

IN THE MATTER OF THE GRENFELL TOWER INQUIRY

SUBMISSIONS ON BEHALF OF HARLEY FACADES LTD IN RESPECT OF EXTENDING THE ATTORNEY GENERAL'S UNDERTAKING TO CERTAIN LEGAL PERSONS

INTRODUCTION

1. These submissions are drafted on behalf of Harley Facades Limited and address the issue of extending the Attorney General's undertaking to certain legal persons.
2. The relevant background to these submissions is as follows:
3. On 20th March a letter was sent on behalf of the Public Inquiry to all Core Participants in relation to an application to the Attorney General, made on behalf of Mark Osborne, Graham Berry and Osborne Berry Installations Ltd ("Osborne Berry"), to extend the undertaking previously given, which applies to natural persons only, to the Osborne Berry company through which Mr Osborne and Mr Berry carry on business.
4. The 20th March letter stated that 'the Attorney General's Office has informed the Public Inquiry that any application to extend the scope of the undertaking to a specific legal person should be made by the Public Inquiry itself, if it considers that such an extension is justified in light of the Attorney's decision of 26th February 2020'. On consideration of the matters, the Panel reached the conclusion that it is necessary for the undertaking to be extended and set out reasons at (i) to (vi) of the letter.
5. The 20th March letter invites Core Participants to 'identify any other companies which in their view should be brought within the scope of the undertaking in order to enable the

Inquiry to carry out its work, setting out the grounds on which that step is said to be necessary’.

6. It is submitted that Harley Facades Limited should be brought within the scope of the extended undertaking for the reasons set out below.

SUBMISSIONS

7. As recognised in the Public Inquiry’s letter of 20th February 2020, it is well established that a company can itself both answer questions and claim privilege against self-incrimination if the answer would tend to expose it to a risk of prosecution (*Triplex Safety Glass Co Ltd v Lancegaye Safety Glass* (1939) 2 K.B. 395).
8. Harley Facades Limited (‘Harley’) is a company with a sole director, Mr Ray Bailey. He also owns the company in its entirety.
9. Harley’s business at the time of the Grenfell Tower Project involved estimating, designing and project managing construction packages of external facades including curtain walling, windows, doors, structural glazing and rainscreen cladding systems on residential and commercial buildings.
10. At the time Harley employed around 16 employees, four of whom have been called as witnesses to the Public Inquiry; Mark Harris, Mike Albiston, Daniel Anketell Jones and Ben Bailey.
11. In terms of Mr Bailey’s involvement in the Grenfell Tower refurbishment project as per his Rule 9 statement [HAR00010184, para 9]:

“On a day to day basis my role as the director of Harley was to oversee the projects the company was working on. This involved, amongst other things, going through estimating work, reviewing key concept drawings for buildability and discussing projects internally. These would not be formal, minuted meetings. There were less frequent internal progress meetings, which I attended. I would usually visit each site once every 2 to 3 weeks to see how work was progressing. On occasions, I would visit projects more frequently. I would also work with Mark Harris (Commercial Manager) on the sales side of the business”.

12. Accordingly, Mr Bailey’s evidence is directly relevant to the Inquiry’s investigation into the design and construction of the external façade and its compliance with the relevant regulations and guidance in place at the time; and in particular Issues 4 and 6 of the Table of Issues under investigation and set out in full below:

Issue 4. Modifications to the exterior of the building 2012-2016 (including cladding and insulation)

- (a) What was the purpose of the cladding/insulation to the exterior of the building?*
- (b) What was its design, manufacture, composition and method of fixing to the building?*
- © To what extent did the design and construction of the modifications to the exterior of the building take account of the design and construction of the interior of the building? If it did not, in what respects did it not and why not?*
- (d) Was the exterior of the building (including the cladding, insulation, fixings and windows) compliant with relevant building regulations, fire regulations, other legislation, British Standards (including testing requirements), guidance and industry practice?*
- (e) To the extent that it was compliant with such regulations, legislation, British Standards, guidance etc. were any of those inadequate and if so in what respects, so far as relevant to the nature and immediate causes of the fire and its spread?*
- (f) If not compliant in any respect, what elements or aspects of the exterior of the building at the time of the fire failed to comply with what elements or aspects of what regulations, legislation, British Standards, guidance, industry practice, and in each case to what extent?*
- (g) Who was responsible for such failures?*
- (h) What advice or information was available, and what assessments were made, about the components that comprised the exterior of the building, their fire safety, fire-resistance and compliance with safety standards (including information or advice from manufacturers of relevant components)?*
- (i) Was specific consideration given to the combination of the exterior components (e.g. cladding, insulation, windows, and methods of fixing) and the fire safety, fire-retardancy and compliance with safety standards of the same?*
- (j) How commonly used are:*
 - (i) these particular cladding panels;*
 - (ii) this type of insulation;*
 - (iii) any other relevant parts of the exterior e.g. fixings/windows in the UK and elsewhere and are there relevant lessons to be learned from the use/regulation of such matters elsewhere?*
- (k) What decisions about the exterior of the building (i.e. cladding, insulation, fixings and windows) were made, by whom and when?*
- (l) What was the chain of decision-making, communication and responsibility about the cladding, insulation, windows and fixings?*

- (m) *What factors or motives influenced the decisions about the exterior of the building?*
- (n) *What if any assessments were carried out to balance such factors or motives with the safety of the residents?*
- (o) *If such assessments were carried out, who carried them out, when and what did they conclude?*
- ...

Issue 6. Inspections

- (a) *What fire and other relevant inspections (including building control inspections) were carried out:*
 - i. *During the recent renovations; and*
 - ii. *Between the completion of the recent renovations and the fire?*
 - (b) *What were the relevant conclusions/ reports from those inspections and by whom were they carried out?*
 - © *Pursuant to what criteria were such inspections carried out, how frequently and by what personnel?*
 - (d) *Were the inspections compliant with all relevant standards?*
 - (e) *Were the fire and other safety inspections system (including any criteria applied) reasonably fit for purpose?*
 - (f) *Who carried out the inspections, how were they trained and were they competent to do so?*
 - (g) *What was the system for implementing conclusions/ recommendations following such inspections?*
 - (h) *Was that system operated properly or at all?*
13. Criticisms have been made by the Public Inquiry’s experts of the work carried out by Harley Facades in particular in relation to the materials used, the design of, installation and inspection of works in relation to the external façade at Grenfell Tower.
14. As is evident from Mr Bailey’s statement [INQHAR00010184] he was directly involved in the Grenfell Tower project. Accordingly, in giving evidence to the Public Inquiry he will be answering questions simultaneously on behalf of himself and Harley, the company.
15. This was the situation which was envisaged by the Chair and Panel Member in their Ruling on whether to request an undertaking from the Attorney General (dated 6th February 2020):

Paragraph 22: *“...difficulties may arise when, for example, the person giving evidence both represents himself and embodies a company. The problem is most acute in the case of “one-man” companies, but could easily arise in relation to small companies where the managing director is also the person who carries out important parts of the company’s work. In such cases it may be impossible to distinguish between the individual and the company”.*

Paragraph 23: *“Clearly, not every employee not even every director represents the company for that purpose and it might prove difficult at a later stage to decide whether any particular answer was give on behalf of the company, but*

that would have to be determined by others at a later date. In our view, the only fair and workable solution is for the undertaking to cover answers given by a witness when speaking on behalf of the company who he or she represents. It would be for the company seeking to rely on the undertaking to show that the answer given by the witness could not be used against it. If the undertaking is limited to natural persons, we think that those who are directors of small companies are likely to invoke the privilege against self-incrimination on behalf of the company and thereby avoid answering questions which have a direct bearing on their own actions. It is also very difficult to see what offences could have been committed by any relevant corporate entity in respect of which questions directed to individual witnesses would not also present the risk of criminal proceedings, albeit for separate offences. For those reasons we shall ask the Attorney-General for an undertaking that extends to both natural and legal persons”.

16. The relationship between Mr Bailey and his company is so close that it will not be possible to draw a meaningful distinction between answers given in a purely personal capacity and answers given as representative of the company. As the sole director of a small company it is likely that Mr Bailey will invoke the privilege against self-incrimination on behalf of Harley Facades Limited.

17. Accordingly, it is submitted that, in order to allow the Public Inquiry to fulfil its important function and avoid unnecessary disruption of the Inquiry’s proceedings, the Public Inquiry ought to seek an extension to the current undertaking given by the Attorney General to bring into the scope of the privilege against self-incrimination Harley Facades Limited.

JLQC

A.T.

2 Hare Court

March 23rd 2020