'm going to ask you to
 8 rise, if I may, for five minutes to —
 9 SIR MARTIN MOORE—BICK: Yes, for the usual reasons.
 10 MR MILLETT: Yes, for the usual reasons.
 11 SIR MARTIN MOORE—BICK: Right. Well, we'll rise just for
 12 a moment, and perhaps you would ask the usher to come
 13 and fetch us when you're ready.
 14 MR MILLETT: Yes, thank you very much, Mr Chairman. Yes,
 15 absolutely.
 16 (2.11 pm)
 17 (A short break)
 18 (2.19 pm)
 19 SIR MARTIN MOORE—BICK: Yes, Mr Millett.
 20 MR MILLETT: Yes, Mr Chairman, thank you.
 21 I now call Mr Anthony Burd, please.
 22 SIR MARTIN MOORE—BICK: Thank you.
 23 MR ANTHONY BURD (affirmed)
 24 SIR MARTIN MOORE—BICK: Thank you very much.
 25 Would you like to sit down, make yourself

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1 comfortable.
 2 THE WITNESS: Thank you.
 3 SIR MARTIN MOORE—BICK: Yes, Mr Millett.
 4 Questions from COUNSEL TO THE INQUIRY
 5 MR MILLETT: Yes, thank you, Mr Chairman.
 6 Mr Burd, good afternoon.
 7 A. Good afternoon.
 8 Q. Can I start by thanking you very much for attending the
 9 public inquiry here and giving us your evidence. We are
 10 very much grateful to you for assisting us in our
 11 investigations.
 12 If you have any difficulty understanding my
 13 questions or the way I phrase them, then I can ask the
 14 question again or put it in a different way, please just
 15 say.
 16 We will take, in the normal way, scheduled breaks
 17 during the course of your evidence, this afternoon and
 18 mid-morning on Monday, but if you need a break at any
 19 other time, please just let us know.
 20 A. Thank you.
 21 Q. Can I ask you, please, to keep your voice up so that the
 22 transcriber, who sits to your right, can get down
 23 everything you're saying. A nod or a shake of the head
 24 doesn't work; you have to say "yes" or "no" as the case
 25 may be, if that is your evidence.

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1 Now, you have provided the Inquiry with one witness
 2 statement, which is at {CLG00019461}. It's dated
 3 23 November 2018. Can we please have that up on the
 4 screen.
 5 Is that the first page of your statement?
 6 A. Yes, it is.
 7 Q. Can we please go to page 75 {CLG00019461/75}. There is
 8 a signature there above the date, 23 November 2018. Is
 9 that your signature?
 10 A. Yes, it is.
 11 Q. Have you read this witness statement recently?
 12 A. I have.
 13 Q. Can you confirm that its contents are true?
 14 A. I can.
 15 Q. And have you discussed your witness statement or the
 16 evidence that you're going to give today with anybody
 17 before coming here?
 18 A. Only my legal team.
 19 Q. Yes.
 20 Now, you joined what was then, I think, the
 21 Department for Environment, Trade and the Regions in
 22 May 1998?
 23 A. Yes.
 24 Q. And you were at that time, I think, a senior fire safety
 25 professional; yes?

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1 A. Yes.
 2 Q. That was your formal job title, was it?
 3 A. It was.
 4 Q. Did you have any professional or scientific
 5 qualifications in relation to fire?
 6 A. Yes, I did.
 7 Q. What were those?
 8 A. So in addition to studying aspects of fire within my
 9 building surveying degree, I also sat the entrance exams
 10 for full membership of the Institution of Fire
 11 Engineers.
 12 Q. And what happened as a result of sitting those exams?
 13 A. I became a full corporate member of the IFE.
 14 Q. Right, and when was that?
 15 A. 1996/1997.
 16 Q. Right.
 17 A. Forgive me, you've asked specifically about fire; I also
 18 have other building studies and related sort of
 19 certificates. Are they relevant or not?
 20 Q. Yes, I was coming on to those, but please do tell us.
 21 A. Oh, okay. So I have an Ordinary National Diploma in
 22 building studies, I have a Higher National Certificate
 23 in building studies, I have a Bachelor of Science degree
 24 in building surveying, and I've mentioned already the
 25 Institution of Fire Engineers, but I also sat entrance

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1 exams for membership of the Institute of Building
 2 Control.
 3 Q. And did you pass?
 4 A. I did. Yes, I did, later becoming a fellow of the
 5 Institute of Building Control, IBC. That was subsumed
 6 into the RICS and I became a fellow of the RICS, making
 7 me a chartered surveyor, and I became a member of the
 8 Association of Building Engineers at the time, becoming
 9 thereafter a fellow of that association as well, making
 10 me a chartered building engineer as well.
 11 Q. Thank you.
 12 Now, you were the head of technical policy at what
 13 became MHCLG from October 2007.
 14 A. Yes.
 15 Q. And you stayed in that post until December 2013.
 16 A. Yes.
 17 Q. What were your responsibilities in that role?
 18 A. As head of technical policy, I led a team of technical
 19 policy experts, overseeing the different parts of the
 20 Building Regulations. I was involved working with my
 21 team in terms of the letting of related research work
 22 supporting technical parts of the Building Regulations.
 23 I would support ministers in providing briefings and
 24 supporting them in parliamentary questions, et cetera.
 25 I would also undertake and support the Building

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1 Regulations Advisory Committee, as I was in my capacity
 2 as head of technical policy, supporting BRAC as the
 3 Building Regulations Advisory Committee, and I attended
 4 forums and similar, offering speaking engagements for
 5 events in relation to related Building Regulations.
 6 Q. Does it follow from what you have just told us that you
 7 were, in effect, the most senior official below director
 8 level?
 9 A. No. Within that department, deputy director is the head
 10 of building regs division, so Bob Ledsome was there, so
 11 I was one below.
 12 Q. Yes.
 13 A. Yeah.
 14 Q. Let's see if we can put that into a visual format.
 15 Can you please go to {CLG00019462}. What I'm
 16 putting on the screen for you there is an organogram
 17 that you have referred to at paragraph 9 of your
 18 statement. Now, it looks as if it's been printed in
 19 Ivrit. Is there an English version of this, or
 20 a clearer version of it? I wonder if we could expand
 21 it. It may not be possible.
 22 Is this a document that you have exhibited to your
 23 statement?
 24 A. I can't recollect.
 25 SIR MARTIN MOORE—BICK: It's quite hard to tell, I would

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1 think.
 2 A. Just a bit, sir.
 3 MR MILLETT: We may have to come back to that. It's done
 4 something slightly surprising on its appearance.
 5 Can we please go to your statement at paragraph 7,
 6 you set out some of your responsibilities there, some of
 7 which you have told us about already. If we go to the
 8 foot of page 2 of your statement {CLG00019461/2}, you
 9 say there that:
 10 "As Head of Technical Policy I was responsible for
 11 leading a team of officials (civil servants) on ..."
 12 Then if you turn the page {CLG00019461/3}:
 13 "a. all technical aspects of Building Regulations in
 14 England, including overseeing technical reviews of the
 15 statutory Approved Documents and any supporting
 16 guidance, and their publication and dissemination."
 17 After you left the department, I think you moved
 18 then to the BSI.
 19 A. I did, yes.
 20 Q. Are you still working at the BSI?
 21 A. I still work at BSI.
 22 Q. Yes, and in your statement I think you refer to your
 23 appointment to BRAC, as you have told us, ending at the
 24 end of 2018; is that right?
 25 A. I'm still a member of BRAC. That was — I joined it in

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1 2015 —
 2 Q. Right.
 3 A. — and I have been — my period has been extended.
 4 Q. I see.
 5 Now, I'm going to focus, I think, on a number of
 6 specific topics during the course of your evidence, and
 7 I'll tell you what those are: first is contract cc1924;
 8 second, the RADAR research; thirdly, the revision of
 9 Approved Document B, leading to the publication of the
 10 2006 edition in April 2007; and, finally, the fire at
 11 Lakanal in 2009 and related matters.
 12 Now, I'm going to begin, then, with contract cc1924
 13 and the Garnock Court fire.
 14 Do you recall the fire that took place in a building
 15 called Garnock Court in Irvine on 11 June 1999?
 16 A. Yes, I do.
 17 Q. You do. Were you aware of the circumstances of that
 18 fire at the time?
 19 A. Yes, I was.
 20 Q. Would you agree that, in the history of fire events in
 21 the United Kingdom, that fire was a major event?
 22 A. Yes.
 23 Q. This was a local authority block of flats, wasn't it,
 24 which had been refurbished, in this case in 1991, in
 25 fact the same year as the fire at Knowsley Heights in

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1 Liverpool; yes?
 2 A. Yes.
 3 Q. And it had been clad in GRP, glass—reinforced plastic,
 4 panels; yes?
 5 A. Yes.
 6 Q. Were you aware of that fact at the time of the Irvine
 7 fire in 1999?
 8 A. No, I don't believe I was. It was through my
 9 involvement with the select committee and the run-up to
 10 the select committee that I started to read information
 11 further about the Knowsley Heights fire.
 12 Q. Right, and the select committee was in the summer of
 13 1999, wasn't it?
 14 A. Yeah, yes, it was.
 15 Q. The hearings were.
 16 A. The hearings were, but as part of my involvement in
 17 preparation for that, that's when I first learnt about
 18 Knowsley Heights.
 19 Q. Did you know anything by, let's say, mid-1999, the date
 20 of the Garnock Court fire, about GRP panels which were
 21 used to clad Garnock Court?
 22 A. No.
 23 Q. Did you recognise at the time that GRP panels were
 24 combustible?
 25 A. I would have known that.

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1 Q. Yes.
 2 A. Yes.
 3 Q. Now, after the Garnock Court fire, so far as we are
 4 aware, the BRE investigated and produced three reports
 5 into the Garnock Court fire. I'll just show you what
 6 they are on the screen.
 7 The first is {BRE00035377/2}. This is entitled,
 8 "Fire at Garnock Court, Irvine on the 11 June 1999",
 9 prepared for North Ayrshire Council and dated
 10 August 1999. You see that?
 11 A. Yes.
 12 Q. It's signed by Nigel Smithies on behalf of the BRE.
 13 Is that a document that you saw at the time, do you
 14 think?
 15 A. I believe my then boss, the principal fire safety
 16 professional, Tony Edwards, to whom I worked to, it
 17 would have been provided to Tony and he would have
 18 shared it with me.
 19 Q. Right, thank you.
 20 Can we then go to {BRE00035377/22} — so same
 21 document, page 22 — and this is a further report for
 22 North Ayrshire Council dated April 2000 into the
 23 Garnock Court fire. Again, is that a document that you
 24 saw at the time?
 25 A. I don't believe so.

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1 Q. And then finally {BRE00035375}. This is the DETR
 2 project report prepared for you, dated August 2000. You
 3 see that?
 4 A. Yes, I do.
 5 Q. If you go to page 2 {BRE00035375/2}, you can see that,
 6 again, it says prepared for you; yes?
 7 A. Yes.
 8 Q. By Penny Morgan at the fire safety engineering centre at
 9 the BRE and approved by Nigel Smithies.
 10 A. Yes.
 11 Q. Did you see that at the time? One assumes so because
 12 it's got —
 13 A. I believe I did.
 14 Q. — your name on it.
 15 Now, the reports to North Ayrshire Council make
 16 numerous references to class 0 and, in particular, the
 17 fact that the cladding at Garnock Court should have had
 18 a class 0 classification, whereas the BRE's
 19 Investigation of Real Fires report to the DETR, the one
 20 on the screen, makes no mention of class 0 at all. We
 21 have studied these documents. Take that difference from
 22 me.
 23 My question is: were you yourself ever aware of that
 24 discrepancy?
 25 A. No, I was not.

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1 Q. So let me just try one or two of these on you.
 2 If we look at the August 1999 North Ayrshire report,
 3 at {BRE00035377/6}, which is the first of the three
 4 reports I showed you, at paragraph 3.1.1, near the foot
 5 of the screen. Let's keep that on the page and I'll
 6 show it to you. "Remedial measures", and halfway down
 7 the paragraph you will see towards the right-hand side
 8 it says:
 9 "The spandrel panel to be an external insulated
 10 render of panels between the windows of either
 11 a non-combustible or Class 0 material."
 12 You see that sentence?
 13 A. I do.
 14 Q. Now, I'm going to ask you to see that and compare it
 15 with the report you saw a year later in August 2000.
 16 Can we please have up {BRE00035375/4}. I'd like
 17 both of those up at the same time. So I wanted
 18 {BRE00035377/6} at the same time as {BRE00035375/4}.
 19 Can we do that, have those up at the same time.
 20 (Pause)
 21 Yes, thank you very much.
 22 Now, I'll just pick up the discrepancy between them
 23 and just ask you about it.
 24 So on the left-hand side, as I've shown you, under
 25 3.1.1, the sentence ends "between the windows of either

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1 a non-combustible or Class 0 material", whereas if you
 2 look on the right-hand side, under "Remedial measures",
 3 you can see in the third line, which is the same:
 4 "The spandrel panel to be an external insulated
 5 render of panels between the windows of
 6 a non-combustible material."
 7 That's different from "between the windows of either
 8 a non-combustible material or Class 0 material".
 9 Just looking at that discrepancy, you can see the
 10 words "or Class 0" have been removed after
 11 "non-combustible", and there is a grammatical
 12 consequential change as well, isn't there?
 13 A. Yes.
 14 Q. Are you able to account for the discrepancy? Why is the
 15 report that was sent to you in August 2000 as part of
 16 the Investigation of Real Fires report different from
 17 the BRE report sent to North Ayrshire?
 18 A. I do not know.
 19 Q. Do you remember any discussion about removing the
 20 reference to class 0 in the version of the report that
 21 came to government?
 22 A. No, I do not.
 23 Q. Keep them both on the screen. Looking at the
 24 North Ayrshire report, left-hand side, can we go to
 25 page 9 {BRE00035377/9}, and looking at the final

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1 paragraph on page 9, which starts:
 2 "In the case of the fire in Garnock Court ..."
 3 Then flip over to page 10 {BRE00035377/10}, please,
 4 that says, in a hanging second paragraph on that page:
 5 "Although the material used in 1991 should have been
 6 Class 0 we have reservations about its current
 7 performance."
 8 Then you see the words at the end of the next
 9 paragraph:
 10 "We suggest that non-combustible materials are
 11 chosen wherever possible."
 12 That's in the report to went to North Ayrshire.
 13 Compare that, right-hand side, please, with what you
 14 see a year later at page 7 {BRE00035375/7}, if we can go
 15 to page 7 on the right-hand side, you can see in the
 16 third paragraph down the same text repeated word for
 17 word, do you see —
 18 A. Sorry, which paragraph?
 19 Q. I'm asking you to look at the paragraph two above
 20 "Implications for Building Regulations" towards the
 21 bottom.
 22 A. Okay.
 23 Q. You can see that the long paragraph ends:
 24 "... GRP was the main material involved."
 25 Then it goes straight on to the remedial measures.

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1 No reference there or no paragraph between the two which
2 says, "Although the material used in 1991 should have
3 been Class 0 we have reservations about its current
4 performance".

5 Do you know why that was excised from an otherwise
6 very similar, if not identical, report sent to
7 North Ayrshire the year before?

8 A. I do not.

9 Q. And the same question in relation to the last sentence
10 that you can see had been removed. You can see the
11 words, "We suggest that non-combustible materials are
12 chosen wherever possible" does not appear on the
13 right-hand side, the report you saw.

14 Again, do I take it that you knew nothing about that
15 discrepancy?

16 A. I knew nothing about that.

17 Q. Do you know when you came to learn about that
18 discrepancy?

19 A. By following the Inquiry as I have these past few weeks.

20 Q. Right.

21 Have you any inkling as to why those amendments,
22 those excisions from the text, were made?

23 A. I do not. From my perspective, that would be a specific
24 question, of course, to take back to BRE.

25 Q. We've asked the BRE about that and they were unable to

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1 assist us.

2 Now, looking at this now, does it concern you that
3 the Investigation of Real Fires report to you in 2000 is
4 different in these respects from the one sent by the BRE
5 to North Ayrshire on this matter?

6 A. Yes. I find it surprising that this would have
7 happened, and can't think of a reason why.

8 Q. Right. You can't think of a reason why?

9 A. No.

10 Q. If it wasn't done at DETR's investigation, have you any
11 inkling as to on whose instigation it was done?

12 A. I do not.

13 Q. Can you think of any reason why the BRE would consider
14 that the department would not want to be kept informed
15 of their concerns about the reaction to fire performance
16 of class 0 materials or products?

17 A. I do not.

18 Q. Can I ask you, then, to look at another section of the
19 1999 report, left-hand side, page 24 this time
20 {BRE00035377/24}, and go to page 24, items 2 and 3.
21 Item 2 says:

22 "2. It is highly unlikely that the material used as
23 cladding for Garnock Court and the four sister blocks
24 was Class 0 at the time of the fire.

25 "3. It is also highly likely that the GRP supplied

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1 would never have achieved Class 0."

2 Now, take it from me, Mr Burd, that those two
3 conclusions do not appear in the August 2000 report
4 prepared for you by the BRE.

5 Can you think of any reason why the BRE would not
6 set those observations or findings out in the clearest
7 terms to the department in this report?

8 A. No, I do not. And if I may, given the importance of the
9 Investigation of Real Fires contract, it is imperative
10 that we should be receiving the fullest information
11 about the fires that are being investigated.

12 Q. Now, can I ask you then to look at — well, before I ask
13 you that, these reports are prepared by the BRE and sent
14 to the department.

15 A. Yes.

16 Q. Was anybody else involved, to your knowledge, in the
17 decision-making process about what those reports should
18 contain, other than the BRE or possibly the department?

19 A. No.

20 Q. So can we safely conclude that whoever made the decision
21 to excise those passages from the North Ayrshire report
22 that I've shown you and send you the version without
23 those matters excised were either people in the BRE or
24 people in government, they can't have been anybody else?

25 A. Given that is who the documents went to, yes.

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1 Q. You can't, sitting there now, even offer any kind of
2 explanation —

3 A. No.

4 Q. — however speculative?

5 A. No, but the point I would add, though, is that we didn't
6 receive these documents digitally, at this stage they
7 were probably still coming forward as hard copy. So as
8 a client receiving these documents, that would have been
9 typically in hard copy. And I have no answer to why
10 this has happened. As I say, in terms of it — going
11 back to the people specifically named on the front
12 covers of the documents to ask that very specific
13 question.

14 Q. To the best of your recollection, casting your mind back
15 to the time of the Garnock Court fire, June 1999, and
16 into 2000, was there a particular sensitivity or anxiety
17 about class 0 as a safe and appropriate classification
18 for the external walls of a high-rise building?

19 A. No, not that I can recall.

20 Q. Right.

21 Let's go to {BRE00035379/22}, please. I should just
22 tell you what it is: it's a pack of documents provided
23 to the Inquiry by the BRE as a copy of their file on
24 Garnock. So that's what this is.

25 If we go to page 22, we can see, looking at it, it's

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1 addressed to Tony. Do you know who that is or that
2 might be?
3 A. So potentially two people. If it's come from the BRE,
4 it might have been a gentleman called Tony Morris —
5 Q. Right.
6 A. — who I believe worked there. The fact it's from the
7 BRE, as I've said, I don't think this could be the case,
8 but the principal fire safety professional to whom
9 I worked for at the department was Tony Edwards.
10 Q. Right. Well, let's see if we can get a little bit
11 further into it.
12 If you look through this, it's difficult to
13 interpolate, but it says:
14 "Material alteration.
15 "Still need limited comb over a curtain wall of
16 class 0. [Combustible] barriers looked 135 — every
17 other floor. BRE report [I think that is] is PVL doc
18 avoiding risk [something] in submission to [committee]."
19 A. All right.
20 Q. That may be a "risk question in submission to
21 [committee]". Now, obviously this is my reading of this
22 document, doing the best I can with it.
23 First, have you ever seen this before?
24 A. I have not.
25 Q. Were you ever privy to a conversation along the lines

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1 suggested by this note, difficult though I know it is to
2 interpolate?
3 A. I was not.
4 Q. Did you suggest or were you aware of any suggestion
5 emanating from the department that the BRE's report on
6 Garnock Court was to be prepared as a privileged legal
7 document in order to avoid it being quotable in the
8 select committee inquiry?
9 A. No, I was not.
10 Q. Let's go to {BRE00035378/25}, please. This is an email
11 chain from September 1999.
12 Now, we don't need to go to the whole thing, but if
13 we go to page 26 {BRE00035378/26}, you can see at the
14 bottom there is an email from somebody called
15 Colleen Wade in New Zealand, as you can see, to IAFSS
16 Newcastle and SFPE Newcastle, which gets forwarded on by
17 Martin Shipp to Penny Morgan, so it seems to go in to
18 BRE, and it looks as if the two Newcastle entities there
19 are part of the University of Newcastle.
20 A. Mm—hm.
21 Q. That's my guesswork. And it says this:
22 "In a recent Fire and Flammability Bulletin
23 reference was made to a fire in a 13 storey block of
24 flats in Irvine, Ayrshire in June of this year. The
25 fire apparently spread externally up the block via

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1 over—engulfing the upper nine floors in minutes.
2 "Does anyone know where or from whom, I could get
3 some more information about this incident?"
4 If we then look at Peter Field's response to
5 Brian Martin, if we go to the top of page 25
6 {BRE00035378/25}. Following the screen from bottom to
7 top, we can see the course of this email. It goes to
8 Penny Morgan. From Penny Morgan it goes to
9 Brian Martin, and she asks him:
10 "How much can we tell them?
11 "P."
12 And then Brian Martin to you, "Ant" — can you see
13 that in the middle of your screen?
14 A. Yes.
15 Q. "Ant,
16 "Have you put out any press releases?
17 "Can we assume that anything said at the select
18 committee hearing is in the public domain?
19 "Regards Brian."
20 Further up the chain, there is an email from
21 Peter Field, he is at the BRE —
22 A. Yeah.
23 Q. — 23 September 1999 to Brian Martin and you, copied to
24 Penny Morgan:
25 "BRIAN

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1 "I discussed this with Anthony yesterday following
2 enquiries from Radio. Our position is to refer all
3 matters to DETR where it is appropriate to do so i.e. if
4 they are seeking to put the issue into a Regulatory
5 context. WE SHOULD NOT COMMENT.
6 "All enquires we receive must be referred to
7 Tom Harvey (BRE Press) he has been adequately briefed.
8 "As ever, let me know of any approaches please.
9 "Peter."
10 Now, Peter Field is, as I say, BRE.
11 A. Yeah.
12 Q. You and Brian Martin are government.
13 Had you instructed the BRE not to comment on the
14 fire?
15 A. Not that I can recall, but what I'm — no, I would not
16 have instructed the BRE not to comment on the fire.
17 I would have suggested that where there are questions in
18 relation to government matters, that they should refer
19 the matter to DETR, so for us to deal with, looking at
20 this email.
21 Q. Right, I see.
22 A. Yeah.
23 Q. And why was that?
24 A. Typically, we wouldn't want BRE commenting upon
25 Building Regulations matters or similar if it could be

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1 more readily directed to press officers within DETR.
 2 Q. Right.
 3 Now, at this time you'll note that the select
 4 committee was still sitting, in the sense that it had
 5 heard evidence in the July of 1999 —
 6 A. Yeah.
 7 Q. — and didn't report until the December of 1999. Did
 8 that have a bearing on what you were telling Peter Field
 9 and he then relayed to Brian Martin?
 10 A. No, it would have been — there have been many
 11 situations whereby press are asking questions
 12 potentially in relation to a building regs issue and
 13 where best we'd suggest hand it over in terms of — to
 14 the DETR, to the press officer, for the department to
 15 answer.
 16 Q. Right.
 17 Let's then turn to the select committee.
 18 You, I think, attended the select committee inquiry
 19 on 20 July 1999; is that right?
 20 A. I did.
 21 Q. You didn't give evidence?
 22 A. No, I joined the minister, Paul Everall, head of
 23 Building Regulations, Tony Edwards, principal
 24 fire safety professional, and I also attended, but I did
 25 not give evidence.

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1 Q. No.
 2 Now, let's look at the minutes of the select
 3 committee, {CLG00019484}. That is the minutes of
 4 evidence and appendices of Tuesday, 20 July 1999, and
 5 you can see who was there: there's the FBU, and then the
 6 Fire Safety Development Group, David Harper and
 7 Dr Bob Moore, and then from the BRE or, as it was
 8 called, the Building Research Establishment/Fire
 9 Research Station, Peter Field, Tony Morris and
 10 Sarah Colwell, and others were represented as well,
 11 including CWCT, Dr Stephen Ledbetter, and from the
 12 department, as you can see, Nick Raynsford,
 13 Paul Everall, Tony Edwards and you, Mr Burd.
 14 A. Yes.
 15 Q. Yes. So is it right that you would have heard or did
 16 hear the evidence given by David Harper and Dr Moore?
 17 A. Yes.
 18 Q. Can we then go to {CLG00019484/9}, and at page 9, this
 19 is the memorandum by the Fire Safety Development Group,
 20 whose members you have just seen, at least so far as the
 21 select committee was concerned.
 22 Is this a document you think you read at the time?
 23 A. Yes.
 24 Q. Yes. So would it have been a document you would have
 25 been familiar with yourself?

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1 A. I would have read the document once it had been made
 2 available.
 3 Q. Right.
 4 A. Yes.
 5 Q. And what about those others from the DETR, Tony Edwards
 6 and Nick Raynsford?
 7 A. I would suggest — well, Mr Raynsford is a minister.
 8 I would envisage, given his appearance, he probably
 9 would have read it. Tony Edwards would definitely
 10 have read it because he was in charge of the fire safety
 11 aspects of the Building Regulations. Paul Everall as
 12 well.
 13 Q. Right.
 14 Now, if we look at paragraph 2, this has a title
 15 "Memoranda", and then:
 16 "2. 'Whether a risk is posed by such cladding'.
 17 Then if you look at 2.2 it says this:
 18 "We believe that there is a confusion about the
 19 Class 0 standard for two reasons. Class 0 materials
 20 refers to the performance of the surface of the
 21 material, but applies to the total product, ie the
 22 facing plus any coating, adhesive, paint, etc plus the
 23 substrate to which the facing is bonded. Clearly these
 24 other elements will affect the performance of the
 25 cladding in a fire, and will vary with the nature of the

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1 coating, the thickness of the adhesive, the type of
 2 substrate etc."
 3 Pausing there, on the basis of your knowledge,
 4 experience and expertise at the time, did you agree with
 5 that assessment?
 6 A. No.
 7 Q. You didn't?
 8 A. Not necessarily in terms of the confusion existing. It
 9 was my understanding, having been formerly
 10 a building control officer as well, that there was
 11 understanding that, actually, the application of what
 12 class 0 equated to, and therefore what it might mean
 13 thereafter as to what performance might continue subject
 14 to the substrate that sat beneath that.
 15 Q. Leaving aside the first sentence, and taking the second
 16 sentence on, it's right, isn't it, that class 0
 17 materials refers to the performance of the surface of
 18 the material but applies to the total product?
 19 A. Yes, I agree with that sentence, sir.
 20 Q. Okay. So your disagreement is about the extent or
 21 existence of confusion, rather than the analysis of
 22 the —
 23 A. Yes.
 24 Q. — make—up of class 0?
 25 A. Yes.

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1 Q. Yes, thank you.
 2 Then looking at 2.3:
 3 "A material of limited combustibility can achieve
 4 a Class 0 rating as defined by the regulations but
 5 a Class 0 material is not equivalent [and that's got an
 6 italic] to a material of limited combustibility.
 7 A material of limited combustibility is generally
 8 a material which is totally non-combustible or which
 9 contains a small amount of combustible material.
 10 Combustible materials, like plastic, wood, etc are not
 11 [in italics] materials of limited combustibility but can
 12 achieve Class 0 performance by adding fire retardant
 13 chemicals or facing the combustible material with
 14 a metal foil or sheet. Thus there is a fundamental
 15 difference between products that are inherently Class 0
 16 and products modified to enhance their performance.
 17 This serves to undermine the integrity of the
 18 regulations and therefore reduces fire safety."
 19 Now, leaving aside the opinions in the last sentence
 20 there, do you agree with the rest of paragraph 2.3?
 21 A. Could we maybe take it bit by bit to make sure?
 22 Q. Yes.
 23 A. Yes. So ... So I agree that class 0 material is not
 24 equivalent to a material of limited combustibility.
 25 Q. Yes.

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1 (Pause)
 2 A. "A material of limited combustibility is generally
 3 a material which is totally non-combustible or which
 4 contains a small amount of combustible material."
 5 Q. Yes?
 6 A. Yes.
 7 Q. Yes.
 8 A. "Combustible materials, like plastic, wood, etc are not
 9 materials of limited combustibility but can achieve
 10 Class 0 performance by adding fire retardant ..."
 11 Yes, I agree with that.
 12 Q. Yes.
 13 A. "Thus there is a fundamental difference between products
 14 that are inherently Class 0 and products modified to
 15 enhance ..."
 16 I agree there is a difference.
 17 Q. Yes. Do you agree with the last sentence:
 18 "This serves to undermine the integrity of the
 19 regulation and therefore reduces fire safety."
 20 A. No, I do not.
 21 Q. Why is that?
 22 A. Because there are situations whereby there are
 23 provisions within the regulation — within the statutory
 24 guidance that for the purposes of the external surface
 25 it would achieve — you would want a performance of

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1 class 0, but you might ask for additional levels of
 2 performance, such as limited combustibility, in certain
 3 situations.
 4 Q. Right, I see. Well, we'll come back to that possibility
 5 later.
 6 If we go, please, two pages ahead in this document
 7 to page 11 {CLG00019484/11}, we can see paragraph 5.3,
 8 and at 5.3, towards the top of the screen, it says this:
 9 "There is also widespread concern amongst many fire
 10 fighters about the safety of external cladding systems
 11 consisting of metal-faced foam plastics. These systems
 12 will generally have Class 0 fire performance, but in
 13 real fires the foam plastic lining can ignite and burn.
 14 This helps to spread the fire via the building fabric
 15 and there will be an increase in the generation of smoke
 16 and toxic fumes. Collapse is also possible. We believe
 17 this subject is still being reviewed by the DETR and
 18 consider more stringent controls a priority."
 19 Now, Peter Field also gave evidence, and if we can
 20 go to page 19 {CLG00019484/19}, paragraph 46 in this
 21 document, he says — this is in the live evidence, and
 22 it's quite a long passage, but let me just show it to
 23 you. He says, about two-thirds of the way down:
 24 "I think there are some circumstances ..."
 25 Do you see that?

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1 A. I do.
 2 Q. "I think there are some circumstances whereby utilising
 3 that of itself [that's class 0] would not adequately
 4 identify the fire performance of the complete system."
 5 Now, just taking the two passages I've just shown
 6 you without asking a question on so far, did you regard
 7 the evidence of the fire safety group and Peter Field of
 8 BRE here as clear?
 9 A. Mr Millett, could I ask, could we go back a bit, because
 10 I was looking at the larger document that then honed in,
 11 so I've lost my place on —
 12 Q. I'm so sorry, yes, of course. Does that help? This is
 13 under "Examination of Witnesses" and this was
 14 evidence —
 15 A. Yeah, so remind me again, please, sir, where we're
 16 looking.
 17 Q. Bottom right-hand corner of the page.
 18 A. Thank you.
 19 Q. I think the context of this is Peter Field of the BRE
 20 telling the panel what he thought, and I'll just run up
 21 to it again. Halfway down that paragraph he says:
 22 "There have also been issues referred to already
 23 relating to the Class '0' system of fire spread, which
 24 is basically a material based system of classification.
 25 I think there are some circumstances whereby utilising

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1 that of itself would not adequately identify the fire
 2 performance of a complete system."
 3 Was that evidence clear when you heard it?
 4 A. Yes.
 5 Q. Yes, and similarly the passage I read to you on page 11,
 6 widespread concern amongst many firefighters, was that
 7 clear?
 8 A. It was clear, and from my experience, concern had been
 9 raised by firefighters .
 10 Q. Yes, thank you.
 11 Now, can you recall, was there any view put forward
 12 to the select committee to counter what is said in those
 13 two passages, namely along the lines of evidence or
 14 submission to say, "No, class 0 is a reliable and
 15 a robust classification for reaction to fire on the
 16 external surface of a high-rise building"?
 17 A. I cannot recall .
 18 Q. No.
 19 Now, what at the time was your understanding of
 20 class 0?
 21 A. So, from my perspective, class 0 was utilised in
 22 relation to the external surface of a material and,
 23 therefore, by virtue of what it was looking to do,
 24 was — by virtue of two tests, it was looking to control
 25 potential fire spread and the amount of heat given off

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1 by the material in a fire condition, but it was testing
 2 the surface, and it was the highest national
 3 classification for the performance of such materials.
 4 Q. Now, you say it was testing the surface; I don't
 5 necessarily need to take you to it, but does that
 6 reflect what became paragraph 13 of appendix A of
 7 Approved Document B, which was the definition?
 8 A. Yes.
 9 Q. Yes, and that definition, I think, said — and I'm
 10 summarising — that the material or the surface of
 11 a composite product should be either of limited
 12 combustibility or else composed throughout of class 1,
 13 with relevant indices .
 14 A. Yes.
 15 Q. That was always the case, wasn't it, from 1992, at
 16 least, or even before that, so far as you were aware?
 17 A. As far as I'm aware, yes.
 18 Q. Yes.
 19 Now, you would also have been aware — and I'm
 20 making that assumption, given your expertise — that
 21 class 0 was a product performance or material
 22 performance classification for lining materials.
 23 A. Yes.
 24 Q. Do you understand, or was there ever a time when you did
 25 understand, how it came about that a test for lining

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1 materials was thought suitable for the classification of
 2 the fire reaction performance of the surface of
 3 an external wall of a high-rise building?
 4 A. From recollection, it has been utilised for quite some
 5 time, long before I arrived at the department, and —
 6 but I suppose the most sort of relevant point is there
 7 was no other tests to utilise, and so it was — in terms
 8 of for the surface, it was used for that purposes, and
 9 therefore has been used in a number of the approved
 10 documents.
 11 Q. Right. So it was your understanding that a test for
 12 internal linings was transposed to an application for
 13 the external surfaces of walls simply because there was
 14 no other test available?
 15 A. In terms of the surface, it's my understanding, where
 16 additional provisions of performance might be needed in
 17 terms of the substrate or insulation, then they could
 18 also be set too, but, yeah, that was my understanding
 19 for external surface.
 20 Q. Right.
 21 Do you know the logic? It sounds from your answer
 22 that the logic here was the BS 476—6 and 7 tests, and
 23 there was no other test, so those would do.
 24 A. Not those would do. Forgive me, I can't — in terms of
 25 the work that was done to show the performance from

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1 an internal lining to an external surface, and when it
 2 was first utilised, but it was felt that whilst the
 3 reference scenario is indeed an internal lining of
 4 a room, obviously that you would be able to get
 5 an element of performance that would still meet your
 6 need for external surfaces .
 7 Q. Do you remember at any time in your career within
 8 government whether you heard any concerns expressed
 9 about whether it was appropriate to use a test developed
 10 for internal linings as a test and classification
 11 standard for the external surface of external walls on
 12 high-rise buildings?
 13 A. I believe there had been suggestions by some that
 14 actually it might not be the most befitting test to
 15 utilise, and hence as a regulator, therefore, we — as
 16 I was then — we were very then mindful how we might
 17 need to supplement that in certain situations, such as
 18 asking for sort of periods of limited combustibility in
 19 addition to that surface spread of flame rating.
 20 Q. Right. So you say there had been suggestions by some —
 21 A. Yes.
 22 Q. — that it actually might not be the most befitting test
 23 to utilise. Now, those suggestions, first, do you know
 24 when those suggestions were made?
 25 A. They were made from time to time by people, but

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1 generally, on the whole, whilst thought not ideal, we
 2 were mindful that there were new tests coming down the
 3 track, in terms of European test methods and similar,
 4 but it was felt that, for the purpose of regulations,
 5 they would be sufficient and, where needed, you would
 6 add additional items of performance to that
 7 specification .
 8 Q. Who were the people who made those suggestions from time
 9 to time?
 10 A. Some parts of academia would raise it, and some
 11 other ...
 12 (Pause)
 13 Academia and some other fire safety experts.
 14 Q. Can you give us any names or any organisations?
 15 A. No, I'm sorry.
 16 Q. The BRE? Did the BRE ever say that they had doubts
 17 about the safety of class 0, given that it had been
 18 derived from an internal linings test?
 19 A. BRE would certainly have suggested that there are other
 20 tests that were under development that would be more
 21 befitting in terms of as they come forward in the
 22 European context, so —
 23 Q. Yes.
 24 A. Yeah.
 25 Q. We can come to that material in due course.

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1 Did you understand that there was a difference
 2 between class 0 and limited combustibility?
 3 A. Yes.
 4 Q. Yes. And did you understand — and I detect that you
 5 did, help me — that although class 0 would be achieved
 6 if a material or surface of a material of a composite
 7 product was composed throughout of material of limited
 8 combustibility, the same was not true vice versa?
 9 A. Yes.
 10 Q. Yes. In other words, a material was not of limited
 11 combustibility merely because it or the product achieved
 12 class 0.
 13 A. Yes.
 14 Q. Right. And that was crystal clear, was it?
 15 A. Yes.
 16 Q. Yes.
 17 You were aware, I think, weren't you, that a class 0
 18 could be achieved within the definition and its use in
 19 what became 12.6 and diagram 40 as an alternative to
 20 a material of limited combustibility by passing or
 21 achieving the relevant indices in the BS 476—6 and 7
 22 tests?
 23 A. Yes.
 24 Q. Turning first to part 7, that's a surface spread of
 25 flame test, isn't it?

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1 A. That's my understanding, yes.
 2 Q. Were you aware that the reference scenario for that test
 3 was an internal fire?
 4 A. Yes.
 5 Q. It had originated as a method for testing flame spread
 6 within corridors.
 7 A. Yes.
 8 Q. Yes, and on BS 476—6, the fire propagation test, that
 9 was also developed to test a fire within a compartment.
 10 A. Yes.
 11 Q. Yes. So both of those tests have internal fires as
 12 reference scenarios, not an external cladding fire.
 13 A. Yes.
 14 Q. In the light of that, what was the relevance of either
 15 of those tests or, taken together, class 0 to assessing
 16 the risk of external fire spread in the event of
 17 a cladding fire?
 18 A. As I explained, in terms of, whilst they are very much
 19 material tests for internal arrangements, it was felt
 20 that they could be utilised to even — to set
 21 performance for external façades and similar in support
 22 of the Building Regulations. However, as I've touched
 23 upon already, where needed, we could supplement those
 24 provisions with others, in terms of maybe a request for
 25 materials of limited combustibility, but from our

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1 understanding and my understanding at the time, they
 2 were usable and could be utilised as part of the
 3 Building Regulations statutory guidance.
 4 Q. When you say, "We could supplement those provisions with
 5 others in terms of maybe a request for materials of
 6 limited combustibility", what do you mean, by reference
 7 to the Building Regulations at least until 2006 —
 8 sorry, ADB, at least until 2006?
 9 A. So, what you could ... up to and including 2006?
 10 Q. Up to — before 2006.
 11 A. Before —
 12 Q. And before the amendments in 2006.
 13 A. Yes.
 14 From recollection, within section 13 of the
 15 document, that would be asking at the time for thermal
 16 insulation in ventilated cavities should be of material
 17 of limited combustibility.
 18 Q. Yes. So that's what you're referring to, is it?
 19 A. Yes.
 20 Q. I see.
 21 A. Yes, sorry.
 22 Q. Did you ever come to doubt at any time before the
 23 Grenfell Tower fire in June 2017 whether class 0 had at
 24 any time been an appropriate classification for external
 25 cladding material or products?

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1 A. In my experience, no.
 2 Q. Did you ever learn from Debbie Smith that her opinion of
 3 class 0 was that it was based, as it was, on small-scale
 4 tests, which were not appropriate or reliable indicators
 5 of how a cladding system might perform in a fire?
 6 A. We'd had discussions in terms of — I think with the
 7 backdrop in relation to the European test methodologies
 8 that were being developed at that time, that they might
 9 ultimately — well, no, sorry. I'd had discussions with
 10 Debbie where she had raised that perhaps a move to
 11 differing tests would be of benefit in the future.
 12 Q. Yes, that's not quite an answer to my question. It's
 13 a bit more general than that.
 14 Did you ever learn from her that her view of
 15 class 0, in general, was that they were based on
 16 small-scale tests and, as such, were an inappropriate
 17 and unreliable indicator of how a cladding system might
 18 perform in a fire? That was her view of class 0. Did
 19 you know that?
 20 A. I can't recall. But ...
 21 (Pause)
 22 We must have had discussions, from recollection,
 23 about a move ultimately to the new European test
 24 methodologies.
 25 Q. Right. So we have a timeframe for that, the

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1 harmonisation —
 2 A. Yes.
 3 Q. — process, which I think started with the RADAR 2
 4 report on reaction to fire —
 5 A. Yes.
 6 Q. — in May 2000. Was it about that time that you had
 7 these discussions with Debbie in general about the
 8 appropriateness of class 0? Was it in that context or
 9 was it —
 10 A. No, I don't believe it was. The RADAR work was
 11 something that we undertook because we had to bring
 12 about recognition of the new European test methodologies
 13 and how we would place them into the approved documents
 14 and how they would transpose into the approved
 15 documents. Whether we had discussions at that time,
 16 Debbie and I, about cladding, I don't think that would
 17 have been the case. I think we'd have been focused in
 18 on the transposition between the national approach for
 19 surfaces and the new Euroclasses.
 20 Q. So the discussions about Dr Smith's views about class 0
 21 would have been, what, earlier than the harmonisation
 22 programme?
 23 A. I can't recall.
 24 Q. All right.
 25 I would like now to look, please, at some of the

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1 recommendations made by the select committee in their
 2 report, after the evidence had been delivered.
 3 Can we go, please, to {CLG00019478}. This is the
 4 report dated 14 December 1999 entitled, "Potential risk
 5 of fire spread in buildings via external cladding
 6 systems".
 7 If we can go to it, please, at page 9
 8 {CLG00019478/9}, paragraph 20, I would like to examine
 9 with you, Mr Burd, the recommendation under the heading,
 10 "The adequacy of the regulations pertaining to their
 11 use", which is just about a quarter of the way down your
 12 screen, and it says this — and I'll read the bold as
 13 well, note the bold, which I think is the
 14 recommendation:
 15 "19. Notwithstanding what we have said in
 16 paragraph 18 above, we do not believe that it should
 17 take a serious fire in which many people are killed
 18 before all reasonable steps are taken towards minimising
 19 the risks. The evidence we have received strongly
 20 suggests that the small-scale tests which are currently
 21 used to determine the fire safety of external cladding
 22 systems are not fully effective in evaluating their
 23 performance in a 'live' fire situation. As a more
 24 appropriate test for external cladding systems now
 25 exists, we see no reason why it should not be used.

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1 "20. We believe that all external cladding systems
 2 should be required either to be entirely
 3 non-combustible, or to be proven through full-scale
 4 testing not to pose an unacceptable level of risk in
 5 terms of fire spread. [In bold] We therefore recommend
 6 that compliance with the standards set in the 'Test for
 7 assessing the fire performance of external cladding
 8 systems', which has been submitted to the British
 9 Standards Institution for adoption as a British
 10 Standard, be substituted in Approved Document B for
 11 previous requirements relating to the fire safety of
 12 external cladding systems."
 13 What did you understand that recommendation there in
 14 paragraph 20 to mean?
 15 A. Could we — could I see the full recommendation, please?
 16 Q. Yes, absolutely, if we can go back a page, please, to
 17 the foot of page 9. I'm really focusing on 20 in light
 18 of 19, which I read to you.
 19 A. Yeah.
 20 Q. The recommendation in bold, as you can see in the last
 21 two lines there, is there.
 22 A. Yeah, so that was a recommendation from the select
 23 committee that either a cladding system should be
 24 entirely non-combustible or its performance proven
 25 through full-scale testing.

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1 Q. Yes, and if we go over the page to page 10
2 {CLG00019478/10}, I just want to draw your attention to
3 the word "substituted" in the second line there. Yes?
4 A. Yes.
5 Q. Looking at that word there, again, what did you
6 understand that recommendation to mean?
7 A. That it should be — that should happen and go into the
8 Approved Document B as a way of showing compliance.
9 Q. Did you understand it to mean that small-scale testing
10 for class 0 under BS 476—6 and 7 should be removed and
11 replaced by a full-scale test method?
12 A. That was the recommendation made by the select
13 committee, that's what I —
14 Q. And you were never in any doubt about that, were you?
15 A. No, not as to the recommendation made by the committee,
16 no.
17 Q. No.
18 If we go down the page here to paragraph 22, you can
19 see that the committee recommended that the department,
20 picking it up in the bold:
21 "... instruct local authorities and Registered
22 Social Landlords to undertake a review of their existing
23 building stock with a view to ascertaining how many
24 multi-storey buildings are currently using external
25 cladding systems; and how many cladding systems are in

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1 use which, whilst complying with the regulations in
2 force at the time when they were installed, do not
3 comply with current Regulations."
4 Do you see that?
5 A. Yes.
6 Q. Did that review ever take place?
7 A. I can't recall.
8 Q. No. I mean, we have seen no evidence of any such
9 review, unless it's a survey done ahead of the cc1924
10 tests. Just looking at the terms of that recommendation
11 there, you can't recall.
12 A. No.
13 Q. Is that that you've never seen one, you don't know
14 anything about it?
15 A. I can't recall.
16 Q. Right. I mean, sorry, just to be clear, often witnesses
17 say, "I can't recall" when they can't remember one way
18 or the other. But are you saying you, from your
19 recollection, are saying that it never took place?
20 A. No, I'm not saying that, sir. I'm trying to think back.
21 There was a formal response from the department, from
22 the minister, Nick Raynsford.
23 Q. We're going to come to that in a moment.
24 A. Oh, okay.
25 Q. But just in general terms, if there were a review as

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1 recommended, you, given the systems in place at the
2 time, would have been very likely to have known about
3 it.
4 A. Yes. It wouldn't have been undertaken by perhaps the
5 Building Regulations division, as it was known at the
6 time, that would have been undertaken by somebody else,
7 but I don't recall this review.
8 Q. We've seen no evidence of it.
9 A. Okay.
10 MR MILLETT: Now, can we then turn to the government's
11 response, please, to the committee's recommendation.
12 That is at CLG —
13 Mr Chairman, I just note the time. I'm happy to
14 carry on, given that we started with this witness
15 only —
16 SIR MARTIN MOORE-BICK: Shall we finish this point, if we
17 can?
18 MR MILLETT: Yes, let's do that.
19 This is {CLG10000347}. This is a document we
20 believe is dated 6 April 2000, and we understand it to
21 have been sent by Nick Raynsford, the then minister.
22 Just looking at it, it says:
23 "Appendix.
24 "Government response to the first report of the
25 environment, transport and regional affairs committee on

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1 potential risk of fire spread in buildings via external
2 cladding systems."
3 Would that be right?
4 A. Yes.
5 Q. Yes.
6 Now, it's undated, as I say, but you can see from
7 paragraph 1 at the very least that it postdates
8 15 March 2000.
9 Did you have a role in preparing this draft?
10 A. I don't believe so. Well, no. It would have been
11 prepared by Tony Edwards, the principal fire safety
12 professional, working with Caroline Cousin, who was the
13 head of technical policy then. I might have been shown
14 and asked to offer comment on the document, but I didn't
15 write it myself.
16 Q. Right, I see.
17 Now, let's scroll down to paragraph 9 on page 3
18 {CLG10000347/3}, please. Page 3, paragraph 9. It says
19 there:
20 "The 1992 edition of the Approved Document to
21 Part B, which was in force at the time I gave evidence
22 to the Committee last year, sets out the recommended
23 provisions for the fire protection of external surfaces
24 of walls in diagrammatic form. However in the new 2000
25 edition of the Approved Document to Part B the test

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1 method mentioned in your recommendation (currently BRE
2 Fire Note 9) is now quoted as an alternative to meeting
3 these provisions for the external surfaces of walls."

4 Now, that's the department's response to the
5 recommendation we've looked at together, Mr Burd, in
6 other words that the full –scale test should be
7 substituted in place of the previous requirements,
8 including class 0.

9 A. Mm—hm.

10 Q. Now, here, paragraph 9 explains that Fire Note 9 would
11 be referred to in the 2000 edition of Approved
12 Document B; yes?

13 A. Yes.

14 Q. As an alternative to meeting these provisions.

15 Now, that wasn't the recommendation of the select
16 committee, was it? They'd recommended that class 0 be
17 replaced by the full system test.

18 A. I believe that was their recommendation, yes.

19 Q. Not that class 0 be retained to sit alongside
20 a full –scale test as an alternative route to compliance;
21 yes?

22 A. Yes.

23 Q. Do you know what the reason was that the minister had
24 for ignoring the select committee's recommendation or
25 refusing to follow it?

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1 A. No, I do not. However, when I joined the department in
2 1998, we had just closed on the consultation that
3 amounted to the 2000 edition of the ADB, so the Building
4 Regulations Advisory Committee would have asked
5 a working group to be formed, and so potentially there
6 was some discussion within that BRAC working group as to
7 where such a reference could go in relation to
8 Fire Note 9. But as to why it went only in part in
9 effect to — as an alternative to what is now
10 diagram 40, I can't recall why it was done in that way.

11 Q. Right.

12 Do you know who made the decision to ignore or
13 refuse to follow the select committee's recommendations?

14 A. Ultimately, the responsibility resides with ministers.

15 Q. Well, that's certainly true, but ministers act on
16 advice. Do you know who ultimately gave the advice that
17 the select committee's recommendation should not be
18 followed?

19 A. So that would have been Tony Edwards, I would suggest,
20 who was the principal fire safety professional.

21 Q. Right.

22 What was the rationale for that advice, retaining
23 class 0 to sit alongside the new full—scale test, in
24 light of the select committee's conclusions and
25 recommendations based on the evidence that it had

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1 received?

2 A. That's not something I can answer, and nor something
3 that I'm aware of as to why it was placed there.

4 Q. You can't help?

5 A. No, I cannot.

6 Q. Now, you gave a hint of a possible answer, and clearly
7 that may be an ex post facto, after the event, as it
8 were, rationalisation to do with the closing of the
9 agreement to amend ADB.

10 A. Right.

11 Q. Now, ADB was amended and a new version came out in
12 July 2000.

13 A. Yes.

14 Q. That's some months after this, isn't it?

15 A. Yes.

16 Q. Is there any reason, given that ADB was, as revised, in
17 production, why the recommendations of the select
18 committee could not be carried into effect in those
19 revisions?

20 A. I can only assume that there wasn't necessarily
21 agreement that it should go in as the only way of
22 showing compliance.

23 MR MILLETT: If we go down to paragraph 11, you can see —

24 SIR MARTIN MOORE—BICK: Can I just ask: would it be right to
25 understand that the minister would have been presented

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1 with a written submission advising him not only what to
2 do but why to do it?

3 A. That would be my understanding, yes, sir.

4 SIR MARTIN MOORE—BICK: Thank you.

5 A. And that probably would have come from the head of
6 technical policy, Caroline Cousin.

7 SIR MARTIN MOORE—BICK: Right. Thank you very much.

8 MR MILLETT: Looking at paragraph 11:

9 "When the technical amendments to the document have
10 been completed, and it has been adopted as a British
11 Standard, the Department will amend the reference in the
12 Approved Document to BRE Fire Note 9 to reflect its
13 status as a British Standard. We will also review
14 whether the reference to this method of demonstrating
15 compliance should be strengthened. It is unlikely that
16 any such changes will be made immediately the status of
17 the test method is changed as such minor amendments to
18 the Approved Documents are difficult to promulgate to
19 ensure that all users of the document are made aware of
20 the change. However, supplements to the Approved
21 Document are planned to give guidance on the new
22 harmonised European methods of test, and the amendment
23 would be included in this."

24 Now, no amendment to strengthen the reference to
25 what became BS 8414 was included in the 2006 edition of

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1 Approved Document B published in April 2007, was it?
 2 A. Sorry, could you repeat the question?
 3 Q. Yes.
 4 No amendment to strengthen the reference to BS 8414
 5 was included in the 2006 edition of Approved Document B?
 6 A. It was — the provision was recognised that it
 7 couldn't — it isn't just an alternative to surface
 8 spread of flame. When the reference to 8414—1 and 2 and
 9 BR 135 went into what was the 2006 edition, it was there
 10 as an alternative to undertaking the provisions set out
 11 in 6—point — and 12—point — in section 12 for class —
 12 for surfaces and provisions in relation to the external
 13 wall.
 14 Q. Yes.
 15 A. Yes.
 16 Q. That is, if I may say so, entirely correct.
 17 A. Yes.
 18 Q. Therefore, I think you would agree with me that in the
 19 amendments made in 2002 to reflect Euro, 2006, 2010,
 20 2013, throughout all of those amendments, Fire Note 9,
 21 becoming BS 8414 parts 1 and, latterly, part 2 from
 22 2006, were provided as an alternative route to
 23 compliance with the approved documents, alternative to
 24 section 12.6 and diagram 40.
 25 A. Yes.

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1 Q. And 12.7.
 2 A. But, forgive me, the select committee's recommendation
 3 did talk about making potentially — there are two
 4 approaches, you either — it should be made entirely of
 5 non-combustible material, or it should be a full-scale
 6 test. I believe what is called here the linear route
 7 does exist within the Approved Document B, and then the
 8 citation of 8414 did go in.
 9 Q. As an alternative.
 10 A. As an alternative.
 11 Q. That's my point.
 12 A. Yes.
 13 Q. There was never a substitution, only an alternative.
 14 A. Yes. The only point I would add is that, as alluded in
 15 this response from government to the select committee,
 16 there would be a review undertaken at an appropriate
 17 point to see if that provision be strengthened, and by
 18 virtue of considerations of the statutory committee, the
 19 Building Regulations Advisory Committee, and the working
 20 party, the proposals for amendments of the various
 21 iterations to which you refer, those would have been
 22 considered during that process.
 23 Q. Right.
 24 What did you understand by "reference to this method
 25 of demonstrating compliance should be strengthened"?

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1 A. I understood that to mean if they were going to make
 2 that definitively the method of showing compliance.
 3 Q. I see.
 4 Why, to the best of your knowledge at the time, was
 5 it necessary to review whether the reference to that
 6 method of demonstrating compliance should become the
 7 method of demonstrating the compliance, as you've just
 8 explained, in light of the clear recommendation of the
 9 select committee that that should have been so?
 10 A. As I say, this is a response from the government. It is
 11 a recommendation by a select committee, which is
 12 obviously held with huge importance, but it was still
 13 a recommendation, and therefore it was for government to
 14 consider what it should do in relation to this matter.
 15 SIR MARTIN MOORE-BICK: Would that be a good point,
 16 Mr Millett?
 17 MR MILLETT: One or two more questions and then it would be
 18 a very good point.
 19 SIR MARTIN MOORE-BICK: All right.
 20 MR MILLETT: Was there a conscious decision to retain the
 21 provisions of class 0 and diagram 40 in Approved
 22 Document B at this time?
 23 A. By virtue of it still remaining, then yes.
 24 MR MILLETT: Yes.
 25 Yes, Mr Chairman, it is now a convenient moment,

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1 thank you.
 2 SIR MARTIN MOORE-BICK: Right.
 3 Well, as you were told, Mr Burd, we have a break
 4 during the afternoon, and so we'll take it now. We'll
 5 stop now and we will resume, please, at 3.45.
 6 Now you have started giving your evidence, I have to
 7 ask you, please, on this and other occasions, not to
 8 talk to anyone about your evidence while you're out of
 9 the room.
 10 THE WITNESS: Thank you, sir.
 11 SIR MARTIN MOORE-BICK: All right? Thank you very much.
 12 (Pause)
 13 Thank you, Mr Millett. 3.45, please. Thank you.
 14 MR MILLETT: Thank you.
 15 (3.30 pm)
 16 (A short break)
 17 (3.45 pm)
 18 SIR MARTIN MOORE-BICK: Right, Mr Burd.
 19 THE WITNESS: Yes, sir.
 20 SIR MARTIN MOORE-BICK: Thank you very much.
 21 Yes, Mr Millett.
 22 MR MILLETT: Yes, Mr Chairman, thank you.
 23 Mr Burd, I just want to show you the ministerial
 24 submission to which the Chairman referred earlier before
 25 the break.

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1 Can we please go to {CLG00019457}, and look at the
 2 first page there, which is the response from
 3 Caroline Cousin, head of technical policy, 9 March 2000,
 4 to Paul Everall and Nick Raynsford, and this is
 5 Mr Raynsford's copy, ticked by him, as you can see, on
 6 9 March itself, and it's entitled —
 7 A. Sorry, Mr Millett, it's been ticked by — that's
 8 Paul Everall.
 9 Q. Oh, it's Paul Everall, is it?
 10 A. Yes.
 11 Q. "PE", quite right.
 12 A. Yes.
 13 Q. Okay, fair point.
 14 If you look down at this document, please, and go to
 15 page 2 {CLG00019457/2}, paragraph 7, it says:
 16 "The third point is that the BRE large scale test
 17 for the fire performance of external cladding systems
 18 should be substituted in the Approved Document to Part B
 19 as a requirement for the safety of cladding systems.
 20 The response explains that the approved Documents do not
 21 make requirements, but just offer guidance. However, it
 22 goes on to say that the 2000 edition of the Approved
 23 Document has been expanded to include a reference to
 24 this test. It also details the progress which has been
 25 made with the adoption of this method as

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1 a British Standard."
 2 We have, beyond that paragraph, scoured this
 3 document for the advice given or any advice given by
 4 Ms Cousin to the minister to ignore the select
 5 committee's recommendation to substitute class 0,
 6 et cetera, with the full —scale test, and we can't see
 7 it. This is the closest we get, and there is nothing
 8 there, as you can see, about not following the select
 9 committee's guidance.
 10 So are you able to offer any insight as to why that
 11 advice was rejected, or that recommendation was
 12 rejected?
 13 A. I am not, sir.
 14 Q. Right.
 15 Is it possible that somebody perhaps above your pay
 16 grade, as it were, would have spoken to the minister
 17 outside the formal ministerial submission enclosing this
 18 advice, which is this, and persuaded him to do what he
 19 appears to have decided to do in the April 2000
 20 document?
 21 A. It was not uncommon, for detailed and important
 22 submissions like this, for ministers to request
 23 a follow-up discussion with officials to talk items
 24 through. I don't know if that happened or not, but that
 25 was quite common for that to happen in the department.

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1 Q. Right.
 2 Now, let's think about who was there at the time.
 3 We know you were, and Tony Edwards was at the select
 4 committee. Did Tony Edwards have the same technical
 5 experience and expertise that you had in matters of fire
 6 and the Building Regulations relating to fire?
 7 A. Well, he was the principal fire safety professional and
 8 he was more experienced than me, having worked within
 9 the industry, so I'd suggest that, yes, he was better
 10 than I.
 11 Q. That's modest of you. What I'm really seeking to get at
 12 is whether you can think of any reason why any
 13 discussions of the kind that you've described which
 14 might have taken place between officials and the
 15 minister after Caroline Cousin's formal ministerial
 16 submission would not have involved you?
 17 (Pause)
 18 A. Again, I was deputy to the fire safety portfolio,
 19 part B. I can't recall attending such a meeting.
 20 Q. No.
 21 A. As I say, ministers — certainly something as important
 22 as this, Mr Raynsford would potentially want to talk
 23 through what he was going to submit in writing. From
 24 recollection, Mr Everall enjoyed a good relationship
 25 with ministers and might have gone in his capacity,

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1 Caroline and Tony, but I can't recall attending.
 2 Q. Would it have been uncommon or unusual, perhaps, for you
 3 not to have attended those meetings, given your
 4 involvement in the select committee evidence?
 5 A. No. It could have been a matter of circumstance, in
 6 terms of my availability. I might have been out of the
 7 country on business. These things did happen, you know.
 8 I was the junior on fire safety. They wouldn't hold
 9 a meeting back with a minister because I wasn't
 10 available.
 11 Q. I see.
 12 A. Yeah.
 13 Q. Now, can we go back to Nick Raynsford's document at
 14 {CLG10000347/2} and just pick it up at paragraph 6.
 15 You can see there that there's a reference to
 16 a series of large-scale fire tests, three-quarters of
 17 the way down the paragraph:
 18 "... to assess the fire performance of a range of
 19 existing and new cladding systems. The results of this
 20 work will be used to determine the most appropriate
 21 method for specifying the fire performance requirements
 22 of cladding systems. The revised guidance should be
 23 available by September 2001."
 24 Yes?
 25 A. Yes.

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1 Q. That turned into, didn't it, contract cc1924?
 2 A. Yes.
 3 Q. Yes.
 4 Let's now turn to that, and let's start with the bid
 5 document, {BRE00041836}. There it is. We have been
 6 through this with a number of witnesses. You can see
 7 that the project manager was Mrs S Colwell, project
 8 title :
 9 "Review of fire performance of external cladding
 10 systems and revision of BRE report BR135."
 11 The date of it is 23 December 1999. Now, that's
 12 only a week after the select committee report on
 13 14 December 1999, isn't it?
 14 A. Yes.
 15 Q. So request for bids would have gone out before that, one
 16 imagines; is that right?
 17 A. I would have thought so, yes.
 18 Q. Right.
 19 Now, if we go to page 3 of the bid document
 20 {BRE00041836/3}, we may not need to run through all of
 21 these, but the project objectives are set out there.
 22 Looking at the primary project objectives, you can
 23 see three bullet points: review the guidance contained
 24 in the approved documents, update and maintain the
 25 Building Regulations, and support the process of

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1 regulation and harmonisation with Europe; yes?
 2 A. Yes.
 3 Q. Under those three objectives on page 3 and over to
 4 page 4, there are some specific objectives on the
 5 department's part, and there is a longish set of bullet
 6 points there; yes?
 7 A. Yes.
 8 Q. Are you familiar with those or shall I take you through
 9 them in detail?
 10 Let me summarise them, if we go back to the bottom
 11 of page 3.
 12 A. Please.
 13 Q. The first is:
 14 "To carry out a survey of the existing multi-storey
 15 building stock in Great Britain in order to determine
 16 the composition and design of systems and the changing
 17 nature of materials currently in use within 3 months of
 18 the start date."
 19 The second is the database. The third is to review
 20 the update the existing guidance in BR 135.
 21 A. Yes.
 22 Q. Then over the page {BRE00041836/4}:
 23 "To complete an experimental programme enabling the
 24 assessment of the fire performance of the range of both
 25 existing and new cladding systems within 12 months of

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1 the start date."
 2 The next one is:
 3 "To utilise the large-scale scenario based test to
 4 determine the most appropriate method for specifying the
 5 fire performance requirements of cladding systems."
 6 There are others as well, which I don't think I need
 7 to take you through.
 8 Now, these are the DETR's objectives. Do you agree
 9 that they reflected the department's aims?
 10 A. From recollection, yes.
 11 Q. Did all of those objectives remain in place and
 12 unchanged throughout the life of the cc1924 project?
 13 A. I believe so. From recollection, there were some
 14 changes along the way with regards to the testing
 15 programme, in terms of what more might need to be
 16 tested, so I can recollect -- actually, I might have
 17 seen in evidence that's come forward.
 18 Q. Yes, there are some emails from Sarah Colwell in
 19 August 2001 about the --
 20 A. Yes.
 21 Q. -- changes to the testing regime. But the objectives
 22 themselves?
 23 A. Broadly, yes.
 24 Q. Yes. Now, Dr Colwell told the Inquiry in her oral
 25 evidence that the objective of the project was to review

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1 and provide information but not to rewrite ADB. Was
 2 that your understanding?
 3 A. Yes, that was my understanding.
 4 Q. If we go to {BRE00001392}, this is an annual progress
 5 report prepared for you dated 27 April 2001, and it was
 6 prepared by Sarah Colwell for you.
 7 If we go to page 5 {BRE00001392/5}, we see, under
 8 the heading "Formation of the IAG", it says this:
 9 "Thirty groups were invited to join the industry
 10 advisory group for this project, they included
 11 representatives from:
 12 " ■ Manufacturers (rain screen systems, rendered
 13 systems and built-up systems).
 14 " ■ specifiers, and
 15 " ■ building owners and users."
 16 Yes?
 17 A. Yes.
 18 Q. Under that list, you can see that it is reported that 27
 19 representatives accepted invitations to join the group.
 20 Their details are given in table 1.
 21 If we go to page 9 {BRE00001392/9}, we can see who
 22 they are. Page 9, table 1 is there, "Members of the
 23 IAG", and you can see that your name appears right at
 24 the top of the list for the department; yes?
 25 A. Yes.

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1 Q. And you can see others there, some from government but
 2 mainly from industry organisations, county councils and
 3 industry representatives, as well as Drs Smith and
 4 Colwell from the BRE.
 5 Who had decided which manufacturers, specifiers and
 6 building owners and users would be invited to join the
 7 IAG?
 8 A. Sorry, did you say manufacturers?
 9 Q. Well —
 10 A. I can see trade associations, sir. I don't see
 11 individual manufacturers necessarily.
 12 Q. All right. Amending my question, then, who had decided
 13 on this list?
 14 A. So the way IAG normally works is that there would come
 15 forward a recommendation by those undertaking the work,
 16 in this case BRE, and offering a list to me as the
 17 client. I would have considered that list and would
 18 have suggested if we needed anybody in addition to that
 19 for the IAG.
 20 What then happens, moving forward, is that typically
 21 at the first meeting of the IAG there would be
 22 a discussion quite early on, on the agenda items, to see
 23 if we had missed anybody off of that list, thinking
 24 about who would best serve the membership and the work
 25 under way.

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1 Q. And on what basis were these representatives chosen?
 2 A. From recollection, we wanted, of course, to cover the
 3 relevant regulators, so there was myself for England and
 4 Wales, the relevant regulator from Scotland, the
 5 relevant regulator for the Home Office, a selection of
 6 consultants, some — representatives from there from the
 7 enforcing authority, which is the Institute of
 8 Building Control, a number of local authorities, and
 9 then, just looking through the list, a selection —
 10 well, more than — actually probably the relevant trade
 11 associations that existed in the cladding sector.
 12 Q. What was to be the function of the IAG?
 13 A. Typically the IAG is there to provide support and input
 14 to the work programme. They would offer comments and —
 15 in terms of their understanding of the marketplace.
 16 They would also typically be shown things like
 17 the testing programme to see that — if they feel that
 18 that was the correct tests to undertake. So it's
 19 generally a very open discussion to be had, and actually
 20 for them to provide insight and steer the work.
 21 Q. Now, to meet the objectives which we looked at in the
 22 document, there were several reports produced for the
 23 project, weren't there, one of which was a literature
 24 review?
 25 A. Yes.

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1 Q. Let's look at that, {BRE00001353/2} and this is
 2 entitled, "Fire spread in external cladding" —
 3 A. Right, yes.
 4 Q. — "a literature review". That's not it.
 5 A. This is a costed document.
 6 Q. Yes. I think we need to go a little bit further down in
 7 the document, forgive me.
 8 If we go to page 4 {BRE00001353/4}, that's where we
 9 see it, forgive me. If you look at page 4, you can see
 10 it was prepared by Sarah Colwell, Jason Foster and
 11 Brian Martin, dated 30 March, for the department; yes?
 12 A. Yes.
 13 Q. That would have been you in the first instance, would
 14 it?
 15 A. Tony Edwards was still in the department at this time.
 16 He didn't leave till the summer of 2000.
 17 Q. Yes, but you would have been on the receiving end of
 18 this document, would you?
 19 A. Yes.
 20 Q. Did you ask for it? Did the department actually ask for
 21 it or did it come —
 22 A. It's not normal for contractors just to issue —
 23 Q. No, exactly. So this was part of the contract.
 24 Can we go to page 14 {BRE00001353/14}, the first
 25 paragraph there. We can see there that, in the first

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1 paragraph, it says:
 2 "Irrespective of boundary distance, Diagram 40
 3 (Provisions for external surfaces of walls), in AD B,
 4 restricts the combustibility of external walls of high
 5 buildings (where the top floor is at least 18m above
 6 ground level) and those of the Assembly and Recreation
 7 Purpose Group, to reduce the danger from fire spread up
 8 the external face of the building."
 9 First, building up a little bit, did you receive
 10 this report at the time?
 11 A. I can't recall, but I would imagine I did.
 12 Q. Yes, and imagining that you did, can we imagine also
 13 that you read it?
 14 A. Yes.
 15 Q. Yes, and this paragraph too; yes?
 16 A. Yes.
 17 Q. Yes.
 18 Now, where it says diagram 40 restricts the
 19 combustibility of external walls of high buildings, that
 20 is not correct, is it? That is not a correct statement
 21 in two respects, is it?
 22 A. Given that diagram 40 talks about the surface of
 23 a cladding system, I can see why that terminology
 24 shouldn't have been used. However, the likes of
 25 BS 476—6 and 7, whilst they are a reaction to fire test,

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1 the performance gleaned from those two tests is
 2 an aspect of combustibility. But, no, I don't think
 3 that is quite correct.
 4 Q. No, and it's incorrect, let me suggest to you, in two
 5 respects: first, diagram 40 is only relevant to
 6 combustibility in that class 0, as one of its possible
 7 routes to achievement, rests on limited combustibility;
 8 yes?
 9 A. Mm—hm.
 10 Q. And, secondly, diagram 40 does not restrict the
 11 combustibility of the entirety of the external wall, but
 12 only its surface.
 13 A. I agree, yes.
 14 Q. Now, that confusion or error, was that identified by the
 15 department at the time?
 16 A. Not that I can recall, no.
 17 Q. Right. It's quite a fundamental mistake, isn't it,
 18 looking at it now?
 19 (Pause)
 20 A. It is a basic mistake to make, yes, and it doesn't
 21 actually capture the rest of the content in what was
 22 section 13 of the Approved Document B then. So, yes, it
 23 is a mistake. Yes.
 24 Q. Presumably you didn't notice at the time or ask how it
 25 could have come about that an organisation as august in

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1 fire as the BRE could have made such a basic error?
 2 A. I don't recall I raised it.
 3 Q. No.
 4 A. No. No.
 5 Q. Turning back to the literature review on page 12
 6 {BRE00001353/12}, if we can, please, there is a heading
 7 "Façade Costs". Now, under that you will see that:
 8 "Finegan highlights the typical costs associated
 9 with different cladding systems based on figures given
 10 in the Architect's Journal ... in February 1998, in
 11 Tables 1, 2 and 3."
 12 And you can see that the tables on page 12 there and
 13 over to page 13 list various different types of cladding
 14 systems.
 15 If we go to page 13 {BRE00001353/13} and look at
 16 table 3, "Types and costs of in-fill panels as quoted in
 17 AJ, Feb 1998", the penultimate entry there is this:
 18 "Composite panel of 0.55mm stove lacquered
 19 aluminium, 3mm polyethylene core, 0.5mm mill-finish
 20 aluminium, with insulation and vapour barrier bonded to
 21 rear face."
 22 And then there is a price or cost range.
 23 Now, Dr Colwell confirmed to us in her evidence at
 24 {Day232/42:16–23} that that was aluminium composite
 25 material with a polyethylene core. Were you aware of

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1 that?
 2 A. I was not, and I can't recall being aware at — I can't
 3 recall seeing that, but it is in the report and so
 4 I would have seen the report.
 5 Q. Right.
 6 A. Yeah.
 7 Q. But you don't remember looking at it and seeing the
 8 presence there of ACM with a PE core —
 9 A. No.
 10 Q. — as one of the infill panels quoted in the AJ?
 11 A. No.
 12 Q. More generally, were you aware before approving this
 13 report, or before seeing it, perhaps, that ACM panels
 14 with a PE core were in use, even commonly in use, in the
 15 external wall arrangements of buildings in England and
 16 Wales?
 17 A. No.
 18 Q. You weren't?
 19 A. No.
 20 Q. Did this not strike you at the time as an unnecessary
 21 and unusual item to consider, given the upcoming
 22 project, if in fact you thought that this kind of
 23 product wasn't in use?
 24 A. No, but from the perspective of the report and the
 25 undertaking of investigations, it was for BRE to come

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1 forward and suggest types and costs of infill panels,
 2 and so I would have seen it along with everything else
 3 listed there as this is what is being experienced in the
 4 marketplace.
 5 Q. Right. Therefore, did you take from this that partly,
 6 perhaps, or perhaps only because BRE had recommended
 7 that this kind of product be tested, this product was in
 8 use, perhaps even commonly in use, in the UK
 9 construction market?
 10 A. I would not necessarily have had that thought, but
 11 I just ... if it was listed here as a costing, I mean,
 12 obviously it's taken from the Architect's Journal from
 13 the time, it doesn't give any values as to market share
 14 or similar, but if this is what was coming forward,
 15 then, yes, it was to be considered, yeah.
 16 Q. Put it this way: you wouldn't have expected the BRE to
 17 have recommended testing to the department on a product
 18 which was not in common use or significantly commonly
 19 used?
 20 A. Erm ...
 21 Q. It would have been a waste of time and money.
 22 A. Not necessarily a waste of time and money. If —
 23 certainly if there are products coming forward which are
 24 innovative and new, then — if this was the case, which
 25 I believe it was, then whether this product or any

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1 others that were forming part of what is going to be
 2 a testing regime to work out the pass/fail criteria of
 3 a new full-scale test, then you would want to test
 4 things that, you know, could truly test the test, as it
 5 were. So, no, sometimes you would use products that
 6 were not that common but we wanted to potentially see
 7 how they would perform in a full-scale test.
 8 Q. Was it your experience at the time, spring of 2000, that
 9 ACM panels with a PE core were new to the market, it was
 10 an innovative material?
 11 A. I can't recall, and I don't believe I had any experience
 12 of that type of product.
 13 Q. All right.
 14 Did it strike you at the time that there may be
 15 a fundamental problem with the statutory guidance, which
 16 did not restrict the use of polyethylene-cored panels at
 17 height provided only that they achieve class 0?
 18 A. I don't believe I would have had that thought at this
 19 time.
 20 Q. Right. Did the BRE ever explain the rationale for
 21 selecting this product, a composite panel with a PE
 22 core?
 23 A. Not that I can recall, no.
 24 Q. Was there any discussion that you can recall, either
 25 with the BRE or internally within the department, about

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1 this particular cladding product at this stage of the
 2 project?
 3 A. Not that I can recall, no.
 4 Q. Can we go to page 27 {BRE00001353/27}, and we can see
 5 the conclusions of the literature review there. If we
 6 can just have those expanded a little bit, please. You
 7 can see conclusion 2:
 8 "The 2000 revision of AD (B) goes some way to
 9 addressing the issues of fire performance of external
 10 cladding systems, the review of BR 135 will help to
 11 clarify any remaining issues as identified."
 12 Now, the requirements for external surfaces in both
 13 the 2000 and the 2002 versions of ADB were that the
 14 external walls of a building over a certain height
 15 should meet the provisions of diagram 40; yes?
 16 A. Yes.
 17 Q. Yes. To be clear, in the 1992 version it was
 18 diagram 36, and in the 2000 version it was 13.5.
 19 A. Yes.
 20 Q. Both versions of those diagrams, in 1992 and 2000 —
 21 and, indeed, 2002, I think — stipulated class 0.
 22 A. Yes.
 23 Q. The only difference was the height for the requirement,
 24 where it was reduced from 20 metres in 1992 to 18 metres
 25 in 2000; that's right, I think?

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1 A. From my recollection, yes.
 2 Q. Yes. Otherwise they were exactly the same; yes?
 3 A. Yes.
 4 Q. Yes.
 5 Now, for insulation, the 1992 version of Approved
 6 Document B required insulation in the external wall
 7 construction of buildings over 20 metres to be material
 8 of limited combustibility, didn't it?
 9 A. From recollection, yes.
 10 Q. Yes. I know it's difficult to remember.
 11 A. Yes.
 12 Q. Let me just pin this down with the documents so you and
 13 others can see it. Can we please have {BLA00005482/74}.
 14 It's 12.7:
 15 "In a building with a storey more than 20m above
 16 ground level, insulation material used in the external
 17 wall construction should be of limited combustibility
 18 (see appendix A)."
 19 Yes?
 20 A. Yes.
 21 Q. Now, let's leave that on the screen and track it through
 22 to the 2000 version, {CLG10000012/89}, please. This
 23 becomes 13.7 in that version. Let's have that at the
 24 same time. Expand that a bit on the right-hand side,
 25 "External wall construction", and you can see the second

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1 paragraph there, "In a building"; yes?
 2 A. Yes.
 3 Q. "In a building with a storey 18m or more above ground
 4 level, insulation material used in the ventilated
 5 cavities in the external wall construction should be of
 6 limited combustibility (see Appendix A)."
 7 A. Yes.
 8 Q. Do you see that?
 9 Now, comparing the two, do you accept that in 2000,
 10 the effect of that change in the language in the second
 11 paragraph under what became 13.7 was a reduction of the
 12 circumstances in which the guidance asks for insulation
 13 to be of limited combustibility?
 14 A. Yes, in the context of the paragraph we have just
 15 discussed, and, as I say, this document — what became
 16 the 2000 approved document had gone out to consultation
 17 before my arrival in the department, but as part of
 18 looking over paperwork in the Inquiry, I'm unable to
 19 find a version of the consultation document that might
 20 have suggested why that might have happened.
 21 Q. Do you know yourself why there was a narrowing of the
 22 circumstances in which insulation was required to be of
 23 limited combustibility in the 2000 edition?
 24 A. No, I do not. But, sir, if I could just refer you to
 25 paragraph 13.7, the first paragraph.

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1 Q. Yes.
 2 A. Notwithstanding the provision specifically in relation
 3 to the location of insulation and the height of the
 4 building, the first paragraph is also a hugely important
 5 provision within the approved document, which sets out
 6 from the outset:
 7 "The external envelope of a building should not
 8 provide a medium for fire spread if it is likely to be
 9 a risk to health or safety."
 10 It then goes on in terms of the use of combustible
 11 materials for cladding framework and similar, and then
 12 talks at the end:
 13 "... may present a risk in tall buildings, even
 14 though the provisions for external surfaces in
 15 Diagram 40 may have been satisfied."
 16 Q. Yes.
 17 A. And so from my reading of the approved document, whilst
 18 the specific provisions do refer to less instances of
 19 thermal insulation being of limited combustibility, you
 20 still have to be mindful of the paragraph above that,
 21 actually, you need to look at each individual building
 22 on its merits, and where it might be seen to be
 23 an issue, you need to consider whether you need to
 24 provide a greater degree of materials of limited
 25 combustibility in a building.

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1 Q. Yes.
 2 A. Yes.
 3 Q. Yes, thank you, and we will see what happens to that as
 4 we trace through the amendments later in your evidence.
 5 But for the time being, is this right: the words
 6 you've just read to us helpfully are the same in 13.7 in
 7 2000 as they were in the first paragraph of what was
 8 12.7 in 1992, with I think the only difference being the
 9 diagram number?
 10 A. Yes.
 11 Q. Yes. That remained the same, and therefore although the
 12 general principle remained the same, there was
 13 nonetheless, it seems, a narrowing of the requirement
 14 for insulation material in the external wall
 15 construction now only to be in ventilated cavities.
 16 A. I'd suggest there has been a narrowing of the provision.
 17 However, I would wish to raise — and maybe it will come
 18 up further when we start looking at maybe the Approved
 19 Document B 2006 — that there would still be a need,
 20 even reading these provisions, to ensure that you've met
 21 the functional requirement.
 22 Q. Well, indeed so, and I'm going to come to that right
 23 now.
 24 A. Okay.
 25 Q. I think the answer to my question, though, however, is:

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1 taking into account the first paragraph of 12.7 and then
 2 13.7, nonetheless the restriction or the requirement for
 3 materials of limited combustibility so far as concerned
 4 insulation was narrowed in 2000.
 5 Turning to the functional requirement, do you recall
 6 that was amended, because in 1992 the requirement was
 7 that, "The external walls of the building shall resist
 8 the spread of fire over the walls", but in 2000 that
 9 became, "The external walls of the building shall
 10 adequately resist the spread of fire over the walls"?
 11 Do you remember that?
 12 A. I can recall, and I believe it might have happened as
 13 part of a consolidation exercise of the regulations,
 14 that, in doing so, lawyers, departmental lawyers, looked
 15 over all parts of schedule 1 of the Building
 16 Regulations, all the technical parts, and it was at that
 17 point such words as "adequate" and "reasonable" were
 18 added, I believe, to most of the provisions, the
 19 functional requirements B1 to B5, as that would bring
 20 them into line with the other extant functional
 21 requirements for the other technical parts of the
 22 building regs, where they are predicated.
 23 Q. Let's focus on this particular functional requirement,
 24 B4. Can we put those up on the screen simultaneously.
 25 Let's have the 1992 version on the left. We can take

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1 down what we have there and put up {BLA00005482/72}, and
 2 at the same time the 2000 version {CLG10000012/86}.
 3 Now, left—hand side, 1992, "External fire spread",
 4 B4(1):
 5 "The external walls of the building shall resist the
 6 spread of fire over the walls and from one building to
 7 another, having regard to the height, use and position
 8 of the building."
 9 On the right—hand side, 2000 version, "External fire
 10 spread":
 11 "The external walls of the building shall adequately
 12 resist the spread of fire over the walls and from one
 13 building to another, having regard to the height, use
 14 and position of the building."
 15 So identical words, other than the insertion of the
 16 word "adequately"; yes?
 17 A. Yes.
 18 Q. Now, you've told us that there was a schematic rationale
 19 for using the word "adequately". Was there a specific
 20 rationale for inserting the word "adequately" in this
 21 functional requirement?
 22 A. As I say, from recollection, it was a consolidation of
 23 the building regs by the departmental lawyers, and these
 24 predications went in across part B, as I understand it,
 25 in line with — the same way other functional

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1 requirements are predicated in other parts of
 2 schedule 1.
 3 Q. Yes.
 4 Do you remember, in 2000, any discussion along the
 5 lines of whether the insertion of the word "adequately"
 6 relaxed the requirement to any extent?
 7 A. I don't recall any such discussions on that basis.
 8 If at all possible, what follows the functional
 9 requirements are normally performance statements by the
 10 Secretary of State as to how one can show compliance
 11 with these functional requirements. Would it be helpful
 12 or possible to put those side by side as well, sir?
 13 Q. Yes, I think it would.
 14 If we go, please, to page 73 on the left-hand side
 15 {BLA00005482/73}, and the following page, which I think
 16 is 87, on the right-hand side {CLG10000012/87}.
 17 Thank you. Yes, there they are.
 18 Can you —
 19 A. Thank you.
 20 Q. — see how that helps us in any way?
 21 A. It does, because when people have asked me previously —
 22 and it's not been for a very long time — what is
 23 adequate or reasonable, I always start with the
 24 overarching Building Act and the Building Regulations,
 25 and the regulations talk in the context of part B of the

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1 Building Regulations is they relate to the health and
 2 safety of people in and around buildings and
 3 firefighters engaged in search and rescue. So with that
 4 understanding, reading the functional requirement that
 5 you've just kindly shown, I then suggest people move
 6 into and read the performance statements, and they both
 7 appear to be exactly the same.
 8 Q. They are.
 9 A. "If the external walls are constructed so that the risk
 10 of ignition from an external source, and the spread of
 11 fire over the surfaces, is restricted by making
 12 provision to have low rates of heat release."
 13 So the performance statements didn't change, and so
 14 I'm unable to answer why departmental lawyers did what
 15 they did. But I'd go to suggest that nothing thereafter
 16 changed. It was still considering what else is
 17 identical between 1992 and 2000.
 18 Q. Yes.
 19 Do you accept that, taking the functional
 20 requirement as amended by the insertion of the word
 21 "adequately", there was a risk that the reader might not
 22 turn the page and think that the performance requirement
 23 had been diluted in some way, so that it went from
 24 an absolute requirement, by reference admittedly to the
 25 performance requirements, to a relative one?

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1 A. Typically, you can't look at any part of the
 2 Building Regulations or the statutory guidance in
 3 isolation, and so I would like to think a competent
 4 professional, whatever they be, designer,
 5 building control, or similar, if they did look at the
 6 change in the functional requirement or they
 7 acknowledged that, they would then do what we've just
 8 done now, to have a look into the document itself to try
 9 and work out what else has been suggestive in terms of
 10 the Secretary of State's view.
 11 Q. So is your evidence that in fact the intended addition
 12 of the word "adequate" was really to have no effect at
 13 all, because the performance requirements remained the
 14 same? It was just a lawyers' thing?
 15 A. From recollection, yes, to bring it into line to the
 16 other predications offered to the other technical parts
 17 of the building regs.
 18 MR MILLETT: Right.
 19 SIR MARTIN MOORE-BICK: That doesn't really solve the
 20 problem of precision, does it, because you're then left
 21 with provision for the walls to have low rates of heat
 22 release, and how low is required to satisfy that?
 23 A. That's a very fair comment, sir. But I presume again,
 24 harking back to what I said about the legal locus, you'd
 25 have to relate that to it amounting to life safety,

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1 because the building regs, for example, don't cover pure
 2 economic loss or property protection, so what you might
 3 need to do to achieve life safety. You can then — as
 4 we know and as has been discussed in the Inquiry, sir,
 5 you know, the approved documents are but one way of
 6 potentially showing compliance. They can tend to show
 7 compliance, but for some of the more common situations,
 8 and thereby what you can do is look at the provisions,
 9 what's asked for thereafter within the guidance, to see
 10 if — take that as what is tantamount to being
 11 acceptable and adequate for common situations. But I do
 12 recognise the issue you raise, sir.
 13 SIR MARTIN MOORE-BICK: In the end, it might be thought that
 14 in each case it will be a question of what degree of
 15 risk you're prepared to tolerate, but the minister
 16 hasn't given very much assistance on that.
 17 A. I could see how some people might read it that way but,
 18 from experience, having worked in terms of
 19 building control and then as a regulator in the
 20 department, from my understanding, they would move into
 21 the document and the body of technical guidance, and
 22 they would use that as potentially an equivalence if
 23 they are — you know, they feel, in terms of a designer,
 24 because it's their duty to show compliance, or
 25 building control for them to check as to what has been

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1 provided is sufficient to meet the functional
 2 requirement and the performance. But I can understand
 3 the point you raise, sir.
 4 SIR MARTIN MOORE-BICK: All right, thank you.
 5 MR MILLETT: Yes, thank you.
 6 I know it's two minutes to 4.30, but I just want to
 7 explore something a little bit with you.
 8 A. Yes.
 9 Q. Perhaps we should keep the 2000 version up on the screen
 10 and go back a page {CLG10000012/86}, if we can, and have
 11 the functional requirement there. If we can flick back,
 12 please, to that, the word "adequately" there, and it's
 13 "adequately ... having regard to the height, use and
 14 position of the building", isn't it?
 15 A. Yes.
 16 Q. So does that tell us — and I don't want you to embark
 17 on an exercise of interpretation of the guidance, but
 18 was the understanding in the department at the time that
 19 the word "adequately" was adopted that what was adequate
 20 would vary from building to building, depending on the
 21 height, use and position of the building?
 22 A. Yes.
 23 Q. Yes.
 24 Then going to the performance requirement, chasing
 25 this through, next page {CLG10000012/87}, please,

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1 picking the Chairman's point up and running with it
 2 a bit further, does that tell us that the low rates of
 3 heat release, the degree of tolerability of rates of
 4 heat release, would also depend upon the height, use and
 5 position of the building?
 6 A. I think that would be a fair assumption, sir.
 7 Q. And if the reference to rates of heat release was
 8 a reference to class 0 and diagram 40, does that tell us
 9 that the appropriateness of class 0 in any given case
 10 would depend upon the height, use and position of the
 11 building?
 12 A. It would, and if — again, referring back to the
 13 section 13 guidance, in terms of where there were
 14 concerns that actually the functional requirement might
 15 not be met just by following the provision of insulation
 16 of limited combustibility within ventilated cavities,
 17 you could look and think, actually, no, you need to go
 18 above and beyond that, so in addition to that provision.
 19 I mean, if it helps, and I don't wish to extend the
 20 discussion, but the way the approved documents and the
 21 functional system has always worked is that you look at
 22 the approved document and its applicability to the
 23 design that is being undertaken or being checked, and if
 24 you think the common guidance doesn't really deal with
 25 that situation, you revert back to the functional

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1 requirement and then into the performance statement,
 2 which does mean — and I did it as a building control
 3 officer — you can ask for provisions that go above and
 4 beyond what's in the guidance for the more common
 5 building situations.
 6 Q. Yes.
 7 Now, do you agree, in the light of what you've just
 8 told us and this exercise that we've been going through,
 9 that "adequate", by reference to performance
 10 requirements, which takes you into class 0, in the
 11 context of a building with a stay-put policy there
 12 should mean no flame spread?
 13 A. Not necessarily, no.
 14 Q. So was there, in the light of that answer, some degree
 15 of tolerance, even with a building with a stay-put
 16 policy in place, that there could be some flame spread,
 17 external flame spread, having regard to the height, use
 18 and position of the building?
 19 A. Yes, and examples of where that can happen is you can
 20 get fire spreading up — depending upon climatic
 21 condition, fire rolling up the face of masonry
 22 buildings, brick buildings. What you're trying to do is
 23 limit the propensity for fire spread to afford more time
 24 for the Brigade to arrive and deal with the situation,
 25 and by controlling the propensity for fast fire spread

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1 and the jumping from window into a fire compartment,
 2 starting a fire, jumping to a next window, you can slow
 3 that entire process down.
 4 Q. Now, let's be careful to distinguish between fire spread
 5 from floor to floor up a masonry building as a result
 6 perhaps of the coanda effect — yes?
 7 A. Yes, sir.
 8 Q. With a cladding system on fire. Do you appreciate that
 9 there's a difference?
 10 A. Yes, yes.
 11 Q. Now, my question is: in the light of the risk of
 12 flame spread from a cladding on fire, do you agree that
 13 "adequate" in that context, where there is a building
 14 with a stay-put policy, means no flame spread, in other
 15 words no cladding on fire at all?
 16 A. No, I believe there would still be the propensity for
 17 fire spread. That could still be allowed, albeit by —
 18 depending upon the specification, it is a controlled
 19 fire spread. It is not a fast burn.
 20 Q. And what would tell the architect, the designer or the
 21 building control officer how much external flame spread
 22 in or through the cladding system was permissible to
 23 make such flame spread adequate if the building had
 24 a stay-put policy in place?
 25 A. Again, I'd revert you back to the provisions in the

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1 actual approved documents itself, in terms of the
 2 guidance in paragraph 13.6 that suggested, where it is
 3 an issue, to have — would it be possible to see 13.6
 4 again?
 5 Q. Yes, of course, absolutely.
 6 A. Thank you.
 7 Q. Yes, I think you need to go to {CLG10000012/89}.
 8 A. Thank you, sir.
 9 "The external envelope of a building should not
 10 provide a medium for fire [risk] if it is likely to be
 11 a risk to health or safety. The use of combustible
 12 materials for cladding framework or similar, or of
 13 combustible thermal insulation as an overcladding or in
 14 ventilated cavities, may present such a risk in tall
 15 buildings, even though the provisions for external
 16 surfaces in Diagram 40 may have been satisfied."
 17 Q. Yes.
 18 A. So by virtue of that provision, where it is felt — and
 19 that would be a discussion, quite often, between
 20 a designer and a building control body — that by just
 21 following the guidance that follows in diagram 40 and
 22 the second paragraph here, actually more might need to
 23 be done in terms of affording greater provision to the
 24 cladding system in its entirety.
 25 Q. Right.

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1 Now, what you've just told us very helpfully just
 2 now in the last ten minutes, was that your understanding
 3 of Approved Document B in 2000?
 4 A. In terms of the ability to look at a situation and
 5 decide that, because I've got something that might not
 6 be a typical situation, I have some concerns about some
 7 of the materials being used, could I then revert back to
 8 the functional requirement and the performance
 9 statement? Then the answer is yes.
 10 Q. Now, given — and help me with this — that the
 11 assumption in any stay-put strategy is that flame will
 12 not spread beyond the compartment of origin, do you
 13 agree that any vertical flame spread across or through
 14 the façade would fundamentally undermine all the other
 15 design assumptions forming the basis of that stay-put
 16 strategy?
 17 A. That's not my understanding, sir. If we look at BR 135,
 18 and the guidance that that definitively offered as
 19 a recommendation that it needed to be updated from the
 20 select committee, that recognises the potential effect
 21 of fire spread, but by controlling the degree of
 22 fire spread over time affords greater time to
 23 operational firefighters in search and rescue, and that
 24 is in BR 135, part 2.
 25 Q. So does it come to this, therefore: that as a result,

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1 perhaps, of Fire Note 9 in 2000 and 8414 later, a degree
 2 of fire spread in the cladding system was entirely
 3 possible without undermining the design assumptions
 4 fundamental to a stay-put strategy, which would keep it
 5 within the meaning of the word "adequate"?
 6 A. Yes.
 7 MR MILLETT: I see.
 8 Mr Chairman, we're mid-document, but probably not
 9 mid-topic now, which I think we've now covered, but I'm
 10 going to ask for the break at that stage. But we'll
 11 come back to this document on Monday morning, if we may.
 12 SIR MARTIN MOORE-BICK: Yes, of course.
 13 Well, Mr Burd, we have gone slightly longer than
 14 usual this afternoon, but it was an interesting topic to
 15 explore.
 16 MR MILLETT: I'm grateful.
 17 SIR MARTIN MOORE-BICK: We will break at that stage. I will
 18 have to ask you to come back, I'm afraid, on Monday.
 19 THE WITNESS: Of course.
 20 SIR MARTIN MOORE-BICK: We'll resume at 10 o'clock on
 21 Monday, and again, I must ask you not to talk to anyone
 22 about your evidence or anything relating to it over the
 23 break. All right?
 24 THE WITNESS: Thank you, sir.
 25 SIR MARTIN MOORE-BICK: Thank you very much.

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1 (Pause)
 2 Thank you very much. 10 o'clock on Monday, then,
 3 please. Thank you.
 4 (4.40 pm)
 5 (The hearing adjourned until 10 am
 6 on Monday, 28 February 2022)

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