



Grenfell Tower Inquiry

Day 168

July 28, 2021

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Wednesday, 28 July 2021

2 (10.00 am)

3 SIR MARTIN MOORE—BICK: Good morning, everyone. Welcome to
4 today's hearing. Today we're going to hear evidence
5 from Mr Colin Todd, a continuation of the evidence that
6 we began yesterday.

7 So would you ask Mr Todd to come in, please.

8 MR COLIN TODD (continued)

9 SIR MARTIN MOORE—BICK: Good morning, Mr Todd. Do sit down,
10 please.

11 THE WITNESS: Thank you. Good morning, sir, ma'am, sir.

12 SIR MARTIN MOORE—BICK: Now, before I invite Mr Millett to
13 continue putting questions to you, can I just say this:
14 reviewing yesterday's evidence, which I think it's fair
15 to say we all found very interesting and very useful,
16 I was rather struck by the length of some of your
17 answers.

18 THE WITNESS: Yes, sir.

19 SIR MARTIN MOORE—BICK: I do understand that you have a lot
20 of knowledge that you wish to impart to us.

21 THE WITNESS: Yes, sir.

22 SIR MARTIN MOORE—BICK: As I say, we did find it very useful
23 and interesting, but I must ask you to keep your answers
24 a little shorter, if you can, otherwise we are going to
25 overrun the time that we've allowed.

1

1 THE WITNESS: I'll do my very best, sir, thank you.

2 SIR MARTIN MOORE—BICK: If you wouldn't mind, thank you.

3 I am going to repeat also what I said to both of you
4 yesterday: please take care not to overspeak each other
5 because, if you do, it makes life very difficult for the
6 transcriber.

7 THE WITNESS: Yes, sir, certainly.

8 SIR MARTIN MOORE—BICK: Well, with that introduction, when
9 you're ready, Mr Millett.

10 Questions from COUNSEL TO THE INQUIRY

11 MR MILLETT: Mr Chairman, good morning. Members of the
12 panel, good morning.

13 Mr Todd, good morning to you.

14 A. Good morning, sir.

15 Q. Can we then revisit where we were yesterday, which is
16 the topic of flat entrance doors, and I want to ask you
17 about inspections.

18 Can we start, please, with the LGA guide,
19 {HOM00045964/45}, section 35.

20 This is part of the LGA guide which sits in part D,
21 for which I think you did the initial drafting.

22 SIR MARTIN MOORE—BICK: Mr Millett, I'm sorry to interrupt
23 you quite so early, but my transcript isn't running.

24 Can I just check everyone else's is?

25 MR MILLETT: You're right.

2

1 SIR MARTIN MOORE—BICK: None of the three of us have
2 a transcript. Is yours running?

3 MR MILLETT: No, it isn't. I have just noticed. I will
4 just refresh it to see if it runs now.

5 (Pause)

6 SIR MARTIN MOORE—BICK: Well, I think we ought to solve that
7 before we embark on serious questioning.

8 MR MILLETT: Yes.

9 SIR MARTIN MOORE—BICK: I'm sorry about this, Mr Todd.

10 THE WITNESS: Not at all.

11 SIR MARTIN MOORE—BICK: We don't have too many of these
12 problems, but when we do, we really just have to sort
13 them out before we get started.

14 THE WITNESS: Yes, sir.

15 SIR MARTIN MOORE—BICK: So I will ask you to go back to your
16 retiring room, if you wouldn't mind, and we'll rise for
17 a moment to have this sorted out.

18 THE WITNESS: Thank you, sir.

19 SIR MARTIN MOORE—BICK: All right, thank you very much.

20 (Pause)

21 Mr Millett, I think the only thing to do is to rise
22 for a short time.

23 MR MILLETT: I'm afraid so, yes, I think that must be right.

24 SIR MARTIN MOORE—BICK: Perhaps you will ask the usher to
25 come and tell us when we're ready to continue.

3

1 MR MILLETT: Certainly, sir.

2 (10.05 am)

3 (A short break)

4 (10.39 am)

5 SIR MARTIN MOORE—BICK: Yes, do sit down, Mr Todd.

6 Welcome back, everyone. I'm sorry to say that the
7 problem we have with the realtime transcript has not
8 been resolved. However, counsel here in the hearing
9 room does have access to a realtime transcript, and the
10 panel has decided that we can manage without one.

11 I'm aware that those who are following the
12 proceedings from remote locations, who would normally
13 have access to this transcript, will not have it for the
14 time being. It may reappear in due course, but we can't
15 guarantee that. We've decided, therefore, rather than
16 waste any more time, that we should continue without the
17 benefit of the realtime transcript, but because we are
18 well aware that those who wish to follow Mr Todd's
19 evidence and maybe to suggest further questions for him
20 will wish to have seen the transcript before they
21 finally decide whether they do wish any further
22 questions to be put to him, we will make arrangements to
23 ensure that they have a chance to view that transcript
24 before they decide finally whether any further questions
25 should be suggested for Mr Todd. When and how we do

4

1 that will depend a little bit on how we get on for the
2 rest of today.

3 The only point to remind people of, perhaps, is that
4 you can follow the proceedings on the live stream and
5 therefore understand Mr Todd's evidence as it is given.

6 So, under those circumstances, we're going to
7 continue now with Mr Todd's evidence, albeit in the
8 absence of the live transcript.

9 Yes, Mr Millett.

10 MR MILLETT: Mr Chairman, thank you very much.

11 Mr Todd, can I take you, then, please, to section 5
12 of the LGA guide {HOM00045964/45} —

13 A. Yes, sir.

14 Q. — which sits in part D.

15 You can see under, "Type 1", at the top of the page,
16 "Common parts only (non-destructive)" fire risk
17 assessment.

18 A. Yes.

19 Q. If you look at the second paragraph there, in the second
20 sentence, it says:

21 "But, as well as considering the arrangements for
22 means of escape and so forth, the fire risk assessment
23 includes examination of at least a sample of flat
24 entrance doors. It also considers, so far as reasonably
25 practicable, the separating construction between the

5

1 flats and the common parts without any opening up of
2 construction. However, in this Type of fire risk
3 assessment, entry to flats beyond the area of the flat
4 entrance door, is not involved."

5 Now, the reference there to "at least a sample of
6 flat entrance doors" is what I want to examine with you.

7 Would you agree that such an inspection would
8 require the assessor to gain access to the flat in order
9 to examine the presence and condition of the
10 self-closing device and cold smoke seals where needed?

11 A. Yes, and other things, but yes.

12 Q. Yes. In practice, what kind of percentage of flat
13 entrance doors was considered suitable and sufficient
14 within the trade?

15 A. Right. So that figure has evolved, sir, and it is now
16 a kind of unwritten understanding that the figure would
17 be about 10%, with a minimum of two. That tends to be
18 the — it wasn't necessarily then, but that's what's
19 evolved, so it will give you some idea of custom and
20 practice.

21 Q. Right. Taking 2012, then, as the benchmark point, what
22 was the standard suitable and sufficient percentage at
23 that time?

24 A. Yes, as I said, sir, it's evolved. There wouldn't have
25 been one.

6

1 An important thing — trying to keep my answer
2 short — would be to look at different typologies of
3 door, that's important, and particularly to look out for
4 situations in which leaseholders had changed their flat
5 entrance doors. It's a very common occurrence that when
6 people buy their flat or buy the 99-year lease or
7 whatever, they change their flat entrance doors, so it's
8 like a sort of badge, and so you need to look out for
9 that, because often they don't put in a fire resisting
10 door.

11 Q. Right.

12 When this guide was produced, and the expression "at
13 least a sample of flat entrance doors" was inserted
14 there, what did you have in mind would represent
15 an acceptable sample at that point?

16 A. Yes, we wouldn't have had a specific figure in mind. It
17 would have been a matter of reasonableness on the part
18 of the fire risk assessor.

19 Q. Right.

20 Can we go to Mr Stokes' evidence, please, at
21 {Day136/95:15}, please.

22 You can see there the question, my having shown him
23 what I've just shown you in the LGA guide:

24 "Question: What was your understanding of what was
25 required when the guidance here speaks of examining

7

1 a sample of flat entrance doors? By which I mean: what
2 kind of percentage proportion of doors would you expect
3 to examine to satisfy yourself that you had checked
4 a sample?

5 "Answer: The short answer would be, if there's
6 different types, one of each type; if they were all the
7 same, and you knew that they were all the same
8 throughout the whole building, as long as you could
9 sample a few of those. But if there was more than one
10 type or style, try and get as many samples — or look at
11 every one of those as possible."

12 Is the approach that Mr Stokes described there
13 adequate?

14 A. That would probably reflect custom and practice at the
15 time, sir, yes.

16 Q. Right.

17 Now, except where an entrance door is identified as
18 deficient in some way, Mr Stokes did not appear to
19 record in his FRAs the specific doors that he checked,
20 nor the percentage of doors inspected. He told
21 the Inquiry during his oral evidence that he only
22 inspected a "handful", his words, or 5% or so.

23 A. Yes.

24 Q. Was 5%, during the period between 2012 and 2016,
25 a sufficient or an insufficient sample properly to

8

1 perform his role?
 2 A. If they were all the same, it's probably on the slim
 3 side, but not unduly. The only thing is — I mean, that
 4 would tell you about the fire resistance of the doors,
 5 if they were all the same. What it wouldn't tell you
 6 was the extent to which self-closers had been removed.
 7 But then unless you did 100%, you would never know how
 8 many self-closers were removed.
 9 Q. Was it good practice for a reasonably competent fire
 10 risk assessor to record which doors had been inspected
 11 as part of the sample, if not all of them, when carrying
 12 out a fire risk assessment?
 13 A. It would certainly — I mean, we would do that always,
 14 but not everybody would, again.
 15 Q. And where they wouldn't, would that fall short of
 16 acceptable standards?
 17 A. I've never considered that it would fall short of
 18 acceptable, I've always just thought it was best
 19 practice to have a record, if only for your own
 20 liability.
 21 Q. And would that good practice remain good practice even
 22 where no defects were identified with a particular door?
 23 A. Oh, yes, absolutely, yes.
 24 Q. Can we go to your main report, please, {CTA00000011/80},
 25 paragraph 8.38, foot of the page. You say:

9

1 "With further regard to the doors that had not been
 2 replaced, it is clear from the FRA that Mr Stokes did
 3 examine a sample of these doors to confirm that they
 4 were 44mm thick (as would be the case in a traditional
 5 fire-resisting door), that they fitted properly in their
 6 frames and that any gaps between the door and the frame
 7 were acceptable in size. He also noted that the
 8 letterbox was within the lower part of the door; the
 9 significance of this is that it is less likely to be
 10 affected by fire than if it were in the top half of the
 11 door, where positive pressure would tend to force hot
 12 gases through the letterbox."
 13 A. Yes, sir.
 14 Q. Now, having reviewed all of Mr Stokes' fire risk
 15 assessments for Grenfell Tower, do you agree that the
 16 paragraph in the FRAs to which you're referring in this
 17 paragraph is, subject to minor alterations, repeated
 18 across all four of Mr Stokes' FRAs for Grenfell Tower
 19 between 2012 and 2016?
 20 A. As I recall, that's the case, and if you tell me that's
 21 the case, then I would accept that. I do recall great
 22 similarities at the very least.
 23 Q. Yes. Well, I don't think I need to take you through all
 24 the documents.
 25 A. No, sir.

10

1 Q. During your review of the FRAs and significant findings
 2 and action plans, is it right that you found no
 3 documentation to show that Mr Stokes inspected
 4 individual doors which were not found to have any
 5 deficiencies which required them to be included in the
 6 significant findings and action plan?
 7 A. Sorry, could you repeat that question, sir?
 8 Q. Yes. During your review of Mr Stokes' FRAs —
 9 A. Yes.
 10 Q. — is it right that you found no documents to show that
 11 Mr Stokes inspected individual doors which weren't found
 12 to be deficient in any way?
 13 A. No, there was no record of — as I recall. The only one
 14 I recall — it might have been 112, I can't remember —
 15 was one that was being replaced at the time in question,
 16 and he saw that a leaseholder was replacing it and
 17 therefore he expressed concern as to whether the door
 18 was fire resisting or not.
 19 Q. You are right, and we'll come to that in a moment.
 20 In fact, let me show you three where Mr Stokes did
 21 identify doors as presenting a risk or hazard within his
 22 significant findings and action plans. I can cite them
 23 to you, because you'll be familiar with them, but if we
 24 need to look at them, Mr Todd, we can: first, the 2012
 25 FRA action plan — and I'll just give the reference:

11

1 {CST00003083/3} — item 12b, where he identified holes
 2 in flat entrance doors to flats 166 and 202; the
 3 June 2016 action plan, item 12g at {CST00003069/4},
 4 where he identified that the flat entrance door to
 5 flat 24 was damaged and missing a letterbox; the same
 6 action plan, same page, page 4, item 12h, where he
 7 identified that the flat entrance door to flat 112 was
 8 being replaced, and asked for confirmation that the door
 9 was a certified FD30 door and that a self-closing device
 10 should be fitted to the door.
 11 Now, I've summarised for you there — we can see
 12 them if you like — those three entries.
 13 In the light of that, do you agree that Mr Stokes
 14 only in fact identified four flat entrance doors within
 15 Grenfell Tower that he had actually inspected?
 16 A. Yes, and that were deficient, yes.
 17 Q. Those were all as a result of a visual inspection from
 18 the outside of the flat, not an inspection of the inner
 19 leaf of the door.
 20 A. Is that what he actually said, sir?
 21 Q. Well, I'm really asking you from your experience of
 22 inspections whether that is a conclusion that
 23 the Inquiry should draw.
 24 A. I'd need to see the wording, and I don't want to take up
 25 your time unnecessarily, but ...

12

1 Q. Right.
 2 A. I agree with the point you made earlier, that in order
 3 to check a door properly, you'd always need to have it
 4 opened. That's definitely the case.
 5 Q. Let me try it a different way.
 6 Would you agree that, with the exception of the open
 7 door at flat 112 which you have identified, you've never
 8 seen any evidence yourself in the Inquiry's material
 9 where it shows that Mr Stokes ever identified any
 10 problems with flat entrance doors which would be
 11 apparent from any internal inspection?
 12 A. No, I don't think I saw any.
 13 Q. No.
 14 Now, would you accept that there is no evidence
 15 which suggests that Mr Stokes examined a sample, in the
 16 sense you understand it, of flat entrance doors, both
 17 inside and out?
 18 A. No, I may have made that assumption, sir, because you
 19 would have to open it. Whether I actually saw anything
 20 that said he had the doors open, I can't remember. That
 21 may have been an assumption on my part, sir.
 22 Q. Yes, and no evidence that he ever embarked on any kind
 23 of sampling exercise of any kind, as opposed to reacting
 24 to what he could see?
 25 A. My impression was that he checked a sample, because he

13

1 referred to that 5%, didn't he? So my understanding --
 2 but that could be wrong -- is that he was sampling
 3 doors, and I assume by that that he had the doors
 4 opened.
 5 Q. Right. We're slightly at cross--purposes.
 6 A. Sorry.
 7 Q. What I'm really getting at is evidence from within his
 8 fire risk assessments, the record of his fire risk
 9 assessments about his sampling.
 10 A. Ah. No, he doesn't go into any detail in that respect,
 11 no.
 12 Q. No. So when you say in your report that there is
 13 evidence that Mr Stokes examined a sample of flat
 14 entrance doors, what were you referring to?
 15 A. He made reference to the flat entrance doors, he talked
 16 about the leaseholder doors that had not been replaced,
 17 and he gave a bit of a description about them, as you
 18 see there in 8.38, and so that's what I was talking
 19 about.
 20 Q. Would it be normal practice for a fire risk assessor to
 21 carry out a sample, as opposed to simply reacting to
 22 what he saw, and then record the sampling exercise and
 23 its results in his fire risk assessment?
 24 A. Yes, you'd normally put down, "I checked doors X, X, X
 25 and found whatever".

14

1 Q. X, X, X, being --
 2 A. Sorry, the flat numbers.
 3 Q. Yes, and would not doing that fall short of acceptable
 4 standards?
 5 A. Not everybody would do it. As I say, we do. I think
 6 the important thing is that he checked a sample. The
 7 specific record would be more to protect your own
 8 liability as to what you had done.
 9 Q. Yes, but by not recording the sampling exercise that you
 10 had done in your fire risk assessment, would you, as
 11 a fire risk assessor, fall short of acceptable
 12 standards? That's the question.
 13 A. Yes, I understand the question.
 14 I can honestly say I have never regarded as such.
 15 Where I've looked at fire risk assessments of others for
 16 various reasons, I'm not sure if I have ever --
 17 certainly I've never said, "This risk assessment isn't
 18 suitable and sufficient because there is no records of
 19 the doors that were checked". I might have commented on
 20 it as good practice.
 21 Q. Right.
 22 Can I then turn to the topic of maintenance of flat
 23 entrance doors and self-closing devices specifically.
 24 A. Yes, sir.
 25 Q. Can we go to your main report, please, at page 72

15

1 {CTA00000011/72}, paragraph 7.37 in the middle of the
 2 screen.
 3 You say:
 4 "As in the case of any FRA, the matters to be
 5 considered by a fire risk assessor can be broadly
 6 grouped into three distinct categories, namely fire
 7 prevention (measures to prevent the occurrence of fire
 8 within the common parts), fire protection (measures to
 9 maintain the safety of the common parts in the event of
 10 a fire within the common parts and within any flat) and
 11 management of fire safety."
 12 Then if we look at the bottom of page 72, you can
 13 see paragraph 7.40, which goes over to page 73, and you
 14 say there:
 15 "With regard to fire protection, matters that should
 16 be considered include ..."
 17 Then there is a bullet point list on page 73
 18 {CTA00000011/73}, starting with "means of escape", and
 19 if you look down at the sixth bullet down, you can see
 20 you have listed "flat entrance doors" there.
 21 A. Yes, sir.
 22 Q. And your list of management of fire safety a little bit
 23 lower down the same page, fifth bullet point down,
 24 refers to, "arrangements for testing and servicing of
 25 fire protection measures and equipment", doesn't it?

16

1 A. That's correct, sir.
 2 Q. Yes.
 3 A. Well, it's not on the screen, but I'm sure you're right.
 4 Q. No, you're right and that's my fault. Can we have that
 5 on the screen, please, just so everyone can see it.
 6 A. Yes.
 7 Q. Thank you. Yes, it is.
 8 Now, looking at the inspection and maintenance of
 9 flat entrance doors and of self-closing devices in
 10 particular, is the task of the fire risk assessor to
 11 monitor and assess, first, the physical state of repair
 12 of the doors and door sets; and, second, the adequacy of
 13 the system of maintenance and inspection implemented by
 14 the responsible person?
 15 A. Yes to both, sir.
 16 Q. Yes to both. And then, having done that, is it right
 17 that he should then use those findings to determine the
 18 level of risk?
 19 A. Yes, sir.
 20 Q. Yes.
 21 Do you agree that the process of conducting the fire
 22 risk assessment is not itself a component of the
 23 maintenance and inspection system, by which I mean you
 24 can't outsource the conduct of the inspection to the
 25 fire risk assessor himself?

17

1 A. Yes.
 2 Q. Yes, you agree with me?
 3 A. Yes, I do.
 4 Q. Thank you.
 5 Now, the evidence Janice Wray was that the TMO did
 6 not implement a six-monthly system of inspection of flat
 7 entrance doors as recommended by the LGA guide.
 8 In your opinion, Mr Todd, was the failure to
 9 implement the recommended programme of inspections of
 10 flat entrance doors a matter that you would expect
 11 a reasonably competent fire risk assessor to have
 12 identified during the course of his fire risk
 13 assessments?
 14 A. Yes, the fire risk assessor should look at that system.
 15 Q. Given that Mr Stokes did not identify that as a failure
 16 of the TMO in any of his fire risk assessments, do you
 17 consider that his omission fell below the standards
 18 expected of a reasonably competent fire risk assessor?
 19 A. Yes, I think he should have asked about the maintenance
 20 arrangements.
 21 Q. Yes. You say "Yes" at the start of the answer; are you
 22 accepting the proposition, which is that that failure
 23 fell short of the standards expected of a reasonably
 24 competent fire risk assessor?
 25 A. Yes, I think I probably would.

18

1 Q. Thank you.
 2 Now, let's turn, then, to Mr Stokes' actual
 3 knowledge of conditions relating to flat entrance doors.
 4 We looked, I think, yesterday at clause 20 of
 5 PAS 79, and the question about where work recommended in
 6 the original plan that hasn't been completed needs to be
 7 identified. I don't think I need to show you PAS 79
 8 again.
 9 A. No, that's fine, sir.
 10 Q. I'm sure you're very familiar with it.
 11 Can I just tell you about some examples.
 12 We know that Mr Stokes, from his evidence, was aware
 13 of certain information pertaining to the missing
 14 self-closing devices, first in July 2015, flat 45, and
 15 December 2015, the concern being raised that residents
 16 of Grenfell Tower had told him that one of the
 17 caretakers had disconnected a number of self-closing
 18 devices. It's right, I think, that Mr Stokes did not
 19 include that information in the next fire risk
 20 assessment, which was April 2016, nor confirm that the
 21 issues had been rectified in the interim.
 22 Now, given all of that background, my question is:
 23 would you have expected Mr Stokes, on the basis of what
 24 he then knew by April 2016 about self-closing devices,
 25 to have performed checks concerning those doors

19

1 previously identified as deficient?
 2 A. Not if he thought that they were acting on the findings
 3 of his fire risk assessment, because these doors are
 4 just a sample, and so it's not an end in itself to have
 5 identified those and then go back and check those. In
 6 fact, it might be more helpful to sample further
 7 doors --
 8 Q. Yes.
 9 A. -- so that he has a better picture.
 10 Q. Yes, but would you expect the reasonably competent fire
 11 risk assessor, having been told that there were
 12 defective doors, to go and check whether those defects
 13 had been remedied in order to satisfy yourself that the
 14 fire safety management system was working?
 15 A. The doors that he identified the previous time or the
 16 doors that had been brought to his attention --
 17 Q. The doors that had been brought to his --
 18 A. Brought to his attention by the TMO. That would be
 19 a reasonable thing to do.
 20 Q. It would be a reasonable thing to do; would it be
 21 an unreasonable thing not to do it, or would it fall
 22 below the standards of the trade?
 23 A. I think it depends on whether he thought that they
 24 actually were active in resolving these problems, in
 25 which case he might well choose to do a different

20

1 sample.

2 Q. Given the volume of FRA actions which had not been

3 completed by the time of the next FRA, and given his

4 knowledge about that, would you have expected him to

5 check, by way of a check against these particular doors,

6 that they had been remedied in order to verify or

7 satisfy himself that the fire safety management system

8 operated by the TMO was working?

9 A. I think it could have been done by discussion, as, "What

10 steps have you taken since last time to make sure that

11 doors that you were aware of have been resolved?" If

12 you were content with that, then he'd be better probably

13 looking at a further sample of doors to keep rotating,

14 as it were. So it would depend on what he understood

15 had been done.

16 Q. I follow.

17 If he'd been told nothing and had asked nothing

18 about the doors which he had been told had demonstrated

19 defects, would a reasonably competent fire risk assessor

20 proceed on the assumption that if he had told his client

21 that a self-closer was defective, it would be speedily

22 fixed and he need concern himself no more with it?

23 A. That would often be a reasonable assumption, if you're

24 dealing with someone you trusted. On the other hand, it

25 wouldn't be a bad idea to do a sample of the sample to

21

1 satisfy yourself.

2 Q. Yes. I see.

3 A. Did that make sense, sir?

4 Q. Yes, it does.

5 In your opinion, given what Mr Stokes knew about the

6 TMO not actioning FRA actions or being slow to do so,

7 was it unreasonable of him to proceed on that

8 assumption, namely that if he had told his client, the

9 TMO, that self-closers were defective, he need concern

10 himself no more with it because he could assume it would

11 be speedily fixed?

12 A. I think I can't put myself in the mindset of Mr Stokes

13 and his level of understanding of trust, but to be sure

14 it probably would have been a good idea to double check.

15 Q. Now, Mr Stokes also told us that he didn't include

16 information about the condition of the flat entrance

17 door to flat 45 Grenfell Tower in the April 2016 FRA

18 because it was not part of the FRA, but just part of

19 separate ad hoc advice to the TMO. That's

20 {Day138/126:18-21}.

21 Would you endorse that approach?

22 A. No, I think --

23 Q. Can you --

24 A. You can't unknow what you already know.

25 Q. No, and you wouldn't endorse that approach; can you just

22

1 tell us why not?

2 A. Well, it doesn't matter how he came by the information,

3 if he was aware of it from whatever means, that's one of

4 the advantages of his continuity in helping the TMO with

5 their fire risk assessments and management.

6 Q. Would you have expected Mr Stokes to record in his

7 April 2016 FRA his knowledge that self-closing devices

8 had been removed or were missing in the period following

9 his 2014 FRA, regardless of the status of those doors as

10 at April 2016?

11 A. Yes, if he knew there was a problem with that, then it

12 would have been appropriate to highlight it, yes.

13 Q. Would you agree that by checking doors or, if not

14 possible, by including a reference to the problems

15 identified in the period between the two FRAs, Mr Stokes

16 would have had an opportunity both to examine and assess

17 the effectiveness of the TMO's fire safety management

18 system?

19 A. Yes, he did have that opportunity by virtue of the

20 interim.

21 Q. Did it fall below the standards of the trade not to have

22 taken that opportunity, do you think?

23 A. Yes, I think probably I would agree with that, that if

24 he knew there was a particular problem from whatever

25 source and didn't follow up on it, if it was likely to

23

1 continue to be a problem, then yes, probably.

2 Q. Yes.

3 Now, can I turn to a completely different topic,

4 which is the AOV, the automatic ventilation system.

5 Would you agree that a fire risk assessor ought to

6 consider the automatic ventilation system in

7 a residential high-rise building and determine its

8 contribution or otherwise to the safety of the

9 occupants?

10 A. You'd want to know that there was a smoke control system

11 and that it was being maintained, certainly.

12 Q. Yes. So is the answer to my question yes?

13 A. Yes, you couldn't ignore it.

14 Q. Is it right that a fire risk assessor should also ensure

15 that there are adequate arrangements for ongoing

16 control, testing, maintenance of that system?

17 A. Definitely.

18 Q. And also that he should consider the potential for means

19 of escape to be compromised by a ventilation system if

20 it wasn't working?

21 A. That would be inherent in the absence of it working,

22 your protection of the staircase would be undermined.

23 Q. Yes.

24 When a fire risk assessor assesses a building, how

25 should he go about assessing the functionality and

24

1 adequacy of the AOV?
 2 A. By asking about its maintenance and testing.
 3 Q. So, specifically, what records ought he to examine?
 4 A. He may do it by records, or he may simply ask the
 5 question, and he may accept the answer.
 6 Record-keeping — it's not an ISO 9000 audit, so
 7 record-keeping may well be a sampling process, and
 8 custom and practice would be to ask the dutyholder what
 9 they were doing.
 10 Q. Should the relevant records that he does examine be
 11 noted in his fire risk assessment?
 12 A. Not necessarily, no, I wouldn't necessarily keep
 13 a record of the records that were checked.
 14 Q. Okay.
 15 Would you expect the fire risk assessor to make
 16 reasonable enquiries of the competent person or
 17 competent assistant, in this case Janice Wray, for
 18 up-to-date information about the operation and condition
 19 of the AOV system?
 20 A. Yes, sir. And just to qualify the last answer, it's
 21 good practice, even though it's not required by the
 22 Fire Safety Order, to confirm that there are records
 23 kept in relation to various testing and maintenance.
 24 Q. And would it be bad practice not to do so?
 25 A. Yes. As I say, there is no requirement, strangely

25

1 enough under, the Fire Safety Order to keep records, but
 2 you wouldn't actually go to the bother of telling the
 3 client that, you would tell them it's good practice to
 4 keep records, and I think you'll find in the template of
 5 PAS 79 there is a section that asks for verification
 6 that records are kept.
 7 Q. Yes.
 8 Ought the fire risk assessor himself or herself to
 9 inspect the AOV system?
 10 A. The risk assessor would probably not be competent to
 11 inspect it, to be honest.
 12 Q. Should they ask for the functionality to be
 13 demonstrated?
 14 A. No.
 15 Q. No.
 16 Now, in Carl Stokes' three FRAs for Grenfell Tower
 17 between 2009 and 2012 — so September 2009,
 18 December 2010 and November 2012 — he consistently wrote
 19 in the action plan, "It is not known if the system is
 20 serviced and maintained", and he asked the TMO to
 21 confirm that the AOV was serviced and maintained, and on
 22 each occasion he marked that action in red to indicate
 23 that it was a high priority.
 24 Now, given that Mr Stokes had consistently raised
 25 his perpetual ignorance on this point over a three-year

26

1 period with the TMO, would you have expected him to have
 2 raised the lack of records and the implication that
 3 there is a lack of maintenance more explicitly with
 4 Janice Wray?
 5 A. Yes, I think so. It's not so much the lack of records.
 6 If he was unable to confirm, by discussion with
 7 Janice Wray or however, on three successive occasions
 8 that that was being done, by that time it was time to,
 9 if I can put it this way, sir, make a bit more of
 10 a fuss.
 11 Q. In addition to that, let me ask you, would the fact that
 12 Mr Stokes could not confirm that there were adequate
 13 arrangements in place for servicing and maintaining the
 14 AOV have affected the risk rating of the tower over that
 15 three-year period?
 16 A. I think he wouldn't know what the effect was, because he
 17 couldn't confirm it, so he wouldn't necessarily assume
 18 that it wasn't being done and therefore affected the
 19 risk, it would be more that he wasn't really in a clear
 20 position to advise on that without that information,
 21 which is why it would have been appropriate for him to
 22 make a bit more of a fuss and say he needed that
 23 information.
 24 Q. Yes. I mean, having got, as it were, a nil return, it
 25 is not known, on three occasions, would the reasonably

27

1 competent fire risk assessor then use that information,
 2 or rather the absence of that information, to assess the
 3 risk rating overall? Would it feed into the risk
 4 rating?
 5 A. I probably wouldn't look at it that way, I would look at
 6 it that in order to complete his risk assessment and
 7 make the assessment of risk, he would need to pursue the
 8 matter further, because someone must have known that.
 9 That information can't have been that difficult to find
 10 out.
 11 Q. If we go to PAS 79, please, at page 54 {CTA00000003/54},
 12 and we look at paragraph 16.3(k), this is under the
 13 rubric under 16.3 at the top of your screen:
 14 "In the course of the fire risk assessment, the
 15 following matters should be considered. Any
 16 shortcomings in these matters should be identified in
 17 the documented fire risk assessment and should be
 18 addressed in the action plan ..."
 19 Then if you cast your eye down the screen to the
 20 bottom of the screen, (k):
 21 "Testing and maintenance of fire protection systems
 22 and equipment by a competent person (including systems
 23 and equipment installed for use by, or for the safety
 24 of, firefighters)."
 25 A. Yes.

28

1 Q. Given that guidance there, was it not the case that the
2 absence of any information over three years, or three
3 periods, three FRAs, about the maintenance of the AOV
4 system at Grenfell Tower was a clear shortcoming in the
5 fire safety management of the building which he should
6 have raised in his FRAs?

7 A. Yes, I think you're probably right, sir. I mean, he
8 couldn't really complete it without the information, so
9 I can only tell you what my own practice would do, and
10 that would be, even on the first occasion, probably
11 follow up it by telephone or email later on and say,
12 "I can't answer this question in my fire risk
13 assessment, can somebody please confirm one way or the
14 other, is this being carried out or not".

15 Q. Yes, and by failing to do so, did his actions fall below
16 the standards acceptable in the trade at the time?

17 A. Yes, if he didn't have the answer on three different
18 occasions and he wasn't getting anywhere, then yes, he
19 should have been doing that, he should have been
20 following up that.

21 Q. Yes.

22 In his fire risk assessment of 17 October 2014,
23 we'll look at that — let's go to that, it's
24 {CST00003157/26}. In it, you will see at section 19
25 what he says about the AOV.

29

1 You've got the whole thing on your screen there.
2 It's about halfway down.

3 A. I see it, sir.

4 Q. "There is an automatic opening smoke ventilation
5 system ..."

6 Do you see that?

7 A. Yes.

8 Q. I'll just read this part to you:

9 "There is an automatic opening smoke ventilation
10 system located on each flat/ lift lobby area, there are
11 two sets of vents, each of two vents on opposite walls
12 on the flat/ lift lobby areas. There is a smoke detector
13 located on each flat/ lift lobby area which upon
14 activation opens the vents on that floor level, 2 vents
15 are for in flow air the other 2 are extraction. The
16 mechanical extraction units and the control panels for
17 these vents are located in the roof level plant room on
18 the wall. There is a manual over ride facility located
19 in the ground floor lift lobby area for use by the fire
20 service. Please see section 17 above, 'Means of giving
21 a warning in case of fire' for more information of the
22 lift / flat lobby area detectors.

23 "As part of the buildings refurbishment this smoke
24 extraction system is being upgraded, this currently
25 installed system was serviced by RGE Services on the

30

1 11th October 2013. This smoke extraction system
2 incorporates dampers within the duct work."

3 Now, there are a number of documents which Mr Stokes
4 saw about the condition of the smoke vent system. Let
5 me just show you one of them.

6 Can we go, please, to {CST00001628/2}.

7 This is an email from Alex Bosman on 9 October 2014,
8 so about a week and a bit before his 17 October 2014
9 FRA, and if you go halfway down the email, you can see
10 it says:

11 "Smoke extract — I understand a visit was carried
12 out on 6.10.2014. This system has been confirmed as
13 beyond repair and is scheduled for replacement shortly —
14 no further action required."

15 Do you agree that that information should have been
16 included in his October 2014 fire risk assessment?

17 A. Yes, sir.

18 Q. Yes, and a failure to do so, did that fall below the
19 standards expected of a reasonably competent fire risk
20 assessor at the time?

21 A. Yes, I think at the very least the narrative should have
22 been there.

23 Q. Yes. So is that a yes?

24 A. Yes.

25 Q. Yes.

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1 Do you agree that that information ought to have
2 been factored into his risk rating for the tower
3 overall?

4 A. Yes, I think he should have actually — and I'm not sure
5 whether he did or he didn't — but beyond repair, I'm
6 not entirely clear what that means. Does it mean it's
7 not working and can't be fixed, or does it mean that if
8 it breaks down in the future, you can't get parts and
9 therefore it's not possible to maintain it properly?
10 I don't know if he knew that, but that would need
11 investigation.

12 Q. It would need investigation, and by not investigating
13 it, how would you characterise Mr Stokes' approach?

14 A. Yes, he should have found out what that actually meant,
15 unless he already knew.

16 Q. And by not doing so, did he fall below the acceptable
17 standards?

18 A. Yes, I think that's probably fair comment.

19 Q. Yes. And a non—functioning or irreparable AOV, would
20 that heighten the risks facing residents if a fire broke
21 out?

22 A. Yes, it would, because it would impact on the protection
23 of the stairway.

24 Q. If we go to the action plan for this October 2014 FRA,
25 which is at {CST00003177/8}, we see item 19d, which is

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1 in the middle of your screen, and he says there, against
 2 a red, "High", under the "Actions to be taken":
 3 "Can it please be confirmed what compensatory
 4 measures, if any are being put in place whilst the
 5 installed smoke control extract systems are being
 6 up graded?
 7 "Once the new extract system has been installed then
 8 a commissioning certificate for the system must be
 9 obtained stating that the smoke extraction system(s) is
 10 fully functional."
 11 Would you have expected a reasonably competent fire
 12 risk assessor to have advised on what mitigation
 13 measures were required, rather than leaving it to the
 14 TMO to decide?
 15 A. I think he was working alongside the client, so it was
 16 probably a reasonable question to ask.
 17 The problem is, I'm not sure what mitigation
 18 measures you could really implement. You would want it
 19 fixed as soon as possible, but you wouldn't go to
 20 a waking watch, I suggest. So it's very difficult to
 21 come up with mitigation measures for a non-functioning
 22 or not adequately functioning smoke control system.
 23 Q. Right.
 24 On the assumption that some might be available,
 25 would you have expected Mr Stokes to find out what

33

1 compensatory measures were proposed before he submitted
 2 his FRA?
 3 A. Yes, I think you'd look into that.
 4 Q. Yes.
 5 Now, I want to look at the testing and maintenance
 6 assessment of the AOV in this same FRA.
 7 If we go, please, to {CST00003157/29}, this is under
 8 the part of the FRA representing his tailor-made
 9 template, part 23, "Testing and maintenance".
 10 If you see five items down, you can see the question
 11 is:
 12 "Is there a monthly testing and annual servicing and
 13 maintenance of any automatic opening vents along with
 14 any associated equipment/devices, with records kept?"
 15 Do you see that?
 16 A. Yes, sir.
 17 Q. You can see that he has ticked "No".
 18 A. Yes.
 19 Q. Having ticked "No", we've not seen any commentary in the
 20 box below it which records that as a problem, or any
 21 action about it raised in the action plan.
 22 Do you agree that, in not doing either of those
 23 things, that fell below acceptable standards?
 24 A. Was this one of those where he said it couldn't be
 25 confirmed, whether it was being maintained, sir?

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1 Q. No, I don't believe so.
 2 A. You told me about him being unable to confirm it on
 3 a number of occasions, I wondered if this is one of
 4 them.
 5 Q. No, I don't believe so. That's 2009 to 2012.
 6 A. Right.
 7 Q. Those are the years I put to you. This is later, this
 8 is 2014.
 9 A. And there is no comment at all about that?
 10 Q. No, none.
 11 A. And there is nothing in the action plan?
 12 Q. No.
 13 A. Well, that can't be right. To help the Chairman,
 14 possibly, sir?
 15 SIR MARTIN MOORE-BICK: Briefly.
 16 A. Yes, absolutely.
 17 If I can explain the way this template was meant to
 18 work, sir, every time you come across a "No", the way
 19 that we would train people to use it is that a "No" must
 20 then give rise to a comment, and then something in the
 21 action plan. And sometimes there's double negatives
 22 even in the template, to make sure that "No" is always
 23 the worst answer, and when you do a sort of peer review,
 24 as we would do, we wouldn't worry too much about the
 25 yeses; we would look at all the nos and ask ourselves:

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1 does the "No" give rise to a comment, does the "No" give
 2 rise to an action? That's how it's structured, sir, if
 3 that helps.
 4 SIR MARTIN MOORE-BICK: Thank you.
 5 MR MILLETT: Right, it does, thank you.
 6 Now, in his April 2016 FRA, he didn't explain
 7 whether the newly installed AOV, which it had been by
 8 that time, was operational or not. We can look at it if
 9 you like, but I don't think we need to go to it
 10 necessarily.
 11 But would you agree that that omission is something
 12 that — well, would you agree that he should have
 13 clearly spelt out in that fire risk assessment that it
 14 was operational? Should he have made a fire risk
 15 assessment of the new system, in other words?
 16 A. No, I think if he was happy that a new system had been
 17 installed and commissioned, then his concentration would
 18 be more on: is it now being maintained?
 19 Q. Yes. The question perhaps gets a little bit ahead of
 20 itself.
 21 Mr Stokes' evidence was that he believed that he
 22 didn't at that time have information on the new system
 23 yet —
 24 A. Ah.
 25 Q. — and that it hadn't been commissioned. That's

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1 {Day137/45:17} to {Day137/46:1}.

2 In the light of that, what would you have expected

3 Mr Stokes to record if he was acting competently?

4 A. A narrative of what you have just told me, sir.

5 Q. Right. And not doing so, would that fall below the

6 standards?

7 A. Yes, I think that smoke control's pretty important, and

8 having narrative about that would be expected.

9 Q. Can I then turn to a different topic altogether, which

10 is cladding.

11 I want to ask you about Mr Stokes' opinion on the

12 cladding of Grenfell Tower.

13 A. Yes.

14 Q. This touches on the topic to some extent that we covered

15 on the first day of your evidence.

16 Can we go to your main report, please, at page 22

17 {CTA00000011/22}.

18 You can see paragraph 3.17 in the middle of your

19 screen there, and you say:

20 "Moreover, in my experience, the assessment of the

21 fire performance of external wall construction is quite

22 specialized, beyond the competence of typical fire risk

23 assessors (and fire and rescue service fire safety

24 officers) and, often, incapable of informed opinion

25 purely on the basis of a visual inspection; intrusive

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1 inspection, involving destructive exposure and,

2 sometimes, testing of materials, might be necessary.

3 Again, this opinion is widely held within the fire

4 safety profession, and is supported by the FIA guidance

5 to which I referred in the previous paragraph."

6 Indeed, in paragraph 3.16 you have referred to some

7 guidance there, or at least to the FIA.

8 A. Yes, sir.

9 Q. I should also, to be fair to you, point out the fact

10 that the basis of the view you express in 3.17 is also

11 to be found in 3.15 about the general opinion about the

12 external wall build-up falling outside the scope of the

13 FSO, a point we've already covered —

14 A. We did, sir, yes.

15 Q. — and I don't want to go back to.

16 My first question is: was the assessment of the

17 cladding on Grenfell Tower beyond Mr Stokes' competence?

18 A. Yes, sir.

19 Q. It was. Does that mean that the NOS—3 training that he

20 received, which included training on external fire

21 spread and cladding systems, was insufficient to equip

22 him to offer an opinion on the fire safety of the

23 cladding system?

24 A. I wouldn't have expected it to go into that level of

25 detail, sir.

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1 Q. Right. So is that a no, it wasn't sufficient?

2 A. A no, sorry.

3 Q. That's all right.

4 Now, if assessing the cladding was outside the scope

5 of Mr Stokes' competence as a fire risk assessor, can

6 you help me what business Mr Stokes had in expressing

7 a view about its fire safety or its performance in fire?

8 A. Ah, yes. This is a very interesting question, sir, and

9 a common philosophical chestnut, and I think I address

10 this in the report itself.

11 It's a very common conundrum that if someone in the

12 fire sector is tasked with doing one job, and if I could

13 simplify it, servicing fire extinguishers, and they spot

14 a problem on the means of escape, should they blinker

15 themselves and say, "I'm not competent to advise on

16 means of escape", knowing that there is something wrong

17 with the means of escape? Should they say, "I'm here to

18 service the fire extinguishers, means of escape's not my

19 problem"?

20 Now, the view of the sector — and this has come up

21 even in prosecution cases — is you need to be very

22 careful from a liability point of view, because if you

23 start to talk about means of escape as a fire

24 extinguisher technician, you have spotted one problem,

25 and if there is another problem, you may end up with

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1 a civil liability because people will say, "You were

2 advising us on means of escape, look, you pointed that

3 out, why did you not point this other point out?"

4 My view, sir, is the safety of the public should

5 take precedence over people's concerns over their own

6 liability, and even if they are not competent in

7 an area, and not being paid to comment on an aspect of

8 fire safety, if they think there is a concern, for the

9 safety of the public they ought to draw it to someone's

10 attention, and if they want to protect their liability,

11 they can do that with a caveat that, "I haven't looked

12 at all of these things, I'm not competent in this area,

13 but by the way, I think you should look at that".

14 Q. Right. Would the competent fire risk assessor express

15 any opinion on a matter outside their expertise and

16 experience?

17 A. Yes, they would, but they'd probably caveat it.

18 Q. I see.

19 A. It happens a lot, sir.

20 Q. Yes. There may be some assistance on this in PAS 79, so

21 help me with that.

22 Can we go to PAS 79, please, at page 24.

23 SIR MARTIN MOORE—BICK: Can you give us a reference for the

24 transcript, please.

25 MR MILLETT: Yes, it's {CTA00000003/24}.

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1 SIR MARTIN MOORE-BICK: Thank you.
 2 MR MILLETT: You can see the top of the page, the clause is
 3 "Competence of fire risk assessors", and if we can look
 4 at clause 7, paragraph (ii)(b).
 5 A. Yes.
 6 Q. There is a bit of a run-up in the text:
 7 "Competence does not necessarily depend upon the
 8 possession of specific qualifications ..."
 9 But if you look about three-quarters of the way down
 10 that block of text before the letters, it says:
 11 "... the following attributes of the fire risk
 12 assessor might be sufficient in conjunction with a study
 13 of suitable guidance documents ..."
 14 Then (b) says:
 15 "An awareness of the limitations of the fire risk
 16 assessor's own experience and knowledge ..."
 17 Then (c):
 18 "A willingness and ability to supplement existing
 19 experience and knowledge, when necessary, by obtaining
 20 external help and advice."
 21 Now, in the light of that, would you expect
 22 Mr Stokes to have told — well, sorry, let me ask you
 23 slightly differently.
 24 What would you have expected Mr Stokes to say about
 25 the cladding?

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1 A. Okay. Just on (b) and (c), again it might help
 2 the Inquiry to know that this is extracted directly from
 3 the ACOP under the Management of Health and Safety at
 4 Work Regulations, just as background to those.
 5 So your question was, sir, what would I have
 6 expected Mr Stokes to — Mr Stokes' attention to the
 7 cladding I think was drawn by a sample that he saw, was
 8 it not, sir? He saw a sample that was there for the
 9 residents. He saw that it was fixed on timber.
 10 Q. Timber battens.
 11 A. Timber battens, yes, and that was only a temporary
 12 arrangement, but it caused him some concern, and I think
 13 his recommendation was: make sure that the cladding, and
 14 I think he even went on to say the method of fixing, is
 15 satisfactory to building control. That's my best
 16 recollection, sir. And in that he was straight down the
 17 middle following (b) and (c).
 18 Q. Well, let's look at the text of what he did.
 19 Can we look at his April and June 2016 FRAs. We'll
 20 look at the April 2016 one, because that's probably the
 21 best place to go, {CST00003161/4}, please.
 22 He says at the very top of the page:
 23 "New external cladding has been fitted to this
 24 building as part of the project of refurbishment/
 25 construction work being undertaken on and within this

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1 building. The original external face of this building
 2 has been over clad, the new fire rated cladding is fixed
 3 to the out face of the building by metal fixings and the
 4 whole process has been overseen by the RBKC Building
 5 Control Department and Officers. They have approved and
 6 accepted the fixing system and cladding used."
 7 Now, let me just give you a little bit of background
 8 about his evidence that he gave the Inquiry.
 9 He told the Inquiry that, at the time he wrote that
 10 statement in this FRA, and indeed again in the June 2016
 11 FRA a few months later, he had not seen any
 12 building control documentation or any independent
 13 information, and that it was based on an informal
 14 conversation with a representative from Rydon,
 15 Mr David Hughes, and a conversation that he'd had with
 16 the TMO.
 17 Now, against that background, would you expect
 18 a competent fire risk assessor to make these statements
 19 in his FRA about cladding without having seen any
 20 underlying objective material to support them?
 21 A. I think you can't take that paragraph out of the context
 22 of what I was referring to, sir, and that was
 23 a recommendation in an action plan of a previous fire
 24 risk assessment in which he expressed concern and
 25 recommended that there be consultation with

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1 building control. I don't know if you can find that at
 2 all.
 3 Q. Yes, we can. That would be the October 2014 FRA, which
 4 we can certainly show you if you want to see it.
 5 A. I think it might be helpful in terms of contextualising
 6 for the Chairman that paragraph.
 7 Q. Yes, of course. Yes, you'll have to bear with me while
 8 we find the reference, Mr Todd.
 9 A. I apologise for —
 10 Q. Not at all, it's important that you give your evidence
 11 fully.
 12 Yes, can we go, please, to {CST00003157}, which is
 13 the October 2014 FRA. I will then find you the passage.
 14 (Pause)
 15 A. It would be in the action plan, sir, I think, if it
 16 helps.
 17 Q. Oh, yes. Well, thank you.
 18 {CST00003177}, if we can just look at that.
 19 A. Yes, here we go.
 20 Q. I will find it for you.
 21 A. Yes, that's not the one.
 22 Q. No, it's the last page of that, if we go to page 10
 23 {CST00003177/10}.
 24 A. Ah.
 25 Q. Is that what you were after?

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1 A. Yes, here we go.
 2 Q. "Actions to be taken". Let me just show them to you.
 3 He says:
 4 "I would recommend that the contractor provides
 5 "1. The scope of works covering how this cladding?
 6 [sic] How will the cladding be fixed to the building?
 7 "2. What fixings will be used?
 8 "3. The fire rating of the cladding and the fixings?
 9 "4. The Building Control Officers acceptance of this
 10 fixing system and the cladding used?"
 11 A. Yes, and that was what I meant, sir, when I said
 12 I regarded that as compliance with the (b) and (c) that
 13 you took me to, because Mr Stokes, by his own admission,
 14 is not terribly knowledgeable about cladding — no
 15 surprise there, I wouldn't expect him to be — so he has
 16 recognised the limitation of his own knowledge, (b), and
 17 then on (c) he has expressed the willingness to
 18 supplement his own knowledge by reference to others.
 19 So he basically refers people to building control,
 20 because they would have, or should have, the expertise
 21 to deal with that.
 22 Q. Yes.
 23 Can we then come back, please, to the text —
 24 I mean, we can have both at the same time. Perhaps that
 25 would be a good idea, so that you can see both the

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1 context from 2014 and the April 2016 FRA.
 2 Can we go back, please, to {CST00003161/4}, keeping
 3 this on the screen, so have both up at once.
 4 Now, you've got, I think, everything you need there.
 5 Going back to the text —
 6 A. Yes.
 7 Q. — on the right-hand side {CST00003161/4}, in the second
 8 sentence where it says:
 9 "The original external face of this building has
 10 been over clad, the new fire rated cladding is fixed to
 11 the out face of the building by metal fixings and the
 12 whole process has been overseen by the RBKC Building
 13 Control Department and Officers. They have approved and
 14 accepted the fixing system and cladding used."
 15 There is no qualification or equivocation in that
 16 statement, is there?
 17 A. No, that's correct, sir.
 18 Q. Would you expect a competent fire risk assessor to make
 19 that statement, unqualified and unequivocal, in his FRA
 20 about cladding without having seen any underlying
 21 documentary material to support them?
 22 A. Did they have the completion certificate by then, sir?
 23 Sorry to answer your question with a question.
 24 Q. No, by neither the time of the April nor the June 2016
 25 FRAs did Mr Stokes see —

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1 A. Right. So he has made the recommendation that —
 2 I mean, building control shouldn't have needed that
 3 recommendation, they should have been doing that anyway,
 4 but Mr Stokes tries to flag up that this in particular
 5 needs to be considered by building control. Now,
 6 I don't know what assurances he had in that respect.
 7 I believe Rydons told him that it had all been approved.
 8 There is a handwritten note of a meeting in which he
 9 says I think it was something like "B/C approval",
 10 obviously meaning building control.
 11 So people have told him that building control have
 12 agreed this. I don't think it's incumbent on him to
 13 say, "Well, show me a bit of paper that says that".
 14 Q. Let me explore this a bit more.
 15 Can we go to your main report at page 78
 16 {CTA00000011/78}.
 17 A. Yes.
 18 Q. Because there we see that you say, at paragraph 8.25, in
 19 the second sentence — I'll read the whole thing to you
 20 because it gives you the full context. You say:
 21 "Furthermore, the building control department issue
 22 issued a Completion Certificate ... Such a certificate
 23 constitutes evidence (though not conclusive evidence) of
 24 compliance with the Building Regulations. In view of
 25 the circumstances outlined above, including Mr Stokes'

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1 expression of concern that the cladding be subject to
 2 approval by the building control department, it was, in
 3 my opinion, reasonable for Mr Stokes to assume that the
 4 cladding, and its method of fixing, complied with
 5 Requirement B4 of Part B of Schedule 1 to the Building
 6 Regulations 2010 in relation to external wall
 7 construction."
 8 A. Yes.
 9 Q. Now, that's what you say.
 10 My question is: wouldn't the competent fire risk
 11 assessor record exactly that, namely that what he says
 12 is his assumption only which he had not verified and was
 13 not qualified to verify?
 14 A. He could have said, "I assume that it has", but it was
 15 a reasonable assumption for him to make, such as to
 16 virtually treat it as an assertion, because why would it
 17 not? The whole project had been subject to
 18 Building Regulations approval.
 19 And if I could give some support to that view, sir.
 20 We've talked about the sleeping accommodation guide,
 21 sir, you will recall, albeit that it didn't help you
 22 with high-rise blocks of flats, but in all of the CLG
 23 guides on the Fire Safety Order, the same wording
 24 appears, and I'm sure you have access to it. But in
 25 each of the CLG guides, the RP and the risk assessor is

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1 advised that if a building has been constructed or
 2 altered — and here we have an alteration — under
 3 Building Regulations, in other words in circumstances
 4 that require approval under the Building Regulations,
 5 you will probably have nothing else to do. There is
 6 an encouragement to accept that building control have
 7 done their job properly.
 8 Q. My query with you is about the text of the statement.
 9 A. Yes.
 10 Q. We clearly see that he didn't spell out that this was
 11 simply an assumption on his part.
 12 A. No, he didn't.
 13 Q. No, and my question is: might the text — let's go back
 14 to it, so we've got it on the screen, {CST00003161/4},
 15 top of the page.
 16 Might not that statement lead the reader to think
 17 that Mr Stokes himself had independently assessed the
 18 cladding for its fire safety and was making a statement
 19 about its adequacy?
 20 A. I personally wouldn't, but I can see that a layperson
 21 might.
 22 Q. I mean, even if Mr Stokes had said no more than that
 23 building control had approved and accepted the cladding
 24 system, would that constitute a suitable and sufficient
 25 fire risk assessment for the cladding?

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1 A. I think the fact that the project was carried out under
 2 Building Regulations, building control were responsible
 3 for ensuring compliance with regulation B4, I think it's
 4 an absolutely reasonable assumption, when you come to do
 5 the fire risk assessment, that what is there is
 6 compliant with the Building Regulations, otherwise
 7 you're doing building control's job for them or acting
 8 as an independent auditor of building control.
 9 Q. Yes. So would it follow from that that Mr Stokes didn't
 10 actually conduct any fire risk assessment on the
 11 cladding?
 12 A. Well, I wouldn't have expected him to.
 13 Q. So why is it in his FRA, then?
 14 A. It's in his FRA, I imagine, because it's relevant that
 15 there has been this alteration, and it's relevant that
 16 the alteration was carried out under Building
 17 Regulations and required approval by building control.
 18 Q. I'm not sure I'm following this.
 19 A. Okay.
 20 Q. The purpose of a fire risk assessment, as a document, is
 21 a statement of findings by the fire risk assessor
 22 pursuant to his task acting as such.
 23 If you wouldn't have expected Mr Stokes to carry out
 24 a fire risk assessment of the cladding, why is he making
 25 statements about the cladding in his fire risk

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1 assessment?
 2 A. Because if he hadn't, sir, I'd be sitting here and you'd
 3 be asking why Mr Stokes did not refer to the fact that
 4 cladding had been added to the building and that was
 5 a material alteration.
 6 Q. Was building control's opinion a fire risk assessment
 7 for the purposes of Article 9 of the FSO?
 8 A. No. Their role is compliance with the
 9 Building Regulations. And if they'd done their job
 10 properly, sir, as Mr Stokes assumed, then there wouldn't
 11 have been a problem.
 12 Q. So nobody conducted a fire risk assessment of the
 13 cladding, then?
 14 A. You don't carry out a fire risk assessment of each
 15 little individual component of a structure, sir. The
 16 fire risk assessment is holistic in relation to the
 17 building, and there are components that you have to
 18 consider. Mr Stokes quite correctly considered the
 19 cladding because it was a change to the building. It
 20 would have been incompetent of him not to refer to the
 21 fact there had been this change, and it was relevant for
 22 him to record that the process of the refurbishment had
 23 been carried out under the watchful eye, supposedly, of
 24 building control.
 25 Q. I'm very sorry, I'm not sure I'm following.

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1 A. I'm sorry then, I didn't make it clear.
 2 Q. I'm not sure I'm following, because you say in your
 3 answer that he correctly considered the cladding because
 4 it was a change to the building.
 5 A. Yes.
 6 Q. But he is a risk assessor. What is the point of him
 7 considering cladding as a change to the building within
 8 the scope of his risk assessment unless it forms part of
 9 the fire risk assessment itself?
 10 A. Well, can I help you with an analogy in that case, sir?
 11 There were new flats constructed. It was reasonable for
 12 him to assume that the structural elements would have
 13 adequate fire resistance. He wouldn't have had to carry
 14 out a fire risk assessment of the structural elements.
 15 He would have assumed, reasonably assumed, that that was
 16 all sorted out under Building Regulations.
 17 Q. I mean, let me just put a paradigm to you.
 18 Was it not part of the reasonably competent fire
 19 risk assessor's task to say three things to the client:
 20 one, building control have not carried out a fire risk
 21 assessment for the purposes of the FSO; I am not
 22 competent to do so in respect of the cladding and I have
 23 not done so; therefore, thirdly, there is a material gap
 24 in the fire risk assessment for the refurbished
 25 building?

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1 A. No, I'm sorry, I can't go along with that at all, sir.
 2 Q. So what should Mr Stokes have done?
 3 A. More or less what he did. He correctly in narrative
 4 pointed out — because any review of a fire risk
 5 assessment — I know this is a new fire risk
 6 assessment — is required to refer to any alteration
 7 since the last fire risk assessment. So he knows
 8 cladding is an issue, he refers to the fact that there
 9 is cladding, he has correctly previously flagged up that
 10 someone needs to make sure with building control that
 11 it's okay because it's outside his competence, he has
 12 been told that this was checked with building control,
 13 and therefore it was a reasonable assumption for him to
 14 record that building control had approved it.
 15 Q. I understand that, but my point is really perhaps
 16 a narrower one.
 17 Wasn't it incumbent on Mr Stokes simply to say that
 18 it's been passed by building control and he is assuming
 19 that that is all properly done, but makes no opinion of
 20 his own? He is not expressing an opinion of his own
 21 about the fire safety of the cladding, largely because
 22 he's not competent, experienced or expert enough to do
 23 so.
 24 A. Well, there would be new emergency lighting provided in
 25 some areas of the building. He wasn't competent to

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1 examine — you could say that for many, many components
 2 of fire safety that he has recorded as there and
 3 reasonably makes the assumption that it has been
 4 installed properly because someone else has looked at
 5 it, and the whole report could be caveated with
 6 "I assume that this person did their job properly,
 7 I assume that that person did their job properly". It's
 8 a reasonable assumption and doesn't need to be stated as
 9 such, in my opinion, sir.
 10 Q. Given the risks of rapid vertical fire spread presented
 11 by a cladding system, and given the limitations on
 12 Mr Stokes' ability to assess the cladding system
 13 itself —
 14 A. Yes.
 15 Q. — in terms of its own fire risk, was it not nonetheless
 16 incumbent on Mr Stokes, as a reasonably competent fire
 17 risk assessor, if that is what he was, to have noted in
 18 his fire risk assessment that the presence of cladding
 19 on this building was something which might affect the
 20 risk rating of the building overall, but which he was
 21 not competent to advise on, and its fire rating should
 22 be the subject of specialist advice?
 23 A. No, I don't agree with that, sir.
 24 Q. Why don't you agree with that?
 25 A. I don't agree with it because you're looking at one

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1 aspect of the building and the fire precautions,
 2 fire strategy for the building, with the lens of
 3 hindsight. There would be a multiplicity of other
 4 things that you could say the same about. It just so
 5 happens that, dreadfully, this was one that was not
 6 dealt with properly by others. But you could say this
 7 about almost any aspect of a refurbished building that
 8 was approved under Building Regulations: were the
 9 structural elements adequate?
 10 SIR MARTIN MOORE-BICK: I'm sorry, I was going to ask you
 11 just to deal with a slightly different aspect of this.
 12 At the time in question — so we're talking about
 13 2016, I think —
 14 A. Yes.
 15 SIR MARTIN MOORE-BICK: — was the danger that could be
 16 created by overcladding one that ought to have been
 17 apparent to a reasonably competent fire risk assessor?
 18 A. Yes, sir, because we gave a warning about it in the
 19 LGA guide.
 20 SIR MARTIN MOORE-BICK: That's what I thought. So the
 21 presence of a potential danger —
 22 A. Yes.
 23 SIR MARTIN MOORE-BICK: — in the cladding —
 24 A. Yes.
 25 SIR MARTIN MOORE-BICK: — was something which at that time

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1 the competent fire risk assessor should have been aware
 2 of?
 3 A. He was aware of it as a hazard without being able to
 4 assess it, assess the cladding. Yes, that's right, sir.
 5 SIR MARTIN MOORE-BICK: In that case, I'm not sure I quite
 6 understand why someone carrying out a fire risk
 7 assessment should not be expected to draw the client's
 8 attention to the presence of that hazard and advise the
 9 client to take expert advice to determine whether it
 10 existed or not?
 11 A. Because all you'd be doing is repeating what
 12 building control should already have done. He tried to
 13 head off the problem at the pass, rather than waiting
 14 until it was installed. Once it's installed, it's a bit
 15 late, because how would you assess it unless you cut
 16 a sample out, which would be somewhat absurd.
 17 So he tried to head off problems at the pass on this
 18 point by recognising that it was a hazard, and saying,
 19 "Check with building control that they're happy". Then,
 20 on a second occasion, he asked Rydon, "Have you done
 21 that?", and Rydon say yes, and he makes a little note of
 22 that handwritten.
 23 So, first of all, he has told people to ask building
 24 control, but building control shouldn't have needed to
 25 be told, sir, that's what they do for a living. But

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1 just in case, he actually flags it up and says, "Draw
2 their attention to this". Then he asks, "Has their
3 attention been drawn, are they satisfied?" At that
4 stage he has gone absolutely far enough, sir, in my
5 opinion.
6 And when he comes along and sees it installed, how
7 would he carry out a risk assessment? To actually find
8 out whether buildings have ACM post—Grenfell, people had
9 to get a contractor along, cut a bit out and send it to
10 BRE. You wouldn't in a nicely completed building say,
11 "By the way, just in case building control haven't done
12 their job" — you get the point, sir.
13 SIR MARTIN MOORE—BICK: I understand the point, yes, thank
14 you. Thank you very much, Mr Todd, that is helpful.
15 Mr Millett, we've been running for about an hour and
16 a quarter and I think we ought to have a break.
17 MR MILLETT: Yes, I think that's a good idea.
18 SIR MARTIN MOORE—BICK: We're going to have a break at this
19 point, Mr Todd. We will come back at 12.05. As usual,
20 please don't talk to anyone about your evidence.
21 THE WITNESS: Hopefully I'm meeting your objective of
22 shorter answers, sir.
23 SIR MARTIN MOORE—BICK: You are, thank you.
24 THE WITNESS: Thank you, sir.
25 (Pause)

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1 SIR MARTIN MOORE—BICK: Thank you very much. 12.05, please.
2 (11.52 am)
3 (A short break)
4 (12.05 pm)
5 SIR MARTIN MOORE—BICK: Yes, please, Mr Todd, sit down.
6 All right. Ready to carry on?
7 THE WITNESS: Yes, sir.
8 SIR MARTIN MOORE—BICK: Yes, Mr Millett.
9 MR MILLETT: Thank you, Mr Chairman.
10 Mr Todd, just to finish off on this line of
11 questions about the external cladding system at
12 Grenfell Tower and Mr Stokes, can I ask you, please, to
13 go to the LGA guide at {HOM00045964/111}.
14 A. Are you going to take me to the word "assessment"
15 possibly, sir?
16 Q. I'm going to show you the whole thing, I think.
17 "72. External fire—spread". We've seen it before —
18 A. Yes.
19 Q. — but we'll come back to it again:
20 "The external façades of blocks of flats should not
21 provide potential for extensive fire—spread. When
22 assessing existing blocks of flats, particular attention
23 should be given to any rainscreen or other external
24 cladding system that has been applied and to façades
25 that have been replaced."

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1 Just looking at that, what should Mr Stokes have
2 done when visiting Grenfell Tower in April 2016 and
3 seeing the cladding?
4 A. More or less what he did, sir.
5 I thought you might be interested in the use of the
6 word "assessing" there.
7 Q. Well, it was a roundabout way of me expressing that
8 interest, if I can put it that way.
9 A. Yes.
10 Q. What would you tell me?
11 A. So this is not in the section on fire risk assessment,
12 and you'll probably notice, sir, in the section on fire
13 risk assessment, we don't suggest that there be
14 an assessment of external wall construction because
15 there are very few people in the country, actually,
16 competent to assess external walls. The new legislation
17 that will require that has effectively created a new
18 profession of external wall assessors.
19 So you may ask, and it would be a very reasonable
20 question to ask, why are we saying assessing here, and
21 it's probably not the best word, if I'm absolutely
22 honest, but bear in mind this is a general indication to
23 everybody, not just fire risk assessors, that: be
24 careful about external cladding systems.
25 Q. Well, as I read it — and you're the expert, of course,

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1 and having had input into its drafting, you will know
2 better — this is a warning to everybody, but
3 particularly responsible persons —
4 A. Yes.
5 Q. — and their fire risk assessors retained for the
6 purpose.
7 A. Yes.
8 Q. So what is involved or what was intended to be involved
9 in an assessment of an existing block of flats where
10 there was a rainscreen or other external cladding system
11 present?
12 A. Yes, I think it was really just a general blanket
13 warning to everybody that rainscreen cladding is
14 a problem, potentially, and I don't think you've ever
15 taken me to it, but you will find an even closer
16 warning, if you like, a more specific warning, in the
17 bit on unauthorised alterations or alterations, where we
18 specifically say that one potential effect of
19 alterations would be a landlord fitting rainscreen
20 cladding retrospectively to a building.
21 So bear in mind, as I've explained before, sir, this
22 is a general guide to fire safety in blocks of flats,
23 not to fire risk assessments specifically, and that is
24 why you don't see this in section D, but you do see it
25 as just a general warning to everybody about cladding

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1 systems.
 2 Q. Yes.
 3 A. And particularly at the design stage, before you
 4 actually do it.
 5 Q. Well, it doesn't say that, it says —
 6 A. No, it says "has been applied".
 7 Q. — "has been applied".
 8 A. I know, yes, I realise that, sir.
 9 Q. Just answering the question on the text, what is it that
 10 the responsible person or a fire risk assessor retained
 11 for the purpose should do when assessing an existing
 12 block of flats and giving particular attention to the
 13 rainscreen? They turn up, what do they do?
 14 A. There is not a lot they can do, sir.
 15 Q. So what's the point of paragraph 72.1 here?
 16 A. As I said, a general warning. If you remember, we
 17 inserted this because of concern over the whole subject
 18 of rainscreen cladding. The wording might not be
 19 perfect, I think it was a fairly late change.
 20 If I can tell you what it isn't, it's not
 21 an instruction to the fire risk assessor or a suggestion
 22 that the fire risk assessor should carry out some
 23 particular assessment of cladding that's in place. They
 24 may take note of it. If there was something that
 25 worried them, they could raise it. But if there was

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1 nothing to flag up that there would be an issue, we
 2 wouldn't expect, with the greatest of respect, the risk
 3 assessor to do anything. And if it was recently
 4 installed, supposedly under the watchful eye of
 5 Building Regulations, we certainly wouldn't expect them
 6 to question that.
 7 Q. Right.
 8 Should Mr Stokes, in the light of section 72 of the
 9 LGA guide in particular, have advised the TMO that,
 10 notwithstanding the fact that the rainscreen system at
 11 Grenfell had been passed by building control,
 12 nonetheless a fire risk assessment of the building needs
 13 to be carried out in the light of that alteration, but
 14 that he wasn't competent to do it because he was not
 15 competent to assess the fire safety of the cladding and
 16 a specialist was needed?
 17 A. No, I wouldn't go along with that at all, sir.
 18 Q. Why is that?
 19 A. Because that's just not what was done.
 20 Q. Well, it wasn't, but my question really is: should it
 21 not have been done?
 22 A. Why would — sorry, I shouldn't answer a question with
 23 a question.
 24 It wouldn't have been appropriate to take a project
 25 that has just been completed, completed under

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1 Building Regulations, and pay a rarefied specialist —
 2 and it would be a rarefied specialist, it would be one
 3 of quite a small number of people in the country — to
 4 come along and drill holes in it and stick a borescope
 5 to see if the cavity barriers were in place,
 6 for example, or to cut a piece out, as I said before the
 7 break, sir, and send it off for analysis.
 8 This was a recently completed project, supposedly
 9 under Building Regulations. There would be nothing that
 10 I would consider puts up a red flag to a fire risk
 11 assessor that would cause him to say, "Now get some
 12 specialist to come and look at it".
 13 Q. Now, can we then move on to another document.
 14 You'll recall that we saw the 6 April 2017 letter
 15 from Assistant Commissioner Daly to Laura Johnson.
 16 A. Yes, sir, yes.
 17 Q. The "Tall buildings — external façades" letter.
 18 A. Yes.
 19 Q. We can see from the documentary trail that, on
 20 19 April 2017, Mr Stokes was sent that letter —
 21 A. Yes.
 22 Q. — and asked by Janice Wray a few days later to confirm
 23 that the TMO did not have any external cladding blocks
 24 of the nature described in the letter.
 25 Let's look at his response to that. This is at

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1 {CST00003112}.
 2 If we go to the foot of the page, we can see
 3 Janice Wray's email to Carl Stokes on 24 April 2017:
 4 "Carl
 5 "My understanding is that we do not have any blocks
 6 with external cladding of this nature. Are you able to
 7 confirm please?"
 8 Then Mr Stokes' response the same day, a few hours
 9 later, was:
 10 "Grenfell was clad but the cladding complied with
 11 the requirements of the Building Regulations, lots of
 12 questions asked of Rydons and answers received back from
 13 them."
 14 A. Yes, I think that was a point I made before the break,
 15 sir.
 16 Q. Well, could you just explain to me the point that you
 17 made before the break which is supported by this
 18 document?
 19 A. Just to go through the steps again, building control
 20 shouldn't have needed to be told. Mr Stokes drew
 21 particular attention to the matter because he was aware
 22 of it, and I believe that he was aware of it because of
 23 the LGA guide — I can tell you why I think that if it's
 24 relevant — and he's not satisfied with that, but he's
 25 asked questions of the contractor, and he's got answers

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1 back. That's what I said before the break. And that
 2 really reinforces what I said before the break: that he
 3 had asked the questions and got answers.
 4 Q. Yes. He'd asked the questions, he'd got answers, but
 5 hadn't himself carried out a fire risk assessment using
 6 his expertise and experience in relation to the
 7 cladding, had he?
 8 A. He didn't have any expertise that would allow him to
 9 carry out a specific assessment in relation to the
 10 cladding. As I tried to explain, sir, there weren't
 11 that many people in the country in the fire sector who
 12 would have that expertise.
 13 Q. Tell me, do you agree that Mr Stokes did not himself
 14 know whether the cladding complied with the requirements
 15 of the Building Regulations; all he knew is that he had
 16 been told by somebody that Building Regulations had
 17 passed it?
 18 A. That's correct, sir.
 19 Q. And therefore when he says the cladding complied with
 20 the requirements of the Building Regulations, that was
 21 an unverified statement by him, wasn't it?
 22 A. Well, it was verified by Rydons to him.
 23 Q. Yes, but he hadn't done, and I don't think was qualified
 24 to do, any compliance check himself; it is just
 25 second-hand hearsay, isn't it, or third-hand hearsay?

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1 A. I think that downgrades it somewhat below its proper
 2 status. He hadn't checked that the elements of
 3 structure that held the building up or any new parts of
 4 the building were fire resisting, and he would
 5 reasonably assume that that had been dealt with under
 6 Building Regulations. There's lots of things that he
 7 would have reasonably assumed were dealt with by
 8 Building Regulations, which goes back to something
 9 I explained to the Chairman I think on day one, the two
 10 branches of fire safety, if you like: Building
 11 Regulations and ongoing legislation.
 12 There has always been an assumption, an assumption
 13 promoted by Government itself, as I explained before the
 14 break, that Building Regulations would have been
 15 adequately applied by a building control body, otherwise
 16 what's the point of them doing the work if someone else
 17 has to come along and independently verify it?
 18 Q. Well, my question is a much narrower than one than that.
 19 A. I see.
 20 Q. It's almost textual.
 21 He says here, unqualified, "the cladding complied
 22 with the requirements of the Building Regulations". My
 23 question is: would a reasonably competent fire risk
 24 assessor make that statement without having verified
 25 himself whether they complied or not, or would the

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1 reasonably competent fire risk assessor say, "I am told
 2 by building control or Rydon that the cladding has
 3 complied"?
 4 A. I think that's a very pedantic point. I think that
 5 statement was perfectly reasonable in the circumstances,
 6 and I think a competent risk assessor would quite
 7 commonly express it in those terms, sir. It will be for
 8 the Chairman to decide, of course, whether that's wrong,
 9 but all I can tell you is I see nothing wrong with that
 10 sentence.
 11 Q. You don't?
 12 A. Not in the circumstances.
 13 Q. Even though Mr Stokes hadn't himself carried out any
 14 compliance check?
 15 A. Compliance check how, sir?
 16 SIR MARTIN MOORE-BICK: I think we've got the point,
 17 Mr Millett.
 18 MR MILLETT: Yes.
 19 Fire risk management, next topic.
 20 Can we go to {SAL00000013}, please.
 21 Now, this is Salvus' fire safety management report
 22 undertaken for the TMO dated 22 September 2009, sent to
 23 Carl Stokes on 28 September 2010, just after he had won
 24 the tender for the medium-risk programme for the TMO.
 25 If we look at this report — well, first of all, I'm

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1 assuming you have read this before?
 2 A. I do believe I have. I don't remember much about this
 3 particular document, sir.
 4 Q. Right.
 5 If we look at it, we can see that it identifies some
 6 19 breaches of statute, what are called statutory
 7 breaches, in relation to TMO's fire safety management.
 8 A. So it claimed, sir, I believe that.
 9 Q. Yes, on its face.
 10 Now, would you have expected Mr Stokes to have
 11 satisfied himself when he came into the job a year later
 12 that those deficiencies had been remedied?
 13 A. Could you remind me what the breaches were, sir?
 14 Q. Yes, absolutely.
 15 If we go to the middle of this document, page 5
 16 {SAL00000013/5}, this is where the list starts, and the
 17 first one under 1.1 on that page is:
 18 "Lack of a TMO fire safety policy statement."
 19 A. Yes. That's good practice. I'm not sure what that's
 20 a statutory breach of, exactly.
 21 Q. Well, I'm just showing you that by way of reminding you
 22 what the —
 23 A. Yes.
 24 Q. — breaches were. That's the first one. There are 19
 25 or so.

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1 A. Yes.
 2 Q. One can scroll down.
 3 Let's just scroll into it a little bit further:
 4 "1.2. Lack or inadequate TMO policy and
 5 arrangements.
 6 "1.3. Lack of inadequate recording systems eg log
 7 book and/or fire safety manual."
 8 A. Yes. Pausing there, sir, it's a positive, there is
 9 a clear and positive lack of any statutory requirement
 10 to keep records of testing and maintenance. That's very
 11 well established.
 12 Q. Then over to the top of page 6 {SAL00000013/6}:
 13 "1.4. Lack of/ineffective managerial audit of
 14 fire safety arrangements."
 15 And it continues in that vein under different
 16 topics. You can see topic 2, "Fire Safety Organisation
 17 — Roles and Responsibilities", "3. Training and
 18 Competence". Over the page on to page 7
 19 {SAL00000013/7}, "Active Monitoring — Fire Safety
 20 Inspections of the Premises and Facilities", et cetera,
 21 and it runs to 19 in total.
 22 My question is: would you have expected Mr Stokes to
 23 have satisfied himself that those deficiencies had been
 24 remedied, at least when he became formally appointed to
 25 the TMO to carry out FRAs on medium-risk properties in

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1 October 2010?
 2 A. I wouldn't have expected him to use that as a checklist,
 3 because a lot of it is very vague, a lot of it is not
 4 actually a statutory breach, it's good practice, and
 5 I would have expected Mr Stokes to, as it were, start
 6 with a clean sheet of paper and determine for himself
 7 whether the management standards were adequate. I would
 8 expect him to do that. I'm not sure that this document
 9 was terribly helpful in the first place.
 10 Q. Why not?
 11 A. Because some of this is about health and safety:
 12 "The Health and Safety Advisor ... appears to have
 13 sufficient competence to undertake the role in relation
 14 to health and safety which includes elements of
 15 fire safety management.
 16 "It was not possible at the time of the assessment
 17 to establish if all relevant staff have the necessary
 18 competence to implement their respective roles ..."
 19 A lot of it is so vague, sir, and some of it, as
 20 I've said, is not a statutory breach anyway, that
 21 I would expect Mr Stokes to use his own knowledge and
 22 skill to make up his own mind with a clean sheet of
 23 paper, rather than using this particular document.
 24 Q. If we go to page 13 in this document {SAL00000013/13}.
 25 A. Yes.

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1 Q. This is the action plan.
 2 A. Yes.
 3 Q. I've shown you 1.1 before, and we have the action plan
 4 in relation to it. The deficiency was the absence of
 5 a TMO fire safety policy statement, as we've seen, and
 6 here we see Salvus' recommendation: a strong
 7 recommendation that one be developed which set out the
 8 organisation's strategic fire safety objectives,
 9 including compliance with the Fire Safety Order. You
 10 see that?
 11 A. Yes.
 12 Q. In the second row:
 13 "It is strongly advised that adequate policy and
 14 supporting arrangements are introduced to explain how
 15 TMO will meet the objectives set out in the strategic
 16 policy statement, so as to ensure suitable and
 17 sufficient fire safety is maintained at all times
 18 throughout the managed estate (property portfolio)."
 19 I've shown you both of those.
 20 Would you have expected Mr Stokes to have sought and
 21 reviewed a copy of the TMO fire safety policy, to the
 22 extent that there was one, before carrying out any fire
 23 risk assessments for the TMO?
 24 A. If you wanted to have a full understanding of
 25 fire safety management, I think that would be helpful.

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1 It probably wasn't terribly helpful in carrying out
 2 a hands-on practical fire risk assessment for
 3 a building.
 4 Q. Do you mean by that answer that, on
 5 a building-by-building basis, it was no help?
 6 A. It would be of minor help, sir, but —
 7 Q. Well —
 8 A. — probably not hugely, if you were to take it building
 9 by building.
 10 Q. Can we go to your main report, please.
 11 A. Yes.
 12 Q. Page 73 {CTA00000011/73}, paragraph 7.41.
 13 A. Yes. Yes.
 14 Q. You say there — we've seen this before:
 15 "With regard to management of fire safety, matters
 16 to be considered include ..."
 17 The first item on your list of matters to be
 18 considered in respect of management of fire safety —
 19 A. Yes.
 20 Q. — is —
 21 A. The fire safety —
 22 Q. — the fire safety policy of the organisation.
 23 A. Yes.
 24 Q. Do you agree that Mr Stokes should have considered it?
 25 A. Yes, in terms of the practical aspects that affected the

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1 individual building. So, for example, again to talk
 2 turkey, if I can use that term, he would need to know
 3 what the policies were on testing, maintenance,
 4 monitoring and so on, but very often a policy starts
 5 with, in this case, "The TMO are committed to the
 6 principles of fire safety and ensuring that everyone who
 7 enters their buildings are safe from fire". Wonderful
 8 high-level statement; it's not going to help him with
 9 his fire risk assessment.

10 So there are definite elements of a policy that he
 11 would need to understand before he could do the fire
 12 risk assessment.

13 Q. Yes.

14 A. Yes.

15 Q. Yes, thank you. I mean, leave aside the self-serving
 16 stuff at the start that everyone puts in there.

17 A. Yes.

18 Q. You would expect to see, in a properly crafted
 19 fire safety policy, some nuts and bolts, wouldn't you?

20 A. You would.

21 Q. Yes, and those nuts and bolts would have been important
 22 for Mr Stokes to know before he carried out his first
 23 fire risk assessment?

24 A. Yes, because he'd need to know what they were doing in
 25 terms of testing and maintenance.

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1 Q. Exactly, yes, thank you.

2 Now, can we go, please, to {CST00001822}, which is
 3 a letter Mr Stokes wrote to Janice Wray on 23 June 2010.

4 The subject is:

5 "Employee Fire Training, Personnel Emergency
 6 Evacuation Plans (PEEPs) and the Lift Maintenance
 7 servicing and testing Policy in TMO Controlled
 8 Buildings."

9 Now, this followed a meeting, I should just tell
 10 you, that they'd had the previous day, as you can see
 11 from the first line —

12 A. Yes, sir.

13 Q. — in relation to employee fire safety training, PEEP
 14 and lift maintenance policies in TMO buildings.

15 If you look at the second paragraph, Mr Stokes says
 16 this:

17 "When completing any fire risk assessments for
 18 buildings under the control of The Tenant Management
 19 Organisation (TMO) of the Royal Borough of Kensington
 20 and Chelsea in future and where TMO employees are
 21 present in the buildings the information in this letter
 22 will be used as a basis of the fire training and fire
 23 warden section of the document."

24 So it's clear that this information would be used in
 25 future fire risk assessments.

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1 Chasing the history a little bit further forward,
 2 and I'll just show you a little bit of evidence,
 3 {CST00003061}, we come to a letter dated
 4 27 September 2010 which followed a meeting which
 5 Mr Stokes had had with Ms Wray on 24 September 2010, the
 6 day after he had been awarded the medium-risk programme,
 7 and you can see here in the letter, in the first
 8 paragraph he says:

9 "After our meeting on Friday 24th September 2010 ...

10 I would like to put in writing the management
 11 procedures, topics and issues etc we discussed, so that
 12 when completing any fire risk assessments for
 13 residential buildings under the control of The [TMO] ...
 14 in future these standards and observations will apply."

15 Then the letter goes on to cover a number of
 16 matters, and you can see them listed there below —

17 A. Yes.

18 Q. — above the heading "Employee fire training" towards
 19 the bottom of your screen. There are a number of them,
 20 and one of them includes PEEP, as you will see, and we
 21 will come back to that perhaps later.

22 But my first question arising from these two letters
 23 I've just shown you is: would you have expected
 24 Mr Stokes to carry out an assessment of the TMO's
 25 overall fire risk management system at the outset of his

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1 contract?

2 A. I think this is what he's trying to do, by taking
 3 components of their management system, and he's
 4 obviously been asking questions about it, sir.

5 Q. Yes, and having answered that question, the next
 6 question is: do you consider that what Mr Stokes set out
 7 in these two letters was an adequate assessment or
 8 adequate questions designed to form part of
 9 an assessment of the TMO's overall fire safety
 10 management arrangements?

11 A. As the topic, sir, do you mean?

12 Q. Well, as an assessment.

13 A. He's covered training, he's covered a very important
 14 thing, which is information to residents, in-house
 15 inspections, evacuation strategy, he mentions PEEP,
 16 lift, fixed installations, signage, contractors.

17 If I sat and thought about it, I might be able to
 18 add to it, but it's certainly a good starter for 10.

19 Q. Would not a better starter for 10 have been to have
 20 picked up the Salvus report from the previous year and
 21 used that as a basis — not the only basis necessarily,
 22 but a basis — for understanding his client's
 23 fire safety management systems?

24 A. Yes. My view of the Salvus report, which I think I've
 25 implied, was that it was all very high-level, grandiose

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1 stuff. This stuff is hands-on things that are
 2 a translation of policy that Mr Stokes, as a man on the
 3 ground, as it were, needed to know.
 4 Q. Well, you say it's high-level, grandiose stuff.
 5 I wonder if that's really fair, Mr Todd.
 6 Can we go back to --
 7 A. Certainly.
 8 Q. -- {SAL00000013/5}.
 9 The absence of a TMO fire safety policy statement.
 10 A. Yes, we talked about that.
 11 Q. Yes. Now, you're not in a position to say whether
 12 that's factually correct or not.
 13 A. No.
 14 Q. No. But on the basis that it's factually correct that
 15 there wasn't one, why is that a high-level and grandiose
 16 problem? It's maybe a high-level problem because it's
 17 a serious problem, fundamental problem, isn't it? It's
 18 not grandiose, is it?
 19 A. The fire policy doesn't always help you in carrying out
 20 a practical fire risk assessment for the reasons
 21 I discussed. He's taken bits out of what would be
 22 a fire policy and translated them into something
 23 practical that he needs to know.
 24 Q. Take another one, 1.4 at the top of page 6
 25 {SAL00000013/6}:

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1 "Lack of/ineffective managerial audit of fire safety
 2 arrangements."
 3 And then it says {SAL00000013/7}:
 4 "The Health and Safety Advisor appointed by TMO
 5 appears to have sufficient competence ... which will
 6 include elements of ... safety ...
 7 "... not possible at the time of the assessment to
 8 establish if all relevant staff have the necessary
 9 competence to implement their respective roles in regard
 10 to fire safety."
 11 Why is that grandiose and high-level? It looks
 12 quite granular.
 13 A. I don't think it is granular, sir. I'm not sure what
 14 they're actually looking for in terms of something
 15 practical that Mr Stokes could have looked at.
 16 Q. Well, let me give you a better, then.
 17 A. Thank you.
 18 Q. 4.1 on page 7 {SAL00000013/7}:
 19 "Lack of/inadequate general inspection and
 20 monitoring of premises and facilities."
 21 And in the italics, the complaint is that there are
 22 no current formal checks on fire doors or fire exits,
 23 storage, security matters:
 24 "Guidance provided does not appear to indicate fully
 25 the procedure to follow in event of finding deficiencies

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1 and to whom completed reports should be sent for audit
 2 purposes.
 3 "A Site Plan and Fire Safety Drawing is not
 4 currently available showing relevant fire safety
 5 arrangements for any TMO managed properties to assist
 6 local wardens etc with fire safety checks.
 7 "... not possible at the time of the management
 8 assessment to confirm how defects to the safety critical
 9 issues are managed and if all repairs are up to date.
 10 Why was that not a very helpful set of initial
 11 signposts to Mr Stokes when embarking on
 12 an understanding of his client's fire safety management
 13 systems?
 14 A. Well, he has picked out some of these, because he has
 15 picked out inspections and so on, but when you do a fire
 16 risk assessment, sir, one of the things that you don't
 17 include is how repairs are managed. It's almost
 18 a different exercise. This is almost related. You
 19 remember, sir, you took me to PAS 7, didn't you?
 20 Q. Yes, I did.
 21 A. Which is now a BS. That's a different standard from the
 22 standard for fire risk assessment. That's the standard
 23 for how fire safety is managed in an organisation,
 24 particularly at high level. That's a different
 25 exercise, really. A fire risk assessor does not sit

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1 down and say, "How are you managing repairs within the
 2 organisation? What's your structure for managing
 3 repairs?" That's not part of a fire risk assessment,
 4 nor would you find that sort of matter covered in
 5 PAS 79, sir.
 6 Q. Well, you say that. Can we go to annex E,
 7 {CTA00000003/106}. This is a model pro forma.
 8 A. Sorry, I haven't got anything yet on the screen, sir.
 9 Q. You're right. There it is.
 10 It's informative.
 11 A. Yes.
 12 Q. We know that, but this is a "Model pro-forma for
 13 documentation of a review of an existing fire risk
 14 assessment for premises in England and Wales".
 15 A. Yes.
 16 Q. If we go to page 111 {CTA00000003/11}, there is
 17 a section on "Management of fire safety", isn't there?
 18 A. There is.
 19 Q. The first of which is 13.1. There is a box to record
 20 significant changes in management of fire safety since
 21 the time of the risk assessment.
 22 Now, do you accept that that would appear to suggest
 23 that up-to-date information on fire safety management
 24 matters should be obtained when carrying out any fire
 25 risk assessment review?

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1 A. Yes, you'd look for any changes. This is looking for
 2 changes.
 3 Q. It's looking for changes, but in relation to fire safety
 4 management?
 5 A. Yes.
 6 Q. Yes.
 7 If we look at 14.1 —
 8 A. Yes.
 9 Q. — there is a more general question:
 10 "Are arrangements for management of fire safety
 11 adequate?"
 12 Tick box "Yes" or "No".
 13 A. Yes.
 14 Q. And then a text box underneath it to note any comments
 15 and deficiencies observed.
 16 What assessment is envisaged will be carried out by
 17 the fire risk assessor in response to that question?
 18 A. Now, to help you with that, sir, could you possibly go
 19 to the section of PAS 79 on fire safety management, and
 20 I could help you walk through that to answer your
 21 question.
 22 Q. Yes, if I can find it just off the top of my head. Help
 23 me with this. I think it may be page 50
 24 {CTA00000003/50}.
 25 A. I don't remember page numbers.

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1 Q. We'll find out.
 2 A. You'll find it — there we go, well done.
 3 Q. Thank you.
 4 A. So there we find who is responsible for fire safety in
 5 the premises.
 6 Now, within the template for the fire risk
 7 assessment, it's actually pointed out that this
 8 designation of responsibility isn't part of the
 9 Fire Safety Order, but it's a good idea, and we make
 10 that clear.
 11 Access to suitable advice on the requirements of
 12 fire safety legislation, that is what I call the
 13 competent assistant, so this is looking at Article 18.
 14 Procedures to follow, that's looking at Article 15.
 15 Nomination of people to respond to fire and, where
 16 appropriate, to assist with evacuation, Article 15.
 17 Arrangements for liaison with the fire and rescue
 18 service, good practice, not defined within the
 19 Fire Safety Order but part of fire safety management.
 20 Q. Yes. Can we stop and can we just look at it together?
 21 A. Sorry, I should have let you drive it, sir.
 22 Q. That's all right. It would be nice if it was a joint
 23 venture.
 24 So the "General" here:
 25 "In the fire risk assessment, fire safety management

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1 ... needs to be regarded as of equal importance to fire
 2 protection measures."
 3 Pausing there, do you accept or disagree?
 4 A. 100%.
 5 Q. "In its broadest sense, fire safety management includes
 6 certain policies and procedures designed to prevent the
 7 occurrence of fire by eliminating or controlling fire
 8 hazards."
 9 Yes?
 10 A. Yes.
 11 Q. "However, most of these aspects of fire safety
 12 management have already been considered in Clause 13."
 13 Which we can go to, if you like, but it would be
 14 nice if we didn't have to.
 15 A. I don't —
 16 Q. Then it says:
 17 "Fire safety management also includes the
 18 following ..."
 19 And then there is this long list, do you see?
 20 A. Yes, I do.
 21 Q. "a) designated responsibility for fire safety in the
 22 premises."
 23 Et cetera, et cetera, and it includes procedures for
 24 people to follow in the event of fire, including people
 25 with special responsibilities, nomination of people to

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1 respond to fire, et cetera, et cetera.
 2 A. Yes.
 3 Q. Documentation and implication of the action plan. It
 4 goes on at length.
 5 If you look at subparagraph (iii), it says:
 6 "Points a) to k) are discussed in the sections of
 7 the commentary that follow. Point l) is discussed in
 8 Clause 19 ..."
 9 A. Yes.
 10 Q. "... and point m) is discussed in Clause 20. It is
 11 important that matters in the paragraphs that follow are
 12 properly considered in the fire risk assessment and that
 13 the fire safety management is taken into account in the
 14 subjective judgement of overall fire risk."
 15 Is it not correct, therefore, that a reasonably
 16 competent fire risk assessor would be expected to
 17 consider all the fire safety management factors covered
 18 in clauses 13, 16, 19 and 20 of PAS 79?
 19 A. Correct, sir, which was my point, that a number of the
 20 things that you were taking me to in the Salvus
 21 management of fire safety review are not the management
 22 issues considered in a fire risk assessment. It's
 23 a different exercise.
 24 So you took me to the review document about
 25 management of fire safety; that's looking for any

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1 changes in anything, and what you describe, sir, as
 2 a big long list .
 3 Q. But have you actually done an exercise of comparing the
 4 contents of clause 13, 16, 19 and 20 of PAS 79, on the
 5 one hand, with the contents and recommendations in the
 6 Salvus report on the other?
 7 A. No, I read the Salvus report, sir, and I took it that
 8 that was almost a different exercise that they were
 9 carrying out, rather than something directly associated
 10 with a fire risk assessment.
 11 Q. Well, if you look at some of the factors listed in —
 12 well, before I ask that question, just following up on
 13 your last question, you say it was a different exercise.
 14 A. Yes.
 15 Q. Assuming that it was an exercise which was different,
 16 would it not nonetheless be an important result of the
 17 exercise for a fire risk assessor to know before
 18 embarking on his task which does include the matters
 19 that I'm showing you on the screen?
 20 A. Well, it was more a PAS 7 assessment. It was more akin,
 21 as I saw it, sir, to a PAS 7 assessment, and some of
 22 that would be outside the scope of the fire risk
 23 assessor's work, some of it would be inside the scope.
 24 Q. Yes, yes.
 25 A. That which is inside the scope we would find in this

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1 clause here, which lists the sort of practical, hands-on
 2 things that the fire risk assessor would need to concern
 3 himself with because they emanate from the Fire Safety
 4 Order.
 5 Q. This comes back to a broader question which I wanted to
 6 come back to which I had asked you having shown you
 7 box 13 and 14 in annex E: does not the presence of the
 8 questions in that box and the material at clause 16 on
 9 page 50 that we've seen suggest that the fire risk
 10 assessor does have to concern himself with management of
 11 fire safety, or at least many aspects of management of
 12 fire safety?
 13 A. Oh, absolutely, sir.
 14 Q. Yes.
 15 A. And it's very often far more important than, if I can
 16 express it this way, whether there is three hinges on
 17 a fire door or two hinges. Management of fire safety is
 18 actually one of the most important things to look at.
 19 Q. Yes, and Mr Stokes didn't include these sections, in
 20 other words sections 13 and 14 in annex E — and we can
 21 go back to those — in any of his fire risk assessments
 22 for Grenfell Tower after his first one he did for Salvus
 23 in 2009 as a matter of record.
 24 Would you have expected him to have included them —
 25 A. Sorry, could you show me what he hasn't included again,

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1 please, sir?
 2 Q. Yes. Annex E, page 106 of this document
 3 {CTA00000003/106}.
 4 A. Yes, that —
 5 Q. Annex E.
 6 A. Yes, that's a review, if you're not going to carry out
 7 a complete new fire risk assessment. This is a sort of
 8 short-form, abbreviated assessment if you are not going
 9 through the whole thing again. But Mr Stokes wasn't
 10 actually carrying out that short-form review, he was
 11 carrying out a new fire risk assessment. That's very
 12 different from a review.
 13 Q. Right.
 14 If there was no review or if there was no properly
 15 documented review, let alone a review done under the
 16 informative annex E, so that there was no document which
 17 would tell Mr Stokes when he came to do his FRAs in the
 18 years he did what fire safety management there was or
 19 what changes there had been, would you expect Mr Stokes
 20 at least to ask the question when he came to do his
 21 FRAs?
 22 A. I would expect him, yes, to ask, "This was the situation
 23 before, I take it that's still the same, have you got
 24 any changes?", yes.
 25 Q. Would you expect him to include in his fire risk

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1 assessments at least something about the status or
 2 situation of fire safety management at the TMO, even if
 3 only by way of changes that he had been told about?
 4 A. I think he was picking through all the — what you
 5 called the big list, I think he was more or less picking
 6 through that in the risk assessment.
 7 Q. If in fact, as a fact, Mr Stokes did not assess
 8 significant changes in fire safety management in his
 9 subsequent fire risk assessments of Grenfell Tower,
 10 would you consider that that fell below the acceptable
 11 standards?
 12 A. If there were changes in the matters which we have just
 13 looked at in clause 16 of PAS 79, yes.
 14 Q. Let's go back to page 50 of this document, PAS 79
 15 {CTA00000003/50}, please, and let's look at clause 16
 16 again.
 17 A. Yes.
 18 Q. If we look at (ii), we can see the list. In the list we
 19 can see:
 20 "f) arrangements for routine inspections of the
 21 premises and its fire precautions or more for more
 22 formal fire audits ..."
 23 A. Yes.
 24 Q. Let me give you some evidence.
 25 Mr Stokes repeatedly raised questions in all of his

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1 fire risk assessment action plans for Grenfell Tower, at
2 least, and indeed other buildings, about whether the
3 caretakers or estate service assistants, ESAs, were
4 carrying out their routine inspections and whether there
5 were records kept.

6 A. Yes, that's right.

7 Q. But he stated in the body of all of his fire risk
8 assessments, at least for Grenfell Tower from 2010, that
9 they were being carried out with records kept; do you
10 remember that?

11 A. Yes, I do.

12 Q. Yes, I don't need to show you some examples.

13 Would you have expected Mr Stokes to have obtained,
14 where possible, records showing that routine inspections
15 of the premises were being carried out before his fire
16 risk assessment, rather than raising it as an action?

17 A. Do you mean in advance of his fire risk assessments
18 or —

19 Q. As part of the exercise of conducting it, before writing
20 his report and submitting it to his client:

21 A. You tend to sample records. I think as I explained
22 before, it's not an ISO 9000 audit, where if there is no
23 record of something, to all intents and purposes it
24 hasn't been done. So the level to which a fire risk
25 assessor would examine documentation such as records

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1 would depend on a number of things: their pre-knowledge
2 of the practices that were carried out, the trust they
3 had in the client, what they were being told on this
4 particular occasion, and so it's more an art than
5 a science to determine what records you would wish to
6 look at.

7 Q. In practising the art, would you have expected Mr Stokes
8 to have asked to see records and discovered whether or
9 not there were any?

10 A. Records of something, sir, certainly, sample records of
11 things, but the art comes in which records they want to
12 see.

13 Q. Right.

14 A. To put it this way, sir, in simple terms — and this
15 will be a nutshell — if you think the client's
16 a complete rogue, and he's telling you that he tested
17 the emergency lighting but you think, "I don't believe
18 that for one minute", then you would say, "Show me". In
19 fact, you would not only say, "Show me the records", but
20 you'd say, "Show me how you do it", because if they
21 don't do it, they won't know, and so on.

22 Q. Would it follow from that — I'm sorry.

23 A. Well, just at the other extreme, if it's a client that
24 is of high integrity that you've worked with for
25 five years and you know, for example, that the emergency

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1 lighting is always tested every month, and you have seen
2 evidence of that before, you'd be content to accept
3 their word that, "We still test the emergency lighting
4 every month".

5 Q. Yes.

6 Would it follow from what you have just told us
7 that, where a fire risk assessor hasn't managed to
8 obtain records of routine inspections and it wasn't
9 known to him whether routine inspections were in fact
10 being carried out, would you expect the fire risk
11 assessor to have made comment in their fire risk
12 assessments?

13 A. Yes. It's a good practice point, it would be difficult
14 to point to an article of the Fire Safety Order. But,
15 yes, you would expect him to be satisfied in his mind —
16 however he became satisfied, whether verbal information,
17 records or whatever — that someone was carrying out
18 routine inspections. Yes, sir, that's right.

19 Q. Yes, and would you expect a reasonably competent fire
20 risk assessor to factor the absence of records into his
21 assessment of risk?

22 A. Not the absence of records. The absence of records
23 doesn't establish that things aren't being done.
24 Record-keeping really protects people's liability rather
25 than reduces the risk to anybody. Doing the inspections

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1 impacts on risk; failing to write down that you've done
2 it doesn't make a whit of difference.

3 Q. No, you're right. Let me put the question slightly
4 differently.

5 If in fact Mr Stokes had no means of knowledge about
6 whether or not inspections were being carried out
7 routinely or not, he had no way of knowing and the
8 records didn't tell him, such as there were, then would
9 he not factor that into his risk assessment?

10 A. He would probably make a recommendation in that case
11 that there should be routine inspections, if nobody
12 could even tell him that it was being done.

13 Q. Yes.

14 Now, can we go to subclause (l) in this document
15 {CTA00000003/50}, which you can see just above the foot
16 of the screen:

17 "Implementation of the action plan's
18 recommendations."

19 If Mr Stokes was aware in relation to Grenfell Tower
20 that the TMO had problems completing his action plan
21 recommendations on time, and there was a persistent
22 problem with tackling backlogs of actions, would you
23 have expected him to refer to that problem in his risk
24 assessments?

25 A. Yes, we kind of discussed this before, didn't we? The

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1 symptom of what you have described would be he would
 2 keep finding the same thing time and time again, and
 3 therefore he'd want to, I think I called it earlier ,
 4 make a fuss about it, sir .
 5 Q. Exactly, and would he have factored that time and time
 6 again re—emergence of the same problem into his
 7 assessment of the risk of the building?
 8 A. I think we discussed that before as well. The risk
 9 would be what the risk was. The risk would have
 10 continued, it wouldn't have increased, but its continued
 11 presence would be a reflection on management that he
 12 would want to draw to attention.
 13 Q. That's really my next question, that that repeated
 14 problem was a fire safety management problem.
 15 A. Yes, it is .
 16 Q. And, as such, would that not factor into his risk
 17 assessment, not necessarily just for Grenfell Tower but
 18 for other buildings in the TMO's stock?
 19 A. He would assess the risk as he found it. The lack of
 20 management might be the foundation for what he finds.
 21 Does that answer your question, sir?
 22 Q. Well, it leads to another one.
 23 In view of the backlog question or issue or problem,
 24 would you have expected Mr Stokes to have offered
 25 general advice to the TMO on the fire risk consequences

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1 of not completing actions timeously in a systemic way?
 2 A. I think that might be what I colloquially described as
 3 making a fuss.
 4 Q. Very good, then I understand.
 5 Now, I want to ask you a few questions about the
 6 risk rating matrix.
 7 A. Oh, yes.
 8 Q. For each of his FRAs for Grenfell Tower, Carl Stokes
 9 undertook an assessment of the likelihood of fire and
 10 assessed it at medium, and the consequence of fires
 11 presenting a risk of slight harm and the overall risk as
 12 tolerable .
 13 A. Yes.
 14 Q. Is it your opinion that the risk level of tolerable for
 15 each and every FRA of Grenfell Tower was a reasonable
 16 conclusion for Mr Stokes to draw?
 17 A. I think, from all the things that you have put in front
 18 of me thus far, sir , there's probably only one thing
 19 that I would suggest increased the risk to moderate, and
 20 that would be if he were aware that the smoke control
 21 system was not working, then the protection of the
 22 staircase would be undermined, and I would personally
 23 then increase the consequences accordingly, and then the
 24 risk would increase accordingly.
 25 Q. Yes, thank you.

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1 Now, can we go to your main report at page 99
 2 {CTA00000011/99} —
 3 A. Yes, sir .
 4 Q. — and paragraph 9.14. You say there:
 5 "Step 4 in the PAS 79 nine steps involves
 6 determining the physical fire protection measures
 7 (measures that contribute to safety in the event of
 8 fire), relevant to protection of people in the event of
 9 fire . In my opinion, Mr Stokes gave due consideration
 10 to all relevant fire protection measures to the extent
 11 appropriate in a suitable and sufficient FRA."
 12 A. Yes.
 13 Q. In the light of the answer that you have just helpfully
 14 given us about the risk level , does that still remain
 15 your opinion?
 16 A. Yes, I think the only thing that would change my opinion
 17 was the information you gave me, sir, that the smoke
 18 control system was inoperative for a period of time.
 19 His scope was fine, because he covered all the issues ,
 20 but if it is in fact the case that he knew the smoke
 21 control system was not operative and didn't, as we
 22 talked about, provide a narrative on that, then that was
 23 an omission.
 24 Q. Is your answer still the same when we consider two other
 25 things: first of all , his incorrect statement that the

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1 lifts were firefighting /evacuation lifts and could be
 2 used by disabled persons in the event of emergency?
 3 A. Yes, that was a definite mistake.
 4 Q. Yes.
 5 A. And we talked about that, talked about the implications.
 6 I don't consider that it would have affected the risk
 7 rating .
 8 Q. And what about the absence of any evidence that
 9 Mr Stokes systematically assessed the internal features
 10 of the flat entrance doors at Grenfell Tower, and thus
 11 did not evaluate the hazard posed by non—functioning or
 12 non—existent self—closing devices?
 13 A. If it is correct, sir , that he didn't inspect the flat
 14 entrance doors correctly , then it's not so much that it
 15 impacted on the risk, it's more that he wasn't in
 16 a position to advise properly on what the risk is . If
 17 that is the case, and that's a matter of fact, that he
 18 didn't examine the doors properly, then it's not so much
 19 that that enhances the risk; it means that his judgement
 20 of the risk is invalid , can I put it that way.
 21 Q. Yes, I understand.
 22 Is it your view that it was reasonable for Mr Stokes
 23 to assess the risk at Grenfell Tower as tolerable, even
 24 given the number of high—priority red FRA actions
 25 recorded on each occasion?

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1 A. Yes, tolerable doesn't mean that you can just walk away
2 and accept it. It's all down to the definition of
3 tolerable risk, which is that there is no big
4 showstoppers that will need major capital expenditure,
5 but you may have to do lots of little things.
6 Q. Right.
7 A. And there were lots of little things.
8 Q. I see. Would that still be the case despite the absence
9 of any record within each of the fire risk assessments
10 of what steps had been taken since the last fire risk
11 assessment to cure the actions outstanding in those?
12 A. We come back to the fact that the risk was what the risk
13 was.
14 Q. Now, can we go to PAS 79 at clause 19.2, page 60
15 {CTA00000003/60}.16 A. Yes, sir.
17 Q. We've looked at this, I think, yesterday. I just want
18 to cover it off, if I can.
19 It says there, under "Recommendations", 19.2:
20 "The action plan should be such as to ensure that,
21 if implemented, it will reduce fire risk to, or maintain
22 risk fire at, a tolerable level."
23 A. That's correct, sir.
24 Q. And I think that principle is reflected, isn't it, in
25 the template?

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1 A. It is, sir.
2 Q. Which is, for our purposes, page 98 of this document
3 {CTA00000003/98}.4 A. Yes.
5 Q. Where it says, under the heading "Action plan" — and it
6 says what it says.
7 So is it that the fire risk assessor must make
8 an assessment of whether the actions, once implemented,
9 will reduce or maintain the risk level to trivial or
10 tolerable?
11 A. Yes, you've got it. You test it in your mind.
12 Q. Right.
13 A. You imagine: now that's been done, what's my view now?
14 Q. So when you are writing "tolerable", do you assume the
15 cure of the items you're identifying or do you assess it
16 as it is?
17 A. Oh, no, as it is.
18 Q. Right, so it's tolerable without the cures?
19 A. Yes, and then if, say, it were at moderate, you would
20 test in your mind to ensure the adequacy of your action
21 plan, you hypothesise that they've carried out all the
22 measures you've recommended, and you then hypothetically
23 re—assess the risk.
24 MR MILLETT: I understand.
25 Now, in the light of that, let's examine what

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1 Mr Stokes said about this, because we know he didn't
2 include this section in his fire risk assessments.
3 If we go to the transcript, please, for {Day137/49}.4 Mr Chairman, I'm just looking at the clock while
5 this comes up.
6 SIR MARTIN MOORE—BICK: Yes.
7 MR MILLETT: If I can cover this before the short
8 adjournment. I mean, I can, so —
9 SIR MARTIN MOORE—BICK: Very well.
10 MR MILLETT: — if that's acceptable to you, that would be
11 good.
12 At page 49, if you look at line 24, I'd shown him
13 the template at PAS 79 which I've just referred you to
14 at page 98, and at line 24 I asked him this:
15 "Question: Can you explain why you didn't include
16 that in your action plans?
17 "Answer: Because it's already at tolerable.
18 "Question: But in terms of the template.
19 "Answer: It's guidance only, and it was already at
20 tolerable.
21 "Question: You had already classified the risk to
22 Grenfell Tower as tolerable, but was that the risk
23 rating before or after the actions that you recommended
24 should be implemented?
25 "Answer: Both.

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1 "Question: When you tick the tolerable box —
2 "Answer: Yes.
3 "Question: — was it tolerable if and on the
4 assumption that the items that you identified, the
5 action items, are completed, or is it tolerable even
6 though they're not completed, in other words tolerable
7 as the building stood?
8 "Answer: When the actions are completed they would
9 be tolerable.
10 "Question: This is why I asked the question.
11 PAS 79 suggests that the tolerable box is ticked so as
12 to maintain or reduce the level to what is ticked. So
13 is the answer that it is only once, as I think you say,
14 the actions are completed that the risk is tolerable?
15 "Answer: In the particular case here, before they
16 were tolerable, the actions would still make the
17 building tolerable when it's completed as well."
18 Is the approach described by Mr Stokes in that
19 exchange I've just read to you correct?
20 A. Well, he's kind of contradicted himself and then gone
21 back to his first position. So at line 7 he says it was
22 tolerable before and it was tolerable after, and then at
23 line 15 he says when the actions were completed they
24 would be tolerable. That was in response to your
25 question as to which it was. But then he goes back in

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1 line 21 to it was tolerable before and it would be
 2 tolerable after.
 3 So I'm not quite sure what your question is, sir.
 4 Q. My question is — perhaps it was simple, or perhaps
 5 simplistic — is the approach that he is describing
 6 there correct?
 7 A. If he thought it was tolerable before and it was
 8 tolerable after, then he would, in the risk assessment,
 9 record that it's tolerable now, and in the action plan
 10 he would record, if he follows PAS 79, that it would be
 11 tolerable after the work was completed. So that would
 12 be his both. But then in the middle of that exchange,
 13 sir, he seemed to veer from that.
 14 Q. I see.
 15 A. So I'm not quite sure what his approach was.
 16 SIR MARTIN MOORE—BICK: It seems to me that would beg
 17 a rather different question, which is: if it's tolerable
 18 before any suggestions are carried out, why do you need
 19 to make any suggestions? But you can always improve
 20 things in some respects.
 21 A. Yes. It's a formality included within PAS 79. It
 22 achieves nothing to say tolerable before, tolerable
 23 after, and I think that's your point, sir. If it's
 24 tolerable before, and you make it better, it's bound to
 25 be tolerable because it's never going to be trivial. It

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1 was a formality within the template.
 2 MR MILLETT: Right.
 3 Would you expect a competent fire risk assessor to
 4 calculate the risk to premises at the same level both at
 5 the time that the FRA is carried out, and again in the
 6 mind once the necessary action has been taken to address
 7 the risk posed by the hazards identified?
 8 A. If both are correct, yes.
 9 Q. Right. So is it quite common to say tolerable and would
 10 remain tolerable —
 11 A. Yes.
 12 Q. — even though there are a myriad of red items?
 13 A. Yes, you can sometimes have 30 items in an action plan,
 14 but none of them are showstoppers that are going to
 15 cause people to die.
 16 The tolerable — I'm not sure if this has come out,
 17 sir, from our exchange. To help the Chairman, the
 18 tolerable isn't — the risk assessor doesn't suddenly
 19 decide it's tolerable or moderate; he goes through the
 20 two components of risk, the probability of fire and the
 21 consequences of fire, and then the matrix drives him
 22 afterwards to determine — the matrix decides for him
 23 what the level of risk is. So the probability is always
 24 going to be medium, in practice, because there's always
 25 things that can start a fire. So the key thing for you

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1 to look at, sir, is the consequences of fire, and that's
 2 perhaps more relevant, what he considered the
 3 consequences of fire to be, because it's from that that
 4 he determined whether it's tolerable risk or not.
 5 Q. Yes.
 6 Now, in the light of the evidence you have given and
 7 we have explored together, and in particular your
 8 opinion you have expressed about the AOV which ought to
 9 have raised the risk rating to moderate, if the panel
 10 were to conclude, on the basis of the evidence,
 11 including your opinion, that Mr Stokes ought to have
 12 assessed the risk at Grenfell Tower at moderate and not
 13 tolerable, would his failure to identify the risk as
 14 moderate have fallen below acceptable standards?
 15 A. On the basis of the smoke control system alone, yes,
 16 sir.
 17 Q. Yes.
 18 A. If he knew that it wasn't working.
 19 MR MILLETT: Yes, thank you.
 20 Mr Chairman, is that a convenient moment?
 21 SIR MARTIN MOORE—BICK: Yes, I think it is, thank you very
 22 much.
 23 Well, it's time we stopped for some lunch, Mr Todd.
 24 THE WITNESS: Thank you, sir.
 25 SIR MARTIN MOORE—BICK: So we'll do that now. We'll come

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1 back at 2.05, please.
 2 THE WITNESS: Thank you, sir.
 3 SIR MARTIN MOORE—BICK: Usual request: please don't speak to
 4 anyone about your evidence over the break.
 5 THE WITNESS: Of course, sir. Thank you.
 6 SIR MARTIN MOORE—BICK: Thank you very much. If you would
 7 like to go with the usher, please.
 8 THE WITNESS: Yes, of course.
 9 (Pause)
 10 SIR MARTIN MOORE—BICK: I'm tempted to ask you, Mr Millett,
 11 whether you would regard progress as moderate or
 12 tolerable.
 13 MR MILLETT: It depends which is better, but moderate.
 14 SIR MARTIN MOORE—BICK: Well, we just have to keep going.
 15 MR MILLETT: Yes.
 16 SIR MARTIN MOORE—BICK: All right. 2.05, then, please.
 17 (1.05 pm)
 18 (The short adjournment)
 19 (2.05 pm)
 20 SIR MARTIN MOORE—BICK: Right, Mr Todd. All ready to carry
 21 on?
 22 THE WITNESS: Oh, yes, sir.
 23 SIR MARTIN MOORE—BICK: Good, thank you very much.
 24 Yes, Mr Millett.
 25 MR MILLETT: Yes, Mr Chairman, thank you.

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1 Mr Todd, I want to ask you some questions now
 2 arising out of your witness statement and particularly
 3 in relation to the LGA guide, if I may.
 4 A. Oh, yes, sir, thank you.
 5 Q. Yes.
 6 Can we go to your witness statement, please, at
 7 {CTA00000012}. We looked at it at the very start of
 8 your evidence formally.
 9 A. I recall, sir, yes.
 10 Q. At page 15 {CTA00000012/15}, can we look at
 11 paragraph 71.
 12 This is in the context of the consultation on the
 13 draft LGA guide.
 14 A. Yes.
 15 Q. In the second line:
 16 "... in addition to providing detailed comments on
 17 specific clauses of the draft, [we] asked seven
 18 overarching questions under five headings, as
 19 follows ..."
 20 A. Yes.
 21 Q. On page 16 {CTA00000012/16} you see question 6, under
 22 the heading of "Diversity".
 23 A. Yes.
 24 Q. And the question was:
 25 "Do you think that the guidance deals adequately

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1 with vulnerable people such as people with disabilities
 2 who need assistance with evacuation in the event of
 3 a fire?"
 4 A. Yes, sir.
 5 Q. Then you go on to say in your statement at paragraph 75,
 6 if you could please go to that on page 17
 7 {CTA00000012/17}:
 8 "In this connection, only around 50% of the
 9 respondents addressed the question on vulnerable
 10 occupants; a number of these were seeking only
 11 clarification of responsibilities. Others highlighted
 12 the importance of compartmentation for the safety of
 13 disabled people, so enabling them to stay put in the
 14 event of fire. In terms of the definitive question as
 15 to whether or not the question of disability was
 16 adequately covered, respondents were almost equally
 17 split in the affirmative and the negative."
 18 A. That's correct, sir.
 19 Q. Yes.
 20 Now, did any responses identify the problems that
 21 could face a disabled resident seeking to evacuate from
 22 a fire in their own flat or on their own floor?
 23 A. In their own flat or their own floor? I'm not sure
 24 whether they did or not. A number of respondents talked
 25 about the need for assistance to disabled people.

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1 A number of respondents said the guidance was fine.
 2 I think one — did I mention? — complained that the
 3 fire authority were asking for assistance to be provided
 4 by the RP for evacuation of disabled people or PEEPs to
 5 be prepared — PEEPs to be prepared, it was.
 6 So it was a bit of a curate's egg of response, is
 7 the nutshell answer, sir.
 8 Q. Now, let's go to {HOM00002660/7}. This is the response
 9 from the Chief Fire Officers Association.
 10 A. Oh, yes.
 11 Q. And it answers your question 6 under "Diversity" as
 12 follows:
 13 "The document, as stated earlier, tends to avoid any
 14 reflection on the effect of occupancy on the adequacy of
 15 provision over and above stating the minimum required
 16 for Building Regulation or Benchmark compliance.
 17 Experience shows us that stay put policy is adopted in
 18 many situations to overcome difficulties with disabled
 19 evacuation with the building failing to meet the
 20 standards required for stay put. Many providers have
 21 taken great effort to provide access for disabled
 22 persons and fail to appreciate the difficulties in
 23 a fire situation when the measures they have provided
 24 cannot be used in a fire situation. Additionally, the
 25 document states that where fire may start in common

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1 areas then occupants in these areas should make their
 2 way out of the building. To ignore and eliminate advice
 3 on disabled access and evacuation is a fundamental error
 4 of the document and is recommended that it must be
 5 included."
 6 A. Yes, sir.
 7 Q. Now, in particular focusing on that last sentence, how
 8 did you respond to that view?
 9 A. Well, that was one of the — I mentioned some were in
 10 the affirmative, some were in the negative. That
 11 obviously falls into the category of in the negative.
 12 Others expressed a completely different view. One
 13 particular fire and rescue authority said there is no
 14 need for you to give any further consideration to
 15 disabled people because it's adequately covered in other
 16 documents.
 17 Q. In considering the answers, or rather in asking the
 18 questions, did you seek the views of organisations
 19 representing disabled persons?
 20 A. Not as I recall, sir. I'm not sure if LGID might have
 21 done, but I don't think we as a practice particularly
 22 did.
 23 Q. Why was that?
 24 A. Probably because we were focusing on the fire and
 25 housing sectors and it may not have even occurred to us,

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1 if I'm honest.
 2 Q. I was going to ask you, did you actually think about it?
 3 A. We thought about disabled evacuation. I think
 4 I produced a document for you, sir, that showed within
 5 two days of being awarded the contract, we had a list of
 6 showstoppers, if you like, that we wanted to address,
 7 and one was disabled evacuation, and I think we said
 8 "evacuation or not" in our internal note on that, and
 9 then we wanted to get the public view on this.
 10 So this consultation was open to everyone. We
 11 invited, through certainly fire journals and through the
 12 profession, contact from or consultation from as wide
 13 an audience as possible. We put on three public
 14 roadshows, but LGID did the invitations to those, so I'm
 15 not sure who they invited and who they didn't, sir.
 16 Q. Right.
 17 Can we then look at {HOM00045964/120}, the LGA guide
 18 itself.
 19 A. Yes, sir.
 20 Q. I just want to show you two paragraphs in there.
 21 A. Yes.
 22 Q. At page 120, you will see 79.9 at the top of your
 23 screen, and it says this:
 24 "In 'general needs' blocks of flats, it can equally
 25 be expected that a resident's physical and mental

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1 ability will vary. It is usually unrealistic to expect
 2 landlords and other responsible persons to plan for this
 3 or to have in place special arrangements, such as
 4 'personal emergency evacuation plans'. Such plans rely
 5 on the presence of staff or others available to assist
 6 the person to escape in a fire."
 7 A. Yes.
 8 Q. I just want to ask you about the process whereby those
 9 statements came to be included in this guide.
 10 First, do you remember that you were separately made
 11 aware that, in September 2011, it had been suggested to
 12 a gentleman called Sir Merrick Cockell, late I think at
 13 that time of RBKC, but then of the LGA, that the
 14 guidance in respect of dealing with disabled persons was
 15 unlawful and you were tasked by him with providing
 16 a response? Do you remember that?
 17 A. This was after it was published, was it?
 18 Q. Well, it was September 2011.
 19 A. So it would be after it's published. I don't recall
 20 that off the top of my head, sir, no.
 21 Q. Let me see if I can help.
 22 Can we go to {HOM00019844}.
 23 This is a letter from an organisation called
 24 Triple Consult —
 25 A. Oh, yes.

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1 Q. — to Sir Merrick Cockell, who was chairman of the LGA,
 2 and if you scroll down to the end of the letter at
 3 page 4 {HOM00019844/4}, you can see that it comes from
 4 somebody called Elspeth Grant —
 5 A. Yes, I know Elspeth Grant.
 6 Q. — who was a director. Yes.
 7 Are you familiar with this letter?
 8 A. It doesn't ring a bell with me.
 9 Q. Right.
 10 A. But it may well have been shown to us, sir.
 11 Q. Okay.
 12 It's a long letter, I'm not going to read it all to
 13 you, but the gist of it is that 79.9 that I've read to
 14 you —
 15 A. Yes.
 16 Q. — and also 79.11 that I haven't, but I think you're
 17 familiar with —
 18 A. Yes.
 19 Q. — which says it's not realistic to expect such
 20 an approach to be adopted where disabled persons require
 21 assistance in a general needs block — the complaint, if
 22 we go to page 2 {HOM00019844/2} at the top of the
 23 letter, says, I'll show it to you:
 24 "These Clauses reflect an outdated viewpoint which
 25 is highly discriminative and not in line with UK

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1 Legislation relating to Equality or Fire Safety."
 2 A. Yes.
 3 Q. "Furthermore, the wording is directly contradictory to
 4 the legal advice given in Department of Communities and
 5 Local Government's Fire Risk Assessment for Sleeping
 6 Accommodation and the Supplementary Guide 'Means of
 7 Escape for Disabled People'; LACORS Housing —
 8 Fire Safety Guidance and BS9999:2008.
 9 "If this Guidance is not amended, The LGG is also at
 10 risk of legal action as a result of publishing advice
 11 that is contrary to The Law."
 12 There is some relevant legal background set out
 13 underneath that.
 14 A. Yes.
 15 Q. It goes on in a similar vein, and the conclusion at the
 16 end, on page 4 {HOM00019844/4}, is as follows:
 17 "If this Guidance is not amended, building managers
 18 and landlords who follow this advice will continue to
 19 discriminate in the area of fire safety against disabled
 20 people (who represent one fifth of the population) and
 21 indeed will be open to criminal or civil prosecution.
 22 "Given the current approach to disabled evacuation
 23 and lack of enforcement in this area, it is of little
 24 surprise that the Fire and Rescue Service Equality &
 25 Diversity Strategy states:

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1 "'The impact of fire is grossly disproportionate on
2 some communities (for example 39% of fatal fire deaths
3 are people with disabilities).'
4 "I hope that this letter has explained the issues
5 and I look forward to your response before this Guidance
6 leads to an unnecessary tragedy because plans were not
7 in force."
8 A. Yes.
9 Q. Now, my having read that conclusion to you in its quite
10 stark terms, does that ring a bell with you?
11 A. It doesn't, but it may well be — I would have thought
12 LGID probably would have sent it to us for comment,
13 and/or to CLG, to be honest. It was sent to LGA, was
14 it?
15 Q. Well, it was sent to Merrick Cockell — yes, exactly, as
16 head of the LGG.
17 A. So I would have thought they would have sent it to us
18 and CLG at the time, so I would think it's quite likely
19 that this would have been sent to us.
20 Q. Well, I think we'll see this probably from the next
21 document.
22 Can we go to {CLG10004907}, because this is
23 an email — help me with it — that I think shows that
24 your practice was sent this letter.
25 If we go to the second email down on the page, it's

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1 a letter from the "CSTA Office", that's you —
2 A. Oh, yes.
3 Q. — to Caroline Bosdet. Is it Bosdet?
4 A. I think so, yes.
5 Q. Copied to Louise Upton and Brian Martin.
6 A. Yes.
7 Q. "Dear Caroline
8 "Please find attached the basis of a response to
9 this person's letter.
10 "You may feel it's a bit on the long side, but you
11 know what we are like!"
12 A. Ah, yes, so we did see it.
13 Q. You did see it.
14 If you then go —
15 A. I don't know whether I saw the response. I probably
16 did, but —
17 Q. I'm so sorry, it's partly my fault, actually. Can we go
18 to page 2 {CLG10004907/2}. That's the response —
19 A. Okay.
20 Q. — from Steven Daws. The email that comes from
21 Caroline Bosdet is on the top of the next page,
22 29 August 2011, to you or to your office, and she says:
23 "Hello Colin, I am not sure this organisation took
24 part in the consultation but it would be good to check
25 if there was a written response from them.

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1 Sir Merrick Cockell is the new Chairman of LG Group our
2 equivalent of the Minister. I am currently off after
3 a knee operation and can't log in properly hence
4 forwarded emails. I hope the letter is attached. Are
5 you able to provide a response to her points as I will
6 be expected to provide a full response on this. I have
7 also copied in CLG colleagues who also will be able to
8 provide views. Many thanks Caroline."
9 It looks like you got it.
10 A. Yes, it looks like it.
11 Q. We've seen Steven Daws' response to that.
12 Was the response by CS Todd a joint effort by your
13 practice?
14 A. I honestly don't know because I don't recall the letter.
15 Can you go back to the reference, sir?
16 Q. Go back to the reference?
17 A. Down the bottom of the — the bit about "you know what
18 we're like".
19 Q. Yes, go to page 1 {CLG10004907/1}, second email down.
20 A. Right. Do you see the reference there, sir? So "SD"
21 means the letter was generated by Steven Daws and "MH"
22 means that it was peer reviewed by Malcolm Hoare, but it
23 may well be — and I certainly don't devolve myself of
24 responsibility — they ran it by me, but it looks as
25 though it was dealt with by Steven.

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1 Q. Right. My next question was: did you have any hand in
2 drafting —
3 A. Yes, that's what I don't know. I can probably find out.
4 Q. Well, let me show you the draft response.
5 A. Yes, okay.
6 Q. Because I don't want you to go and find out, I want us
7 to do this together right here.
8 A. Yes, of course.
9 Q. {CLG10004906}.
10 You can see it's clearly a draft, and we will come
11 to see that it's in fact, just so you understand,
12 significantly different from the version that's finally
13 sent.
14 A. Okay.
15 Q. Just for our reference, that's at {CLG10004932}.
16 But if we look at page 1 and look a little lower
17 down on the screen, if you go to the fifth paragraph
18 down —
19 A. Would you mind if I just read the paragraphs before it?
20 Q. Of course, please do.
21 A. Thank you.
22 Q. Tell me when you've got to the fifth paragraph down.
23 A. Of course.

(Pause)

25 Yes, well, I certainly agree with the first four

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1 paragraphs. Whether I saw it or not, I agree with
 2 what's in the first four. I'm now at paragraph 5, sir.
 3 Q. Thank you, and it starts:
 4 "We would agree with your view that the FSO applies
 5 to purpose built blocks of flats ..."
 6 A. Yes.
 7 Q. "... and that there is an obligation on the Responsible
 8 Person to carry out a fire risk assessment. Indeed, one
 9 of the main purposes of the guide is to explain in
 10 detail the application of the FSO to purpose built
 11 blocks of flats and to guide readers on the process of
 12 carrying out a fire risk assessment. You will find this
 13 in Parts C and D of the guide. However, as I am sure
 14 you are aware the FSO only applies to the common parts
 15 of blocks of flats and not the individual flats which
 16 are domestic premises. Therefore, the safety of
 17 residents in their own flats is clearly outside the
 18 scope of the FSO."
 19 Do you remember seeing that and approving that
 20 statement there?
 21 A. I don't remember but, as I say, it may well be that
 22 I was. I don't know why Steven did the reply, that's
 23 what's slightly confusing me, as to whether I wasn't
 24 available or whether, because he led the drafting team,
 25 I gave it to him. But if I was around, I'm sure I would

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1 have looked at this.
 2 Q. Was it the view of your practice at the time that the
 3 FSO did not apply to the evacuation of disabled persons
 4 from their flats?
 5 A. I think our view was if they had a fire in their own
 6 flat, that was outside the scope of the Fire Safety
 7 Order and, as we've discussed, sir, that's by far the
 8 most likely place for them to have a fire or to be
 9 affected by a fire.
 10 Q. Yes, and we covered that a little bit earlier in your
 11 evidence.
 12 A. Yes.
 13 Q. As at the date of this exercise, so this is
 14 September 2011, did your practice consider whether there
 15 were any duties owed to a disabled person once they were
 16 in the parts used in common in a high-rise residential
 17 block?
 18 A. I'm not sure that we would have thought of it in these
 19 terms.
 20 I think you're aware from other evidence that I've
 21 given you, sir, that we identified the fact that there
 22 was no consistency in the views expressed to us in
 23 consultation, and so we took the matter to the project
 24 group for a decision as to what they wanted us to say.
 25 Q. Yes, and we'll come to that in a moment.

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1 A. Of course.
 2 Q. But I'm just interested in the views of your practice at
 3 the time.
 4 A. At the time? I don't really recall it with any clarity,
 5 as to whether we had sat down and actually said, "What
 6 happens when a person goes into the common parts?"
 7 Q. You see, a person in the common parts is a relevant
 8 person.
 9 A. Yes.
 10 Q. And that would include a disabled resident.
 11 A. Yes.
 12 Q. A disabled relevant person, wouldn't it?
 13 A. Yes, indeed.
 14 Q. Therefore, my question really is: did your practice
 15 consider whether there were any duties owed by the
 16 responsible person under the FSO to a disabled person
 17 standing in what you call the common parts?
 18 A. The common parts. I would honestly answer that question
 19 candidly if I knew the answer to it, but here we are
 20 ten years later, I've no idea, really, what our —
 21 Q. Now, if we go to page 2 {CLG10004906/2}, please, of this
 22 letter and look at the second-last paragraph —
 23 A. Did you need me to read the bits in between?
 24 Q. I don't think I do, but if you want to, we can.
 25 A. I would rather, if you don't mind —

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1 Q. No, of course.
 2 A. — for context.
 3 Q. I'm not going to read it out aloud, if you don't mind.
 4 A. No, no, no, no.
 5 Q. Tell me when you have read the second page.
 6 A. Can we go back to where 5 was again.
 7 Q. Yes.
 8 A. That's where I left off, thank you.
 9 Q. Then tell me when you have reached the bottom of page 1.
 10 A. Okay.
 11 (Pause)
 12 Yes, could you turn the page, please, sir?
 13 (Pause)
 14 If I did read it, I missed a typo on "rationale",
 15 but ...
 16 Q. It was a draft and, as I say, not the version that was
 17 sent.
 18 A. Right.
 19 (Pause)
 20 I'm continuing to read. Where do I alert you as
 21 to —
 22 Q. The bottom of page 2, penultimate paragraph.
 23 A. Okay, I'm not there yet.
 24 (Pause)
 25 Yes, I'm at the bottom of page 2 now, sir.

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1 Q. Yes, thank you. If you would like to read on to page 3,
2 we can, but we'll do that together.

3 In the penultimate paragraph on page 2, you see it
4 says this:

5 "You will appreciate that, in the vast majority of
6 blocks of flats, no-one is employed to be present to
7 provide any form of assistance to residents in the
8 normal use of the building, let alone in emergencies.
9 We therefore can see little value in preparing PEEPs
10 when no-one is available to implement them.

11 "We are sympathetic to the suggestion, which you and
12 others have made, about holding information on
13 vulnerable and disabled people that can be accessed by
14 the fire and rescue service. While we are aware of
15 organisations that have put this in place, we do not
16 consider it reasonable and practical to recommend that
17 this is adopted by way of default in all blocks of
18 flats. It would place a significant burden on those
19 managing blocks of flats to continuously update the
20 information. Indeed, we have emphasised that inaccurate
21 information might be more harmful than no information."

22 Now, what I've just read aloud to you, was that the
23 view of your practice at the time?

24 A. Yes, I think that's probably fair comment.

25 Q. On what basis did your practice arrive at that view?

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1 A. Reasonable practicability, sir.

2 Q. Was that as a result of some sort of research or some
3 sort of empirical data collection?

4 A. Consultation with the housing sector, sir, and the fire
5 sector, and this was quite an extensive consultation.

6 Q. Right. So did members of that sector tell you about the
7 burdens on those managing blocks of flats?

8 A. In no uncertain terms.

9 Q. Right. Did your practice interrogate them about that or
10 did you just take that at face value?

11 A. Well, we realised that this was no different from the
12 situation over the past half century, and that the quirk
13 of blocks of flats coming within the scope of the
14 Fire Safety Order wasn't to actually change the
15 status quo, it was for the purpose of rationalisation of
16 fire safety legislation, and the purpose of including
17 blocks of flats was their possible consideration as
18 a workplace or that Europe might possibly consider them
19 to be a workplace.

20 So it wasn't terribly surprising that the housing
21 sector, or certainly many people in the housing sector,
22 said, "Well, we don't have staff and we can't arrange
23 for people to assist with evacuation of disabled people
24 as you do in all other premises", and so there was
25 nothing, as we saw it, untoward or surprising about the

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1 reaction of many people to the whole subject.

2 But, as I say, we then took it to the project group
3 and said: there is this contention. I think I've shown
4 you a document, sir, as an attachment to the witness
5 statement, in which we had a list of contentious issues
6 in which we said, "You will need to decide on this
7 because views are mixed".

8 Q. Yes, indeed, but was the real driver here not the
9 precise legal scope of the FSO, but the
10 practicabilities, namely the undesirability of imposing
11 on landlords or those managing residential blocks the
12 burden of collecting and maintaining information about
13 their individual tenants' disabilities?

14 A. Yes, I think there was concern expressed in the project
15 group about the hazards of doing that, because you could
16 be presenting to the fire and rescue service information
17 that was inaccurate and would therefore divert
18 firefighters to flats in which there weren't disabled
19 people, but the PEEP in the premises information box
20 might imply or would imply that there were.

21 Q. Were the views expressed in this letter that you have
22 read, so far as you have read it and those I've read out
23 to you particularly, discussed with civil servants at
24 the DCLG at the time?

25 A. The DCLG were part of the reference, the project group,

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1 sir.

2 Q. Indeed, and that's why I asked. Were the —

3 A. The — sorry, I just cut across you, sir. Do you want
4 to finish?

5 Q. I was just asking you: were the views I've read out to
6 you actually discussed, do you recall, with —

7 A. Oh, they absolutely were, and in fact, at the project
8 group meeting in which we took these points along and
9 said, "Let's discuss these but ultimately we'll need
10 a steer on this", there was representation from both
11 DCLG and the Chief Fire Officers Association,
12 incidentally.

13 Q. With whom at the DCLG did you discuss this point?

14 A. Those who represented the DCLG on the reference group.

15 Q. Who was that, please?

16 A. Is that confidential information or should that be
17 revealed, Chairman?

18 SIR MARTIN MOORE-BICK: I wouldn't have thought it was
19 confidential.

20 A. No, that's okay, it's just I can remember some of the
21 people on the project group, in fact at the meeting in
22 question, I could actually draw you a picture of the
23 table and where they sat, but I can't remember everybody
24 who was there, so I wondered whether it was out of
25 context to cite the names of particular people when

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1 I can't —
 2 SIR MARTIN MOORE—BICK: If you can remember —
 3 A. The ones that were there?
 4 SIR MARTIN MOORE—BICK: Yes.
 5 A. So there was Peter Wise from the inspectorate, there was
 6 Andy Cloke from the Chief Fire Officers Association,
 7 there was Louise Upton from DCLG, and the only reason
 8 I'm citing those is I'm picturing in my mind going round
 9 the table at the end of the table at which I sat. What
 10 I can't remember is who would have been further down the
 11 table, but I remember Peter Wise, Andy Cloke,
 12 Louise Upton, and there was someone from LGID, and
 13 I can't remember who else was there.
 14 MR MILLETT: Can you tell us the gist of their views or
 15 their responses?
 16 A. Well, you can see the outcome of the meeting, sir, in
 17 what's written in the LGA guide.
 18 Q. Right. So the answer is that, is it: the gist of their
 19 views was as seen in 79.9 that I've read aloud to you?
 20 A. Yes, I remember — and I think it would be inappropriate
 21 to possibly say who said what, because this is quite
 22 a long time ago, but I think I can remember who said:
 23 how would you keep this information up to date? In some
 24 ways you're better giving no information than giving
 25 misleading information and taking firefighters to flats

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1 possibly above the fire where there isn't a disabled
 2 person. The practicalities of it are very difficult.
 3 And the view was that the important thing was to
 4 make sure the compartmentation was right so that
 5 stay put was safe for everybody. There then remained
 6 the much more common issue, which I've referred to
 7 several times, of disabled people who have a fire in
 8 their own flat, which was, if anything — well, not just
 9 if anything — was much more of our concern, and this
 10 comes back to what I said was a very salient question
 11 asked by the Chairman: what do you do about a disabled
 12 person who has a fire in their own flat? And the answer
 13 is — and I'm not going to go through all the things you
 14 can do — there is a massive amount you can do, and
 15 should do, and the view was that was a matter for
 16 community fire safety, not legislative fire safety.
 17 Q. Now, were the views expressed in this letter, so far as
 18 I've read them to you, taught to fire risk assessors on
 19 your LGA guide training courses in 2012 and 2013, do you
 20 remember?
 21 A. I can't remember whether we would have got — you see,
 22 I come back to the fact blocks of flats were not high
 23 profile, and so I could disclose the PowerPoint slide
 24 presentation, if you wish, from some of these courses
 25 probably, because I know it dealt with disabled

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1 evacuation, and it dealt with it very robustly, in terms
 2 of commercial premises, and by robustly we were very
 3 intent on dispelling the myth that you can leave people
 4 in a commercial building for the fire and rescue
 5 service. I do know that every examination paper on that
 6 course, every examination paper, had a question on
 7 disabled evacuation.
 8 I can ... I won't take up your time with telling you
 9 what the sort of questions were, unless you want to
 10 know.
 11 Q. What about your fire risk assessment courses that you
 12 ran in those years, 2012/2013? Were the views set out
 13 in this draft letter taught to candidates on those
 14 courses?
 15 A. I come back to what I've just said, sir: we probably
 16 never really focused on blocks of flats, because the
 17 vast majority of those attending courses were interested
 18 in non-domestic premises. So there was quite a lot of
 19 discussion about disabled evacuation, about considering
 20 all different types of disabilities, the concept of
 21 refuges, communications in refuges, et cetera,
 22 et cetera, assistance for disabled people, how you can
 23 provide it, but as far as I can recall on those courses,
 24 it was all related, in all honesty, to commercial
 25 premises.

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1 Q. In your role as chairman of the FIA, do you remember —
 2 A. I'm not chairman of the FIA, sir.
 3 Q. No, but do you remember attending a meeting on
 4 9 March 2012 where a decision was made that somebody
 5 called Martin Duggan should write to the IFSM, the
 6 Institute of Fire Safety Managers, to make it clear that
 7 the FIA's council's view was that PEEPs weren't required
 8 in general needs housing and that the FRA Council could
 9 not support another event under an FIA banner where the
 10 contrary view was expressed? Do you remember that?
 11 A. I don't, but what I'm chairman of, sir, is the Fire Risk
 12 Assessment Council of the FIA.
 13 Q. Right.
 14 A. And what I do recall was dealing with complaints from
 15 members after a seminar in which views were expressed
 16 that were, in the mind of those complaining, contrary to
 17 the understanding of the sector. Martin may have
 18 responded because of those complaints.
 19 Q. I see. Do you remember him doing so?
 20 A. Not off the top of my head, no.
 21 Q. Right.
 22 Now, let's look at the final version of the letter
 23 sent to Elspeth Grant in response to hers of
 24 23 August 2011. This is at {CLG10004932}.
 25 We looked at the draft in some detail.

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1 A. Yes.
 2 Q. Now, this is the final version, which is rather
 3 different.
 4 It's undated, unfortunately, but it comes from
 5 Caroline Bosdet at the LGA who, as you told us, was head
 6 of the reference group.
 7 Just casting your eye down what's on the screen, do
 8 you recall whether you or your company had a hand in
 9 drafting it?
 10 A. I would very much doubt that we would, but given that
 11 I have only a vague recollection of this whole episode,
 12 I couldn't say one way or the other. But I would have
 13 thought, in the circumstances, we would have sent the
 14 draft letter to LGA — I mean, that was the purpose of
 15 drafting it, I imagine — and that LGA then, as it said,
 16 consulted with members of the project group and DCLG,
 17 and they then produced their own version. But I'm
 18 surmising as to what is likely to have happened, sir.
 19 Q. Very well, that's helpful.
 20 Now, let's just note the second paragraph, where the
 21 author says:
 22 "I have ensured that careful consideration has been
 23 given to the points you have made in your letter. This
 24 included;
 25 "— seeking clarification from the original drafting

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1 team, CS Todd and Associates, appointed as expert
 2 consultants in the field of fire safety.
 3 "— consulting with members of the Project Group,
 4 including key officers from the Department for
 5 Communities and Local Government (DCLG) who funded the
 6 production of the Guidance."
 7 Then if we turn to paragraph 4 at the very bottom,
 8 it says:
 9 "The development of the Guidance was overseen by
 10 a stakeholder Reference Group (the composition of which
 11 is listed on page nine of the Guidance). A significant
 12 breadth of interest and expertise was represented on the
 13 Reference Group. The Reference Group signed off the
 14 Guidance at its final meeting on 1st July 2011. The
 15 process of developing the Guidance involved extensive
 16 public consultation through the LG Group website, which
 17 was widely publicised. In addition, several road shows
 18 were held to canvas views on what should be included in
 19 the Guidance and on the proposed content. A Project
 20 Group were responsible for managing the consultation
 21 responses through the wider Reference Group of major
 22 stakeholders."
 23 A. Yes.
 24 Q. I think you have disclosed the lists of attendees, and
 25 we can look at those. Let's have those: {CTA00000021},

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1 {CTA00000022} and {CTA00000023}. If we can just have
 2 a look at each of those in turn.
 3 Looking at the first of those {CTA00000021}, this is
 4 the delegate booking form for the meeting, 11 May 2011.
 5 I think this is a roadshow.
 6 A. This is one of the roadshows, sir.
 7 Q. Yes.
 8 A. I'm not sure if it's relevant, but more people turned up
 9 at the roadshows than had actually pre-booked, because
 10 often people phoned us and said, "Could we come along?"
 11 So that would not be necessarily all the attendees, but
 12 those that pre-booked.
 13 Q. Right.
 14 Just looking down the list there, we don't see,
 15 I don't think — help me — any specialist in disability
 16 evacuation or stakeholders representing residents with
 17 disabilities.
 18 A. Is there a second page, sir?
 19 Q. There is, and if we can go to the second page
 20 {CTA00000021/2}, we will see the second page. Same
 21 question again. There is a third page too. But long
 22 list of people.
 23 My point is really a simple one I want to ask you
 24 about: do you remember seeing anybody on that list or
 25 the other lists of attendees at these roadshows who were

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1 specialists in disability evacuation or stakeholders
 2 representing residents with disabilities?
 3 A. I wouldn't remember who were attendees, sir. I mean,
 4 one of the roadshows had over 100 people. I think 80
 5 booked and over 100 attended, so I wouldn't know who was
 6 there and who wasn't.
 7 Q. Can we go back to the letter, then, please at
 8 {CLG10004932}, and look, please —
 9 A. One moment, sir. You couldn't just go back to the
 10 bottom of that, could you?
 11 Q. Yes, {CTA00000021}, please.
 12 A. Lambeth Living, do they not specialise in housing for
 13 vulnerable people? I may be wrong.
 14 Q. Lambeth Living. Where do we see that, please?
 15 A. I saw two people from Lambeth Living.
 16 SIR MARTIN MOORE-BICK: Page 2 {CLG10004932/2}.
 17 MR MILLETT: Page 2.
 18 A. They may just be a housing association, I just happened
 19 to see the name of Tony Upfold, who I knew, and I dealt
 20 with him over some problems in sheltered housing. But
 21 they may just be the organisation who managed what was
 22 the council stock in Lambeth, I'm not sure. I know they
 23 did have specialised housing, as I recall.
 24 Q. Can we then go back to the final version of the letter
 25 as sent to Elspeth Grant, {CLG10004932}.

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1 A. Yes.
 2 Q. Can we go to page 1, penultimate and last paragraphs on
 3 that page, and then we'll go over the page.
 4 A. Yes.
 5 Q. I read you the penultimate paragraph. The last
 6 paragraph says:
 7 "While the Project Group did not receive your
 8 comments at the consultation stage, there was
 9 considerable feedback on the issue of fire safety of
 10 people with disabilities and the vulnerable living in
 11 flats within a purpose-built block and the extent to
 12 which the Guidance should and could address this. This
 13 was one of a small number of contentious issues that was
 14 specifically highlighted to the wider stakeholder
 15 Reference Group and I can reassure you that the
 16 particular needs of people with disabilities and
 17 vulnerable people have been taken into account
 18 throughout the Guidance. There were no practical
 19 solutions offered to address the issue of evacuation of
 20 people with disabilities from purpose-built blocks of
 21 flats."
 22 First, did the reference group itself contain any
 23 disability specialists or any representatives of
 24 organisations representing disabled persons?
 25 A. Not that I recall. The project group didn't. The

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1 reference group was a much wider group, and I can't
 2 remember who was on it. But I know the project group
 3 didn't.
 4 Q. Right. Why did the project group not?
 5 A. That would be a matter you'd have to put to LGID. We
 6 didn't choose the members of the project group.
 7 Q. I follow.
 8 A. We were given them, as it were.
 9 Q. I understand that, but do you have any insight you can
 10 offer us as to why —
 11 A. None whatsoever.
 12 Q. Right.
 13 Do you know whether the consultation actually
 14 consulted with any disability experts or representatives
 15 of that section of society?
 16 A. I can't recall. I know we invited comment from as wide
 17 a group of members of the public as we possibly could by
 18 advertisements in fire and housing magazines. We
 19 certainly invited comment right from the start from
 20 anybody who wanted to comment, and, as I recall, the
 21 invitation went out through Inside Housing and a number
 22 of fire journals, I think, who were kind enough to put
 23 in our appeal, as it were, for comment as to what the
 24 guide should cover.
 25 So there was a very wide consultation, but sitting

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1 here, I can't tell you whether any specialist groups
 2 concerned with disability were consulted.
 3 Q. Right.
 4 I mean, do you remember whether, since it had become
 5 such a contentious issue that was specifically
 6 highlighted to the wider stakeholder reference group,
 7 any thought was given by anybody you know or by yourself
 8 to making sure that there was somebody on the wider
 9 stakeholder reference group who was a specialist in
 10 disability?
 11 A. Well, membership of the reference group was beyond our
 12 gift, and at the stage at which we flagged it up as
 13 a contentious issue on which we needed a steer, at that
 14 stage the reference group was already well established
 15 and was about to finish its job, as it were. Similarly
 16 the project group.
 17 Q. Did anybody on the project group or the wider reference
 18 group or yourselves take any legal advice about whether
 19 you or they ought to be consulting such persons, given
 20 the potentially discriminatory nature of the approach
 21 that Ms Grant had highlighted in her 23 August 2011
 22 letter?
 23 A. Do you mean before the guide was published —
 24 Q. Yes.
 25 A. — or after?

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1 Q. Well, at any stage.
 2 A. At any stage. The whole guide was read by Government
 3 lawyers to check that it would comply with all
 4 legislation.
 5 Q. Right.
 6 A. And in fact, comments came back from Government lawyers,
 7 as I recall, on specific matters such as, I seem to
 8 recall, Government lawyers had a view on leaseholder
 9 doors, and whether leaseholders could really be
 10 Article 5(3) persons. So the whole document was
 11 scrutinised by Government lawyers.
 12 Q. Do you remember, without telling me what the content of
 13 the advice was, as a fact whether once Elspeth Grant had
 14 raised the legal challenge based on the Equality Act and
 15 other pieces of guidance or legislation and community
 16 law, anybody within the Government specifically sought
 17 or gave legal advice on those questions?
 18 A. That would really be beyond our knowledge. Our project
 19 was completed in July, when the guide was published in
 20 July 2011. I can see here that LGID or LGA, whichever
 21 it was by then, consulted with DCLG. Whether DCLG
 22 internally consulted with lawyers or who they consulted
 23 with, they wouldn't necessarily have told us, and
 24 I certainly don't know.
 25 Q. Okay.

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1 Now, would you mind just reading the rest of this
2 letter to yourself?
3 A. Of course.
4 Q. Because I've got a general question.
5 You have read the first page, I think, completely.
6 Would you read the rest of it?
7 A. No, I haven't finished the — sorry, the page that's on
8 the screen at the moment I haven't read.
9 Q. Exactly, that's what I'd just like you to finish
10 reading.
11 A. Certainly, sir.
12 I think I would just wish to draw attention to the
13 last sentence of the first paragraph, and that's
14 absolutely true: no one had any practical solutions.
15 Lots of people, to use the modern idiom, talk the talk
16 about disabled evacuation, but when you ask them to walk
17 the walk and ask, "What is it you'd like us to do?",
18 they have no answers.
19 Q. Since you have picked that up —
20 A. Yes.
21 Q. — let me ask you a question about it.
22 It says there were no practical solutions offered;
23 had you or the project group actually asked any
24 stakeholders for any "practical solutions"?
25 A. No, but one or two people raised the subject of disabled

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1 evacuation, but they only offered fairly high-level
2 comment about, "You'll need to make arrangements for
3 people with disabilities", but nobody offered to tell us
4 what these arrangements might be, and that remains quite
5 a problem today, actually.
6 Q. My point really is that no one was actually asked, were
7 they? In the consultation exercise, nobody was actually
8 asked for practical solutions to overcome the perceived
9 practical problem.
10 A. No, we invited comment as to whether the guide
11 adequately addressed people with vulnerabilities. We
12 asked that specific question.
13 Q. Yes, but you didn't ask them the question —
14 A. "Would you like to tell us how to organise a PEEP for
15 disabled people?"
16 Q. Yes.
17 A. No, we didn't.
18 Q. No.
19 A. Shall I finish reading?
20 Q. Yes, please.
21 (Pause)
22 A. Yes, the wording's been changed.
23 I doubt that we actually had a hand in that, but
24 whether it was run by us or not, I can't say.
25 Q. Now, you having read it down to the signature,

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1 Caroline Bosdet —
2 A. I haven't come to her signature yet.
3 Q. I'm sorry, I thought —
4 A. It may be just off the screen — yes, it's just off the
5 screen. Thank you.
6 Q. Right.
7 Now, I've shown you the draft —
8 A. Yes.
9 Q. — and I've shown you the as-sent response.
10 A. Yes.
11 Q. You have read them, I hope, thoroughly, and we can go
12 back to them again if you like, but having read them, do
13 you accept that the as-sent version of the letter makes
14 no reference whatever to the perceived practical
15 problems for landlords in gathering and maintaining the
16 information on disabled residents; instead what it does
17 is it focuses on the benefits of stay put and the scope
18 of the FSO, and we can read that difference.
19 Can you explain why the LGA didn't tell
20 Elspeth Grant in its response that the underlying
21 rationale for the LGA guide's position on PEEPs was to
22 avoid imposing disproportionate burdens on landlords?
23 A. I have no idea, sir.
24 Q. Right.
25 A. That would be a matter for LGA, and DCLG as was.

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1 Q. Right.
2 Did you have any discussion within your practice or
3 with the project board about whether to set up
4 a consultation workshop with resident disability
5 specialists to consider the consequences of the then
6 draft advice in —
7 A. Not as far as I can recall, sir.
8 Q. No.
9 Do you think that it might have been a shortcoming
10 in the consultation process for the sector to reach
11 a view about the practicality of not having PEEPs or the
12 practicality of difficulties of having them in
13 purpose-built blocks of flats without consulting
14 disability specialists?
15 A. What I would say again is that we invited comment from
16 as wide a group as we could possibly access. I've been
17 in fire safety for 45 years, sir. It would be no
18 exaggeration to say I cannot think of any guidance
19 published ever that I've been involved with that was
20 subject to such massive consultation. A British
21 Standard wouldn't go out, for example, to the public
22 with three roadshows, have a couple of hundred people
23 invited along to have their say. And we undertook our
24 own consultation with colleagues in the sector, the LGID
25 defined who was to be involved in the project group and

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1 the reference group, so we thought — and it will be for
 2 the Chairman to decide as to whether we were wrong, all
 3 of us, including Government and LGA — we thought we had
 4 consulted as widely as we possibly could, and we went to
 5 great efforts to that end, sir.
 6 Q. Now, can I come back to your statement. I want to ask
 7 you one or two questions next about the project board
 8 and the reference group.
 9 A. Yes, sir.
 10 Q. If we go to your statement {CTA00000012/12}, please,
 11 let's look together at paragraph 55.
 12 A. Yes.
 13 Q. You say there in the third line:
 14 "At this stage, I would note that one of the areas
 15 identified was whether PEEPs would be appropriate for
 16 purpose—built blocks of flats. Our view was that PEEPs,
 17 in the sense that the term is normally used whereby
 18 staff on premises assist with evacuation of disabled
 19 people, were not practicable. However, we referred the
 20 matter to the Project Board for advice and a decision on
 21 this. I can recall the discussions on the matter at the
 22 Project Board, including some of those present at the
 23 meeting in question. The consensus opinion of the
 24 Project Board was that the LGA Guide should acknowledge
 25 that PEEPs were not practicable."

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1 A. That's correct, sir, yes.
 2 Q. Now, we've discussed, and I think you remember people
 3 sitting round the table —
 4 A. Some of them.
 5 Q. Some of them, yes. Do you remember, did the project
 6 board consider how PEEPs could be made to work in
 7 general needs housing? In other words, did anybody
 8 around the table actually turn their minds to how it
 9 might be made to work?
 10 A. I think it was all part of the distinction. You see,
 11 PEEPs as understood at the time, sir, were procedures
 12 that were adopted in buildings with staff. I come back
 13 to the distinction between evacuation and rescue,
 14 evacuation being a routine procedure whereby, if there
 15 is a fire, everybody in the building evacuates, whether,
 16 if you like, there is a need to or not. It's
 17 a simultaneous evacuation strategy. In those buildings,
 18 you need PEEPs for disabled people and that's what you
 19 get.
 20 So it's not an evacuation — I know I'm repeating
 21 what I said before, but I think this is really
 22 important, Chairman. In a block of flats, if disabled
 23 people are having to leave their flats, something is
 24 wrong, unless the fire is in their own flat. So there
 25 is something very wrong, and when there is something

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1 very wrong, it becomes a rescue, an abnormal situation,
 2 and that's, without being flippant, what the R in FRS is
 3 for, for rescue. So it's not really an evacuation, so
 4 the term is a misnomer.

5 Furthermore, to deal with the Chairman's question,
 6 which I keep coming back to, how do you deal with people
 7 who are disabled and have a fire in their own flat, one
 8 of the first things you do is put telecare-enabled smoke
 9 detection in throughout the flat. How can that be
 10 called a personal emergency evacuation plan? It's not.

11 You sometimes give them fire retardant bedding
 12 because they may want to smoke in bed, and they should
 13 be as entitled to smoke in bed as you or I, sir. So if
 14 that's the lifestyle they want, you don't tell them,
 15 "You've got to stop smoking because you're disabled",
 16 you work around how the disabled person wants to live
 17 their life, and you give them fire retardant bedding,
 18 you give them fire retardant nightwear, sometimes you
 19 give them what's called a smoking apron, which I can
 20 explain if you need me to, and so you kind of work round
 21 their lifestyle.

22 The ultimate, when all else fails, and you're still
 23 not happy that you've protected this person against
 24 a fire in their own flat, you put in some form of
 25 suppression, and I've done that myself, tailor—making it

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1 for a disabled person in a block of flats with a chaotic
 2 lifestyle, and we said: we can't do enough for this
 3 person, they're still going to die from fire, they need
 4 a suppression system. You wouldn't call a suppression
 5 system a personal emergency evacuation plan.

6 So that was why I said early in my evidence, sir,
 7 that providing a PEEP for a disabled person to cater for
 8 a fire elsewhere in the block is putting a superficial
 9 scratch on fire safety for disabled people.

10 SIR MARTIN MOORE—BICK: Well, Mr Todd, just help me, because
 11 when I asked that question, I had in mind, let's assume,
 12 a disabled person, maybe who relies on crutches or
 13 a walking frame or whatever —

14 A. Yes, yes.

15 SIR MARTIN MOORE—BICK: — whose flat is affected by a fire
 16 in the kitchen —

17 A. Yes.

18 SIR MARTIN MOORE—BICK: — which gets out of control.

19 A. Yes.

20 SIR MARTIN MOORE—BICK: So he or she has to leave the flat.

21 A. Yes.

22 SIR MARTIN MOORE—BICK: And there he or she is standing in
 23 the lobby —

24 A. Oh, right.

25 SIR MARTIN MOORE—BICK: — of a building such as

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1 Grenfell Tower.
 2 A. Yes.
 3 SIR MARTIN MOORE—BICK: On, let's say, the 17th floor —
 4 A. Yes.
 5 SIR MARTIN MOORE—BICK: — with a lot of steps.
 6 A. Yes.
 7 SIR MARTIN MOORE—BICK: What, if anything —
 8 A. Can be done for them?
 9 SIR MARTIN MOORE—BICK: — can be done for them?
 10 A. Well, that comes back to the Fire Brigades Union's
 11 point: tell these people they can use the lift, don't
 12 tell them they can't use the lift, because you're
 13 forcing them down, in your case, sir, 17 flights of
 14 stairs, when every other resident in the block is
 15 perfectly free and able to use the lift.
 16 SIR MARTIN MOORE—BICK: That might argue for the conclusion
 17 that in that case — and each case will no doubt depend
 18 on its own facts — somebody should have thought about
 19 it, and the personal evacuation plan would say, if
 20 nothing else, "Use the lift".
 21 A. Yes, and that is why, sir, I said that a PEEP is
 22 a subset of something much more important, which
 23 I called a person-centred fire risk assessment, because
 24 the very salient point you've made, sir, is that there
 25 is a variety of disabilities, and we have to cater for

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1 the worst-case scenario, in which the person is
 2 bedridden.
 3 But you make a very good point: there is a range of
 4 abilities between fully able-bodied and someone who is
 5 bedridden, and the only way to deal with that is
 6 a tailor-made, person-centred fire risk assessment, and
 7 from that might fall out a PEEP, it might fall out
 8 a PEEP, or a personal rescue emergency plan, which
 9 I have penned the name more recently for it, PREP, which
 10 I notice people have latched on to. But you tailor-make
 11 it, and it's important you do that, sir, and we don't do
 12 it enough.
 13 Because remember, 180 people have died in blocks of
 14 flats since Grenfell, and many of these will be older
 15 people. Fire is classist and ageist; it picks on old
 16 people, it picks on vulnerable people, it picks on poor
 17 people. And don't take this the wrong way, sir, but
 18 High Court judges and QCs don't die in fires. People
 19 who die in fires are those who are the most vulnerable
 20 in society, and the most impoverished in society, and
 21 what we should be doing is making sure that we have
 22 arrangements that we look after all disabled people, and
 23 we don't just scratch the surface and say, "If there is
 24 a fire elsewhere, friends and neighbours will get you
 25 out".

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1 There is masses you can do, sir. I mean,
 2 I mentioned telecare-enabled smoke alarms, but that's
 3 just for starters.
 4 SIR MARTIN MOORE—BICK: I think I get the picture and that's
 5 helpful, thank you.
 6 A. Good. I'm sorry if that was one of my longer answers,
 7 sir.
 8 SIR MARTIN MOORE—BICK: That's all right, I encouraged you.
 9 A. Thank you.
 10 SIR MARTIN MOORE—BICK: Yes, Mr Millett.
 11 MR MILLETT: Do you remember whether, at the project board,
 12 the concerns of the Chief Fire Officers Association that
 13 we looked at earlier at {HOM00002660/7} were noted?
 14 A. I don't recall that, sir, but I wouldn't wish to do
 15 a disservice to CFOA, as was, so if you tell me that
 16 they — well, you're not telling me they were, you're
 17 asking me the question.
 18 CFOA were on the project board, I know for a fact,
 19 but I can't remember them strongly disputing the
 20 consensus opinion. But we're going now into the
 21 granular detail of discussions, and so I don't want to
 22 do them a disservice.
 23 Q. You don't recall, I think is the answer?
 24 A. I don't recall, sir, no.
 25 Q. Can we go to paragraph 78 of your statement, please.

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1 A. Yes, sir.
 2 Q. {CTA00000012/17}.
 3 You say there you recollect very clearly the subject
 4 of PEEPs being discussed at the project group, and then
 5 you go on to say this:
 6 "The consensus opinion of the Project Group was that
 7 it should be acknowledged in the LGA Guide that PEEPs
 8 were impracticable because of the difficulty of
 9 collating information and keeping it up to date."
 10 What were the practical difficulties in collating
 11 information and keeping it up to date about disability
 12 or vulnerability if the resident was willing to provide
 13 it?
 14 A. Okay. So it's not so difficult in social housing, but
 15 remember, this guide, sir, is written for all blocks of
 16 flats. So can I give you the hypothetical situation of
 17 a posh block of flats in West London, if I can put it
 18 that way, all leaseholders, and the leaseholders have
 19 bought the freehold, so there is now a residents
 20 management company running the block. So the residents
 21 are the owners, the managing agents and the residents.
 22 So, first of all is identification. So when one
 23 leaseholder sells their flat, it's not incumbent on them
 24 to tell the other residents that they've introduced
 25 a disabled person into the block. If they have

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introduced a disabled person into the block, you have the difficulty that this disabled person — say I'm bedridden, I buy my flat in this block and I kind of say to the other residents, "Hello, I'm disabled, sort me out a PEEP", how would they actually do that, is the rhetorical question? And many leaseholders sublet, so you don't actually know who is in each flat, and so you've got the difficulty of identifying the disabled people, that's only half the problem, maybe only 40%, because you now have to keep it up to date, and how often do you need to review that? Because it will become very rapidly out of date.

One of my own personal horrors which I share with some colleagues in the fire and rescue service is that you have a fire in a block of flats, perhaps not in London, perhaps in Ipswich, and you open the PIB and it tells you that there is a bariatric person on the 12th floor, and the fire is on the fifth floor, but the officer in charge wants more people to come out. A bariatric person, Chairman, is a minimum of four firefighters and a basket stretcher, so we're now committing four firefighters many floors above a fire, which you would never want to do because you're putting them at serious risk. Firefighters will always put themselves at risk if it's necessary to save life,

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always. So they will go to the 12th floor, and you've lost four firefighters. In a shire counties brigade, that's probably half of your firefighting resources that you'll have in the first ten minutes. And in the meantime you find that this bariatric person was taken into hospital last week, or they moved out of the block six months ago. So you check it every six months. Okay, they moved out five months ago. And you've now diverted firefighters from a disabled person who does need assistance and from dealing with the fire. So the problem is keeping the information up to date.

Now, as it happens — and I don't want to digress into this, sir, because you'll cut me off, I know — for the past 18 months, Chairman, I've personally been working on a technological solution to this so that firefighters can be presented with real-time information about disabled people who are actually there and have funding for that — not for my practice, we're doing this on a non — we're not charging for this, but to fund a couple of trial installations, and we have funding from the Fire Industry Association, Scottish Government, the Scottish Fire and Rescue Service, British Approvals for Fire Equipment, and it's underwritten by a company called Aico, who said, "We believe this is really right and we'll give you up to

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£10,000 if you can't get it from anyone else", and we are poised to run a trial installation, one in London, one in Edinburgh, and we're just forming a steering group, on which there will be disability groups represented, to see if we can actually solve this problem once and for all and give firefighters real-time information that can be easily kept up to date. I'm not going to bore you with why, but they will actually have accurate information.

But that of course is still, sir, for the purpose of rescue, because it is rescue that probably arises.

Does that help, sir?

MR MILLETT: Well, it prompts another question.

A. Oh, right.

Q. Why could that not have been done or developed or investigated in 2011?

A. Probably because the technology wasn't around for time and attendance technology, as it's called.

Q. Was it investigated?

A. No, it wasn't, sir.

Q. Why is that?

A. Because no one thought of it, sir.

Q. Was it the Grenfell Tower fire that prompted these thoughts which have given rise to the projects —

A. Oh, absolutely.

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Q. — that you've just described?

A. Absolutely.

Q. So had the fire happened in 2015, the thinking would have started then, or 2013, the thinking would have started then?

A. How can I say, sir? It came to me one day and I decided to progress it in my own time as a little hobby, and I've been doing that for 18 months with funding from a lot of supportive people in the fire sector.

Q. Did anybody consider carrying out any quality impact assessment on the guide at the time?

A. That wouldn't have been a matter for us, that would have been a matter for LGA or DCLG.

Q. Yes, indeed it would, but my question is really were you —

A. I can't tell you the answer.

Q. You can't tell me the answer, right.

Finally, can I come to the BS 9991 guidance, which is 2015.

A. Yes, sir.

Q. This is at {BSI00000059}.

Now, it's 2015, so is it clearly postdates the completion of the guidance, as you can see from the top right-hand corner.

Is it a standard — I think it is, isn't it? —

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1 applicable specifically to fire safety in the design,
 2 management and use of residential buildings?
 3 A. Yes, it's for the design of new buildings.
 4 Q. Well, management and use.
 5 A. After design, yes.
 6 Q. Indeed, and it's a code of practice.
 7 First question: did you have any role yourself in
 8 the formulation of this standard?
 9 A. None at all.
 10 Q. None.
 11 Now, in recognising as a general principle that, in
 12 some circumstances, fire services will need to decide to
 13 evacuate a building, can we look at page 15
 14 {BSI00000059/15}, and look together at 0.2.1. It says,
 15 "General principles".
 16 A. Yes.
 17 Q. "The means of escape from a flat or a maisonette of
 18 limited height is relatively simple. With increasing
 19 height more complex provisions are needed because
 20 emergency egress through upper windows becomes
 21 increasingly hazardous.
 22 "The provisions for means of escape for flats or
 23 maisonettes are based on the assumptions that ..."
 24 Then there are four set out:
 25 "b) there can be no reliance on external rescue

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1 (e.g. a portable ladder)."
 2 A. Yes.
 3 Q. Then if you look at (c):
 4 "The flat or maisonette will have a high degree of
 5 compartmentation and therefore there will be a low
 6 probability of fire spread beyond the flat or maisonette
 7 of origin, so in most fires simultaneous evacuation of
 8 the building is unlikely to be necessary ..."
 9 A. Yes, sir.
 10 Q. Under the note it says, towards the bottom of your
 11 screen:
 12 "Whilst a simultaneous evacuation is normally
 13 unnecessary (see A.1 regarding stay put strategy), there
 14 will be some occasions where operational conditions are
 15 such that the fire and rescue service decide to evacuate
 16 the building. In these situations the occupants of the
 17 building will need to use the common stair, sometimes
 18 whilst fire-fighting is in progress. As such, the
 19 measures in this British Standard for the protection of
 20 common stairs are designed to ensure that they remain
 21 available for use over an extended period."
 22 A. Yes, sir.
 23 Q. Now, if we then go, keeping that in mind, please, to
 24 page 20 {BSI00000059/20}, at the bottom of the page, we
 25 can see there:

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1 "Effective management of fire safety can contribute
 2 to the protection of the building occupants in many
 3 ways ..."
 4 Then (d):
 5 "By being aware of the types of people in the
 6 building (such as disabled people, elderly people,
 7 children, pregnant women, etc.) and any special risks or
 8 needs."
 9 A. Yes.
 10 Q. Then if we go to page 33 {BSI00000059/33},
 11 paragraph 4.6, "Inclusive design" is the heading of this
 12 section, and the second paragraph says:
 13 "Special management procedures might be required
 14 where it is reasonably foreseeable that the proportion
 15 of disabled persons in a building will be relatively
 16 high. Recommendations for building management are given
 17 in Section 9."
 18 A. Yes.
 19 Q. Then underneath that you will see that attention is
 20 drawn to the Equality Act 2010 —
 21 A. Yes.
 22 Q. — which places a duty on all employers and service
 23 providers not to discriminate against disabled people.
 24 A. Yes.
 25 Q. It goes on:

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1 "It is vital to ensure that when making plans for
 2 the fire safety and management of buildings, the
 3 requirements of disabled people are properly taken into
 4 account at all times."
 5 A. Yes.
 6 Q. Now, penultimately in this document, page 145
 7 {BSI00000059/145}. If we can go to that page, please,
 8 and look at the second paragraph below 54, there is
 9 a note 1. Do you see it says, and this is underneath
 10 the heading "Evacuation of disabled occupants or
 11 occupants that require assistance to escape":
 12 "NOTE 1. It is the responsibility of the premises
 13 management to assess the needs of all people to make
 14 a safe evacuation when formulating evacuation plans.
 15 "An evacuation plan should not rely on the
 16 assistance of the fire and rescue service. This is
 17 an important factor that should be taken into account in
 18 the building design."
 19 A. Yes.
 20 Q. Then finally page 175 {BSI00000059/175}, and I'm sorry
 21 to give you such a long shopping list.
 22 A. No, I'm managing, sir.
 23 Q. It builds up to a question.
 24 On page 175 there is a heading, "Management of
 25 additional needs and disabilities".

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1 A. Yes.
 2 Q. And there is a reference, "Annex E (informative)" and
 3 "General".
 4 If you look at the second paragraph:
 5 "Information for disabled people needs to be noted
 6 in fire action notices and in the fire management plan.
 7 Assumptions cannot be made about the willingness of
 8 individuals to remain in their flats even where a stay
 9 put strategy is in place. It is also possible that some
 10 residents will not be inside their own dwelling at the
 11 time a fire occurs; they might for example be in the
 12 process of using lifts or stairs to reach their home,
 13 visiting a neighbour or in a common area such as
 14 a terrace or communal garden, in which case returning to
 15 their flat might not be appropriate or possible."
 16 A. Yes.
 17 Q. Then in the last two paragraphs under that:
 18 "The UK has an ageing society, with increasing
 19 levels of independence into later years, and there are
 20 therefore many people living in standard residential
 21 accommodation who have a range of impairments which
 22 could affect their ability to evacuate or follow
 23 procedures.
 24 "Fire safety management needs to take into account
 25 the full range of people who might use the premises,

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1 paying particular attention to the needs of disabled
 2 people with permanent or temporary impairment."
 3 A. Yes.
 4 Q. Then E.2 deals with people with mobility impairments,
 5 et cetera, and it goes on in that vein, and one can
 6 cover the next two pages, scrolling down to page 176
 7 {BSI00000059/176}, with different impairments, cognitive
 8 and learning, hearing —
 9 A. Yes.
 10 Q. — vision, dogs, et cetera.
 11 I've shown you a lot of that, probably not all of it
 12 that's relevant to this question, but in the light of
 13 what I've just shown you in this British Standard of
 14 2015, did anybody, you included, ever suggest
 15 a reconsideration of the content of paragraphs 79.9 to
 16 79.11 of the LGA guide?
 17 A. I don't recall anyone suggesting any revision of the
 18 LGA guide. Not off the top of my head, sir.
 19 Q. Right.
 20 Do you accept that a situation arose in and after
 21 2015 whereby the LGA guide, at least on the subject of
 22 vulnerable occupants, was out of step with this
 23 British Standard?
 24 A. This is a design guide primarily for new buildings.
 25 This is about how you go about designing and managing

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1 new buildings, really. It's an alternative to Approved
 2 Document B.
 3 Q. The title, though, of the document is also about
 4 management and use.
 5 A. Yes, it is.
 6 Q. Is it limited to new—builds after 2015?
 7 A. It's how it would be regarded, sir, as a new building
 8 design guide. People do design to it sometimes, and we
 9 come across that, because they don't want to use
 10 Approved Document B. There will be stuff in here that
 11 is useful in general terms for existing buildings, no
 12 question, but I'm not sure anybody would have thought,
 13 "Well, now that BS 9991 is published, do we need to
 14 revise the LGA guide?" And certainly that would have
 15 been a matter for the LGA and/or Government departments.
 16 Q. I don't think — I may be wrong — there is anything in
 17 this British Standard which says that it's limited to
 18 new—builds.
 19 A. No, I think you will find something probably in the
 20 scope that says it's primarily about new—builds, but you
 21 might use it as guidance.
 22 Q. Similarly, would I be right in thinking that the
 23 LGA guide was not only about existing buildings?
 24 A. You mean it was about new buildings?
 25 Q. Was it not?

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1 A. No.
 2 Q. Only about existing?
 3 A. No, it actually says that in it, sir.
 4 Q. Now, the first edition of this BSI in fact was published
 5 on 31 December 2011.
 6 A. That's correct.
 7 Q. And it too contained, at section 9, a section on
 8 evacuation of disabled occupants or those occupants who
 9 require assistance to escape. Do you remember that?
 10 A. I vaguely remember that, yes, sir.
 11 Q. So when the LGA guide was put together in 2011 and then
 12 republished, I think, in May 2012, do you remember
 13 whether BS 9991, in its 2011 iteration, was considered
 14 at all?
 15 A. Yes, it wasn't revised in 2012. I think what they did
 16 was there was a paragraph in the 2011 that shouldn't
 17 have been there. It was a paragraph that we had in, the
 18 project group wanted it taken out, so we took it out and
 19 replaced it with another paragraph, but the LGID
 20 accidentally put the new paragraph in but didn't take
 21 out the previous paragraph, so there were two paragraphs
 22 that directly conflicted, and they hadn't implemented
 23 what the project board asked us to do. It was about
 24 doors. So they corrected that in 2012.
 25 Q. Right.

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1 Subject to that, then, let me re-ask the question so
 2 that you answer my question: when the LGA guide was put
 3 together in 2011 —
 4 A. Yes.
 5 Q. — it having been put together in 2011, before
 6 31 December 2011, when the first edition of this BSI
 7 came out, did anybody thereafter, when it came to
 8 revising it in the May of 2012, ask themselves: well,
 9 should we now say something to reflect or bring it in
 10 line with the newly published BS 9991?
 11 A. I'm sorry, this will probably appear as though I'm
 12 contradicting you, sir, but it wasn't revised.
 13 I thought I said that.
 14 Q. No, I appreciate that. My question —
 15 A. It wasn't a revision. Had there been a revision,
 16 a revision of a document is — sorry, I'm teaching my
 17 granny to suck eggs, but in guidance parlance, you
 18 revise a document by sitting down with it and going
 19 through it clause by clause and saying: is it still up
 20 to date? Do we want a revision?
 21 There was no revision. I think that's important to
 22 understand.
 23 Q. That probably answers my question, but when the
 24 LGA guide was republished —
 25 A. Yes.

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1 Q. — in May 2012 — not revised, but republished — was
 2 any thought given to revising it to take into account
 3 what the then recently published first version of this
 4 BSI had said on the subjects I've shown you?
 5 A. Again, that would be a question for LGA, but my answer
 6 would be: not as far as I'm aware.
 7 MR MILLETT: Very good, thank you very much.
 8 Now, Mr Todd, I've come to the end of my prepared
 9 questions, you will be pleased to hear. It's customary
 10 at this point to take a shortish break to see whether
 11 there are any follow-up questions that I need to ask you
 12 from my own side or from the core participants outside
 13 this building, or even in it.
 14 THE WITNESS: Of course, sir.
 15 MR MILLETT: So we're going to take a short break now,
 16 Mr Chairman, if we may.
 17 SIR MARTIN MOORE-BICK: Yes.
 18 Well, Mr Todd, as Mr Millett has indicated, we need
 19 to take a break now, and indeed I think it's time we had
 20 a break during the afternoon anyway. So we will stop
 21 until 3.35, and then, when you come back, we'll see if
 22 there are any more questions for you.
 23 THE WITNESS: That's fine, sir. Thank you very much.
 24 SIR MARTIN MOORE-BICK: Thank you very much. If you would
 25 like to go with the usher, please.

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1 (Pause)
 2 Mr Millett, we're going to have slightly less than
 3 15 minutes, so if you need a bit more time, just let the
 4 usher know.
 5 MR MILLETT: Yes, very good, Mr Chairman, thank you.
 6 SIR MARTIN MOORE-BICK: Thank you.
 7 (3.22 pm)
 8 (A short break)
 9 (3.35 pm)
 10 SIR MARTIN MOORE-BICK: Yes, please, Mr Todd, take a seat.
 11 Now we'll see if there are any more questions for
 12 you.
 13 THE WITNESS: Thank you, sir.
 14 SIR MARTIN MOORE-BICK: Mr Millett?
 15 MR MILLETT: Yes.
 16 Mr Chairman, there are no further questions for this
 17 witness, having considered them carefully, but the
 18 questions that have been put to us may be very pertinent
 19 questions for others coming later in this Inquiry.
 20 SIR MARTIN MOORE-BICK: Right, very well. Thank you very
 21 much.
 22 MR MILLETT: So, Mr Todd, it remains for me, on behalf of my
 23 team, to thank you very much indeed for coming here and
 24 giving us your opinions in oral evidence. We are very
 25 grateful to you. So thank you very much indeed.

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1 THE WITNESS: Thank you.
 2 Chairman, could I just wish you, your panel and the
 3 legal team well for the rest of the Inquiry.
 4 Can I just express my condolences as well to those
 5 who lost loved ones at Grenfell Tower, and assure them
 6 that virtually no week goes by but many of us are
 7 involved in initiatives and committees and activities to
 8 try and prevent it happening again.
 9 SIR MARTIN MOORE-BICK: Well, thank you very much, Mr Todd.
 10 It's right that, before you leave, I should thank
 11 you very much on behalf of all three members of the
 12 panel, and indeed the Inquiry as a whole, for all the
 13 time and effort that you have devoted to our work,
 14 because it's not just a case of coming here for actually
 15 rather longer than I think you were originally led to
 16 believe to give your evidence orally, but you have
 17 produced reports for us, and I'm sure that a lot of time
 18 and trouble has gone into that part of your work as
 19 well, and we are extremely grateful for your help in all
 20 these different respects.
 21 So thank you very much, indeed. It's been
 22 a pleasure to hear from you. Thank you.
 23 THE WITNESS: You're more than welcome, sir, and I hope it's
 24 been of some help.
 25 SIR MARTIN MOORE-BICK: Yes, certainly. Thank you very much

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1 indeed.
 2 THE WITNESS: Thank you. Goodbye, sir.
 3 SIR MARTIN MOORE—BICK: Goodbye.
 4 (The witness withdrew)
 5 SIR MARTIN MOORE—BICK: Thank you, Mr Millett. Now, we have
 6 another witness waiting.
 7 MR MILLETT: We do.
 8 SIR MARTIN MOORE—BICK: But we need to rise for a couple of
 9 minutes just to make the appropriate arrangements.
 10 MR MILLETT: Yes, please, Mr Chairman. It will be
 11 Ms Beryl Menzies, who will be taken by Ms Rose Grogan
 12 for the rest of the afternoon.
 13 SIR MARTIN MOORE—BICK: Yes. We'll rise now and you can
 14 invite the usher to come and collect us when Ms Grogan
 15 is ready.
 16 Thank you very much.
 17 (3.40 pm)
 18 (A short break)
 19 (3.45 pm)
 20 SIR MARTIN MOORE—BICK: Yes, Ms Grogan. Now, you have
 21 another witness for us.
 22 MS GROGAN: Yes, we do. We have Ms Beryl Menzies.
 23 SIR MARTIN MOORE—BICK: Thank you.
 24 MS BERYL MENZIES (affirmed)
 25 SIR MARTIN MOORE—BICK: Thank you very much. Do sit down,

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1 make yourself comfortable.
 2 THE WITNESS: Thank you.
 3 SIR MARTIN MOORE—BICK: Before we start, may I just
 4 apologise for keeping you hanging around for some time.
 5 THE WITNESS: No problem.
 6 SIR MARTIN MOORE—BICK: We don't always quite manage to run
 7 to the timetable, so I apologise for that.
 8 THE WITNESS: No problem.
 9 SIR MARTIN MOORE—BICK: Yes, Ms Grogan.
 10 Questions from COUNSEL TO THE INQUIRY
 11 MS GROGAN: Thank you.
 12 Good afternoon, Ms Menzies. Thank you very much for
 13 coming to give evidence today and for assisting
 14 the Inquiry again with its work.
 15 I will be asking you questions today about your
 16 supplementary expert report, which was prepared for
 17 Module 3 of Phase 2 of this Inquiry, covering the
 18 building control body's assessment of the smoke control
 19 system.
 20 If you don't understand any of my questions, please
 21 ask me to repeat them or to put them in a different way,
 22 and also please keep your voice up so that the
 23 transcriber can hear you.
 24 Can we go first to {BMER0000007}.
 25 This is the supplementary report you have produced

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1 for the Inquiry dated 20 April 2021.
 2 A. Yes.
 3 Q. It covers the smoke control installation that formed
 4 part of the Building Regulations application associated
 5 with the refurbishment of Grenfell Tower.
 6 Can we go to page 5 of that report {BMER0000007/5},
 7 please. Here, at paragraph 10, which is just at the
 8 bottom, you explain that this report should be read in
 9 conjunction with your main report on the application for
 10 Building Regulations approval in relation to the
 11 Grenfell Tower refurbishment as amended in April 2020.
 12 For the transcript, the reference is {BMER0000004}, plus
 13 that report's appendix, {BMER0000005}, and errata sheet
 14 {BMER0000006}.
 15 Can I now take you to the last page of this
 16 document, which is page 71. We see there a declaration
 17 and statement of truth and a signature. Is that your
 18 signature?
 19 A. It is.
 20 Q. Can you please confirm that the facts set out in your
 21 supplementary report are true to the best of your
 22 knowledge and belief?
 23 A. I confirm.
 24 Q. Have you provided this report in the same way as you
 25 would have provided a report to the court?

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1 A. Yes.
 2 Q. And does your report represent your true and complete
 3 professional opinion on the matters addressed within it?
 4 A. It does.
 5 Q. When asking questions today, I may refer to the
 6 supplementary report as "your report", and if we need to
 7 go to your first report prepared for Module 1, I will
 8 make that clear.
 9 A. Okay.
 10 Q. I'd like to start with some questions about your
 11 qualifications and background. You were asked about
 12 these in Module 1, so we can take this reasonably
 13 swiftly, but just as a reminder.
 14 If we could go to page 3 of this document
 15 {BMER0000007/3}, we can see that here you have set out
 16 your professional qualifications and experience.
 17 Starting with your professional qualifications, you
 18 are a fellow of the Chartered Association of Building
 19 Engineers.
 20 A. Yes.
 21 Q. And you told us in Module 1 that you have been a fellow
 22 of the CABE since it became chartered about four years
 23 ago.
 24 A. Yes.
 25 Q. You were president of the Association of Building

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1 Engineers between May 2009 and May 2010.
 2 A. Yes.
 3 Q. And you're also a member of the Royal Institution of
 4 Chartered Surveyors.
 5 A. Correct.
 6 Q. Going on to your experience, we see just at the bottom
 7 of that page, so from the bottom working back up, your
 8 first role in the industry was within the Greater London
 9 Council in the Building Regulations Division between
 10 1973 and 1985.
 11 A. Yes.
 12 Q. After that, you moved to the London Borough of
 13 Tower Hamlets and became a chief engineer implementing
 14 the Building Regulations and the London Building Acts,
 15 with responsibility for specialist officers dealing with
 16 innovative new buildings under construction.
 17 A. Correct.
 18 Q. Since 1991, you have been an independent fire consultant
 19 and you're a director of Menzies Partners Ltd.
 20 A. Correct.
 21 Q. Can you just remind us what it is that Menzies Partners
 22 does?
 23 A. We are building surveyors and fire safety consultants.
 24 Q. Moving on to the next page, page 4 {BMER0000007/4}, can
 25 you confirm that you have previously been a member of

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1 the review panel of the Building Regulations Advisory
 2 Committee for Approved Document B?
 3 A. Yes.
 4 Q. Can you confirm that you're currently a member of the
 5 Building Control Performance Standards Advisory Group of
 6 the BRAC?
 7 A. I am. It hasn't met for some considerable time but, as
 8 far as I'm aware, it still exists.
 9 Q. Can you briefly outline your experience with smoke
 10 control systems, first working on the building control
 11 side at Tower Hamlets and before, and then as
 12 an independent consultant.
 13 A. My experience relates to many new developments within
 14 the Docklands area of Tower Hamlets, where we looked at
 15 pressurisation systems and other smoke control systems.
 16 Or more of late I was technical adviser to Tower Hamlets
 17 in respect of very tall residential blocks and their
 18 smoke control systems. I also visited North America in
 19 the 1980s to look at their forms of smoke control,
 20 mostly pressurisation, where it was more common at the
 21 time than it was in this country.
 22 Q. Do you have experience of refurbishment projects of the
 23 nature of Grenfell Tower or similar?
 24 A. No, I don't, it was mostly new-build. Refurbishment of
 25 such systems is not common, in that buildings of that

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1 age didn't normally have smoke control systems that were
 2 mechanical in part.
 3 Q. Moving on to the relevant legislation, regulations and
 4 standards, then.
 5 Can we look at the section of your report beginning
 6 on page 8 {BMER0000007/8}, please.
 7 So here and in the following pages, you've set out
 8 the relevant legislation and guidance, which includes
 9 the pre-refurbishment guidance, the guidance in Approved
 10 Document B, relevant British Standards and the guidance
 11 provided by the Smoke Control Association.
 12 In relation to Approved Document B, if we go to
 13 page 10 {BMER0000007/10}, please, paragraphs 51 and 52,
 14 you say there that:
 15 "51. AD B set out that the aim of the smoke control
 16 measures for escape was to ventilate the smoke that will
 17 pass through a flat entrance door when the occupants
 18 escape. It recommended that the common lobby was
 19 ventilated 'to control smoke and so protect the common
 20 stairs.' The ventilation was in addition to the
 21 recommended fire resistant self-closing doors to a flat
 22 entrance and the common stair.
 23 "52. Recommendations for natural and mechanical
 24 ventilation were given, stating that mechanical
 25 ventilation may be provided 'to the stair and/or

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1 corridor/lobby' to protect the stairs and that guidance
 2 on the design of smoke systems 'using pressure
 3 differentials' is available in BS EN 12101-6:2005."
 4 We know, as you have just mentioned, that
 5 Grenfell Tower had a smoke control system installed when
 6 it was first constructed.
 7 Can you explain how the Building Regulations and
 8 guidance in Approved Document B would apply to
 9 a refurbishment project where there was an original
 10 smoke control system already in place?
 11 A. As with any refurbishment of an existing building, the
 12 legislation is set out that the situation should be made
 13 no worse. There is no retrospective legislation that
 14 requires a building to be brought up to current building
 15 standards inasmuch as the building control standards
 16 refer to various forms of legislation. Any upgrade,
 17 shall we say, would be dealt with under the Regulatory
 18 Reform (Fire Safety) Order, for an assessment to say
 19 that, if it did say, the system was not fit for purpose
 20 for the use it was being put to in the particular
 21 occupied building.
 22 Q. We can look at the non-worsening principle if we go to
 23 {CLG00019897/6}. That's the Building Regulations there.
 24 If we go over the page to page 7 {CLG00019897/7}, we
 25 see there regulation 4, subparagraph (3), which is at

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1 the bottom of the page. It says:
 2 "(3) Building work shall be carried out so that,
 3 after it has been —completed
 4 "(a) any building which is extended or to which
 5 a material alteration is made; or
 6 (b) any building in, or in connection with, which
 7 a controlled service or fitting is provided extended or
 8 materially altered; or
 9 "(c) any controlled service or fitting,
 10 "complies with the applicable requirements of
 11 Schedule 1 or, where it did not comply with any such
 12 requirement, is no more unsatisfactory in relation to
 13 that requirement than before the work was carried out."
 14 A. Yes.
 15 Q. And that reflects the explanation you've just given us?
 16 A. I hope, yes.
 17 Q. So in simple terms, the "no more unsatisfactory"
 18 position, so the second option there, that's often
 19 referred to as the non—worsening principle?
 20 A. Yes. If the works you were looking at, the situation
 21 you were looking at, did not comply with current
 22 standards, there was no means of going back and making
 23 it comply, it just had to be made no worse, even if it
 24 complied at the time but was not up to current
 25 standards, or it didn't actually comply at the time, and

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1 for some reason it came into existence.
 2 SIR MARTIN MOORE—BICK: It's rather an imprecise criterion,
 3 that, isn't it, "no more unsatisfactory"? Has it given
 4 rise to difficulties of interpretation?
 5 A. Yes, inasmuch as it's down to the individual to
 6 interpret it. You would have to establish what the
 7 situation was and then look at the proposal to see if
 8 the end result was any worse than existing.
 9 SIR MARTIN MOORE—BICK: It's a comparison of the practical
 10 functioning, is it, that one is looking at?
 11 A. It's what the existing situation achieves. In very
 12 simple terms, if it achieved four air changes and they
 13 were proposing three —
 14 SIR MARTIN MOORE—BICK: That would be worse.
 15 A. — then that would be worse, yes.
 16 SIR MARTIN MOORE—BICK: Yes, thank you.
 17 MS GROGAN: Following on from that, is it right that
 18 non—worsening relates to the functional requirements of
 19 schedule 1? So when you look at whether or not
 20 something is no worse, it's no worse in terms of
 21 satisfying B1 or B5.
 22 A. The no worse situation would be: the functional
 23 requirements require reasonable means of escape under
 24 B1. If the existing situation provided reasonable
 25 escape, then you couldn't make it any less a standard

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1 than existed. If it didn't provide reasonable escape in
 2 your opinion but existed, you still could not require
 3 an upgrading of it, but you could tell the Fire Brigade
 4 that they might want to go and look at it under the RRO.
 5 Q. In practice, how would a building control body go about
 6 considering if each of the functional requirements was
 7 either met or not made any worse?
 8 A. It would be a case of hopefully looking at their
 9 records — unfortunately in this case it wasn't
 10 possible — or getting details provided by the applicant
 11 to indicate what the existing situation was, if
 12 necessary go visiting the premises itself.
 13 Q. At paragraphs 43 and 45 of your report, which is on
 14 page 9 {BMER0000007/9}, you refer there to the guidance
 15 at the time the original Grenfell Tower system was
 16 installed.
 17 A. Yes.
 18 Q. If we go to those paragraphs, we see you say there:
 19 "43. In the absence of information regarding what
 20 was originally approved, in my opinion it would have
 21 been good practice for the BCB to refer to the guidance
 22 applicable at the time of the construction of
 23 Grenfell Tower.
 24 "44. Whilst a review of CP3 would not have provided
 25 information regarding the Grenfell Tower smoke control

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1 system, it would have given an understanding of the fire
 2 safety protocol at the time of construction. It would
 3 also have assisted the BCB in ascertaining if the
 4 initial refurbishment proposal was a 'material
 5 alteration' ... where the BCB control was limited to
 6 ensuring the existing situation was made no worse; or if
 7 it was building work that should be regarded as
 8 requiring compliance (full or part) with the applicable
 9 standards current at the time of the application."
 10 Can you explain how a building control authority
 11 would approach a situation where an existing system was
 12 not in accordance with the guidance in place at the time
 13 it was installed?
 14 A. Initially I would suggest they would ask the person
 15 carrying out the works to provide any information that
 16 they had on the building. One would expect somebody who
 17 owns a building to have some background to that
 18 building. If that wasn't available, ask for details of
 19 existing layouts, et cetera, or go down to the site and
 20 have a look and ask them to demonstrate what was there
 21 and to show what the layout was, et cetera.
 22 It's difficult, which is why records should always
 23 be kept, to do so, but it's down to the person carrying
 24 out the works to provide that information to the
 25 building control body.

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1 Q. The Inquiry's heard evidence that the existing system at
 2 Grenfell Tower had been malfunctioning or had broken
 3 down well ahead of the refurbishment.
 4 Would you expect a building control body to carry
 5 out a non-worsening assessment as against the existing
 6 system in a fully functioning state or in its state as
 7 it was at the time, so broken down or malfunctioning?
 8 A. You would assess it against the system working or how
 9 you believe it would work. The malfunctioning aspect
 10 was not a building regs matter, it was for the RRO.
 11 SIR MARTIN MOORE-BICK: And presumably in a building like
 12 Grenfell Tower, you would be able to assess the
 13 extraction rate from a single lobby by reference to the
 14 size of the shafts and the capacity of the fans, insofar
 15 as there were fans working on the system; is that right?
 16 A. An assessment could be made by a competent engineer.
 17 The issue then comes to the leakage from the building.
 18 In an existing building, it's always difficult. No
 19 matter how much you survey a building, you won't know
 20 every crack, void, et cetera, that does exist. So the
 21 proof would be actually running the system, but if it
 22 wasn't functioning, that's where the difficulty comes.
 23 So assume the worst, and take it that they need
 24 to — my approach would be that if you can't prove
 25 what's there, then show me something that is adequate in

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1 what you're proposing.
 2 SIR MARTIN MOORE-BICK: But you could presumably do —
 3 I won't call it a hypothetical calculation, but you
 4 could do a calculation based on the configuration of the
 5 building and such information as you have about the
 6 plant incorporated within the system?
 7 A. You could, but it wouldn't necessarily — because of the
 8 unknown leakage factors —
 9 SIR MARTIN MOORE-BICK: Right.
 10 A. — it would give an indication, but may not be the
 11 actual result.
 12 SIR MARTIN MOORE-BICK: You would get a perfect figure which
 13 wouldn't actually allow for the leakage into the system
 14 from —
 15 A. Not necessarily, yes.
 16 SIR MARTIN MOORE-BICK: I see, thank you.
 17 MS GROGAN: We will come back to this in more detail, but
 18 you said your approach would be, "If you can't prove
 19 what's there, then show me something that's adequate in
 20 what you're proposing". Is that in the context of
 21 non-worsening or would you, in those circumstances, or
 22 we should say would a reasonable building control body
 23 in those circumstances, say you have to therefore comply
 24 with the functional requirements of the Building
 25 Regulations as they are now?

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1 A. I was always trained to assume control until somebody
 2 proves that I don't have control as a building control
 3 officer in the interest of public safety. Therefore, if
 4 they can't show me what they have, I can't say it's not
 5 a worsening or it is a worsening. So I would take the
 6 safe route, if you like, and ask them to prove it or to,
 7 in their proposals, show me something was adequate in
 8 replacement for that system as it existed.
 9 Q. And adequate in relation to the functional requirements
 10 or adequate in relation to something else?
 11 A. It's always in relation to the functional requirements.
 12 Those functional requirements are assisted, supported,
 13 by current guidance, which is where your reference point
 14 would be. If they didn't want to adhere to current
 15 guidance, then we would ask them to employ an engineer
 16 to do a fire engineering assessment, a fire engineer
 17 proposal, and that would then be reviewed in that
 18 context.
 19 Q. If we could go to Dr Lane's Phase 2 report, which is
 20 {BLARP20000035/44}.
 21 So this is Dr Lane's smoke control report, and here
 22 she concludes that the original smoke control system did
 23 not comply with the recommendations of CP3 1971, and the
 24 reference for the transcript is 3.3.28 to 3.3.34.
 25 At paragraphs 3.3.29 to 3.3.31, and at 3.3.34, she

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1 states that:
 2 "3.3.29. In natural ventilation mode, the aggregate
 3 area of the smoke shafts on each side of the lobby was
 4 0.48m².
 5 "3.3.30. The aggregate area of the dampers on each
 6 side of the lobby was 0.28m².
 7 "3.3.31. These values are both significantly lower
 8 than the equivalent free area recommended by CP3 1971 of
 9 1.5m² ... when automatically opening."
 10 Then at the bottom you see there she says:
 11 "3.3.34. Therefore, the system did not comply with
 12 the requirements of CP3 1971 due to the aggregate area
 13 of the dampers being lower than the equivalent free area
 14 recommended by CP3 1971 of 1.5m² when automatically
 15 opening."
 16 Do you agree with her assessment there?
 17 A. I agree that the system did not comply with CP3, but it
 18 didn't have to. It was a system that was accepted under
 19 section 34 of the London Building Acts (Amendment) Act
 20 1939 and under section 20 of that Act, which was
 21 permissible. The authority having control, the GLC,
 22 administered that legislation, and accepted the
 23 proposal, which I would imagine was the result of
 24 a discussion between the developer, the Building
 25 Regulations division and the fire service, and perhaps

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1 even the GLC's scientific branch at the time.
 2 But from the few documents that I have seen, there
 3 was a system that was accepted that reflected what —
 4 well, I can't say it did reflect what was in existence,
 5 because the paperwork wasn't there, but there is
 6 an indication there was a system that involved
 7 mechanical smoke control in Grenfell Tower on those two
 8 documents that the Fire Brigade I think provided
 9 eventually.
 10 Q. Just going back to the paragraphs we looked at in your
 11 report before — we don't need to pull them up — you
 12 said that, in the absence of information regarding what
 13 was originally approved — so, as you've just said, we
 14 don't know quite what was approved, but you say you know
 15 it would have been approved — it was reasonable and
 16 good practice for the BCB to refer to CP3.
 17 How in practice would that have worked, where you
 18 knew the system doesn't comply with CP3, but when
 19 looking at non-worsening it would be reasonable to look
 20 at CP3?
 21 A. This is where the problem arises. You would ask them to
 22 demonstrate to prove what was there. If they couldn't,
 23 then it was either a case of, "Well, we're not going to
 24 accept any proposal from you", which would be totally
 25 unreasonable on the part of a building control body, or

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1 ask them to provide a proposal.
 2 They wanted to do refurbishment works. They wanted
 3 to change the system. They couldn't maintain the
 4 existing system, in other words they weren't prepared,
 5 for instance, to go and get 3D modelling of the existing
 6 fans and everything else and have one-off replacement
 7 components made, plus spares, which would be a very
 8 costly and unreasonable proposal anyway, but it was down
 9 to them to convince the building control body that what
 10 was there would be adequate in terms of B1 and B5.
 11 It couldn't be demonstrating no worsening because
 12 they couldn't prove what was there, but from an
 13 experience point of view, anything that was automatic
 14 would likely be better than a natural system in terms of
 15 the speed at which it would operate and the fact it was
 16 a mechanical extract as opposed to a natural extract,
 17 because the mechanical would be better in terms of
 18 dealing with down winds, et cetera, it would be
 19 positive, and it would be activated as the Fire Brigade
 20 were en route, so it was working for people as they were
 21 escaping and protecting the building.
 22 Of course, it's all part of a system that is
 23 balanced by all the other aspects of part B of the
 24 Building Regulations.
 25 Q. Moving on to the approach that was then taken by the

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1 parties involved in the refurbishment.
 2 Staying in your report, so back to {BMER0000007/8}
 3 now, at paragraphs 35 to 38 you explain that, in
 4 relation to the new smoke control system at
 5 Grenfell Tower:
 6 "35. Initially the BCB's control of the works as
 7 described in the full plans application was limited to
 8 ensuring that the proposals resulted in a smoke control
 9 installation on completion that was no worse/provided no
 10 less protection than had existed prior to the
 11 alterations being undertaken.
 12 "36. The design of the proposed installation changed
 13 significantly as the design developed and it became a
 14 fully mechanical extract system.
 15 "37. No information was provided regarding the
 16 working of the existing system and as such it was not
 17 demonstrated that the various amended proposals would
 18 result in a 'no worse' situation.
 19 "38. This in my opinion extended the control under
 20 the Building Regulations to require compliance with the
 21 guidance current at that time as far as was reasonable
 22 and practical to do so. The BCB appears to have adopted
 23 this approach."
 24 A. Yes.
 25 Q. So we're clear, when you say guidance current at the

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1 time, does that mean at the time of the refurbishment?
 2 A. Yes.
 3 Q. Is that just ADB or would it include other guidance,
 4 such as the Smoke Control Association guidance?
 5 A. It would be to the person proposing the works to adopt
 6 the guidance. You should not cherry-pick from multiple
 7 codes to make it suit your proposal, because it would
 8 make it work, but you can take aspects of different
 9 forms of guidance, because the guidance is published at
 10 different times, and more recent guidance may have
 11 better guidance than, say, ADB 2013. Subsequent 2015
 12 guidance, 9991 for instance, more guidance, more
 13 technical guidance, to assist people designing
 14 installations.
 15 Q. You say the BCB appears to have adopted that approach;
 16 on what basis did you reach that conclusion?
 17 A. Inasmuch as they asked for information regarding the
 18 existing system, they didn't appear, from what I've seen
 19 on the disclosures, to receive that information, and
 20 they then proceeded to review a proposal that developed
 21 over some considerable time and changed from what was
 22 originally proposed.
 23 Q. What do you mean when you say a reasonable and practical
 24 extent of compliance?
 25 A. I suppose, in simple terms, it's getting as near to the

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1 recommended standard as possible.
 2 Q. And recommended standard being guidance or being B1 and
 3 B5?
 4 A. Fulfilling the functional requirements under B1, B5,
 5 having reference to and regard to published guidance in
 6 the absence of a fully engineered proposal.
 7 Q. So would it be fair to summarise that as following the
 8 guidance as best you can, but always ultimately aiming
 9 to achieve compliance with the functional requirements?
 10 A. In terms of B1, does it provide reasonable and adequate
 11 means of escape; B5, facilities to assist firefighters
 12 in fighting the fire.
 13 Q. Dr Lane's view is that the parties involved in the
 14 design of the system and the submission to building
 15 control did not adopt a non—worsening approach.
 16 Therefore, the only other option available to them was
 17 to identify alternative design approach to comply with
 18 the functional requirements.
 19 The reference for that, for the transcript, is
 20 {BLARP20000036/5} at paragraphs 10.2.11 to 10.2.13.
 21 Would you agree with that?
 22 A. On the basis that they couldn't prove what the existing
 23 was, therefore they could not prove it was better or
 24 worse.
 25 Q. In circumstances where it's not possible to comply with

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1 guidance, how would a designer demonstrate compliance
 2 with the functional requirements of the
 3 Building Regulations?
 4 A. Presenting a scheme that would adopt criteria in terms
 5 of performance, by reference to accepted guidance,
 6 a performance level in a code of some sort, or
 7 demonstrate it by modelling or CFD, computational fluid
 8 dynamics programming.
 9 Q. In his evidence, Mr Hugh Mahoney of PSB described the
 10 approach ultimately adopted as a betterment exercise,
 11 and the reference for that is {Day155/110:22}.
 12 We can see that in a different place in the
 13 transcript for {Day155/24:19}.
 14 (Pause)
 15 He says there at line 19:
 16 "What happened was that Max Fordham reviewed the
 17 information that we'd provided them with to say you
 18 couldn't install a compliant system, it was impossible,
 19 and that therefore in order to find a solution which
 20 entered to the spirit of the guidances, not compliant,
 21 we've put forward a suggestion of a system. That was
 22 not taken up. What they then did was to take the
 23 volumetric flow rate that we had specified and put it
 24 forward as an improvement to the existing system, and
 25 that was how the project went forward. It was on

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1 developing improvement, not a design. And they did
 2 a document that they sent through for approval by
 3 building control, who approved the betterment."
 4 What do you understand the concept of an improvement
 5 or betterment exercise to be?
 6 A. I've never heard of the term "betterment" used in this
 7 context. An improvement over and above what was
 8 existing, I understand. Betterment is usually dealt
 9 with in terms of leases and dilapidations and the like.
 10 But it's in the dictionary, and it just means better
 11 than before. I can't say any more than that, really.
 12 Q. Having heard the evidence, how do you understand that
 13 this betterment exercise relates to the two options
 14 we've discussed, so either non—worsening or compliance
 15 with modern standards?
 16 A. It was a move towards the latter, inasmuch as it took
 17 a performance criteria which was of a recognised
 18 standard, be it from a different approach, ie the
 19 pressurisation/depressurisation code, but it was a flow
 20 that was recognised in that document as being adequate
 21 to hold back smoke from the staircase during escape and
 22 during firefighting.
 23 So it was — and I agree — likely to be better than
 24 existed, so it was an improvement on the existing, but
 25 because of the approach that was taken, it couldn't be

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1 pointed to in any specific code as fully complying with
 2 that code, so it required judgement on the part of the
 3 building control body to consider whether that was
 4 adequate in the circumstances.
 5 Q. Again, when you say adequate, you mean adequate with
 6 reference to B1 and B5?
 7 A. Entirely, yes.
 8 Q. So would it be fair to say that your understanding of
 9 this betterment concept is that it's not some halfway
 10 house between non—worsening and full compliance with B1
 11 and B5, it's a species of the latter?
 12 A. Yes.
 13 Q. What kind of analysis would you expect a reasonably
 14 competent BCB to ask for to justify that kind of
 15 betterment proposal?
 16 A. It would be calculations or modelling in the form of
 17 built models, computer models, or in CFD. But
 18 calculations would be acceptable.
 19 The issue with calculations, it doesn't give the
 20 designer 100% confidence because, particularly in
 21 an existing building, the day you turn it on and what
 22 you've done doesn't actually arrive, if you like, is not
 23 demonstrated, then it can be because you weren't aware
 24 of something and did not take it into consideration in
 25 your calculation. But it's a risk that is taken with

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1 safeguards, so building in extra leakage factors,
 2 et cetera, which is what was done in the small
 3 calculation, admittedly, that was done by PSB, which I'm
 4 not sure that building control ever saw.
 5 Q. We will come on to that topic probably tomorrow.
 6 Different individuals giving factual evidence have
 7 referred to the design approach in different ways. So,
 8 as we've discussed, Mr Mahoney referred to it as
 9 betterment.
 10 Given what we have heard from the oral evidence and
 11 also your review of the underlying documentation, can
 12 you help us on whether you think that PSB and the BCB
 13 had a common understanding of the basis of the design?
 14 A. From what I've seen as disclosures, there would appear
 15 to have been, but there is no documentation to
 16 substantiate my perceiving that to be the case.
 17 Q. So your assessment of what happened was that everybody
 18 was working towards compliance with modern standards?
 19 A. Towards it, in the context of an existing building and
 20 the limitations that imposed.
 21 Q. But at all times seeking compliance with B1 and B5?
 22 A. Yes.
 23 Q. If we go now to page 68 of your report {BMER0000007/68},
 24 at paragraph 290, you say there:
 25 "The proposed design of the smoke extract

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1 installation incorporated the adoption of the
 2 recommended velocity of at least 2m/s at the open
 3 lobby/stairwell door for the class of system appropriate
 4 for means of escape and fire fighting in BS EN 12101-6
 5 (Class B). In my opinion the adoption of this flow rate
 6 as a design principle was reasonable in the
 7 circumstances. However, whilst readings established the
 8 design flow was being attained I have not seen any
 9 disclosure that indicates that the BCB sought
 10 confirmation of, confirmed or witnessed the physical
 11 path of the air (smoke) movements away from the stair
 12 and that there was no significant inflow from other
 13 leakage paths such as the fire flat."
 14 If we go to page 51 {BMER0000007/51}, so slightly
 15 earlier in your report, and paragraph 182, you say
 16 there:
 17 "There is no specific explanation/justification for
 18 the adoption of 2.0m/s within the Technical Submission."
 19 Can you explain why, in the absence of explanation
 20 or justification, you consider that the proposal of
 21 2 metres per second velocity was nonetheless appropriate
 22 in the circumstances?
 23 A. It was a well-recognised code, that is 12101-6 was
 24 a well-recognised code, of achieving a high standard of
 25 safety to deter smoke spread. Everybody appeared to

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1 know it, but nobody actually wrote it down for the
 2 record, so to speak.
 3 Q. Was it acceptable to take that particular criterion from
 4 BS EN 12101-6 without explaining precisely why that was
 5 done, why other criteria weren't chosen, for example, in
 6 the technical submission?
 7 A. On reflection, in the absence of records for future
 8 reference to, it was not, and building control should
 9 have said, "Why have you adopted this particular
 10 criterion?" I think it was almost a familiarity and
 11 therefore an omission to record it. I can't think of
 12 any reason why it could not be recorded, but it just
 13 wasn't, as far as I can ascertain.
 14 SIR MARTIN MOORE-BICK: But the probability, I suspect, is
 15 the answer would have come back, "Because we've taken it
 16 from the standard in question".
 17 A. Yes, yes.
 18 SIR MARTIN MOORE-BICK: And that would have been acceptable
 19 to building control?
 20 A. I believe it would, yes.
 21 SIR MARTIN MOORE-BICK: Yes.
 22 MS GROGAN: How would building control know that the
 23 resulting design actually worked and in what
 24 circumstances it actually worked, without that
 25 justification or explanation?

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1 A. The only time you'll know it works is when you test it,
 2 and the offence under the Building Regulations, unless
 3 it's a procedural matter, is on site. So if it had
 4 shown not to have the 2-metre per second flow minimum,
 5 then it would have been a case: this doesn't comply, and
 6 then enforcement action could have been taken.
 7 Q. In his evidence to the Inquiry, Mr Mahoney said that the
 8 new system's route to compliance was based on it
 9 generating a greater extract rate than the existing
 10 system.
 11 The existing system's extract rate had been
 12 calculated by Max Fordham on instruction from the TMO.
 13 Mr Mahoney's evidence was that they took the volumetric
 14 flow rate and put it forward as an improvement to the
 15 existing system, and that's how the project went
 16 forward.
 17 The reference for that — we don't need to go to
 18 it — is {Day155/25:1-7}.
 19 Mr Matt Cross Smith of Max Fordham said on
 20 {Day157/175:4}:
 21 "So building control came back and said, 'We don't
 22 think that you are adequately proving that your proposal
 23 is an improvement' ...
 24 "And they laid out what they would like to see in
 25 order to satisfy them that it was an improvement.

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1 "So the outcome of that was, well, we could go away
2 and we could do either what we termed a hand
3 calculation, you know, it's an Excel spreadsheet,
4 effectively, and a design, or CFD ...

5 "And it was decided that the hand calculation route
6 would be the way that we would go ..."

7 Just pausing there, you referred earlier in your
8 evidence to calculations as being one way of
9 demonstrating; is that what you're referring to, a hand
10 calculation?

11 A. Yes.

12 Q. You've looked at that hand calculation. If we pull it
13 up, it's {MAX00002335/2}.

14 If we just zoom in on the middle section,
15 "2 Existing System", and then scroll up a little bit, we
16 can see the rates there. So it has:

17 "Flow rate of existing system: 1.1–1.2m³/s.

18 "Flow rate of proposed system: 5.0m³/s."

19 You have said in your report that you're unable to
20 ascertain whether it was seen by the BCB, and you've
21 mentioned that again just now.

22 In those circumstances, are you able to assist us
23 with whether the Max Fordham hand calculations
24 represented a sufficiently reliable basis for comparison
25 against the intended performance of the new system?

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1 A. Would it result in it? No, I can't, because there's no
2 description of the likely losses/leakage via the fabric,
3 et cetera.
4 Q. If the Max Fordham document wasn't part of the review by
5 the BCB, on what basis could they have approved the
6 final scheme as being an improvement, if they never saw
7 this?

8 A. The proposal was to achieve a 2-metre flow. As to what
9 was actually seen by the BCB, the disclosures, as far as
10 I can recall, do not indicate that they saw any
11 calculation. However, ultimately, they couldn't have
12 stopped this proposal going forward. I know they said
13 it was satisfactory. They couldn't stop the proposal
14 going forward because they couldn't stop the work, so it
15 was the testing that proved it would achieve the 2-metre
16 flow.

17 They said it would be satisfactory on the basis, as
18 I understand it from the available documentation, of it
19 achieving that flow. Whether they said it would be
20 satisfactory on the basis of the calculation which they
21 may or may not have seen — and they had several
22 discussions that were not minuted, no notes are
23 available, it may have been discussed there.

24 Does that answer your question?

25 Q. Yes, I think that helps.

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1 Mr Hanson's evidence on {Day154/117:10–12} was that
2 "the path that they were proposing to fit a new extract
3 system was the right path; what we needed to establish
4 is what the extract rate should be".

5 Is it correct to say that establishing the extract
6 rate is a different approach from setting the open-door
7 velocity as a performance criterion of 2 metres
8 a second? So the extract rate from the dampers in the
9 lobby is different from the velocity, although there
10 will be a link?

11 A. There is a link in that the extract achieves the flow.

12 Q. Does that statement, that he wanted to establish the
13 extract rate, materially affect your view about the
14 approach taken to achieve compliance?

15 A. No, but I don't really understand his question, why he
16 wanted to ... it would all have been part of the
17 calculation. So it's almost a case of working backwards
18 to achieve — what size fan do I need to achieve that
19 flow in that particular situation?

20 Q. The existing system had a mechanical boost function
21 which was operable by the Fire Brigade. Do you share
22 Dr Lane's view that this means that the existing system
23 had both a means of escape and firefighting performance
24 features?

25 A. Yes, it allowed the Fire Brigade on arrival to increase

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1 the extract by boosting it mechanically if they needed
2 it, or was often used, and is still often used, after
3 the event to get rid of the smoke.

4 Q. And does that mean that both of these features required
5 consideration during the refurbishment?

6 A. The purpose of the smoke control system was B1 for means
7 of escape and B5, firefighting. So, yes, it was
8 a consideration.

9 Q. Now we've heard the evidence regarding the comparison of
10 extract rates, does that in any way affect your view
11 regarding whether it was appropriate to adopt the
12 2 metres per second velocity flow rate?

13 A. No, I think it was reasonable to adopt that in the
14 circumstances.

15 Q. Was it good enough to just look at overall extract rates
16 or would you have expected to see a more detailed
17 analysis being submitted to the BCB?

18 A. I think I'd have to say the BCB couldn't prove it would
19 not work. It would have been better to have more
20 analysis of the proposal, but there were so many
21 unknowns in an existing building. If it didn't work
22 when it was tested, then that would have been
23 catastrophic for the people undertaking the work,
24 because it would have had to have been changed, and that
25 would have been cost, money, time, et cetera. So it was

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1 almost as if people were willing to take the risk of it
 2 not working, but on the basis that they'd done some work
 3 by calculation to establish what they thought they would
 4 need to achieve that rate.
 5 So they put it to a specialist with experience at
 6 a level they thought would be adequate for them to
 7 design a system that would achieve that performance
 8 criteria .
 9 SIR MARTIN MOORE—BICK: Would I be right in thinking that if
 10 the primary — possibly not the sole, but the primary —
 11 purpose of the system is to stop smoke getting into the
 12 stairs , then provided you get the right air flow across
 13 the door from the stairwell into the lobby, the
 14 volumetric extract rate through the shafts is of
 15 secondary importance?
 16 A. That's the way I would look at it, yes.
 17 SIR MARTIN MOORE—BICK: All right, thank you.
 18 MS GROGAN: Thank you, Mr Chairman. That's a convenient
 19 moment for us to pause for the afternoon.
 20 SIR MARTIN MOORE—BICK: Oh, is it?
 21 MS GROGAN: I've reached the end of this topic and I'll be
 22 moving on to another one.
 23 SIR MARTIN MOORE—BICK: Yes, that sounds as though it is
 24 a convenient point.
 25 Ms Menzies, we're going to stop there for the day.

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1 That means, I'm afraid, that I'm going to have to ask
 2 you to come back tomorrow.
 3 THE WITNESS: That's fine.
 4 SIR MARTIN MOORE—BICK: But I suspect you'd factored that
 5 in —
 6 THE WITNESS: Yes.
 7 SIR MARTIN MOORE—BICK: — to your arrangements. I hope so,
 8 anyway.
 9 So we will resume, please, at 10 o'clock tomorrow.
 10 As will all the other witnesses, I have to ask you not
 11 to discuss your evidence with anyone overnight. All
 12 right?
 13 THE WITNESS: Certainly.
 14 SIR MARTIN MOORE—BICK: Good. Thank you very much. We will
 15 look forward to seeing you again tomorrow.
 16 THE WITNESS: Thank you.
 17 SIR MARTIN MOORE—BICK: If you would like to go with the
 18 usher, she'll look after you.
 19 THE WITNESS: Thank you very much.
 20 (Pause)
 21 SIR MARTIN MOORE—BICK: Well, thank you, Ms Grogan.
 22 So we'll resume at 10 o'clock tomorrow and see where
 23 we go then.
 24 MS GROGAN: Yes, thank you.
 25 SIR MARTIN MOORE—BICK: Thank you very much.

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1 10 o'clock tomorrow.
 2 (4.35 pm)
 3 (The hearing adjourned until 10 am
 4 on Thursday, 29 July 2021)

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