

# Grenfell Tower Inquiry

Rt Hon Suella Braverman QC MP  
The Attorney General's Office  
102 Petty France,  
London,  
SW1H 9EA

By email only

22 April 2020

Dear Madam Attorney General,

## **Osborne Berry Installations Ltd and other companies - Extension of Undertaking**

### **Background**

On 27 February 2020 the Inquiry received from Stephen Rimmer LLP a copy of their letter to your office of that date enclosing a request for the undertaking given in favour of witnesses who give evidence to the Grenfell Tower Inquiry to be extended to include Osborne Berry Installations Ltd ("Osborne Berry"). In subsequent exchanges your office expressed the view that any such request ought to be made by the Inquiry itself, taking into account the factors to which you referred in your letter of 26 February 2020. Your office also indicated that you would find it helpful to know whether similar requests might be made by other companies whose officers might be called to give evidence.

On 20 March 2020 the Inquiry wrote to all core participants explaining why it intended to make such a request in relation to Osborne Berry and asking them to identify any other companies which in their view should be brought within the scope of the undertaking. Those whom the Inquiry currently intends to call as witnesses include Mr Ray Bailey of Harley Facades Ltd ("Harley"), Mr Claude Schmidt of Arconic Architectural Products SAS ("Arconic"), and Mr Carl Stokes of C S Stokes and Associates Ltd ("C S Stokes").

### **The responses to the Inquiry's letter**

The Inquiry received the following responses to its letter:

- (i) The solicitors acting for Harley Facades Ltd ("Harley") say that the company is wholly owned by Mr Ray Bailey, who is also its sole director. They therefore submit that he personifies Harley and that some, if not all, of the answers he gives to questions put to him may be regarded as answers given by Harley itself. They

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therefore make it clear that unless the undertaking is extended to cover Harley, it is likely that Mr Bailey will claim privilege on behalf of the company.

- (ii) The solicitors acting for Arconic say that as President of the company Mr Claude Schmidt represents its controlling mind and will and that some, if not all, of the answers he gives to questions put to him may be regarded as answers given by Arconic itself. They have therefore indicated that unless the undertaking is extended to cover Arconic, Mr Schmidt will claim privilege on behalf of the company. They have also said that Arconic will contend that the right of the company to claim privilege against self-incrimination extends to questions put to its servants and agents generally. That point was considered, but not determined, by the House of Lords in *Rio Tinto Zinc Corporation & Others v Westinghouse Electric Corporation* [1978] AC 547. Although it has been adverted to in subsequent decisions, it remains open.
- (iii) The solicitors acting for C S Stokes say that they do not seek an extension of the undertaking in favour of their client, because it is confident that no significant criticism can be made of its work.
- (iv) The solicitors acting for J S Wright & Co Ltd, two of whose directors are expected to give evidence in due course, say that they are unable to make any submissions at this stage.
- (v) The solicitors acting for Artelia UK Ltd have confirmed that their client does not seek to have the undertaking extended to cover it.

The Inquiry's letter to Core Participants and the responses received are attached as **Appendix A**.

### **The position of the Inquiry**

As has been recognised, it was necessary for the Panel to ask for an undertaking to ensure that witnesses answered questions put to them fully and frankly without being concerned that by doing so they might expose themselves to a risk of prosecution. The question we have now had to consider in the light of the correspondence to which I have referred is whether it is necessary to ask for the undertaking to be extended to some or all legal persons in order to enable the Inquiry to carry out its work effectively.

There are two aspects to be taken into account: ensuring that the Inquiry can obtain the evidence it needs in order to carry out its investigations and avoiding undue disruption to its hearings. Both are important if the work of the Inquiry is to proceed as quickly and effectively as it should. The disruption that may be caused by successive claims for privilege, even if ultimately unsuccessful, could be considerable, because in each case it will be necessary to consider the relationship of the witness to the company (possibly in relation to the particular subject matter)

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and whether the question is one which is either directed to the company or which only the company can answer. In addition, there is always a risk that the Panel's decisions on these matters could be challenged in the courts.

Having considered carefully the factors set out in your letter of 26 February 2020 the Panel has come to the following conclusions.

### **Osborne Berry**

Osborne Berry is a company used by Mark Osborne and Grahame Berry as their business vehicle. They own all, or almost all, of the shares in the company in equal proportions and are the only active directors. Between them they control the company, which enters into sub-contracts for the installation of windows and cladding in residential and commercial premises. The company installed the windows and cladding on Grenfell Tower as a sub-contractor of Rydon. Both Mr Osborne and Mr Berry work for the company and both worked on Grenfell Tower.

The evidence of Mr Osborne and Mr Berry is directly relevant to the Inquiry's investigation into the design and construction of the building and its compliance with relevant regulations and guidance (paragraph (i)(b) and (d) of its Terms of Reference). Osborne Berry was responsible for installing the cladding and some criticisms have been made by experts instructed by the Inquiry of the work it carried out. It is therefore necessary to understand what instructions the company was given, how its fitters carried out their work, what degree of supervision and inspection was undertaken, when and by whom, how a quantity of insulation material of a kind different from that which had been specified was incorporated into the cladding and the extent of the company's contact with Building Control. Mr Osborne and Mr Berry have important evidence to give on these matters and will therefore be called as witnesses.

Osborne Berry is a "two-man" company and it is clear from the submissions that have been made by Stephen Rimmer that Mr Osborne and Mr Berry are likely to claim privilege against self-incrimination on behalf of the company on the grounds that "when they give evidence before the Inquiry, they effectively represent themselves and embody the company simultaneously".

Privilege against self-incrimination has to be claimed in response to a specific question and it is not possible, therefore, and indeed would be undesirable at this stage, to attempt to give examples of questions that might cause privilege to be invoked. However, since both Mr Osborne and Mr Berry were carrying out work in the name of the company, it is possible that each of them might have to be regarded as embodying the company for the purposes of answering some questions relating to acts that he carried out on its behalf, and perhaps more generally.

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In those circumstances the Panel has reached the conclusion that in order to enable the Inquiry properly to carry out its work it is necessary for the undertaking to be extended to cover Osborne Berry.

## **Harley**

Harley was the cladding sub-contractor and as such was heavily involved both in the design of the cladding system and the choice of materials. It was also responsible for the installation of the cladding, a task which it sub-contracted to others, principally Osborne Berry.

Mr Ray Bailey is the sole owner and director of Harley. He therefore exercises total control over it as the vehicle through which he carries on business. His evidence will be central to the Inquiry's investigation into the circumstances that led to the design and installation of a highly combustible cladding system. As in the case of Osborne Berry, it is not possible to give examples of questions that might cause privilege to be invoked, but it is very likely that Mr Bailey will have to be regarded as embodying the company for the purposes of answering some questions. If he is able to claim privilege successfully on behalf of Harley, the evidence will not be obtained, but even if the claim fails time will be wasted and the Inquiry's work disrupted.

In those circumstances the Panel has reached the conclusion that in order to enable the Inquiry properly to carry out its work it is necessary for the undertaking to be extended to cover Harley.

## **Arconic**

Arconic is a French company and without having heard any evidence about the position of Mr Schmidt it is difficult to know whether he can properly be regarded as embodying the company for any particular purpose. However, the possibility cannot be discounted. Of greater concern, however, is the indication that Arconic is minded to pursue the *Rio Tinto* argument, which is potentially of far-reaching significance and might well give rise to a challenge in the courts. If it were to do so, it is likely that the decision (whichever way it went) would be the subject of an appeal. That could be very disruptive.

In those circumstances the Panel has on balance reached the conclusion that in order to enable the Inquiry properly to carry out its work it is necessary for the undertaking to be extended to cover Arconic.

## **C S Stokes**

C S Stokes is another "one man" company, being the corporate vehicle through which Mr Carl Stokes carries on business. Its position is therefore the same for practical purposes as that of Osborne Berry and Harley. Although its solicitors say that they do not seek an extension of the undertaking in its favour, that appears to be based on the perception that there are no grounds for criticising their client. However, it is possible that by the time Mr Stokes comes to give

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evidence the position may have changed. The company cannot effectively commit itself at this stage to waiving privilege.

## **The broader view**

In the light of the significant developments to which I have referred, I should be grateful if you would give further consideration to extending the undertaking to legal as well as natural persons generally. To do so would ensure that if, on a correct understanding of the facts, a potentially incriminating answer were given by a company, it would receive the protection to which it is entitled under the general law and no more. It would also place all companies on an equal footing and would ensure that the Inquiry could take the evidence of the witnesses without the risk of disruption resulting from claims to privilege.

I respectfully suggest that, in the circumstances as they now exist, to extend the undertaking to legal persons generally would serve the public interest. However, if you do not consider that to be the case, I should be grateful if you would at the least extend the undertaking to cover Osborne Berry, Harley, Arconic and C S Stokes.

Yours sincerely,



**The Rt Hon Sir Martin Moore-Bick**

**Chairman**