



GRENFELL TOWER INQUIRY RT

Day 255

March 28, 2022

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(10.00 am)

SIR MARTIN MOORE—BICK: Good morning, everyone. Welcome to today's hearing. It's good to be back in the room, if I may say so.

Today we're going to continue hearing evidence from Mr Brian Martin. So would you ask Mr Martin to come back in, please.

MR BRIAN MARTIN (continued)

SIR MARTIN MOORE—BICK: Good morning, Mr Martin.

THE WITNESS: Good morning, sir.

SIR MARTIN MOORE—BICK: All ready to carry on?

THE WITNESS: Yes, sir.

SIR MARTIN MOORE—BICK: Thank you very much.

Yes, Mr Millett.

Questions from COUNSEL TO THE INQUIRY (continued)

MR MILLETT: Yes. Morning, Mr Chairman. Good morning, members of the panel. And, Mr Chairman, welcome back in person.

Good morning, Mr Martin.

A. Good morning.

Q. Now, on Thursday you may recall we were looking at an email run in mid—February 2016 between you and Nick Jenkins of Booth Muir or Euroclad. Can we just go back to that, just to remind ourselves where we were,

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{CLG00031093}.

To be fair to you, because it's been four days since you were last here, we were looking at the email on page 4 {CLG00031093/4}, if we go to that, please, at 17.09, towards the foot of the page, and this was your response, do you recall, to his email to you on page 5 {CLG00031093/5}, the same day. Perhaps just have a look at that, just to remind you of just where we were. This is his email to you on 16 February 2016:

"Hi Brian,

"I am forwarding this query to you as recommended by Sarah Colwell ..."

You will recall he sent his exchange with her to you, and your response is at the foot of page 4 {CLG00031093/4}, and I'll read it to you again. You say to him:

"Hi Nick.

"It's for the designer and the building control body to consider if Requirement B4 has been met.

"ADB give guidance on this by saying that the external walls should not provide a medium for fire spread in tall buildings.

"It then offers two approaches, a set of rules or a full scale test.

"In the rules, we deliberately added the word

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' filler ' to address things that form part of the cladding system that are not insulation but could provide a medium for fire spread.

"I think the core of an ACP panel could reasonably be considered to be a ' filler '. So, unless the core material meets the ' rules ' then the AD suggests a full scale test.

"However, if the designer and building control body choose to do something else then that's up to them."

Then if you turn the page, please, to the top of page 5 {CLG00031093/5}, you say this:

"I'm on the road at the moment so drafting this from memory.

"Brian."

Now, that's where we were on Thursday.

Now, this question, you will remember, I think, was the subject of the question posed to you by Steve Evans in June 2015, and your answer to him in the first line of that email, which we saw on Thursday, was you couldn't give a formal interpretation as such.

Now, my question is: looking at this again, why were you able to give this view, such as it was, to Mr Jenkins in February 2016, but not to Steve Evans in June 2015?

A. I think the same caveats are there, in that it's

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necessary to be clear that we can't categorically say what does or doesn't comply with Building Regulations because that's a matter for the building control body and the designer. So, again, I'm explaining the background without categorically saying what is or isn't acceptable.

Q. Yes, but you didn't say to Mr Evans when he asked you the question back in 2015 what you tell Mr Jenkins here, as you see in the penultimate paragraph on the screen in front of you, which is that the core of an ACP panel could reasonably be considered to be a filler. Making allowances for the way you phrase it, you didn't even go that far with Mr Evans, and my question is why you didn't. Why didn't you answer his question, "The core of an ACP panel is or could reasonably be considered to be a filler"?

A. I can't think of a reason, I think it's just I've phrased the answer differently because there's considerable time between the two emails.

Q. Had your view hardened, become clearer, between June 2015 and February 2016 about the meaning of the word " filler " or the arguments about it?

A. No, I think you're reading that into — I think it's just I've drafted two emails some time apart and I've just used different language. I mean, it's still — the

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1 caveat — in response to the advice that, as officials ,  
 2 we had been given, which was to not give a categorical  
 3 answer, I think we're still in that same place, is that  
 4 by saying it's the functional requirement which is key,  
 5 and that ultimately it's the building control body and  
 6 the designer that need to consider whether or not  
 7 they've met the regulations, so I've put that in there.  
 8 I guess if you look at the two, this is a more  
 9 helpful answer, but I don't think I was consciously  
 10 doing that. I think it's probably a better drafted  
 11 answer than the previous one.  
 12 Q. Do you know why there is no reaction in here to the  
 13 information Mr Jenkins had just provided you about the  
 14 historic and continuing use in this country of ACM  
 15 panels with a polyethylene core on high-rise buildings?  
 16 A. I'm not sure if I really picked up on that. As I say,  
 17 at the time I think I seriously underestimated the  
 18 hazard associated with polyethylene-cored ACM panels, so  
 19 I probably didn't pick up on that.  
 20 I also didn't know who Nick Jenkins was. I'd never  
 21 heard of him up until that point, nor had I heard of  
 22 Booth Muir, so perhaps that would've influenced the  
 23 way I —  
 24 Q. You could have asked him. The email run had come from  
 25 the BRE, and if you didn't know who he was, you could

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1 have asked him before answering.  
 2 A. Well, he set out who he was, so —  
 3 Q. Yes.  
 4 A. But I'd not met him before, so I'd no idea whether —  
 5 Booth Muir could be a tiny company or ... if it was  
 6 a larger company, I would have thought I'd have heard of  
 7 them, but I'd not come across them before.  
 8 Q. You say in your last answer — and I think you said it  
 9 a number of times last week too — that you seriously  
 10 underestimated the risks associated with  
 11 polyethylene-cored ACM panels. Why? Why did you  
 12 underestimate them, given what you had observed and  
 13 remarked a number of times about the Dubai fires, so  
 14 for example "Whoosh!" or "Game over" or the "awesome  
 15 power" of such fires?  
 16 A. I think the reference to "Game over" was talking about  
 17 the sprinklers that get overrun, rather than anything to  
 18 do with the hazard associated with ACM.  
 19 I'd seen large fires — it's very difficult to  
 20 understand what's actually happening with a fire by  
 21 looking at press reports. Sometimes the most innocuous  
 22 fires are the ones that kill more people, so seeing  
 23 a photograph of a building in another country on fire  
 24 doesn't necessarily give you an understanding of the  
 25 true hazard. So I think at that point I didn't fully

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1 recognise just how sort of severe a risk ACM presents.  
 2 Q. Risk in what sense?  
 3 A. Well, judging what I now know is the amount of energy in  
 4 that very thin layer of plastic is much greater than  
 5 certainly I appreciated. So the potential for an ACM  
 6 fire to re — enter the building at other levels and  
 7 create the hazard that it did is something that I just  
 8 didn't appreciate at the time.  
 9 Q. Were you influenced in some way by the absence of any  
 10 information about fatalities in the Dubai fires that you  
 11 by now knew about?  
 12 A. Possibly. Certainly the cladding fires that I had seen,  
 13 people were able to move away from the fire without  
 14 difficulty, and I think that probably did colour my  
 15 perception of the hazard. But, as I say, I think — and  
 16 now having — over the last four years, before I moved  
 17 to the post that I'm in now, we've investigated the  
 18 material more and been able — and got more information  
 19 from other countries and so on, and it's clear to me  
 20 that the polyethylene-cored panels are kind of in  
 21 a league of their own in terms of the hazard that they  
 22 present, and I just didn't appreciate that at the time.  
 23 Q. Well, let's just take it in stages.  
 24 You had seen reports since 2012/2013 of UAE fires  
 25 involving ACM PE core; yes?

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1 A. Yes.  
 2 Q. You had been asked twice about two particular fires in  
 3 Dubai, The Torch and The Address Downtown on  
 4 New Year's Eve 2015, and you had been asked questions  
 5 along the lines of: could this happen here? And we've  
 6 seen your answer.  
 7 So can we take it, just on what I've just put to  
 8 you, that you knew that ACM panels with a polyethylene  
 9 core, if used at height, were capable of burning from  
 10 the bottom of the building to the top of the building  
 11 with impressive speed and power? Yes?  
 12 A. I think I underestimated the speed and power, but  
 13 I think I — looking back through the evidence, I guess  
 14 I understood that there was a potential for these things  
 15 to be on a building. But I didn't ... I didn't  
 16 recognise that risk of non-compliance as being more  
 17 severe than some of the other risks that I was aware of.  
 18 So, for example, we spoke about the question of  
 19 cavity barriers, and that's something that we'd seen,  
 20 I think I mentioned last week, we'd seen a lot of  
 21 building fires, in particular timber-framed buildings  
 22 but also other buildings, and again, certainly with the  
 23 timber-frame buildings, there we were getting  
 24 disproportionate damage to the building. And not in  
 25 isolation; enough of them for them to be statistically

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1 significant . But analysis of the statistics showed that  
 2 whilst you were getting more damage, larger fires, that  
 3 didn't correlate with the casualties or injuries that  
 4 were occurring in those fires . So it's more a question  
 5 of: do you focus on trying to improve the guidance and  
 6 advice and try and work with the industry to raise  
 7 standards, or is it a risk that requires some more  
 8 sort of executive action? And I think that's the  
 9 situation I was in here. And I was wrong. I think  
 10 that's clear and, based on what I've learnt in the last  
 11 four years, it's clear that I was wrong.  
 12 Q. Well, I think that's an answer to my question, which is  
 13 yes, you were aware of the fire risks that this type of  
 14 material posed.  
 15 You had also been asked, as I said to you, whether  
 16 it could happen here, and we've seen your answer —  
 17 essentially no, without a guarantee — and that was  
 18 because, to the way you thought of it at the time, the  
 19 word " filler " effectively banned polyethylene core; yes?  
 20 A. Yes.  
 21 Q. Yes, and we've covered all that.  
 22 But now you're learning from Nick Jenkins that, in  
 23 fact, the use of ACM with a polyethylene core was quite  
 24 widespread in the UK built environment; yes?  
 25 A. Well, allegedly , yeah, that's what he was —

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1 Q. Yes.  
 2 A. Yeah, and on the flipside of that he's also telling me  
 3 that nearly all of the materials he sold was  
 4 fire retardant.  
 5 Q. Well, we'll see how this continues.  
 6 My question is: how did you underestimate the  
 7 seriousness of the problem, given that your founding  
 8 assumption as to why it couldn't happen here, which was  
 9 namely that the effective ban on polyethylene—cored ACM  
 10 panels had worked, had been falsified?  
 11 A. I'm sorry, can you ask that question again?  
 12 Q. Yes.  
 13 How did you come to underestimate the seriousness of  
 14 the problem now that Nick Jenkins was bringing to your  
 15 attention the fact that ACM with a PE core was quite  
 16 widespread in the UK?  
 17 A. I think at that time, I guess I lumped it in with the —  
 18 it sounds awful. This was one of many conversations  
 19 that I would regularly have with stakeholders about  
 20 alleged non—compliance, and actual non—compliance.  
 21 You know, we were — as I say, the issue with  
 22 cavity barriers was definitely something which we were  
 23 seeing a lot of. There were ... it's I guess the nature  
 24 of any regulatory system that there's some — that  
 25 people don't always comply. That's kind of, I guess,

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1 a fact of life . And what you try to do is you try and  
 2 address that as best you can by improving the guidance  
 3 where you can, trying to raise awareness where you can,  
 4 and that's what we were doing with a range of other  
 5 issues .  
 6 I think now knowing what I know now, the ACM problem  
 7 needed more than that, and I just didn't register that,  
 8 and I ... when you go through all of the documents that  
 9 you've put in front of me, and there are probably more  
 10 that you're going to bring forward, I've asked myself  
 11 the same question: why didn't you see that this was more  
 12 severe than the other issues that we were dealing with?  
 13 I think it was, you know, and so I should have treated  
 14 it differently , I think, but I just treated it  
 15 alongside, you know, the debates that we were having  
 16 around a whole range of different issues in relation to  
 17 fire protection , and other aspects of the  
 18 Building Regulations.  
 19 Q. Well, that might answer some of the questions I've got  
 20 coming up in the rest of the email chain.  
 21 A. I'm sorry, that was a long answer. It's quite difficult  
 22 to —  
 23 Q. No, I understand. That's okay. Let's just see how we  
 24 go with this.  
 25 Let's go up the chain, please, to the top of page 4

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1 {CLG00031093/4} and see what Nick Jenkins' response to  
 2 this is . He says — and it starts at the foot of  
 3 page 3, I'll give you the time of the email: 21.54, at  
 4 the foot of page 3, then over to the top of page 4, and  
 5 he says:  
 6 "Hi Brian,  
 7 "Many thanks for your prompt response. In light of  
 8 the fires that have taken hold of a number of buildings  
 9 clad in ACM panels in recent years I also think that the  
 10 core of ACM panels should most definitely be considered  
 11 as a ' filler ' . Some ACM cores meet the rules of ADB  
 12 however the ones commonly used in the UK at present  
 13 don't.  
 14 "To the best of my knowledge there have been no full  
 15 scale 8414 tests carried out to date of any wall  
 16 constructions featuring any type of ACM panel. I am  
 17 aware that 2 manufacturers of ACM have plans to have  
 18 such tests carried out. This however unfortunately  
 19 means that no existing buildings in the UK over 18m tall  
 20 that feature ACM panels currently meet the B4  
 21 requirements. There are many such buildings and their  
 22 numbers are growing.  
 23 "Whilst I appreciate it is for the designer and  
 24 building control body to consider if requirement B4 has  
 25 been met, I do think the current situation is of grave

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1 concern. Surely this justifies the requirement for  
 2 a less ambiguous statement of the rules?  
 3 "With the above in mind do you think it would be  
 4 worth setting up a meeting with the relevant bodies and  
 5 experts represented to review the current presentation  
 6 of the rules?  
 7 "Regards,  
 8 "Nick."  
 9 Now, did the news that no existing buildings in the  
 10 UK over 18 metres tall that feature ACM panels currently  
 11 meet the B4 requirement, and that there are many such  
 12 buildings and their numbers are growing, cause you to  
 13 consider that there might be a wider problem that needed  
 14 to be addressed?  
 15 A. So I think at that time I — as I say, I didn't know who  
 16 Nick Jenkins was. I didn't know whether the points that  
 17 he were making were true or not. And clearly there's  
 18 a concern if there's non-compliance. As I say, trying  
 19 to address non-compliance was an issue that was a part  
 20 of what we did every day, I guess, and frustrations with  
 21 compliance and the way the building control system,  
 22 certainly in my view, and I think in some of my  
 23 colleagues' view, was becoming less effective was  
 24 something we talked about a lot as a team.  
 25 Q. Can I just ask —

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1 A. But I just didn't pick up on this as being as severe  
 2 an issue as I could have done and probably should have  
 3 done.  
 4 As I say, when you look at this in isolation, it  
 5 looks like this is the only accusation of  
 6 non-compliance. I'm afraid that was quite a regular  
 7 accusation. Sometimes that was justified, sometimes it  
 8 wasn't. So it's clearly something to be concerned  
 9 about.  
 10 Q. Did you think at the time this is just another industry  
 11 player complaining about non-compliance of other  
 12 industry players and therefore it's either a Trading  
 13 Standards matter or just another example of industry  
 14 factionalising over products, or did you take it  
 15 seriously?  
 16 A. I think somewhere twixt the two. Clearly we want people  
 17 to comply with the regulations. As I say, this was not  
 18 an uncommon argument, and some of the hyperbole that  
 19 people used — you know, people didn't write to me and  
 20 say, "There's non-compliance but don't worry about it",  
 21 people always tended to use words to describe a risk.  
 22 So when you're faced with lots of communications like  
 23 that, it becomes normal, which is — you know, in the  
 24 context of this Inquiry, it sounds awful, but that's —  
 25 that was the nature of our work, and we focused on it

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1 more as a policy problem than as an operational sort of  
 2 immediate problem. Sorry.  
 3 Q. But that — I'm sorry, I didn't want to cut you off,  
 4 Mr Martin.  
 5 A. No, that's fine, I think I'd finished.  
 6 Q. But the problem here that Nick Jenkins is pointing out  
 7 to you isn't just non-compliance in the broad sense;  
 8 he's identified the very problem — the very problem —  
 9 that was discussed at the CWCT meeting on 2 July 2014,  
 10 and we saw the minute for that under the heading "ACM",  
 11 the very problem that was brought to your attention by  
 12 Steve Evans himself at NHBC in the middle of the year  
 13 previously, and now again. This isn't just a complaint  
 14 about non-compliance; it's a clear identification of the  
 15 problem with the language of 12.7, (1), and (2) the fact  
 16 that it has had a widespread effect, which is that, at  
 17 least possibly, industry had misunderstood it and  
 18 applied ACM with a PE core in a widespread way for some  
 19 years.  
 20 So my question is: how, in the light of that, did  
 21 you just treat this as another complaint from  
 22 an industry player?  
 23 (Pause)  
 24 A. I can only give you the same answer I gave before:  
 25 I would have received quite similar communications from

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1 other people talking about other risks.  
 2 Q. Okay, let's go up to page 2 {CLG00031093/2}, then, and  
 3 we see your response the next morning at 9.49, as you  
 4 can see at the foot of page 2:  
 5 "Thanks Nick."  
 6 Then over the top of page 3 {CLG00031093/3} you say  
 7 this:  
 8 "I'm not sure the text is really all that ambiguous,  
 9 given that it must cover all forms construction [sic].  
 10 People often argue that it isn't clear when they are  
 11 trying to justify doing something that is clearly wrong.  
 12 I'm not entirely sure that even the ACM products that  
 13 have 'flame retardant' cores would meet the rules of  
 14 thumb in the AD so it'll be interesting to see if any of  
 15 them get through an 8414 test.  
 16 "But that's just my opinion. We've recently  
 17 commissioned a survey of Part B users with a view to  
 18 feeding into the next revision. In the first instance  
 19 it might help if you put your views into that please."  
 20 Then you provide the link to the RIBA website.  
 21 "There is a meeting of the CWCT group to talk about  
 22 cladding and fire safety, its run by Bath University,  
 23 maybe you could ask them if you can get involved.  
 24 Brenda Apted, details below, is organising things."  
 25 Then you provide him with Brenda Apted's email

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1 address.  
 2 Now, when you say at the top of the screen there,  
 3 "I'm not sure the text is really all that ambiguous",  
 4 what did you mean?  
 5 A. I think if you include the whole sentence, it's the  
 6 challenge that this is a paragraph that's trying to  
 7 address a wide range of different forms of construction,  
 8 different products and systems, and so given that the  
 9 objectives are really clear, if somebody gives the  
 10 question due consideration and understands the  
 11 construction they're using, it's quite difficult to  
 12 justify why you would adopt the use of  
 13 a polyethylene-cored panel. That was my view then.  
 14 I think it is still to some extent now, is if you're  
 15 looking at the three classifications of ACM panel that  
 16 are on the market, you've got to consciously decide to  
 17 use the one that isn't fire retardant. To me, it seems  
 18 quite difficult to justify that decision if you've read  
 19 that guidance and looked into the issue.  
 20 Q. When you say "not all that ambiguous", were you  
 21 accepting that ADB was not free from ambiguity?  
 22 A. I think in terms of it doesn't clearly say, "Don't use  
 23 polyethylene-cored ACM", so I recognise that there  
 24 wasn't a black and white, "These are the rules", and at  
 25 that time we'd already been trying to progress the next

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1 full review of Approved Document B, so I was expecting  
 2 to try and address this in the changes to the approved  
 3 document.  
 4 Q. Yes, I see.  
 5 A. That's why I asked him to feed into the survey, because  
 6 it would mark the issue in the system, which would make  
 7 it — it would ensure that that's looked at properly  
 8 when we're working our way through the project.  
 9 Q. Yes.  
 10 You don't tell him that his interpretation is  
 11 correct and that the requirements are indeed cumulative  
 12 and not alternative, which was the question he'd asked  
 13 you, do you?  
 14 A. I guess not directly.  
 15 Q. No, and why is that?  
 16 A. I don't know. Probably to some extent is what we always  
 17 tried to say to people asking us these questions is:  
 18 don't treat the approved document like a prescriptive  
 19 set of rules. It's — you should be — you know, if  
 20 you're an engineer, you should be addressing these  
 21 questions in your own mind, as well as just looking at  
 22 the rules.  
 23 Q. Did it not occur to you that whatever element of  
 24 ambiguity there was in 12.7, it was nonetheless  
 25 significantly present so as to have the result that

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1 there was widespread use of aluminium composite material  
 2 panels with a polyethylene core in the UK built  
 3 environment, and that is what Nick Jenkins was bringing  
 4 to your attention?  
 5 A. I think that's a fair question. Again, I was just  
 6 looking at this from the point of view of: how can we  
 7 improve the guidance in the approved document? And I've  
 8 encouraged Mr Jenkins to get involved in the CWCT group,  
 9 I guess to ensure that they're aware of his opinion and  
 10 to test the point that he's making amongst a group of  
 11 people that know about cladding and know about fire.  
 12 Q. Why not at this stage go out with a circular or interim  
 13 measure, such as an FAQ, and tell the public,  
 14 particularly the building control public, what  
 15 Nick Jenkins had told you, and clarify, in unambiguous  
 16 terms, 12.7?  
 17 A. Yeah, I think at this time we'd really struggled to get  
 18 anything done within the department. It had been  
 19 difficult — you know, following the coalition  
 20 government taking over after the financial crisis, there  
 21 was a lot of pressure on the team in relation to  
 22 deregulation and so on, and that had continued to  
 23 magnify over the following period. Once we got past the  
 24 2015 election, we had a combination of an even greater  
 25 ambition towards deregulation, "regulation" was a dirty

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1 word, and there was so much political disruption, it was  
 2 very difficult to get any kind of traction, and any  
 3 document that would have gone out from the department  
 4 would have needed to have had political approval. So  
 5 I think at that stage it would have been incredibly  
 6 difficult to do that.  
 7 Q. Are you saying that even posting an FAQ on the  
 8 department's website would have needed ministerial  
 9 approval?  
 10 A. Oh, yes.  
 11 Q. Really?  
 12 A. Absolutely, yeah. Yeah, it's a document published by  
 13 the department. They're always — anything like that is  
 14 politically cleared.  
 15 Q. Did you raise that question with Mr Harral or Mr Ledsome  
 16 at this time? Did you ask them, "Well, it's now  
 17 apparent that there has been widespread misunderstanding  
 18 of 12.7, I've now discovered that there in fact is, at  
 19 least according to Mr Jenkins, widespread use of ACM  
 20 panels with a PE core just like in Dubai, we need to do  
 21 something about it"?  
 22 A. I wish I had. I think I probably should have done.  
 23 I think it's a combination of factors. I think there  
 24 was a ... it's difficult to know what was going on in my  
 25 head at the time. It was certainly an extremely

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1 frustrating period, and I think that had affected me in  
2 some way, which I find difficult to explain. But  
3 I think I'd got to the point where I was just focused  
4 on: let's get this next review going and then we can  
5 look at this properly. That was clearly the wrong  
6 decision — that was the wrong position to be in, but  
7 I think that's what was going on in my head at the time.  
8 Q. When you say here that you're not entirely sure that  
9 even the ACM products with flame retardant cores would  
10 meet the rules of thumb in the approved document, what  
11 did you mean there?  
12 A. I'm not sure. I've looked at this email in preparation  
13 for speaking to the Inquiry, and I'm wondering where  
14 I got that idea from. It might be just my general  
15 understanding of — the term "flame retardant" is often  
16 bandied around by manufacturers, and it's not a very  
17 precise term, and some products have flame retardant  
18 treatments which actually if you investigate them in  
19 more detail, you find that that treatment has very  
20 little impact on their behaviour in a real fire. There  
21 are others that are — the treatment's very effective.  
22 That might be what I was thinking. I'm not really sure  
23 where I got that from.  
24 Q. Did you understand at the time that, to meet the rules  
25 of thumb, external cladding panels had to be of limited

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1 combustibility, therefore ACM products of any rating  
2 below A2 would not meet those rules?  
3 A. That might have been what I was thinking, I'm not sure.  
4 Q. How did you square that with class 0, which of course  
5 referred to class B?  
6 A. That was a reference to the surface and, as far as I was  
7 concerned, the core of an ACM panel would need to be  
8 a material of limited combustibility. As I've said in  
9 my email to Mr Jenkins, it's the kind of thing that we  
10 were trying to address when we drafted that text in  
11 sort of 2005/2006.  
12 Q. When you say, "It will be interesting to see if any of  
13 them get through an 8414 test", I think you're referring  
14 there to ACM panels with a PE core with flame retardancy  
15 treatment as you say, can we take it that you agreed  
16 with Mr Jenkins' understanding that, as at  
17 February 2016, no such panels had passed such a test?  
18 A. Well, I wouldn't have known, but I had no reason to  
19 doubt Mr Jenkins, or believe him. I mean, that's the  
20 challenge, is this is an email that's come from somebody  
21 I had no knowledge of.  
22 Q. No, but he was inviting a meeting and, given what he was  
23 telling you, did you not think, well, it might be worth  
24 just picking up the phone to him and having a discussion  
25 or inviting him up to Eland House to have a chat?

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1 A. Well, that's why I was encouraging him to go to the CWCT  
2 meeting, is — my problem is I'm an official in  
3 a government department, sitting in a government  
4 building, I don't know what's going on, whereas the  
5 people that are attending the CWCT meeting will be  
6 a cross-section of people from industry and will be able  
7 to either agree, challenge, disagree, whatever, so it's  
8 a way of seeing how much of what he's saying is true or  
9 not, and to get their opinion, because they'll be more  
10 knowledgeable than me about the issues that are being  
11 raised.  
12 Q. Well, maybe more knowledgeable about the technical  
13 issues, but surely what you needed to know was, first of  
14 all, whether and to what extent there was truth in what  
15 Mr Jenkins was telling you, and secondly, if it was  
16 true, how extensive the problem was. Now, surely that  
17 was something you could have done; no?  
18 A. I'm not sure I could have tested how true it was in  
19 a reliable way, and I thought the meeting with the CWCT  
20 group was a way of doing that.  
21 Q. Why not just ask him, "You're gravely concerned about  
22 the presence of ACM PE in the UK built environment, you  
23 say there are only two projects in 15 years where you  
24 have provided A1 or A2, can you give me an idea of the  
25 number of projects and their location where you've

23

1 provided ACM with a PE core which is not A1 or A2 in the  
2 last 15 years", just to get a list, at least an idea of  
3 the scale?  
4 A. I could have done, but at the time I thought: let's get  
5 him to the CWCT meeting amongst his peers, if you like,  
6 other people with expertise in cladding, and get  
7 a clearer picture of what's going on.  
8 Q. Now, the survey of part B users to which you directed  
9 Mr Jenkins in your response, was that the RIBA work?  
10 A. That's right, yes. I mean, the advantage — so at that  
11 time we had no budget for research, which is one of the  
12 reasons — I know you've asked me several times why we  
13 only commissioned one piece of that seven workstream  
14 piece of work for the ADB review, and that was  
15 essentially because it was the last time that we had  
16 a budget to do any research. After that, any research  
17 would have needed to be referenced back to a particular  
18 project, and we didn't have a clearance to do that at  
19 the time.  
20 The arrangement the department had with RIBA, as its  
21 publishers, was that the — there was a certain amount  
22 of royalties that came from the sale of the approved  
23 documents, and the contract the department had with  
24 RIBA, we could, if you like, use some of that money to  
25 fund particular additional pieces of work. Most of that

24

1 was editorial work, but RIBA has a small research team  
 2 as well, and so I was able to get them to do the work,  
 3 looking at doing a user survey of part B, because our  
 4 objective was to improve the quality of the approved  
 5 document, and so that was a way, again, of getting ahead  
 6 of the game, despite the fact that we were in — the  
 7 problems that we had in terms of getting this project  
 8 off the ground.  
 9 Q. But the RIBA work, I think you accepted, was not  
 10 intended to address any of the technical matters in  
 11 Approved Document B.  
 12 A. No.  
 13 Q. So how would directing Mr Jenkins to feed in his  
 14 response into that survey help in any way with the  
 15 situation he was asking you about?  
 16 A. Well, I think, in terms of the approved document,  
 17 whatever else we were going to do at that stage, in the  
 18 next review of ADB, a major exercise in improving its  
 19 clarity was a key part of that. That was both  
 20 a recommendation of the coroner following the  
 21 Lakanal House inquest and was our policy anyway.  
 22 I think as a team we recognised that the approved  
 23 documents could and should be better, and had done a lot  
 24 of work to try and come up with a better way of  
 25 presenting approved documents. So at that time I was

25

1 mostly thinking — I was thinking the issue here with  
 2 external wall construction is not one where there's  
 3 extensive technical research required; it's about taking  
 4 the knowledge that did exist and improving the quality  
 5 of the guidance, so the kind of problem that we're  
 6 talking about here wouldn't occur.  
 7 Q. When you say improving the quality of the guidance, do  
 8 you mean its readability, its clarity as a matter of  
 9 language, plain English, simplification, or do you  
 10 actually mean making it crystal clear that combustible  
 11 cores of cladding panels were effectively banned?  
 12 A. Well, I wasn't just thinking about combustible cores of  
 13 cladding panels, I was thinking about all the other  
 14 issues that crop up with external wall construction. It  
 15 hadn't gone — I was aware that that paragraph was not  
 16 as useful as it could be, and we would want to look at  
 17 that, but we wouldn't just be looking at it from the  
 18 point of view of ACM panels, we'd need to be thinking  
 19 about all the other forms of construction that the  
 20 industry was using or was planning to use, some of which  
 21 I might not even know exists, and that's the sort of  
 22 thing that we would have picked up on once we started  
 23 that project.  
 24 Q. Now, let's look at the final emails in this exchange  
 25 from 17 February, please.

26

1 Can we go to page 1 in this email run  
 2 {CLG00031093/1}, and you can see Mr Jenkins writes, in  
 3 the second email in the chain there on 17 February:  
 4 "Hi Brian,  
 5 "Yes I think you are probably right in that people  
 6 are claiming ambiguity to suit their needs. What  
 7 I can't get my head around however is how buildings,  
 8 that clearly include products that neither:  
 9 "1. meet the rules as set in AD B2 out or  
 10 "2. have been the subject of a full scale 8414 test,  
 11 "are achieving building regulation compliance  
 12 completion certification?  
 13 "Is it that:  
 14 "a) the certification has been wrongly awarded?  
 15 Thus pointing to a requirement for better  
 16 informed/educated certifying officers or  
 17 "b) have they not achieved certification and are  
 18 thus subject to indemnity policies to cover the risk?  
 19 "I have completed the survey and also spoken to  
 20 David Metcalf[sic] of the CWCT re forward inclusion in  
 21 the CWCT group to talk about cladding and fire safety."  
 22 And he goes on in that vein for a while.  
 23 Just on the questions I've read to you from this  
 24 email, do you see that what he was asking you to  
 25 consider, even if it were true that ambiguity were being

27

1 claimed to suit people's needs, was: how could it be  
 2 that these ACM panels were making their way onto  
 3 high-rise buildings? That was his question, wasn't it?  
 4 A. Yeah, I guess you could summarise it that way, yes.  
 5 Q. Now, you didn't respond to that question. At least, we  
 6 haven't seen a response. Did you?  
 7 A. Not that I'm aware of.  
 8 Q. Why did you not?  
 9 A. I guess ultimately I wouldn't have known the answer to  
 10 that question.  
 11 Q. Did you consider the answer to that question?  
 12 (Pause)  
 13 A. I think I ... I don't really know what I was thinking at  
 14 the time. I suspect I was waiting for the CWCT meeting  
 15 to think about it then.  
 16 Q. Why not go back to NHBC and ask them what their  
 17 building control officers were doing, to try to get  
 18 a feel for how their building control officers were  
 19 answering the question?  
 20 (Pause)  
 21 A. That's a reasonable question now, but at the time  
 22 I think I looked at this and thought: let's wait for the  
 23 CWCT meeting.  
 24 Q. If we go to your reply at the top of the email chain,  
 25 the following day, 18 February 2016, you say:

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1 "That sounds like a good plan to me. I'd be happy  
2 to help where I can.  
3 "You are right, of course, constructions complying  
4 with the rules of thumb may well fail an 8414 test. In  
5 an ideal world we'd make the test mandatory but that  
6 would be too costly to justify.  
7 "Please keep me posted."  
8 What did you want Nick Jenkins to keep you posted  
9 about?  
10 A. I think he was proposing to draft some guidance for his  
11 clients, I think. That might be what I was referring  
12 to, I'm not sure.  
13 Q. Right.  
14 Now, did you forward this correspondence to any  
15 other official within the department, or at the  
16 Home Office for that matter?  
17 A. I don't think so, no.  
18 Q. No, we've not seen that, and neither Bob Ledsome nor  
19 Richard Harral had seen this correspondence. Why is  
20 that? Why did you not escalate it to them?  
21 A. As I say, I think at the time I placed the question  
22 about external cladding alongside the -- a range of  
23 issues we had about compliance and a range of issues  
24 that we wanted to work on to improve the approved  
25 document. I didn't recognise this as being a more

29

1 significant risk, which I think I should have done.  
2 So -- we -- the topic of compliance was something that  
3 we regularly debated as a team, so I didn't -- I guess  
4 I just didn't recognise that this was probably something  
5 that I should treat differently.  
6 Q. Why is that, given that only the previous month, on  
7 4 January 2016, a few days after The Address fire,  
8 Bob Ledsome had asked you the very question: is this  
9 something that we should be worrying about? Given that  
10 question, and given what you've been told in this  
11 lengthy email exchange in mid-February, only six weeks  
12 later, why did you not go back to Bob Ledsome and answer  
13 his question and say something like, "Bob, there is  
14 actually something we now need to worry about because  
15 I've been told by an industry player that ACM with 100%  
16 PE core is in use in this country as it is in Dubai?"  
17 A. I'm really not sure why I didn't do that, and I wish  
18 I had. As I say, at that time, things were very  
19 frustrating in the department. I don't know if that  
20 affected my mindset, I'm not sure. It's clear looking  
21 at this I should have done. I think that's a perfectly  
22 reasonable question, and I struggle to come to terms  
23 with why I didn't do that.  
24 Q. Did you deliberately not do it or did it just fall  
25 between the cracks because you didn't give it the

30

1 priority that perhaps it deserved?  
2 A. It wasn't a deliberate attempt to conceal something.  
3 There would have been no reason to do that.  
4 Q. Now, this morning you told us early on that, as part of  
5 your thinking, when looking at the Dubai fires, there  
6 had been no fatalities, and you said last Thursday and  
7 this morning that you underestimated the scale and  
8 hazard of the issue.  
9 Did you recognise that any fires on the scale of  
10 those demonstrated by the Dubai fires would pose a real  
11 and immediate risk to life for occupants, no matter how  
12 well engineered, fire engineered, the interior of those  
13 buildings was?  
14 A. I recognise -- clearly I recognise there was a risk, but  
15 I could have pointed to a dozen other issues and  
16 probably had said the same thing. I think in -- as  
17 I say, knowing what I know now, ACM does seem to present  
18 a -- you know, it's in a different league, and I didn't  
19 recognise that. I was focused on what I saw was  
20 a policy project about to start, and this was one of  
21 a range of things that we'd try and improve as part of  
22 that.  
23 Q. Were you influenced -- and this may be a repetition of  
24 a question I asked you slightly differently this  
25 morning -- in your actions or inactions by the fact that

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1 in those fires there were no reports of people dying?  
2 A. I think that might be a component of my thinking, yes.  
3 Q. Can we look at {SWE00000001}, please. Now, what I'm  
4 showing you here is a witness statement from Sam Webb,  
5 who has provided this statement to the Inquiry dated  
6 4 March this year, 2022. Just so you know, Sam Webb is  
7 an architect and a longstanding member of the RIBA  
8 Council from 1973 to 2012, and he's currently a member  
9 of the RIBA's professional conduct committee. He tells  
10 us in his statement at greater length than I'm going to  
11 that he has had a long career in the health and safety  
12 field and produced a report following the Lakanal House  
13 fire, and had been involved in the drafting of the 2007  
14 CDM regulations. That is a potted summary of his  
15 background.  
16 I want to show you page 90 of this statement  
17 {SWE00000001/90}, please. Here in page 90 he's covering  
18 various individuals that he came across in the context  
19 of Lakanal and the APPG, and here he deals with you, and  
20 he says this at 23.10:  
21 "Brian Martin: I sat next to Brian Martin at lunch  
22 in the Cholmondeley Room in the Palace of Westminster at  
23 an APPG Event on 9 February 2016."  
24 Pause there. 9 February 2016 is a week before you  
25 get the email run from Nick Jenkins that we've spent

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1 time looking at.  
 2 He goes on:  
 3 "I put the following to him.  
 4 "' If AD B wasn't rewritten in clear language as the  
 5 Lakanal Coroner had recommended to the Minister in her  
 6 Rule 43 letter, then another fire like Lakanal was  
 7 inevitable. If it happened in the middle of the night  
 8 when people were asleep then the death toll was likely  
 9 to be 10 to 12 times the six people who died in the  
 10 Lakanal fire.'  
 11 "Brian Martin's reply to me was, 'Where's the  
 12 evidence? Show me the bodies.'  
 13 "This was over a year before the Grenfell Tower  
 14 fire. At that time, I'd never heard the name Grenfell  
 15 Tower. The impression I gained from Brian Martin was if  
 16 it hasn't happened then it wouldn't happen. It was as  
 17 if he needed a disaster before he or the Government  
 18 would act."  
 19 Now, first, some factual questions here.  
 20 First, do you remember having dinner at an APPG  
 21 event in the Cholmondeley Room at Westminster on  
 22 9 February 2016?  
 23 A. I remember the event and I do remember meeting Mr Webb,  
 24 yes.  
 25 Q. Right. Do you remember discussing with him the

33

1 coroner's recommendations from the Lakanal inquest?  
 2 A. I do have some recollection of that conversation, yes.  
 3 Q. Do you remember him saying to you that if ADB wasn't  
 4 rewritten in clear language, as the coroner had  
 5 recommended, then another fire like Lakanal was  
 6 inevitable and many more might die if the fire occurred  
 7 at night?  
 8 A. He probably said something along those lines. He seems  
 9 to have a very accurate memory of exactly what words he  
 10 used.  
 11 Q. Well, that's a comment on his statement, but I'm just  
 12 asking you for your recollection.  
 13 A. I remember having a general discussion about the issues,  
 14 and roughly along the lines what he's saying here.  
 15 I very — I don't think that's exactly what I said in  
 16 that sentence. I think I was explaining to him that the  
 17 problem I had is that I was working in a situation  
 18 where, in order to raise standards, or justify imposing  
 19 higher standards, then there was a very high bar to  
 20 address. We would need to demonstrate that any changes  
 21 were not only cost — as a minimum cost—effective, but  
 22 also meet the one in — I think it was one in, three out  
 23 by then rules. So what I was trying to explain to him  
 24 is: it would be difficult to justify raising standards,  
 25 given that what we were actually experiencing was,

34

1 you know, a regular reduction in the number of fire  
 2 deaths.  
 3 I think the way he's described the conversation is  
 4 not exactly as I recall it, and, as I say, I was  
 5 explaining the challenge that we had as looking at  
 6 these — looking at the policy area was raising  
 7 standards was going to be incredibly difficult under  
 8 that — under the regime we were working under.  
 9 Q. Did you say to him, "Where's the evidence? Show me the  
 10 bodies"?  
 11 A. I wouldn't have said that.  
 12 Q. Did you use words to that effect?  
 13 A. No, I think I'd have used words to the effect I've just  
 14 given you. I can see he may well have read that,  
 15 because he's thinking the government won't act unless  
 16 there's clear evidence of a risk, and to some extent  
 17 that was true. I mean, government policy was — had  
 18 progressively hardened over quite an extensive period,  
 19 the one in, one out thing. I think the Prime Minister  
 20 described people like me as an enemy of enterprise. So  
 21 that's the kind of conversation I would have had with  
 22 him, is — you know, safety campaigners like Mr Webb  
 23 have a view on how the world should be, but the  
 24 government was in a very different place at the time.  
 25 Q. Have you ever used words to anybody along the lines of,

35

1 "Where's the evidence? Show me the bodies", by  
 2 reference to ADB?  
 3 A. I certainly would have talked about evidence a lot,  
 4 that's the key challenge that we always have. I don't  
 5 think I would have said, "Show me the bodies".  
 6 Q. If we continue with paragraph 23.11, Sam Webb goes on:  
 7 "My colleague Arnold Tarling FRICS from Tower Blocks  
 8 UK had mentioned two occasions to me when he was invited  
 9 to speak at an event. While he did not mention  
 10 Brian Martin by name, he referred to him as an, 'Advisor  
 11 to Government' who would state: 'the number of people  
 12 dying in fires is falling, show me the bodies.' One  
 13 event was on 7/8 February 2019 Fire Safety Conference  
 14 organised by the Northern Ireland Fire Safety Liaison  
 15 Panel. After he spoke four people came up and named  
 16 Brian Martin, including the next speaker who worked for  
 17 the LABC. The previous year on 27 July 2018 he spoke at  
 18 'Building Safety Futures' at the West Midlands Fire HQ  
 19 and made the same comment, without naming anyone.  
 20 Several people came up and mentioned Brian Martin by  
 21 name including members of the Fire and Rescue Service."  
 22 Now, I'm not asking you to comment on conversations  
 23 that you were not party to, Mr Martin, of course, but my  
 24 question is: did you say at those events or any of those  
 25 events, "The number of people dying in fires is falling,

36

1 show me the bodies"?

2 A. No.

3 Q. Was the expression "show me the bodies" one that you

4 used at the time or might have used at the time, given

5 the way you would speak?

6 A. I don't think so. That doesn't sound like me.

7 As I say, Mr Tarling and Mr Webb will probably have

8 shared a similar opinion in terms of a desire to raise

9 standards, so — and the government position was that

10 committing more resources to fire protection or any

11 other regulation was, you know, the opposite of where

12 the government wanted to go. So you would need a very

13 strong evidence base to justify an increase in

14 requirements.

15 Q. Well, isn't that the point, that by using these

16 expressions, "show me the bodies", you were seeking to

17 drive home in perhaps garish terms to Mr Webb and

18 perhaps Mr Tarling also, and others who spoke to you,

19 that without fatalities, the government would never

20 agree to tighten up fire safety?

21 A. I'm known for using plain English or speaking plainly;

22 I think that's a bit plainer than I would have said that

23 though.

24 Q. Did you —

25 A. I don't think I would have said "show me the bodies",

37

1 that just doesn't sound like me. But I would have

2 definitely said it's very difficult to justify raising

3 standards given that, you know, the main findings of

4 fire statistics over many decades had been that the

5 number of fires were falling and the number of fire

6 deaths were falling.

7 Q. Did you at least discuss statistics with Mr Webb at that

8 dinner?

9 A. Probably.

10 Q. What about Mr Tarling, do you remember discussing

11 statistics with him or talking about falling fire

12 statistics at public events such as those to which

13 Mr Webb refers?

14 A. It's conceivable. I probably haven't spoken to

15 Mr Tarling that many times. I remember having a — as

16 I say, I think Mr Webb and I sat next to each other over

17 lunch, so we would have had a reasonable conversation.

18 Q. Yes.

19 Just help me with this: statistics were what? These

20 were, what, numbers of fatalities in high-rise

21 buildings, were they? Were those the statistics that

22 you discussed?

23 A. As I say, I can't remember the detail, but that's the

24 sort of thing that we would have talked about, and for

25 many decades the number of fires have been reducing and

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1 the number of fire deaths associated with those fires

2 has been generally reducing.

3 Q. Yes. So is this right: your focus on statistics as

4 a good thing, the trend as a good thing, was on numbers,

5 in other words frequency, frequency of fires, frequency

6 of fatalities?

7 A. Not entirely. You can't just rely on statistics,

8 because they're only telling you about a historic

9 situation. When you look at domestic fires, there are

10 a lot of them. I think flat fires, it's in the order of

11 7,000 to 8,000 fires every year. So because there are

12 so many, the statistics do give you an indication of

13 where the problems might be. But statistics in

14 isolation don't tell you everything about the risk.

15 Q. No, and that's the point, isn't it? Did you ever temper

16 your own thinking and what you said to people about

17 statistics by saying to them or by thinking to yourself,

18 "Well, the frequency figures only give you one side of

19 the equation, you've got to consider severity of risk as

20 well"?

21 A. That was something I was very conscious of, but on

22 the ... but there's — you know, we weren't getting lots

23 of cladding fires, and given that you were getting so

24 many domestic fires, that's a — you know, I guess

25 that's a factor in my thinking, I guess, is ... and

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1 certainly when you are trying to argue or present a case

2 to — through the sort of government process and the

3 policy process, that there are things we need to do

4 here, you can't ignore those statistics. They're

5 obviously a key indicator.

6 Q. Now, in making the assessment of the risk, or the value

7 of the statistics in assisting you to assess the risk,

8 did you ever think back to the recommendation of the

9 1999 parliamentary select committee and its

10 recommendation where it said — and we saw this last

11 week — at paragraph 19 {CLG00019478/9}:

12 "Notwithstanding what we have said in paragraph 18

13 above, we do not believe that it should take a serious

14 fire in which many people are killed before all

15 reasonable steps are taken towards minimising the

16 risks."

17 Now, you remember that warning?

18 A. Yes.

19 Q. Why was that warning not uppermost in your mind as the

20 lead civil servant in charge of the Building Regulations

21 when you heard what Mr Jenkins had to say to you?

22 A. I'm not sure if I was splitting hairs when I was

23 thinking about this, but it's "all reasonable steps".

24 What is the proportionate response to these issues?

25 Q. Well, can you explain why it took Grenfell Tower, in

40

1 which 71 people were killed on the night, for the  
 2 hazards posed by ACM PE to be fully appreciated?  
 3 A. That's quite a complex question. I think that's — I'm  
 4 not sure if it's for me to answer that in full.  
 5 Q. Well, for whom else is it to answer, then, if not you?  
 6 A. Well, I can answer it, but it's a long answer. I think  
 7 it ... it's the progressive decay in the construction  
 8 industry, the progressive decay that went alongside it  
 9 in the building control world, the impact of government  
 10 policy on regulation and the resources available to try  
 11 and address these risks.  
 12 Q. Now, some people might think that that was a description  
 13 of what one might call someone else's problem, but,  
 14 Mr Martin, you were the person in the department to whom  
 15 everybody turned to identify what was happening out  
 16 there in the construction industry, identify the risks  
 17 and bring them to your seniors' attention with a view,  
 18 at least, to trying to do something about them. Do you  
 19 accept that?  
 20 A. Not entirely. I accept that there are — there were  
 21 opportunities that I missed to try and address this, and  
 22 that's something I regret in a way I find difficult to  
 23 describe. But as a team, we focused on individual  
 24 policy projects, and so at various points during this  
 25 time I was focusing on whichever project I was working

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1 on at the time. That was our main focus. We didn't  
 2 see — the team didn't act as a — in this kind of  
 3 policing role. It was more: what's the next project?  
 4 It's a review of part E, or it's a review of part C or  
 5 it's the review of whatever task we're given. That was  
 6 the way the team focused, and so I didn't entirely see  
 7 myself as the solver of all problems, and I think you  
 8 would have needed a more significant team of people if  
 9 that's what you wanted us to do.  
 10 Q. Why would you need a more significant team to take  
 11 Mr Jenkins' observations and concerns seriously? What  
 12 would be needed beyond a properly managed escalation,  
 13 starting with you telling Mr Harral about it?  
 14 A. Perhaps it was because I was the only — I was working  
 15 in isolation. Perhaps if I'd had a colleague that also  
 16 had some background in fire protection, there would have  
 17 been two of us and we'd have, between the two of us,  
 18 perhaps questioned each other.  
 19 As I say, progressively, the number of people  
 20 focusing on these issues had reduced to essentially it  
 21 was just me, and I don't think that's an absolute  
 22 defence, and the more I — over the last few months,  
 23 where I've been looking back through all these  
 24 documents, I think I've recognised that there were  
 25 things that I could and should have done, and I struggle

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1 to understand why I didn't do them. And — but I think  
 2 that's part of it. There's been a progressive reduction  
 3 in resource there, and I think it meant that if I didn't  
 4 pick up on something, there was no one else to question  
 5 me, and I think that's a component of what's happened  
 6 here.

7 Q. Now, I'm going to turn to a short email exchange also in  
 8 February 2016 between you and Alastair Soane. You may  
 9 remember him, he was a structural engineer who at that  
 10 time was the director of Structural—Safety, which was  
 11 a specialist panel of experts dealing with aspects of  
 12 structural safety —

13 A. Yes.

14 Q. — of buildings in the UK.

15 Now, he has provided a statement to us,  
 16 {CUK000000002}. That's the first page of his statement.

17 If we go to page 2 of the statement {CUK000000002/2},  
 18 what he has done is he has taken an email and downloaded  
 19 it or dropped it into the body of the witness statement,  
 20 and if you go towards the bottom of page 2, you can see  
 21 that there is an email from him to you on  
 22 24 February 2016 at 8.45 in the morning, copied to  
 23 somebody called Nick Price, "Re: Cladding fires", and he  
 24 says this:

25 "Good to hear from you Brian as it is some time

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1 since we met on BRAC.

2 "My job these days is with Structural Safety where  
 3 we produce information for industry on lessons that can  
 4 be learned. We were interested to read about the recent  
 5 fire in Dubai which seems to involved the cladding  
 6 panels. Do we have any similar panels in the UK and is  
 7 there is [sic] risk of anything like this happening  
 8 here?

9 "Depending upon the level of possibility of risk we  
 10 could produce an Alert."

11 You see that?

12 A. Yes.

13 Q. Now, this is, as you can see from the date, exactly  
 14 a week after the communications that you had had with  
 15 Nick Jenkins, and the fire that he's referring to is  
 16 clearly The Address Downtown Hotel in Dubai; yes?

17 A. Yes.

18 Q. And that's the fire that you had reassured Bob Ledsome  
 19 and Louise Upton about on 4 January; yes?

20 A. Yes.

21 Q. They had asked you whether there was any risk of  
 22 anything like that happening here.

23 Now, do you accept this: that the honest answer to  
 24 the question posed by Alastair Soane on  
 25 24 February 2016, after your correspondence with

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1 Nick Jenkins a few days earlier, was, "Yes, there is  
2 a risk of it happening here"? Yes?  
3 A. I think you're right, yes.  
4 Q. Now, let's see your response.  
5 If we go down, please, to the next email down, it's  
6 page 3 {CUK00000002/3}, it's 24 February 2016 at 09.08,  
7 and that's 25 minutes later, and you say this:  
8 "Hi Alastair,  
9 "If people are getting things right then we  
10 shouldn't see a similar incident here.  
11 "As I understand it, the problems in Dubai relate to  
12 panels of Aluminium Composite Material.  
13 "Essentially thin layers of Aluminium sandwiching  
14 a polymer core, their are a number of products  
15 available, some with fire retardants in the core some  
16 without.  
17 "ADB gives guidance on this by saying that the  
18 external walls should not provide a medium for  
19 fire spread in tall buildings.  
20 "It then offers two approaches, a set of rules or  
21 a full scale test.  
22 "In the rules, we deliberately added the word  
23 ' filler ' to address things that form part of the  
24 cladding system that are not insulation but could  
25 provide a medium for fire spread.

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1 "I think the core of an ACP panel could reasonably  
2 be considered to be a ' filler '. So, unless the core  
3 material meets the 'rules' then the AD suggests  
4 a full scale test."  
5 Now, the last section of that email, do you accept,  
6 is identical in wording to the view that you had offered  
7 Nick Jenkins on 16 February 2016 in the email, just for  
8 our reference, at {CLG00031093/4}?  
9 A. Yes.  
10 Q. Did you copy and paste that section from your email to  
11 Mr Jenkins into your email to Mr Soane?  
12 A. I might have done. I can't remember.  
13 Q. Why did you not simply say, as you had done to  
14 Bob Ledsome and Louise Upton the previous month,  
15 January 2016 {HOM00043106}, about this very same fire  
16 event, that:  
17 "The polyethylene core of the offending product  
18 would be considered as a filler material so should not  
19 be used over 18m."  
20 That's what you told Ledsome and Upton; why didn't  
21 you say that to Alastair Soane?  
22 A. I don't think I consciously used different language,  
23 I think I was just writing different — writing to  
24 different people at different times.  
25 Q. Did you not wonder how your less than emphatic answer

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1 could possibly assist him?  
2 (Pause)  
3 A. I think at the time I thought it was an appropriate  
4 answer.  
5 Q. How could you think that, given what you had learnt from  
6 Nick Jenkins the previous week, to which the honest  
7 answer was, "Yes, it could happen here or might happen  
8 here, because I'm learning that we do have similar  
9 panels in the UK"?  
10 A. I think that's a fair question. I'm not sure I thought  
11 like that at the time. I think I was — perhaps I was  
12 waiting for the CWCT meeting, I'm not sure.  
13 Q. Why not tell him that? Why didn't you tell him that, in  
14 all candour?  
15 A. I don't know. I mean, as you say, it looks like I've  
16 given him a very similar answer to the one I'd used  
17 previously.  
18 Q. How could you in all conscience tell Mr Soane, as you  
19 say, "If people are getting things right then we  
20 shouldn't see a similar incident here", given that  
21 a fabricator of ACM panels had told you only a week  
22 before that people were not getting it right and that  
23 the matter was of grave concern?  
24 A. I'm not sure I can answer that. At the time, that  
25 seemed like the right answer to give Mr Soane.

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1 Q. But it wasn't a candid answer, was it, given what you  
2 had now been told?  
3 A. I don't think I was deliberately hiding information.  
4 Q. Well, how could you not have been? Surely you hadn't  
5 forgotten the exchange that you had had with  
6 Nick Jenkins over a couple of days the previous week?  
7 A. I'm really not sure what I was thinking at the time.  
8 Q. Now, you knew that 12.7 had been called out by the  
9 industry back in July 2014 as unclear and requiring  
10 clarification, and again by the NHBC in June 2015, and  
11 again by Nick Jenkins the previous week. We know that  
12 nothing had been done to clarify it. Is it right that  
13 you just decided instead to pick off individual queries  
14 one by one with this line?  
15 A. No, at the time — I mean, the Building Control Alliance  
16 guidance note I thought had answered the question in  
17 a way which I thought was effective, and at that time  
18 I was about to start work on changing all of that text.  
19 Q. Well, if you were being honest, surely you would have  
20 added or put somewhere in this message that the meaning  
21 of the rule was controversial, it wasn't universally  
22 shared, and there was indeed a risk of Dubai happening  
23 here because of the presence of ACM with a PE core on  
24 buildings above 18 metres?  
25 A. I think that's a fair point, and I wish I'd done

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1 something along those lines. I still struggle to  
 2 understand what I was thinking at the time.  
 3 When you look back through all the documents, as  
 4 I have over the last few months and as we have, I would  
 5 ask me the same question, and I struggle to understand  
 6 what was in my head at the time, other than to say this  
 7 was one of a range of issues and I hadn't recognised it  
 8 for what it was.  
 9 Q. Now, Mr Soane provided a statement to the Inquiry,  
 10 {CUK00000002/17}, paragraph 45. This is his evidence  
 11 about what he thought at the time. He says:  
 12 "Brian Martin's response indicated to me that it was  
 13 unlikely that such panels were being used in the UK so  
 14 there was unlikely to be a risk to the structural  
 15 integrity of buildings. I therefore believed that this  
 16 had satisfactorily answered the matter that I raised  
 17 with him."  
 18 Now, if he is right that he believed you, do you  
 19 accept that you succeeded in misleading him to believe  
 20 that Dubai couldn't happen when you knew it could,  
 21 because you knew that your reasonable view of "filler"  
 22 in 12.7 was not universally shared by the industry?  
 23 A. I've never deliberately set out to mislead anybody.  
 24 Perhaps part of the — what I was thinking is the work  
 25 that Mr Soane did was focused on structural safety. As

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1 he says here, he's interested in the structural  
 2 integrity of the building.  
 3 Q. Well, if it wasn't —  
 4 A. Perhaps that's why I approached the question in the way  
 5 I did.  
 6 Q. If it wasn't a deliberate choice not to mislead him, why  
 7 didn't you simply say to him, "I can't tell you whether  
 8 there is or isn't a risk at the moment, it's something  
 9 I need to explore further, and I'll come back to you in  
 10 a month's time after a meeting I'm having with CWCT", or  
 11 words to that effect?  
 12 A. I think that would have been a better thing to do at the  
 13 time.  
 14 Q. Would it not have been of benefit to public safety to  
 15 answer him in that way?  
 16 A. It may have done. The way that the organisation that  
 17 Mr Soane was working with works is that it issues  
 18 advice, principally to structural engineers, about  
 19 problems that had occurred, so it wouldn't have been the  
 20 perfect readership for raising this concern, but it may  
 21 have helped, and I think it's — I think it was  
 22 a mistake not to say to him, you know, "Yes, please  
 23 draft something up", but I haven't actively told him not  
 24 to, nor did I say, "That's a good idea, it would be  
 25 helpful", which I think, in hindsight, would have been

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1 the right thing to do.  
 2 MR MILLETT: Mr Chairman, is that a convenient moment?  
 3 SIR MARTIN MOORE-BICK: Yes, thank you, Mr Millett, I think  
 4 it is.  
 5 Mr Martin, we will have a break at this point.  
 6 THE WITNESS: Yes, sir.  
 7 SIR MARTIN MOORE-BICK: We will come back, please, at 11.35.  
 8 As I've said to you every time now, please don't talk to  
 9 anyone about your evidence or anything relating to it  
 10 while you're out of the room.  
 11 THE WITNESS: Yes, sir.  
 12 SIR MARTIN MOORE-BICK: All right? Thank you very much.  
 13 Would you go with the usher, please.  
 14 (Pause)  
 15 Thank you very much. 11.35, please.  
 16 (11.19 am)  
 17 (A short break)  
 18 (11.35 am)  
 19 SIR MARTIN MOORE-BICK: All right, Mr Martin, ready to carry  
 20 on?  
 21 THE WITNESS: Yes, sir.  
 22 SIR MARTIN MOORE-BICK: Thank you very much.  
 23 Yes, Mr Millett.  
 24 MR MILLETT: Thank you, Mr Chairman.  
 25 Mr Martin, I would like to turn next, please, to the

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1 second of the CWCT fire group meetings, this one now on  
 2 17 March 2016. You may recall this meeting.  
 3 Do you remember, were you present for the whole of  
 4 that meeting?  
 5 A. I think I was.  
 6 Q. Yes.  
 7 Now, you deal with this in your statement. Can we  
 8 please go to your statement at {CLG00019469/49},  
 9 paragraph 138. You say:  
 10 "On 17 March 2016 I attended the second meeting of  
 11 the CWCT Technical Group. At the meeting a 'draft  
 12 roadmap' to summarise the measures needed to ensure  
 13 a façade complies with the prescriptive rules of ADB was  
 14 presented. I recall being satisfied that the roadmap  
 15 adequately set out how compliance with the functional  
 16 requirements could be achieved. The minutes go on to  
 17 note that 2015 BCA Guidance Note 18 had extended the  
 18 limited combustibility requirement to all material in  
 19 the wall of a tall building. This was not an  
 20 objectionable clarification. Indeed at the meeting it  
 21 was accepted, as is recorded, that paragraph 12.7 of ADB  
 22 was open to interpretation. Acting on behalf of the  
 23 Department I undertook to change this misleading clause  
 24 in the next revision of ADB. The conclusions of that  
 25 section of the discussion were that:

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1        "... the cladding should not contribute to the  
 2        spread of fire and that the combustibility clause is  
 3        intended to include [then in bold] all materials in the  
 4        external wall. An exception may be made for small  
 5        isolated components that would not contribute to  
 6        fire spread."

7        Now, we have already dealt in some detail, you and  
 8        I, with the effect of the BCA Technical Guidance  
 9        Note 18. You confirmed earlier in your evidence that  
 10       the Technical Guidance Note 18 from 2014 did extend the  
 11       limited combustibility requirement beyond 12.7 to all  
 12       material in the external wall of a tall building,  
 13       including external facings; yes?

14      A. Yes.

15      Q. Yes.

16        Now, looking towards the last part of paragraph 138  
 17       on your screen there, which we've just read, you say:  
 18       "Indeed at the meeting it was accepted ..."

19        Do you see that?

20      A. Yes.

21      Q. Four lines up from the quotation:  
 22        "Indeed at the meeting it was accepted, as is  
 23       recorded, that paragraph 12.7 ... was open to  
 24       interpretation."

25        Now, do you mean here in this statement that it was

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1        accepted by you that 12.7 was open to interpretation?

2      A. I think what I mean here is that was the view of the  
 3       meeting, but I think I'd recognised that there were  
 4       different ways of interpreting that guidance.

5      Q. So you accepted it in line with the other attendees at  
 6       that meeting?

7      A. Yes, I think so.

8      Q. Yes. And you then say:  
 9        "... I undertook to change this misleading  
 10       clause ..."

11        Does this tell us that you accepted at the meeting  
 12       that the clause was misleading?

13      A. It was certainly potentially misleading. I don't think  
 14       that was something I would have disputed, and something  
 15       that I did want to improve on.

16      Q. When had you first come to the conclusion that  
 17       paragraph 12.7 of Approved Document B was open to  
 18       interpretation and misleading, or potentially  
 19       misleading?

20      A. I guess it was a progressive thing. It was around 2014,  
 21       I think, when I recognised that it wasn't necessarily  
 22       understood in the way we'd intended it. I think the ...  
 23       it was probably more around this time that I perhaps  
 24       raised — that problem kind of raised — escalated in my  
 25       own head, that perhaps this is a bigger issue. Again,

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1        at that time we were — I thought we were about to crack  
 2        on with updating the approved document. This was  
 3        clearly a piece of text that would need to be improved,  
 4        as a — I probably overstepped the mark slightly in  
 5        undertaking to change the clause, because I didn't have  
 6        an absolute authority to do that, but we would  
 7        definitely be working on that clause as part of the  
 8        clarification work, if not necessarily going all — as  
 9        far as the BCA guidance note was concerned, and the then  
 10       CWCT draft.

11        I think the ... in a way, the BCA guidance note and  
 12       the changes that had been made to the relevant  
 13       British Standard 9991 had all taken a more onerous  
 14       approach in an attempt to address the uncertainty and  
 15       sort of problems with interpretation of that clause, and  
 16       that's something that I'd recognised we'd need to take  
 17       into account when we amended the approved document.

18      Q. ADB was intended to act as a benchmark, wasn't it? You  
 19       say that yourself in your statement.

20      A. Yes.

21      Q. As such, being open to interpretation and misleading, do  
 22       you accept that it had failed in its purpose?

23      A. Yes, I think to some extent. I don't think that's  
 24       entirely because of the text in the approved document.  
 25       I think it refers back to the question you asked me

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1        earlier, is the construction industry — in my career,  
 2       across the construction industry, in all the jobs I've  
 3       had, the industry's changed considerably from one where  
 4       it was the design professionals that would lead most  
 5       projects, and I certainly recall when I first joined the  
 6       industry it was usually an architect that took the  
 7       absolute responsibility for the design of a building,  
 8       and that was inherent in the way the contracts were  
 9       drafted, and at some point, probably about halfway  
 10       through the period, I guess, maybe earlier, the shift to  
 11       the sort of design and build approach became more  
 12       prevalent in the industry, and I think that's similar to  
 13       the way that the work at Grenfell had been managed, and  
 14       that changed the attitude of the industry, I think, to  
 15       some extent.

16        So there was that, and also the attitude of  
 17       building control bodies had changed. When I first  
 18       started working as a building control officer, I think  
 19       we had a more combative approach to the way — I'm not  
 20       sure if that's the right word, but we would look to  
 21       challenge the designers and the builders, whereas  
 22       I think over time building control bodies, both in the  
 23       public and private sector, had shifted to treating the  
 24       applicant as a client, and sometimes it would —  
 25       I remember somebody saying to me once that they accepted

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1 something if they thought other building control bodies  
2 would accept it, and I remember the contrary attitude  
3 when I first started working as a building control  
4 officer. I think that's part of what happened here, is  
5 perhaps the industry that I first started working in  
6 would have looked at that guidance and taken a more  
7 cautious approach, and perhaps we'd failed to take  
8 account of that in the way that we drafted our guidance,  
9 that over time people looked, you know, for loopholes,  
10 rather than looking for a good solution, and I think  
11 that's the ... so to say that the approved document  
12 failed in its objective I think is an incomplete point.

13 Sorry, that was a very long answer.

14 Q. Now, can we look at the minutes of the meeting at  
15 {CLG00019440}, page 1, which gives you the time of the  
16 meeting and place of the meeting and the attendees  
17 there. You can see Sarah Colwell was there.  
18 Nick Jenkins was there, you having invited him.  
19 David Metcalfe there, and other familiar names:  
20 Brian Martin, you; Adrian Pargeter was there; Chris Mort  
21 from Siderise; Stuart Taylor, again, from Wintech; and  
22 David White from NHBC.

23 Now, if we go to page 2 {CLG00019440/2}, please,  
24 we'll look at the heading, "Combustibility of material",  
25 at the foot of your screen, and it says this:

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1 "Combustibility of material  
2 "Approved Document B (Clause 12.7) requires  
3 insulation and filler material in the external walls of  
4 tall buildings to be of limited combustibility. BCA  
5 Guidance Note 18 extends this requirement to all  
6 material in the wall.  
7 "It was accepted that Clause 12.7 was poorly written  
8 and open to interpretation. The title of the clause is  
9 misleading ('Insulation Materials/Products'), and this  
10 will be changed in the next revision of ADB."

11 Now, just pausing there, who at the meeting actually  
12 said that clause 12.7 was poorly written?

13 A. Oh, I couldn't say.

14 Q. Did you openly agree at the time?

15 A. I probably wouldn't have used those exact words, but  
16 I think I acknowledged that there was a problem, that  
17 there was a problem with the drafting of that text, and  
18 it gave people the opportunity to read it in the way  
19 that suited them.

20 Q. Right. Why didn't you tell the meeting, as you had told  
21 Nick Jenkins the previous month, that ADB wasn't, as you  
22 put it to him, really all that ambiguous, and say what  
23 it clearly meant, what you had told Bob Ledson it  
24 meant?

25 A. I imagine that was the conversation. This minute's

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1 a note of quite a long meeting, I think.

2 Q. Right. When had you come to the conclusion that  
3 paragraph 12.7 was poorly written?

4 A. I think, as I said before, I think this is a progressive  
5 thing. So when we first drafted it, we weren't entirely  
6 happy with it, but felt that it went far enough at that  
7 time.

8 Q. Do you remember who actually said that the title of  
9 clause 12.7 was misleading?

10 A. I couldn't say.

11 Q. Presumably you agreed at the time or at least did not  
12 object?

13 A. I think I was aware that some people in the past had  
14 said, "Look at that, it's only about insulation", and  
15 I think I remember being frustrated that that wasn't the  
16 intention.

17 Q. Right.

18 Why had you not indicated to anybody before this  
19 meeting that you accepted or thought that the clause was  
20 misleading and poorly written? We've seen you had  
21 correspondence with Louise Upton, Peter Holland, in  
22 February 2015, Steve Evans in June 2016, Bob Ledson and  
23 Louise Upton in early January 2016, Nick Jenkins in the  
24 middle of February 2016, and Alastair Soane on  
25 24 February 2016. My question again: why had you not

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1 indicated to any of those individuals that you accepted  
2 or thought the clause was misleading and poorly written?

3 A. I don't remember a particular point at which I changed  
4 view. I think it's just the way the discussion's been  
5 recorded here. I think for some time I'd recognised  
6 that it's a clause that we ought to revisit.

7 Q. Why not say that in terms to any of the individuals I've  
8 just listed in the long history of the correspondence  
9 from February 2015 to March 2016?

10 A. It's a mixture of some of those people wouldn't have  
11 been directly involved in the — that particular  
12 conversation, or I just misjudged the situation,  
13 I think, and I think as I've said already today, there's  
14 clearly some points where I should have recognised that  
15 there was a larger problem than perhaps I'd first  
16 appreciated, and should have shared that with other  
17 people in the department, and I'm still not sure why  
18 I didn't do that.

19 Q. Now, let's then go back to the minute on page 3  
20 {CLG00019440/3}, next, top of page 3, and it says this:

21 "The term 'filler material' was intended to be  
22 a 'catch-all' as it was not possible to list all the  
23 materials that should be covered by the clause. In  
24 addition, there were people arguing that certain  
25 materials in a façade build-up (such as expanded

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1 polystyrene in some instances) were not there for their  
2 insulating properties, but to 'pad out' the façade, and  
3 were therefore excluded from the clause."

4 Pausing there, to the best of your recollection, who  
5 said that?

6 A. I can't say for certain. I think probably a number of  
7 us were talking about that issue.

8 Q. Well, just looking at it closely, who other than you and  
9 perhaps Sarah Colwell present at the meeting were able  
10 to speak to what the word "filler" was intended to  
11 capture as you can see in the first sentence of that  
12 paragraph?

13 A. Oh, in terms of the intention, yeah, that must have been  
14 me, yeah.

15 Q. Right, okay.

16 Now, I'll come back to that in a moment, but let's  
17 just look at the penultimate paragraph of that section  
18 on page 3 where it says:

19 "Conclusion of the discussions — the cladding should  
20 not contribute to the spread of fire and that the  
21 combustibility clause is intended to include all  
22 materials in the external wall. An exception may be  
23 made for small isolated components that would not  
24 contribute to fire spread."

25 Now, I show you that.

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1 Can I show you next what David Metcalfe of the CWCT  
2 has told the Inquiry in his statement. It's at  
3 {CWCT0000115}. I'll show you the first page to identify  
4 the document, and then let's go to page 18  
5 {CWCT0000115/18} next, paragraph 65, and he says this.  
6 He refers in the first sentence there to the minute, and  
7 he says:

8 "I do not think the minutes we have are accurate in  
9 this instance, in so far as I do not think that the  
10 final paragraph of the section on 'Combustibility of  
11 material' is entirely accurate. It refers to the  
12 intention of clause 12.7 being to apply to all  
13 materials. I think a more accurate description would be  
14 that it was concluded that clause 12.7 should apply to  
15 all materials. This is discussed further elsewhere in  
16 this statement. I believe Brian Martin was present for  
17 the whole of this meeting."

18 Now, I want to focus on the word "should" there. Do  
19 you agree with what David Metcalfe says there, namely  
20 that 12.7 should apply to all materials but didn't?

21 A. I don't remember anyone saying that. But I don't  
22 remember this part of the meeting being particularly  
23 contentious. Mr Metcalfe seems to be implying that  
24 there was a dispute or something at that point in the  
25 meeting.

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1 Q. Well, one can read what he says. I'm not going to  
2 debate what he means there. We've had him give evidence  
3 about this already. But to the best of your  
4 recollection, was the discussion along the lines of,  
5 "The intention of 12.7 is that it applies to all  
6 materials", or that, "The intention behind 12.7 is that  
7 it doesn't, but it should be changed now so that it  
8 should"?

9 A. I think the first. That's what I would have said. If  
10 people had been arguing with me, I would have remembered  
11 that.

12 Q. Right.

13 A. I set out what the intention was, and the minutes look  
14 like an accurate record of the discussion.

15 Q. I see. So do you accept, therefore, that the term  
16 "filler material" did not, on any view, catch — that's  
17 the word used — the external facings of cladding  
18 panels?

19 A. Well, I still took the view that the surface of the  
20 panel itself would — could be treated differently to  
21 the core of something like a sandwich panel or  
22 a composite panel, but the BCA guidance note and the  
23 CWCT guidance was taking a less nuanced approach, which,  
24 given the debates we'd had, I still thought was useful  
25 and less confusing, if you like.

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1 Q. Yes, and you've told us yourself that it was the BCA  
2 Technical Guidance Note 18, issue 0 from June 2014, that  
3 extended the limited combustibility requirement in 12.7  
4 to all key elements in the external wall construction.

5 A. Yeah, and particularly this question of whether it's  
6 addressing the surface or not.

7 Q. Yes.

8 In light of that answer, I think we can take this  
9 next question quite quickly, but let me show it to you  
10 anyway. Can we please look at page 21 of this statement  
11 {CWCT0000115/21}, three pages on, paragraph 71, and here  
12 Mr Metcalfe says:

13 "Brian Martin was also present during this part of  
14 the meeting [the bit of the meeting I've just read to  
15 you from the minute]. It was the consensus of the group  
16 that BCA Guidance Note 18 extended [in bold] the  
17 requirement as described. I agreed with this consensus  
18 because, as noted above, BCA Technical Guidance Note 18  
19 interpreted 'insulation products' and 'filler materials'  
20 to apply to all materials in the external wall. This  
21 went significantly beyond the previous interpretation  
22 which was that clause 12.7 only principally applied to  
23 insulation materials. The group consensus was that  
24 clause 12.7 was poorly written, and if intended to  
25 include all materials that the title was also

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1 misleading. I do not recall Brian Martin's exact  
2 response to this."

3 Now, do you accept that it's certainly a reading,  
4 the "all elements" reading, that you had never adopted  
5 in any answer to any question you had ever been asked  
6 about 12.7 to date?

7 A. That's right.

8 Q. Nor was it an interpretation of 12.7 that you had ever  
9 given to Harral or Ledsome?

10 A. That's right.

11 Q. So why did you agree with it?

12 A. The same reason as I was happy with the BCA guidance  
13 note addressing it, is the debate that's going on in  
14 this meeting and the one two years previous was because  
15 of the nuanced nature of that paragraph, and the BCA  
16 guidance note and the CWCT sort of approach was to take  
17 a less nuanced line, which was a safer option and less  
18 open to interpretation, so that would be a good starting  
19 point for any design.

20 I think the issue — probably the point here is that  
21 a lot of the — certainly the people reading the CWCT  
22 guidance probably wouldn't be thinking about the  
23 structure of the wall, they'd be thinking about cladding  
24 systems, which tend to sit in front of most structural  
25 frames. So the issue we were concerned about in

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1 2005/2006, which was that: do we want this requirement  
2 to extend to the structure, wasn't relevant. So I think  
3 in practice people would have read that and put a — had  
4 a timber-framed building with a material — with a  
5 limited combustibility cladding system on the front of  
6 it.

7 Q. Can we just go back to the minute of the meeting,  
8 {CLG00019440/3}, at the top of page 3 there, where you  
9 see it says:

10 "The term 'filler material' was intended to be  
11 a 'catch—all' as it was not possible to list all the  
12 materials that should be covered by the clause."

13 Yes?

14 A. Yes.

15 Q. And you accept, I think, that it was you who said that.

16 A. I don't know if I said those words, but I would — that  
17 would have been the implication, yes.

18 Q. Right. But had it been the true intention to catch all  
19 elements of the cladding system as materials of limited  
20 combustibility, do you accept that there would have been  
21 no need to list all the materials that should be covered  
22 by the clause; you would just say, "All elements of the  
23 external wall build-up"?

24 A. Yes.

25 Q. Yes. It wasn't true, was it, that the phrase "filler

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1 materials etc" — not including gaskets, of course, and  
2 sealants — had originally been intended to be  
3 a catch—all in the way now suggested?

4 A. I'm not sure if I used the term "catch—all". I doubt  
5 it. It's not a phrase I've ever used frequently, but  
6 I might have done. But the intent, as I think I've said  
7 several times, and I think you've acknowledged that I've  
8 not changed what I've been saying, is that it was to  
9 catch relevant things, but we couldn't find a good way  
10 of referring to them.

11 So I may have said "catch—all", but I don't  
12 remember. I doubt it. I probably said something along  
13 those lines, which is why it's been summarised in the  
14 minute that way.

15 Q. At this point, when saying or agreeing that 12.7 was  
16 a catch—all, or whatever it was, it certainly included  
17 external facings of external panels, did you consider  
18 how that left diagram 40?

19 A. I don't think so, because of the — that's the  
20 difference between the kind of nuanced approach that  
21 we'd set out in the approved document, which was to  
22 treat the surface differently to layers underneath, and  
23 the point that I was trying to make in this meeting.  
24 Again, the key point here is to think about the  
25 objective, which is really what we started out with the

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1 intent of trying to get people to do.

2 Q. But if you look at the conclusion of the discussions  
3 that the combustibility clause was intended, as you can  
4 see, to include all materials in the external wall, if  
5 that was right, how did it leave diagram 40?

6 A. I think this is a minute that's summarising  
7 a conversation, and I probably looked at it, at the  
8 minute, and thought: well, that's where the  
9 Building Control Alliance guidance note is and it's  
10 a good place to be. We may have talked about diagram 40  
11 in the meeting, I don't remember.

12 Q. But was it not obvious to you by this point, if not  
13 before, that if all materials in the external wall had  
14 to be materials of limited combustibility, and that was  
15 the intention of the use of the words "filler material  
16 etc", then 12.6 and diagram 40 didn't work, because  
17 neither class 0 nor class B Euroclass were standards of  
18 limited combustibility; they were lower standards of  
19 reaction to fire?

20 A. Yes, and that was something which is fairly clear. As  
21 I say, that's the approach I took, was that they'd taken  
22 a less nuanced approach to the question, but it  
23 delivered the objective. So I didn't see that as  
24 a problem.

25 Q. But if it delivered the objective, do you agree that, as

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1 Steve Evans and John Lewis each have told us in their  
 2 evidence, it created an anomaly, because it meant that  
 3 12.6 and diagram 40 were basically a dead letter, they  
 4 were unnecessary?  
 5 A. To some extent, although diagram 40 addresses things  
 6 other than vertical fire spread. It also addresses  
 7 fire spread between buildings.  
 8 Q. Leave that on one side. We know it does and we know  
 9 there are two elements to that, and we may come back to  
 10 that in due course, but just in relation to fire spread  
 11 over the surface of the walls, rather than from one  
 12 building to another, which is the first element of  
 13 B4(1), as you know, as we've discussed, do you accept  
 14 that if the intention was to require all materials in  
 15 the external wall to be of limited combustibility, that  
 16 meant that 12.6 and diagram 40 were meaningless?  
 17 A. If that was the intention, yes.  
 18 Q. But that's what this note suggests. It's the conclusion  
 19 of the discussion that the combustibility clause is  
 20 intended to include all materials in the external wall.  
 21 If that's right, that leaves diagram 40 and 12.6 as  
 22 empty of content, doesn't it? It must do.  
 23 A. I guess so, yes.  
 24 Q. Yes. Did it occur to you that that would therefore mean  
 25 that some people in the industry, when faced with this

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1 anomaly, might have a problem, because they would say to  
 2 themselves, "Well, I've got this class B panel here  
 3 which diagram 40 says I can use, but I'm also being told  
 4 that 12.7 is intended to include all materials in the  
 5 external wall, so what do I do?"  
 6 A. I think I looked upon that as there might be situations  
 7 where that occurred, and the designers would talk to the  
 8 building control body and they'd find a solution that  
 9 they both considered met the objective of the  
 10 regulation. That's the point I'm trying to make, is  
 11 that you start with the objective. If you're coming up  
 12 with something which you're not sure about, you step  
 13 back, you do your research and you think about the  
 14 objectives of the regulations.  
 15 Q. But did it occur to you that the following question  
 16 might be posed by a building owner or person carrying  
 17 out the work: I'm told by diagram 40 that I can comply  
 18 with B4, at least presumptively, by using this panel  
 19 here which has got class 0, that's what it says in the  
 20 regulation, in the approved document, so why do we have  
 21 to have a conversation about it?  
 22 A. I think — because if you've got a panel which has got  
 23 things inside it that might affect its fire behaviour.  
 24 That's the point we'd been trying to make.  
 25 Q. But, as we've discussed already, diagram 40 doesn't

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1 distinguish, when it comes to composite products,  
 2 between the surface and the core, does it?  
 3 A. It just talks about surfaces. It doesn't talk about  
 4 cladding panels at all, it talks about surfaces. And  
 5 I recognise that it would have been better if we'd made  
 6 specific comment about cladding panels, whether they be  
 7 sandwich panels or composite panels, or any other  
 8 cladding material that might have multiple layers in it.  
 9 At the time of drafting, we thought the text we put in  
 10 12.7 did the job.  
 11 Q. But even just ignoring the core for the moment, just  
 12 focusing on the surface, the surface didn't have to be  
 13 of limited combustibility, so what is a person carrying  
 14 out the work to do? He's being told by diagram 40 that  
 15 the surface needn't be of limited combustibility, but  
 16 he's being told by 12.7 that all elements, all materials  
 17 in the external wall, must be of limited combustibility.  
 18 What does he do?  
 19 A. He takes responsibility as an engineer to think through  
 20 the issues, he discusses it with the building control  
 21 body and fire safety engineer and anybody else that's  
 22 involved in the design, takes advice from the  
 23 manufacturer — looks at the manufacturer's literature  
 24 and sees that there are multiple different products, and  
 25 thinks to himself: why am I going to use this one?

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1 Those are the kinds of decisions that specifiers make.  
 2 Q. What is the answer to the question: diagram 40 or 12.7?  
 3 Which trumps which?  
 4 A. The functional requirement and the objective.  
 5 Q. No, that's not answering my question.  
 6 A. Well, that's because it's the wrong question. I mean,  
 7 that's the point that I think is fundamental to the way  
 8 the Building Regulations are designed to work.  
 9 I understand they didn't work in that respect.  
 10 That's — there's no disputing that. But that's how  
 11 I was taught to approach the Building Regulations, is  
 12 when in doubt, look at the functional requirement, look  
 13 at the objectives of the regulations, and ask yourself:  
 14 am I doing something here which is meeting those  
 15 objectives?  
 16 Q. Mr Martin, we've tried this last week. You are  
 17 answering the question by reference to the answer. What  
 18 I'm trying to do is to work towards the answer by using  
 19 the guidance that the Secretary of State put in place to  
 20 enable people to do so. Let's try that.  
 21 I would like to be able to achieve B4. That's the  
 22 functional requirement. I'd like to be able to achieve  
 23 it. Now, then, I've got a panel which I'm told is  
 24 class B, but I'm also looking at what you now say about  
 25 12.7. Can I use my class B panel or can't I, as the

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1 linear route to compliance? Can I use it or can't I?  
 2 A. I think I'd read that paragraph and say: it depends. Is  
 3 it a homogeneous panel? Is it solid all the way  
 4 through? Is it made of one material? Could you  
 5 reasonably treat it as a surface or not? I can't give  
 6 you a black and white answer to a question that — to  
 7 that question.  
 8 Q. So in answer to the simple question, can I use it or  
 9 can't I, there are at least five further questions that  
 10 arise?  
 11 A. I've not counted them, but that sounds ...  
 12 Q. That's the number of questions you posed.  
 13 Did that not at the time tell you that there was  
 14 something fundamentally wrong with Approved Document B,  
 15 and specifically 12.7, if class 0 was to remain  
 16 a standard for surface spread of flame?  
 17 A. That's not how I saw it at the time. I saw it as this  
 18 is the nature of the Building Regulations, and the  
 19 system that we're working in is that designers and  
 20 building control bodies needed to make a judgement.  
 21 SIR MARTIN MOORE—BICK: Mr Martin, just help me with this:  
 22 you have been answering these questions on the  
 23 assumption that it was your intention that the words  
 24 "filler material" would extend to the core of an ACM  
 25 panel, although I think you accept that the way in which

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1 12.7 was worded did not make that entirely clear. Is  
 2 that right?  
 3 A. I think that's fair, sir, yes.  
 4 SIR MARTIN MOORE—BICK: Right. Do you think it's possible,  
 5 then, that someone looking at ADB would say to himself:  
 6 I've got a class 0 panel here, I see what the words are  
 7 in 12.7, they don't refer to a cladding panel or the  
 8 core of a cladding panel, because the two are  
 9 inconsistent, I'm entitled to assume that 12.7 does not  
 10 apply to the core of a cladding panel?  
 11 A. Then you're making a decision as a designer based on the  
 12 words in a book rather than thinking about your design.  
 13 SIR MARTIN MOORE—BICK: But you can see that's a possible  
 14 way to read ADB?  
 15 A. I understand that, sir, absolutely, yes, and from 2014,  
 16 a Building Control Alliance note had alerted all the  
 17 building control bodies, I thought, to be more cautious  
 18 about that point, and I'd hoped that that was effective,  
 19 which evidently it wasn't. But I think that's the  
 20 fundamental point here, is the — I would have hoped  
 21 that the designer thought about it. In a way, if it had  
 22 been an insulated sandwich panel, then you would say,  
 23 "Well, it's insulation, it needs to be material of  
 24 limited combustibility". The main difference between  
 25 the core of a composite panel and the insulation in

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1 an insulated panel is the fact that there are air  
 2 bubbles in it. It's essentially the same stuff. So if  
 3 you stop to think about it, you'd have to ask yourself:  
 4 why am I imposing a rule on the foamed plastics but not  
 5 the unfoamed plastics? And I would hope anyone stopping  
 6 to think about that would recognise that that makes no  
 7 sense.  
 8 SIR MARTIN MOORE—BICK: But in the end I think you accept  
 9 that the only way around the construction that I've  
 10 suggested to you is to go back to B4(1) and use that as  
 11 your guide?  
 12 A. Yes, sir.  
 13 SIR MARTIN MOORE—BICK: All right. Thank you so much.  
 14 Thank you.  
 15 Yes, Mr Millett.  
 16 MR MILLETT: Looking at the note, the minute  
 17 {CLG00019440/3}, in the second sentence, it says at the  
 18 top of your screen:  
 19 "In addition, there were people arguing that certain  
 20 materials used in a façade build-up (such as expanded  
 21 polystyrene in some instances) were not there for their  
 22 insulating properties, but to 'pad out' the façade, and  
 23 were therefore excluded from the clause."  
 24 Who were the people arguing that?  
 25 A. I think I'm reading this as being — I probably

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1 explained the background to the clause and the fire at  
 2 The Edge, I think, but I can't remember.  
 3 Q. I see. Was there any discussion at the meeting about  
 4 the meaning of the word "filler" and how people  
 5 generally understood it?  
 6 A. I don't remember being particularly challenged at that  
 7 meeting. People just acknowledged — understood that  
 8 was the intention. I think, as I say, the Building  
 9 Control Alliance guidance note had addressed this  
 10 a couple of years beforehand. I don't remember it being  
 11 a particularly contentious component of this meeting.  
 12 Q. Did you explain that filler could be a can-applied  
 13 expanding foam like Polyfilla?  
 14 A. I know that's something that I think has been suggested.  
 15 As I said, I wouldn't have said that. It's an illogical  
 16 thing to say.  
 17 Q. Why is it illogical?  
 18 A. The sort of can-applied foam is something you'd use in  
 19 small, isolated spots. I mean, it's bad practice to use  
 20 it generally anyway, but it would have been used in —  
 21 you wouldn't cover a whole building in can-applied spray  
 22 foam. That would be just a thing you just wouldn't do.  
 23 Q. But it might fall into your list of things which you  
 24 couldn't precisely identify.  
 25 A. Potentially, I suppose. I mean, the most likely use of

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1 something like that would probably be somewhere where  
 2 you'd use it as a sealant or a gasket or something, in  
 3 which case it specifically excludes that. So I don't  
 4 remember saying that, and I don't believe I said that.  
 5 Q. Now, I would like to show you the department's opening  
 6 statement to the Inquiry in this module. Can we go,  
 7 please, to {CLG00036387/8}, paragraph 23, line 2.  
 8 Now, Mr Martin, can I ask you first: did you have  
 9 any input into this document?  
 10 A. No, I was specifically excluded from it.  
 11 Q. Right.  
 12 Now, if we go to paragraph 23, line 2, it says this:  
 13 "... the Department's view is ..."  
 14 And this, I should say, is at the start of this  
 15 module:  
 16 "... the Department's view is that the meaning of  
 17 the Regulations, and of ADB read together with the  
 18 Regulations, was sufficiently clear at the time of the  
 19 refurbishment of Grenfell Tower such that no competent  
 20 professional acting in good faith should have  
 21 misunderstood or misapplied the statutory requirements.  
 22 A competent professional would have taken appropriate  
 23 advice in case of uncertainty, not least where the issue  
 24 involved fire safety."  
 25 Now, at the time of the refurbishment of the

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1 Grenfell Tower project, that was early 2012 to  
 2 July 2016; right?  
 3 A. Yes.  
 4 Q. You may not know that, but that's when it was. So  
 5 that's the period in respect of which the department is  
 6 making the statement I've just read to you.  
 7 Now, given all the questions that I have been  
 8 through with you over the past few days on 12.7, do you  
 9 accept that the statement that no competent professional  
 10 acting in good faith should have misunderstood or  
 11 misapplied the statutory requirements is a fair and  
 12 reasonable one?  
 13 (Pause)  
 14 A. I think a competent professional acting in good faith —  
 15 yeah, I think I agree with the point the department's  
 16 making.  
 17 Q. You agree with it? So is it your evidence that despite  
 18 the lack of clarity, the need for clarification and the  
 19 misleading nature of both the title and the text of  
 20 12.7, you still say that no competent professional  
 21 acting in good faith should have misunderstood or  
 22 misapplied the statutory requirements? Is that your  
 23 evidence?  
 24 A. I think it is, yeah. I think — I've tried to put  
 25 myself in the place of somebody selecting a cladding

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1 panel. A competent professional would be aware of the  
 2 requirements of the Building Regulations, would be aware  
 3 that external fire spread is an issue that they need to  
 4 consider. I would have looked at the materials I'm  
 5 choosing. If you looked at the options for ACM, you'd  
 6 see that there are three materials available, and you  
 7 would need to consciously decide to use the one that has  
 8 no fire retardant properties. You've got the choice of  
 9 polyethylene—cored, you'd have the choice of the  
 10 fire retardant type or the A2 type. So you'd need to  
 11 consciously decide to use the least fire retardant  
 12 material, and surely you would discuss that with the  
 13 building control body or the — if you were going to do  
 14 that, you would discuss that with somebody. You'd do  
 15 some more research. You'd see that there are more  
 16 fire retardant materials available. So you're  
 17 consciously deciding to use the least fire retardant  
 18 one.  
 19 Q. Is it your evidence that no competent professional  
 20 acting in good faith would have understood the word  
 21 " filler " as not applying to the core of an ACM panel?  
 22 A. I think if they're a competent professional, they're  
 23 thinking about the objectives, so they would think more  
 24 carefully.  
 25 Q. No, I'm asking you about how 12.7 would be read by the

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1 competent professional.  
 2 Are you saying that the competent professional  
 3 acting in good faith would have understood the words  
 4 " filler material " to have applied to the core of  
 5 a polyethylene panel, and that if they didn't, then they  
 6 fell below the standards of reasonable competence? Is  
 7 that what you're saying?  
 8 A. I think I am. I recognise that the drafting would  
 9 potentially result in some doubt, and that's something  
 10 I tried to address by working with CWCT and the  
 11 Building Control Alliance.  
 12 Q. Are you also saying that no competent professional  
 13 acting in good faith would have understood Approved  
 14 Document B, paragraph 12.7, as not applying to the  
 15 external facings of a rainscreen panel?  
 16 A. I think if they've stopped to consider it, I think  
 17 they — that's right. I think probably the problem is  
 18 that no one did, which goes back to the point I was  
 19 trying to say about the way the industry had changed.  
 20 SIR MARTIN MOORE—BICK: Mr Martin, what I understand you to  
 21 be telling us — and this follows from the questions  
 22 that I asked you a moment ago — is that the competent  
 23 professional would, in the end, have to be guided not by  
 24 ADB, but by B4(1) of the Building Regulations, the  
 25 functional requirement, because that would be his final

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1 source of information; is that what you're saying?  
 2 A. I think that's what a competent professional should be  
 3 doing, they should be thinking about the objectives, in  
 4 the way that — I mean, that's the approach that  
 5 a designer should approach any design, is you think  
 6 through what the objectives of your design are.  
 7 SIR MARTIN MOORE—BICK: Right.  
 8 A. And you shouldn't be working through and just blindly  
 9 following a set of rules.  
 10 I'm not disputing that we could have drafted better  
 11 text in 2005 and 2006. At the time, we thought we had  
 12 it right, but I don't think we did, and I think I should  
 13 have put — recognised this is a more significant issue  
 14 and tried to perhaps raise the alarm or raise awareness  
 15 more directly. But I think if a competent professional  
 16 is asking themselves: is this product suitable for this  
 17 building, then those are the things they should be  
 18 thinking about.  
 19 SIR MARTIN MOORE—BICK: Thank you.  
 20 MR MILLETT: I'm asking you a different question. I'm  
 21 asking you how you say a competent professional should  
 22 have read 12.7. What's the answer to that question?  
 23 A. I think they should have read it, recognising that it's  
 24 broad in its nature and to some extent imprecise, and  
 25 therefore I need to stop and think. I know the evidence

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1 from the engineers at Wintech is that's exactly what  
 2 they did do.  
 3 Q. So it would be negligent, would it, for a professional  
 4 not to spot that 12.7 was imprecise? Have I got that  
 5 right?  
 6 (Pause)  
 7 A. In the context — if you've read all of the guidance,  
 8 I think that's — yeah, I think that's an argument. I'm  
 9 not — whether something's legally negligent or not, I'm  
 10 probably not the right person to answer that question.  
 11 Q. That's fair enough, but I think you've answered my  
 12 question.  
 13 Did it occur to you in March 2016 that what you said  
 14 about the meaning and intended ambit of 12.7 of Approved  
 15 Document B was the first official, if I can put it that  
 16 way, confirmation or interpretation of that guidance  
 17 which had been offered? It's the first time you'd come  
 18 out in public and confirmed what 12.7 meant, or was  
 19 intended to mean?  
 20 A. I'm not sure. It's something we'd talked about at  
 21 various points with different actors, I suppose.  
 22 Q. Why were you not prepared to offer that interpretation  
 23 to Mr Evans in June 2015 or even Nick Jenkins in the  
 24 previous month, February 2016?  
 25 A. I think I'd said roughly the same thing to all of them,

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1 in terms of the objective of the guidance and the way it  
 2 should be approached.  
 3 Q. Were you aware that there were attendees at this  
 4 meeting, this CWCT fire group meeting in March 2016, to  
 5 whom your interpretation of the meaning and scope of  
 6 paragraph 12.7 came as a surprise?  
 7 A. No. My recollection of that meeting is this wasn't  
 8 a particularly contentious point. I wish it had been,  
 9 perhaps I ... I think rather like the previous meeting  
 10 where I wasn't there at that section, is I'm not sure  
 11 anyone in the room really recognised the significance of  
 12 the problem. Perhaps that's one of the reasons why  
 13 I didn't register it, is we were all looking at this as  
 14 this was a debate over the guidance, how best to apply  
 15 it, what guidance we could give to industry and how it  
 16 could be improved in the future, rather than  
 17 a recognition that there was a serious risk that was  
 18 present at the time.  
 19 Q. But —  
 20 A. I don't understand why none of us came to that  
 21 conclusion.  
 22 Q. Well, is that really right? We know that Mr Jenkins had  
 23 written to you with precisely those concerns, precisely  
 24 a month before, and he was in the room. He'd brought it  
 25 to you, and then he came along to the meeting. So is it

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1 really right to say that you're not sure that anyone in  
 2 the room really recognised the significance of the  
 3 problem?  
 4 A. That was ... I didn't walk out of that room having felt  
 5 that people were seriously concerned about this.  
 6 I'd ... and there was, you know, a wide cross-section of  
 7 people there.  
 8 I don't know. I wish I could understand better why  
 9 my understanding was what it was then, and why we didn't  
 10 react in the way that we clearly should have done.  
 11 I don't really know.  
 12 Q. Can we go back to your statement, please, page 50  
 13 {CLG00019469/50}, paragraph 139. You say there:  
 14 "I was content that the industry as a whole  
 15 (considering the list of attendees at the CWCT meeting)  
 16 were considering such an issue. It had clearly been  
 17 demonstrated that this was something that should be  
 18 revised in the next full technical review of ADB."  
 19 Now, dealing with the second part of that paragraph  
 20 first, please, did you take the decision during the  
 21 meeting that the text should be revised in the next  
 22 review of Approved Document B?  
 23 A. I think I'd come to that conclusion some time before  
 24 that, that it needed to be improved.  
 25 Q. Can you remember when? I think this is a repeat of

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1 a question I asked you earlier .  
 2 A. Yeah, probably post-2014, I imagine.  
 3 Q. Right. What was it that had clearly demonstrated to you  
 4 that the text needed to be revised?  
 5 You say, "It had clearly been demonstrated"; what  
 6 was it that had clearly demonstrated to you that the  
 7 text —  
 8 A. I guess it's a cumulative effect of the various  
 9 conversations I'd had. As I say, it's important to  
 10 understand this is one of lots of different parts of the  
 11 approved document, which I would have thought, "This  
 12 needs to be better", or, "People aren't reading it the  
 13 way we intended it". That's ...  
 14 Q. Looking at the first part of that paragraph, you say:  
 15 "I was content that the industry as a whole  
 16 (considering the list of attendees at the CWCT meeting)  
 17 were considering such an issue."  
 18 Do you mean that the attendees at this meeting  
 19 represented a reliable or reasonable cross-section of  
 20 the industry?  
 21 A. Yes, I think I'm just recognising the fact that it's  
 22 a positive thing that the cladding industry are looking  
 23 at these issues and trying — again, like so many other  
 24 trade bodies right across the industry, they're looking  
 25 at the practice in their industry and seeing what they

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1 can do to improve it.  
 2 Q. Did they not also do that in July 2014 at the previous  
 3 meeting?  
 4 A. Yes.  
 5 Q. Yes. But after that, we've seen you took no action in  
 6 respect of the concerns raised there about the ambiguity  
 7 and lack of clarity of 12.7. The question I have is:  
 8 why were those concerns not acted upon two years earlier  
 9 but acted on now?  
 10 A. Well, I was thinking that they were acted on, if you  
 11 like, in the short term via the Building Control  
 12 Alliance guidance note, and that I would be acting upon  
 13 those issues once we were allowed to start work on  
 14 Approved Document B.  
 15 Q. Did it occur to you at any time that a far wider group  
 16 than those 15 people present at this meeting in  
 17 March 2016 ought to have been alerted now to the fact  
 18 that you, acting on behalf of the department, had  
 19 accepted that the guidance in 12.7 was misleading,  
 20 unclear and should be revised?  
 21 A. I think that's the reason for having those conversations  
 22 with trade bodies, is that they keep their membership  
 23 informed and updated, and that was the way we  
 24 communicated with the construction industry, was working  
 25 through the trade bodies. So I saw that as

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1 a continuation of what had been started in 2014.  
 2 Q. What consideration did you give to alerting others  
 3 outside this particular group to your decision to change  
 4 12.7 in light of the fact that it was misleading and  
 5 needed to be revised?  
 6 A. I saw that the CWCT were issuing more guidance to their  
 7 members and saw that as being the way that that  
 8 information would be disseminated. I mean, not the fact  
 9 that I thought it ought to be revised. That was just my  
 10 opinion. My opinion holds no particular sway. But the  
 11 CWCT were circulating important information to their  
 12 membership.  
 13 Q. Did you go back to the office and tell Richard Harral or  
 14 Bob Ledsome that you had undertaken to change this  
 15 misleading clause in the next revision of ADB, as you  
 16 say in your statement?  
 17 A. No, but I had spent weeks trying to talk to them about  
 18 the fact that the whole of the approved document needed  
 19 to be revised, and that would have been included in  
 20 there, and I would have been having similar  
 21 conversations like this with a whole range of different  
 22 stakeholders.  
 23 Q. Yes, but I want to focus on this one. You go to  
 24 a specific meeting with a specific group and a specific  
 25 problem arises, and you have already had specific

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1 questions raised by members of the industry such as  
 2 Nick Jenkins. After this meeting, did you go back to  
 3 Bob Ledsome or Richard Harral and tell them what had  
 4 happened at the meeting and what you had promised to do?  
 5 A. Not specifically, no.  
 6 Q. Why is that?  
 7 A. Because it was one of a wide range of different issues  
 8 that needed to be addressed in Approved Document B.  
 9 Q. This one was particularly important, and particularly  
 10 sensitive to life safety issues, wasn't it?  
 11 A. I didn't see it as that at the time, I saw it on the  
 12 same level as all the other issues that I were dealing  
 13 with, all of which had potential for life safety  
 14 implications.  
 15 Q. There is potential and there is potential, isn't there?  
 16 A. And at the time I didn't identify this as being —  
 17 I think I was wrong, but at that time I treated this  
 18 like some of the other issues we were dealing with.  
 19 I suppose the cavity barrier issue, I imagine, had some  
 20 impact on the way the fire spread on Grenfell as well as  
 21 the way it's impacted on some other buildings.  
 22 Q. You say in paragraph 138, if we can go back, please, to  
 23 the previous page {CLG00019469/49}, that you undertook  
 24 to change this misleading clause in the next revision of  
 25 ADB. You can see that from the bottom of the paragraph,

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1 just before the quotation. Did you have authority to  
 2 undertake to make that revision?  
 3 A. No, I'm not sure how precisely I phrased it at the time,  
 4 but I would certainly have said something along the  
 5 lines, "We need to look at it". Whether I'd said it in  
 6 those exact terms, I can't remember. It seems a bit  
 7 direct, and as a — well, no official has absolute  
 8 authority to say that something will or won't change.  
 9 Ultimately it's for the Secretary of State. But I think  
 10 I would have definitely said that I was planning to  
 11 change it.  
 12 Q. Right. Did you have any discussion with any other  
 13 officials about the possibility of revising the text of  
 14 ADB on this point before this meeting?  
 15 A. On this, no, there wouldn't have been anyone to speak to  
 16 about it.  
 17 Q. Well, Richard Harral, for example.  
 18 A. I spoke to him at length about amending the whole  
 19 approved document. I didn't isolate this particular  
 20 paragraph.  
 21 Q. Now, at this time, when was the next revision of ADB  
 22 then scheduled for?  
 23 A. That was kind of the problem, really.  
 24 Q. Well, when was it? What did you have in mind for the  
 25 next revision? When would that be?

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1 A. So we would — at that time we were still, on paper at  
 2 least, intending to meet the objectives that we — the  
 3 timetable that was from the Lakanal House coroner's —  
 4 the Secretary of State's response to the Lakanal House  
 5 coroner, which was sort of 2016/17, so at some point in  
 6 2017 was how I read that. But that really depended on  
 7 the ultimate scope of what we were going to be doing  
 8 then, which was very uncertain at the time.  
 9 Q. Yes. Indeed, the discussion document was being  
 10 discussed, wasn't it?  
 11 A. Constantly, yes.  
 12 Q. Yes, and in fact hadn't been submitted to ministers and  
 13 wasn't in the end submitted until 23 March 2017,  
 14 precisely a year later.  
 15 A. Yes.  
 16 Q. Yes.  
 17 A. I can talk — I imagine we're coming back to the — to  
 18 that issue. I can ...  
 19 Q. Well, we might.  
 20 A. My intention was to publish a discussion document as  
 21 soon as the new government was in post, but I wasn't  
 22 allowed to do that.  
 23 Q. Well, at this stage, this is March 2016, and the  
 24 Conservative-majority government had been in post since  
 25 the previous May, I think, hadn't it? Yes?

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1 A. Yes.  
 2 Q. And at this stage there was no prospect, was there, of  
 3 yet another government coming along? This is  
 4 March 2016.  
 5 A. I can't remember the detail of the timeline, but there  
 6 was an awful lot of uncertainty through that period, as  
 7 I think Mr Ledsome explained in some detail.  
 8 Q. Yes.  
 9 A. And that made planning anything almost impossible at  
 10 that time.  
 11 Q. Well, that gives rise to the question: why did you  
 12 undertake to change this misleading clause in a revision  
 13 of ADB whose timing was, in your own mind, essentially  
 14 open-ended and uncertain?  
 15 A. I think I believed it was still imminent.  
 16 Q. You can't have believed it was imminent if you were  
 17 still discussing the scope.  
 18 A. The one thing that was definitely in the scope would  
 19 have been the clarification part of the project. The  
 20 level of work that we'd be doing in respect of technical  
 21 policy was the bit that was most uncertain.  
 22 Q. Did you give any consideration to acting on the need for  
 23 the revision more urgently?  
 24 A. As I say, at that time, I didn't recognise this as being  
 25 more urgent than any other problems that I was aware of.

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1 Q. But what led you to be satisfied that it needn't be  
 2 dealt with as a matter of urgency and was, as you put  
 3 it, no more urgent than any other problem that you were  
 4 aware of?  
 5 A. I'm not sure. I think, as I say, there were a range of  
 6 issues that needed work. I'd be talking to a number of  
 7 different industry operators and other bodies about all  
 8 sorts of problems with the Building Regulations. I'd  
 9 put this on the to-do list with the others.  
 10 Q. But the others weren't all to do with life safety, were  
 11 they? We know —  
 12 A. No, I was worried about other things. I was worried  
 13 about sound insulation. One of the other areas of  
 14 responsibility I had was sound insulation, and there was  
 15 a long-running concern we had with the way that sound  
 16 transmission was measured, and that had the potential  
 17 that you could pass a test for sound insulation which  
 18 actually didn't deliver a very — an acceptable outcome  
 19 for the people living there, and I was very concerned  
 20 about that.  
 21 So there were lots of things that we needed to  
 22 progress.  
 23 Q. Yes, but some people listening to this might wonder why  
 24 you allowed something as obviously relevant to  
 25 fire safety, life safety, the difference between life

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1 and death, to sink into the morass of other issues  
 2 including things like sound insulation, which poses no  
 3 threat to life .  
 4 A. Because that was my job. My job was to cover a wide  
 5 range of different subject matters. If I'd have  
 6 recognised how severe the issue was with cladding, then  
 7 I think I may have pushed harder and said we need to do  
 8 more on this subject, but at the time I didn't recognise  
 9 it as such a severe risk .  
 10 Q. Now, coming back to your statement, we looked at this,  
 11 I think, last week, I think at least twice, but it's  
 12 paragraph 18 on page 6 {CLG00019469/6}, five lines up  
 13 from the bottom of that paragraph. You say:  
 14 "As such, one of the roles of the technical policy  
 15 officials within the Department can involve working with  
 16 trade bodies, insurers, Building Control Bodies, etc. to  
 17 find interim solutions to issues with the Regulations  
 18 until such time as a formal review of the part of the  
 19 Regulations or Approved Document is completed."  
 20 Now, given the conclusion that you had arrived at at  
 21 the March 2016 meeting that the guidance in 12.7 was  
 22 misleading, poorly worded and open to interpretation,  
 23 did you give any thought to putting in place any interim  
 24 measure or interim solution, such as you referred to  
 25 here, until such time as a formal review could take

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1 place?  
 2 A. I think the interim solution I was thinking there was  
 3 the Building Control Alliance guidance note, which had  
 4 been in place since 2014, and the guidance that CWCT  
 5 were producing. That's the kind of thing that I'm  
 6 referring to in this paragraph.  
 7 Q. But we covered this last week: why not, therefore,  
 8 simply put something on your website to say that the BCA  
 9 Technical Guidance Note 18, option 1, should be read as  
 10 the route to linear compliance?  
 11 A. I didn't think of it at the time. It could have been  
 12 an option. I honestly thought that the BCA guidance  
 13 note would have a lot of effect .  
 14 Q. Did you give any consideration at or after the meeting  
 15 to the possibility of publishing an FAQ to clarify the  
 16 guidance in paragraph 12.7, an idea which you can see  
 17 from the minute of the 2 July 2014 CWCT meeting had been  
 18 proposed?  
 19 A. I'm not sure I did consider it at the time. It would  
 20 have been incredibly difficult to get the thing — to  
 21 get it through the system. We were struggling to get  
 22 any — as I say, any publication on the department's  
 23 website requires some kind of political clearance, and  
 24 we were struggling to get anything through the system at  
 25 the time.

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1 Q. Well, I wonder. Let's go to —  
 2 A. I'm not sure if I thought about it specifically, but  
 3 that might have been what put me off it, is things were  
 4 very difficult at the time.  
 5 Q. Right. Okay. Let's look at some examples just in case.  
 6 {CLG10000003}, please. What I'm showing you here is  
 7 an MHCLG publication, "Approved Document B, Frequently  
 8 Asked Questions", and this is dated, as you can see from  
 9 the bottom right-hand part of your screen, March 2016,  
 10 so the same month as the CWCT meeting.  
 11 If we look at page 3 {CLG10000003/3}, we can see  
 12 that in that month the department published FAQs on  
 13 a range of subjects from fire precautions in  
 14 self-catering holiday homes down to access and  
 15 facilities for the fire service. Do you see that?  
 16 A. Yes.  
 17 Q. Yes. FAQs here on B1, B3 and B5. No FAQs here on any  
 18 aspect of B4.  
 19 Now, standing back from the detail of this document,  
 20 how were matters which are addressed in documents like  
 21 this selected for inclusion?  
 22 A. Quite a lot of the FAQs you see here we first produced  
 23 when the approved document was published, and they were  
 24 to some extent sort of informative notes. I think the  
 25 one on fire doors was in response to a request from the

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1 Building Control Alliance for some help. Certainly I'd  
 2 need to double check, but most of these are considerably  
 3 older than the date that's on the front cover. It must  
 4 have been reformatted at some point.  
 5 Q. Well, reformatted, but presumably somebody looked at it  
 6 again and thought these were questions still worth  
 7 asking, or referring to as asked frequently.  
 8 A. I can't remember, but certainly these are all — they  
 9 would have been around for some time, these particular  
 10 FAQs.  
 11 Q. How often were you asked to look at the FAQs and update  
 12 them?  
 13 A. Not very regularly. It wasn't a thing that you did  
 14 periodically, it was more a case of if you identified  
 15 a thing where an FAQ might be helpful, then you'd work  
 16 your way through the system and try and produce one,  
 17 which would take some time because of the process you'd  
 18 need to work through. But there wasn't a routine — it  
 19 wasn't a routine thing.  
 20 Q. Right.  
 21 Let's look at some examples in this document.  
 22 Page 4 {CLG10000003/4}. This deals with a BCA technical  
 23 guidance note:  
 24 "Fire doors  
 25 "Can I use a 30 minute rated fire door without

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1 intumescent seals where AD B asks for a 20 Minute fire  
 2 door?"

3 You can see that there is an answer:  
 4 "This is something that you should check with the  
 5 Building Control Body. Many do accept this arrangement  
 6 where they are satisfied that it will provide  
 7 a sufficient level of protection to escape routes within  
 8 dwellings."

9 Then there is a reference to Technical Guidance  
 10 Note 9.

11 Then if you go on to page 7 {CLG10000003/7}, last  
 12 three paragraphs there, there's clarification of  
 13 an existing provision. The question is:  
 14 "Should a fire alarm be provided throughout a block  
 15 of flats?"

16 Do you see that?

17 A. Yes.

18 Q. "The guidance in B1 Section 1 of the Approved Document  
 19 (fire alarm and fire detection systems) is not intended  
 20 to be applied to the common parts of blocks of flats and  
 21 does not include a provision to interconnect  
 22 installations in separate flats."

23 So there's a clear statement of the intention  
 24 underlying a part of the approved document; yes?

25 A. Yes.

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1 Q. Page 8 {CLG10000003/8}, in the middle section of the  
 2 page, again a clarification of the intention of  
 3 an existing provision:  
 4 "Why do we say 1 bed and not 1 person for care  
 5 homes?"

6 Then there is an answer:  
 7 "Paragraph 3.49 in Volume 2 of AD B states; Bedrooms  
 8 should not contain more than one bed (this includes  
 9 a double bed). This is for a design, without  
 10 sprinklers, relying upon fire resisting construction to  
 11 protect occupants that are remote from the seat of  
 12 fire."

13 Then it goes on in the last paragraph there:  
 14 "It is not the intention of the Approved Document to  
 15 separate couples who happen to live in a care home by  
 16 insisting that they sleep in separate beds."

17 Again, it's guidance, isn't it, here, about the  
 18 underlying intention behind the language in Approved  
 19 Document B?

20 A. Yes. As I say, most of these were drafted at the time  
 21 we published the approved document.

22 Q. Yes. Now, why could paragraphs 12.6 and 12.7,  
 23 particularly 12.7, not have been the subject of an FAQ  
 24 in the March edition of this document explaining or  
 25 clarifying 12.7 in the same way that the department had

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1 seen fit to do for fire alarms, lift doors and beds in  
 2 care homes?

3 A. Well, as I say, this — most of these, if not all of  
 4 them, were drafted several years before the date that's  
 5 on the front cover. It would have been an option, and  
 6 there was no specific policy to say that we couldn't do  
 7 that. At the time, it didn't occur to me as being  
 8 something that was necessary. It would have been  
 9 a challenge because of the political issues at the time.  
 10 But it's not something that I pursued, and it's  
 11 definitely an option I should have considered, and  
 12 I don't remember thinking about it at the time. I think  
 13 in my mind at the time the industry guidance was doing  
 14 the job.

15 Q. Right. Why didn't you think about it at the time given  
 16 that it was specifically spelt out on the face of the  
 17 2 July 2014 CWCT minute?

18 A. I think at that time I thought that might be an option,  
 19 but my recollection is that someone was going to propose  
 20 a draft, and so I waited for that. In the meantime, the  
 21 Building Control Alliance guidance note was produced,  
 22 which I thought was probably more effective.

23 Q. Well, we'll come to see what happens with the  
 24 Building Control Alliance note and NHBC particularly  
 25 shortly.

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1 Was your decision that the revision of the clause  
 2 that you described as misleading or accepted was  
 3 misleading could wait until the next review of the  
 4 approved document a matter on which you or any other  
 5 official consulted BRAC?

6 A. No.

7 Q. Why not?

8 (Pause)

9 A. The majority of the work we did with BRAC were where we  
 10 were talking to BRAC about proposed changes to the  
 11 regulations or proposed changes to the guidance, and so  
 12 that would have been something we'd have discussed with  
 13 BRAC or a BRAC working party once we'd started work on  
 14 the project that would have been the next edition of  
 15 Approved Document B.

16 Q. Was your decision that the revision of the clause you  
 17 described or accepted as misleading could wait until the  
 18 next review of the approved document a decision that you  
 19 cleared with any senior official in the department at  
 20 the time?

21 A. No.

22 Q. Why not?

23 A. At the time, I considered it to be one of a range of  
 24 things that I needed to do. We were working hard to try  
 25 and start the next part B review project sort of in

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1 full , and there were numerous aspects of the approved  
 2 document that needed work, and at that time I didn't  
 3 recognise this one as being more of a problem than any  
 4 other.  
 5 Q. Does that explain why this was never raised with any  
 6 minister at the time and why there was no ministerial  
 7 submission which put options on this decision — could  
 8 it wait, should it be dealt with now — before any  
 9 minister at any time?  
 10 A. I think if I'd recognised the severity of the risk ,  
 11 I would have escalated it through Mr Harral and  
 12 Mr Ledsome, and ultimately that would have worked its  
 13 way up probably at least to director general level . If  
 14 they all agreed that this was something that we needed  
 15 to act on, then the next stop would have been advice to  
 16 ministers to say, "We're concerned about this issue,  
 17 there are a number of things we could do". Because  
 18 I didn't recognise it as being such a significant issue,  
 19 those other steps couldn't happen.  
 20 Q. So I think we can take it that you didn't, after  
 21 March 2016, make any senior official or minister aware  
 22 that you had accepted that an important section of the  
 23 statutory guidance, in place for almost a decade, was  
 24 misleading, and had been the subject of a difference  
 25 across the industry for some time?

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1 A. Not specifically . I certainly expressed a lot of  
 2 frustrations that an approved document which was now  
 3 well past the point at which it ought to have been  
 4 reviewed still needed to be reviewed, but I didn't focus  
 5 on this particular issue .  
 6 Q. Did anybody at the meeting ask you: well, when is this  
 7 next revision of Approved Document B going to be?  
 8 A. If they did, I don't remember.  
 9 Q. Did you indicate to anybody at the meeting when this  
 10 next revision of Approved Document B was likely to be?  
 11 A. I can't be sure I said that, but I — certainly at that  
 12 time, I will have been talking to various industry  
 13 stakeholders and saying, you know, it's something that  
 14 we're hoping to get started soon. I'd have needed to be  
 15 cautious. It's not appropriate for an official to  
 16 express frustration about the fact that the department  
 17 or the government's slowing things down that I think  
 18 should be hurried up, but I would have said something  
 19 along the lines , you know, "We're working on developing  
 20 a plan". That would be the kind of thing I would have  
 21 had to say to stakeholders, so they would have known  
 22 that there was something in the pipeline but there  
 23 wouldn't have been a fixed date.  
 24 Q. Can we go, then, to {CEV00000008}. Now, this is a board  
 25 meeting of the CWCT on 6 April 2016, so some three weeks

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1 after the 17 March 2016 fire group meeting minute, and  
 2 you can see who was present there, particularly  
 3 David Metcalfe and Brenda Apted at the bottom of the  
 4 list , with apologies from various others. Do you see  
 5 that?  
 6 A. Yes.  
 7 Q. If you go to page 2 {CEV00000008/2}, please, this is  
 8 within paragraph 5, four paragraphs down from the top of  
 9 the page, it says this :  
 10 "There are still concerns on the issue of Fire and  
 11 these will be discussed at the afternoon Technical Group  
 12 meeting. Brian Martin, DCLG, who wrote most of the  
 13 Government document and sits on the CWCT Fire group, has  
 14 indicated that there may be consultation on a revised  
 15 Approved document starting soon."  
 16 Had you told the CWCT that there would be  
 17 a consultation on a revised approved document starting  
 18 soon?  
 19 A. I can't remember exactly what I said. I would have —  
 20 as I just said, I would have intimated that we were  
 21 planning to start work and that there would be  
 22 a consultation. I guess it depends on your definition  
 23 of "soon".  
 24 Q. Well, the first question is: did you say what is  
 25 recorded here as you saying, that it would start soon?

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1 A. I don't know.  
 2 Q. I mean, if you did say it , it was quite untrue, wasn't  
 3 it? There was no revised Document B document to consult  
 4 on.  
 5 A. I would have said there was a consultation due at some  
 6 point, but I don't know what I said. I doubt I would  
 7 have said soon as in the next couple of months. It  
 8 would have been something that was in the pipeline.  
 9 I guess I would have summarised something, and someone's  
 10 summarising what I said in this note. So exactly what  
 11 I said, I don't know for sure.  
 12 Q. I think you would accept that the discussion document to  
 13 agree the scope of any future consultation hadn't even  
 14 been finalised at this stage.  
 15 A. I agree, yes. My plan was to publish the thing  
 16 immediately that the new government came in, but that  
 17 was — I wasn't allowed to do that, and so the project  
 18 was — the timetable was drifting.  
 19 Q. Did you give any consideration to investigating the  
 20 potential impact of having left in place for almost  
 21 a decade guidance on external fire spread within  
 22 Approved Document B which, by 2016, you had come to  
 23 accept was misleading, unclear and open to  
 24 interpretation?  
 25 A. No, I don't think I did consider that.

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1 Q. Why is that?  
 2 A. As I say, I don't think I recognised it as being any  
 3 different to a range of different points in the approved  
 4 document where people were taking different approaches,  
 5 or other practices that I felt we needed to look at. So  
 6 I didn't recognise it — that would have been an unusual  
 7 thing to do. The nature of the work we did is that we  
 8 focused on policy projects, if you like, starting  
 9 with — we're now reviewing this part of the  
 10 Building Regulations, we'd start by decide — you know,  
 11 working up what the scope of that project would be,  
 12 which would be a combination of asking the industry  
 13 where the issues are, and other groups, and looking at  
 14 the political situation, and then we'd sort of turn the  
 15 handle on the machine from there.  
 16 So to do something like that and go back and look  
 17 and say, you know, is there an issue in the existing  
 18 stock, would be unusual. I think, in hindsight, if I'd  
 19 recognised how serious this was, that would have been  
 20 a thing we could have done. Again, I would have needed  
 21 to go through the process of raising it, escalating it  
 22 through the department, trying to convince various  
 23 people in the department and eventually ministers that  
 24 the potential was such that it was worth investing some  
 25 time and resources in investigating that. Perhaps the

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1 environment we were working in at the time put me off  
 2 doing something like that. I'm not sure what was going  
 3 through my head. I don't remember seeing this as being  
 4 a bigger issue than any of the others we were thinking  
 5 about.  
 6 MR MILLETT: Well, I wonder.  
 7 Mr Chairman, I've got one document that will take  
 8 about three minutes to cover, but it is closely relevant  
 9 to that last answer.  
 10 SIR MARTIN MOORE—BICK: Yes, all right. Well, you continue  
 11 for the moment.  
 12 MR MILLETT: If that's all right, thank you.  
 13 Let's go back from 6 April 2016 just a little under  
 14 a week to 29 March 2016. {CLG10008111}. Now, this  
 15 isn't terribly clear, but if we can expand this so that  
 16 it's legible, you see, at the bottom of page 1 in the  
 17 chain, an email dated 29 March 2016 from Martin Shipp of  
 18 the BRE to you, David Crowder and Ciara Holland about  
 19 a fire in Ajman in Dubai. Do you see?  
 20 A. Yes.  
 21 Q. The first thing he does is to give you the BBC News  
 22 website article, and then it says this. The subject of  
 23 the email is, "Ajman fire: Huge blaze hits UAE  
 24 residential towers":  
 25 "'The fire struck one tower in Ajman emirate, north

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1 of Dubai, before spreading to an adjacent block.' [my  
 2 emphasis]  
 3 "Is this a first?"  
 4 Now, he sends his email at 9.08. If you look above  
 5 that at 9.36, you respond to Martin Shipp:  
 6 "Great fire of London?"  
 7 Moving up the chain to the next email, Mr Shipp  
 8 responds to you a few minutes later:  
 9 "Oh yes — I'd forgotten about the tower blocks in  
 10 1666 London!  
 11 "(I'm not suggesting this is a World first for  
 12 fire spread between buildings — just occupied modern  
 13 tower blocks)."  
 14 You reply at 9.43:  
 15 "Only kidding [smiley face].  
 16 "Yes, it's a first as far as I'm aware. Looks like  
 17 it's the same stuff as Dubai."  
 18 When you say "the same stuff as Dubai", did you mean  
 19 aluminium composite material with a polyethylene core?  
 20 A. I think so, yes.  
 21 Q. Did that fire or your correspondence about it with  
 22 Mr Shipp and Dr Crowder give you any pause for thought  
 23 about use of this material here in the UK?  
 24 (Pause)  
 25 A. Not that I remember.

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1 Q. Did it not trigger in your mind the Nick Jenkins  
 2 correspondence from the previous month? It's the same  
 3 stuff being installed on high-rise buildings in London  
 4 and around the country.  
 5 (Pause)  
 6 A. I can't really remember what I was thinking at the time.  
 7 Q. Can you explain the disconnect between your thinking at  
 8 the time, 12 days after the CWCT meeting, and yet  
 9 another UAE fire featuring yet again ACM with a PE core?  
 10 A. I think a part of me was thinking that this seems to be  
 11 an issue which is peculiar to that part of the world,  
 12 because they'd had so many fires.  
 13 Q. What about peculiar to the use of aluminium composite  
 14 material with a polyethylene core, the presence of which  
 15 you had been told by Mr Jenkins was widespread in the UK  
 16 built environment?  
 17 (Pause)  
 18 A. I'm not sure I made the connection, and I don't know  
 19 why.  
 20 MR MILLETT: All right.  
 21 SIR MARTIN MOORE—BICK: Is that a good point, Mr Millett?  
 22 MR MILLETT: Yes, thank you, Mr Chairman.  
 23 SIR MARTIN MOORE—BICK: Yes. Well, I think it's time we all  
 24 had a break, Mr Martin. We will stop there. We will  
 25 resume, please, at 2.05. All right?

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1 THE WITNESS: Yes, sir.  
 2 SIR MARTIN MOORE—BICK: As before, please don't talk to  
 3 anyone about your evidence while you're out of the room.  
 4 THE WITNESS: Yes, sir.  
 5 SIR MARTIN MOORE—BICK: Thank you very much.  
 6 (Pause)  
 7 Thank you, 2.05. please. Thank you.  
 8 (1.05 pm)  
 9 (The short adjournment)  
 10 (2.05 pm)  
 11 SIR MARTIN MOORE—BICK: All right, Mr Martin?  
 12 THE WITNESS: Yes, sir.  
 13 SIR MARTIN MOORE—BICK: Right, thank you very much.  
 14 Yes, Mr Millett.  
 15 MR MILLETT: Yes, Mr Chairman.  
 16 Mr Martin, I'm going to move forward in time to  
 17 a little bit later in 2016, particularly the May of that  
 18 year, and your invitation to speak at an NHBC event in  
 19 the July, which was entitled "Façades to tall  
 20 buildings". You address this in your statement at  
 21 page 50 {CLG00019469/50}, if we could please go to that,  
 22 paragraph 143, and you say at the foot of the page:  
 23 "On 27 May 2016 I received an invitation from  
 24 Steve Evans of NHBC to speak at a seminar they were  
 25 organising on facades to tall buildings, focussing on

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1 the use of combustible materials and routes to  
 2 demonstrate compliance. Such events (across the  
 3 Regulations) are common place and I regularly receive  
 4 invitations to speak. Where the Department can, we try  
 5 and support them, providing they are putting forward  
 6 a message with which we agree. Mr Evans went on to  
 7 chase my boss, Richard Harral, at which point  
 8 I responded saying that I was not happy to attend based  
 9 on some of the assessments or engineering solutions that  
 10 were being used. I did not think that it was for me to  
 11 tell Building Control Bodies what they could or could  
 12 not do. Discussion followed during which I accepted  
 13 that I was happy with the four options set out in the  
 14 2015 BCA Guidance Note 18 (with which I am still happy  
 15 to this day) but asserted that I felt that some of the  
 16 assessments and engineered solutions were not as robust  
 17 as they should be (I had recently had conversations with  
 18 some professionals that had expressed this view)."  
 19 Just pausing there, if we can, Mr Martin, what was  
 20 it about some of the assessments or engineered solutions  
 21 that were then being used that made you unhappy enough  
 22 to decide, initially at least, not to attend?  
 23 A. I'm pretty sure it revolved around a conversation I'd  
 24 had with a building control officer, who was concerned  
 25 that assessments were being accepted without challenge,

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1 which again is something that I think reflects the way  
 2 the building control world had evolved. I'd certainly  
 3 dealt with assessments when I'd been a building control  
 4 officer, and they're sometimes a necessary part of the  
 5 process, but we always felt comfortable to go back to  
 6 somebody who had done an assessment and say, "Are you  
 7 sure about this? What about" — you know, provide some  
 8 sort of challenge, and I think it was on the basis of  
 9 that and perhaps another conversation — it was kind of  
 10 hearsay. It wasn't — I hadn't seen any assessments.  
 11 Q. Right.  
 12 A. I had no reason to see any assessments, but on the basis  
 13 of some conversations I'd had, I was a little concerned,  
 14 and to some extent I was trying to use the invitation to  
 15 the event as a lever to press NHBC on the issue.  
 16 Q. Right.  
 17 What was it about these assessments or engineered  
 18 solutions that led you to think they weren't as robust  
 19 as they should be, or at least the conversations with  
 20 professionals that you'd had about that?  
 21 A. I don't remember anything specific.  
 22 Q. Right.  
 23 A. I think it was more that they were being accepted  
 24 without adequate challenge.  
 25 Fire safety engineering is a very subjective

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1 subject, probably always will be, and you need a degree  
 2 of challenge in the process, so — to get to the right  
 3 answer. And I think that was something I was — I'd  
 4 become concerned about, and that was part of the reason  
 5 why I think I wanted to use it as a lever with NHBC and  
 6 say, "Are you approaching these things properly or not?"  
 7 Q. When had you first become concerned by any such reports?  
 8 A. I think it was quite close to this period. As I say,  
 9 I have a very vague recollection of a telephone  
 10 conversation with a building control officer.  
 11 Q. Is that the professional who had expressed that view or  
 12 were there others?  
 13 A. Erm ...  
 14 (Pause)  
 15 It would have been more hearsay and rumour, so there  
 16 may have been a couple of people, but not a large number  
 17 of people.  
 18 Q. Right.  
 19 A. One or two people, I think.  
 20 Q. You say in the brackets there:  
 21 "I had recently had conversations with some  
 22 professionals that had expressed this view."  
 23 Which or who were the professionals?  
 24 A. I think they probably were both building control  
 25 officers.

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1 Q. Both? There were two?  
 2 A. I think — I don't think I spoke to anyone else, I think  
 3 it must have been building control officers.  
 4 Q. Right.  
 5 A. Generally those are the people we spoke to the most.  
 6 I think over time, I think as I said last week, when  
 7 Shona Dunn took over as head of division, we'd been  
 8 discouraged from spending too much time with general  
 9 enquiries because of the way the team had been  
 10 resourced, and I think the approach we tended to take  
 11 was direct — to direct designers and engineers to their  
 12 building control bodies, but if the query's coming from  
 13 a building control body, then we ought to try and be  
 14 more supportive. So it tended to be building control  
 15 people that we spoke to the most.  
 16 Q. When you say you spoke to them, what was the occasion on  
 17 which you spoke to them?  
 18 A. I think it was over telephone. I have a vague  
 19 recollection of one conversation, and I think I was  
 20 talking to a building control officer about a different  
 21 issue, and he mentioned this in passing.  
 22 Q. Right.  
 23 A. So it wasn't a significant body of evidence.  
 24 Q. Right. Did they ring you up at your desk or on your  
 25 mobile? How did these conversations initiate?

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1 A. I think this was ... it could have been a telephone call  
 2 into the department at my desk, or I might have been  
 3 calling somebody in response to an email.  
 4 Q. Right. Was it quite routine that you would have these  
 5 telephone discussions with BCOs?  
 6 A. Yes.  
 7 Q. Right. And they would just, what, ring you up or send  
 8 an email with a problem and ask you to —  
 9 A. Yes, I mean, and in general, most building control  
 10 officers understood that the department couldn't tell  
 11 them what to approve and what not to approve. They  
 12 would very often ask us — one of the things that we did  
 13 at the department was determinations and appeals, so in  
 14 some circumstances where there's a disagreement between  
 15 the building control body and the designer, the  
 16 applicant, the Secretary of State has a role in  
 17 determining an argument, and the building control bodies  
 18 used those — whilst they have no legal status in terms  
 19 of precedent, in practice most people — they're often  
 20 published in journals or on the department's website,  
 21 and it's a way of building control bodies seeing,  
 22 you know, the approach the Secretary of State takes to  
 23 a question relates to, you know, the way that they  
 24 perhaps should as well, and they would often ask us:  
 25 have we dealt with a case recently that's very similar

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1 to the one that they're looking at, when they're trying  
 2 to decide how to approach a problem. Or it might be  
 3 that we've been involved in some research or are aware  
 4 of some activity in the industry that they might not be.  
 5 So they rarely asked us for a direct answer, because  
 6 they understood that we weren't always able to do that,  
 7 but we could often point them in the direction of more  
 8 guidance or information.  
 9 Q. Had you read any of the particular reports which the  
 10 professionals you were speaking to were concerned about?  
 11 A. No.  
 12 Q. Why not? Why didn't you have a look at them and see  
 13 what the problem was?  
 14 A. I guess it's two-fold. One is that I had no authority  
 15 to check somebody — check one of these reports, and it  
 16 would definitely have flown against the advice we had  
 17 from the department's legal department in terms of not  
 18 getting directly involved in individual cases. If  
 19 somebody's sent me a report and asked me to comment on  
 20 it, I'd be in a position where I'm saying whether  
 21 I thought something was adequate or not, which I was  
 22 expressly told not to do.  
 23 Q. No, no, but just to understand the nature of the  
 24 problem, have a look at one of these desktop reports and  
 25 see what the nature of the problem was; did you not want

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1 to do that?  
 2 A. Well, as I say, if I'd have done that then I'd have  
 3 flown in the face of instructions that we'd been given,  
 4 and ultimately it was for the building control bodies to  
 5 make those decisions, so no.  
 6 Q. Did you escalate this problem that you'd heard about?  
 7 A. No.  
 8 Q. Why is that?  
 9 A. As I say, it's a — from my point of view, I saw that as  
 10 another routine debate about Building Regulations, of  
 11 which there are many.  
 12 Q. Right.  
 13 Can we go to {NHB00001325}, please. This is the  
 14 correspondence that you're referring to in your  
 15 statement.  
 16 If we can scroll down, please, to page 8 of this  
 17 email run {NHB00001325/8}, we can see that at 9.39 in  
 18 the morning of 27 May 2016, Steve Evans sends you  
 19 an email:  
 20 "Subject: NHBC Seminar on Facades to Tall Buildings.  
 21 "Importance: High.  
 22 "Hi Brian."  
 23 Do you see that?  
 24 He says that:  
 25 "NHBC are organising a Seminar on the facades to

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1 tall buildings which will focus on the use of  
 2 combustible materials and routes to demonstrate  
 3 compliance ... two sessions ..."  
 4 Then in the next paragraph you can see in red:  
 5 "Regulatory Requirements relating to the Facades of  
 6 Tall Buildings — DCLG? (15 mins)."  
 7 It appears that that's the invitation for you.  
 8 If we go to page 7 {NHB00001325/7}, we can see  
 9 various emails where Steve Evans chases Richard Harral  
 10 for a response, and Richard Harral then at the top of  
 11 the screen gets on to you on 20 June 2016:  
 12 "Brian  
 13 "I am being chased by Steve Evans on this — are you  
 14 happy to speak?"  
 15 If you go up to page 6 {NHB00001325/6}, we can see  
 16 the email sent by you on 20 June at the foot of the  
 17 screen:  
 18 "Hi Steve  
 19 "Sorry for not getting back to you sooner on this,  
 20 I've been in two minds about this.  
 21 "I'm not entirely happy that some of the assessments  
 22 or engineering solutions that are being used in the  
 23 industry meet the objectives of Part B. It's not for me  
 24 to tell Building Control Bodies what they can or can't  
 25 accept, but I'm reluctant to be seen to be endorsing

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1 something that I'm unhappy with.  
 2 "Perhaps I'm worrying unnecessarily but, on balance,  
 3 I think I'll decline your kind offer."  
 4 Then above that, summarising Mr Evans' response, he  
 5 asks for a call so that he can understand what the  
 6 problem is.  
 7 If we then run to page 5 {NHB00001325/5}, please, at  
 8 15.20 on 21 June, you can see there:  
 9 "Hi Steve. Not really near a phone until Thursday.  
 10 "I'm comfortable with the principles set out in the  
 11 BCA guidance note. The 4 options are a matter of fact.  
 12 "I am a tad concerned that some assessments and  
 13 engineered solutions are not as robust as they should  
 14 be.  
 15 "This is why I'm a bit conflicted. Options 3 and 4  
 16 are a matter for designers and BCBs."  
 17 Above that you can see that Steve Evans then comes  
 18 back and says:  
 19 "Could we talk Thursday? What time would be  
 20 good ..."  
 21 And then he says in the next paragraph:  
 22 "I would be comfortable with you being critical at  
 23 the seminar in respect of what you would ideally want to  
 24 see in terms of a robust solution as a pointer for the  
 25 builders in the room.

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1 "Are there any NHBC schemes where you feel we may  
 2 have fell short? I would certainly like to think not,  
 3 but if you have, I am keen to understand where you feel  
 4 we could have done better in terms of a more robust  
 5 solution?"  
 6 Then if we go to page 4 {NHB00001325/4} and your  
 7 response to that, 23 June, looking at the second  
 8 paragraph, you say this:  
 9 "I should make it clear that I have no specific  
 10 evidence of a problem on one of your sites — I would  
 11 tell you. I've just grown concerned that some desk top  
 12 studies (as they have become known) and engineered  
 13 approaches I've heard about make me wonder if the right  
 14 people are doing them sometimes. I know we've had some  
 15 communication in the past about problems you had with a  
 16 BBA certificate for a Kingspan product, again I only  
 17 have part of the story so I guess that makes me nervous.  
 18 "Most of my 'information' comes from building  
 19 inspectors (public and private sector) who are presented  
 20 with submissions. Many do not appear to cover important  
 21 details like window reveals.  
 22 "Maybe it would be better if I do come to your  
 23 event. I've got an appointment on 7 July but I should  
 24 be able to move it, sadly there's nobody else in the  
 25 team that could easily cover this subject matter. I'll

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1 get back to you."  
 2 Now, again, what were the desktop studies and  
 3 engineered approaches you had heard about? Are they the  
 4 same thing you've referred to in your statement?  
 5 A. Yes. Yeah, as I say, I didn't have a big body of  
 6 evidence. It was hearsay from a couple of conversations  
 7 I'd had —  
 8 Q. Right.  
 9 A. — which had made me a little uncomfortable.  
 10 Q. Where were the projects, do you remember?  
 11 A. Oh, I wouldn't have known. I mean, people are very  
 12 cautious to name names, so when you do speak to people,  
 13 they'll very rarely mention a particular construction  
 14 project.  
 15 Q. Right. When you use the word "information" in quotation  
 16 marks there in the penultimate paragraph, is that  
 17 because it isn't really information, it's hearsay?  
 18 A. Yes, that's the point I'm making there, I think, is that  
 19 I'm not sitting here with a pile of documents  
 20 demonstrating that things are wrong.  
 21 Q. Right.  
 22 A. It's more — as I say, I mean, it's self-evident now  
 23 that the problem that we had as a policy team is that we  
 24 had no mechanism to interrogate the system. I guess the  
 25 system was designed that that was — the architects of

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1 the system in the 1984 Building Act were trying to  
 2 exclude government intervention, that was one of the  
 3 stated objectives of the Act, and so we didn't really  
 4 have a mechanism to investigate things. So it would  
 5 tend to be just hearsay in conversations with people.  
 6 Q. How were you able to assure Mr Evans that the concerns  
 7 didn't relate to any NHBC site?  
 8 A. Well, I didn't have any evidence of any — of  
 9 a particular site.  
 10 Q. No, but — I see. So these two conversations you had  
 11 with these BCOs were you clear in your mind were not  
 12 NHBC projects?  
 13 A. I didn't know where they were.  
 14 Q. Right.  
 15 Did this information that you had gleaned from  
 16 building inspectors indicate to you that issue 1 of  
 17 BCA's Technical Guidance Note 18, option 3, which we  
 18 looked at last week, which had amended the kinds of  
 19 people who could do desktops, did you not have a concern  
 20 that it had been diluted to such an extent that they  
 21 were now not being done properly?  
 22 A. I don't think I'd registered that that was linked to the  
 23 text in the BCA guidance note. I think — fire safety  
 24 engineering as part of the design of a large building  
 25 often means that the building isn't following

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1 prescribed — a set of rules. That's — again, the  
 2 system is designed to allow people to do that, and at  
 3 various points over the years, governments have  
 4 encouraged people to use fire safety engineering as  
 5 a way of, you know, increasing efficiency. And again,  
 6 as I said earlier, my experience is that where you're  
 7 taking that kind of approach, whether it's an assessment  
 8 or a fire engineered design or whatever, you need some  
 9 challenge in the system, and that's what you want the  
 10 building control body to be doing, is challenging the  
 11 assumptions that people have used in their designs or  
 12 the approaches they've taken, so that you're — both  
 13 sides are satisfied that you've got a robust solution.  
 14 Q. But given the very thin spread of information that  
 15 you've got — in fact, it's not information at all, it's  
 16 just word on the street — what is it that you were  
 17 going to be able to tell the attendees at the event,  
 18 unless you had some proper empirical basis for telling  
 19 them?  
 20 A. Well, I think I was talking — the section that they  
 21 wanted me to talk about was explaining the regulations,  
 22 which is something I would be able to do.  
 23 Q. Right. But it looks as if your discovery about the  
 24 weakness in desktop studies was what had made you change  
 25 your mind. Is that right?

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1 A. I think "discovery" is a strong point. I was  
 2 concerned — probably reflected my general concerns in  
 3 the way the building control world had shifted, in that  
 4 it was quite common — I'd heard building control bodies  
 5 saying, "Well, I approved that because it was signed off  
 6 by a chartered fire engineer", and that was contrary to  
 7 what I'd been trained as a building control officer,  
 8 that you kind of — the qualifications of the person  
 9 drafting the report was neither here nor there; you  
 10 needed to satisfy yourself that it was acceptable.  
 11 So I think that's part of my thinking at this point,  
 12 is I was concerned that building control bodies might be  
 13 accepting an assessment report without challenge,  
 14 without really giving it any thought, just saying:  
 15 somebody signed it off, they've got letters after their  
 16 name, it's fine. And in my view that's not what  
 17 building control bodies should do.  
 18 Q. If you look at the foot of the email, you say:  
 19 "... sadly there's nobody else in the team that  
 20 could easily cover this subject matter."  
 21 That was correct, was it, at July 2016, there was  
 22 nobody else in the division who —  
 23 A. Oh, no, there'd not been anybody with any other —  
 24 I mean, to be fair, I'm a construction generalist, with  
 25 a more — above average experience in fire safety. I'm

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1 not — fire safety specialist is probably stretching the  
 2 point with me, I think. That's probably a matter of  
 3 opinion. But there was nobody else in the division that  
 4 had any fire safety training at all, other than —  
 5 I mean, Mr Harral was a trained architect, so he would  
 6 have had some experience of fire protection design, but  
 7 not to the level that I would have had, and —  
 8 Q. What about Bob Ledsome?  
 9 A. No, he's not got any construction training at all.  
 10 Q. Now, we know that you went on to meet Steve Evans and  
 11 Diane Marshall on 30 June 2016. Do you remember that?  
 12 A. Yes.  
 13 Q. Let's look and see what Mr Evans says about that meeting  
 14 in his statement, {NHB00003020/117}, paragraph vi, and  
 15 he says there at the foot of the screen:  
 16 "My recollection of that meeting was that  
 17 I explained what NHBC were trying to achieve with the  
 18 2016 Guidance Note. I recall that his response [your  
 19 response] was that this seemed sensible, as that was  
 20 'akin to the deemed to satisfy' principle (which is an  
 21 accepted principle within the Building Regulations).  
 22 I also recall confirming arrangements for the Facades  
 23 for Tall Buildings conference and told him about the  
 24 other speakers and likely attendees. I cannot recall us  
 25 discussing his concerns beyond what is set out in the

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email chain mentioned above. We did not, as far as I can remember, have a wider discussion about combustible materials on buildings over 18 metres or the routes to compliance."

Now, is it right that you told him that NHBC's aims in the document were akin to the deemed to satisfy principle?

A. This is the new — the NHBC's guidance note?

Q. It is, and we're going to look at it, and I should have introduced the document to you before asking the question, but it is.

Do you remember saying that NHBC's aims were akin to the deemed to satisfy principle?

A. In terms of what its effect would be, yes.

Q. What did you mean by that?

A. So if you go to the older iterations of Building Regulations pre-1985, they often had deemed to satisfy provisions, where they would specifically describe a form of construction in detail and say, "Somebody building this thing that way with this stuff would comply with the Building Regulations", and that had — that was actually drafted in the statutory instrument, so had sort of direct legal effect. So you'd have a form of construction that everybody in the industry said, "If it meets that, it definitely complies", and

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that's something that was essentially removed in 1985 and replaced by the functional system with approved documents.

So I think I was just saying what NHBC are doing here was saying, "We've got these constructions which we've now reviewed on many occasions and are satisfied that they comply", and NHBC were saying to their clients, "If you follow — if you use these constructions again, we've already checked them, we don't expect you to jump through as many hoops as perhaps you would have done in the past". So I could understand why they were doing that, and it seemed, from their point of view, a sensible approach.

Q. Right. I'm going to come back to that answer in a moment, because I want to unpick it a little bit.

Before I do, can we look at your statement on this. You say on page 51 {CLG00019469/51}, in paragraph 145 as follows, at the foot of the screen:

"I have been shown a PowerPoint presentation prepared by Steve Evans entitled 'External Facades to Tall Buildings — Routes to Compliance'. I cannot definitively state whether he delivered this presentation at the 7 July 2016 NHBC seminar, but I believe he did on behalf of the Building Control Alliance. The presentation set out what, for me, had

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been the entire point of attending, the slide on the 'Not so Positives' of the BCA Experience. This reported that some fire engineers were still basing assessments on opinion rather than fact and, amongst other issues, that there were no tests using lightweight metal claddings. These were all real issues and I was happy to see Mr Evans raising them on behalf of the BCA. I hoped that such a presentation would improve the industry's understanding and provide clarity until the issue could be addressed by way of a review of ADB."

Were you already aware before you went to the seminar that there were no full-scale tests under BS 8414 on systems incorporating what you describe here as lightweight metal claddings?

A. I wouldn't have been aware. I mean, I don't regularly see fire test reports from anyone, or didn't at the time, so I wouldn't have been aware at all.

Q. Right. So this is something that you learnt during Mr Evans' presentation at the seminar; is that right?

A. I guess so. Yeah, I mean, his presentation was promoting best practice, as I saw it, so I saw that as a good thing.

Q. Right.

In what way did you consider or hope that Mr Evans' presentation would improve industry's understanding?

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Understanding of what, specifically?

A. As I recall, the point that I'm referring to here was NHBC had received assessments which they weren't happy with and had, I assume, rejected because they didn't have the necessary evidence base, and so they were in the seminar saying, "These are the things that — you shouldn't be producing assessments without an adequate evidence base".

Q. Did you consider whether it might be appropriate for you on behalf of the department to take on the role of taking steps to improve industry's understanding of the guidance on external fire spread?

A. Well, I did. I was one of the other speakers and that's what I was trying to do.

Q. Do you or did you at the time consider that that seminar might have been the perfect opportunity to explain to a wider audience than had been present at the CWCT fire group meeting on 17 March 2016, that the guidance in 12.7 was poorly written and misleading? Did that occur to you?

A. Not in those terms. I mean, I was there to try and promote best practice and people understanding the objective of the regulations and how to approach compliance.

Q. Yes, but we don't see anything — and we'll look at what

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1 you said shortly — where you take the opportunity to  
 2 broadcast to the audience in the room the fact that 12.7  
 3 was poorly written, misleading, misleadingly titled and  
 4 was not intended to refer only to insulation materials,  
 5 but all parts of the external wall arrangements over  
 6 18 metres. Why is that?

7 A. I can't — I know that you've got a transcript of the  
 8 day. I can't remember what I said. But I was there as  
 9 part of a group of people, all trying to promote best  
 10 practice and covering different subject matters.

11 Q. Right. I mean, did it occur to you that this was the  
 12 perfect platform, the perfect opportunity, if you  
 13 couldn't get an FAQ out or some kind of circular or get  
 14 any traction with anyone in the department, at least  
 15 just to talk to industry on a wider basis and say,  
 16 "Look, 12.7 appears to have been misunderstood, let me  
 17 tell you what the intention underlying it is, and that  
 18 is that ' filler ' extends at least to the core of  
 19 a rainscreen panel"?

20 A. I think that was effectively covered by one of the other  
 21 speakers, I think, when they were talking about the  
 22 Building Control Alliance guidance note, but by  
 23 supporting this event, that's what I was trying to do.  
 24 But I wouldn't have stood up and said, "The government  
 25 publication's got mistakes in it", I'm sure I wouldn't

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1 have said it in those terms, but getting involved in  
 2 those seminars was one way of raising awareness of the  
 3 regulations and promoting best practice.

4 Q. But why leave it to other speakers? You're government  
 5 coming along to lend authority to the occasion, and to  
 6 explain the regulations; why didn't you — and we have  
 7 the transcript — anywhere in that transcript explain in  
 8 very simple terms to those assembled what the underlying  
 9 intention of 12.7 was and clarify what for two years now  
 10 had been crying out to be clarified?

11 A. I think I just did my part of the seminar. I was  
 12 looking at the seminar as a whole and seeing whether it  
 13 was a positive thing or not.

14 Q. You weren't told what to say, though, were you, by  
 15 Mr Evans? You had —

16 A. No.

17 Q. No. So why didn't you take advantage of the liberty  
 18 given to you by the speaking slot and tell the audience  
 19 what it was that you now understood 12.7 to mean, and  
 20 tell them that's how they should understand it pending  
 21 eventual revision?

22 A. I don't think I was thinking of it in that way.

23 Q. Well, why is that?

24 A. I think, as I say, I'm thinking about the whole issue of  
 25 fire safety with façades, not this specific question.

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1 Q. Nor do you say anywhere that we can find that ACM with  
 2 a polyethylene core, and particularly the normal core,  
 3 the 100% core, should never be used in any external wall  
 4 build-up above 18 metres under the linear route. You  
 5 don't say that either. Take it from me that you didn't.  
 6 My question is: why didn't you?

7 A. I suppose I wasn't thinking that I needed to list all  
 8 the things that weren't allowed.

9 Q. Was this not an important and pertinent thing that was  
 10 not allowed, given the history that had built up over  
 11 the last 18 months about ACM fires? We've had The Torch  
 12 in Dubai, early 2015; we've had The Address in Dubai,  
 13 New Year's Eve 2015; we've had the Lacrosse fire in  
 14 November 2014; and we've just had a fire in the UAE at  
 15 the end of March. All ACM cladding fires with  
 16 a PE core. The warnings are out there, and it's been  
 17 covered expressly by the CWCT.

18 What I'd like just to understand is: why wasn't that  
 19 at least on your radar for discussion or mention at this  
 20 conference?

21 A. I was thinking about external wall construction in its  
 22 broadest sense. I was focused on a range of issues.  
 23 There were lots of other fires that occurred with other  
 24 forms of construction, so I wasn't focusing on a single  
 25 form of construction. I think, again, if you only think

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1 about ACM, yes, it's clearly an important point, and I'm  
 2 not sure if anyone mentioned it on the day.

3 But, yeah, I was thinking of the Building  
 4 Regulations in its broadest sense, and its application  
 5 to all external wall constructions, not one specific  
 6 one.

7 Q. Why would the application of the Building Regulations in  
 8 its broadest sense to all external wall constructions be  
 9 of interest to a group of specialist NHBC building  
 10 control officers who could be assumed, fairly, to know  
 11 that?

12 A. It wasn't a building control seminar. The seminar was  
 13 for designers and it was a much broader cross-section of  
 14 people in the audience. It wasn't for building control  
 15 officers.

16 Q. So all the more reason, if you were going to get to  
 17 a broad cross-section of people, to spell out to them  
 18 the one thing that you now knew needed to be spelt out,  
 19 which was: well, whatever these mean, you can't use  
 20 a combustible core in a rainscreen panel?

21 A. I was thinking about the other issues as well, like  
 22 cavity barriers and selecting the right insulation and  
 23 all the other issues that you need to consider.

24 Q. Now, let's go to your presentation. It's at  
 25 {INQ00014812/5}. This is the start of your address, and

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1 you say:  
 2 "My name is Brian Martin. I'm in the Building Regs  
 3 and Energy Performance Division of DCLG. That's the  
 4 small but perfectly formed team that deals with policy  
 5 on building regulations for England. Then separate  
 6 teams for Wales and sometimes Scotland and Ireland do  
 7 essentially the same as us. Amongst other things I hold  
 8 the [pen] on approved document B and then it's my fault  
 9 basically that some things change."  
 10 Pausing there, there was obviously an element of  
 11 light-heartedness about that introduction,  
 12 understandably, but that revealed a deeper truth,  
 13 doesn't it, that in fact you were in charge of Approved  
 14 Document B, at least —  
 15 A. Well, there wasn't anyone else, so it must have been me,  
 16 yes.  
 17 Q. Let's then move to page 7 {INQ00014812/7}. You've got  
 18 a presentation, and just below halfway down:  
 19 "Looking at the pictures on the right-hand side ...  
 20 The one we've all seen a lot of various incidents again  
 21 in Dubai, they've had a bit of a bad time of it recently  
 22 with cladding fires. In a way it's been an opportunity  
 23 for us all to learn about cladding fires and what not to  
 24 do, if you like. We've had our own in the past as well.  
 25 Garnock Court in Glasgow back in 1999 when I was a wet

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1 behind the ears fire investigator working for BRE at the  
 2 time."  
 3 Now, it's clear from that that the Dubai fires, the  
 4 ACM polyethylene-cored fires, were not only on your  
 5 radar, you actually made a virtue of mentioning them at  
 6 the conference; yes?  
 7 A. Yes.  
 8 Q. Yes. What were you saying? What was the point of  
 9 mentioning them?  
 10 A. I think I was just highlighting the — what external  
 11 fire spread looks like.  
 12 Q. Yes.  
 13 Then go to page 8 {INQ00014812/8}, final paragraph  
 14 on that page, "Cladding fires generally"; do you see  
 15 that?  
 16 A. Yeah.  
 17 Q. You say:  
 18 "Cladding fires generally, if you look at a lot of  
 19 cladding fires, certainly the ones in Dubai and some of  
 20 the other ones that we've experienced over the years,  
 21 they tend not to kill people so why are we even worried  
 22 about these things? That's probably because we've been  
 23 lucky."  
 24 Just pausing there, and going back to the "show me  
 25 the bodies" discussion that we had this morning and the

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1 evidence that we looked at earlier, that rather  
 2 indicates that the absence of fatalities was what was  
 3 driving the department's attention or lack of attention  
 4 on cladding fires. Would that be fair?  
 5 A. I think I'm sort of presenting this rhetorically. I'm  
 6 presenting the question that I'm then going to answer.  
 7 So I'm saying, you know, it is — the vast majority of  
 8 the international cladding fires that we'd seen had  
 9 resulted — the buildings had been evacuated without  
 10 difficulty, and — because the fire's on the outside of  
 11 the building and the escape routes tend to be away from  
 12 the outside of the building, and I'm trying to explain  
 13 to the audience why we should still take the issue  
 14 seriously.  
 15 Q. Yes, and we've come on to see that. You say:  
 16 "That's probably because we've been lucky. Very  
 17 often you can say that we're lucky in that if we've got  
 18 an otherwise well-designed building and we get  
 19 a cladding fire, there's a good chance most people will  
 20 be able to evacuate the building. Certainly moving away  
 21 from the cladding, going downstairs and leaving the  
 22 building."  
 23 Now, just pausing there, was it your understanding  
 24 in July 2016 that fire and rescue services would advise  
 25 evacuation in the first instance in the case of a fire

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1 in a clad high-rise building, or rather a cladding fire?  
 2 A. For a stay put type building, you're speaking about, I'm  
 3 guessing?  
 4 Q. You are guessing correctly.  
 5 A. I would have expected the fire service to see a cladding  
 6 fire — if a cladding fire was developing quickly, I'd  
 7 expect them to recognise that there's a potential that  
 8 the stay put would no longer be appropriate and for them  
 9 to evacuate the building. I'm not saying that's — you  
 10 wouldn't design with that intention, but I — my  
 11 expectation would be that's what firefighters would do  
 12 when faced with a building where fire — where there was  
 13 clearly fire spread across the building.  
 14 Q. Well, what was that expectation based on?  
 15 A. Combination of my experience and conversations I'd had  
 16 with firefighters over the years. When's this? 2016.  
 17 And the conversations we'd had following the  
 18 Lakanal House fire. I thought that was — as far as  
 19 I was concerned, that was a well understood principle,  
 20 that the stay put — it's a complex issue, I know. The  
 21 stay-put approach is in general, certainly was at that  
 22 time and still is at the moment, considered to be the  
 23 best strategy for a block of flats, but where  
 24 firefighters can see that fire is spreading in a way  
 25 which would mean that stay put is not going to work, or

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1 is not going to be safe for the residents, then you'd  
 2 initiate an evacuation.  
 3 Q. Where is that reflected anywhere in Approved Document B?  
 4 A. It's not, because it's not a guidance document for  
 5 firefighters, it's a building design document.  
 6 Q. Where is anything in Approved Document B consistent with  
 7 the idea that if you have a cladding fire and stay put  
 8 has to be revoked, then the fire and rescue services  
 9 will be able to do so?  
 10 A. I don't think we'd — the way ADB had been drafted up to  
 11 that point had been to focus on the design issues,  
 12 without providing a narrative to explain stay put, and  
 13 I think that's something which I know when I was working  
 14 with BSI on BS 9991, we talked about trying to provide  
 15 a narrative along those lines, I think I nearly drafted  
 16 one, and then that — I think that got rejected in the  
 17 end, I can't remember why, but possibly because the  
 18 fire service were concerned they didn't want designers  
 19 to presume that the Fire Brigade had another option up  
 20 their sleeve, so to speak.  
 21 Q. Can we agree on this: a stay-put or defend-in-place  
 22 strategy was effectively enshrined into the Building  
 23 Regulations so far as concerned a building over  
 24 18 metres in reliance upon compartmentation? That was  
 25 a basic design —

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1 A. Yes, and had been since, I think, probably the 1960s or  
 2 something, yeah.  
 3 Q. Yes, and that nothing in Approved Document B catered for  
 4 the contingency that stay put might have to be revoked  
 5 or abandoned and a full-scale evacuation or rescue  
 6 ensue?  
 7 A. No, that was always regarded as being an operational  
 8 issue.  
 9 Q. Was it your view in 2016, when you spoke these words,  
 10 that a stay-put strategy was inherently incompatible  
 11 with buildings which had been clad in combustible  
 12 materials?  
 13 A. I think you've leapt several steps forward. I mean,  
 14 it's incompatible with extensive external fire spread.  
 15 You could clad a building in combustible materials and  
 16 still avoid extensive fire spread. That's essentially  
 17 the point of BS 8414, was to try and deliver a building  
 18 that would do that. But, yes, if you've got extensive  
 19 external fire spread, then I'd expect the building to be  
 20 evacuated as quickly as possible.  
 21 Q. Yes.  
 22 When did you first form the conclusion that if you  
 23 have extensive external fire spread because the building  
 24 has been clad in combustible materials which have not  
 25 passed the BR 135 criteria, then a full-scale or

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1 substantial partial evacuation would have to ensue?  
 2 A. I don't think I thought of it in terms of the BR 135  
 3 criteria. I think I probably — I had a general  
 4 understanding of the stay-put principle all the time I'd  
 5 been working with Building Regulations. I think during  
 6 the — after the Lakeland House fire, as you might  
 7 imagine, there was some discussion about the stay-put  
 8 approach, and the conversations I'd had with senior and,  
 9 for that matter, junior firefighters was that there was  
 10 an understanding that where a fire was spreading further  
 11 than you would expect in a block of flats, ie beyond the  
 12 flat of origin, then evacuation was something that the  
 13 commander on scene would be considering. It's a really  
 14 difficult decision to make, at which point you should  
 15 decide to do that, but I'd certainly met firefighters  
 16 that had done it.  
 17 Q. Did anybody ask you for your views on the draft of  
 18 GRA 3.2, which was in the process of being revised in  
 19 the summer of 2013 and eventually got published in  
 20 February 2014?  
 21 A. I don't know if I ever saw the draft. I remember  
 22 talking about it to people. Because it was  
 23 an operational issue, it was kept to some extent  
 24 separate from us, but I think we would have spoken about  
 25 it. I have — I recall talking about it.

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1 Q. Who did you have a conversation with about it, do you  
 2 remember?  
 3 A. I can't remember, I'm sorry.  
 4 Q. Right. Was it Les Britzman? Does that name ring  
 5 a bell?  
 6 A. I remember the name, but I probably spoke to Les about  
 7 a range of things, so I couldn't be sure.  
 8 Q. Right.  
 9 It goes on. You say:  
 10 "That's probably because we've been lucky."  
 11 I've read that to you.  
 12 If we turn the page to page 9 {INQ00014812/9}, you  
 13 say:  
 14 "Certainly moving away from the cladding, going  
 15 downstairs and leaving the building. That doesn't mean  
 16 to say you've had a good. That means aren't we lucky  
 17 that we designed the rest of the building properly.  
 18 It's not a good way to rely on things. Fire safety,  
 19 like all safety measures, is about having layers of  
 20 safety. Every time you lose a layer of safety, you  
 21 significantly increase the risk of something might go  
 22 wrong.  
 23 "In the case of the fire in Azerbaijan last year,  
 24 15 people were killed as a result of a cladding fire.  
 25 The product substitution at some point during that

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1 project, what they clad the building with, was an  
 2 entirely inappropriate material."  
 3 And it goes on like that.  
 4 Again, did it occur to you at the time that the use  
 5 of combustible cladding materials in external wall  
 6 build-ups as a result of people misunderstanding 12.7  
 7 presented a risk that might very well not be mitigated  
 8 by the stay-put policy in the case of a building which  
 9 wasn't as well designed as the Dubai buildings?  
 10 A. You've put it in a very specific way.  
 11 Q. Yes.  
 12 A. And I'm not sure if I can answer that question.  
 13 I understood that external fire spread was one of the  
 14 risk factors that you needed to address when you were  
 15 designing a building, and if you didn't, you put the  
 16 occupants at risk.  
 17 Q. Yes. So does it mean that you understood at the time  
 18 that if you're going to have combustible cladding, then  
 19 in order for the stay put design assumption to hold  
 20 good, you had to have a lot of other or a number of  
 21 other reliable redundancies, layers of fire protection?  
 22 A. I suppose — you're using the phrase "combustible  
 23 cladding", which I —  
 24 Q. Well, all right.  
 25 A. I'm trying not to be pedantic, but you have a tendency

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1 to return to something I've agreed with, so I need to  
 2 take care with the language you're using.  
 3 If you've got a cladding system which is going to  
 4 present a risk of fire spread, then — well, you  
 5 shouldn't do that is the simple answer, but if you've  
 6 got a fire like that, then you become reliant on those  
 7 other measures.  
 8 Q. Let's go to paragraph 146 of your statement. You say  
 9 there, page 52 {CLG00019469/52}:  
 10 "At the 7 July 2016 seminar the NHBC launched  
 11 a document entitled 'Acceptability of common wall  
 12 constructions containing combustible materials in high  
 13 rise buildings'. This document provided specific  
 14 guidance on Option 3 of the 2015 BCA Guidance Note 18 as  
 15 to how to achieve compliance with Requirement B4. The  
 16 document provided, at Appendix 3, has a section on ACM  
 17 panels. The 'Guidance' section provided that NHBC would  
 18 accept that a certain make-up of a façade would meet  
 19 Requirement B4, and it then went on to set out what such  
 20 a specification would be from inside to out. Having  
 21 reviewed the document I was satisfied that this was  
 22 a reasonable approach to satisfying the functional  
 23 requirements of the Regulations. I was happy to see the  
 24 NHBC warning that substitution with a less  
 25 fire-resistant product did not take place on site."

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1 When did you first read NHBC's 2016 guidance note?  
 2 A. I think it was in advance — the meeting I had with NHBC  
 3 in advance of the seminar.  
 4 Q. Right, so 30 June 2016 with Steve Evans and  
 5 Diane Marshall?  
 6 A. I believe so, yes.  
 7 Q. Right.  
 8 Who did you understand that the guidance note was  
 9 intended for? Who was the intended audience?  
 10 A. I think that was for NHBC's building control clients.  
 11 Q. Right. Let's go to it, {NHB00000065}. Can you just  
 12 confirm for us that that is the document you're  
 13 referring to?  
 14 A. Yes.  
 15 Q. Yes.  
 16 Now, it's entitled "Acceptability of common wall  
 17 constructions containing combustible materials in high  
 18 rise buildings", and if we stay on page 1 and look to  
 19 the right-hand column of the text, towards the bottom of  
 20 page 1, under the heading "Common wall and facade types  
 21 accepted by NHBC", it says this:  
 22 "The following common wall and facade constructions  
 23 are acceptable to NHBC without the need to provide an  
 24 Option 3 assessment providing that the design  
 25 specification and installation meets the minimum

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1 specifications set out in the following appendices ..."  
 2 Then you can see that there are three appendices: 1,  
 3 brickwork façade; 2, timber panelling; and 3, aluminium  
 4 composite panels.  
 5 Now, do you remember that in simple terms — and  
 6 we'll look at the note in detail — it significantly  
 7 widens the routes to compliance for the use of certain  
 8 combustible materials over 18 metres?  
 9 A. I'm not sure if it does widen the route to compliance.  
 10 What they were trying to do is to say that these are  
 11 constructions that they have already reviewed and  
 12 concluded that they meet one of those routes to  
 13 compliance.  
 14 Q. Right. Well, let me put it differently.  
 15 Do you agree that it was creating an alternative to  
 16 producing a desktop, which was itself an alternative to  
 17 using either materials of limited combustibility above  
 18 18 metres or passing a full-scale test under BS 8414?  
 19 A. Yes.  
 20 Q. Yes.  
 21 Let's look at appendix 3, then, page 4  
 22 {NHB00000065/4}. Under the heading "Key issues", if you  
 23 look at the left-hand side, it says this:  
 24 "Similar to cement based panels, mineral cored  
 25 aluminium composite panels tend to crack and break up

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1 under sudden flame impingement."  
 2 Et cetera.  
 3 Then if you look at the next paragraph, it refers to  
 4 BR 135, and then the end of that second paragraph, it  
 5 says:  
 6 "With the measures below, it is considered that  
 7 an aluminium composite panel facade finish will meet  
 8 these criteria."  
 9 And those are the criteria in BR 135.  
 10 Then it goes on to say, "With the measures below",  
 11 et cetera, and then it goes on to say:  
 12 "These appropriate measures include:  
 13 "■ The use of minimum Class B (in accordance with  
 14 BS EN 13501:1) aluminium composite panels which provide  
 15 a Class 0 surface spread of flame.  
 16 "■ The use of a cement particle board behind the  
 17 insulation (minimum Class B) ...  
 18 "■ The use of reputable and robust  
 19 cavity barriers ..."  
 20 And then it says "Restrictions on use":  
 21 "The use of polythene or polythene/mineral cored  
 22 aluminium composite panels which do not achieve  
 23 a minimum Class B combustibility classification fall  
 24 outside of the scope of this guidance note."  
 25 Now, reading the word "polythene" there for

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1 "polyethylene" —  
 2 SIR MARTIN MOORE—BICK: Mr Millett, I wonder if we could  
 3 scroll down a bit, because I've only got the first two  
 4 lines on my screen.  
 5 A. Thank you, sir.  
 6 MR MILLETT: I'm sorry, you're quite right.  
 7 SIR MARTIN MOORE—BICK: Thank you.  
 8 Sorry, put your question again if you'd like to.  
 9 MR MILLETT: Making allowances for the word "polythene"  
 10 there, which should be read as "polyethylene", how did  
 11 you understand that paragraph when you read it?  
 12 A. I remember this being explained to me in that NHBC  
 13 specifically wanted Euroclass B as a minimum  
 14 performance, as opposed to class B or class 0.  
 15 Q. It allows, doesn't it, or did you understand it as  
 16 allowing for the use of polyethylene—cored ACM so long  
 17 as those panels achieved Euroclass B or better?  
 18 A. Yeah, as I understood it, this was based on the  
 19 information that NHBC had received over an extensive  
 20 number of projects. So I presumed, I think wrongly now,  
 21 that there had been some testing to demonstrate that.  
 22 Q. I just want to get your evidence about how you read  
 23 this. Did you read it as allowing for the use of  
 24 polyethylene—cored aluminium composite panels as long as  
 25 those panels achieved Euroclass B?

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1 A. Yes.  
 2 Q. Yes. So not, therefore, as saying that ACM panels with  
 3 a polyethylene core are not permitted?  
 4 A. I think my understanding at the time was that the only  
 5 class B products were ones that had some sort of  
 6 fire retardant material inside them.  
 7 Q. That's an understanding about what was out there and  
 8 available; yes? That's not a —  
 9 A. Well, I didn't have a great deal of understanding of  
 10 what was out there and available, but NHBC had dealt  
 11 with an extensive number of projects where they'd  
 12 received a lot of information from the various engineers  
 13 that were supporting the applications, and NHBC were  
 14 satisfied that a panel that met this specification would  
 15 achieve the criteria in BR 135.  
 16 Q. Did you read anything on this page as saying that an ACM  
 17 panel with a polyethylene core was effectively banned?  
 18 (Pause)  
 19 A. I don't think I looked at it in those terms. I looked  
 20 at it — I saw that — I remember the — I can't  
 21 remember who it was at NHBC I spoke to, it might have  
 22 been John Lewis, the fire engineer, and he said that it  
 23 was important that it was Euroclass B and not class 0,  
 24 as the class B separated out the poorer performing ACMs,  
 25 so that was my understanding of how this worked, which

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1 seemed reasonable to me.  
 2 Q. Class B is not limited combustibility, though, is it?  
 3 A. No, but, as I say, this was based on, as I understood  
 4 it, a lot of large—scale testing, because otherwise how  
 5 would they have reviewed all these buildings?  
 6 Q. Did they tell you that?  
 7 A. I don't think they directly did. I think —  
 8 Q. No.  
 9 A. — what they explained to me is that they'd dealt with  
 10 a lot of projects, that they'd been reviewing them, and  
 11 they — they'd been dealing with lots of projects, with  
 12 a wide range of different forms of construction, and  
 13 there were certain forms of construction that had become  
 14 more common, and they were satisfied with the evidence  
 15 that they'd been presented that these particular  
 16 constructions met the performance criteria in BR 135.  
 17 So I guess I presumed that meant that at least some  
 18 testing was involved.  
 19 I now understand I don't think there was any testing  
 20 on ACMs, certainly not to BS 8414, but at the time  
 21 I think I presumed that there had been. I didn't see  
 22 how else you could do — how you could do an assessment  
 23 or a desktop, as it's become known, for a construction  
 24 involving a rainscreen panel if no one had ever tested  
 25 one.

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1 Q. Just to be clear about your evidence just now, when you  
2 were shown this and discussed it with Diane Marshall and  
3 Steve Evans, did you just assume that there had been  
4 full —scale tests under BS 8414 which had passed the  
5 BR 135 criteria where an aluminium composite material  
6 panel with a polyethylene core had been used as part of  
7 the system?

8 A. Where that panel was class B, yes, that's the — that's  
9 what I was presuming from this, is that they'd seen  
10 sufficient evidence to be able to confidently say —  
11 because that's what they were doing, was that a class B  
12 ACM panel would meet those criteria, so I assumed that  
13 that was satisfactory.

14 Q. Had you forgotten cc1924 and the results of the tests in  
15 2001, particularly with the ACM panel with a PE core  
16 that had had to be terminated before 5 minutes was up,  
17 with flames going up 20 metres?

18 A. As I mentioned to you when you asked me about that  
19 before, I wasn't aware of the full extent of that  
20 failure, and I presumed that this was a different  
21 material.

22 Q. Why?

23 A. Because it's class B and they've reviewed hundreds of  
24 buildings and come to the conclusion it met the BR 135  
25 criteria, which, if I had have been that aware of that

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1 test, all those years before, then I would have  
2 recognised that wouldn't have been likely to be true.  
3 But I only had scant knowledge of that test, as I've  
4 told you before.

5 Q. You have.

6 If we turn to the right—hand side, please, in the  
7 last bullet point above the words "The use of  
8 reputable", do you see that, it says:  
9 "Minimum Class B (when assessed to BS EN 13501:1)  
10 aluminium composite material boards with a Class 0  
11 surface spread of flame classification."

12 Now, again, it's right, isn't it, class B would not,  
13 under Approved Document B, count as material of limited  
14 combustibility, would it?

15 A. That's correct.

16 Q. No.

17 Is that specification there in two places, and  
18 particularly here, using a minimum class B ACM board,  
19 not wholly inconsistent with the requirement for all  
20 elements of the build—up, including external facings, to  
21 be material of limited combustibility?

22 A. It is. As far as I was aware, they were basing this on  
23 a series of projects they'd dealt with where they'd  
24 satisfied themselves that it met the performance  
25 criteria in BR 135.

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1 Q. But I think the answer to my question, the first part of  
2 your answer, is yes?

3 A. Yes.

4 Q. Yes.

5 We can also see, if we scroll up a little bit, what  
6 the rest of this list says just above it. It says:  
7 "Insulation (maximum 140mm thick) comprising one of:  
8 " ■ Kingspan K15.  
9 " ■ Celotex RS5000.  
10 " ■ Xtratherm SR/RS."

11 Those are all combustible insulation materials,  
12 aren't they?

13 A. Yes.

14 Q. Not materials of limited combustibility.

15 A. Correct.

16 Q. So this guidance was blessing the use above 18 metres of  
17 two important elements of a cladding system, both of  
18 which were regulated by ADB, that were not materials of  
19 limited combustibility; yes?

20 A. Absolutely, yes.

21 Q. But without any testing of those elements?

22 A. The way it was explained to me is that these forms of  
23 construction that are set out in this guidance note were  
24 ones that NHBC had reviewed in detail on many occasions  
25 and had satisfied themselves that they met the

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1 performance criteria of BR 135, and on that basis they  
2 would be acceptable in terms of requirement B4. I was  
3 under the — I don't see how you could possibly have  
4 done that without some large—scale testing.

5 Q. How was the blessing of combustible insulation above  
6 18 metres, either alone but particularly when combined  
7 with a cladding panel with a polyethylene core of  
8 minimum class B, consistent with the linear route to  
9 compliance?

10 A. It's not.

11 Q. No. And indeed, do you accept that if this guidance  
12 note was acceptable, at least so far as these materials  
13 were concerned, you wouldn't need to amend or review  
14 ADB?

15 A. I think there were still quite specific limits here,  
16 and, as I say, I was under the impression that this was  
17 based on perhaps more detailed consideration than  
18 perhaps the evidence you've now seen shows.

19 I can see the point you're making, is it showed that  
20 this type of insulation and that type of cladding, they  
21 were very confident that within the constraints that  
22 they'd set out, you — they would meet the performance  
23 criteria of BR 135, and so that seemed — that was like  
24 a good thing.

25 Q. Scrolling down again, so you have the whole thing, could

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1 we start at the foot of page 4 with the bullet points.  
 2 I'll come back to the paragraph above it in a moment,  
 3 but it says:  
 4 " ... the following precautions are incorporated into  
 5 the specification , design and installation ..."  
 6 Then:  
 7 "From inside to out ..."  
 8 This is what I want to focus on in this question:  
 9 " ■ Double layer of 12.5mm plasterboard.  
 10 " ■ Minimum 100mm lightweight steel frame internal  
 11 leaf (which may incorporate combustible or  
 12 non-combustible insulation)  
 13 " ■ No less than 12mm thick cement particle board of  
 14 minimum combustibility Class B ...  
 15 " ■ Insulation [which I've read to you] ...  
 16 " ■ Drained and vented cavity.  
 17 " ■ Aluminium support rails.  
 18 " ■ Minimum Class B ... aluminium composite material  
 19 boards with a Class 0 surface spread of flame  
 20 classification ."  
 21 Then cavity barriers , and then some other things  
 22 underneath that, which you can see.  
 23 A. Yes.  
 24 Q. Looking at it, do you agree that it's no more than  
 25 a list of products and dimensions?

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1 A. It is a list of products and dimensions, I guess, yes.  
 2 Q. So do you agree that any BCO, building control officer,  
 3 could quite fairly pick up this document and approve  
 4 a cladding system on a high-rise building anywhere, any  
 5 high-rise building, that contained a class B 100%  
 6 polyethylene-cored ACM panel and RS5000 or K15 as the  
 7 insulation behind it?  
 8 A. I mean, this is an NHBC policy document, so any NHBC  
 9 building control officer is essentially getting  
 10 an instruction from NHBC that they — it's telling  
 11 everybody that NHBC will accept that form of  
 12 construction, yes.  
 13 Q. Yes, and on BBA paper, at least — and leave aside the  
 14 problems with the certificate for the moment — that's  
 15 what was on Grenfell Tower, wasn't it: K15,  
 16 Celotex RS5000, and apparently a class B aluminium  
 17 composite panel with a class 0 surface spread of flame  
 18 classification , or one which could be regarded as such?  
 19 A. I mean, I don't know the exact specification of the  
 20 construction on Grenfell Tower, but, as I say, as far as  
 21 I was aware, this had been subject to a lot of scrutiny  
 22 by NHBC and had been evidenced as meeting the  
 23 performance criteria of BR 135. I understand now that  
 24 that's not entirely accurate, but that's not what I'd  
 25 been led to believe.

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1 Q. Did you understand at the time — I mean, I should just  
 2 tell you there's an irony here, of course, because the  
 3 7 July 2016 was the very day when RBKC's John Hoban  
 4 signed off the certificate of practical completion on  
 5 the Grenfell Tower refurbishment, but it would have been  
 6 possible for him — let's assume he had done the work —  
 7 to have discovered this document, looked at it, done  
 8 an investigation of what was on Grenfell Tower, and seen  
 9 that the very products listed as acceptable here as  
 10 meeting requirement B4 were on his building, and gone  
 11 ahead and signed that practical completion certificate ;  
 12 yes?  
 13 A. I guess so, yes.  
 14 Q. Yes. This guidance note essentially delivers the  
 15 builder and the building control officer a linear  
 16 approach to compliance which doesn't require any of the  
 17 external elements to be materials of limited  
 18 combustibility and doesn't require the insulation to be  
 19 of limited combustibility either .  
 20 A. Yes. I mean, it's quite specific about the particular  
 21 insulation materials, and they are the better performing  
 22 insulation materials that were on the market, in terms  
 23 of fire performance. I'm sorry to repeat myself, but my  
 24 understanding was that this had been assessed thoroughly  
 25 by NHBC.

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1 Q. Before you lent your approval to this document, even  
 2 informally, did you not want to see from NHBC at least  
 3 the test data from the tests incorporating any of these  
 4 materials or products, and understand from NHBC how the  
 5 extrapolation had been made to the desktop which  
 6 supported their use in different tests, different  
 7 structures, and on top of that, the basis on which it  
 8 was thought safe to apply it across the board?  
 9 A. Well, it wasn't for me to check the detail. What — the  
 10 conversation I'd had with NHBC was about, you know, are  
 11 they happy that the assessments that they're looking at  
 12 are appropriate and are they checking assessments  
 13 thoroughly, and I was reassured that they were taking  
 14 a responsible attitude to looking at assessments, and  
 15 that was part of the reason for their seminar, was to  
 16 make sure that people were submitting adequate  
 17 submissions to them, and they said, and — that they'd  
 18 had a lot of assessments which — and they'd already  
 19 assured me that those assessments were based on test  
 20 data, so — and they said these are particular  
 21 constructions that they'd seen a lot of and that they  
 22 were satisfied met the performance criteria, so that  
 23 seemed an entirely reasonable approach for them to take.  
 24 Q. Did you not remember the words in the 2013 edition of  
 25 BR 135, in both annexes A and B, to the effect that the

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1 results of a full system test under BS 8414 could not be  
 2 transliterated to a different system? Did you not  
 3 remember that?

4 A. You're mixing terms here. What BR 135 is talking about  
 5 is the fact that you can't claim a classification to  
 6 BR 135 for a construction that isn't the one you tested,  
 7 which is true. But as I think several people have said,  
 8 including myself, it's a reasonable approach, having —  
 9 if you have sufficient data from large-scale tests, to  
 10 interpolate between them, and that's where assessments  
 11 are appropriately used, and regularly used across the  
 12 industry for a wide range of different things. So I saw  
 13 this as being reasonable. They'd seen a range of  
 14 assessments on a large number of buildings, and they  
 15 were going through the same process repeatedly, and  
 16 concluded that there were certain constructions where  
 17 they were so confident they'd seen enough data that they  
 18 could come up with this deemed to satisfy type approach.

19 SIR MARTIN MOORE—BICK: Well, just help me with this: did it  
 20 not strike you as very odd that they were accepting  
 21 constructions which simply would not begin to comply  
 22 with the linear route under ADB?

23 A. No, sir, because that was the whole point of BS 8414,  
 24 was to provide an alternative to the linear approach to  
 25 ADB.

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1 SIR MARTIN MOORE—BICK: Yes, but these weren't based on  
 2 a lot of 8414 tests, they were based on previous  
 3 assessments, which were themselves said to have been  
 4 based on 8414 tests which you and possibly nobody else  
 5 had seen. Did it not raise some sort of warning flag?

6 A. If I'd realised the lack of testing involved, sir, yes,  
 7 it would have done, but I was under the impression that  
 8 quite a lot of testing had been done in support of those  
 9 assessments, which if — the BCA guidance note is quite  
 10 clear, and the process of assessment — you can't  
 11 interpolate between two tests if you haven't done the  
 12 two tests, and — but that appears to be what has  
 13 happened in some of these cases.

14 SIR MARTIN MOORE—BICK: But this all depends, doesn't it, on  
 15 the quality of the assessments that they were themselves  
 16 extrapolating from in order to produce this —

17 A. Yes, sir.

18 SIR MARTIN MOORE—BICK: — document?

19 A. And those assessments, as I understood it, were carried  
 20 out by organisations with the right sort of experience,  
 21 and they were being — they'd been reviewed carefully by  
 22 NHBC's fire engineers.

23 SIR MARTIN MOORE—BICK: Yes. All right, thank you.

24 MR MILLETT: Mr Chairman, I have five minutes left on this  
 25 topic, if I may.

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1 SIR MARTIN MOORE—BICK: Yes.

2 MR MILLETT: You referred to the deemed to satisfy in your  
 3 last answer and also in your statement, but you  
 4 explained to us very helpfully this afternoon that the  
 5 deemed to satisfy concept was one which had been removed  
 6 by the 1984 Building Act and the 1985 Building  
 7 Regulations. How come it could be relevant now?

8 A. In the case of NHBC, it's a very large approved  
 9 inspector that does a lot of work on very similar  
 10 buildings, so it comes across the same question  
 11 frequently, and it's something government encourages  
 12 building control bodies to do, is to be consistent in  
 13 its assessment of applications. That's something which  
 14 is in the Enforcement Concordat and I think it's the  
 15 Regulators' Code. But government policy on — to  
 16 enforcers, which NHBC effectively is, is to be more  
 17 consistent. So I saw this as them trying to be more  
 18 consistent on forms of construction that they were  
 19 dealing with regularly. So it sat well with government  
 20 policy.

21 Q. Now, there's a further point. If we again scroll down,  
 22 please, to the guidance at the bottom left—hand corner  
 23 {NHB00000065/4}, I read some of this to you but not all  
 24 of it, and it precedes the bullet—point list of products  
 25 and specifications, and it says this:

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1 "Where a building has a floor level exceeding 18m  
 2 from outside ground level, a Class B aluminium composite  
 3 panel finish is specified and the builder can  
 4 demonstrate that the following precautions are  
 5 incorporated into the specification, design and  
 6 installation of the facade, NHBC will accept the  
 7 build-up as meeting Requirement B4(1)."

8 Did you read that paragraph?

9 A. Probably.

10 Q. Yes. Did you not ask Steve Evans or Diane Marshall on  
 11 what basis they would accept these build-ups as meeting  
 12 the functional requirement, not just satisfying the  
 13 guidance, but actually meeting the functional  
 14 requirement?

15 A. Well, they were working on — I'm sorry to repeat  
 16 myself, but they were working on the basis that they  
 17 were satisfied by the evidence they had seen that this  
 18 form of construction met the performance criteria in  
 19 BR 135 and therefore demonstrably didn't contribute to  
 20 external fire spread.

21 Q. Ah, now, it's that last part of that answer that I'm  
 22 interested in. You say, "met the performance criteria  
 23 in BR 135 and therefore demonstrably didn't contribute  
 24 to external fire spread". It's the "therefore".  
 25 Did you think that if you followed ADB, whether

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1 through the linear route or the full — scale test method,  
 2 and had got a BR 135 pass under the alternative method,  
 3 you therefore met the functional requirement without  
 4 more?  
 5 A. Ultimately, there's always the duty to think broadly, so  
 6 you'd have things like the mechanical performance report  
 7 from BR 135, so again, if you were doing an assessment,  
 8 you would want to look at the mechanical performance in  
 9 case there was something untoward there that you were  
 10 concerned about.  
 11 Q. What about —  
 12 A. I can't think what that would be, but that's something  
 13 that an engineer doing that sort of work would want to  
 14 do.  
 15 Q. Where do we see in this document anything that says that  
 16 you should consider the use of Kingspan K15 or  
 17 Celotex RS5000 or an aluminium composite material board  
 18 with a polyethylene core having regard to the height,  
 19 use and position of the building?  
 20 A. I think it's broadly the whole document is trying to do  
 21 that, isn't it?  
 22 Q. No. Well, it's trying to do that, but where do we see  
 23 it? The reason I'm putting this to you is because, as  
 24 it says, NHBC will accept the build-up as meeting  
 25 requirement B4; did it occur to you at the time that

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1 NHBC had leapt from meeting the Approved Document B  
 2 guidance, the statutory guidance, to satisfying the  
 3 functional requirement without pausing to think whether  
 4 satisfying the guidance did meet the requirement in  
 5 every case?  
 6 A. I think they dealt with build — very — a fairly —  
 7 there was a lot of repetition in the kind of work that  
 8 they dealt with, so I think — I don't think  
 9 I considered that in detail at the time, but there's  
 10 a lot of repetition in the type of work they were doing,  
 11 and my experience of them is they were, like, quite  
 12 competent as a building control body, because it was  
 13 a large organisation and they had access to people like  
 14 Mr Lewis, they had fire engineers. Most local  
 15 authorities didn't have access to a chartered  
 16 fire engineer.  
 17 Q. Mr Martin, it's more fundamental than that. It's more  
 18 fundamental than that. Did you not read this as telling  
 19 NHBC BCOs that they no longer needed to worry about the  
 20 height, use and position of a given building above  
 21 18 metres provided this list of materials and dimensions  
 22 was used?  
 23 A. I think this is saying that NHBC had thought about those  
 24 issues and concluded this form of construction was  
 25 acceptable.

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1 Q. What, on every single building above 18 metres  
 2 regardless of its height, use and position? Is that  
 3 what you thought?  
 4 A. Well, the height is above 18 metres, it says it there,  
 5 and the use of the building — NHBC mostly do domestic  
 6 premises, it's the nature of their business. I don't  
 7 know if it says blocks of flats anywhere on this  
 8 guidance note. And its position is more relevant to  
 9 fire spread between buildings and not external fire  
 10 spread.  
 11 Q. Do you not accept that this was a thoroughly dangerous  
 12 and irresponsible document because it signalled to  
 13 a large population of building control officers  
 14 operating under the NHBC banner that they could tick off  
 15 a cladding system comprised entirely of combustible  
 16 material and, what is more, do so on the assumption,  
 17 without more, that it adequately resisted the spread of  
 18 fire over the walls.  
 19 A. At the time I saw this as being a reasonable approach to  
 20 dealing with the form of construction that they had  
 21 dealt with on numerous buildings, and they had satisfied  
 22 themselves, looking at the information they'd been  
 23 given, that it met the requirement.  
 24 Q. You knew that no lightweight cladding panels had  
 25 actually been tested to BS 8414. You told us that

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1 Mr Evans confirmed that in his own presentation, which  
 2 he did.  
 3 A. I don't remember making the connection at the time.  
 4 I wish I had.  
 5 Q. On what possible basis could it be appropriate for the  
 6 NHBC to accept such panels for use over 18 metres  
 7 without any full — scale test data to support their use?  
 8 A. I don't think they should have done, and I don't think  
 9 anyone should have been doing an assessment without at  
 10 least some full — scale testing of the cladding panel  
 11 involved.  
 12 Q. Right.  
 13 A. I still find it hard to believe that anyone doing  
 14 an assessment would have been willing to do that.  
 15 Q. You see, you told Mr Jenkins on 17 February 2016 that  
 16 you weren't sure that even ACM products with a flame  
 17 retardant core would meet the rule of thumb in the  
 18 approved document, and doubted whether or not they would  
 19 get through an 8414 test, and yet here we are six months  
 20 later, you endorsing the use of such products over  
 21 18 metres without full — scale test data.  
 22 A. Because I was now under the impression that someone had  
 23 tested them.  
 24 Q. Just on the basis of this document?  
 25 A. On the basis of what NHBC told me when they were

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1 planning to present this document at the seminar.  
 2 Q. Let's be clear: did they tell you that there were recent  
 3 tests with ACM with a PE core that had met the BR 135  
 4 criteria?  
 5 A. Probably not as directly as that and, in hindsight,  
 6 I wish I'd challenged them on that, but I — they talked  
 7 about the fact they'd reviewed a lot of buildings, they  
 8 talked about the approach they were taking to cladding,  
 9 which seemed a responsible one, and because they'd dealt  
 10 with a lot of projects with very similar forms of  
 11 construction, they were satisfied that this form of  
 12 construction met the functional requirement, and I think  
 13 I must have assumed that the only way you could have  
 14 done that with — is with some sort of large-scale test.  
 15 I don't see how you could possibly do that without doing  
 16 some sort of large-scale test, at least one. I was —  
 17 when I discovered that this — all these assessments had  
 18 been done without that kind of — what I would regard as  
 19 a minimum level of relevant data, I was shocked.  
 20 I still am.  
 21 Q. Did you mention this note or your endorsement of it as  
 22 a reasonable approach to Melanie Dawes' office when  
 23 summarising the guidance for her in the wake of the  
 24 Grenfell Tower fire when you said that aluminium PE was  
 25 effectively banned?

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1 A. I can't remember. I don't think I did.  
 2 Q. No. Why not?  
 3 A. It was a very intense period, and I'm — when you're  
 4 briefing a Permanent Secretary to answer the questions  
 5 they ask you — and it's not an excuse, it's  
 6 an explanation — and I think I — I don't know if it  
 7 slipped my mind or I just didn't manage to get all my  
 8 words in, I don't know, but I don't think I mentioned  
 9 this.  
 10 Q. In truth, it can't be correct, can it, that ACM PE was  
 11 effectively banned; this document effectively permitted  
 12 it?  
 13 A. I mean, I presumed that it wasn't ACM PE.  
 14 MR MILLETT: Mr Chairman, I've gone on a little bit longer  
 15 and I apologise, both to you and the witness, but this  
 16 is a convenient moment.  
 17 SIR MARTIN MOORE-BICK: Well, there we are. We ought to  
 18 have a break at this stage.  
 19 So we'll take a break now, Mr Martin.  
 20 THE WITNESS: Yes, sir.  
 21 SIR MARTIN MOORE-BICK: We will come back, please, at 3.45,  
 22 and once again, please don't talk to anyone about your  
 23 evidence. All right?  
 24 THE WITNESS: Yes, sir.  
 25 SIR MARTIN MOORE-BICK: Thank you very much.

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1 (Pause)  
 2 Thank you very much. 3.45, please. Thank you.  
 3 (3.28 pm)  
 4 (A short break)  
 5 (3.45 pm)  
 6 SIR MARTIN MOORE-BICK: All right, Mr Martin, ready to carry  
 7 on?  
 8 THE WITNESS: Yes, sir.  
 9 SIR MARTIN MOORE-BICK: Thank you very much.  
 10 Yes, Mr Millett.  
 11 MR MILLETT: Yes, Mr Chairman.  
 12 Mr Martin, I'm going to change now to a completely  
 13 different topic, which is the LGA guide on purpose-built  
 14 block of flats, which is in the context of the RRO, in  
 15 other words the Regulatory Reform (Fire Safety) Order  
 16 2005.  
 17 Now, nowhere in your statement do you refer to  
 18 having any responsibility for policy matters relating to  
 19 the RRO. Is that because you didn't?  
 20 A. Not directly, no. There were various points where  
 21 I assisted colleagues that were working on policy  
 22 relating to the Fire Safety Order.  
 23 Q. Right, and in what capacity were you assisting those  
 24 colleagues?  
 25 A. At times, I was the only person in the department, or

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1 sometimes both departments, that had any experience of  
 2 fire safety, and I had a network of contacts which meant  
 3 that I could help sometimes, and both teams were quite  
 4 small, so sharing information was something that we  
 5 tried to do when we could.  
 6 Q. Did you have any involvement in policy matters relating  
 7 to the RRO on a daily basis or —  
 8 A. Not — it wasn't my principal function, but I think at  
 9 one stage I think it was in my objectives. Every year  
 10 you review your objectives as an official, and I think  
 11 there was a period where that included recognition that  
 12 I would assist colleagues that were dealing with the  
 13 Fire Safety Order, probably while they were still in the  
 14 department, I think.  
 15 Q. Now, you tell us in your statement, paragraph 10  
 16 {CLG00019469/3}, that before the Grenfell Tower fire,  
 17 you had reported to Anthony Burd and then  
 18 Richard Harral —  
 19 A. Yes.  
 20 Q. — as head of technical policy. Did you have any formal  
 21 reporting lines in relation to the RRO?  
 22 A. No.  
 23 Q. Right.  
 24 Now, I'm going to turn to the LGA guide itself,  
 25 which I think you may remember was published in the July

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1 of 2011.  
 2 A. Yes.  
 3 Q. Yes.  
 4 Can we go to your statement, please, at page 55  
 5 {CLG00019469/55}. You say there, at paragraph 156, in  
 6 answer to the question:  
 7 "What other oh work was identified in the period  
 8 2009–14 June 2017 to improve fire safety in high rise  
 9 purpose built blocks of flats?  
 10 "156. During the period in question work on  
 11 fire safety in purpose–built flats was aimed at ensuring  
 12 that there was adequate guidance for the safe management  
 13 of buildings in use. Whilst this is outside my direct  
 14 area of responsibility I did assist colleagues working  
 15 in that area and the LGA by helping with the procurement  
 16 of a contractor to produce the guidance to which I have  
 17 referred above, and then providing contributions and  
 18 comments as the document was developed. The LGA guide  
 19 was reviewed following the Coroner's recommendations in  
 20 the Lakanal House Inquest but was found to be suitable  
 21 without amendment."  
 22 Why were you involved in the drafting of the  
 23 LGA guide if it was outside your direct area of  
 24 responsibility?  
 25 A. It — one of the things that we'd tried to do between

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1 the two policy teams was to make sure that any guidance  
 2 that existed didn't conflict, and so, as a minimum,  
 3 I was reviewing that to — what you wouldn't want is  
 4 a provision in the guidance for existing buildings which  
 5 asked — required something which was in conflict with  
 6 the standards you were setting for new buildings,  
 7 because you — that would be unworkable. So that was  
 8 a — probably the main reason for being involved, but  
 9 generally if — I would be reviewing it to see if  
 10 I could make any helpful comments.  
 11 Q. What did you know about the RRO that meant that you  
 12 could add value to that project?  
 13 A. I'd been involved in various aspects of — so I'm trying  
 14 to think now. Sorry, I'm just trying to get the  
 15 chronology straight in my head.  
 16 BRE had a contract with the department to produce  
 17 some of the Fire Safety Order guidance at the same time  
 18 as we were working on the 2006 edition of Approved  
 19 Document B, and so I was involved to some degree —  
 20 I wasn't in the team that was doing that work, because  
 21 I was already tied up with the approved document, but  
 22 I was involved at that stage, and it was quite  
 23 an important piece of legislation for fire safety, the  
 24 Fire Safety Order, so it's something I guess we were all  
 25 talking about. And there was a period, whilst I was

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1 still working for — it was probably the last couple of  
 2 years while I was still working for BRE, where, in  
 3 addition to the work I was doing with the department,  
 4 supporting them on Building Regulations, I provided some  
 5 assistance to the policy team responsible for the  
 6 Fire Safety Order when it was first implemented. So it  
 7 was a separate contract.  
 8 Q. Now, on this project, I think it's right that you  
 9 represented DCLG on the project group for the LGA guide.  
 10 A. I was one of the DCLG representatives, yes.  
 11 Q. Why were you part of the project group, you  
 12 particularly?  
 13 (Pause)  
 14 A. Well, as I say, there weren't really anybody else.  
 15 Q. Right.  
 16 A. So it would be me or no one, I think. If you wanted  
 17 someone from the department that could contribute to  
 18 this, it would pretty much be me.  
 19 Q. What role did you take?  
 20 A. So I think, as I said in my statement, I think the  
 21 initial — there was an initial discussion about the  
 22 need for some better — I think — it's quite difficult  
 23 to remember the chronology, but it had been recognised  
 24 I think by the policy team responsible for the order  
 25 that the Fire Safety Order guidance, the way it had been

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1 structured — there was one guide which I think was  
 2 titled "Sleeping risks" or something.  
 3 Q. Sleeping Guide —  
 4 A. Yeah, that's —  
 5 Q. — 2006.  
 6 A. And the problem with that guide was that it covered  
 7 hotels and blocks of flats in one guide, even though the  
 8 strategies for those two types of buildings was very  
 9 different, and that was causing problems in its  
 10 application, because they are just — their design  
 11 strategies are completely different, so it didn't work  
 12 very well. And I think there was — there were also  
 13 issues that the Fire Safety Order team had come across,  
 14 where there's the — I guess it's the legislative  
 15 overlap between the Fire Safety Order, which applied to  
 16 certain parts of a block of flats, and the housing  
 17 health and safety rating system, which is a — it works  
 18 in a very different way, but essentially does the same  
 19 job for the other parts of a block of flats, and I think  
 20 it was a kind of — discussions around that that  
 21 concluded that a guide that addressed all of the issues  
 22 in one place would be the best way to resolve some of  
 23 these kind of conflicts that were occurring with the —  
 24 the different systems were all meetings in blocks of  
 25 flats, and it was felt that a guide that covered

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1 fire safety in purpose—built blocks of flats would  
2 resolve that.

3 Q. Sorry, I'm going to cut across you. My question was:  
4 what was your role on the project group?

5 A. Oh, I beg your pardon, sorry.  
6 So having decided that they needed a guide,  
7 I worked — I assisted the — my colleagues that were  
8 working with the Fire Safety Order in securing  
9 a contractor, so I think I was one of the people that  
10 reviewed the various bids, and then subsequent to that  
11 I was there really to review text and to contribute to  
12 the discussions about the development of the guide as it  
13 went along.

14 Q. Were you also part of the reference group or only the  
15 project group?

16 A. I can't remember. There were a number of different  
17 groups. I can't remember the exact constitution.

18 Q. Now, let's look at the guide itself. Can we please go  
19 to {HOM00045964}. The panel may be familiar with this  
20 document from careful examination of it last May,  
21 I think.

22 If we look, please, at page 120 {HOM00045964/120},  
23 we will look at sections 79.9 through to section 79.11.  
24 In 79.9 it says this:  
25 "79.9. In 'general needs' blocks ... it can equally

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1 be expected that a resident's physical and mental  
2 ability will vary. It is usually unrealistic to expect  
3 landlords and other responsible persons to plan for this  
4 or to have in place special arrangements, such as  
5 'personal emergency evacuation plans'. Such plans rely  
6 on the presence of staff or others available to assist  
7 the person to escape in a fire."

8 "79.10. Even in sheltered housing schemes, there  
9 will be reliance ultimately on rescue by the fire and  
10 rescue service in the event that residents cannot escape  
11 by themselves. However, in sheltered housing schemes,  
12 it is commonplace to hold information relating to any  
13 resident with particular mobility or other issues  
14 affecting their ability to escape. This can be made  
15 available to the fire and rescue service on arrival at  
16 the premises (eg by keeping it in a 'premises  
17 information box', which can only be unlocked by the fire  
18 and rescue service, at the main entrance). Details of  
19 any residents using oxygen or other medical gases are  
20 also usually kept with this information.

21 "79.11. It is not realistic to expect such an  
22 approach to be adopted where there are disabled people  
23 and others requiring assistance in a 'general needs'  
24 block. Any attempts to keep information of this kind  
25 must be updated regularly as inaccurate information

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1 could potentially be more harmful than no information."

2 Can I take it that you're familiar with those  
3 paragraphs?

4 A. Reasonably so, yes.

5 Q. Do you recall being part of any discussion about whether  
6 the responsible person's responsibility under the RRO  
7 extended at all to persons with mental or physical  
8 disability?

9 A. I remember it ... so there's specific provision in the  
10 Fire Safety Order where it requires the responsible  
11 person to consider — is it persons at special risk?  
12 There's a particular phrase or language which I can't  
13 recall. The complexity with blocks of flats is  
14 whether — it's never been entirely clear in my mind  
15 whether that applies to — because the Order is aimed  
16 only at the common parts of the block, is whether it's  
17 reasonable to expect the building — the person  
18 responsible for the building to be considering the  
19 occupants of the flats, when they're in their flats.  
20 That's not as clear as it might be.

21 One of the things that had been agreed in the  
22 drafting of this guide was to try and focus on what was  
23 considered to be best practice at the time for the  
24 building as a whole, without getting drawn into the  
25 boundaries between the different bits of legislation,

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1 because the real question is: what's the right way to  
2 manage a block of flats in terms of fire safety, not  
3 which bit of legislation starts and finishes where.  
4 That's a problem for the regulators, if you like, not  
5 for the person using it.

6 Q. Can I just ask my question again, please.

7 A. Sorry.

8 Q. Do you remember being part of any discussion about  
9 whether the responsible person's responsibility under  
10 the RRO extended at all to persons with a physical or  
11 mental disability? Do you remember being part of any  
12 discussion about that?

13 A. Not as specific as that. I remember discussions about  
14 people with disabilities.

15 Q. Did you ever discuss or know of any discussions about  
16 the possibility of taking any legal advice about whether  
17 it did, the RRO did extend to disabled people, or  
18 whether equality legislation might have a bearing on  
19 whether it did?

20 A. Not that — I can't remember that in detail. I mean,  
21 that would have been something that the policy team for  
22 the Fire Safety Order would have taken more direct  
23 attention to.

24 Q. Do you know or do you have any recollection of whether  
25 they did?

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1 A. I think the generalities, I'd refer back to the —  
 2 there's a — I'm sure the Order makes specific reference  
 3 to — it doesn't say disabled people, it says something  
 4 else, but it's essentially implying that you need to  
 5 consider them.  
 6 Q. Can we take it, to the best of your recollection, no  
 7 such legal advice was ever obtained by government before  
 8 the LGA guide went to press in August 2011?  
 9 A. I'm not confident in answering that question, because  
 10 wouldn't have been — but to my knowledge, I have no  
 11 recollection of that particular question being raised  
 12 with lawyers.  
 13 Q. Thank you.  
 14 Now, given that the LGA guide, as we can see here,  
 15 contained guidance about helping vulnerable and disabled  
 16 persons in a fire, did you take any steps or, to your  
 17 knowledge, did anybody take any steps to ensure that the  
 18 authors of this guide obtained the views of  
 19 organisations representing disabled people or vulnerable  
 20 people?  
 21 A. I didn't, no.  
 22 Q. What about anybody else?  
 23 A. Again, I can't recall the exact constitution of the  
 24 various groups, but there was a wide range of people  
 25 involved in the production of this document, and I know

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1 that they certainly gave that a lot of consideration.  
 2 Q. But, to your knowledge, didn't do anything about it,  
 3 didn't actually ask people representing —  
 4 A. That doesn't mean to say they didn't, it means I don't  
 5 know.  
 6 Q. That's all I'm asking.  
 7 A. Yeah.  
 8 Q. Yes.  
 9 I would like to look at a letter sent by  
 10 Elspeth Grant after publication in late August 2011 to  
 11 Sir Merrick Cockell, who was chairman of the Local  
 12 Government Group. This is after publication.  
 13 Can we please go to {HOM00019844}. You can see it's  
 14 dated 23 August 2011, and it starts:  
 15 "Dear Sir  
 16 "Re: Fire safety in purpose-built block of flats.  
 17 "As a fire safety consultant who has worked with  
 18 disabled people for many years, I am writing to you as  
 19 Chairman of the Local Government Group to request that  
 20 the Guidance titled 'Fire safety in purpose-built blocks  
 21 of flats' is withdrawn and amended as the advice  
 22 contained within is contrary to The Law."  
 23 Are you familiar with this letter?  
 24 A. I've seen it recently, yes.  
 25 Q. I think you saw it at the time, didn't you?

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1 A. Yes, I would have done, yeah.  
 2 Q. Yes, and I can show you the email string. Just for our  
 3 reference purposes, it's {CLG10004907/2}. It was sent  
 4 to you, I think, on 29 August 2011, to Colin Todd,  
 5 copied to you. Do you remember that?  
 6 A. Vaguely.  
 7 Q. Yes. I mean, I can show it to you if you like, but take  
 8 it from me you did get it at the time.  
 9 A. Okay.  
 10 Q. I've read you the first paragraph.  
 11 Then we go, please, to page 4 {HOM00019844/4}, under  
 12 "Conclusion", and what she says there is this:  
 13 "If this Guidance is not amended, building managers  
 14 and landlords who follow this advice will continue to  
 15 discriminate in the area of fire safety against disabled  
 16 people (who represent one fifth of the population) and  
 17 indeed will be open to criminal or civil prosecution.  
 18 "Given the current approach to disabled evacuation  
 19 and lack of enforcement in this area, it is of little  
 20 surprise that the Fire and Rescue Service Equality &  
 21 Diversity Strategy states:  
 22 "'The impact of fire is grossly disproportionate on  
 23 some communities (for example 39% of fatal fire deaths  
 24 are people with disabilities)'.  
 25 "I hope that this letter has explained the issues

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1 and I look forward to your response before this Guidance  
 2 leads to an unnecessary tragedy because plans were not  
 3 in force."  
 4 Do you remember reading that part of the letter?  
 5 A. I must have done. I don't remember the experience of  
 6 reading it at the time.  
 7 Q. So you don't remember what your reaction was when you  
 8 read it?  
 9 A. No, I don't think I do remember. I have an opinion  
 10 about it, but what I remember I'm not sure I can  
 11 separate from that.  
 12 Q. Right.  
 13 Now, in his evidence to the Inquiry, Colin Todd told  
 14 us that this letter was brought to the project group for  
 15 discussion, and there was representation on that group  
 16 from the department, DCLG, and the CFOA. That's  
 17 {Day168/124:5-12} for those who want to look at it.  
 18 Do you remember being part of that meeting?  
 19 A. I don't, but it wouldn't surprise me if I was there.  
 20 Q. Do you remember discussing the letter from  
 21 Elspeth Grant?  
 22 A. Again, I can't confidently say I was there, but it  
 23 wouldn't surprise me if we discussed it.  
 24 Q. Right.  
 25 Do you remember how you or the project group

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1 envisaged that vulnerable and disabled persons in  
 2 a general needs block would be assisted or evacuated in  
 3 the event of a fire?  
 4 A. It's the — there is a — there's a real problem with  
 5 blocks of flats about how you deal with this question,  
 6 and to some extent the stay—put approach helps  
 7 considerably, in that for the vast majority of  
 8 incidents, the people in the flats will not need to  
 9 evacuate, and those people that are in the flat where  
 10 there is a fire are probably the only people that need  
 11 to evacuate, and they should — if they're not able to  
 12 traverse a staircase, then they ought to be able to get  
 13 to the nearest protected stair enclosure, so get to  
 14 somewhere reasonably safe away from the fire.  
 15 Q. What, unassisted?  
 16 A. Yes. I mean, I think — I mean, that is the challenge,  
 17 is there is no one else to assist them.  
 18 Q. Right, and that was a problem known to you and those in  
 19 the group at the time, was it?  
 20 A. It's a universally understood problem, in that what  
 21 could you reasonably expect somebody to do? If you've  
 22 got a person with disabilities in a flat on their own,  
 23 and they become involved in a fire, if the fire and  
 24 rescue service can't get to them, there is no one else.  
 25 You might get a benevolent neighbour, but you can't put

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1 that into a statutory procedure to say, "You must rescue  
 2 your neighbour in the event of a fire". I think there  
 3 are some people that think that should be the provision.  
 4 That wasn't the prevailing view at the time.  
 5 Q. So what do you do? What was the view at the time about  
 6 what would happen to vulnerable persons with mental or  
 7 physical disabilities?  
 8 A. Where possible they would self—evacuate, or hopefully  
 9 the Fire Brigade would get to them in time.  
 10 Q. What if it wasn't possible?  
 11 A. This is — I mean, this is a very difficult subject to  
 12 talk about objectively, but that's one of the reasons  
 13 why there are a large number of people that — with  
 14 disabilities that die in fires, is because they can't  
 15 get themselves away from an incident. A lot of those  
 16 fire deaths, when you look at the statistics — sorry,  
 17 this is a very dark subject — are directly involved in  
 18 the fire, so it's unlikely anyone could rescue them.  
 19 Q. Well, it's unlikely that anyone could rescue them if you  
 20 don't have a policy directed towards them.  
 21 A. You could have a policy, but what would you do with it?  
 22 I mean, I think that's — it's — you can only expect of  
 23 the responsible person something that is reasonable, and  
 24 if you want to get to the point where a person who is  
 25 unable to self—evacuate to be rescued in every event,

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1 then every block of flats would need a permanent staff  
 2 of fire rescue people, which is unreasonable and  
 3 impracticable.  
 4 Q. Why?  
 5 A. It would be too expensive — it would be  
 6 disproportionate.  
 7 Q. Too expensive?  
 8 A. Too expensive, yes, I guess is the ultimate conclusion  
 9 to that.  
 10 Q. So people die in their flats because they're bedbound,  
 11 because it's too expensive to have a system to get them  
 12 out?  
 13 A. I suppose so. I mean —  
 14 Q. Was that British government policy?  
 15 A. That was what was considered at the time to be the  
 16 prevailing — the reasonable approach to the problem.  
 17 I don't think anyone had ever expressed it in those  
 18 terms. I don't have much choice because you're asking  
 19 me these questions in those terms, but that is the  
 20 challenge with that. The only other option you could  
 21 have would be to forcibly remove people from their homes  
 22 and put them into care, and I think that would be  
 23 an equally challenging policy position. So it's an area  
 24 for which there is no perfect answer.  
 25 Q. Well, leave aside perfect answers. The question is: did

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1 you or anybody else consider or discuss considering  
 2 obtaining views from disability specialists or other  
 3 stakeholders who represented disabled persons at least  
 4 just to find out what they thought?  
 5 A. This is — this wasn't a new subject. This is something  
 6 that had been discussed in the past.  
 7 Q. Well, what's the answer? Did you or didn't you?  
 8 A. I honestly can't remember who discussed what with who.  
 9 But the prevailing view that's set out in the LGA guide  
 10 was what — the consensus as being the reasonable  
 11 approach to the problem. It's not perfect, because  
 12 a perfect answer is not available.  
 13 Q. No, but there is a legally compliant answer, isn't  
 14 there, as I think you're bound to accept?  
 15 A. I'm not sure there — in terms of actually ensuring that  
 16 they can always be rescued? No.  
 17 Q. Had you heard of the Equality Act 2010?  
 18 A. Yes.  
 19 Q. Right. To your knowledge, did anybody in the  
 20 department, you included, consider seeking legal advice  
 21 on whether Elspeth Grant was right in what she was  
 22 saying as a matter of law?  
 23 A. I don't think anyone did.  
 24 Q. Why is that?  
 25 A. Because the prevailing view was that the reasonable

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1 approach that was set out in the LGA guide was the  
 2 consensus of the fire safety community as being the only  
 3 reasonable approach you could take at the time.  
 4 Q. Well, I'm so sorry to be critical, but that sounds like  
 5 a rather circular answer. The prevailing view was  
 6 of course what is set out in the guide.  
 7 A. Yes.  
 8 Q. After the guide was published, you've got the threat of  
 9 a legal challenge, and I've asked you whether anybody —  
 10 A. Oh, I see.  
 11 Q. — considered taking legal advice on whether she was  
 12 right as a matter of law.  
 13 A. It's very common for people to write to the government  
 14 or other public authorities claiming that something is  
 15 not in compliance with the law. If policy officials  
 16 referred that to lawyers every time that happened, we'd  
 17 need a lot more lawyers.  
 18 Q. And we can't be having that, can we?  
 19 A. I'm not sure I should comment on my view of lawyers,  
 20 but —  
 21 Q. Well, I'm not asking you about that. What I'm really  
 22 asking you is: given that she has raised what — well,  
 23 let me ask it differently: did you or anybody else who  
 24 saw this letter take it seriously?  
 25 A. We would have taken it seriously, but the question is:

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1 what can you do? I'm a ... I'm trying to place in time  
 2 what I know. This particular correspondent had some  
 3 very strong views which were contrary to what was the  
 4 consensus amongst fire safety professionals at the time.  
 5 So the question is: do you revisit all of that because  
 6 of the opinions of one person, given that it had been  
 7 given a lot of consideration, and a practical option  
 8 isn't really available — alternative to the approach  
 9 that we're taking isn't really available?  
 10 Q. So is the answer to my question — and I don't want to  
 11 put words in your mouth, I'm just trying to interpret  
 12 what you've just told us — no, that you didn't seek  
 13 legal advice on the legal question raised by  
 14 Elspeth Grant because there was already a consensus  
 15 among safety professionals about what was reasonable?  
 16 A. Yes. I don't think we would have referred this for  
 17 legal advice unless we thought the threat of legal  
 18 challenge was real, which I don't think we did.  
 19 Q. So you'd already made up your minds as a consensus and  
 20 weren't willing to revisit it in the face of this  
 21 letter?  
 22 A. Yes, that's correct. Yeah, you can't revisit things  
 23 like that every time somebody writes a letter.  
 24 Q. Now, I haven't shown you the whole of the letter, but it  
 25 runs to some four pages, and it cites not just from the

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1 LGA guide, but from the UN Declaration of Human Rights,  
 2 the UN Convention on the Rights of Disabled Persons, the  
 3 RRO, and the Sleeping Guide, and arrives at a conclusion  
 4 with some quite — one could disagree or agree about  
 5 this, but with some analysis in it, as well as the  
 6 Disability Discrimination Act 1995.  
 7 When you saw this letter, did you just think it was  
 8 a nuisance letter, to be put on one side, or did you  
 9 think: the author has done quite a lot of work here, has  
 10 cited things that look as if they should be taken  
 11 seriously, we need to find out whether there's anything  
 12 in it?  
 13 A. I think I looked at it — from what I can recall,  
 14 I think I looked at it and saw that these were issues  
 15 that had been debated before. There was nothing new  
 16 there. These were issues that people had discussed in  
 17 the past.  
 18 Q. Now, tell me then, if they had discussed it in the past,  
 19 let's take it in stages. When, in the context of 79.9  
 20 to 79.11, had there been any discussion about any of the  
 21 Declaration of Human Rights, the Convention on the  
 22 Rights of Disabled Persons, the 1995 Disability Act, the  
 23 RRO or the Equality Act 2010?  
 24 A. I can't place particular dates, but, as I say, the  
 25 general debate is one that had been discussed regularly

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1 over the years. It's a real challenge. Fire safety for  
 2 disabled people is a challenge in all buildings, and  
 3 trying to get the balance between providing  
 4 accessibility to all and how you address that in terms  
 5 of fire safety is a very difficult problem, and the  
 6 solution of — the convention of personal emergency  
 7 evacuation plans revolved around the fact that buildings  
 8 had staff that could facilitate them. When you get to  
 9 a block of flats, you don't have staff, and so the  
 10 approach that had been taken in this country was to say  
 11 that the stay-put approach was the best way to resolve  
 12 the challenges associated with disabled people.  
 13 Q. Can we look at {CLG10004907}, please. Now, this is  
 14 an email chain from the following month, September 2011.  
 15 If we look at page 1, the second email down,  
 16 8 September 2011, at 3.39, we have an email from  
 17 Steven Daws at CS Todd & Associates to Caroline Bosdet,  
 18 and copied to Louise Upton and you, among others. Do  
 19 you see that?  
 20 A. Yes.  
 21 Q. Thank you. He says:  
 22 "Please find attached the basis of a response to  
 23 this person's letter.  
 24 "You may feel it's a bit on the long side, but you  
 25 know what we are like!"

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1 Now, do you remember looking at the document  
2 attached to this email?  
3 A. Vaguely. Yeah. I can't remember the incident in  
4 detail, but I can remember seeing it, yes.  
5 Q. No, fine. Let's look at it. It's at {CLG10004906}.  
6 It's quite long, and it runs over three pages, but do  
7 you remember looking at this document in draft at the  
8 time?  
9 A. Vaguely.  
10 Q. Yes. In the second paragraph he says in draft:  
11 "We have given careful consideration to the points  
12 you have made, including seeking clarification from the  
13 original drafting team as well as the project group  
14 responsible for managing the development and publication  
15 of the guide. We hope that the following response will  
16 provide you with the explanation behind the  
17 recommendations given in the guide and reassure you that  
18 the particular needs of disabled and vulnerable people  
19 have been taken into account."  
20 If we look at the next paragraph, which is the third  
21 one on the page, it says:  
22 "The process involved in producing the guide  
23 involved extensive public consultation, which was widely  
24 publicised. In addition, we held several roadshows to  
25 canvas views on what should be included in the guide and

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1 on some of the proposed content.  
2 "While we did not receive your comments at this  
3 stage, there was considerable feedback on the issue of  
4 the safety of disabled and vulnerable people living in  
5 flats within a purpose-built block and the extent to  
6 which the guide should and can address this."  
7 Just pausing there, did you know whether the authors  
8 of the LGA guide had actually sought advice or the views  
9 of disability specialists or those representing disabled  
10 persons in the consultation?  
11 A. I didn't know for sure, no.  
12 Q. You didn't know one way or the other?  
13 A. I guess not.  
14 Q. Right.  
15 Then if we look at the bottom of page 2  
16 {CLG10004906/2}, in the second-last paragraph, it says:  
17 "You will appreciate that, in the vast majority of  
18 blocks of flats, no-one is employed to be present to  
19 provide any form of assistance to residents in the  
20 normal use of the building, let alone in emergencies.  
21 We therefore can see little value in preparing PEEPs  
22 when no-one is available to implement them.  
23 "We are sympathetic to the suggestion, which you and  
24 others have made, about holding information on  
25 vulnerable and disabled people that can be accessed by

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1 the fire and rescue service. While we are aware of  
2 organisations that have put this in place, we do not  
3 consider it reasonable and practical to recommend that  
4 this is adopted by way of default in all blocks of  
5 flats. It would place a significant burden on those  
6 managing blocks of flats to continuously update the  
7 information. Indeed, we have emphasised that inaccurate  
8 information might be more harmful than no information."  
9 Did you agree with that view, the view expressed in  
10 that last paragraph?  
11 A. I knew that there was certainly a lot of involvement  
12 from the fire and rescue service in the preparation of  
13 this, and there's no organisation that's got better  
14 experience of applying this — dealing with this problem  
15 in practice, and they were quite supportive of the  
16 guide.  
17 Q. What research or views had you sought to substantiate  
18 the view set out here?  
19 A. I didn't do any, but I know that —  
20 Q. No, when I say you — you're quite right, let me  
21 rephrase the question.  
22 Do you know what research or views Colin Todd's  
23 office had done or your department had done to  
24 substantiate this view?  
25 A. As it sets out in this letter, they went through quite

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1 an extensive exercise of talking to people with a stake  
2 in the issue of fire safety in blocks of flats, and they  
3 took this very seriously, and they also had a lot of  
4 experience themselves. CS Todd & Associates do a lot  
5 of — have got a lot of clients with this type of  
6 building, so they had a lot of experience of the  
7 practicalities of this, and I know that they discussed  
8 the issue with, as I say, all the various people at the  
9 different sort of meetings that they'd held around the  
10 country, and certainly the fire and rescue service were  
11 heavily involved in all of that, and I think — which is  
12 why I think what they arrived at in their guide is what  
13 the majority of people working in fire safety considered  
14 to be a reasonable approach.  
15 Q. The majority of people working in fire safety, but not  
16 the majority of people on the receiving end of  
17 fire safety; residents, for example?  
18 A. I suppose that's a — possibly. I mean, there may have  
19 been some charities responsible for residents, I'm not  
20 sure, I can't say that with certainty. The difficulty  
21 is that people that are on the receiving end of  
22 fire safety often don't hold a lot of opinions on the  
23 subject, but I think they went as far as you would  
24 reasonably expect anyone would go in terms of trying to  
25 canvass opinions on the work they were doing.

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1 Q. Can we go back to the email run, please, at  
 2 {CLG10004907/1}, and go to the top of page 1. This is  
 3 a response from you to Steven Daws, again copied to  
 4 Louise Upton:  
 5 "Hi Steven  
 6 "Para 12 is mixing a period of fire resistance with  
 7 real time. 'A fire within a flat should, in the initial  
 8 stages of the fire, stay within the confines of the  
 9 flat, for anything up to a period of 60 minutes'. In the  
 10 vast majority of cases fires will be contained in a flat  
 11 until they burn out. You might wish to use a different  
 12 form of words to avoid a counter argument that  
 13 60 minutes isn't long enough for disabled people."  
 14 Why did you think that CS Todd wished to avoid  
 15 a counterargument, rather than addressing  
 16 Elspeth Grant's concerns?  
 17 A. I think I've agreed with the general thrust of the  
 18 letter, but I've picked up on a technical error. I was  
 19 just trying to help them with the drafting of the letter  
 20 at that point.  
 21 Q. Did it occur to you that if, in fact, 60 minutes wasn't  
 22 enough for disabled people to escape, then it wasn't  
 23 safe to leave disabled people unattended in their flats  
 24 during the first hour of a fire?  
 25 A. You're committing the same mistake that they did in this

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1 letter, which is to mix periods of fire resistance with  
 2 real time.  
 3 Q. Why not instead look at it the other way round and  
 4 examine the principle behind and the technical issues  
 5 underlying the assertion that PEEPs were not required in  
 6 general needs blocks?  
 7 A. Well, I mean, ultimately that would have been a policy  
 8 question for the Fire Safety Order team, but that would  
 9 have been a strange thing to conclude, given all the  
 10 work that had just been done, and the consensus was that  
 11 it wasn't the best approach for dealing with blocks of  
 12 flats.  
 13 Q. Can we then go to {HOM00020345/2}, the email at the top  
 14 of page 2 of that email run. This is the response sent  
 15 by Elspeth Grant to Caroline Bosdet on 17 October 2011,  
 16 after her reply. She says this:  
 17 "Dear Caroline  
 18 "Thank you for your considered and detailed response  
 19 to my letter of 23rd September.  
 20 "However, I note that your wide range of  
 21 consultations do not mention (either in your letter or  
 22 in the document) any consultation with national  
 23 organisations representing disabled people. This  
 24 I would have expected to be essential, given that  
 25 proportionally more of this group suffer fatalities in

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1 a fire and are likely to have a greater interest in this  
 2 radical departure from all previous Government Guidance  
 3 on The Regulatory Reform (Fire Safety) Order (FSO)."  
 4 She continues in paragraphs 2 and 3 to ask for  
 5 a copy of the equality analysis undertaken and asks for  
 6 details of those who provided the legal advice. That's  
 7 the gist of those two paragraphs. Although she calls it  
 8 an equality analysis, EA, we can I think presume that  
 9 she meant an equality impact assessment.  
 10 If we go back to page 1 here {HOM00020345/1},  
 11 please, at the foot of the page, we can see an email  
 12 from Caroline Bosdet to you and Colin Todd and others,  
 13 where she says:  
 14 "Hello — I am not really prepared to enter into  
 15 further correspondence on this.  
 16 "Do you have any comments?  
 17 "Kind regards Caroline."  
 18 Then you say in the email immediately above that on  
 19 17 October, about 20 minutes later:  
 20 "Whatever you do, keep your answer short.  
 21 "I assume no EA was produced?  
 22 "It isn't a radical change it is just setting out  
 23 what is recognised current practice. Hence no need for  
 24 an EA.  
 25 "Don't answer the legal advice bit."

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1 Just taking it in stages, why did you advise her to  
 2 keep her answer short?  
 3 A. It looked like the potential for a long run of  
 4 non-constructive correspondence. It's clear that the  
 5 correspondent had a view which was different to what was  
 6 the consensus and the way the guidance had been written,  
 7 and was unlikely to be convinced otherwise.  
 8 Q. Why did you assume that no EA, equality analysis, had  
 9 been produced?  
 10 A. Probably for the reasons that's in the sentence  
 11 immediately below that one, because it wasn't a radical  
 12 change of guidance, it was — that's what was recognised  
 13 current practice.  
 14 Q. Were you qualified to form that view?  
 15 A. I think, based on the conversations we'd had, yes.  
 16 Q. Did you obtain any legal advice to substantiate that  
 17 view?  
 18 A. No.  
 19 Q. Why not?  
 20 A. Because I didn't think I needed any.  
 21 Q. Why did you advise that the question on legal advice go  
 22 unanswered?  
 23 A. Because she would probably then subsequently ask for  
 24 a copy of the legal advice and, again, it would just  
 25 extend a debate which isn't particularly constructive.

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At that time, the likelihood of the guide being withdrawn and being modified to require personal emergency evacuation plans, particularly where that required that all residents would have a plan in place that meant that they could evacuate the building without the assistance of the fire and rescue service, just wasn't going to happen, so there seems little point in continuing.

It's a debate that's been going on for many years, and clearly continues now. There wouldn't have been any value in an extensive exchange of correspondence.

Q. Can we go to {HOM00020571/2} at the foot, please, email from Caroline Bosdet to Elspeth Grant, 2 November 2011.

If we turn the page to page 3 {HOM00020571/3}, we can see the rest of it and the main email, and she says in the third paragraph to Elspeth Grant:

"It is practical guidance created by the housing sector and enforcing authorities — both the fire and rescue service and environmental health. It is not statutory and is not considered to be a radical departure from previous guidance but sets out recognised current practice."

If we look at the second page of this email run {HOM00020571/2}, there is an email in response from Elspeth Grant of 4 November to Caroline Bosdet, the one

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at 9.40 on 4 November:

"Dear Caroline

"Thank you for your email.

"Government fire statistics show that 77% of all fatal fires involve disabled people, quite probably as a result of outdated 'current practice' which does not meet the requirements of Equality or Fire Safety Law, British Standards or any other Government Guidance on the subject.

"As you state in your email that your Guidance is not a radical departure from previous guidance, please can you let me know which piece of Fire Safety Law or Government Guidance you are referring to which supports the statements made in Clause 79."

Now, you weren't copied in to these emails, in fairness to you, Mr Martin, but in the email above on page 2, we can see that Caroline Bosdet copies or forwards the email chain to you, Louise Upton, Colin Todd and Steven Daws. Do you see that?

A. Yes.

Q. She says:

"Hello, I have had some further communication from this person ... She was starting to ask for someone else ..."

Then she goes on:

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"We stated that this was the conclusion of our communication on the subject. But she has now dropped EIAs and is coming back with this. I am starting to feel harassed by her as she is also chasing up replies. I don't really have the capacity now to deal with her continuing questions. How do you want to play this? Colin would you want to reply to her direct? Let me know what you all think. Kind regards Caroline."

Then at the very foot of page 1 and the top of page 2 you see you respond on 7 November to Caroline Bosdet, and over the top of page 2 you say this:

"I'd give her a reply along the lines of — we are happy with the guide (recognised as industry best practice), there's no point in arguing about it, I'm not going to reply to any further correspondence — then ignore anything else you get from her."

Now, do you remember sending that email?

A. I don't, but I accept that I sent it.

Q. What was the basis for your view that in relation to vulnerable and disabled residents, the guide was recognised as industry best practice?

A. Because of the work that the authors had done in canvassing views of all the people involved.

Q. Right. And it may have been current practice, as

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Ms Bosdet says in her email, but why best practice?

A. I think you're splitting hairs with words. I'm not sure I gave it that much consideration. That's what was regarded as the appropriate way of managing that kind of block.

Q. Was it appropriate to recommend that correspondence from Elspeth Grant now be ignored rather than investigated with her concerns addressed?

A. Managing this kind of correspondence is a thing that people in public organisations have to do all the time.

Q. Right.

A. You can't commit that much time to an argument which is clearly not going to go anywhere.

Q. By this point —

A. I'm sorry, that sounds disrespectful, but it's a thing you have to do when you're receiving lots of correspondence, you need to recognise where there's somewhere you can help or where there is an argument which is just going to perpetuate, and this is one of those.

MR MILLETT: Mr Chairman, two more questions on this, and then I'm finished with the topic, if I may.

SIR MARTIN MOORE-BICK: All right.

MR MILLETT: By this point, was it not absolutely clear to you that this was a legal question as much as a question

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1 of practice?

2 A. She was using the law in her argument, but the practical

3 question is the one that's ... is key to me. I think —

4 I'm pretty sure — I can't remember — the policy team

5 for the Fire Safety Order would have reviewed the guide

6 with the department's lawyers, and this wouldn't be

7 something you would want to refer back to lawyers unless

8 you thought there was a real legal issue here.

9 I think this particular correspondent had some very

10 strong views about this subject, which the majority of

11 practitioners thought were impracticable in practice.

12 Q. What led you to think that there wasn't a real legal

13 issue here?

14 A. If there was a real legal issue, she could have taken it

15 to a judicial review, and then it would have been

16 reviewed in respect of the law. Ultimately, as policy

17 officials, we can't determine the law one way or

18 another, and, as I say, it's not unusual for people to

19 make references to various legal rights and so on.

20 Again, if you dealt with all of those with that kind of

21 attention, then you'd quickly run out of time to do

22 anything.

23 MR MILLETT: Was the truth —

24 SIR MARTIN MOORE—BICK: Oh, a third question, Mr Millett?

25 MR MILLETT: Well, yes.

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1 SIR MARTIN MOORE—BICK: All right.

2 MR MILLETT: Was the truth, Mr Martin, that were all — you,

3 Bosdet, Todd and Upton — fed up with Ms Grant's

4 persistence and just wanted to close her down? That's

5 what it looks like.

6 A. That's part of it, yes. I don't think there's anything

7 wrong with that. A correspondent that's writing to you

8 in a way which is not constructive and isn't going to

9 result in anything is, I guess, something that you want

10 to bring to an end. That doesn't mean to say that we

11 didn't care about the issue. I think in particular —

12 Colin Todd in particular is somebody I know has spent

13 a lot of time and effort trying to improve standards for

14 means of escape and fire safety for disabled people,

15 he's done a lot of work in that area, but you've got to

16 manage these things, and the arguments she was putting

17 forward — it's well understood that, you know, a large

18 number of the people that become casualties in fires are

19 affected by disability in some way. It's an incredibly

20 difficult thing to try and solve.

21 MR MILLETT: Yes, thank you very much.

22 Mr Chairman, is that a convenient moment?

23 SIR MARTIN MOORE—BICK: Yes, Mr Millett, thank you very

24 much.

25 Well, it's time we closed for the day, Mr Martin.

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1 THE WITNESS: Yes, sir.

2 SIR MARTIN MOORE—BICK: So we'll stop there. We'll resume,

3 please, at 10 o'clock tomorrow. As before, please don't

4 discuss your evidence with anyone while you're out of

5 the room.

6 THE WITNESS: Yes, sir.

7 SIR MARTIN MOORE—BICK: All right? Thank you very much.

8 Would you like to go with the usher. Thank you.

9 (Pause)

10 Thank you very much. 10 o'clock tomorrow, please.

11 MR MILLETT: Thank you, Mr Chairman.

12 (4.40 pm)

13 (The hearing adjourned until 10 am

14 on Tuesday, 29 March 2022)

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