

OPUS 2

INTERNATIONAL

Grenfell Tower Inquiry

Day 3

January 29, 2020

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1 Wednesday, 29 January 2020
 2 (10.00 am)
 3 SIR MARTIN MOORE-BICK: Good morning, everybody. Welcome to
 4 today's hearing, at which we're going to hear further
 5 opening statements from various core participants.
 6 Before we do that, however, I need to mention
 7 something that's come up which will require an amendment
 8 to the timetable for tomorrow.
 9 Very recently I have been advised that, when they
 10 are called to give evidence, which of course will start
 11 next week, many of the witnesses who were involved in
 12 the design and choice of materials are likely to claim
 13 privilege against self-incrimination as a reason for not
 14 answering questions.
 15 Now, privilege against self-incrimination is a rule
 16 of law that protects a person from being required to
 17 answer questions if to do so truthfully might expose him
 18 or her to a risk of prosecution. It's a very broad
 19 principle, and will extend to any answers which might
 20 assist in or lead to a prosecution.
 21 This development has caused me a little surprise,
 22 because hitherto there has been the fullest co-operation
 23 with the Inquiry, both in the form of giving written
 24 statements and in the provision of documents, and no one
 25 so far has sought to avoid doing that or to answer any

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1 of our questions on those grounds.
 2 At all events, an application was made last night by
 3 a number of counsel for various core participants,
 4 including, amongst others, Harley, certain employees or
 5 ex-employees of Rydon, and the TMO, as well as some
 6 others.
 7 What they are asking me to do is to apply to the
 8 Attorney General, for an undertaking that nothing said
 9 by a witness in answers to questions in the Inquiry will
 10 be used in furtherance of a prosecution against them,
 11 thereby giving them complete freedom to tell the truth
 12 without any concern for the future.
 13 Now, in view of the urgency of this matter, because
 14 of course Studio E are scheduled to start giving
 15 evidence on Monday next week, I have directed that this
 16 application be heard tomorrow afternoon, after we have
 17 completed the opening statements. That may lead to the
 18 afternoon being slightly prolonged. If that's the case,
 19 I'm afraid that's just too bad; we're going to have to
 20 deal with this.
 21 When that application is heard tomorrow, all core
 22 participants will have an opportunity to address me on
 23 the matter, and I shall of course hear from all those
 24 who wish to do so. They aren't obliged to do so, but
 25 I shall hear anybody who wants to be heard. In the

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1 light of what's said on that application, on all sides,
 2 I will decide what action I should take in the interests
 3 of the Inquiry, because that of course is the overriding
 4 consideration.
 5 Now, this information has come, I think, to you, as
 6 to me, as something of a surprise. I suspect that you
 7 find it a little difficult to understand exactly what
 8 the import is of what I have just told you, so I'm going
 9 to rise now for a little while to give your lawyers the
 10 opportunity to talk to you about this, and to get some
 11 preliminary reactions. They don't have to be final
 12 reactions because, as I said, I'm going to hear this
 13 application tomorrow afternoon, probably about the
 14 middle of the afternoon. So there is quite a bit of
 15 time still to consider what to do. But I'm going to
 16 rise now and I'll sit again at 11 o'clock, and in the
 17 meantime you can have a chance to talk to those who
 18 represent you to get some further information.
 19 All right. I'm sorry about that, but that means
 20 that we're going to put back the first of the opening
 21 statements until 11 o'clock. Mr Spafford, I'm sorry,
 22 that means you are going to have to wait a bit. All
 23 right?
 24 Thank you very much, 11 o'clock, please.
 25 (10.05 am)

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1 (A short break)
 2 (11.00 am)
 3 (Proceedings delayed)
 4 (11.15 am)
 5 SIR MARTIN MOORE-BICK: Right. Now, Mr Mansfield,
 6 I understand that you would like to address me at some
 7 point today on the matter which has been occupying us so
 8 far. I'm very happy to hear you, but I'd rather do it,
 9 if you don't mind, when we have finished today's group
 10 of opening statements.
 11 MR MANSFIELD: Yes, absolutely.
 12 SIR MARTIN MOORE-BICK: So the middle of the afternoon or
 13 whenever we get to that point. Is that all right?
 14 MR MANSFIELD: It is, thank you.
 15 SIR MARTIN MOORE-BICK: Thank you very much.
 16 So I will ask Mr Spafford, then, to come and make
 17 an opening statement on behalf of Artelia.
 18 Yes, Mr Spafford.
 19 Opening statement on behalf of Artelia by MR SPAFFORD
 20 MR SPAFFORD: Thank you, sir. Thank you, madam. My name is
 21 Richard Spafford, and I am a partner in Reed Smith LLP.
 22 I appear with Simon Greer, who is counsel in my firm.
 23 Reed Smith is instructed by Artelia Projects UK Limited,
 24 which I will refer to as Artelia.
 25 The opening of Phase 2 gives Artelia an opportunity

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1 to address the Inquiry in detail about its role on the
2 refurbishment of Grenfell Tower between 2012 and 2017.
3 This opportunity is very much welcomed by Artelia, but
4 Artelia also wishes to do all it can to assist the
5 Inquiry in understanding why the dreadful events of
6 14 June 2017 occurred so that such an appalling tragedy
7 never happens again.

8 We all pay tribute to the extraordinary people who
9 died, and to the dignity of those who survive them, and
10 the community that continues to support all those
11 touched by the Grenfell Tower tragedy.

12 Our oral submissions today and Artelia's written
13 submissions make the extent of Artelia's roles on the
14 refurbishment clear, and seek to put the record straight
15 following a number of ill-informed comments about the
16 extent of Artelia's roles in some position statements,
17 some witness statements and submissions, including those
18 recently provided by some core participants.

19 Now, some core participants have said that they want
20 to wait for closing submissions to give full accounts of
21 their roles. Artelia takes a different view. We want
22 the Inquiry to be fully aware from the outset of what
23 Artelia's roles were.

24 So my focus now will therefore to a great degree be
25 upon those roles, the extent of those roles and, where

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1 applicable, the limits on those roles.

2 In our view, identifying the existence of limits on
3 roles of Artelia is not inconsistent with Mr Millett's
4 instruction to the corporate core participants in 2018,
5 which he repeated on Monday.

6 Artelia readily acknowledges its significant
7 involvement in the refurbishment from April 2012,
8 shortly after Studio E and the then likely principal
9 contractor Leadbitter became involved, through
10 completion and beyond to the agreement of the final
11 account with Rydon in 2017. At the same time, Artelia
12 will identify and rely upon some very important limits
13 on its roles, each of which was contractually agreed to
14 and, we say, acted upon by TMO.

15 Indeed, we say that, even with Mr Millett's words
16 ringing in all our ears, there should be no valid
17 criticism of an entity which properly and fairly
18 identifies and relies upon any such limits, which can
19 only assist the Inquiry in its task of identifying where
20 responsibilities lie.

21 I want to start briefly by looking at Artelia's
22 contract. Artelia had a contract with the TMO. Its
23 work was carried out under that contract. Artelia was
24 not novated to Rydon, and had no contracts with any
25 other member of the project team. Artelia, under its

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1 contract, had three roles on the refurbishment: it was
2 employer's agent, quantity surveyor, and the
3 construction, design and management co-ordinator, more
4 commonly known as the CDMC. I will consider each of
5 these briefly and in turn.

6 It is not easy to give a general description of the
7 role of an employer's agent, as at least to some degree
8 appointments will be project-specific. However, it is
9 not controversial, in our view, to say that
10 an employer's agent is primarily an administrator. As
11 Keating on Construction states in its 10th edition,
12 an employer's agent will often be a qualified
13 construction professional who carries out "certain
14 administrative functions".

15 For example, an employer's agent will frequently,
16 and Artelia did, issue its clients instructions on the
17 project; report to the client about the progress of the
18 project; develop the client's brief; co-ordinate the
19 preparation of the employer's requirements by the design
20 team; prepare reports, registers and project plans;
21 advise on tenders; administer the building contract;
22 chair and take minutes of meetings; and prepare handover
23 plans and drive completion.

24 For the avoidance of any doubt, we say that the fact
25 that Artelia was appointed by the TMO as an employer's

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1 agent and not as a project manager is a relevant
2 consideration for the Inquiry.

3 Secondly, Artelia was appointed by the TMO as
4 a quantity surveyor. Again, there are some challenges
5 in providing a general description of a quantity
6 surveyor, as each appointment will be project-specific.
7 But a quantity surveyor has more of an advisory role.
8 At its core, the role of a quantity surveyor is to
9 advise the client on project costs and the costs of
10 design and construction options. A quantity surveyor
11 will, and Artelia did, prepare budgets and cash flow
12 forecasts, prepare cost plans, prepare bills of
13 quantities on tenders, facilitate value engineering
14 exercises, check tender submissions from a cost
15 perspective, recommend interim payments by the client to
16 the contractor, and prepare the final account at the end
17 of the project.

18 In summary, the quantity surveyor role is a cost
19 advisory role. Keating describes a quantity surveyor
20 as:

21 "... employed by the employer to estimate the
22 quantities of the proposed works and set them out in the
23 form of bills of quantities."

24 Now, thirdly, Artelia was CDMC. It had this role
25 until 5 October 2015. This was both a contractual and

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a statutory role under the 2007 CDM Regulations, and was both advisory and administrative in nature. It involved, among other things: providing appropriate formal notifications to the Health and Safety Executive identifying pre-construction information; liaising with the principal contractor on the construction phase plan to be issued by the principal contractor; advising the client in relation to its duties under the CDM regulations; amassing information for the project's health and safety file; and co-ordinating the co-operation of duty holders under the CDM Regulations -- so the client, the designers and the principal contractor -- so there was proper focus on health and safety issues.

Now, there has been some criticism by Dr Lane of the TMO, of Rydon and of Artelia in the context of obligations arising under the CDM Regulations 2007, and of the TMO and Rydon in relation to the CDM Regulations 2015. Artelia is, of course, continuing to consider these criticisms carefully, although it addresses some of the points made in our written submissions and will also shortly address them briefly in our oral submissions.

However, before doing that, in our submission, an important issue for the Inquiry in relation to the

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CDM Regulations 2007 is the distinction between what is governed by those regulations and what is governed by the Building Regulations 2010, made under the Building Act 1984.

As we believe to be clear, questions relating to the fire safety of Grenfell Tower on the refurbishment were governed by the requirements set out in the Building Regulations 2010. By contrast, the CDM Regulations 2007 applied to health and safety in construction and maintenance work, so that the construction work itself could be carried out safely, those working on the construction site could be properly protected, and so that designs also took into account the need to protect future construction and maintenance workers whilst on site.

As I have said, we believe this to be clear and understood, but it is a point to which I'll have to return shortly in the light of what appear to us to be some errors in the position of the TMO on this issue, including in its recent written submissions.

Now, I mentioned that I would make reference to contractual limits and the reasons why I was doing that. I am now going to turn to those limits.

To summarise, Artelia had three roles: employer's agent, quantity surveyor and CDMC. Within Artelia's

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contract with the TMO, there were a number of what we submit are important limits which were agreed between Artelia and the TMO.

It would be helpful, if possible, if I could have document {ART00005742} put on the screens, and in particular if you could start, please, with page 23 of that document {ART00005742/23}. Many thanks.

This page is schedule 1 to Artelia's contract with the TMO. In that schedule, it is clear that Artelia was expressly not appointed to provide RICS project manager services. The relevant box has not been ticked and, indeed, has been crossed through. This, we say, is important, not least because a number of ill-informed suggestions that Artelia was the project manager have been made, mainly by the TMO, but also by some others.

Now, we fully appreciate that the TMO's witnesses are yet to confirm their statements, but, in those statements and elsewhere, the TMO has on a number of occasions described Artelia as the project manager. It is important to note that the more recent statement from Mr Maddison and the TMO's written submissions do suggest that there might be some shifting in the TMO's position on this point, and no doubt this will be clarified in due course.

While we can forgive the few other descriptions of

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Artelia as project manager by other core participants on the basis they are probably simple mistakes, what is surprising to us is that Mr Hyett in particular does describe Artelia in this way in his expert's report. Mr Hyett is, with the greatest respect, mistaken. We will return to this issue briefly later when we consider the content of his report.

So, to be clear, Artelia was not appointed as project manager. As the contract shows, this was a deliberate decision by the TMO. The relevant box is not ticked, but others are. This is not an automatic standard-form provision.

The TMO could, had it wanted to, have appointed a project manager with the greater responsibilities that that role would no doubt have brought. But the TMO chose not to. That the TMO did not appoint a project manager is of course no particular surprise. An entity with the experience, resources, expertise and specialisms of the TMO was perfectly capable of project managing the refurbishment itself. The TMO was not a lay client. Even a quick look at what the TMO had to offer makes this abundantly clear. It was a substantial and sophisticated entity. You have Mr Anderson's and Mr Dunkerton's experience and qualifications, and later those of Mr Maddison, Mr Gibson and Ms Williams. You

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1 have the structure of the TMO and its areas of
2 operation. Project managing the refurbishment of
3 Grenfell Tower was well within the TMO's purposes and
4 its capabilities .

5 With the same document, may I please have page 34 on
6 the screen {ART00005742/34}. Many thanks.

7 This is the appendix to Artelia 's contract with the
8 TMO. The second limit is at point 3.4/3.5, under which
9 Artelia was expressly not appointed as the lead
10 consultant. The lead consultant identified in this
11 contract was Mr Sounes of Studio E. Studio E appear to
12 regard this as a controversial point. However, in our
13 submission, it clearly is not.

14 Studio E, at point 6.3 of its written submissions
15 {SEA00014642/5}, tries to say that there was a lack of
16 clarity on this issue. Studio E suggests that there was
17 some changing of the minds on this point, and some lack
18 of certainty on whether Studio E or Artelia would be
19 lead consultant.

20 Now, Studio E's position on this issue is unlikely
21 to have been assisted by the challenges they refer to in
22 section 4 of their written submissions, which mean, they
23 say, that their focus has had to be on their own
24 evidence. However, whatever these challenges, Artelia
25 has to make the position clear.

13

1 First, there could be no doubt but that Studio E was
2 appointed as lead consultant. In this regard, we refer
3 not only to what is clearly set out in Artelia 's
4 contract with the TMO, but also to communications
5 between Studio E itself and the TMO in which it is
6 clearly stated that Studio E's services included its
7 role not only as designer but also as lead consultant.
8 The position is indeed helpfully summarised in
9 paragraph 12.1 of the written submissions of BSR
10 Group 1.

11 Secondly, Studio E suggest in their written
12 submissions that Artelia confirmed that it would act as
13 lead consultant. Studio E rely upon a draft document
14 prepared in May 2013 by Artelia in which that
15 possibility is, we accept, clearly mooted. But that
16 document does not support the conclusion that Studio E
17 tries to draw from it. That document was prepared in
18 the context of discussions in 2013 between the TMO and
19 Artelia which ultimately led to the re-procurement of
20 the project in 2014.

21 In 2013, at the request of the TMO, a draft revised
22 brief was prepared and consideration was certainly given
23 to Artelia taking on a lead consultant role, with
24 Leadbitter taking on the principal contractor role.
25 But, as Studio E at least knew at the time, the TMO

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1 ultimately decided, albeit clearly at the behest of
2 RBKC, not to follow this route but instead to
3 re-procure, so Artelia did not become lead consultant
4 and Studio E remained in that role.

5 Indeed, Artelia has provided evidence on these
6 issues contained in Robert Powell's witness statement,
7 which was disclosed by the Inquiry on 30 October 2019.
8 We appreciate that this may not have been considered by
9 Studio E's legal team, but evidence on this issue is
10 nonetheless available.

11 So, for the avoidance of any doubt, until its
12 novation to Rydon, Studio E was clearly the TMO's lead
13 consultant.

14 On the same document, may I please have the next
15 page, page 35, on the screen {ART00005742/35}.
16 Thank you.

17 This is the next page in the appendix to Artelia 's
18 contract with the TMO. The third limit is the most
19 important. It arises at point 4.4 of the appendix under
20 the heading "Design Responsibility". Under it, the TMO
21 expressly agreed:

22 "The Consultant [so Artelia] is not responsible for
23 the design of the Project."

24 And:

25 "The Consultant [so Artelia] is not responsible for

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1 the specifying and/or approving materials."

2 It will be easily appreciated how important this is
3 to Artelia 's position before this Inquiry.

4 I will come on shortly to consider how these
5 provisions operated in practice, but these provisions
6 make it clear that no one in the Artelia team was at any
7 stage responsible for, first, the design of the
8 refurbishment and, secondly, the materials used in the
9 refurbishment.

10 It will come as no surprise when I say that these
11 provisions also influenced the make-up of the team used
12 by Artelia on the project. The team did not include
13 an architect or anyone with professional design
14 expertise because its roles did not require that.

15 So, when Artelia witnesses say, as they do, that
16 they did not have the expertise necessary to consider,
17 for example, whether particular elements of the building
18 envelope were compliant with the requirements set out in
19 the building regulations, they are not only reflecting
20 the position at the time, but there is a sound basis for
21 their having been in that position.

22 Now, pulling all the threads of what has been said
23 so far together, the following conclusions can be drawn
24 about the context and extent of Artelia 's contractual
25 responsibilities to the TMO.

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1 First, the TMO did not need project management
2 support. It was a sophisticated entity operating within
3 its areas of expertise, and it had chosen not to appoint
4 a project manager. It was managing the project itself.

5 Secondly, that does not mean, of course, that the
6 TMO did not need support in specialist areas. It needed
7 advice from a quantity surveyor and advice from a CDMC.
8 From an employer's agent, it essentially needed support
9 of an administrative nature.

10 Thirdly, Artelia had a lot to do, but nonetheless
11 there were some important limits on its roles. In
12 particular, it was not the lead consultant and it had no
13 responsibility for design and no responsibility for
14 materials.

15 Indeed, the TMO contracted with Studio E as
16 architect and later Rydon as design and build contractor
17 in respect of design and choice of materials. There
18 were clearly technically qualified parties in place on
19 the project whose job it was to cover these issues.

20 So what happened in practice? What did Artelia do
21 on the project? What did the TMO do on the project?
22 And did what actually happened bear out the points
23 I have made about the extent of Artelia's roles? In our
24 submission, they clearly did.

25 First, over a full five-year period, Artelia did

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1 a significant amount of work. As quantity surveyor,
2 Artelia provided and advised on eight often detailed
3 cost estimates. Artelia also provided advice in
4 relation to potential re-procurement. Artelia provided
5 advice to the TMO in connection with the tender process
6 between August 2013 and March 2014. Artelia facilitated
7 lengthy value engineering exercises with Leadbitter and
8 later with Rydon. Artelia also regularly valued Rydon's
9 work on site, making recommendations for interim
10 payments. Artelia interrogated Rydon's extension of
11 time claims and negotiated Rydon's final account.

12 As CDMC, Artelia prepared a CDM risk register and
13 CDM report. Artelia prepared pre-construction
14 information. Artelia reviewed Rydon's construction
15 phase health and safety plan, and Artelia prepared and
16 submitted forms to the Health and Safety Executive.

17 As employer's agent, Artelia worked with the TMO and
18 the project team from 2012 to and beyond practical
19 completion.

20 Artelia took part in the discussions with
21 Leadbitter, and was heavily involved in 2013 during the
22 period which led to the TMO's decision -- at the behest,
23 we say, of RBKC -- to end the arrangements with
24 Leadbitter, re-align the project so that value for money
25 became its primary driver, and to re-procure.

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1 Artelia spent a significant amount of time in
2 administering the building contract between Rydon and
3 the TMO and monitoring the progress of Rydon's work
4 against the programme. Artelia arranged, attended and
5 minuted tens of formal meetings, and issued 39
6 employer's agent instructions to Rydon, every one of
7 which followed a formal decision by the TMO.

8 Artelia prepared numerous checklists and reports,
9 and, where appropriate, discussed issues relating to
10 Rydon's performance with its client, the TMO. Artelia
11 administered the practical completion process from
12 September 2015 onwards, arranging handover meetings,
13 identifying requirements for the issue of a certificate
14 of practical completion, and ensured that sign-offs on
15 relevant completion issues were given by responsible
16 entities such as the TMO, Rydon or the clerks of the
17 works. These were, on any view, significant tasks and
18 roles.

19 What actually happened in relation to the important
20 question of responsibility for design and for materials?
21 It is clear that responsibility for these issues was
22 contractually excluded by the TMO, but it is also clear
23 that at no stage did Artelia deviate from that
24 contractual position.

25 First, the contractual exclusion of these issues

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1 from Artelia's responsibilities did not stop the TMO,
2 particularly through Ms Williams, asking Artelia
3 questions about design. But what Artelia consistently
4 did when asked these questions was to say, "No, we
5 cannot answer these questions. They are not within our
6 areas of responsibility and expertise. These are
7 questions for Rydon."

8 There are in fact numerous examples of this, but in
9 my submissions I will focus on only one example, in the
10 main because this example has been picked up by a number
11 of core participants in their written submissions. This
12 example is Ms Williams' so-called "'Lacknall' moment" in
13 November 2014.

14 On 12 November 2014, Ms Williams of the TMO emailed
15 Artelia saying that she had just been looking at the
16 cladding "as our database is asking for costs", and
17 saying that she did not know if there is any issue of
18 flame retardance requirement. She noted that at
19 Lakanal House, one issue was that the replacement
20 panelling was not flame retardant. She asked for
21 advice.

22 Phillip Booth of Artelia replied. He said that he
23 had had a quick review of the NBS spec, which had of
24 course been prepared by Studio E, and set out certain
25 standards anticipating that one of the standards would

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1 require flame retardance. He said, however:
 2 "As client, I suggest you seek clarification from
 3 Rydon."
 4 Now, we know that Ms Williams did this through
 5 a separate email to Rydon, but we do not know what the
 6 outcome of her enquiry to Rydon was.
 7 Ms Williams' so-called "'Lacknall' moment" is picked
 8 up by both BSR Groups 1 and 2 in their submissions.
 9 Their criticism is widely spread, and Artelia is
 10 criticised for what is called a vague answer and for not
 11 following this up further. However, there was nothing
 12 vague or inappropriate in Artelia's response. Artelia
 13 had no expertise in design issues and, by agreement, had
 14 no responsibility for design or for materials. It could
 15 not reasonably be expected to know the answer to the
 16 question posed, and it would have been wrong for it to
 17 answer it.
 18 Artelia went as far as identifying potentially
 19 relevant standards in Studio E's NBS specification, and,
 20 on the same day as the client's request, it referred the
 21 client, the TMO, on to the entity which was obliged to
 22 answer the question, namely Rydon. We say that Artelia
 23 did exactly what an employer's agent should do.
 24 The second event of many which sheds some further
 25 light on this issue is the offer made by Artelia to the

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1 TMO in February 2014 to provide client design advice to
 2 TMO. To be clear, this is a service which at the time
 3 could be offered where a design and build contract was
 4 in place, the purpose of which was to help the client
 5 protect its design following the novation of the
 6 architect to the contractor. Its aim was to fill the
 7 gap created by the client giving up its contractual
 8 relationship with the architect.
 9 Had the offer been accepted, Artelia would have
 10 brought a registered architect with design expertise
 11 onto the team to support the TMO on design issues and
 12 the signing off of designs as the project progressed.
 13 As Artelia's detailed offer was rejected, Artelia did
 14 not do this.
 15 In its written submissions, the TMO say that they
 16 did not see what the role of the client design adviser
 17 offered, and they did not agree to it because Artelia
 18 was seeking fees for a role that, in their words in
 19 their submissions, did not apply to specialist issues.
 20 They also say that the role was not necessary because
 21 Artelia was already the CDMC. They then go on to refer
 22 to certain provisions in Artelia's appointment which
 23 obliged Artelia to ensure that design sign-offs were
 24 carried out as meaning that the client design adviser
 25 role would have added no value.

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1 But these arguments make no sense. First, when the
 2 very full and detailed offer of the client design
 3 adviser role was turned down by the TMO on 29 August
 4 2014, the TMO did not say that Artelia was seeking fees
 5 for a role that added no value or anything of that
 6 nature. What they actually said was:
 7 "We are going to see if we can manage this within
 8 the TMO as we are very familiar with the specifications
 9 for social housing. Can you please send any design
 10 proposals to myself [that's Claire Williams], cc
 11 David Gibson."
 12 In short, they said, "We will carry out this design
 13 role ourselves because we have the experience to do
 14 this". They did not say, "This role is not required
 15 because you are already covering it" or anything of that
 16 nature.
 17 To suggest that the role was not necessary because
 18 Artelia was CDMC does no more than show further
 19 confusion between design compliance for the building
 20 under the Building Regulations 2010 and issues as to
 21 current and future site health and safety under the
 22 CDM Regulations 2007.
 23 In addition, contractual obligations upon Artelia to
 24 ensure that design sign-offs were carried out clearly
 25 did not give Artelia responsibility for the design

23

1 itself. Those provisions only obliged Artelia to ensure
 2 that the designs were signed off by the person with
 3 responsibility for doing that.
 4 What is particularly strange, given the approach
 5 being taken by the TMO on this issue, is that, partly as
 6 a consequence of its decision not to take Artelia on as
 7 the client design adviser, it was the TMO who had to and
 8 did provide all design sign-offs on numerous occasions.
 9 This makes the TMO's suggestion at page 21 of its
 10 written submissions that they did not sign off on
 11 designs impossible to understand.
 12 Finally, on the question of responsibility for
 13 design and materials, I need to raise what is said by
 14 the TMO in its written submissions more generally on
 15 compliance issues.
 16 It says, and I summarise, that in the period before
 17 it contracted with Rydon, responsibility for compliance
 18 lay with what it calls the pre-contract professional
 19 team. It includes Artelia within that team, and
 20 accordingly appears to ascribe some responsibility to
 21 Artelia for compliance with the design in that period.
 22 We have explained why that cannot be right. The TMO
 23 had expressly agreed with Artelia that it should not
 24 have responsibility for design or for materials, and
 25 there is no basis on which Artelia could be responsible

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for design compliance as CDMC. As BSR Team 1 explain in their submissions, it is actually clear that responsibility for compliance before the contract between the TMO and Rydon lay with Studio E.

My final point about what happened in practice is a general comment about the role of the TMO. Running through the TMO's written submissions is the portrayal of itself as no more than a reactive, passive, inexperienced bystander, powerless as those around it let it down. The TMO suggestions that its decision-making was limited, that it never signed off on designs, and that it handed over responsibility for anything of substance to the consultant team.

The TMO may have been let down. That's a question for the Inquiry. But its portrayal of itself is not accurate. Throughout the process, Artelia was there. Artelia asks: what about the TMO's project management role? What about its design sign-offs? What about its decisions on windows, kitchens and on the crown? What about its decision with RBKC to use champagne coloured aluminium cladding with cassette fixing? What about its liaison between consultants, its driving of value engineering -- a point I'll return to -- and its confirmation of the contents of the building manual for Grenfell Tower? What about its decision that Rydon

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should not introduce or alter any further fire protection works following an indication that areas of existing fire compartmentation needed addressing?

It is for the Inquiry to decide if the TMO was let down, but it should surely acknowledge the extent of its role on the refurbishment.

I would like to finish by commenting on a few additional points which are made about Artelia which need, in our view, to be corrected.

First, there is a suggestion from the TMO that, on the 2014 tender, it was Artelia who made all assessments, recommendations and evaluations. To be clear, there is some hint in the TMO's written submissions that their position might also be shifting on this issue. But to make the position clear, and particularly because the BSR groups to some degree take issue with the tender process, I'll address this briefly.

First, the tender process was a joint effort, with both the TMO and Artelia scoring and evaluating pre-qualification questionnaire answers and the tender returns. It is surprising that the TMO may be trying to suggest otherwise, in circumstances where it went to the trouble of engaging its own specialist procurement consultant, Ms Jackson, who was very heavily involved

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throughout the tender process.

Secondly, the tender took place on an arm's-length basis. Rydon may have scored lowest on the PQQ process, but that was not a reason to exclude them from the tender process. On that tender process, next to the other tenderers, they clearly, on the basis of industry standard and agreed criteria, scored the highest.

The second issue I would like to mention is the assertion made by the TMO that costs were not a factor for it on the refurbishment, and that it had no substantive involvement in value engineering.

The suggestion that costs were not a factor for the TMO makes little sense and can be dismissed very easily. From 2012, and Mr Anderson's email on 4 May 2012 saying, "We have a project to deliver but within a very tight timeframe and an even tighter budget", to Ms Williams' email of 16 July 2014 when she asked for good costs, there was clearly a focus on the part of the TMO on costs.

In addition, while Artelia, as it was obliged to do so in its contract, facilitated value engineering exercises, there was a drive for value engineering from the TMO. For example, in December 2013, Ms Williams identified her own "VE hit list".

Artelia agrees with Mr Hyett when he says that value

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engineering is intrinsic to most UK construction projects, but we say there is no basis for the TMO to seek to distance itself from value engineering and costs issues.

Finally, I would like to pick up briefly on some of the comments made by Dr Lane and Mr Hyett, two of the Inquiry's experts, about Artelia. Further comments are contained within our written submissions.

Dr Lane relies upon the health and safety file, a file provided under the CDM Regulations 2007 and 2015. She is critical of a number of entities on this issue, including Artelia. Dr Lane sees the health and safety file as a file that could, in the absence of a fire safety manual, have been provided to the London Fire Brigade. But Artelia's responsibility for the preparation of the health and safety file ended on 5 October 2015, when the TMO took over as principal designer under the CDM Regulations 2015. That was nine months before practical completion and the actual finalisation of the health and safety file by all group holdings for Rydon, who in turn were under a contractual obligation to the TMO.

In addition, even if Dr Lane is right in suggesting that, as a practical matter, it might have been possible to provide the health and safety file to the

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1 fire brigade, bearing in mind that that file was not
2 required to be in a format in which it could be easily
3 obtained and quickly analysed, it would not in Artelia's
4 submission be right for any failure by any party in
5 respect of the health and safety file to lead to
6 a finding of responsibility by the Inquiry.

7 The health and safety file is prepared for the
8 purpose of future construction work, which is carefully
9 defined, and so includes cleaning, maintenance,
10 alterations, refurbishment and demolition. Its purpose,
11 as indeed Dr Lane acknowledges in her report, is not to
12 assist the fire service as they carry out their duties.

13 Finally, both Dr Lane and Mr Hyett seek to construe
14 and frame the extent of certain of Artelia's contractual
15 employer's agent obligations. Dr Lane does this by
16 reference to particular contractual provisions, and
17 Mr Hyett's analysis is more general in nature. Mr Hyett
18 also frequently misdescribes Artelia as project manager,
19 but, as we have explained, Artelia was not appointed as
20 project manager.

21 Both Dr Lane's and Mr Hyett's contractual analyses
22 amount to a position that Artelia had general oversight
23 obligations as employer's agent, such that Artelia was
24 obliged in effect to sweep up every problem, to follow
25 and understand in detail the specialist technical design

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1 work being carried out by others, and effectively to act
2 as a guarantor of the obligations of those entities.

3 With great respect to the experts, as we explain in
4 our written submissions, that, in our view, cannot be
5 right. The experts appear to be giving opinions on the
6 legal construction of contractual obligations.

7 The wording of Artelia's contract with the TMO does
8 not suggest any general oversight obligation as
9 employer's agent. Artelia was an administrator, and it
10 can't be reasonable or appropriate to view Artelia as
11 having had some kind of obligation to come to the rescue
12 if there were failings by other consultants with clear
13 responsibility for particular issues.

14 Sir, madam, thank you. Those are my submissions.
15 SIR MARTIN MOORE-BICK: Mr Spafford, thank you very much.

16 Now, at this point we are going to hear from
17 Ms Jarratt, who represents the TMO.

18 Yes, Ms Jarratt.

19 Opening statement on behalf of the TMO by MS JARRATT

20 MS JARRATT: Good morning, sir and madam. As you know,
21 I appear on behalf of the TMO this morning.

22 The TMO does wish again to express its immense
23 sympathy and profound sorrow in relation to the
24 horrifying and tragic events that took place at
25 Grenfell Tower, where 72 members of your special

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1 community lost their lives, and many more lost their
2 loved ones, their friends and their homes.

3 The TMO continues to fully support the efforts of
4 the public inquiry to obtain clear, reliable and
5 truthful evidence to understand what led to this
6 needless tragedy, and to demand meaningful change, to
7 improve public safety, and to ensure that this never
8 happens again.

9 The TMO has provided a substantial body of evidence
10 to the Inquiry and responded to requests for witness
11 statements and information relevant to this first module
12 of Phase 2.

13 This morning, the Chairman said that it had been
14 brought to his attention that witnesses are likely to
15 claim privilege against self-incrimination as a reason
16 for not answering questions. However, in respect of the
17 TMO, what was brought to the Chairman's attention is
18 that, where witnesses may be asked questions that may
19 incriminate them, there is a professional obligation for
20 those witnesses to be warned about this legal privilege;
21 that is, that it is their right not to answer any
22 questions to which it applies. The purpose of
23 an undertaking is to allow witnesses to attend the
24 Inquiry and be able to give their best evidence in the
25 Inquiry's search for the truth.

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1 Mr Chairman, of course it is obviously a matter for
2 you whether or not to make that application to the
3 Attorney General, having heard submissions in respect of
4 it tomorrow.

5 The TMO was incorporated on 20 April in 1995 under
6 the Right to Manage legislation. This was introduced to
7 give tenants a greater say in managing their community
8 and their own homes. The purpose of the TMO was to act
9 as RBKC's managing agent, and to look after
10 the council's residential housing stock and commercial
11 property across the borough. This included
12 Grenfell Tower, which until 2013 was also managed in
13 part by the Lancaster West Estate management board.

14 The roles and responsibilities of both the Royal
15 Borough of Kensington and Chelsea and the TMO are
16 further defined under the terms of the modular
17 management agreement which existed between them.

18 The business of the TMO was housing management and
19 maintenance, as well as capital investment projects.
20 Staff were employed for their skills in housing
21 management, which included managing property repairs,
22 resident liaison work and rent collections.

23 It did not possess specialist knowledge in relation
24 to design and construction, nor did it seek to employ
25 staff with these specialist skills. It had to engage

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1 specialist contractors to turn the plan to regenerate
2 Grenfell Tower into a realisable project specification
3 and then to construct it.

4 The TMO has now ceased to operate as a managing
5 agent. The TMO's functions were handed back to RBKC in
6 March 2018, and it is no longer a working body.
7 However, it will remain in existence until the public
8 inquiry and any other relevant legal proceedings have
9 been completed.

10 The project can be divided into the pre- and
11 post-contract phases, and the TMO's role in the project
12 was different in respect to each phase.

13 In the pre-contract phase, the TMO engaged
14 a professional team, which consisted of Studio E and
15 others, to design the project brief and to plan and
16 manage the pre-construction phase on its behalf.

17 The post-contract phase commenced in October 2014,
18 when Rydon was appointed as main contractor under the
19 design and build contract. From this point, Rydon
20 became responsible for all aspects of the design and
21 construction of the project, including the construction
22 of the external façade and the replacement of the
23 windows.

24 They were also appointed as principal contractor
25 under the Construction (Design and Management)

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1 Regulations, the CDM, and became responsible for
2 planning, managing and monitoring the works during the
3 construction phase, including ensuring that safe methods
4 of construction were used.

5 At this point, Rydon also became the single
6 commercial point of contact for the TMO and for Rydon's
7 own appointed team of professionals.

8 This opening statement will look first at the
9 decision to refurbish Grenfell Tower, and then provide
10 an overview of the role that the TMO played in the
11 refurbishment works. We hope, sir, despite some of
12 Artelia's suggestions, that here will be a fair and
13 accurate summary of at least some of those roles.

14 I will concentrate predominantly on the pre-contract
15 phase, looking at the role of appointees and addressing
16 the matter of cost savings. I will then deal briefly
17 with some discrete aspects of the post-contract
18 responsibilities that TMO had, including in relation to
19 the health and safety file.

20 The decision to refurbish Grenfell Tower.

21 In 2011, the RBKC were embarking on a large project
22 to build a new academy school and leisure centre,
23 referred to as KALC, on the Lancaster West Estate, at
24 the base of Grenfell Tower. This also included the
25 construction of 30 residential dwellings. TMO was not

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1 involved in this project. However, RBKC recognised that
2 the residents of the Lancaster West Estate were directly
3 affected by the works on KALC, and simultaneously TMO
4 identified Grenfell Tower as a major investment
5 priority.

6 Subsequently, it was agreed at RBKC's cabinet
7 meeting on May 2 that Grenfell Tower be refurbished
8 alongside KALC. The purpose of the project was to
9 improve Grenfell Tower for its residents and the local
10 community by upgrading the communal heating system and
11 improving the external thermal efficiency of the
12 building, as well as refurbishing the nursery and the
13 Dale Boxing Club.

14 In identifying the priorities for the project, the
15 TMO consulted with the residents and community of
16 Grenfell Tower. Discussions suggested that improvements
17 to the heating system, whereby there could be
18 individually controlled systems, would be welcome, and
19 residents suggested a preference for new windows that
20 they could open themselves and clean.

21 The project was also going to create nine new
22 residential homes in the tower, and this was in keeping
23 with RBKC's programme for housing development and
24 investment, to increase the number of modern, accessible
25 and affordable council homes in the borough.

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1 The Inquiry's expert Paul Hyett observes in his
2 report that the decision to improve the thermal
3 performance of the tower was perfectly reasonable, and
4 that, of the options that were available, the decision
5 to apply thermal insulation to the outside of the
6 concrete walls was a good one. Mr Hyett further
7 observed that it would have been exceptionally
8 difficult, both technically and in terms of disruption,
9 to achieve a high level of thermal performance if the
10 insulation were to be applied inside of the walls. It
11 was the TMO's understanding from the outset that to clad
12 the tower was the best way forward in the case of
13 an occupied building.

14 CDM.

15 The TMO's role in the project was that of client.
16 That is simply the organisation for whom a construction
17 project is carried out, as defined by the Construction
18 (Design and Management) Regulations, the CDM. These
19 regulations set out the roles and responsibilities for
20 health and safety in any large building project
21 undertaken in Great Britain.

22 CDM explicitly acknowledges that clients may not be
23 experts in the construction processes and are therefore
24 not required to plan or manage the project, or take
25 an active role in managing the works. What the TMO were

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1 required to do was to appoint competent specialists to
2 carry out the project on its behalf, and to ensure that
3 there were both sufficient time and resources to do
4 this. The TMO complied with these duties.

5 The pre-contract appointments made by the TMO.

6 For the KALC project, RBKC had procured a team of
7 professional consultants. This included Studio E,
8 Artelia -- at the time still known then as Appleyards --
9 Max Fordham and Leadbitter, who were the principal
10 contractors. RBKC initiated the use of this
11 professional team on the project. These organisations
12 were already familiar with Grenfell Tower due to its
13 proximity to KALC, and the TMO understood that all the
14 appointments for the £58 million KALC project were more
15 than qualified and competent to carry out these
16 refurbishment works at Grenfell Tower.

17 Key benefits of utilising this team were a reduction
18 in the procurement timeframe, meaning the works could be
19 delivered earlier and reducing the length of the overall
20 disruption to residents of the Lancaster West Estate and
21 Grenfell Tower.

22 Artelia was introduced to the project in April 2012
23 at an initial design meeting, and was subsequently
24 formally appointed in August to the roles of CDM
25 co-ordinator under the CDM Regulations, employer's agent

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1 and quantity surveyor. They played an important role in
2 both the pre- and post-contract phases.

3 In the pre-contract phase, it advised the TMO in
4 appointing a professional team of designers and
5 contractors to turn the brief into a realisable design,
6 as well as advising on and administering the procurement
7 and value engineering exercises.

8 During the post-contract phase, they were the TMO's
9 contract administrator and responsible for monitoring
10 progress of the contract. Artelia's obligations were
11 governed by the terms of the standard form RICS
12 appointment, as you have already been referred to. They
13 liaised with the design professionals and advised the
14 TMO on the development of the project brief, as well as
15 advising and managing the procurement processes that the
16 TMO undertook, including the appointment of Rydon.

17 As CDM co-ordinator, they were a key project adviser
18 to the TMO in respect of the health and safety risk
19 management, and assisted the TMO in ensuring
20 co-ordination of the design process and preparing the
21 pre-construction information.

22 As their role as quantity surveyor, they provided
23 expertise in estimating construction costs, advised the
24 TMO on ways to keep costs under control, as well as
25 enhancing value for money, and they advised on and

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1 administered the re-procurement process and assisted in
2 the value engineering exercises.

3 It is not, sir, with respect, reasonable to suggest
4 that because TMO employees may have had past experiences
5 in their working lives in design or construction, they
6 are to be considered specialists for the purpose of this
7 complex project. Nor is it correct to suggest that this
8 somehow dilutes Artelia's responsibilities under the
9 terms of the various appointments.

10 The TMO does not seek to elevate the role of Artelia
11 beyond those terms that are set out in the appendix and
12 the RICS schedules of the contract between them.

13 The TMO appointed Studio E and a number of other
14 specialist contractors to assist with the design and
15 preparation of the tender documents referred to as the
16 employer's requirements and the National Building
17 Specification.

18 Studio E were involved in discussions with the TMO
19 about refurbishing Grenfell Tower from February 2012.
20 In their opening submissions, Studio E state that the
21 appointment process required greater co-ordination. We
22 submit this was not the case. Their terms of service
23 were clear. We invite the Inquiry to accept the
24 evidence of Mr Hyett, who states in respect of Studio E
25 that the range of appointments are clearly established.

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1 He states the services that Studio E were contracted to
2 provide, both in terms of scope and standard, were, as
3 would be expected of an architect, providing full
4 architectural services as lead consultant, lead
5 designer, architect as designer and landscape designer,
6 and this was under the terms of the standard RIBA
7 outline plan of works.

8 The employer's requirements included a request for
9 pricing for Proteus HR zinc cladding and for two
10 alternative products: Reynobond rainscreen cladding and
11 the Alucobond rainscreen cladding.

12 The TMO understood that the specification was
13 prepared pursuant to the standard terms of the RIBA
14 appointment. RIBA standards require that only materials
15 which complied with the building regulations were to be
16 specified.

17 The employer's requirements also expressly stated
18 that any issues in relation to design could be rectified
19 by the tendering contractors, and that there was
20 a requirement that expressly stipulated that any
21 materials put forward as an option complied with
22 specified performance standards.

23 The purpose of presenting pricing options for
24 materials was to achieve value for money, and the TMO
25 had a reasonable expectation that all the options set

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1 down in the specification would be suitable and
 2 compliant options for the external façade.
 3 Exova.
 4 One of the professional pre-contract team was Exova,
 5 who were appointed to provide fire safety engineering
 6 services for Studio E to consider in respect of design
 7 matters. Studio E introduced Exova to the project and
 8 TMO understood them to be competent fire safety
 9 engineers. Barbara Lane refers to Exova's industry
 10 reputation as top tier, and she states in her expert
 11 report that it would be entirely reasonable for KCTMO
 12 and Artelia -- indeed any party -- to assume that the
 13 Grenfell Tower primary refurbishment project team had
 14 access to and could rely on highly competent experts for
 15 all aspects of fire safety and design.
 16 They were instructed on 18 July 2012 to prepare
 17 a fire safety strategy in respect of the refurbishment
 18 project. There were two subsequent versions of this
 19 report. Exova provided these reports to Studio E for
 20 consideration in respect of their design work. It was
 21 not the TMO's role and nor did it have the relevant
 22 expertise to lead on fire engineering matters in
 23 relation to design.
 24 Mr Terrence Ashton, an Exova employee, prepared
 25 three versions of the reports, and each report stated in

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1 respect of compliance with the building regulations at
 2 requirement B4:
 3 "It is considered that the proposed changes will
 4 have no adverse effect on the building in relation to
 5 external fire spread, but this will be confirmed by
 6 analysis in a future issue of this report."
 7 Both Dr Lane and Mr Hyett refer to the fact that
 8 Exova had been provided with the stage C RIBA report
 9 prepared by Studio E setting out the specification for
 10 Celotex RS5000 rainscreen cladding.
 11 If this section of the report was not intended to
 12 relate to the cladding, as is now asserted, the Inquiry
 13 will need to consider if that can be reconciled with the
 14 assertions made in that report and the possible effect
 15 this may have had on those that read it.
 16 The TMO understood that it was Exova's
 17 responsibility to advise their design team in respect of
 18 all aspects of fire safety strategy.
 19 On 16 August, Exova also issued a fire safety
 20 strategy report for the existing building. This had
 21 been requested by the TMO when it was established that
 22 none existed. It was prepared by the Exova employee
 23 Cate Cooney. As Dr Lane identifies in her report,
 24 Ms Cooney failed to record the existing building
 25 condition and failed to properly assess the active and

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1 passive fire protection measures that existed. The
 2 Inquiry may wish to examine how Ms Cooney came to
 3 provide a report which did not identify any issues in
 4 relation to the tower's existing fire safety measures,
 5 or in relation to the previous fire risk assessments.
 6 Post-contract, if it was necessary to appoint a fire
 7 safety engineer, this was Rydon's responsibility.
 8 Simon Lawrence, Rydon's contracts manager, stated in the
 9 contract introduction meeting on 1 April 2014 that Rydon
 10 would contact Exova with a view to using them going
 11 forward, a sentiment repeated in two subsequent progress
 12 meetings. Again, it will be a matter for the Inquiry to
 13 look at whether Rydon should have appointed a fire
 14 safety engineer, as the TMO had done at the pre-contract
 15 stage in order to assist their own design team.
 16 The appointment of a main contractor and the tender
 17 process.
 18 At a TMO board meeting on 15 November 2012,
 19 Leadbitter was recommended for appointment as the main
 20 contractor, to mirror that appointment that they had on
 21 the KALC project. However, in early 2013, there were
 22 concerns as to whether Leadbitter was the right
 23 appointment for the contract. Artelia noted that the
 24 scheme costs put forward by Leadbitter were at variance
 25 with their own estimates, and there were concerns over

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1 Leadbitter's ability to provide value for money. They
 2 were slow responding to requests and the TMO was unsure
 3 of their overall commitment. There were also real
 4 concerns about their lack of experience of working with
 5 residents in situ, which was such a vital logistical
 6 aspect of the works at Grenfell Tower.
 7 As a result of these concerns, in April of 2013, the
 8 TMO and Artelia discussed what would be involved in the
 9 appointing of a new main contractor, and this whole
 10 process was conducted in an open and transparent manner
 11 and observing due process.
 12 Phillip Booth of Artelia provided a draft revised
 13 programme exploring two potential procurement routes:
 14 the Office of the Journal of the European Union,
 15 referred to as OJEU, and the London Housing Consortium
 16 framework.
 17 OJEU is the publication through which public sector
 18 tenders valued above a certain financial threshold are
 19 published. This ensures that the scoring process is
 20 open and transparent. The purpose of OJEU is to secure
 21 best value in the use of public funds.
 22 Mr Booth explained that OJEU would take a month
 23 longer, but that it would be a more open procurement
 24 option. It required a pre-qualification questionnaire,
 25 a PQQ, and he explained that, through OJEU, it would

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1 also be open to Leadbitter to apply.
2 In July 2013, the board agreed to re-tender through
3 an OJEU procurement process, and Artelia managed the
4 exercise, together with Jenny Jackson, an external
5 procurement consultant, who was engaged by TMO.

6 In August 2013, the OJEU notice for the project was
7 published. As a result of a PQQ process being
8 completed, Artelia identified five contractors who were
9 invited to tender. The invitation to tender, or ITT,
10 was put together by Artelia. This included the
11 employer's requirements prepared by Studio E.

12 Bidders were also invited to a conference in
13 December 2012 at TMO offices, which included a site
14 visit so that they would have the opportunity to view
15 Grenfell Tower and the surrounding location.
16 Representatives from Studio E and Max Fordham were in
17 attendance to answer any questions in relation to design
18 specification.

19 Three contractors, including Rydon, submitted bids
20 in February 2013. The evaluation panel for marking the
21 tenders comprised not only TMO employees, but also
22 a member of the TMO board, as well as a ward councillor,
23 along with a representative from Artelia.

24 The scoring matrix for the process shows that the
25 tender prioritises quality over price. 55% of the

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1 overall score was for quality as opposed to 34% for
2 cost, with the remaining balance as 5% for performance
3 in interview and 6% for the cost for alternative works.

4 Rydon scored the highest in every category. In
5 respect of the assessment of quality, it scored five
6 points or 16% higher than Durkan Limited, and seven
7 points, so nearly 25% higher than Mulalley.

8 Rydon submitted the most competitively priced tender
9 price at 9.2 million compared to 9.9 million, and
10 10.4 million respectively.

11 Artelia observed in their final tender report that
12 Rydon had the highest overall score. They recorded that
13 a comparison between bidders of the pricing for various
14 elements of the work demonstrated broadly consistent
15 pricing at a sustainable level, and no particular
16 anomalies were noted in regard to the overall bids. The
17 decision to appoint Rydon was solely based on the fact
18 that their score was the highest in this rigorous and
19 transparent process.

20 Value engineering and cost savings.

21 It has been suggested in some of the written opening
22 submissions that the only consideration for the project
23 was minimising costs. This was not the case. Looking
24 for where reasonable costs can be reduced on a large
25 public sector project is normal practice.

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1 RBKC financed the works. As early as 18 July 2013,
2 the RBKC director of housing, Laura Johnson, submitted
3 a report to the cabinet recommending an increase in
4 budget to 9.7 million. Again, in June 2014, a further
5 report was submitted to the RBKC cabinet recommending
6 a further budget increase to 10.3 million. This was the
7 second and final budget increase that was asked for and
8 both granted for the project.

9 TMO provided RBKC with regular updates as to costs,
10 and it was one of the TMO's main functions to manage the
11 budget. It is unsurprising that a large proportion of
12 TMO's correspondence with interested parties is
13 concerned with issues of costs. Seeking out value for
14 money in publicly funded projects is standard practice.

15 The RIBA stage guide of 2015 gives a useful summary
16 of value engineering exercises and describes them as
17 this:

18 "A systematic and organised approach to provide the
19 necessary functions in a project at the lowest cost.
20 Value engineering promotes the substitution of materials
21 and methods with less expensive alternatives without
22 sacrificing functionality."

23 Mr Hyett states in his expert report that
24 competitive tendering and ongoing value engineering are
25 themselves intrinsic parts of most UK construction

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1 projects; indeed, they lie at the heart of virtually all
2 manufacturing and service supply processes within and
3 outside the construction industry.

4 In section 2 of his report, Mr Hyett forms
5 an opinion that neither the competitive tendering nor
6 value engineering processes as carried out both pre- and
7 post-tender should be considered as any form of excuse
8 for the fact that the overcladding arrangements were
9 unsafe, and that any requests made by the employer --
10 KCTMO -- or any pressure that might otherwise have
11 existed on Studio E or other members of the design team,
12 Rydon or Harley, either individually or collectively,
13 cannot in any way be accepted as an explanation or
14 excuse for the circumstances that allowed the fire to
15 spread so far and so fast, and ultimately escalate out
16 of control with such devastating effect.

17 Whilst it is a matter for the Inquiry, the TMO notes
18 that Mr Hyett recognises that value engineering and
19 competitive tendering processes are not incompatible
20 with maintaining the highest levels of safety, and that
21 the value engineering exercises undertaken for the
22 project cannot be used to explain why the materials came
23 to be applied to the external façade. The TMO would
24 never have accepted a value engineering option that it
25 was aware was either not suitable, non-compliant or

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1 unsafe.
2 It is also important to note that the TMO was
3 a not-for-profit organisation. Therefore, it had no
4 commercial incentive to drive down cost to maximise
5 profit for its shareholders. Ultimately, any surplus
6 funds would be put back into the TMO to try and improve
7 services.

8 The TMO was invested in the long-term success of the
9 refurbishment project. Whilst the various appointed
10 contractors were going to move on at the end of the
11 project, the TMO's role was to continue to maintain and
12 manage the tower on behalf of its residents. It was in
13 the TMO's interests that the refurbishment works should
14 be completed successfully and that they should be of
15 good quality.

16 The post-contract phase.

17 Now turning briefly to aspects of the post-contract
18 phase, Rydon were now responsible for all aspects of
19 design and the construction works. Artelia remained
20 under the same terms of appointment and continued to
21 advise TMO on a regular basis in respect of how the
22 project was progressing and in respect of their duties
23 under CDM, as well as liaising with Rydon on TMO's
24 behalf.

25 As Rydon has set out in its company statement, it is

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1 a very experienced contractor, their role in
2 refurbishment projects is that of main contractor, and
3 that typically they were also appointed as principal
4 contractor under CDM. It goes on to state that it had
5 significant experience of discharging these duties in
6 respect of planning, managing and monitoring
7 construction phases. Rydon also has an accredited
8 project management system.

9 It was Rydon's responsibility to monitor the works,
10 and there was no obligation on the TMO to make any
11 separate monitoring appointments. However, in order to
12 provide the TMO with further assurances that the project
13 was being properly carried out, the TMO appointed two
14 clerks of works. They were appointed to carry out
15 regular site inspections of the construction works and
16 of the mechanical and electrical engineering
17 installations, and to report back to the TMO on
18 workmanship, quality, progress and site health and
19 safety.

20 Jonathan White, who inspected the construction work,
21 states he carried out a total of 35 inspection reports,
22 and at no point were any concerns in relation to the
23 application of the cladding or any serious concerns in
24 relation to health and safety raised with the TMO.

25 In accordance with its role as employer's agent,

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1 Artelia monitored the progress of Rydon's work against
2 the programme of works on the TMO's behalf, liaising
3 with Rydon and other contractors on site where
4 necessary. Every month from July 2014, Artelia chaired
5 progress meetings, which were attended by senior
6 representatives on the projects, including TMO, in order
7 for Rydon to update them on the progress of the works.

8 The health and safety file.

9 Pursuant to CDM, a health and safety file must be
10 prepared and handed to the client at the end of
11 a project. The purpose of the health and safety file is
12 to ensure that anyone carrying out subsequent
13 construction work on the building has information to be
14 able to plan and carry out that work safely. It is
15 clear that the health and safety file is prepared solely
16 for the purposes of future construction work and
17 maintenance. The health and safety file is not required
18 to follow a set format and may be combined with
19 a building log regulations book or a maintenance manual.
20 The regulations do not envisage that it would be
21 available in the purposes of any emergency.

22 In 2015, a new set of CDM Regulations came into
23 force, abolishing the role of the CDM co-ordinator and
24 creating a new role of principal designer. This role
25 took on many of the functions of the CDM co-ordinator.

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1 However, and inexplicably, none of the contracting
2 parties were willing to adopt this position. The TMO
3 therefore felt it had no option but to assume the role.

4 At progress meeting number 17 on 17 November 2015,
5 Rydon agreed to be responsible for the preparation of
6 the health and safety file, and Rydon subsequently
7 subcontracted this work to All Group Holdings Limited.

8 In her report, Dr Lane is critical of documentation
9 which she attributes as having been prepared by All
10 Group Holdings Limited and as amounting to the health
11 and safety file. To date, no witness statements have
12 been provided from this organisation, but we understand
13 that the Inquiry is now taking steps to seek witness
14 statements from All Group Holdings Limited and we are
15 grateful for this indication. What documentation was
16 prepared by All Group Holdings for the health and safety
17 file and to whom that documentation was provided are
18 matters which the Inquiry may wish to consider in
19 relation to the compliance of that health and safety
20 file.

21 The TMO and its former employees continue to be
22 committed to the Inquiry's investigation into the events
23 that led to such an unimaginable loss of life. There
24 can be no denying that both the design and construction
25 of the refurbishment works that took place between 2012

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1 and 2016 comprised the safety of the building and led to
2 these losses.

3 At all times, the TMO understood that applying
4 cladding to the exterior of the building was a well
5 recognised method for improving the thermal efficiency
6 and, for some, the appearance of a high-rise building.

7 TMO believes it took reasonable steps to appoint
8 competent specialists to achieve its aim of upgrading
9 Grenfell Tower and bringing the building into line with
10 modern standards. The professionals appointed had the
11 experience and technical expertise to plan, design and
12 build the refurbishment works for Grenfell Tower, as
13 well as to advise the TMO on matters of compliance with
14 industry standards, legislation and safety.

15 Like so many others, we wish now to understand how,
16 with this infrastructure in place, there were such
17 terrible failings in both the design and construction of
18 the works. The TMO will continue to work closely with
19 the Inquiry to assist them in their detailed review of
20 the issues in Module 1, including a thorough analysis of
21 the TMO's own role, its own duties under the
22 CDM Regulations, and of course with all their ongoing
23 investigations. This is with the genuine hope that the
24 bereaved, survivors and residents who are at the heart
25 of this enquiry get the answers that they deserve, and

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1 that you, sir and madam, can make findings to ensure
2 that people are safe and can feel safe in their own
3 homes.

4 SIR MARTIN MOORE-BICK: Thank you very much.

5 Now, the next statement we're going to hear from
6 will come from the council, RBKC, and it will be made by
7 Mr Maxwell-Scott Queen's Counsel. Yes.

8 Yes, Mr Maxwell-Scott.

9 Opening statement on behalf of the Royal Borough of
10 Kensington and Chelsea by MR MAXWELL-SCOTT

11 MR MAXWELL-SCOTT: Mr Chairman, madam. I, together with
12 Katie Sage and Bethany Condron, represent the Royal
13 Borough of Kensington and Chelsea, instructed by DWF
14 Solicitors.

15 Although the Inquiry did not hold any hearings in
16 2019, it nevertheless made great strides in its ongoing
17 investigation. The Phase 1 report was impressive in its
18 thoroughness, and clearly the product of a great deal of
19 hard work and considered thought.

20 Last year also saw the disclosure of a number of
21 detailed expert reports and tens of thousands of
22 documents, documents which your team had obtained from
23 a multitude of different organisations.

24 The council is very grateful to you and your team
25 for all the work done on the Phase 1 report and the

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1 preparations for Phase 2.

2 The council has also been busy over the last year;
3 busy improving the services which it provides, busy
4 preparing for Phase 2, and busy reflecting on the issues
5 that will be considered in it.

6 In reflecting on those issues, it has sought to stay
7 faithful to three guiding principles: guiding principle
8 number 1, the Charter for Families Bereaved Through
9 Public Tragedy, which the council has adopted; guiding
10 principle number 2, the commitment to candour which
11 the council has made; and guiding principle number 3,
12 the desire to ensure that the people who lost their
13 lives will never be forgotten.

14 Commitment to these principles has led the council
15 to identify a number of failings in the way its
16 building control service processed and considered the
17 application for building control approval during the
18 refurbishment of Grenfell Tower. I will say more about
19 this later, but may I say now, on behalf of the council,
20 that it apologises unreservedly for those failings.

21 Building control is of course only one of
22 the council's many services. As you have no doubt been
23 discovering in more detail during your investigation,
24 the council is a complex organisation made up of elected
25 councillors and employed officers, with many separate

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1 directorates, departments, functions, services and
2 committees. Some of those services were delivered
3 in-house by the council's own employees; others were
4 contracted out to other organisations and delivered by
5 employees of those other organisations.

6 Before returning to the council's building control
7 service, let me first say something about the
8 relationship between the council and the Kensington and
9 Chelsea Tenant Management Organisation, which I shall
10 refer to as the TMO.

11 The TMO is an example of an organisation to which
12 the council contracted out delivery of services. In
13 a number of places, core participants in their written
14 opening statements for this module refer to the council
15 and the TMO without distinguishing between them. Sir,
16 I make absolutely no criticism of them for this at this
17 opening stage of Module 1, when the relationship between
18 the council and the TMO has not been explored, and when
19 it can be hard to work out who was responsible for what,
20 who did what, and who worked for which organisation.

21 Legal Team 2 representing the bereaved, survivors
22 and residents say in their opening statement
23 individuals, firms and institutions are to blame for
24 what went wrong. It will be necessary for the Inquiry
25 to consider carefully the respective culpability of

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the council, the TMO, the professionals and contractors involved and others. I agree. Although none of the eight modules in Phase 2 is specifically devoted to analysing the relationship between the council and the TMO, the distinction between the council and the TMO and the close working relationship between them will need to be analysed and understood.

The relationship was governed by a modular management agreement based on a template for such agreements approved by central government. At the risk of oversimplifying the contents of the agreement, which is many hundreds of pages in length, and over 20 years of history of the TMO, the following points can be made.

The TMO came into existence in the mid-1990s because a majority of those who were residents at the time voted in favour of its creation. From that date onwards, it was at all relevant times a separate legal entity from the council.

In 2002, at an extraordinary general meeting of the TMO, it was voted unanimously to amend the TMO's constitution to enable it to operate as an arm's-length management organisation, or ALMO. As a result, the TMO additionally took on responsibility for developing and undertaking all major work schemes.

The normal model for an ALMO was that it was owned

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by the local authority. The TMO was unusual in that it remained an organisation owned by its resident members. This fact and the fact that its constitution expressly stated that the majority of board members must be tenants and leaseholders meant that the TMO at all times remained independent of the council.

In 2006, the Audit Commission published a report on the TMO following an inspection which took place between 17 and 28 July that year. I mention that here because the Audit Commission noted that the TMO was in fact the only ALMO with a majority of tenants on the board.

As stated in its memorandum and articles of association, the TMO was established to manage and maintain the housing stock and ancillary properties of the council. As such, it was effectively the council's managing agent. So the housing management service which the council, as landlord, provided to the residents of Grenfell Tower was provided by the council through its managing agent, the TMO.

I'm now going to return to the council's building control service. In doing so, it is important to recognise that this service, unlike the council's housing management service, was provided by the council entirely independently of the TMO.

Local authorities are required by law to provide

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a building control service. The way in which the council was structured meant that its building control service fell within the council's planning and borough development directorate. But one should not infer from this that there was an overlap between the council's planning function and its building control function. Both functions arise under wholly separate statutory regimes. The building control function is highly technical in nature, and is both conceptually and in practice wholly separate from planning. Fire safety does not fall within the remit of planning. It does fall within the remit of building control.

Persons carrying out building work within the borough who needed to use a building control service had the option of using the council's building service, which is a public sector service, or of using an approved inspector, which is a private sector service. Both are permitted by law to act as building control bodies.

It is important to be clear about the nature of the service offered by local authority building control and by approved inspectors. It is not a design service; it is a checking service.

Legal Team 1, representing the bereaved, survivors and residents, described the building control officer as

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providing the last line of defence against the construction of an unsafe building.

Your expert, Beryl Menzies, puts it this way:

"The role of a Building Control Body is only to check for compliance with the requirements of the Building Act and the Building Regulations. A [building control body] has no role in the design: it checks submitted proposals and inspects work on site to ascertain compliance."

What that means in practice is this: if the professional design team engaged to create the design have created an unsafe design, and if the unsafe features of that design have not been detected during the design team's internal checking processes, then the external checking service provided by building control represents the last opportunity to spot the errors of the design team and stop the unsafe design being built.

As is well known, in the case of Grenfell Tower, the application for building control approval was made to the council's building control service, rather than to an approved inspector.

Mr Chairman, I mentioned earlier that the council had engaged in a process of reflection which had led it to identify number of failings in the way its building control service processed and considered the application

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1 for building control approval during the refurbishment
2 of Grenfell Tower.

3 The council would have wished to have reached this
4 stage sooner than it did, but, through its own fault, it
5 was unable to do so. This is because its building
6 control service failed to retain sufficient records for
7 the Grenfell Tower refurbishment project.

8 What has changed within the last few months is that
9 the Inquiry's experts have succeeded in partially
10 reconstructing the documentary record from the limited
11 records building control had and the documents disclosed
12 by a number of core participants, including Studio E,
13 Rydon, Harley and Exova. This has enabled the council
14 to identify a number of failings on the part of its
15 building control service. I have set them out in
16 paragraphs 97 to 105 of my written opening
17 {RBK00055479/26}, but will repeat some of them now.

18 Building control did not have a formal procedure for
19 tracking the progress of applications for building
20 control approval. There was no requirement for it to
21 have such a procedure, but the council accepts that
22 building control should have had one, and that, had one
23 been in place, it would have reduced the likelihood of
24 aspects of the application or the building control
25 approval process being overlooked.

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1 Building control failed to issue a decision notice
2 following receipt of the full plans application.

3 Building control failed to ask for comprehensive
4 details of the cladding system, including the crown.

5 The last Exova fire safety strategy received by
6 building control was issue 3, dated November 2013.
7 Building control failed to request an up-to-date version
8 of this document.

9 Building control failed to identify that the
10 insulation materials used in the cladding system were
11 not of limited combustibility and therefore did not
12 satisfy the requirements of paragraph 12.7 of Approved
13 Document B.

14 Building control failed to recognise that
15 insufficient or no cavity barriers to seal the cavities
16 at openings within the walls, including around the
17 windows, had been indicated on the plans submitted
18 to it.

19 Building control issued a completion certificate on
20 7 July 2016. It should not have done so.

21 The council apologises unreservedly for these
22 failings. It is committed to co-operating fully with
23 the Inquiry and helping to prevent a tragedy like
24 Grenfell ever happening again.

25 The Inquiry has an important role to play here,

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1 because we know that, up and down the country, in the
2 private sector and the public sector, hundreds of
3 buildings have been found with cladding on them which
4 does not comply with the building regulations. This
5 means that, in the case of each such building,
6 a professional design team has created an unsafe design,
7 and the unsafe features of that design have not been
8 detected during the design team's internal checking
9 processes, and the external checking service has failed
10 to spot the errors of the design team and stop the
11 unsafe design being built.

12 So, in hundreds of cases, the last line of defence,
13 together with all previous lines of defence, has failed.
14 Sometimes that last line of defence will have been
15 a local authority building control service. Sometimes
16 that last line of defence will have been an approved
17 inspector. Sometimes it will have failed in similar
18 ways to the ways it failed at Grenfell. Sometimes it
19 would have failed in different ways. But the bottom
20 line is that in hundreds of cases, it will have failed.
21 This is not just a local problem; this is a national
22 problem, and it will require national solutions.

23 Returning to the council, there have been changes in
24 its building control service since the fire. In my
25 written opening statement, I stated that the council

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1 intended to provide the Inquiry with a written update on
2 key changes made within its building control service
3 before the start of Module 1. That document was
4 provided to your team last week.

5 Summarising it in a sentence, many changes have been
6 made, but a number of opportunities for further
7 improvement have been identified.

8 Mr Chairman, as you are aware from having read my
9 written opening, the council has made observations in it
10 on a number of issues which I have not addressed you on
11 this afternoon. These include the decision to refurbish
12 the tower, the budget for the refurbishment project, and
13 the choice of cladding material, to name just a few.

14 I do not propose today to lengthen this opening
15 statement by repeating what I have said in writing or by
16 adding to it. This is the beginning of Module 1, not
17 the end, and there is a great deal of important evidence
18 to be heard on many issues. In our closing submissions
19 for Modules 1, 2 and 3, we will set out in detail and
20 with candour the council's position on all issues
21 relevant to it that have arisen in those modules.

22 May I finish by quoting from what the leader of
23 the council said in her speech to full council on
24 22 January this year:

25 "There is a stark reality we face: 72 people died,

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1 and this council could have and should have done more to
2 stop it happening. Grenfell is a tragedy which should
3 not have happened. It is a tragedy that can never
4 happen again.”

5 Thank you.

6 SIR MARTIN MOORE-BICK: Thank you very much.

7 Now, the next statement is to be made by the Mayor
8 of London.

9 Ms Studd, would it be convenient for you to make
10 your opening statement now, or are you going to require
11 more than, say, 15 minutes? Then perhaps if you would
12 like to come up to the front, you could do it now.

13 Opening statement on behalf of the Mayor of London
14 by MS STUDD

15 MS STUDD: Mr Chairman, madam.

16 The report of Phase 1 of the Inquiry, delivered on
17 30 October 2019, focused on the immediate and terrible
18 events of the night of 14 June 2017, which resulted, as
19 we all know, in the deaths of 72 individuals. It
20 focused on the causes of the fire, the emergency
21 response, and the experience of those who survived, as
22 well as commemorating those who died. It was
23 an important first step in justice for the Grenfell
24 community.

25 The contents of the Phase 1 report indicated that

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1 there was much to be learned from the evidence heard and
2 the conclusions reached. The Mayor welcomes
3 the Chairman's decision to make recommendations, and,
4 without detailing the action to be taken, this not being
5 the correct forum to do so, he can reassure the Chair of
6 the commitment on his part to oversee the implementation
7 of the Phase 1 recommendations in London, and to
8 proactively encourage others to urgently adopt them as
9 a matter of priority.

10 As the Inquiry looks forward to Phase 2, the Mayor
11 welcomes the consideration that the Inquiry has given to
12 the venue, and the need for it to be more easily
13 accessible to those who were and remain most affected.
14 The new location here in West London is a welcome step,
15 as is the intention to appoint two panel members to
16 assist the Chairman with the decision-making in this
17 important phase of the Inquiry.

18 We support the bereaved, survivors and residents'
19 desire to have the second panel member in place as soon
20 as possible. It is of course a matter of regret that
21 this has not been satisfactorily resolved, and we would
22 invite the Chairman to take whatever steps he feels able
23 to take to ensure that this uncertain position is
24 remedied as soon as possible.

25 To that end too, we publicly invite the

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1 Cabinet Office to provide an update before the
2 commencement of the evidence next week. The Mayor is
3 planning to write to the Prime Minister again, asking
4 him to resolve this issue as a matter of priority.

5 We have seen the timetable for the work of Phase 2,
6 and the division of the work into modules. There is,
7 obviously, a great deal to consider. In the course of
8 the hearings, there are likely to be issues raised which
9 will undoubtedly give rise to consequential concerns
10 about public safety. Given the modular structure for
11 Phase 2, the Mayor would support and encourage
12 consideration of interim recommendations at the
13 conclusion of each module if it is thought necessary for
14 immediate action to be taken to preserve life.

15 It is clear from the evidence heard and the
16 conclusions reached by the Inquiry in Phase 1 that the
17 failure of a common domestic appliance in the kitchen of
18 flat 16 at Grenfell Tower should never have resulted in
19 the tragic loss of life that occurred on that night.

20 Without revisiting the extensive evidence that was
21 heard as part of the Phase 1 hearings, the expert
22 evidence disclosed very significant defects, resulting
23 in the conclusion that the building envelope "created
24 an intolerable risk to safety resulting in extreme
25 harm". It also highlighted an absence of proper

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1 maintenance of active and passive fire measures.

2 Phase 2, Module 1 will begin the process of detailed
3 examination of the design, construction and modification
4 of the building, and the provision of maintenance of
5 active and passive fire measures to determine what
6 caused this building to fail as it did. Any
7 investigation into those failings has to be accompanied
8 by accountability for them.

9 The Mayor supports the bereaved, survivors and
10 residents in their determination to ensure that Phase 2
11 of the Inquiry provides such accountability.

12 The Mayor joins with Mr Millett in his criticism
13 that the openings of the corporate core participants for
14 this part of the Inquiry are characterised by
15 buck-passing and a conspicuous lack of acceptance of any
16 responsibility for any elements that rendered this
17 building non-compliant, as indeed you found it to be in
18 your Phase 1 report.

19 Obviously it is to be expected that all the core
20 participants will positively contribute to your Inquiry,
21 ensuring that all issues are considered thoroughly.
22 They have agreed to do so in their oral openings before
23 you, and the Inquiry team must hold them to account to
24 ensure that those words are borne out in practice.

25 An additional point that can be divined from the

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1 written openings, and one which the Mayor would like you
2 and your panel members to consider, is what can be done
3 to prevent the situation that occurred here, where
4 a very large number of contracts and subsidiary
5 contracts have provided an environment where no one
6 corporate participant is accountable for the whole
7 project, where the contractual relationship appears to
8 take priority over the successful but more importantly
9 the safe delivery of the project, and where catastrophic
10 failures can easily be passed off by one contractor to
11 be the fault of another.

12 While this phase of the Inquiry will inevitably be
13 focused in large part on the decision-making in relation
14 to the fatally flawed refurbishment and design of
15 Grenfell Tower, the Mayor would emphasise that the
16 bereaved, survivors and residents must remain central to
17 this Inquiry and its work.

18 Thank you.

19 SIR MARTIN MOORE-BICK: Thank you very much.

20 Well, that is no doubt a convenient moment at which
21 to adjourn so we can all go and have some lunch.

22 We will rise now and we will sit again at 2 o'clock,
23 please. Thank you very much.

24 (12.53 pm)

25 (A short break)

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1 (2.00 pm)

2 SIR MARTIN MOORE-BICK: Now, then, Mr Walsh, you are going
3 to make a statement on behalf of the London Fire
4 Brigade.

5 Opening statement on behalf of the London Fire Brigade
6 by MR WALSH

7 MR WALSH: Yes. Good afternoon, sir. Good afternoon,
8 madam.

9 Can I make it clear from the outset of this
10 relatively brief statement of the London Fire Brigade
11 that, as Phase 2 of the Inquiry gets underway, the LFB
12 remains focused on delivering all necessary positive
13 changes to operational procedures and training which
14 reflect the lessons learned from the tragic events of
15 14 June 2017. I will come back to that in just a little
16 bit more detail in a moment.

17 Of course, now is not the time for submissions on
18 the content of your very thorough Phase 1 report. There
19 will be ample opportunity for that in Module 5, when the
20 LFB's operational response to the fire is to be
21 revisited, along with broader, including national,
22 issues, as I understand it.

23 It is enough to say for the present that the LFB's
24 energies are concentrated on the recommendations which
25 you made in that Phase 1 report, which are welcomed by

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1 the Brigade, and on seeking to implement them.

2 With that in mind, the issues in evidence which are
3 to be examined in Module 1 and the modules which
4 immediately follow it are of crucial importance to the
5 LFB's learning process, so that positive changes may be
6 fully informed by a clear understanding of how the
7 condition of Grenfell Tower facilitated the development
8 of the fire.

9 Sir, I hope that you will bear with me while
10 I reiterate very briefly a small but crucial point in
11 the Brigade's opening and closing statements for
12 Phase 1, because they're relevant to Module 1 of
13 Phase 2. That point, insofar as they touched upon the
14 fire safety requirements of the building regulations,
15 which require that residential high-rise buildings
16 should be designed, built and maintained -- crucially,
17 maintained -- to support the stay-put principle, and
18 of course that is and was at the time of the
19 Grenfell Tower fire central to the issues of fire safety
20 which arise in the course of construction or
21 refurbishment of such buildings. I do so, I revisit
22 this, in case there is still a degree of
23 misunderstanding in the public arena, as we think there
24 is, about the origins and purpose of the stay-put
25 principle.

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1 As certain of the Inquiry's experts have pointed
2 out, stay-put is not a principle or policy which was
3 invented by fire and rescue services. Far from it. It
4 is a principle of building design and construction which
5 is bolstered by the requirements of the building
6 regulations.

7 As Dr Lane emphasised during her evidence in
8 Phase 1:

9 "The fire protection measures must be constructed
10 and then maintained to ensure that they are fit for
11 purpose in the event of fire. The stay-put strategy is
12 provided through design, construction and ongoing
13 maintenance. All building occupants, including the Fire
14 Brigade, rely on it in the event of a fire. It is the
15 single safety condition provided for in the design of
16 high-rise residential buildings in England. The
17 statutory guidance makes no provision within the
18 building for anything other than a stay-put strategy."

19 Now, sir, that is obviously a statement of
20 incontrovertible fact which should, in our submission,
21 form the backdrop to the consideration of evidence in
22 Module 1 and beyond. Because of course, whether we like
23 it or not, the stay-put principle is still the single
24 safety provision for buildings of this kind, for the
25 purposes of fire. Of course, within the meaning given

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1 to it by Dr Lane, obviously the stay-put principle is
2 dependent upon multiple layers of fire safety measures
3 to support it.

4 In those circumstances, the LFB submits that the
5 public and emergency services should be entitled to have
6 faith in the efficacy of such a fundamental fire safety
7 requirement, and at the very least that those who engage
8 in major refurbishments do not do so in a way which
9 radically undermines or even eradicates -- as appears to
10 have occurred at Grenfell Tower tragically -- that
11 single fire safety condition.

12 Phase 1 of the Inquiry was a robust and thorough
13 examination of the operational response to the fire by
14 the fire service and its partner services, and the LFB
15 trusts -- indeed it knows, sir, having heard
16 Mr Millett's opening -- that the Inquiry and its experts
17 will apply the same meticulous scrutiny to the questions
18 how and why Grenfell Tower came to fall so far short of
19 these basic regulatory requirements that it was the
20 scene of the worst and most devastating fire in
21 residential premises since the Second World War.

22 A full understanding of how and why the fire took
23 hold and developed -- which will be looked at, I know,
24 in Module 2 and beyond, but is relevant to Module 1 --
25 how it developed with such rapidity and to such

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1 an extent is also of paramount significance to fire and
2 rescue services nationally, that is if the advancement
3 of policy and training and learning is to be achieved to
4 maximum effect, in the interests of public safety and
5 that of firefighters who must be deployed into buildings
6 to carry out fire and rescue duties.

7 Sir, although not strictly pertinent to Module 1,
8 this is an appropriate moment, if you wouldn't mind, for
9 me to gently remind you and the Inquiry team that the
10 Brigade is strongly of the view that a detailed smoke,
11 heat and fire modelling project will provide essential
12 information from which fire and rescue services can plan
13 effectively for similar incidents in the future. Such
14 a modelling exercise will be invaluable in assessing the
15 potential impact which the manner in which fire and
16 smoke and heat behaved during the Grenfell Tower fire
17 had on the viability of rescue and evacuation of
18 residents at different times of the night.

19 Important information of that kind may be
20 extrapolated to predict the behaviour of fire and smoke
21 in any future incidents of a similar kind, and be used
22 by fire and rescue services to assist in the continuous
23 review of policies and procedures which are underway as
24 we speak.

25 This is of particular importance given the statutory

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1 and moral obligations which fire and rescue services
2 have to the safety of firefighters who are deployed into
3 buildings in a fire situation. That wasn't directly
4 within scope in the first phase of this Inquiry, but
5 it's particularly relevant to buildings which are
6 fundamentally unsafe by reason of the failure of
7 multiple levels of fire safety measures which they are
8 supposed to be designed to provide.

9 In that regard, sir, the Brigade is appreciative of
10 the fact that your Phase 1 report recognises the bravery
11 and selflessness of firefighters who were deployed into
12 Grenfell Tower on the night of the fire, in some cases
13 without firefighting equipment, which created very
14 significant risks to their safety.

15 Now, fire and rescue services must obviously assess
16 and reduce, as far as is reasonably practicable, the
17 risks to both firefighters and members of the public
18 through the development of training and policy, and this
19 is one of the key reasons why the detailed analysis of
20 the range of issues to be addressed in Module 1 and
21 beyond is of such crucial significance to fire service
22 learning.

23 Now, while these opening submissions must be
24 confined, of course, to matters under consideration in
25 Module 1, it's important just for a moment, if I may, to

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1 emphasise the tireless work which the LFB continues to
2 undertake to ensure now that Londoners are kept safe in
3 the event of fire. That wide-ranging work, which
4 commenced immediately after the Grenfell Tower fire, has
5 been well documented in statements to this Inquiry, and
6 in publicly available material provided to stakeholders
7 such as the Greater London Authority.

8 Close liaison with central government has also been
9 at the heart of the LFB's programme, with a substantial
10 investment in terms of finance, time, fire service
11 personnel, to ensure that learning from the
12 Grenfell Tower fire is progressed with expedition.

13 Not least of the LFB's priorities, as I have said,
14 is the urgent work to address your recommendations from
15 the Phase 1 report, which, as I have also said, are
16 acknowledged and welcomed by the Brigade.

17 The Phase 1 report represented a thorough and
18 detailed analysis of the vast amount of evidence adduced
19 during Phase 1, and, sir, as you know, much of that
20 evidence was derived from the LFB itself, not only in
21 the evidence provided by Brigade staff at the live
22 hearings, but also in the painstaking operational
23 response reports which were compiled by the LFB over
24 many months, beginning immediately after the fire, as
25 I say, the contents of which, I think it's fair to say,

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1 formed a fair amount of the factual material in the
 2 Phase 1 report.
 3 Consequently, the Brigade hopes that it has provided
 4 real and meaningful assistance to the Inquiry, both
 5 through the preparation of those reports and by
 6 facilitating the complex process of ensuring the
 7 attendance at the Inquiry of over 80 firefighters, who
 8 all spoke freely and we suggest candidly and openly
 9 about their experiences, and other Fire Brigade staff
 10 who gave oral evidence drawn from written statements
 11 made by many hundreds of firefighters who attended on
 12 the night.
 13 So the matters to be addressed in Module 1 represent
 14 the beginning of the process of learning how it was that
 15 a building that was designed and built to keep residents
 16 safe appears to have promoted the development of
 17 a devastating fire with such catastrophic consequences.
 18 The Brigade -- this is very important that I make
 19 this point -- has listened very hard to the findings of
 20 the Phase 1 report, and it is committed to working with
 21 the Grenfell community to do everything possible to
 22 prevent such a tragedy ever happening again, and
 23 obviously it goes without saying that the Brigade will
 24 continue to assist you and your team in the coming
 25 months in every way it can.

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1 Finally -- and here I make no apology for again
 2 repeating what we said in the Brigade's opening and
 3 closing statements for Phase 1 -- the LFB, the
 4 London Fire Brigade, and all of those who work within
 5 it, will never forget the appalling impact which the
 6 night of 14 June 2017 had and continues to have on the
 7 bereaved, survivors and residents of Grenfell Tower and
 8 the surrounding area.
 9 Here we join with Ms Studd's assertion on behalf of
 10 the Mayor of London in commending the Inquiry for
 11 ensuring that they have been and will continue to be
 12 central to the Inquiry process, to ensure that
 13 meaningful lessons will be learned and acted upon.
 14 Sir, I don't think I can help any further.
 15 SIR MARTIN MOORE-BICK: That's very helpful, thank you very
 16 much.
 17 Now, Mr Seaward, you are going to make an opening
 18 statement on behalf of the Fire Brigades Union, I think.
 19 Opening statement on behalf of the Fire Brigades Union
 20 by MR SEAWARD
 21 MR SEAWARD: Thank you, sir, madam.
 22 I am instructed by Thompsons Solicitors, and
 23 I represent the Fire Brigades Union and the
 24 firefighters, control staff and fire safety officers
 25 whom it represents.

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1 Our written opening submissions have been disclosed
 2 to all core participants, and, trusting you and your
 3 colleagues have read them, I won't read them out today,
 4 but instead focus on a few key issues facing the
 5 Inquiry.

6 The FBU remains humbled by the suffering of the
 7 deceased and the bereaved, survivors and relatives of
 8 the deceased as a result of the Grenfell Tower disaster,
 9 and committed to a full and open Inquiry.

10 About the panel. Two assessors remain for Phase 2,
 11 after Joyce Redfearn stepped down, and one panel member
 12 after the resignation of Benita Mehra and
 13 Professor Hamdi. The FBU is aware, in light of all the
 14 disclosure and the witness statements, of the heavy
 15 burden of evidence-weighting and decision-making that
 16 faces the Inquiry in Phase 2, and we support the
 17 application made by Michael Mansfield QC for your
 18 support in encouraging the speedy appointment of another
 19 panel member to serve with Thouria Istephan.

20 In this connection, the FBU invites you to
 21 reconsider recommending the appointment of
 22 an independent environmental health practitioner to
 23 serve either as a panel member or as an additional
 24 assessor. An independent and well respected expert in
 25 the fields of environmental health, social housing and

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1 the housing health and safety rating system under part 1
 2 of the Housing Act 2004 would complement the areas of
 3 expertise and knowledge of yourself, Ms Istephan,
 4 Professor Nethercot and Joe Montgomery.

5 You may wish to revisit paragraph 3 of the FBU's
 6 application of 28 November 2017 and paragraph 9 of the
 7 written submissions that we lodged in support of that
 8 same date, in support of that application for the
 9 appointment after independent environmental health
 10 practitioner. Such an individual would have experience
 11 throughout his or her working life of going into
 12 high-rise blocks and listening to the difficulties of
 13 those who live in high-rise blocks, and writing reports
 14 to try and improve the conditions of people living in
 15 high-rise blocks. They develop a profound understanding
 16 of the people who live in high-rise blocks and the
 17 problems that they face.

18 About interim recommendations, the FBU supports
 19 Anne Studd QC's submission on behalf of the Mayor to
 20 consider these at each module of Phase 2. The FBU can
 21 assure the Chairman that we are doing what we can to
 22 progress the recommendations that you have made.

23 I should say, before passing on, that we agree with
 24 all of the submissions made on behalf of the Mayor.

25 About the evidence in Module 1. In Phase 1, several

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1 firefighters and control room staff who are FBU members
 2 were in the witness box for more than a day, some for
 3 two to three days. The FBU hopes the Inquiry team will
 4 likewise probe witnesses thoroughly in Module 1 on how
 5 Grenfell Tower came to be coated in a combustible
 6 rainscreen cladding system which destroyed
 7 compartmentation in the building, both between the flats
 8 and the exterior façade and across the façade and over
 9 the crown; on the knowledge and training and experience
 10 of the professionals and supervisors engaged on the
 11 project -- you will recall, of course, the firefighters
 12 were asked about their knowledge, and we expect the same
 13 to be put to the witnesses in Module 1; their attitudes
 14 to fire safety, to building control and the
 15 London Fire Brigade and how fire safety came to be
 16 afforded such a low priority; and how the use of this
 17 sort of cladding became so widespread in England.
 18 Moving on to the blame game, the FBU welcomes
 19 Mr Millett's exhortation to candour and the Royal
 20 Borough of Kensington and Chelsea's admissions. We hope
 21 others will do likewise.
 22 As matters stand, however, and consistently with
 23 their original position statements, their opening
 24 written and, those who have made them, oral submissions
 25 of the companies and organisations involved in the

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1 refurbishment project indicate that the key players in
 2 the refurbishment are keen to ringfence their limited
 3 involvement in the project, and thereby, whether openly
 4 or implicitly, to point the finger of blame away from
 5 themselves.
 6 There is a circle of corporate finger-pointing. It
 7 seems that no one organisation can be singled out.
 8 There is yet no and may never be one bad apple. Viewed
 9 with the large and widespread number of properties now
 10 blighted with Grenfell-type cladding, that indicates the
 11 problem is systemic and the whole system must be
 12 challenged. It also explains why so many victims feel
 13 so angry. We endorse Mr Maxwell-Scott's submission that
 14 this is a national problem and requires a national
 15 solution.
 16 Those submissions that I referred to of the core
 17 participants also show that there was some apparent
 18 uncertainty and confusion about the building
 19 regulations, the guidance in the approved documents and
 20 even the meaning of the BBA certificates. There was
 21 confusion of roles and responsibilities within the
 22 project, with professionals such as Studio E and Exova
 23 assuming only a limited role, and seemingly no one
 24 taking ownership of the design of the cladding system,
 25 including the windows and the choice of materials.

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1 So we have heard, for example, Mr Spafford
 2 highlighting this morning the difference in
 3 understanding between the TMO and Artelia of their roles
 4 under the contract and under the CDM Regulations,
 5 whether Artelia was a project manager or just
 6 a co-ordinator, employer's agents and quantity surveyor,
 7 for example whether Studio E or Artelia were appointed
 8 as lead consultant, and, for example, the TMO's decision
 9 not to employ a client design adviser. This is
 10 contentious, as appears from Ms Jarratt's oral opening
 11 submissions before lunch.

12 The main driver of the project was value for money,
 13 ahead of quality and programming. That appears clear
 14 from the evidence that's been disclosed to the core
 15 participants. The enforcement measures were inadequate,
 16 as has been admitted by the Royal Borough of Kensington
 17 and Chelsea in respect of building control, and there
 18 was a minimum compliance culture in relation to building
 19 works and fire safety, of waiting to be told what to do
 20 by regulators, rather than taking responsibility for
 21 building to correct standards aiming at minimum
 22 compliance instead of ensuring safety.

23 I just want to dwell on this minimum compliance
 24 culture for a moment. It's already exemplified to this
 25 Inquiry. Sir, a few examples.

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1 Studio E's assertion, made by Mr Popat QC on the
 2 first day of this module at page 53 of the transcript
 3 {Day1/53}, that Rydon tended not to use architects to
 4 the extent that other contractors might and envisaged
 5 their role as being more responsive.

6 Exova. Exova's assertion that it was more or less
 7 left out of any communications or information or details
 8 of the proposed cladding system, made by Mr Douglas QC
 9 on the second day.

10 And by Mr Wehrle's internal report for Arconic on
 11 6 July 2011, an internal report, cited by Mr Taverner QC
 12 for Rydon. Under the heading "European fire
 13 regulation", he noted Reynobond PE in cassette form was
 14 classified Euro class E, but a B class is the minimum
 15 required for façade in Europe. He went on:

16 "For the moment, even if we know that PE material in
 17 cassette has a bad behaviour exposed to fire, we can
 18 still work with national regulations, who are not as
 19 restrictive."

20 That, you may find, sir, is a clear indication that
 21 at least some companies appear to have gamed the system,
 22 to have taken shortcuts with fire safety, and that must
 23 never happen again.

24 Dame Judith Hackitt reported an interim report in
 25 December 2017 and followed it up with her final report

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1 in May of 2018, and all of this is foreshadowed by her
2 reporting. In her interim report of December 2017,
3 Dame Judith Hackitt said of the Grenfell Tower fire,
4 "This tragic incident should not have happened in our
5 country in the 21st century" -- I'm sure we all echo
6 that -- and her review would provide useful background
7 for this Inquiry.

8 Sir, I hope you will forgive me if I just remind the
9 Inquiry of what she said in this context, insofar as
10 it's relevant to Module 1. She described how the
11 regulatory system covering high-rise and complex
12 buildings was not fit for purpose, leaving room for
13 those who want to take shortcuts to do so. That's
14 page 5, paragraph 1.6 of her interim report.

15 Amongst so many findings to support that central
16 conclusion, she found enforcement and sanction measures
17 are poor and do not provide adequate means of
18 compliance, assurance, deterrence or redress for
19 non-compliance. That's paragraph 1.24.

20 Among her key recommendations was there is a need
21 for stronger and more effective enforcement within the
22 system, but this requires the necessary resources to be
23 available and demonstrably independent. Those charged
24 with enforcing must have appropriate enforcement powers.

25 The FBU agrees with Dame Hackitt's analysis and

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1 contends the lack of stronger and more effective
2 enforcement played a key causal role in the
3 Grenfell Tower disaster. That raises the question for
4 this Inquiry, we contend: why was enforcement
5 ineffective?

6 The FBU contends that this, this Grenfell Tower
7 tragedy, is a paradigm example of deregulation not
8 working, that companies in the construction industry
9 cannot be trusted to regulate themselves, that over
10 a decade of austerity cuts have reduced the
11 effectiveness of building control and of the fire safety
12 department.

13 In her final report of May 2018, Dame Hackitt noted
14 fire events since Grenfell. Obviously there have been
15 many more since Dame Hackitt's final report, but she
16 noted the ones until then. She said:

17 "Subsequent events have reinforced the findings of
18 the interim report and strengthened my conviction that
19 there is a need for a radical rethink of the whole
20 system and how it works. This is most definitely not
21 just a question of the specification of cladding
22 systems, but of an industry that has not reflected and
23 learned for itself."

24 That's page 5 of her final report.

25 She listed the key issues underpinning the system

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1 failure. The reason I just summarise those below is
2 because they reflect what I said earlier, and you may
3 find that it's almost a template for Module 1 of this
4 Inquiry.

5 Sir, the key issues underpinning the failure of the
6 regulatory regime:

7 Ignorance. Regulations and guidance weren't always
8 read by those who need to, and when they do read them,
9 the guidance is misunderstood and misinterpreted.

10 Indifference. The primary motivation is to do
11 things as quickly and cheaply as possible, rather than
12 to deliver quality homes which are safe for people to
13 live in. When concerns are raised by others involved in
14 building work or by residents, they are often ignored.
15 Some of those undertaking building work failed to
16 prioritise safety, using the ambiguity of regulations
17 and guidance to game the system.

18 Thirdly, lack of clarity on roles and
19 responsibilities -- I won't quote all that she says
20 about it -- and inadequate regulatory oversight and
21 enforcement tools.

22 Sir, a major part of the reasons underlying the
23 systemic failure in Dame Hackitt's assessment is the
24 absence of effective enforcement.

25 Judging from the opening submissions of the core

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1 participants to this Inquiry, Dame Hackitt could have
2 been writing about this very refurbishment project. The
3 FBU hopes the Inquiry will explore this minimum
4 compliance culture -- or "race to the bottom", as she
5 described it in her report -- in the Grenfell Tower
6 refurbishment project to discover whether the failure of
7 the enforcement agencies, particularly building control
8 and the fire safety department, played a causal role in
9 the tragedy.

10 At the risk of trespassing onto the ground reserved
11 for Module 5, but to explain the FBU's interest in
12 Module 1, the FBU contends that at the very time that
13 their job was becoming much more complex with
14 deregulation, which facilitated a much more flexible
15 approach to design and construction, successive cuts
16 over the last decade have led to reduced staffing levels
17 and enforcement budgets for building control and the
18 fire safety department. So it's a double whammy: the
19 job is getting more complicated, the staff is being
20 reduced, and the funds for enforcement.

21 Also, that deregulation has increased the workload
22 of enforcers by making their jobs more complex, this at
23 a time when they are subject to cuts, staff shortages,
24 increased workloads. I won't cite it because it hasn't
25 been disclosed yet, but see, for example, the witness

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1 statement under unique ID {RBK00033934} at paragraphs 3
2 to 4.

3 As Dame Judith Hackitt says at paragraph 3.23 of her
4 interim report, having a performance-based system which
5 relies on sophisticated judgements places increased
6 reliance on the competence of those undertaking the
7 design and construction of the buildings and the skill
8 and rigour of the regulators verifying the quality of
9 the work that's done.

10 Sir, the current regulatory regime allows greater
11 flexibility in design and construction, but, as the
12 statistics show, the enforcement authorities are denied
13 a commensurate increase in resources to provide and
14 train enough building control officers to do the extra
15 work involved. The same applies to the fire safety
16 department.

17 There was obviously ineffective enforcement of the
18 building regulations in this refurbishment. The FBU
19 contends that poor enforcement encouraged the minimum
20 compliance culture that I spoke of earlier, which
21 enabled the companies involved in the project to game
22 the system, take shortcuts and create this fire hazard.

23 The FBU contends the Inquiry should explore whether
24 deregulation and cuts to building control and the LFB,
25 particularly the fire safety department, materially

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1 contributed to the failure of effective enforcement of
2 the building regulations in the course of this
3 refurbishment project.

4 Thank you, sir.

5 SIR MARTIN MOORE-BICK: Thank you very much, Mr Seaward.

6 (Applause)

7 I think we don't have applause, I'm afraid, just
8 listen quietly. Thank you.

9 Now, Mr Mansfield, I said I would hear you at this
10 point. Are you ready?

11 MR MANSFIELD: Yes, I am.

12 SIR MARTIN MOORE-BICK: Yes, Mr Mansfield.

13 Submissions by MR MANSFIELD

14 MR MANSFIELD: Sir, madam. May we thank you for the
15 opportunity. I will be very brief.

16 The timing of this application on behalf of certain
17 corporates with regard to whether they will answer
18 questions or have immunity -- both are linked -- in
19 relation to those questions is highly reprehensible and
20 highly questionable, coming on the eve of evidence.
21 There has been plenty of time for this to have been
22 considered, as it does normally in inquiries and
23 inquests, with many weeks to go before you actually get
24 to the evidence.

25 So we have a major question over why it's been done

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1 today, because it has caused -- and I speak for Team 2
2 and Team 1 on this issue -- immense anxiety, distress
3 and anger, at a time which has come throughout a much
4 longer period of waiting after this disaster, of waiting
5 to get to the point of accountability, as it were to be
6 almost thwarted at the doors of the court.

7 As far as that is concerned, therefore, I'm not at
8 this moment going to go into the substance of it all,
9 merely to ask for your indulgence in a couple of ways.

10 One of them is that we don't seek to delay these
11 hearings at all. There is no desire -- I entirely
12 support your desire to conclude these matters within
13 a reasonable timeframe.

14 However, as you are aware, Team 1 and Team 2
15 comprise a very large number of BSRs, many of whom or
16 some of whom don't live in London, some live abroad, and
17 getting them together -- they're not all here today --
18 so that they can be spoken to together rather than in
19 a piecemeal fashion over telephone calls and so on is
20 a task which we would not engage in if this was a minor
21 matter. You will appreciate of course that this
22 decision will have far-reaching effects for the quality
23 and nature of this whole Inquiry. Therefore, explaining
24 what the repercussions are of the various options that
25 are open to the families to, as it were, contribute to

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1 you and your panel member's decision is something which
2 is taken very responsibly.

3 As far as that is concerned, we have already begun
4 the process. However, we are sitting tomorrow, and we
5 are not suggesting the application shouldn't be made
6 tomorrow; we would ask that they do, those who want to
7 make this, so that we can see whether the terms of what
8 is said tomorrow on their behalf measures with the
9 written material we have already been provided with, and
10 then we can make sensible measures to advise those
11 people. We can't do it tomorrow afternoon,
12 unfortunately.

13 So you know the proposal, there is going to be
14 an attempt to, as it were, hire a public building in
15 London not far from here where they will all gather.
16 Those of us, as it were, who represent the BSRs have
17 talked about this. It is possible to get the vast
18 majority to one place at one time to be advised by all
19 those who represent so it's done as you would wish it,
20 namely not staggered. But that will take some time on
21 Friday.

22 We would therefore come to the bald point, which is
23 this: would you be kind enough to allow us to make
24 representations orally on Monday morning first thing?
25 Before that, we would endeavour to get written

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1 submissions to both of you so you see in advance roughly
 2 what we may want to say.
 3 SIR MARTIN MOORE-BICK: That would be helpful.
 4 MR MANSFIELD: And it should shorten matters. I think it's
 5 shown, actually, over the openings, it has made
 6 a difference to do it in writing first.
 7 So we would endeavour to do that, I can't commit
 8 those who are actually doing the writing, but well
 9 before Monday morning.
 10 I pause in case somebody wants to correct me. No.
 11 Unless there is any matter you would like to ask me,
 12 I hope that's helpful.
 13 SIR MARTIN MOORE-BICK: It's very helpful. I agree, this
 14 application has come very late in the day and at a most
 15 inconvenient time.
 16 MR MANSFIELD: Yes.
 17 SIR MARTIN MOORE-BICK: The programme for Module 1 I think
 18 has been out in the open for several weeks, and the
 19 arrangements to call witnesses starting on Monday has
 20 been established for a long time, so it's very
 21 disappointing -- I might even use a stronger word --
 22 that the application is being made so close to the date
 23 for calling witnesses. I fully understand that you need
 24 time to explain to your clients what is and what is not
 25 involved, so I have a lot of sympathy with what you are

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1 asking for.
 2 Can I ask you to pause there for a moment, just to
 3 see if Mr Millett, who of course bears primary
 4 responsibility for organising what we do next week,
 5 wants to say anything about it, because it will mean
 6 changing the arrangements we have already made for
 7 witnesses to attend on Monday.
 8 MR MANSFIELD: Hopefully only slightly, but ...
 9 SIR MARTIN MOORE-BICK: Well, the difficulty is that I will
 10 have to hear submissions on Monday. I shall then have
 11 to consider what I have heard, formulate my own
 12 decision. If it's my decision that I should approach
 13 the Attorney, then that will take a little bit of time
 14 to organisation and may disrupt further the existing
 15 programme. That's not your fault, and there is nothing
 16 any of us can do about that, but I just think it would
 17 be helpful to give Mr Millett a chance, to see whether
 18 he has anything more to say.
 19 Mr Millett, do you have any response?
 20 MR MILLETT: Mr Chairman, no, I don't, other than to say
 21 that if Mr Mansfield thinks, on reflection, that he
 22 needs the time over the weekend both to provide you and
 23 indeed my team with written submissions and properly to
 24 be able to advise his clients so that they fully
 25 understand the ramifications of what's involved and to

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1 make a considered decision, then that's most important.
 2 SIR MARTIN MOORE-BICK: Yes.
 3 MR MILLETT: I am sure that we can make whatever adjustments
 4 to the timetable that we can for Monday suitably in
 5 advance. Of course, you will understand, Mr Chairman,
 6 that we have two witnesses currently slated for Monday,
 7 but if we start a little bit later on Monday and there
 8 is a small impact on the timetable, if it's to hold up,
 9 then that can be accommodated.
 10 Can I just say something else. Mr Mansfield
 11 mentioned hiring a hall somewhere. All I would do is
 12 extend the invitation to him to come to talk to us after
 13 this to see whether this room might be available.
 14 I speak without any instructions at all, but it does
 15 seem to me to be inconvenient to the BSRs to have to
 16 find somewhere else.
 17 SIR MARTIN MOORE-BICK: That's a good idea. Thank you very
 18 much, that's very helpful.
 19 MR MANSFIELD: I'm most obliged.
 20 SIR MARTIN MOORE-BICK: Mr Mansfield, as I have already
 21 said, I do understand the difficulties you have in
 22 explaining to your clients -- of whom there are very
 23 many, of course -- what this proposal involves and what
 24 it does not involve.
 25 MR MANSFIELD: Yes.

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1 SIR MARTIN MOORE-BICK: So what I am going to say is: yes,
 2 I will hear the application tomorrow afternoon as
 3 I indicated this morning as far as the applicants are
 4 concerned. I will then adjourn it to enable you to
 5 address me on Monday morning in the light of whatever
 6 instructions you are then holding.
 7 MR MANSFIELD: I am most obliged, thank you.
 8 SIR MARTIN MOORE-BICK: If we take that first thing on
 9 Monday morning at 10 o'clock, that will obviously
 10 disrupt Monday's proceedings to some extent, but it
 11 probably won't last too long, will it? Because there is
 12 only a certain amount that can be said.
 13 MR MANSFIELD: Well, I had better not make any promises.
 14 I think we can be succinct, and we don't wish to delay
 15 matters. I would have thought -- well, a couple of
 16 hours perhaps should be mentally put aside.
 17 SIR MARTIN MOORE-BICK: All right. Well, don't worry about
 18 the witness arrangements for next week, that's something
 19 that we will take care of, but we will hear you at
 20 10 o'clock on Monday morning.
 21 Are you going to address me on behalf of Team 1 and
 22 Team 2 as we call you, is that right?
 23 MR MANSFIELD: I think there is a consensus that I should do
 24 it. I'm not doing the openings, can I make it clear,
 25 tomorrow.

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1 SIR MARTIN MOORE-BICK: I noticed that. I have been given
2 the names of those who are.
3 MR MANSFIELD: I am concerned in a later module. Certainly
4 I'm very happy, unless somebody else wishes to do it, to
5 do it on Monday morning.
6 SIR MARTIN MOORE-BICK: Yes. All right. Probably I can't
7 help you any further at the moment, can I?
8 MR MANSFIELD: No, thank you.
9 SIR MARTIN MOORE-BICK: Thank you very much.
10 Now, we have made, again, extremely rapid progress.
11 I wonder if I could trouble Ms Barwise to come up to the
12 desk for a moment. It's very hard to talk to you at
13 such long range, I'm afraid.
14 The reason I asked you to come up is because we have
15 now got to the end of the business that was scheduled
16 for today.
17 MS BARWISE: Yes.
18 SIR MARTIN MOORE-BICK: But, as we have just been
19 discussing, we have additional business to fit in
20 tomorrow afternoon, at the end of a day in which, by my
21 reckoning, we have three and a half hours' opening
22 statements scheduled, and I was going to have the
23 temerity to ask you whether you are ready to go this
24 afternoon or would be if I were to adjourn now for
25 quarter of an hour to give you time to collect yourself?

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1 MS BARWISE: Yes, perhaps quarter of an hour so that I can
2 make sure I --
3 SIR MARTIN MOORE-BICK: I don't want to put you under any
4 pressure. I know you will have been expecting to
5 address us tomorrow.
6 MS BARWISE: Yes, I was.
7 SIR MARTIN MOORE-BICK: But it seems a shame at 2.45 to have
8 another short day.
9 MS BARWISE: Yes, and I totally understand that. The only
10 thing I would just like to check with my solicitors is
11 I know that some clients had planned to come tomorrow
12 for our opening, and that does give me a little
13 difficulty. In answer to your question, I understand
14 your timetabling, I would be more than welcome to
15 oblige, but I think there is just that issue, that many
16 have made plans.
17 SIR MARTIN MOORE-BICK: That's a very proper consideration,
18 so I'm not going to put you under any pressure, and
19 indeed you might not want to say everything that you
20 need to say today.
21 MS BARWISE: I was going to add a few things, sir, in light
22 of events.
23 SIR MARTIN MOORE-BICK: Well, look, we will rise for quarter
24 of an hour.
25 MS BARWISE: Yes.

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1 SIR MARTIN MOORE-BICK: We will sit again at 3 o'clock. At
2 that stage, you can tell me how you are placed, and you
3 can take instructions in the meantime and then we will
4 see where we go.
5 MS BARWISE: Most grateful.
6 SIR MARTIN MOORE-BICK: Although I'm anxious to use the time
7 available, I'm equally anxious not to put you in
8 a difficult position.
9 MS BARWISE: I'm most grateful for that, sir.
10 Just to say that on Monday, when you hear the
11 application, we would probably make some very short
12 observations, but they would be brief.
13 SIR MARTIN MOORE-BICK: All right. We will rise now and
14 come back at 3 o'clock, please.
15 MS BARWISE: Most grateful.
16 (2.45 pm)
17 (A short break)
18 (3.00 pm)
19 SIR MARTIN MOORE-BICK: Before we go any further, can I just
20 mention one thing in relation to this application that
21 we were discussing just before the adjournment.
22 I thought we had made it clear in the letter that
23 was sent to core participants, I think this morning or
24 maybe last night, that all core participants who want to
25 say something about the application are entitled to do

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1 so, but it would be very helpful if anyone who does have
2 a position would give me a brief statement of what that
3 position is as soon as it's able to do so. It doesn't
4 have to be anything lengthy, just give me an indication
5 of where you stand.
6 It would also be very helpful if you want to address
7 us orally on the application, that you make that clear
8 and give me a rough indication of how long you think you
9 might require for that purpose. Then we can plan for
10 the application in what I hope will be a satisfactory
11 way.
12 Now, Ms Barwise, I'm sorry, I put you on the spot
13 earlier on.
14 MS BARWISE: I'm most grateful for the time, sir.
15 The position is that there are lots of clients who
16 are coming tomorrow especially. I believe that's also
17 true of T2 as well. So I'm afraid I personally would
18 prefer not to, for that reason. But of course grateful
19 for the opportunity, but I'm afraid I can't ...
20 SIR MARTIN MOORE-BICK: No. I do understand. If people are
21 coming tomorrow because they expect you to be on your
22 feet, then they mustn't be disappointed.
23 MS BARWISE: I'm most grateful. I hope they won't be.
24 SIR MARTIN MOORE-BICK: I'm sure they won't.
25 In that case, we have reached the end of the

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1 programme for today. Again, we have done so rather more 103
 2 quickly than we thought was going to be the case, but
 3 there it is.

4 We have to stop there, and we will resume tomorrow
 5 at 10 o'clock, when we shall see you again, Ms Barwise.

6 MS BARWISE: Most grateful, sir.

7 SIR MARTIN MOORE-BICK: Thank you.

8 10 o'clock tomorrow, please. Thank you.

9 (3.02 pm)

10 (The hearing adjourned until 10 am on
 11 Thursday, 30 January 2020)

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