Grenfell Tower Inquiry

Day 4

January 30, 2020

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(10.00 am)

SIR MARTIN MOORE-BICK: Good morning, everyone. Welcome to today's hearing. Today we're going to hear opening statements on behalf of the bereaved, survivors and other residents of the Lancaster West Estate.

So, without more ado, I shall invite Ms Barwise to make an opening statement. Thank you.

Opening statement on behalf of BSRs Team 1 by MS BARWISE

MS BARWISE: Good morning, sir. Good morning, madam.

The bereaved, survivors and residents come to you in the confident expectation, based on the Chair's exhaustive and exacting Phase 1 report, that you and your team will leave no stone unturned in seeking to establish where responsibility lies for the disaster.

The BSR know that the factors which led to the fire are complex, interwoven and deep seated. Responsibility lies in more than one place. Any adequate explanation of a disaster on this scale is not susceptible to simplistic or one-dimensional narratives, and the BSR are confident the Inquiry will be wary of any attempts to advance them.

Your starting point is Module 1, which will be concerned with the detail of how the 2012 to 2016 refurbishment was carried out. But, as this is the

opening of Phase 2, and given the need to identify where responsibility for the disaster may lie, I inevitably mention, as indeed have others in opening, matters which arise in other modules.

In these submissions, as in our written submissions, I propose to address the design of the refurbishment and the roles and responsibilities held by the various core participants. I intend to do so by examining what those core participants now say in order to obfuscate, deflect responsibility and blame others for the disaster that ensued.

I will end by addressing the urgency of the need to prevent recurrence of such a disaster.

Before examining the refurbishment, it's necessary to look back to the seeds of the fire, which were sown before a single drawing was produced.

The decision to refurbish Grenfell was a product of knee-jerk reactions rather than carefully thought out plans and decisions. The relevant history is that the Lancaster West Estate, within which Grenfell sits, had been left to deteriorate. It had received no real investment since its inception in the 1970s. Among the many problems faced by residents, the tower's heating and hot water system was beyond economic repair, and its windows provided neither the sound nor insulation

required by modern standards.

By 2009, RBKC had engaged consultants to consider what to do with Grenfell. The resulting report, the Notting Barns South Draft Final Masterplan, recommended demolition of the tower and one of the three finger blocks. In the event, neither that plan nor any other cohesive strategy for investment in the area was adopted.

Instead, RBKC reacted at the last possible moment to pressing needs within the area by deciding to construct a school for which it could obtain grant funding under the government's Building Schools for the Future programme. That project was the Kensington Academy and Leisure Centre, known as KALC.

By this point, Grenfell's pressing needs had reached such a degree of criticality that they could no longer be ignored. Moreover, the adverse effect that the construction of KALC would have on Grenfell's residents meant that refurbishment was seen as a necessary step to assuage the residents, who were by now complaining about KALC.

An obsession with aesthetics which was to dog the project began at this early stage. RBKC and the TMO feared Grenfell would appear a poor cousin to this brand new facility next door. Grenfell was also regarded as

an eyesore by Studio E, the architect RBKC had engaged for KALC, who later became the architect of Grenfell. Studio E expressed the view that Grenfell created a poor quality frontage for KALC, thereby endangering the success of the KALC project, which remained RBKC's priority throughout. Overcladding Grenfell was seen as a solution to RBKC and others' aesthetic concerns.

The decision to clad the academy, part of the £40 million KALC development, in a powder-coated, highly combustible core insulating panel set into motion the fate of Grenfell's cladding. The contractors at Grenfell would later seize upon the cladding used on the academy as having set a precedent, saying, "Next door are using powder-coated aluminium, so not an inferior product", precedent already set. It was an unfortunate precedent. The powder-coated aluminium cladding panel used on the academy has an unacceptably poor reaction to fire, namely Euro class E, and is also an insulating core panel, which poses particular risks in the event of fire, as indicated by the specific warnings in appendix F of Approved Document B.

Besides aesthetics, another important design priority for Grenfell was RBKC's and TMO's desire to offset part of the cost of the refurbishment by obtaining funding for environmental sustainability.

This desire was reflected in the design team's imperative to win a BREEAM award, an environmental award curated by the BRE, the Building Research Establishment. Both that and the requirement to obtain ECO funding were later incorporated into Rydon's pre-construction agreement and the ultimately agreed design and build contract.

Given the current environmental imperative, the drive to reduce carbon emissions was laudable, but it is perhaps an opportune moment to reflect on the fact that, at Grenfell at least, that drive very directly led, with much encouragement from the insulation manufacturer Celotex, to the use of combustible insulation behind the rainscreen cladding, which fuelled the inferno which ensued. The use of combustible insulation results in fires at much higher temperatures than they otherwise would be, and so it was at Grenfell.

The designers at Grenfell were keen, in order to win the BREEAM award not only to meet but to exceed the requirements of Approved Document L, which imposes thermal efficiency requirements expressed as target U-values. That aim, whilst admirable in itself, did not excuse the need to ensure that the form of insulation used was capable of complying with the fire safety requirements of the building regulations.

Yet the importance of fire safety appears to have been overlooked. That overfocus on sustainability at the expense of fire safety is reflected nationally in the guidance underlying the building regulations, in that there is an inherent potential conflict between Approved Documents L and B which has not expressly been addressed, as it must be.

Returning to TMO, in the execution of these hastily defined project objectives, TMO's behaviour was far from the flawless image it now seeks to project. From the outset, it disregarded its procurement obligations in a way that likely affected the quality of the refurbishment.

TMO circumvented public procurement legislation by requiring the consultants involved in KALC, whom TMO decided to use on Grenfell, to cap their fees below the thresholds at which the then in force Public Contract Regulations would have required a competitive procurement process under what is known as OJEU, namely the Official Journal of the European Union. The balance of the consultants' fees would later become payable by the contractor once the professionals' contracts had been novated to it. Such a procurement process would have ensured transparent competition, and should have resulted in the most suitable and qualified

professionals being appointed.

Instead, TMO conducted no competitive process and, apparently on the grounds of speed and convenience alone, retained Studio E as the architect for Grenfell, even though Studio E had no experience of high-rise building or heating renewal, nor of cladding. And, as one of their architects said in an email upon winning the project, they were "a little green on process and technicality, so I propose some rapid CPD".

A further breach of the procurement procedures occurred in the process used to select the contractor. For this, an OJEU procurement process known as the restricted procedure was used, but TMO entered discussions with Rydon alone prior to the award of preferred bidder status, seeking a reduction in costs of £800,000, namely the amount by which Rydon's tender exceeded TMO's available budget. That private negotiation included, amongst other reductions, a £243,000 reduction in the cladding costs, involving a change from the zinc cladding specified to one of the alternative options included within the specification, namely aluminium composite panels.

This requested reduction was dressed up as value engineering, but to be properly so described it would have needed to preserve or improve functionality at

a lesser cost. That is not what happened. Indeed, the TMO seems to have given no thought and asked no questions as to whether performance, including safety, was in any way compromised by this cost reduction.

TMO was advised that giving one contractor an opportunity to engage in the so-called value engineering process to the exclusion of others would invalidate the procurement process and, as a result, it was careful not to formally agree this variation until after the award of the contract. This manipulation of the procurement process was not transparent and may arguably have adversely affected the selection process.

There are, of course, other early contributing factors to the scale of the fire beyond those that I have mentioned, and beyond the refurbishment project itself. Many of these factors are rooted in the mismanagement of the tower and necessary repairs by TMO over many years. Doors are an obvious example. Why did TMO simply remove door closers on discovering, as Dr Lane explains in her Phase 1 report, that there was a systemic problem with the door closers? An important question for Module 3 will be why the systemic fault was not addressed, and why the door closers were not better maintained so that they did not permit the entry of significant amounts of smoke early in the fire.

If further evidence of TMO's complacent attitude to fire is needed, one need look no further than the fact that, prior to the refurbishment, no one had troubled to reduce the fire strategy for the tower to writing. That is very telling. The purpose of a fire strategy is to ensure the building is compliant with legislation and to ensure the safety of those within it.

Publicly available specification 911, dated 2007, advises that a strategy should be prepared as a necessary precursor to deciding upon the fire prevention and management practices which are required by the Regulatory Reform (Fire Safety) Order 2005. TMO and RBKC both bore responsibility for ensuring the necessary fire prevention and management practices under the fire safety order.

TMO's fire risk assessor, Carl Stokes, also played his part by careless statements regarding not only the nature of the cladding, but also stating the lifts were firefighter lifts when they were not, overriding the Fire Brigade's advice that a premises information box was required, and, more fundamentally, his failure to adopt the correct approach to fire risk assessments in failing to consider the nature of the population of Grenfell at all, leading to a flawed assessment of the consequences of fire.

None of Stokes' failures excuse TMO. It had been clearly warned by the fire brigade during a bi-monthly meeting in early January 2016 that Stokes was prone to making unjustified statements. Faced with that warning, TMO cannot now say it was entitled to rely on Stokes without question.

A further very significant example of TMO's contribution to loss of life is its failure to produce personal evacuation emergency plans, referred to as PEEPs, for the many residents who suffered from mobility or cognitive disorders. This failure was despite being well aware that such plans were required, since TMO proposed production of PEEPs for TMO staff but not residents. Furthermore, the fire risk assessments produced by Carl Stokes all recorded that PEEPs would be put in place. On the night of the fire, there were none.

There is therefore much within the confines of Module 1 and beyond with which TMO, if it were being entirely candid with this Inquiry, could reproach itself. Instead, TMO's opening statement expresses regret as to the events leading to the fire, but essentially says that all its actions were based on advice of the professionals. This is to overlook some very serious failings for which no one but TMO is to

blame, and which contributed to the loss of life.

Whilst we recognise the participants' submissions are generally addressing Module 1 issues, the participants are equally well aware that this is the opening of Phase 2 and what they say now is critically important. It is misleading for a party to express, as TMO does, its sympathy, remorse and sorrow for the horrifying and tragic events which took place on the night of the fire, and then to conclude, as TMO does, that it is undeniable that the design and construction of the refurbishment compromised the safety of the building and led to a tragic loss of lives, without acknowledging any aspects of TMO's own performance which contributed to that compromised state and that loss of life. That denial of responsibility by TMO is reflective of an approach being adopted by all too many of the core participants, each of whom, as Counsel to the Inquiry has observed, indulges in a blame game.

What should be happening is that each body should consider its conduct, reflect honestly upon the adequacy of it, and, seeing how its own behaviour, together with that of others, played out, make constructive suggestions as to how to avoid the recurrence of this terrible disaster or anything like it.

On the contrary, each core participant's eyes are

too firmly fixed on ways to avoid legal liability at the expense of examining what in fact happened. They have all been at pains to tell you in opening how co-operative with the Inquiry they have been and are being. But TMO, Harley, various former and current Rydon employees, Osborne Berry, Kevin Lamb and Studio E gave the lie to that by intimating to the Inquiry late on Tuesday evening their intention to invoke privilege against self-incrimination and refuse to answer questions unless the Attorney General gives an undertaking preventing their oral evidence from being used against them in criminal proceedings.

Whilst in other circumstances no criticism of those under threat of criminal proceedings would arise for seeking such an undertaking, the timing of this application, which clearly could and, if it was going to be made, should have been made many months ago, gives the appearance of sabotaging this Inquiry. These core participants know that seeking these undertakings will inevitably cause delay, and the timing of this application is much to their discredit.

The behaviours of arrogance and complacency which caused the disaster at Grenfell still rage unchecked among many of the core participants. The only party which admits it could have done something better and was

at fault, without seeking to say its fault had no effect, is RBKC commenting on its own building control department. It does so now only in the face of clear expert evidence enumerating those failings. It is no coincidence that such admission is prefaced by a denial of any legal liability for failures in reliance on the principle that a local authority planning department owes no duty of care in tort under the judgment of the House of Lords as it then was in Murphy v Brentwood. That submission in any event overlooks the fact that the House of Lords in that case expressly left the door open for the possibility of a duty of care arising in the event of physical harm. Arguably, a case such as Grenfell is precisely why that door was left open.

RBKC's approach is therefore consistent with TMO's and the corporate core participants' general stance, which appears to be the denial of liability at the expense of addressing responsibility.

It was suggested by RBKC's counsel yesterday that there might be confusion as to the separation of functions between RBKC and TMO. There is none. RBKC's role and function were separate from TMO's, but in some areas they bore joint responsibility. So, for example, as building owner, RBKC's CEO was a responsible person under the Regulatory Reform (Fire Safety) Order 2005.

The TMO was also a likely responsible person under the order. RBKC also fails to mention that it had a scrutiny role over TMO. The effectiveness of that scrutiny will need to be examined by this Inquiry. To the extent that RBKC now seeks to minimise its role by pointing to TMO, who is effectively its subcontractor, it is behaving in the same way as the corporate participants.

One hallmark of the Grenfell disaster is the epidemic level of incompetence from a fire safety perspective across substantially all the disciplines involved, both in the refurbishment and in the management of the building. These disciplines include TMO and its fire risk assessor, and many of the professionals and contractors involved in the refurbishment, principally the fire engineer, Exova, Studio E, Rydon, Harley, and other subcontractors, as well as RBKC building control.

Before addressing the extent to which the relevant core participants were incompetent, it's necessary to consider the question of compliance with the building regulations and other guidance.

The building regulations impose a set of functional requirements or outcomes which must be achieved. The requirements governing fire safety are B1 to B5, and B4

is the requirement that the external wall shall adequately resist the spread of flame.

It is argued by many of the core participants that lack of clarity in Approved Document B, which is the guidance underlying the building regulations, led to confusion. As to that, whilst it is true that Approved Document B, known as ADB, is based on a post-war 1946 document and is not fit for purpose in some fundamental respects, nevertheless it was sufficiently clear as to the requirements for a façade on a building over 18 metres tall, as Grenfell was.

There are four possible routes to compliance, three of which derive from ADB. First, either the precise cladding proposed is tested by a large-scale test carried out in accordance with BS 8414. Second, the so-called linear route, which requires that the cladding should use only limited combustibility insulation, and the external surface of walls should comply with diagram 40, namely be national class 0 or Euro class B-s3,d2 or better. Third, a holistic fire engineered study. Fourth is a route postulated by the Building Control Alliance technical guidance note 18, namely a desktop study.

There is no evidence that, at Grenfell, any consideration was given to following any of the four

routes to compliance. No large-scale test was considered, nor holistic fire engineered study, nor desktop. As a result, by default, the designers and contractors must have been following the linear route. Insofar as the designers and contractors appear to have been concerned about any aspect of compliance, they seem to have taken comfort, or at least claim they may have done so, from the fact that the BBA certificate for the cladding panel was class 0, and the fact that the insulation literature said the product was class 0.

ADB was absolutely clear in requiring limited combustibility insulation in the external walls if the linear route to compliance was being followed. That is clear from industry guidance notes current at the time of Grenfell. The Building Control Alliance technical guidance note 18 first issued in June 2014 recommended that if the linear route to compliance was followed, all key components of the cladding should be limited combustibility.

Additionally, this was clear from guidance produced by the Centre for Windows and Cladding Technology, the standard for systemised building envelopes, which was expressly incorporated by reference into the employer's requirements in Rydon's contract.

It appears the designers and contractors fell

broadly into two camps at Grenfell: they either did not think about compliance at all, or many of those who did address it seem to have understood what was required and ignored it. This is one of the more troubling emerging themes, that many of the professionals and contractors wilfully failed to comply with the regulations or statutory guidance, despite being fully aware of and understanding the guidance.

The most egregious example of this is Exova. The fire engineer, described by Dr Lane as "top tier", was retained by TMO at the outset of the Grenfell refurbishment pursuant to two separate instructions: first, to prepare a fire strategy for the existing building, and, second, for the proposed refurbishment. Pursuant to these instructions, Exova produced a fire strategy for the existing building, an initial design note and three iterations of the outline fire strategy for the refurbishment.

Dr Lane finds that each of these five documents was fundamentally flawed, starting with the fire strategy for the existing building, which represented a missed opportunity to provide assessment of fire risks that resulted from any difference between the original and current guidance. Each successive Exova fire strategy should have informed the next, but failed to do so in

a positive way due to the flaws in each.

The fundamental flaw in all three versions of the outline fire strategy was that it failed to adequately address functional requirement B4, "External fire spread", and in fact made a negligent misrepresentation in that it read:

"It is considered that the proposed changes will have no effect on the building in relation to external fire spread, but this will be confirmed by an analysis in a future issue of this report."

This statement was seriously misleading because, by the time it was made in November 2013, the design team knew that Exova had been copied in on the stage C report issued in October 2012, which made clear that both new insulation and zinc composite rainscreen cladding were proposed. Given that the strategy contained no caveat or exclusion relating to the cladding system, the natural reading of that statement was that Exova had taken the cladding and insulation into account.

Given that the existing concrete was non-combustible and that any form of metal composite cladding was almost inevitably going to be combustible, Exova must have known the cladding represented a worsening of the condition of the existing building.

That was therefore a material alteration within the

meaning of the building regulations and, as such, ought to have been flagged up. It seems, however, that a culture within Exova, certainly amongst those who worked on the Grenfell strategies, was to play down potential non-compliance in order to get around the building control officer.

In a contemporaneous email in the context of the ventilation system, one of Exova's employees acknowledged that the proposals amounted to "making an existing crap condition worse", and an instruction to the effect that "no sprinklers wanted" was simply accepted instead of being questioned.

Exova saw its role and means of adding value as one of advising on the building control officer's likely attitude, and to massage the presentation of certain aspects of the design in order to avoid a proposal being rejected as non-compliant.

Exova was clearly at fault and yet accepts absolutely no responsibility for any shortcomings in its performance, despite the eviscerating report of Dr Lane, in which she considers Exova's failure to fully address functional requirements B1, B2, B3 and B5 and the total omission of B4 evidences serious incompetence.

Furthermore, Dr Lane considers that Exova's failure to issue a revised outline fire strategy to address B4

even once Exova became aware of the details of the cladding system was, as she says, very serious evidence of professional negligence.

Exova's submissions are an exercise in semantics. Its defence to Dr Lane's criticism is that her approach is flawed, in that she has construed its obligations by reference to the Fire Industry Association guide 2015, which was not in force at the time, and also that Dr Lane uses the guide to fault Exova for providing advice which the guide required but which, in fact, Exova was not asked to do by the client.

That is a bad point, firstly because Dr Lane identifies the guide as epitomising her experience of good practice from both before and after 2012. Secondly, Exova completely overlooks that the advice which it did in fact provide was negligent, according to Dr Lane, who considers Exova made serious mistakes in each of its five strategy documents. Thirdly, Exova overlooks the fact that the three iterations of the fire strategy amounted to a negligent misrepresentation in relation to B4, "External fire spread", which instilled a false sense of security in the design team by the use of the words, "It is considered that the proposed changes will have no effect" and by suggesting this would be confirmed.

That was not the conclusion which should have been reached. What should have been said was that the cladding would likely have an adverse effect, but the extent of the worsening of condition could not be known until the precise cladding system had been defined.

Fourthly, Exova volunteered advice on cavity barriers in the cladding in 2015 on being asked by Studio E, who forwarded a query from Harley, about the degree of fire resistance required of the cavity barriers.

Given Exova did not have the cladding specification, such advice should not have been given at all, and Exova was negligent in failing to warn that the outline fire strategy section on external fire spread required to be the subject of a proper analysis now the cladding system, including insulation and composite metal cladding, was proposed.

Instead of proffering advice, Exova should have refused to give any advice until the full specification had been shown to them. At the very least, Exova should have warned of the dangers of reliance on their advice, given their ignorance of the design of the rest of the system and in the absence of the B4 analysis.

Exova overlooks the culture of knowing and wilful non-compliance which permeated the firm and/or those

knowingly involved in, as Exova said, "making an existing crap situation worse". That language, terrible as it is, has a deeper significance than may at first blush appear. Exova was well aware that, in order to be acceptable under the building regulations, the proposed works and system must not make the existing conditions worse. This, therefore, is proof that Exova was wilfully advocating a non-compliant system insofar as ventilation, part of its B1 means of escape strategy, was concerned.

As already explained, that culture of seeking to get around the building control officer extended to all aspects of Exova's behaviour on the Grenfell project, and probably explains the wording which should not have appeared in the context of external fire spread, namely that the proposed changes would have no effect.

Exova makes a general plea that it would be wrong for a party who was sidelined at the time to end up now being front and centre. This appears to be Exova's argument: that after November 2013 it was cut out of the loop. Exova asserts it is strongly arguable that it was exonerated from any continuing obligation by Rydon being appointed design and build contractor in 2014. This is a most peculiar and flawed submission. It is flawed for two reasons.

First, Exova was not sidelined. On the contrary, it produced the seminal documents on which the fire safety of Grenfell Tower depended, namely the existing and outline fire strategy. The fact that these documents were, according to Dr Lane, negligently prepared and contained a negligent misstatement that the proposed works would have no effect on external fire spread is likely to be causative.

Second, Exova's own procedures required it to ensure that its services were no longer required and had been completed, but yet there is no evidence that Exova did so. Recent Relativity disclosure includes Exova's internal operating procedure, dated 1 April 2010, which provides at paragraph 4 for the closure of the project. This requires the Exova project manager to either check all elements of the proposal have been carried out, or, alternatively, he should contact the client to ensure they are satisfied with the scope of Exova's services and that they matched the client's expectations. Exova does not mention this procedure or suggest that it was carried out.

Exova concludes by suggesting each party must assist this Inquiry in coming to accurate and reliable conclusions, and by sincerely hoping that Phase 2 will bring some measure of closure for the victims. That is

unlikely to happen if each participant adopts a similarly misleading approach as Exova.

Turning to Arconic, now self-anonymised as AAP-SAS, but who shall remain Arconic to the BSR. Arconic begins Phase 2 as it ended Phase 1: by pointing out that it would have been obvious to anyone professionally involved in constructing a building that its product, by reason of its polyethylene core, was not of limited combustibility.

In its oral opening, Arconic claimed credit for the fact that it is not seeking to blame others. However, it is blaming others by its submission that the flammability of Arconic's product was or should have been obvious to others.

Furthermore, Arconic argues that the fabrication of its panels into the riveted or cassette product is the cause of the problem, which is not merely blaming others, it is also a thoroughly bad point. It overlooks the inherent flammability of the product, and completely ignores the fact that, as Rydon counsel explained on Monday, Arconic knew by 2011 that its products behaved very poorly in fire and increasingly could not be used in European markets. This was due to the fact that countries such as Spain were switching to the Euro class system and had a Euro class B requirement, whereas

Reynobond PE 55 was at best class E and, on 29 June 2011, had been tested as class F, albeit in subsequent testing it subsequently obtained an E.

Government documents in October 2000 explaining the correlation between Euro classes and national classes tell us that class E means the product will flash over, meaning autoignite within two minutes in fire. In those circumstances, it is disingenuous for Arconic now to make the submission that when the standard grey/green product was tested for reaction to fire, it was capable of achieving a B.

Arconic also fails to mention that, armed with the knowledge that its product was at best class E and increasingly could not be sold in other markets, Arconic set out to increase sales in the UK and win the Grenfell Tower project.

Please may we go to {MET00053161/24}, and scroll to the email starting at the bottom of page 23. At the bottom of page 23 {MET00053161/23}, you see an email from Peter Froehlich of Arconic to Deborah French in which Froehlich asks French whether Arconic is on track to meet the target for their UK forecast sales of PE Reynobond.

In the table -- can we scroll down to the table -- we see the years 2012 to 2014. For the year 2014 we see

an almost doubling of the planned sales from the previous year. In 2014, the letters in red are the plan. Arconic plans to sell 65,000 square metres, bringing a revenue of 1.885 million, and a profit margin of just over half a million pounds.

If we scroll up to the top of page 23, we see the email, Deborah French in reply to Mr Froehlich, confirming that, yes, they are on target, and she lists seven UK projects, beginning with Waylands House, and then further down, under the list of projects, she says:

"Projects I am still working on but confident we will get them are

"Grenfel Towers [sic] ..."

This gives the lie to Arconic's previous narrative that all it does is sell the product and that it is not involved in the process of persuasion to get its product onto buildings. It does so through its distributors, targeting potential contractors on a project, in this case CEP. And so it was at Grenfell. By 29 March 2012, CEP, through its Mr Geof Blades, had made contact with Studio E to discuss cladding options.

Furthermore, as Arconic well knew, the BBA certificate for the cladding panels on which the Grenfell contractors and designers would be relying was misleading, because it did not in fact apply to the

cassette as opposed to the riveted version of the panel.

The suggestion by Arconic on Tuesday that the BBA certificate relates to nothing other than the surface of an unfabricated panel, and that such product could achieve a B, would only be a valid point if the certificate did not appear on its face to relate to both the riveted and cassette panel. The certificate contained diagrams of both the riveted and cassette systems, and only in the smallest of footnotes, in the middle of a page where it would undoubtedly be missed, did it state that the certificate did not apply to the cassette at all.

Arconic had tested the cassette version of the product and knew it was, at best, class E. Arconic was clearly at fault in failing to give BBA the test data for the cassette panel as well as the riveted panel.

Yet further, lest there be any doubt, Arconic became aware at latest by April 2016, whilst the works at Grenfell were still ongoing, by being sent Booth Muirie guidance that UK building regulations required all significant elements of each and every layer of the wall to be non-combustible or of limited combustibility. Even earlier, in 2015, Arconic had become aware that in order to comply with diagram 40 of ADB, the external surface of the wall must be class 0, and that in order

to achieve that class, the FR, not PE, was required.

Yet Arconic failed to advise any of the contractors or designers with whom it had been dealing on Grenfell that the polyethylene cored Reynobond was unsuitable and non-compliant, or that the BBA certificate which suggested the product was class 0 was for the riveted but not the cassette panel.

Arconic relies on our Phase 1 submissions, in which we suggested that the insulation also had an important role to play, in order to seek to exonerate its product. That is a risible submission. The panels contained polyethylene, a substance, as Professor Bisby told us in his Phase 1 presentation, with a heat of combustion akin to diesel and close to lighter fluid. As the Phase 1 report records, it can flow whilst burning and generate burning droplets. It has a high calorific value compared with other common construction materials and will provide a fuel source for a growing, spreading fire. Arconic's knowledge that the cassette panel was at best an E renders absurd its conclusion that it says:

"The tragedy at Grenfell Tower shows the awful consequences which can arise when combustible materials are used in a particular combination and configured in a particular manner."

That is not what the fire at Grenfell shows. It

shows that the use of a thermoplastic with a heat of combustion similar to lighter fuel within any construction is likely to result in an uncontrollable inferno due to the fact that, as the Phase 1 report makes clear, the dripping, burning droplets will set fire to anything in its path.

The DCLG testing carried out in 2017 tells us that the polyethylene cored panels will not be compliant with the building regulations in combination with either combustible or non-combustible insulation and present a significant fire hazard.

The reader of Arconic's opening submissions, however, would be left blissfully unaware that the Chair had found Reynobond PE 55 to be non-compliant with building regulations on the grounds that not only did it not adequately resist flame spread, but, on the contrary, promoted it.

Arconic's unerring ability to overlook the innate flammability and non-compliance of its product, despite its own marketing materials in December 2016 advising the product was unsuitable for use over 10 metres, and despite its withdrawal of the product as a result of the fire, is symptomatic of its disingenuous approach to this Inquiry.

Turning to Celotex. Unlike the other core

participants, Celotex does admit to wrongdoing, albeit it denies that these actions had any causative effect. The two aspects of wrongdoing Celotex admits to are, first, discrepancies in the BS 8414 test carried out by BRE on RS5000 insulation in May 2014, and the way that test was described in Celotex marketing literature. It was that test which led Celotex to be able to market its RS5000 product as suitable for use above 18 metres.

The second aspect of admitted wrongdoing is the understatement of lambda values by the selective use and omission of data. Lambda values represent the heat conductivity of a material such as insulation, and are therefore part of the thermal calculations done to ascertain the ability of every layer of the external walls to resist heat loss. Those calculations are known as U-values. The lower the lambda values and overall U-values the better.

Both these aspects of Celotex's wrongdoing -- the misstatement of the test and the understatement of the lambda values -- feature in the reasons why the designers and contractors at Grenfell were influenced to use Celotex. Both these behaviours evidence a culture within Celotex at the time which will require careful examination in this Inquiry. It is not the case that the test on RS5000 and the misdescription of that test

and the understatement of the lambda values had no causative effect.

As Celotex was well aware, there was a lack of knowledge in some building inspectors about the use of combustible insulation. Celotex exploited this lack of knowledge, but in a way which carefully avoided expressing a view on the requirements of ADB.

A good example of this was that in April 2015, a distributor of RS5000, SIG, told Celotex that the NHBC was refusing to approve RS5000 unless there was no difference between the proposed cladding system on site and that described in Celotex's RS5000 May 2014 test.

If we may turn to {CEL00001406}, at the bottom of page 1 we see Celotex's head of technical's reply to SIG. He says:

"The official Celotex view.

"Celotex are open about the test we have performed and we always include the ... Rainscreen Cladding Guide ... The key line being:

"'Any changes to the components ... will need to be considered by the building designer.'"

At the foot of page 1 he says:

"Here is my view."

If we scroll down, he says:

"... ultimately the specification of this product

will depend on the ... requirements of ... [ADB]. Celotex do not try to second guess what may, or may not be, deemed suitable and if RS5000 is rejected as an option ... we take it on the chin ... We have ... had conversations with the NHBC and are aware that generally we will struggle to [get RS5000] accepted ... at this time."

He went on:

"We have heard of one ... job where the inspector said that it was OK to use any insulation up to 18m and only above 18m did it have to be non-combustible or in line with the requirements of BR 135. Clearly wrong. The fire hasn't got a tape measure and if it starts at the ground floor it will love to race up the first 18m. Just shows you the smoke of confusion out there."

If we can scroll back up to the top of page 1 {CEL00001406/1}, Celotex's distributor's reply to this was:

"Thanks for that.

"Never has the expression 'smoke and mirrors' been more appropriate.

"I think I'll adopt a version of 'caveat emptor' and if specifically challenged use the rock fibre options. If I'm not challenged it'll be RS5000."

This, as Celotex well knows, is how its marketing

strategy worked. Contractors and designers would use the fact that the sales literature indicated the product was fit for use over 18 metres to get it onto buildings if they could get it past the building control inspector.

Celotex also omits to mention just how aggressive its marketing strategy was. It used the subcontractors and specifiers effectively as pushers to ensure that its products were specified and used on buildings. This was part of Celotex's so-called push/pull marketing strategy, namely using potential contractors on a project to push the product onto architects, who would then specify it, thereby pulling it onto the building.

Nowhere was that more apparent than in an internal Celotex document in early June 2017 in which Celotex acknowledged that architects and main contractors push RS5000 particularly vehemently, but noted that to sell RS5000, Celotex needed to engage with the key decision-makers, namely the building owner, client warranty provider and fire engineer. The document records that one of the main reasons why RS5000 was continuing to achieve success was because of Celotex's growing relationships with these warranty providers and fire engineers.

In these circumstances, it does not lie in Celotex's

mouth to assert that the misleading description of the May 2014 test for RS5000 had no causative effect and that the designers at Grenfell cannot have relied upon it.

As Celotex accepts, it was dealing directly with Harley in relation to the use of RS5000 at Grenfell, and indeed it is clear that Celotex went out of its way to win the Grenfell project. The so-called must-win projects list sent by Celotex to its parent company, Saint Gobain, on 7 November 2014, included at item 2 Grenfell Tower. Celotex saw Grenfell as being a flagship for the RS5000 product, hence in July 2015 it drafted a Celotex case study regarding the use of Celotex at Grenfell, boasting super-low lambda values, delivering better U-values and thinner solutions, precisely the qualities it knew the designers of Grenfell wanted.

Whilst it was heartening that Celotex's counsel corrected Harley's incorrect submission that there was no evidence that Harley knew the cladding was dangerous, it is nevertheless disappointing that Celotex itself also fails to recognise the evidence which demonstrates the fallacy of its position.

Turning to Studio E, its position is untenable and based on four fundamental misconceptions: first,

Studio E considers the regulatory system was not fit for purpose and had permitted unsafe cladding for many years; second, Studio E didn't have knowledge of the products and could not be expected to know they were unsafe; third, all its staff acted with reasonable skill and care; and, fourth, Mr Hyett, the Inquiry's expert, has not adopted the correct standard of skill and care, and has overlooked that Harley would always do the design. Each of these four arguments are flawed.

As to the first, the fact that the ADB guidance is in part unsatisfactory and not fit for purpose does not mean that it in fact confused Studio E. Studio E were not confused; rather, they do not appear to have addressed what was necessary to comply with the requirements of ADB. They openly say they delegated that to others.

As to the second, the fact that Studio E did not have knowledge of the products is not a defence. Taking the obvious case of the insulation, everyone agrees that should have been limited combustibility if the linear route was being adopted. It was obvious that both Celotex FR originally specified and RS5000 eventually used, and which were the same product, were not of limited combustibility. Neither the RS5000 nor the FR5000 were marketed as limited combustibility. If

Studio E had troubled to establish what compliance required, it would have established that the insulation must be of limited combustibility, and the FR5000 which it specified and RS5000 which it approved were not.

Third, Studio E did not act with reasonable skill and care in the ways described by Mr Hyett, in that they failed to identify what compliance looked like at the outset, and failed to specify in its NBS specification appropriate products such as the insulation. That NBS specification was the document against which all the contractors tendered. It was a flawed starting point for the whole project.

What appears to have happened is that Studio E was so intent on achieving what it considered to be the right aesthetic outcome, agonising as between the brushed aluminium and the battleship grey, that instead of focusing on or even considering the performance criteria which functional requirement B4 dictated, it instead defined the products in the specification and subsequently purely by reference to aesthetic criteria.

Finally, whilst Harley, the cladding subcontractor, was legally liable for the cladding design and was under implied duties to revisit the design and warn of obvious shortcomings, as was Rydon, that does not exonerate Studio E from negligence in preparing the original

design. Given Studio E's role after novation of approving Harley's drawings, it is clear Studio E had ongoing responsibility to approve the development of the design.

Studio E makes the bizarre suggestion that a perfectly legitimate approach to the question of compliance might be to leave it to what it calls an advanced stage, once the building control officer or approved inspector has been consulted. That will almost invariably be too late and is painfully close to what happened at Grenfell. The relevant contractors and designers were by then determined to simply get things past the BCO without him noticing. That risk is the more likely once the contract has been put out to tender and priced and the budget agreed. At that stage, there is an increasing reluctance to make changes.

Turning to Rydon, its stance in its opening is misleading in four key respects.

First, a contractor does not diminish its responsibility to its client by subcontracting its obligations. Rydon recites at length both Studio E's obligations to Rydon under its novated retainer, and Harley's obligations to Rydon under its DOM2 design and build subcontract.

Rydon omits to mention that it bore full

responsibility to TMO for the design of the works under the amended clause 2.17 of its JCT design and build contract. That clause imposed on Rydon an obligation to exercise all the reasonable skill and care to be expected of a professionally qualified and competent design and build contractor experienced in the carrying out of such works for a project of similar size, scope, value, character and complexity to the works. There may be an argument about precisely what that means, but the extent of the obligation assumes experience in the design of high-rise cladding projects of this nature.

For a designer experienced in such projects, a familiarity with the relevant requirements of ADB would have been essential. Given Rydon was being paid for design, TMO was entitled to assume that even where subcontractors were used, at least some basic level of scrutiny of the subcontractor's design was being exercised, including a check that ADB had been considered.

Rydon points out that one of Harley's witnesses accepts it is normal practice for a façade contractor to consider compliance. Just because a contractor bears that obligation to Rydon does not mean Rydon does not also owe that obligation to TMO.

For this reason, Rydon's position that it

essentially has a facilitative and management function, whether or not a description of what Rydon actually did, is not at all reflective of its true obligations to TMO and is a misleading description of its proper role.

Second, Rydon fails to accept that it should have appointed Exova to advise on the compliance of its design with building regulations. Even if Rydon's role had been confined to that of facilitator, manager and co-ordinator, as Rydon wrongly contends, that role included identifying the need for specialist design and ensuring that specialist design input was in fact obtained. That was particularly so if Rydon felt unable to provide the advice itself.

As part of the tender documents, Rydon had been provided with Exova's outline fire strategy which, in section B4, referred to the prospect of a future analysis. Rydon ought, therefore, to have insisted on that analysis being done. Indeed, given that changes had been made to the specification of the cladding, the need for that analysis was all the more pressing.

Rydon was perfectly well aware that it needed to appoint Exova. It undertook to do so. In a contractor induction meeting on 1 April 2014, it was recorded that Rydon would contact Exova with a view to using them going forward. Yet Rydon deliberately failed to do so.

In mid-September 2014, Rydon became aware that Studio E was seeking advice from Exova. Instead of recognising that advice was necessary, Rydon told Studio E, "I know we haven't employed Exova, so if you're getting some free advice then great, otherwise we will need to look at this". It's clear that Rydon had no interest in appointing a fire engineer and it made that clear to everyone.

Given this, it's entirely disingenuous for Rydon to suggest, as it does, that Rydon only failed to appoint a fire engineer because Studio E did not suggest one was required, or that, as Rydon now asserts, Rydon cannot be expected to have done more.

Rydon understood full well that a fire engineer was required, but did not want to appoint one for reasons of cost. Rydon clearly bears a significant share of responsibility for the failure to obtain advice from Exova on external fire spread.

Thirdly, Rydon asserts it had no knowledge that the combination of cladding panels and insulation posed a risk to health and safety. It is clear that Rydon took the view that the most important thing was to satisfy and appease the building control officer, rather than risk him rejecting the building at the end. This issue arose when Harley was seeking clarification of the

fire resistance of the cavity barriers, leading to Rydon's Mr Lawrence's email to Harley on 30 March 2015 to say that Harley should not upset the building control officer over a 10K issue, which, he said, "could effect me later when trying to get sign-off for the whole building, and that's an 8.5 million issue for me".

It's clear that Rydon's priority was getting sign-off of the building, rather than investigating what the building regulations and guidance required. It is therefore not appropriate for Rydon to claim it was never aware of any non-compliance. Rydon chose simply not to engage with potential non-compliance problems, even when copied on correspondence alluding to them, such as the cavity barriers versus firestopping issue.

Finally, Rydon makes the bad point that it's entitled to assume that if the employer's requirements specified particular products, those products were fit for purpose. That is patently incorrect. When a design and build main contractor or subcontractor assumes responsibility for the design to date, as both Rydon and Harley did, they come under an implied obligation to satisfy themselves that the design is viable, and that includes compliance with the relevant statutory guidance.

In the event that the design does not comply, and/or

poses any risk to health and safety, the main and sub design and build contractor both come under an implied obligation to warn. Harley should have warned Rydon, but whether or not it did, Rydon should have warned TMO.

Turning briefly to Harley. They responded on Monday to Counsel to the Inquiry's admonishment of the corporates for playing the blame game by rather belatedly admitting fault in relation to the omission of cavity barriers around windows. Harley spoilt its good deed immediately, however, by pointing out that the lack of cavity barriers was not Harley's responsibility because Studio E should have specified them, and by observing that they anyway were not causative of harm because cavity barriers could never have been effective.

So whilst seeking to portray itself as having laudable candour, Harley is in fact conforming to the behaviour of the other corporate core participants.

My concluding remarks are aimed at reminding -- although we are well aware this Inquiry needs no reminder -- of the dangers posed by the current regulatory system and the way in which certain manufacturers and contractors exploit it, as I have explained. This inevitably involves trespass into Module 6, for which I hope you will forgive me.

In Module 6, you will be considering how we may

prevent recurrence of this disaster or anything like it. Clearly the culture of some corporates needs to change, but if the buck-passing responses of the corporates in this Inquiry are anything to go by, it is naive to think that any but the rarest of offending companies will change of their own volition in this current regulatory environment. There is therefore an urgent need for recommendations.

We cannot help but marvel at how it is that the Grenfell fire occurred at all, given how much knowledge both central and local government have had about the lack of clarity in the regulations, and in particular the risk of confusion about class 0, to say nothing of their knowledge of previous fires.

Central government has known since 2000 that ADB should have been overhauled to remove reference to national standards, including class 0. It has known this because of the Radar research programme which it and some industry sectors commissioned, and because of a House of Commons select committee report entitled "Potential risk of fire spread in buildings via external cladding systems" in 2000.

That overhaul of ADB should have happened because the European tests which result in Euro classifications A1 down to F measure reaction to fire, and therefore are

wholly superior to the UK standards BS 476, part 6 and 7, from which class 0 is derived.

Those standards measure only surface spread of flame. The Euro classes, however, are based on the tendency of a product to flash over, meaning autoignite when a certain temperature is reached.

According to government documents on the correlation between the Euro classes and UK national standards in 2000, A1, A2 and B were considered not to flash over, whereas C and D would do so in ten minutes and E within two minutes. It is not possible to equate the Euro classes to class 0 but the Radar 2 project part 2 results in May 2000 produced a transposition table showing that class O might be as low as class E.

It is staggering that, despite this knowledge and the report of the select committee explaining how class 0 could be misunderstood as being a meaningful measure of a product's behaviour in fire, we are still, 20 years later, subject to a meaningless class 0 criterion.

Furthermore, government was given further cause to overhaul ADB in 2015, when it commissioned by BRE a suite of seven reports into the adequacy of various aspects of ADB. The project was entitled "Compartment size, resistance to fire and fire safety research". The

results were shocking, in that the reports made clear that ADB provides no means of calculating the increased fire load caused by modern insulation standards to be imposed on the façade in the event of a fire escaping from a window.

These reports also reveal that the fire resistance requirements for external walls are now no longer accurate, given they're based on an immediately post-war document which does not take account of the increased insulation requirements and therefore results in much hotter fires.

The reports also revealed that sprinklers should be installed on buildings much lower than 30 metres, and that the provisions of ADB concerning the evacuation of those with disabilities are far from adequate.

All that knowledge acquired between 2000 and 2015, and yet nothing was or has been done to cure these fundamental problems.

The amendments made to ADB in 2019 are footling, given this backdrop. The way in which successive governments have ignored this knowledge and, for example, the 2015 suite of reports on ADB were not released until halfway through a consultation on ADB in 2018. This brings into sharp focus the need for the reintroduction of the Public Authority (Accountability)

Bill. Grenfell is the archetypal example of why candour from state and private bodies is a prerequisite to everybody's safety.

Both central and local government have also been made aware over the years of the propensity of cladding not to comply with ADB and the risks of poor maintenance of social housing. One of the recommendations of the select committee report in 2000 was that cladding on all social housing buildings should be assessed. It seems this was not done, given that, in the wake of Grenfell, it had to be done.

Even though local authorities had some piecemeal but important knowledge, it was not brought to bear in a cohesive way. By way of example, contemporaneously during the Grenfell project, RBKC's head of building control, John Allen, emailed his colleague, Hanson in March 2014 saying there could be another Lakanal House elsewhere. He went on to describe Lakanal as having been state of the art, but acknowledged the cause was overall worsening of condition through years of neglect.

Furthermore, TMO's Janice Wray wrote a note in 2013 on Lakanal. David Gibson was also aware of some guidance on Lakanal. Claire Williams even questioned the nature of the cladding in 2014, during what she called her "'Lacknell' moment". As did Janice Wray in

2016, following the Shepherds Court fire.

Why this collective knowledge did not operate on RBKC building control's or TMO's mind and cause them to reconsider the Grenfell project under their noses we shall hopefully discover in this Inquiry, but one cannot help but think that greater candour, including immediate publication and dissemination by central and local government of fire research reports and reports of fires, may have resulted in greater and more widespread understanding and less complacency.

Had the Radar 2000 reports and the 2015 reports been released to the public at the time given to government, they could have been considered by the whole of industry and experts, and the benefits of that data could have been fed meaningfully into subsequent consultations on ADB. As it is, government was holding, as from 2000, what may properly be regarded as a ticking time bomb, which it chose not to share with industry and experts, thereby rendering all consultations on ADB thereafter a meaningless sham.

The long period in which government has known about the flaws in ADB, has known sprinklers were needed in buildings lower than 30 metres, has had the Hackitt Review and the subsequent 2018 select committee report on Hackitt, and yet the resultant trivial

amendments to ADB in 2019 are deeply troubling.

At least, however, ADB does now include the ban on anything below A2 in buildings over 18 metres. The fundamental flaws I have described are, however, not addressed by the 2019 amendments. As will be apparent, these matters strongly suggest a likely breach by government of Article 2 of the Human Rights Act in failing to ensure safe systems to protect the public.

As a result of these long and inexplicable periods of inaction, despite fundamentally important but privately held knowledge of danger to the public, promises ten days ago to introduce sprinklers into newbuilds above 11 metres and the establishment of a building safety regulator and plans for improvement of performance standards may be thought to be too little, too late.

Thank you. Those are my submissions.

SIR MARTIN MOORE-BICK: Thank you very much indeed. That's probably a convenient moment at which to have a short break, so we will rise now and resume at 11.30, please. Thank you.

(11.15 am)

(A short break)

(11.30 am)

SIR MARTIN MOORE-BICK: Now, some of the bereaved, survivors

and residents are represented by the firm of Imran Khan Queen's Counsel, who was intending to make an opening statement on their behalf, but I understand that he's not able to be here, and therefore Ms Balvinder Gill is going to read out a statement in his place. Yes?

MS GILL: Yes.

SIR MARTIN MOORE-BICK: So when you are ready, thank you.

Opening statement on behalf of BSRs represented by Imran Khan & Partners by MS GILL

MS GILL: Thank you.

Sir, madam, the commencement of Phase 2 of the Grenfell Tower Inquiry raises many questions which need to be addressed in respect of policies made and decisions taken before the fire.

Whilst many of our clients feel that the Phase 1 proceedings left questions unanswered, they hope that it is the goal of the Inquiry to ensure that in Phase 2 all key issues will be addressed and no stone left unturned.

Our submissions for Modules 1 to 7 reflect our clients' views and perspectives on those decisions taken which led to the catastrophic tragedy that was the Grenfell Tower fire in June 2017.

This is a summary of our written submissions, and full references can be found in the written document.

If we remind ourselves that the Royal Borough of

Kensington and Chelsea allocated a budget of 9.7 million for the regeneration works in July 2013, of that 8.5 million was allocated for the construction works. Initially Leadbitter were considered as the main contractor, but their costs came in around £12 million, far in excess of the proposed budget. In March 2014, we know that Rydon were informed by TMO that their tender was in the lead, subject to value engineering. Finally, Rydon were awarded the contract for the refurbishment of Grenfell Tower for the position of design and build contractor.

From our analysis of the material, a number of key themes emerge which run throughout the decision-making process, and these are:

First, cost-cutting. The decisions taken by RBKC Tenant Management Organisation were led by their budget, with cost-cutting being the most important consideration at the time of decision-making. Value engineering was a constant focus of discussion between the relevant parties. The term has two meanings, which are intrinsically linked: value-adding and cost-cutting. We heard from Ms Jarratt yesterday that the TMO reject this suggestion. We therefore invite the Inquiry to consider which of these was applied in the case of Grenfell Tower: was value added as a result of this

exercise, or was it, as we suggest, an exclusively cost-cutting exercise?

Secondly, lack of co-ordination. We suggest that it is beyond doubt that there was a lack of co-ordination between the parties all the way through from the design to the construction stage, and this is clear from the reams of correspondence which has been disclosed.

Third, lack of care and skill. There was a demonstrable lack of care and skill by the contractors, resulting in the subpar quality of work which has been identified by the experts post-fire.

We invite the Inquiry to seek explanations as to how these contractors were appointed and whether they were competent enough to carry out their tasks on the project.

Finally, buck-passing. The disclosure shows that there is a constant attempt by individuals and organisations post-fire to blame each other. Parties and individuals have continuously passed the buck for responsibilities that should fall squarely in their remit.

In our written submissions, sir, madam, we wrote, perhaps with some optimism, that we invite the Inquiry to ensure that such buck-passing does not continue in these proceedings, and that parties are held accountable

for their actions. But these words could not have been more prescient. As we all saw earlier this week, within minutes of this phase of the Inquiry commencing, the blame game started from almost every single corporate core participant.

We and our clients have been genuinely shocked at hearing the corporate CPs seeking to defend the indefensible and trying to justify the unjustifiable. Every one of the corporate CPs has read what we have read, has seen what we have seen, and yet despite this, they have each, with the limited exception of RBKC and Celotex to an even lesser extent, denied any fault and sought to blame others.

Sir, madam, according to our clients, each of these corporate CPs has blood on its hands, and it cannot be washed off by the blood on another's.

It is our submission that these four overriding themes played an integral role in the decision-making process, such that they led to at least 15 key missed opportunities when components of the cladding system could have and should have been identified as dangerous and unsuitable, which would have avoided the tragedy that took place on 14 June 2017. At each of these key opportunities, a party or parties had the chance to identify these issues and do something about it. They

did not.

First, we look at the decision to undergo the refurbishment. The initial decision to undergo refurbishment was taken by RBKC/TMO. The reasons for their decision include, as Claire Williams, who was the project manager of TMO, stated, to improve energy efficiency and allow residents to control their own heating systems and energy, and also to make the building more thermally efficient.

The TMO were the client for the project and they were involved in correspondence with the design team from the outset. Module 1 witnesses reiterate throughout their statements that cost-cutting was the key motivator. We submit that their consistent focus on cost-cutting led to poor quality of work and, further, to the use of unacceptable materials.

At paragraph 41 of his witness statement, Mark Anderson of TMO says:

"At the time I left the TMO in January 2013 the focus was very much on costings and viability rather than appointing any specialist contractors."

Simon Cash, Artelia, states:

"Value for money is regarded as the key driver for the project."

In email correspondence dated September 2013 between

Bruce Sounes of Studio E, Claire Williams of TMO, Phillip Booth of Artelia and others, Bruce Sounes highlights:

"Budgets force clients to adopt the cheapest cladding option."

Mark Harris of Harley at paragraph 23 of his witness statement says:

"... there was a real focus amongst the various stakeholders on value engineering."

Further, Simon Cash refers to an email chain in October 2015 where it is said that:

"Peter [Maddison] reiterated that the key for him is still budget, then quality and finally time ..."

Zak Maynard, Rydon, at paragraph 13 of his witness statement, notes that the TMO made the decision on cladding primarily based on cost."

These are snapshots from correspondence and information gathered in the period between mid-2013 to late 2015, which demonstrate that cost was the priority for RBKC/TMO over and above quality of work. In short, as far as they were concerned, our clients' lives were not worth it. Their lives were cheap. And our clients say this was less of a missed opportunity than a death sentence for 72 innocent people.

Next, testing and certification. As you know,

Approved Document B is a building regulations document which covers fire safety matters within and around buildings, and contained within this document are provisions which set out the required level of fire resistance of materials to be used on the external walls of buildings over 18 metres in height. The requirement is that of limited combustibility, which refers to the susceptibility of the external walls to ignite from an external source, and the flame spread, which is measured using a system of classification for materials.

Whilst the class 0 classification exists and is often relied upon as the benchmark for fire safety in materials within the industry, it is insufficient inter alia because the class 0 classification fails to consider a material's reaction to fire, meaning its combustibility. In this way, as previously stated, the class 0 classification is entirely misleading.

The BBA is an independent and accredited certification scheme which testifies to the compliance with building regulations. The BBA tested and issued a certificate for the accreditation of Reynobond Architecture wall panels, and these are the cladding panels that were installed in Grenfell Tower.

Dr Barbara Lane stated that these panels did not meet the requirements of Approved Document B. It is clear

that had these panels been tested correctly, they would have been found to be non-compliant with building regulations and would not have been installed on Grenfell Tower, a missed opportunity.

Next, manufacture and marketing. Celotex were the manufacturers of the PIR insulation boards and, of particular importance, RS5000, which was incorporated within the cladding system on Grenfell Tower. Celotex RS5000 was tested at a BRE test centre in February 2014. The test was terminated prematurely as the fire spread was too fast that the test could not go on, as it would pose a risk to employees and surroundings. This first test failed.

A second test was carried out in May 2014, with thicker cladding panels used as part of the set-up. This test passed. However, after the test was conducted, some major concerns were raised by the National House Building Council regarding the materials used with the insulation boards. This is because they were not a true representation of a typical rainscreen cladding system that would be installed on a building. Aluminium panels are typically used in conjunction with insulation boards as part of cladding systems. However, these panels were not used as part of this test. A different type of cladding panel was used.

The process that Celotex undertook is described by the National House Building Council as "deliberate overengineering", as Celotex made every effort to ensure that the RS5000 product passed the test, no matter what. Once the RS5000 product passed the test, when it should not have, it was marketed to suppliers and consumers as being suitable for buildings above 18 metres in height. It is clear this assertion was not true, because as a matter of fact, RS5000 was not suitable for buildings over 18 metres in height.

When it was actually tested in September 2017, it failed to achieve the required performance to demonstrate that the material was a class 0 material. In any case, as already stated, class 0 is considered to be insufficient to meet the requirements of Approved Document B. This material should never have been used on Grenfell Tower. Celotex RS5000 has since been removed from the market. This was a missed opportunity.

Arconic produced Reynobond aluminium cladding panels, which were supplied to contractors for Grenfell Tower. We have noted that Dr Barbara Lane confirms that this material was not one of limited combustibility and therefore does not comply with the building regulations.

It is clear that Arconic should have recognised that

the product they were selling was not suitable for its proposed purpose. They should have known, and now we know that they did in fact know, that they were supplying a material which was to be sold in the UK that failed to comply with the UK building regulations. To suggest that this was a missed opportunity is an understatement of the utmost gravity.

Next, material selection. Rydon was the design and build contractor, so essentially they were responsible for all aspects of design and construction in relation to the refurbishment. Rydon subcontracted out the work to specialist contractors, such as Harley Façades for the external works, JS Wright & Co for the mechanical and electrical works, and so on.

Simon Lawrence of Rydon states, paragraph 40 of his witness statement:

"Rydon's role was to then manage and co-ordinate the work of those third parties."

It is clear that Rydon relied so heavily on the word of building control that they themselves did not but should have considered the suitability and compliance of materials.

As the design and build contractor, Rydon was responsible for the delivery of the project, and according to Claire Williams of TMO, as part of this

arrangement, Rydon were contractually responsible for ensuring compliance with all legislation, regulation, standards, guidance and for receiving all necessary building control approvals. We submit they failed to do so. This was a missed opportunity.

Studio E, the architects in the main design team, were involved in the project from inception. Studio E prepared the National Building Specification in January 2014, which included not less than 150 millimetres for spandrel panels and 80 millimetres for columns of Celotex insulation. It was Bruce Sounes who suggested the cladding material change from zinc to aluminium, which was the material actually used on the tower, when the TMO requested a value engineering exercise to take place. What this essentially meant was cost-cutting, so that materials which should have been identified by Studio E as being unsafe and unsuitable to be used on the tower were not.

Studio E were criticised by Mr Hyett, the expert architect, for their failure to produce the proper amount of design that fell into their responsibility. The fact of the matter is that the materials were being discussed prior to the appointment of a main contractor, and tenderers were asked to make their tenders on the basis of a range of materials provided to them. The

responsibility, therefore, fell on Studio E to ensure that the materials they themselves suggested were compliant. Not only that, but as building control expert Beryl Menzies states, the full plans application that was submitted by Studio E had insufficient detail so that compliance could be ensured. Another missed opportunity.

There is a necessity to consider the competence of these contractors further. Tomas Rek states in his witness statement that he has no recollection of a discussion about compliance of materials with building regulations. It is this attitude that allowed things to slip through the cracks as key issues failed to be identified until it was too late.

Mr Hyett is highly critical of Neil Crawford, who was the day-to-day manager of this project, because at around 60% of the way through the construction phase, in Mr Hyett's words, Neil Crawford asked:

"... a question of the most fundamental kind about an issue [compliance of the cladding] that should have been firmly established prior to the release of Studio E's stage D report -- this is almost two years prior back in 2013."

We submit that this was far too late, and the issue of compliance was ignored. We invite the Inquiry to ask

why these life or death questions were not asked and answered at the start of the construction phase.

We also invite the Inquiry to consider the culture of blame amongst the majority of parties involved in the refurbishment, especially on the issue of compliance.

To give just one example, Neil Crawford states that ensuring compliance is the responsibility of the clerks of works and building control who were checking the works. The Inquiry is invited to ask whether this is right, given that the problem lay with the initial design and the material selection, which was driven by Studio E from the outset.

Next, fire strategy. Exova were engaged on behalf of the TMO to provide fire consultancy services. They were tasked with creating an existing fire strategy report and a refurbishment fire strategy report.

Cate Cooney was responsible for the existing fire strategy report, to ensure compliance with building regulations. Terrence Ashton was tasked with the refurbishment fire strategy, and he carried out three fire strategy reports for the proposed refurbishment, none of which, surprisingly, accounted for the overcladding that was proposed as part of the refurbs.

His explanation for this was that, whilst he knew some overcladding was proposed, he was not provided with

any information as to the cladding materials in order to take this into account, so he simply omitted this from his assessments.

We submit that Exova failed to obtain the important information to ensure that their reports were complete, and Studio E failed to effectively communicate vital information which was needed for the reports to be accurate.

In October 2012, which was the date of the first fire strategy report, or at least by 2015, Mr Ashton should have been able to identify that the proposed materials were unsuitable and would not comply with building regulations for fire safety. This was yet another missed opportunity, because the issues could and should have been caught at the design stage.

Put simply, if Exova had undertaken their job competently, they would have realised that the materials used as part of the cladding system were unsuitable for their intended purpose.

It is perhaps worth noting in passing that there was serious confusion around firebreaks versus cavity barriers, and whilst Mr Ashton notes this confusion in his witness statement, there is no record of him seeking to clarify the same. This confusion is likely what led to the inaccurate advice from Exova, who were consulted

on fire safety measures.

Carl Stokes was the independent fire risk assessor who tendered for the job in the summer of 2010 and was responsible for conducting the fire risk assessments. He undertook four FRAs over the course of four years, from 2012 to 2016. He was working under the premise that the principle of compartmentation was the underlying principle which governed the stay-put policy.

It is our submission that Carl Stokes should have considered whether compartmentation was actually effective in the tower during his fire risk assessments. He acknowledges that changes to the façade could affect the integrity of the compartments in the building. However, he states that it was not in his remit or expertise to consider whether materials that were being used were compliant with building regulations in relation to fire safety. Further, he wrongly assumed that they were compliant. Another missed opportunity for the issues to be identified and rectified. Mr Stokes should have enquired further about the specific changes that were being made and how these would affect the integrity of compartmentation. If he had done so, it is likely that many lives would not have been lost.

Moving to the next topic, the supply of materials,

including the Reynobond ACM panels and PIR insulation.

SIG supplied the insulation boards, manufactured by Celotex, to Harley Façades to install as part of the cladding system. Acting as the suppliers, they bought the product and sold it on without satisfying themselves of its compliance or alerting Harley to the need to check whether the product was compliant. A missed opportunity.

CEP supplied the Reynobond aluminium cladding panels and aluminium window frames from Arconic to Harley for the refurbishment. When CEP purchased the cladding panels from Arconic, they should have checked that they complied with UK building regulations. They did not. It was another missed opportunity.

Next, fabrication and preparation. CEP also fabricated the ACM panels and window frames. Fabrication refers to the preparation of materials so that they are ready for installation. They claim that the selection and review of the materials can only be done in the context of the full cladding system, information which they did not have. They state that Harley and Studio E had this wider information; therefore, they were responsible for ensuring that the whole cladding system was compliant with building regulations.

At this point, if more questions had been asked or greater care had been taken, CEP should have identified that there was a potential issue with this use of material, especially paired with the PIR insulation boards, and should have alerted the installers, Harley, to these concerns. This was a missed opportunity.

Next, installation. Harley were the envelope package contractor, so they were responsible for the installation of the cladding. They purchased the PIR insulation boards from SIG Plc. Given that Harley are referred to as cladding specialists throughout the disclosed materials, it is expected that compliance with building regulations should have been seriously considered when installing materials. Having looked at the evidence, it is clear that Harley relied on information given to them by the manufacturers of the materials and also from the design team, without making their own judgements. There was an opportunity before these materials were installed for contractors to confirm that the materials they were installing were safe and compliant. Missed opportunity.

Next, installation. The function of RBKC building control was to ensure that all building work carried out in their borough should meet current building codes and regulation requirements. John Hoban, senior building

control surveyor, had over 30 years of experience. He is rightly criticised by Beryl Menzies, the building control expert. Also, Dr Barbara Lane notes in section 11 of her first report that on her site inspection, she noticed that the cavity barriers were poorly prepared, with jagged edges which led to an imperfect fit, creating gaps around the columns.

John Hoban claims that he was not trained to check cavity barriers, nor was he trained to check the installation of the cladding. Ms Menzies comments that this is incredibly surprising, given his many years of experience. Had he checked, as he should have, he would have identified these problems and the fire may not have spread as quickly as it did.

Building control are also heavily criticised by Ms Menzies for their failure to recognise that the materials which formed the cladding system were unsuitable for the tower.

It is our submission that these problems could have and should have been picked up by building control.

We do note, however, that RBKC have addressed this issue in both their written and oral submissions, and do accept that it was a failure on their part to issue a completion certificate when they did. Whilst it is encouraging that they have accepted some responsibility,

this was in the face of overwhelming evidence and they really had no choice but to do so.

John Rowan and Partners were contracted to undertake clerk of works responsibilities for the general building works. Their role is to represent the client on the construction site in ensuring that the quality of both materials and workmanship are in accordance with the design specification. This title is highly contested by Jonathan White, who claims that his role is more likened to that of a site supervisor, because he did not attend the site regularly enough or for the duration of the project. We invite the Inquiry to explore this further.

Mr White states that he attended the site to undertake weekly inspections from October 2014, some seven months after construction began. He states he was not asked to consider the compliance of materials at the design stage, as John Rowan and Partners were only instructed to undertake these inspections after the construction had already started.

Dr Barbara Lane notes that the cavity barriers were poorly prepared, leading to an imperfect fit. It is our submission that the clerk of works should have picked up on these quality issues and taken appropriate steps to ensure they were rectified. If Mr White had done so, there is every possibility the overall quality of

workmanship would not have contributed to the events of 14 June 2017. A missed opportunity.

Finally on this topic, general management. During their oral submissions yesterday, Artelia maintained that they were not project managers, though the disclosed material states otherwise. We ask the Inquiry to determine what role they actually played in the management process. They provided contract administration services, and their role was to ensure that the project ran according to time and budget. There were several layers of management, and this continued from the design of the project to completion. We invite the Inquiry to consider whether the poor co-ordination between the parties resulted in unanswered questions and misguided answers in respect of the compliance of materials.

This feeds directly into the issues identified by employees of Artelia, in particular whereby they claim that individuals of the TMO, and Claire Williams specifically, would misdirect design related issues to them. Simon Cash and Neil Reed both identify correspondence which suggests that individuals at the TMO were wrongly directing these issues towards them. It is our submission that this confusion around parties' roles and responsibilities and the overall lack of

effective co-ordination is what resulted in this cladding being installed on the tower.

These are some of the questions that need to be addressed by the Inquiry.

Turning back to the four themes that we identify above, the issue of cost-cutting, the lack of co-ordination, the competence of contractors and the culture of buck-passing, we invite the Inquiry to ensure that this does not continue during the proceedings.

Finally, sir, madam, whilst we have identified at least 15 key missed opportunities on the part of those involved in the refurbishment of Grenfell Tower, we note that there has actually been a missed opportunity for this Inquiry, and that is to recognise the issues of race and social class which we on behalf of our clients argue should be an integral part of this Inquiry.

Whilst it may be argued that race and class do not readily fall to be considered within this module, we ask the question: would the issues of cost-cutting, budget restraints, lack of compliance of building regulations arise if the make-up of the residents of Grenfell Tower had been different, namely if they had been wealthy and white?

Thank you.

SIR MARTIN MOORE-BICK: Thank you very much.

Now, then, Mr Stein, I think we are going to hear from you next, aren't we?

MR STEIN: Sir, madam, yes.

SIR MARTIN MOORE-BICK: Thank you very much.

Opening statement on behalf of BSRs Team 2 by MR STEIN

MR STEIN: Yesterday, the people of the Grenfell Tower and the Walk were outraged by an application which has all of the appearance of looking like an attempt to pull a fast one made by some of the firms who want to have whatever they might say from the witness box not be used against them in any future prosecution. They want the protection of an undertaking from the Attorney General worded in the following way:

"No oral evidence a person may give before the Inquiry will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings."

Yet those self-same companies have provided what they wanted to say in their statements. No such undertaking was asked to cover those statements, but they are clearly scared of what they know they have to face in this witness box.

Why make this application now? Why wait until we are in the middle of the opening part of Phase 2 of this Inquiry, well over a year after the close of Phase 1 in

December 2018?

Our response to this application will be dealt with on Monday. So let me simply say that the people we represent are furious. Like you, Chair, I could use other words. They are furious that this application has been made at this time. Do the companies who have made this application still not understand? Do they still have no respect, no regard and no feeling for those who have lost so much?

Over the last few days, we have listened to the litany of excuses and the revolving door of the blame game, but we have yet to hear anyone other than RBKC, who have made some admissions, or Celotex, who in their statements have blamed a few bad apples, say that they have done wrong.

Why is that? Surely they and their lawyers can read and understand the evidence which has been disclosed in documents and statements and emails within this Inquiry. Surely they can understand what went wrong. So why have no admissions been made to their own failures?

Well, perhaps there is no real mystery. Imagine the financial consequences of making admissions to their own businesses. Think about the drop in trade, the loss of profit, the insurance implications. Think about the sackings and resignations, and think about what

admissions could do to accelerate civil claims.

In comparison to that, spending part of their profits or the insurance companies avoiding large payouts now and fighting all the way is much more attractive. But make no mistake, these commercial considerations don't seem so attractive to the people of the Grenfell Tower, who have a right to the truth.

There were 72 people and many people injured at the Grenfell Tower fire. We will be considering their fate and what happened to them during the following modules of this Inquiry. The companies responsible killed those 72 people as sure as if they had taken careful aim with a gun and pulled the trigger.

Let us remember the youngest they killed, Logan, the unborn son of Marcio and Andreia, who was delivered stillborn whilst his mum lay in a coma, and who died in the womb as a result of smoke and cyanide poisoning. Let us remember the many other families. I only mention a name that comes to mind: the Choucairs, an entire family practically wiped out.

Those companies responsible killed when they criminally failed to consider the safety of others. They killed when they promoted their unsuitable, dangerous products in the pursuit of money and a place within the market. And they killed when they entirely

ignored their ultimate clients, the people of the Grenfell Tower.

When hearing the evidence about these companies, and when watching them wriggle on the hook during these hearings, let us not forget who they killed, and the bereaved who have been left behind.

Since the time of the Grenfell Tower fire, we have had at least five major fires: Barking, Crewe, Clapton, Bolton, in blocks of flats. We have had the Hackitt Review and other reports which have condemned the behaviours of companies such as Rydon and their like. We have had reports which vilify the training and management of the London Fire Brigade. Despite this dismaying array of information, many residents of social housing live in conditions which our soon to be Brexited European partners would have condemned for animals as cruelly unsafe.

Since the Grenfell Tower fire, there have been promises about reform, promises about fire safety and promises of change, but no actual change, no actual reform and no actual safety.

The dignified, measured calls from the BSRs for identifiable change appear to be falling upon deaf ears. This cannot go on. It is a shame, we say, and a stain on this society that people are still living in tower

blocks with highly flammable cladding on their buildings. It is staggering that central government and local government have left people living alone, people with mobility problems, carers and families in conditions which mean that hanging over their heads is a terrifying death in a poisonous fire.

What would you do if you were in such a building? Practice regular fire safety drills with your family or friends? Prepare home-made smoke hoods? Have torches ready to tie everyone together to move down the stairs, or sit in a wheelchair, wondering how on earth you will get out?

So people are still living in blocks of flats where there is dangerous cladding and who, in the event of a fire, will depend for their lives on the undoubtedly brave but inadequately prepared firefighters to save them. So, unsurprisingly, the report by the charity Inquest last year found that residents' mental health has been affected, family life undermined and life is lived under constant stress.

We suggest that the failure to ensure that people living in tower blocks can live without fear within their own homes is a clear demonstration that the lives of people living in multi-occupancy buildings are considered worth less than those, for example, earning

a good living within the companies who killed the 72 people at the Grenfell Tower.

So what about justice? Well, as to that, the people of the Grenfell Tower and the Walk have been told by the police investigation that they will have to wait many more years for any possible prosecution, and therefore many years to hold those responsible to account.

This year, yet again, we have had the blandishments of government in the form of the Secretary of State for Housing, Communities and Local Government, Robert Jenrick MP, who on 20 January 2020 became the most recent politician to say that he and his department will ensure that everyone is safe and feels safe, going on to say, as ever, "We will be shortly publishing our response to the Phase 1 report". Moving on, he said, "and in anticipation of a wider programme of building safety reforms".

The Grenfell Inquiry's Phase 1 report, published in October, found that the Grenfell Tower's cladding did not comply with building regulations and was the principal reason for the rapid fire spread.

On 15 January 2020, Sir Thomas Windsor, chief inspector at Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, said it was alarming that, more than two years after the Grenfell fire, more than

300 buildings still had the same cladding as the tower.

In his report, Sir Thomas said the firefighters responded to the tower fire in June 2017 with determination, dedication, courage and commitment. But he then went on to say, in agreement with us and in agreement with the Phase 1 report and many other commentators of the London Fire Brigade, that the people of the Grenfell Tower were also let down by failures, failures in planning and preparation, incident command, communication and working with other emergency services.

So let's add this up. People are still living in tinderbox buildings with no one able to say that the deep failings of the London Fire Brigade have been rectified.

Government data released this month has revealed that more than 21,000 households are still living in flats wrapped in the aluminium composite panel cladding that allowed the flames to spread so rapidly in the early hours of 14 June 2017.

The figures published show that of 450 high-rise residential buildings in England that have been found to have the combustible cladding, 315 as yet have had no works undertaken to remove it, with 76 of these buildings not having any plans in place to do so.

Responding to those figures, Grenfell United said:

"Over two and a half years later, it is obvious that the government have no intention of making people safe and are continuously dragging their feet on the matter."

Grenfell United went on to say:

"It is only a matter of time before another tragedy happens, and the blame will lie solely at the government's door."

It took far too long for Commissioner Cotton to be ousted by the Mayor, despite our call for her immediate resignation at the close of the Phase 1 hearings in 2018. Now, the appointment of Commissioner Andy Roe on 10 December by the Mayor of London, Sadiq Khan, was a late but at least welcome step, as it should be recalled he was amongst the senior firefighters at the Grenfell Tower fire ground, and he recognised quickly after he attended that the stay-put policy must be abandoned. On his appointment, Commissioner Roe stated:

"We have some real challenges ahead, but I will be working tirelessly with the Brigade, the Mayor and local communities to ensure we deliver on the recommendations of the Grenfell Tower Inquiry report."

The Mayor also commented on the appointment of the new commissioner, saying that he looks forward to working with Andy Roe to deliver on the Inquiry's recommendations, and to ensure the transformation of the

Brigade is carried out as effectively and swiftly as possible.

But the people of the Grenfell Tower, and I'm sure that those people who live in dangerous tower blocks, are tired of this type of empty promise. They are tired of platitudes, they are tired of inactivity. They want and deserve action. From the Minister of Housing and Local Authorities to the commissioner of the London Fire Brigade, the people of the Grenfell Tower have had enough of talk about change but no actual change.

It is true that all of this has highlighted the urgent need to establish an implementation body to put into effect the recommendations of statutory inquiries, as was discussed recently in Parliament.

Instead, what would represent at least some change would be some signs of real progress and a timetable against which to measure activity. So in lieu of others doing so, we have decided to make our own commitment towards change and a commitment to providing an indicative timetable to push towards safer communities within the timescale of this Inquiry.

If the people we represent are not satisfied that sufficient change is being made or that plans to implement change are not being drawn up with sufficient commitment, energy and speed, we will have no choice

other than to consider making an application to this Inquiry, to the panel as we now have it, to ask for a full and frank explanation from those responsible for change, namely the Minister of Housing, that is Robert Jenrick MP, Sadiq Khan, the Mayor of London, and Commissioner Roe of the London Fire Brigade.

Further, if there is no explanation or no adequate explanation as to the failure to make progress towards change, we will request that you, sir, the Chair, exercise the Inquiry's powers of compulsion under section 21 of the Inquiries Act 2005 to order the attendance of the minister, the commissioner and the Mayor so that they can be questioned by Counsel to the Inquiry and answer the forthright questions of the people of the Grenfell Tower who we have the privilege to represent.

The power of an inquiry under section 21 of the Inquiries Act, enlarged upon in the explanatory notes at paragraph 51, explains that the powers are exercisable by the Chairman, but in a multi-member Inquiry -- in other words, the Chair with a panel member -- he will be exercising them on behalf of the panel.

Those explanatory notes are a useful reminder that we now have a panel, albeit of one for the moment. Therefore, the decision to require an explanation and

the potential calling of evidence is a decision of the panel as a whole, with panel members having an equal say with the Chair.

As regards the making of an application for an explanation, or for the attendance of the minister, the Mayor and the commissioner, we commit to making this only after receiving the clearest of instructions from our client group to do so, and we also commit to making such an application in writing, in a document which will be publicly released, and with due consideration to the Inquiry timetable.

If, on the other hand, the housing minister, the Mayor and the commissioner commit to inform, include and involve the people of the tower in the pathway to change and reformation of the system, then there will be no need to make the application to call them to account before this Inquiry.

The reason why we have decided to make a commitment to promote change is a failure so far for change to take place, despite the endless statements and empty promises made by so many.

After all, as Ms Barwise Queen's Counsel has pointed out with clarity this morning, cladding fires are not new. They have happened around the world well before the Grenfell Tower fire and they have been a cause for

concern for many years. All of the companies who have spent the last few days engaging in a pitifully predictable war against each other at the start of this module worked against the clearest background of warnings and evidence of the potential dangers posed by cladding.

In December 1999, the select committee on environment, transport and regional affairs stated, following a cladding fire in Irvine, Ayrshire, on 11 June, where William Linton died and four others were taken to hospital, as regards the evidence provided to them before their committee:

"The responsible attitude taken by the major cladding manufacturers towards minimising the risks of excessive fire spread has been impressed upon us throughout this Inquiry."

The select committee went on, and they said:

"Notwithstanding this, we do not believe that it should take a serious fire in which many people are killed before all reasonable steps are taken towards minimising the risks."

The Building Research Establishment, the BRE, is an organisation which provides testing facilities and guidance as to building materials. It is true that the BRE itself has questions to answer about their

procedures and their supervision of tests that they conduct. We will deal with those within Module 2 of this Inquiry. But the BRE reacted to the warnings set out in the 1999 select committee report and reviewed their original 1988 guidance on the fire performance of external thermal insulation for walls on multistorey buildings. That guidance had then been further reviewed in 2003 and then 2013, and emphasised the dangers to residents of this type of cladding fire. It's worthy of note to thus quote BRE 135, where they say this, the BRE:

"Once flames begin to impinge upon the external fabric of the building, from either an internal or external source, there is the potential for the external cladding system to become involved, and to contribute to the external fire spread up the building ..."

They go on to say:

"Window openings or other unprotected areas within the flame envelope provide a potential route for fire spread back into the building, leading to the potential to bypass compartment floors and to affect multiple storeys simultaneously, thus making firefighting more difficult."

As we have learned over the last few days and in all of the submissions, these companies were working against

this background of real known risk and real known danger to other people. That evidence has been brought out already in those submissions, and it tells us that these companies knew that they were literally playing with fire. But it seems these warnings, this background, this history of other fires were ignored by all of the companies before this Inquiry, who insist on trying to shift responsibility one to another.

Each of these companies owed a duty to get it right against what was well known of those real dangers presented by cladding materials and insulation. What we will suggest you will learn is that those responsible for the refurbishment failed to shoulder their own responsibility to ensure that the outcome of the refurbishment was a safe building.

After the Lakanal House high-rise social housing block fire where six people died and 20 were injured in south London in 2009, the All-Party Parliamentary Fire Safety Rescue Group called for a major government review of building regulations. The all-party group said that thousands of tower blocks were at risk because they had combustible exterior cladding. It later protested the government's ongoing failure to review the building regulations, as agreed following the Lakanal House fire, and pointed to the risk of another tragedy, to be told

by the government that the review following the 2009 Lakanal fire would take place in due course.

Now, all of this means not only that the industry knew of the dangers presented by cladding and insulation material, but also that the need for change and safer regulation had been identified well before the Grenfell Tower fire.

The last housing and communities minister, James Brokenshire, promised that the proposed new building regulatory scheme will ensure that residents are at the heart of the new regulatory framework. But so far, that proposed scheme largely ignores residents' involvement in regulation. As far as we can see, the new regulatory proposals are about reactive or complaints based systems, and not about true participation in the day-to-day business of regulation from residents of social housing.

For example, the new consultation, launched in January 2020, is described as a call for evidence regarding risk prioritisation in existing buildings, and asks for innovative ideas and supporting evidence of approaches to assessing risk in existing buildings.

Well, we have an innovative idea which we will include in our response to that consultation, and that is to ask the people who live in those existing

buildings their opinion.

But this is not good enough. The people of the Grenfell Tower need to know that if they are to suffer the risk, the people living in social housing need to know that if they are to suffer the risk, they must have a say in setting the risk. Our reply to the building regulations consultation last year put it this way: by putting residents at the heart of the new system at every level, including system design, there is a much better chance of achieving widespread stakeholder engagement. Grenfell United made the same point, as have others.

David Parr, the director of social policy and technical services at the British Safety Council, stated: surely as a fundamental principle of sound risk management, the people who are at the sharp end of a risk must have an input into determining how significant a risk actually is and how much effort should go into its prevention and control.

But, unfortunately, the only reference to who will be making decisions about the risk from building materials appears to be the suggestion by the housing minister that the Construction Products Standards Committee, the CPSC, will make recommendations on construction products and system standards and advise on

how the testing regime can be improved. Unfortunately, that committee's membership is obscure and, as far as anything can be said about this committee, it does not include social housing residents.

For the people of the Grenfell Tower and those still living under daily threat in high-rise blocks, we suggest that resident safety should come first, and residents must be allowed to play a full part in risk assessment and regulation in the future.

Dame Judith Hackitt has been asked to chair a board to oversee the transition to the proposed new regulator. We ask Dame Judith to consider the appointment to this board of lay membership from those with experience of living in social housing, in line with modern regulatory practice, which is to include lay membership.

The people of the Grenfell Tower don't want to hear any more words, they don't want to hear about the problems; they want solutions and they want change. So, in summary, if towards the end of Module 3 in September this year there are no sure signs of change, we will request that this Inquiry panel ask for reasons as to the failure to make changes, and if any explanation is lacking or inadequate, we will make an application to the panel of this Inquiry to compel the attendance of the housing minister, Mayor of London and

the commissioner of the London Fire Brigade.

Finally, we should note that today we are still nowhere further with any information from the Cabinet Office as to when the second panel member will be replaced. The ex-Prime Minister, Theresa May MP, recognised the need for the Chair to sit with two panel members, not just one, and committed to that in her recommendation. We are also mindful of the provisions of section 8 of the Inquiries Act 2005, and in particular the need to ensure that the Inquiry panel taken as a whole has the necessary skill and expertise to undertake the Inquiry.

Given the diversity of the Grenfell Tower community, it is essential, we say, that the second panel member's expertise, professional and life experiences encompass the issues of race, class, social housing and access to justice.

Perhaps that's a reminder that, overall, we must never lose sight of the Grenfell community. They are at the heart of this Inquiry. The matters being investigated are about their lives and the deaths of those within their families that they loved. This panel's finding will affect their reception overall of justice and accountability. We know that you will work hard to achieve that outcome, and for that you have our

thanks.

Sir, those are our submissions.

SIR MARTIN MOORE-BICK: Thank you very much.

Now, Mr Williamson, I understand that you are going to address us as well and make a further opening statement.

MR WILLIAMSON: Do you want me to do that now?

SIR MARTIN MOORE-BICK: I think that would be convenient.

If you would, please, Mr Williamson. I'm not sure how long you expect to require, but if you are still running round about 1 o'clock, perhaps you would find a convenient point at which to break.

MR WILLIAMSON: Right. I don't think I shall have finished by 1 o'clock.

SIR MARTIN MOORE-BICK: I was not suggesting you should, but you find a convenient moment.

Opening statement on behalf of BSRs Team 2 by MR WILLIAMSON

MR WILLIAMSON: Sir and madam, the Team 2 bereaved, survivors and residents for whom I appear wish to begin this part of their submissions by thanking the Chairman and his team for the Phase 1 report. It is clear that a huge amount of hard work has gone into that report.

Our clients seek three main things from Phase 2 of the Inquiry.

First of all, there must be accountability. The

many corporate organisations whose failings have led to this tragedy must be held to account. This requires -- a point to which I will return -- a relentless effort by the Inquiry to peel away the layers of obfuscation put up on behalf of the corporates by their well resourced and sophisticated teams of experts and lawyers.

Secondly, this Inquiry must recommend sweeping change and ensure that this is implemented. Our clients cannot contemplate the prospect that yet another report on tower block fires is simply left to gather dust, as was the case with Lakanal House.

Thirdly, the BSRs must be at the centre of this process, not at its periphery. This is important both in relation to the Inquiry process itself and more generally in respect of the management of social housing in the future.

Dealing first with accountability, there was nothing unavoidable about this tragedy. It was the product of human and institutional errors of omission and commission.

At the heart of all this is RBKC, as building owner, planning authority and building control authority. From the very start, this project was bedevilled by a culture which prioritised cost at the expense of all other considerations. In July 2013, Laura Johnson, the

director of housing at RBKC, reported to the Housing and Property Scrutiny Committee that -- and the document is {RBK00000365/2}. She said:

"The Savills report identifies Grenfell Tower as being one of the poorer performing assets in the housing stock with a negative Net Present Value over 30 years of -£340k.

"Any additional investment ... will effectively increase the negative NPV on a pound for pound basis ... [increasing] the negative NPV to -£1.64m."

It followed that, from the point of view of RBKC, every pound spent on this project was really money down the drain, so that the pressure from above was always for cost savings. This had two important general consequences.

The first was that in their discussions about the scope of the works, the TMO and their advisers were obsessed with cost and paid little heed to safety. Safety simply does not seem to have been a priority for anyone concerned with this project. Leadbitter, the contractors who were originally in the frame to carry out this project, were sidelined as too expensive.

At about the same time as Laura Johnson was reporting to the housing committee, it was decided on her instructions that a different approach to

procurement was to be taken. In May 2013, the costs consultant, Artelia, reported internally -- if we could go to {ART00006252} -- that Peter Maddison of the TMO has been overruled by Laura Johnson. Also Mr Maddison is not keen on progressing with Leadbitter.

"Our report kicking this all off was based upon the objective of preserving programme -- this now not so important."

Then these words:

"Value for money is to be regarded as the key driver [of] the project.

"Accordingly we are likely to reprocure [the] scheme via OJEU!

"... Leadbitter to be stood down ..."

RBKC were clearly at the heart of these decisions and cost was by far the most important factor in the decision-making process.

The second important consequence of the concern with cost was that when it came to the choice of materials, cheapness was not just the key driver of the project, it was really all that mattered. So when Studio E began to look for savings at the behest of the TMO, it was decided to "change zinc cladding material to something cheaper". In March 2013, Studio E "had CEP come in today to discuss the cheaper ACM cladding option, and

they will be forwarding samples for possible presentation to planning". What is striking in all these discussions is that the question of fire safety did not seem to feature at all. The concern was at all about saving money.

In September 2013, Studio E told Artelia and the TMO that they had:

"... met with Harley ... this morning to discuss the project. They are very keen and have been tracking the project for some time ... Their recurring experience is that budgets force clients to adopt the cheapest cladding option: Aluminium Composite Material (ACM), face-fixed."

This advice, from which no one seems to have dissented, encapsulated a number of things which went wrong with this project: reliance upon the supposed specialists at Harley without any real due diligence, the choice of ACM, and above all the obsession with cheapness. This meeting also gives the lie to the suggestion that the final choice was ultimately for the TMO, as Harley asserted in their oral opening on Monday. The proposal for the ACM came from Harley.

However, cheapness was not the only concern and it was not the only obsession which contributed to this tragedy. There was also considerable anxiety about

aesthetics, in particular as to how the tower would look post-refurbishment to the well-heeled residents of the borough.

Two features of this preoccupation with appearance were to have important results. In November 2012 the architecture appraisal panel, part of the RBKC planning apparatus, recommended that the top of the tower be revised to provide visual interests by way of a crown. As we now know, the crown was to play a very significant role in the fire. Yet when it came to be considered, Studio E and others were mainly worried about "the visual impact".

Visual impact was, it seems, what really mattered, and this concern came from the very top at RBKC. In the early part of 2013, Studio E had recorded the very strong steer they had regarding Jonathan Bore's choice of colours and materials. Bore, another key RBKC figure relevant to the Module 1 issues, was at that time the executive director of planning and borough development.

The other important feature was that when the specification of the ACM came to be considered in more detail, it was appearance, not safety, which dominated discussions during the summer of 2014. So in June 2014 we find Sarah Scanell of RBKC's planning department expressing concern that "panels of this nature will not

provide the high quality appearance for such a visible building in this borough".

However, it is not of course only RBKC who should be held to account for the selection of dangerous materials for this refurbishment. Unfortunately, Max Fordham and Studio E managed between them to specify Celotex insulation. Celotex actively promoted its RS5000 insulation as "acceptable for use in buildings above 18 metres height". However, as the Inquiry's expert Paul Hyett explains, this claim was both erroneous and misleading. In fact, PIR insulation does not meet any of the definitions for materials of limited combustibility set out in table A7 of ADB2. It is combustible. However, Celotex's deceit provides no shelter for Studio E or Max Fordham or Rydon or Exova. They should all have known that this product did not comply with the building regulations.

As regards the ACM, we have already seen that the conversation about this material related to its appearance and cost, not to its safety and suitability. We have also heard that, as early as 2011, Arconic knew that the Reynobond ACM eventually applied to Grenfell Tower was in fact highly combustible and, in cassette form, should only be used on small buildings. It was identified by Professor Bisby in Phase 1 as by

a considerable margin the most important factor contributing to upward vertical fire spread and, indeed, to external fire spread generally.

A large number of parties are to blame for this misspecification, including, firstly, the British Board of Agrément, who failed to make clear in their certificate that the failure to specify a polyethylene core with a fire retardant additive, or a failure to use only the designated colours, would render any panels non-compliant with class 0 and Approved Document B.

Secondly, Harley, who knew in early 2015 that ACM was dangerous but continued to recommend its use in its cladding system.

Thirdly, Arconic, who continued to supply polyethylene cored ACM products without warning purchasers of the product's characteristics in fire and the inappropriateness for the use of such products in buildings over 18 metres high. It is no defence for Arconic, as they suggested the other day, having supplied dangerous products, to say that others should have made a careful and holistic assessment.

Fourthly, Studio E, who, if they had read the appropriate sections of the BBA certificate, should have reverted to the manufacturer in pursuit of an assurance that the panel colour selected for Grenfell would meet

the test requirements necessary, and, in the absence of any satisfactory insurance, should have insisted on a dedicated test being carried out on the preferred panel colour and refused to specify it without satisfactory certification.

Fifthly, Exova, who were aware of the dangers associated with ACM, even discussing the possibility of flames entering the cavity via the windows, should have ensured that the product was fully and properly tested, certified and applied in strict accordance with its certification and with all the requirements of ADB.

Finally, Rydon, who should have managed both their cladding subcontractor and their architect with greater care. Indeed, Mr Taverner on behalf of Rydon accepted on Monday that it took on express and implicit contractual obligations relating to the quality and standards of the design and construction of the refurbishment work.

Just picking up one of those parties for the moment, we now know that Harley, the specialist cladding contractor, took the view internally -- if we could go to {HAR00006585/1}, a document which I think was referred to the other day, Harley saying internally:

"There is no point in 'fire stopping', as we all know; the ACM will be gone rather quickly in a fire!"

Yet Harley never shared that view outside their own organisation, and positively promoted the use of ACM on this project.

Moreover, calamitous though the selection of materials were on this project, that was not the only thing that went wrong and not the only contributory factor to this tragedy. The procurement of the works by RBKC and the TMO -- and, really, one should in many ways regard these two bodies as one -- was singularly ill-managed.

They selected in Studio E an architectural practice which lacked the requisite experience of overcladding tower blocks. It seems that the core of the practice's work revolved around education, sports, leisure, recreational and commercial work. As events unfolded, it became painfully apparent that they lacked a basic understanding of the requirements of the building regulations as they related to overcladding a tower block, with catastrophic consequences.

They also selected in Rydon a contractor which was by far the cheapest, but cheapness was to come at a very high price. In October 2013, a pre-qualification process had taken place. Rydon scored worst of the contractors, as measured both by Artelia and by the TMO. Despite this, Rydon were allowed to tender, and

submitted by far the lowest tender at just over £9 million, compared with other tenders in excess of £10 million. RBKC, the TMO and Artelia decided to proceed with this contractor, which had scored so poorly on the pre-qualification exercise and whose tender was so far below that of their rivals.

However, the worst failure in terms of procurement related to the failure to appoint a fire consultant with an obligation to provide a comprehensive fire strategy for the refurbishment, and to ensure that they provided such a strategy.

Exova had made a fee proposal to the TMO which included determining any external fire spread issues that there may be and the impact those may have on architectural design, and yet this never happened. No one seems to have clarified with Exova what they were supposed to be doing and they did not make that clear themselves. Their formal relevant contribution never progressed beyond the first edition of an outline fire safety strategy in October 2012, which Ms Barwise quoted this morning.

Exova issued further editions of the strategy, but so far as the relevant part was concerned, the wording remained the same. No one, whether at the TMO, Artelia, Studio E or Rydon, seems to have thought it troubling

that the strategy was outline only or said nothing about regulation B4. Nor did Exova complain about their lack of information or instruction.

Crucially, the strategy simply did not engage with the cladding issues at all. What did Exova think they were doing about fire safety for the refurbishment works which they had been engaged to consider? Their submissions essentially suggest that they were mere spectators. So when Rydon came into this project in 2014, there was no fire strategy and no clarity as to Exova's future role.

When Rydon attended a contractor introduction meeting in April 2014, it was recorded that Simon Lawrence of Rydon would contact Exova with a view to using them going forward. In fact, Rydon seemed to have taken a conscious decision that they would not contact Exova. In their oral opening yesterday, the TMO sought to rely upon that minute, but three of their staff were at that meeting, and, although Rydon never did contact Exova as agreed, the TMO never followed that up.

Later that year, at progress meetings in September and October 2014, Rydon undertook to "appoint other consultants, to include fire". But, as the progress meetings rolled on, that matter simply fell away from

the minutes and no contact or appointment was ever made.

Artelia and the TMO were at those meetings. Why didn't they ask about this? Didn't it appear strange and troubling that Exova and Studio E, for that matter, were not at those meetings?

By the second half of 2014, therefore, all the ingredients were present for the disaster which was to ensue. Between them, the parties -- but in particular Studio E, Fordhams and Harley -- had managed to select dangerous materials for both cladding and insulation. Rydon, the design and build contractors, had, in principle, complete responsibility for the design, and yet they never critically examined the design choices which had been made, and they seemed to have decided to keep both Studio E and Exova very much at arm's length. The TMO and Artelia do not seem to have been concerned to check who was doing what.

These points will no doubt be much developed in the evidence, but by way of example only, consider design team meeting number 1 which was held on site on 13 August 2014. The attendants including Simon Lawrence, Bruce Sounes and Neil Crawford of Studio E, Daniel Anketell-Jones and Kevin Lamb of Harley. This was an ideal opportunity to review where the project was on fire strategy, the design choices

already made for the cladding, the necessary future choices, lines of responsibility and how to deal with building control. Those matters were particularly important given that Crawford and Lamb were new to this project.

None of this was done. Indeed, Crawford noted in his notebook that the fire strategy was "not approved". This is remarkable, more than two years after Exova had first been involved, and yet no one seems to have been concerned.

There was, even at this stage, one final line of defence which might have avoided this tragedy, and that was RBKC's building control department. After all, what is the purpose of such a department if it is not to insist that applicants submit adequate applications for approval, and that these applications are examined in accordance with the building regulations?

We know that building control abjectly failed in discharging this responsibility because, in a case where candid admissions are few and far between, RBKC have admitted as much in their written opening submissions at paragraphs 101 to 106.

Those admissions are well warranted. In addition to the material selection issues which I have already outlined, building control and Rydon and Harley and

Studio E wholly failed, as the building control admissions make clear, in relation to the very important issue of cavity barriers.

There was no overall strategy for the provision of cavity barriers at Grenfell Tower. This led to a catalogue of failures, including a lack of vertical cavity barriers to the window jambs, and a lack of horizontal cavity barriers to the window head and sill, and at the top of the cavities within the rainscreen system.

According to Mr Hyett -- and we agree -- the "fundamental errors in design of the cavity barriers" meant that the Harley construction documentation which Studio E endorsed was deeply flawed in concept, with the result that the construction documentation was released in a form that provided absolutely no protection against the passage of fire anywhere around the window opening, directly into the cavity zone behind the rainscreen.

Despite all these failures, and remarkably, building control not only approved the plans, but also engaged at the time in email exchanges which gave express comfort to Rydon and Studio E, telling them on 1 April 2015 that they had "no adverse comments to make on the cladding proposals shown on your drawings".

Sir, if that's a convenient moment.

SIR MARTIN MOORE-BICK: If that suits you.

MR WILLIAMSON: I am about halfway through.

SIR MARTIN MOORE-BICK: Thank you very much. We will break now for some lunch and resume at 2 o'clock, please.

Thank you.

(12.57 pm)

(The short adjournment)

(2.00 pm)

SIR MARTIN MOORE-BICK: Yes, Mr Williamson, when you are ready.

MR WILLIAMSON: Thank you.

Sir, madam, I turn now to my second theme, which is change and its implementation. We say that the Inquiry should be both ambitious and flexible in its approach; ambitious in the sense that recommendations for change should be wide-ranging and radical; flexible in that the terms of reference should be kept under constant review. If they need to be widened then the Inquiry should so recommend.

The Inquiry needs to build upon the recommendations of the report, Building a Safer Future, of Dame Judith Hackitt, which was referred to yesterday, which was published almost two years ago. For example, Dame Judith criticised what she referred to as indifference, the primary motive to do things as quickly

and cheaply as possible, rather than to deliver quality homes which are safe.

Cost should not be the sole or even the most important factor in designing and carrying out building projects. Safety must always come first and be the focus of attention at all times. It should always be the key driver.

The change from zinc to ACM was an important instance in this case of the obsession with cost, not so much choosing cheaper materials known to be unsafe, but a concentration on cost at the expense of all else.

Another theme running through this broader story is the fragmentation of the construction industry in 21st century Britain. As I have said, no one person or organisation was ever taking responsibility for anything. The buck was passed and continues to be passed, but no one was prepared to say "The buck stops here".

This issue was raised in terms on the very day the fire occurred by the Grenfell Tower Leaseholders' Association, hereafter the GTLA, and these are key questions for the Inquiry to answer. {RBK00000186/2}, please.

They say this:

"It is widely acknowledged by authoritative sauces

in the Fire Brigade that the material of the cladding used by Rydon did not meet health and safety requirements in the 'true' sense, ie is a fire risk as it is combustible. The crucial question that we as a Residents Association have is, who signed off that the refurbishment delivered by Rydon in 2016 met all the required health and safety standards?"

That remains the key question for this Inquiry to answer.

In this connection -- that's in connection with fragmentation -- the Inquiry should consider changes which have been proposed for the construction industry and those implemented in other industries, for example the RIBA proposals for a new plan of work for fire safety, and the Senior Managers and Certification Regime introduced in 2016, following the financial crisis in the financial sector.

That there is a need for an improved regulatory system and stronger individual accountability has been emphasised by those at the heart of this Inquiry, the survivors and bereaved families. In their response to the green paper, Grenfell United called for a new system of regulation and an improved system of regulation so that what they described as an accountability framework backed by law would mean that a named person is

responsible for people's safety in any social housing tower block. There would be consequence for individuals who prioritise profit over people's safety. It would mean individual failures could lead to sanctions, including criminal liability and even fines or prison.

In this connection, our clients support the submissions of the FBU that the Inquiry should carefully consider issues such as deregulation and austerity. For example, did manpower cuts to RBKC's building control department or the changed regulatory regime in which it was operating affect its ability to do its job properly with catastrophic consequences?

Related to these issues of fragmentation is the fact that this was, as we have heard, a design and build contract. In a previous era, a project like this would have been designed by a borough architect, employed full-time by a local authority, and subject to limited, if any, commercial pressures. The authority would have engaged a main contractor and the borough architect would have administered the contract.

An alternative procurement route, especially for more specialist work, would have seen the authority engage a private firm of architects, who would then have performed a similar role to the borough architect.

In more recent times, many public projects have

adopted the design and build model, and of course the in-house resources of local authorities have been reduced massively or eliminated altogether.

Under design and build, there is a danger, as you may well feel occurred here, that the architects, once novated, are squeezed out of the process -- they are after all now a cost burden for the design and build contractor -- and there is no independent professional person to administer the contract and ensure that the design intent is fulfilled.

Now, I have been talking about recommendations that the Inquiry should consider, but recommendations are all very well; unless they're implemented and unless the implementation is overseen, they are not worth the paper they are written on.

The Inquiry needs to be very well aware of the history here, particularly of the Lakanal House fire, which various people have referred to. As the Phase 1 report notes, a major fire occurred at Lakanal House in 2009. There was serious loss of life; six people died. The coroner's recommendations were considered and extensive, and included the need to address the requirements of building regulations B4. Nothing much happened as a result.

As the Lakanal Inquest was nearing its conclusions,

residents at another RBKC estate wrote to the TMO and the council in the following terms. {TMO10038714/10}, please:

"On February 27, 2013, at the inquest into the lethal fire ... at Lakanal House ... the QC for the families of those that died described the work as 'a fundamental breach of building regulations, a lamentable failure of the contractor ...

"Could you please tell us what checks and measures you have undertaken to ensure that Apollo, who were the contractors hired by RBKC for Major Works at Elm Park Gardens, adhered to the building regulations and that we will not suffer a similar fate."

The TMO were clearly giving these issues some consideration in 2013, as the Grenfell project gathered pace. For example, Janice Wray of the TMO noted in May 2013 that:

"Ensuring effective compartmentation of our dwellings is the only effective way of containing fire and reducing fire spread from the flat of origin. This was further reinforced to me yesterday at a briefing from the Building Research Establishment on the Lakanal House fire where breaches in fire stopping definitely contributed to fire spread."

In June 2013, Wray prepared a briefing note on

Lakanal House, which observed that -- {TMO10016215/3}, please:

"Tragically this fire resulted in 6 deaths which clearly led to much discussion about the cause, the contributing factors and most importantly what action is required to ensure fire safety in high-rise residential blocks ... Further, I have also outlined the TMO's current position/approach ..."

And one of the matters she mentioned was:

"Review Approved Document B of the Building Regulations - clear reference to External Fire Spread."

Yet, despite all this, and despite the coroner's best intentions, Grenfell saw the Lakanal mistakes repeated and amplified. The warning signs were there for all to see, and they were ignored.

Most poignantly of all, Claire Williams of the TMO actually invokes the spectre of Lakanal in November 2014, when she wrote to Artelia about the cladding. That's at {ART00003046/2}. She said:

"I have just been looking at the cladding as our database is asking for costs ... However, I do not know if there is any issue of flame retardance requirement? I know at Lacknall[sic] House one issue was that the replacement panelling for the asbestos cladding was not flame retardant! I don't know if this is in the

specification, but want to make sure it is raised."

Mr Booth of Artelia passed, having made a quick review of the specification, suggested that Williams pass on that matter to Rydon.

So Claire Williams took this up with Simon Lawrence of Rydon, copying it to Booth, later on the same day. That's at {RYD00023468}, where she said:

"I am just writing to get clarification on the fire retardance of the new cladding -- I just had a 'Lacknall'[sic] moment."

There was no response to this and neither Williams nor Artelia seem to have followed this up. Artelia submitted in their oral opening the other day that they did exactly what an employer's agent should do, but what they did not do, of course, is to check that there had been an answer of any kind to Williams' question. This was perhaps the last chance to avert disaster and it was not taken.

The email chain should have alerted all concerned to the fact that there was no fire strategy and there had been no coherent attempt to design the cladding to take proper account of the fire safety issues, but it seems not to have done so.

However, this episode is also a warning about the Inquiry process itself. However thorough the analysis

of what has gone wrong, and however trenchant the recommendations, nothing will happen unless those recommendations are monitored and implemented. Thus, in relation to the Phase 1 recommendations, the Inquiry needs to consider carefully which of those matters are the most urgent, who is dealing with the required changes, and what mechanism is appropriate for those changes to be implemented.

As the panel will be aware, and as Mr Stein referred to, the government is considering its response to the Phase 1 report and is proposing to bring forward legislation. But little has so far happened, and, in any event, this Inquiry should be proactive in itself monitoring what is being brought forward at a legislative level.

For example, John Healey, the Labour spokesperson, advocated a five-point plan for action for the Secretary of State to adopt in the House of Commons debate last week. The reference to that is House of Commons debates, 21 January, volume 670, column 234.

In short, the outcome of this Inquiry should not emulate Dickens' circumlocution office, with half a score of boards, after a bushel of minutes, several sacks of official memoranda and a family vault full of ungrammatical correspondence on how not to do it, or

emails to similar effect.

The urgency of the task is not in doubt. For example, Rydon are still working on large public housing projects and were, until very recently, still being allowed to bid for or work on high-rise buildings. There have also been, as Mr Stein referred to, a number of well publicised fires where the cladding has been a substantial contributing factor.

I deal now with my final theme, which is process. Our clients have a number of concerns about the Inquiry process. We ask the Inquiry team to reflect upon them.

The first relates to the evidence and argument which is about to begin. On 4 June 2018, at the very beginning of this Inquiry, Mr Millett QC, as has already been mentioned more than once, outlined what was expected from the corporate participants. He asked that their statements address very specific identified issues, that they provide what he described as a full and clear case. He said that that course would be pursued with vigour by the Inquiry, and, as has been said many times already, he deprecated any temptation to indulge in a merry-go-round of buck-passing.

However, despite those wise words, the witness statements from the key players have demonstrated exactly that which Mr Millett warned against. They say

very little. So, for example, the statements from Studio E are long and detailed and refer to many documents. Others from Exova and Rydon, for example, are terse and unforthcoming, and make little apparent use of the documentation. However, the witness statements share a common thread: the reader would struggle to extract Mr Millett's full and clear case.

None of the witnesses really engage with the question of how the widespread and fundamental failures identified in the Phase 1 report came to take place. The corporates have indeed elected to indulge in a merry-go-round of buck-passing. No one takes responsibility for anything. Everyone seeks to blame other parties and avoid accepting any responsibility themselves. The duty of candour has been ignored.

This process has continued into and, indeed, been much expanded and developed in the opening submissions. With the very limited exceptions of RBKC and Celotex, none of the corporates takes responsibility for anything. They are prepared piously to express deepest sympathy for those affected and to pledge their undying loyalty to the work of the Inquiry, but of contrition there is little sign.

So, for example, Rydon, the design and build contractor, appears not to have been responsible for

either designing or building the works. In his oral opening for Rydon, Mr Taverner QC used the word "delegate" or its variants about a dozen times, and yet, as the design and build contractor, Rydon could not in fact delegate responsibility for anything.

Mr Taverner also made the point that Rydon were reliant upon the architectural and engineering know-how of others, but in truth it appears that Rydon consciously decided, no doubt for commercial reasons, to marginalise that very know-how.

Studio E say that they placed reliance upon Exova's fire safety engineers, and yet they never clarified at the time exactly what Exova were supposed to be doing. They also seek to say that they were not responsible for checking the Harley drawings, but that is exactly what their novation appointment required of them. The deed of appointment, as novated, provided that Studio E were to seek to ensure that all designs comply with the relevant statutory requirements, and they were to co-ordinate any design work done by consultants, specialist contractors, subcontractors and suppliers.

Artelia, described in numerous contemporaneous documents which they themselves drafted as project managers, were not, it seems, actually responsible for managing the project.

Exova, who held themselves out as world leaders in the provision of fire safety services, say they had no responsibility for the fire safety strategy for these works.

Where there is an admission of failure, it is swiftly accompanied by a deflection of blame in the direction of other parties. So, for example, Harley say in their written and oral opening that the absence of cavity barriers around window openings may not have been compliant with the terms of ADB. However, in the very next breath they then blame the cladding design drawings of Studio E for failing to specify cavity barriers, and Exova and building control for their failure to draw attention to the lack of cavity barriers.

Both Rydon and Harley have sought to pass blame in the direction of Arconic and Celotex, placing reliance upon, for example, the Celotex data sheet which asserted that Celotex RS5000 was acceptable for use in buildings above 18 metres in height. However, and crucially, the data sheet went on to say, as to certification -- this is {CEL00000008/3}:

"Celotex RS5000 is a premium performance solution and is the first PIR board to successfully meet the performance criteria set out in BR 135 ..."

It then explained the system was tested and gave

a description of it, and then said this:

"The fire performance and classification report issued only relates to the components detailed above. Any changes to the components listed will need to be considered by the building designer."

We can anticipate, therefore, that these corporate parties, with enormous financial resources behind them, well paid teams of lawyers and extensive expert assistance, are going to make the Inquiry's task as difficult as they possibly can. As Ms Barwise and Mr Stein have already pointed out, some of the corporates have underlined this approach by seeking to claim privilege against self-incrimination for their witnesses.

All this gives rise to a number of procedural concerns, concerns which our clients have not had the opportunity to ventilate until now, since there has been no procedural hearing to prepare for Phase 2.

For example, it appears that much of the defence raised by certain corporates in Module 1 will amount to the assertion that they were the innocent victims of misleading claims made by Celotex and Arconic, and yet those claims and those parties will be peripheral to Module 1, these issues having been reserved to Module 2.

Equally, our clients wish to emphasise the

difficulties they had in putting forward supplemental questions in Phase 1 of the Inquiry. They felt that not enough time was provided at the end of examination by Counsel to the Inquiry of witnesses in order to speak to clients and get instructions for supplemental questions. Subject to questions under rule 10 of the Inquiry Rules, this is of course the only real avenue for raising matters during the course of the hearings, and we submit that a better system will be required for Phase 2.

Our clients are, therefore, concerned that their much less well resourced voice should be heard in this Inquiry. The question of voice is an important one, because a substantial part of the history of this tragedy is the way in which RBKC and the TMO ignored the tenants at the time.

In November 2016, the Grenfell Action Group posted a dramatic but fully justified and prophetic warning. They would have been even more concerned if they had been aware of the litany of incompetence and worse I have described, and that's at {TMO10047933/1}. They say this:

"It is a truly terrifying thought but the Grenfell Action Group firmly believe that only a catastrophic event will expose the ineptitude and incompetence of our landlord, the KCTMO, and bring an end to the dangerous

living conditions and neglect of health and safety legislation that they inflict upon their tenants and leaseholders."

They went on to say:

"The Grenfell Action Group predict that it won't be long before the words of this blog come back to haunt the KCTMO management and we will do everything in our power to ensure that those in authority know how long and how appallingly our landlord has ignored their responsibility to ensure the heath and safety of their tenants and leaseholders. They can't say that they haven't been warned!"

The residents continue to raise concerns about fire safety, and RBKC and the TMO continue to ignore them.

So, for example, in March 2017, the GTLA wrote to a councillor to say that they intended to hire the independent health and safety inspector to carry out a full health and safety inspection of the premises. That was forwarded to Laura Johnson of RBKC, who responded to Robert Black, the chief executive of the TMO:

"I am not minded to agree to this request. I find that the work that the TMO has undertaken is more than sufficient."

On that same day, the GTLA asked Laura Johnson:

"Who is going to pay the ultimate price for the anticipated negligence of KCTMO, the RBKC or the residents of Grenfell Tower?"

In April 2017 the GTLA wrote again to Laura Johnson, referring to a fire which had happened in the building in 2010 due to poor maintenance, and that email referred to a petition calling for an independent investigation by an independent adjudicator, health and safety inspector and Fire Brigade inspectors to carry out a full health and safety inspection of the premises. That was but a matter of weeks before the fire. The petition was signed by many residents. It was delivered by hand by Mr Shah Ahmed, chair of GTLA, to Councillor Feilding-Mellen and to Robert Black on 30 May 2017, only two weeks before the fire. It should be noted in this regard that Mr Ahmed and the GTLA had been raising concerns about fire safety to no avail since 2010.

Our clients are, therefore, with that history in mind, anxious that they should not be ignored or sidelined in the Inquiry process. For example, despite our urgings to the contrary -- and as I have said, there has been no procedural hearing to consider how Phase 2 should be conducted -- the scope and management of the

modules was entirely determined by the Inquiry, without any consultation with anyone. As part of that process, the issue of engagement with the residents has been put into Module 3. Our clients have had no chance to speak as to that case management exercise, and no chance either to comment on the formulation of the issue which is currently drafted as follows:

"Complaints/communication with residents – nature of residents' complaints to the TMO/RBKC; adequacy of response to those complaints, adequacy fire safety advice."

However, this formulation does not capture the real issue and does not address the real key to what went wrong with the design of the cladding and what therefore ultimately led to the fire. The real issue is not merely complaints; it is about the ability of those who lived in Grenfell Tower and those who live in social housing generally to have an input into what is being done to their homes.

Of course, the residents of Grenfell Tower were not necessarily experts on these materials or regulations, but they were experts on where they lived, and they constantly emphasised the need to give top priority to fire safety, in marked contrast to the approach of the TMO and the construction professionals.

This is an important area. Section 105 of the Housing Act 1985 requires only very limited consultation by social landlords with their tenants in respect of, amongst other things, programmes of maintenance or improvement. A stronger legislative framework for consultation might help to avoid another Grenfell.

Note that this is not just the wisdom of hindsight; towards the end of the refurbishment, Councillor Blakeman, an opposition councillor at RBKC, made the following recommendations to her colleagues, and that's at {MET00045750/2}. She suggested that they should:

"Ensure that formal collective consultation arrangements are in place at the start of any project, either through a Residents' Association or through a TMO Compact."

And also that they should:

"Appoint an independent residents' advocate, with direct access to senior TMO management, who can expeditiously collate and progress residents' concerns especially matters of general concern."

The failure of RBKC and the TMO to listen to the concerns of the residents was a substantial contributory factor to this tragedy. It must not happen again in this Inquiry.

Thank you very much.

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

Well, that completes the opening statements, and at this point, as I indicated yesterday morning, I'm going to hear an application that's been made on behalf of a number of core participants in relation to claiming privilege against self-incrimination.

Now, Mr Laidlaw, are you going to make this application on behalf of those who are interested in it?

MR LAIDLAW: I am, sir, yes.

SIR MARTIN MOORE-BICK: Thank you. Well, take your time, but when you are ready.

Application in respect of an undertaking from the Attorney General touching upon self-incrimination

Submissions by MR LAIDLAW

MR LAIDLAW: I ought to say immediately, and just before I offer an unreserved apology, that I appear, as I know you, sir, know and understand, for Harley, the corporate entity. I do not represent the Harley witnesses in their personal capacity, although, as will become clear, I am in effect speaking up on their behalf for your consideration.

In speaking up for these individuals, who would otherwise have no form of representation, I sincerely hope that this at least will be accepted of me: that

I believe it is my professional obligation to do so, however unpopular that may make me and however inconvenient to the smooth running of this important Inquiry the consequences are.

So my apology: I am very sorry that the application I am about to make, an application which I understand that a significant number of witnesses will support, and their numbers may be added to as the Inquiry progresses, is made so late. I accept, of course, that it could have been made earlier. And I am sorry that it's bound to cause disruption to the Inquiry, and that that prospect, as Mr Mansfield said yesterday, has and will cause the bereaved, survivors and residents of Grenfell Tower anxiety, distress and anger. For that, as I say, I am very sorry.

As Mr Mansfield also said, the BSRs, and no doubt the Inquiry itself, have a major question "over why it's being done so late". Whilst I cannot provide an excuse for that, I can provide something of an explanation, which I will, because this is --

SIR MARTIN MOORE-BICK: You do know, don't you, that this sort of question was raised 15/16 months ago by the solicitors acting for the TMO? And I think the response at that stage was: well, you can't expect us to go to the Attorney without some material. The invitation was

given at that stage to provide a basis for approaching the Attorney.

Now, that was only on behalf of the TMO, that letter was written, but we received no response. Since then, all the indications have been that people were essentially not going to rely on privilege against self-incrimination and have not done so in relation to making statements or disclosing documents. So it did come as a bit of a surprise to find that this application was being mooted yesterday.

MR LAIDLAW: Yes, and I accept that.

In respect of the first matter, I do now know of that correspondence. I didn't know that until very recently indeed. I accept, in terms of the appearance of things, the surprise that this has caused.

Can I, speaking for myself now, just identify the reasons for me at least coming late to this issue, because it may be that some or all of these reasons are shared by others who support the application.

First, seeking to make the best use of limited funding -- because I'm afraid we do not have, despite the submissions which were made but a moment ago, unlimited funds or anything like that -- meant that after the summer of last year, counsel, including the juniors who represent Harley, did not return to Harley's

case until December, and then, as you will remember, there was much work to be done on behalf of the company to meet the orders in respect of the delivery of the opening statement.

Next, and this applies to those individuals in respect of whom Mr Hyett passes adverse comment, there was his report. That had been served on 31 October, but I did not see that until December. As far as the Harley individuals are concerned, the view taken through to that point was that the risk of self-incrimination was low. I had not, by way of example, taken the view -- and it's the point that you have made, sir, a moment ago -- that the Rule 9 statements provided a year or so earlier by Harley put them at risk.

Thirdly, and importantly, it was during the autumn, so in October of last year, that the police interviews involving four of the Harley witnesses took place, they having been notified that they were suspected of having committed a number of statutory and regulatory offences and been interviewed under caution. It also became clear -- and I made mention of this point in opening on Monday -- that these are the first of a number of interviews which are to be conducted by the MPS.

Then, four, in terms of the material which gives rise to the concern that answering questions may expose

the individual to prosecution, to Mr Hyett's report one adds the service of the opening statements last week and the emergence of the full extent of conflict of interest between the commercial CPs. This is the buck-passing, as Mr Millett calls it, and his intention, perfectly properly of course, on behalf of the Inquiry to explore, in examining Harley witnesses by way of example, where responsibility lies or is shared.

Then finally, with the best will in the world, it does take time to gather and achieve anything approaching a consensus, even amongst a number of commercial CPs.

That's not an excuse for the lateness of the application. As I have said, it could have been made earlier, and I have no doubt that this explanation will not remove the suspicion amongst some that there is some kind of ulterior objective afoot, but I can assure you that that is not my purpose in making the application.

There is no advantage to me or the company I represent in, as it were, sponsoring this application. The corporate entity can't avail itself of this protection and is not seeking to do so. This is a long-standing protection available only to the individuals, and those individuals who work or worked for Harley do not, as I've said, have a voice, but will

be in peril unless this issue is addressed.

Neither is this an issue, as I know the Tribunal understands, an issue of little or no importance. This is, as you described it, a rule of law and a right that any witness has in civil proceedings when they are at risk of a criminal conviction and possibly of penal sanction. It's also a right explicitly preserved by the statute that governs the conduct of this Inquiry.

Neither, I'm bound to observe, should anybody think that this issue, had it not been raised before Monday evening, would not have arisen in any event very early on in the evidence.

Can I provide an example: as soon as Mr Millett asked, as no doubt the BSRs will expect of him, any question of a witness designed to tease out any acceptance of any failure, to observe any aspect of the building or fire regulations, we would suggest that the obligation to warn the witness would be engaged.

SIR MARTIN MOORE-BICK: Mr Laidlaw, can I just interrupt you for a moment. I of course have had the benefit of your having set out this application in writing --

MR LAIDLAW: Yes.

SIR MARTIN MOORE-BICK: -- so that I can see the basis upon which it's made, the nature of the privilege which you say exists, and, what I found particularly helpful,

an indication of the sort of offences that might be under consideration. But those sitting in the room and those who are watching this perhaps elsewhere on the screen won't have had the benefit of that, and I wonder whether you could help everyone by just outlining those aspects of the matter so that people who are listening to you can follow what you are saying and why you are saying it. Do you mind?

MR LAIDLAW: No, not at all. The only question that I would raise for you to consider was that, having offered my apology, what I was going to do was to identify the more important of the points which arise, and then provide some additional references to the authorities and the guidance, hoping in that way that that will at least allow CTI and the BSR teams and of course yourself to understand our position, and then bring some focus to the points which will be addressed on Monday. I wonder whether that might be --

SIR MARTIN MOORE-BICK: Well, you take whatever you think is the best course, but I think at the moment you have to bear in mind that many of those who are listening to you in a sense don't have -- they're not lawyers, I imagine, in the main -- any context in which to place some of the submissions you may be about to make.

MR LAIDLAW: Certainly.

SIR MARTIN MOORE-BICK: I leave it to you, but I think it would enable them to understand better what you're saying.

MR LAIDLAW: Yes.

Can I then accept that invitation and highlight from the application the essential features of the letter, and I'll provide paragraph numbers to that document.

At paragraph 6, we identify the fact that many of the witnesses to be called in Phase 2 have been interviewed or invited to attend an interview under caution by the Metropolitan Police in respect of a criminal investigation into the fire at Grenfell Tower. We make the point that the nature of the police investigation is broad in scope, is concerned with numerous potential offences, ranging from regulatory breaches to the most serious of criminal offences, all of which carry potential custodial sentences.

In furtherance of the primary purpose of this public inquiry, namely to fully examine the matters set out within the terms of reference and the table of issues, we write to you, sir, to invite you to consider seeking an undertaking from the Attorney General preventing the use of evidence by witnesses to the public inquiry against them in any future criminal

proceedings.

At paragraph 8, we turn to the privilege and we write:

"Plainly, without such an undertaking witnesses will be lawfully and reasonably entitled to rely on the privilege against self-incrimination and to refuse to answer any question if to do so would tend to expose them to proceedings for a criminal offence. This privilege has been described as a 'basic liberty of the subject' and is recognised in section 21(1) of the Inquiries Act 2006 ..."

Which draws upon section 14 of the Civil Evidence Act 1968, which is in these terms, and these are the important ones:

"It is the right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence ..."

Then we go on to make a submission, which I will extend in due course, that the scope of self-incrimination is broad, and I'll come back to that. At the bottom of paragraph 9 we also advance the submission that the privilege applies whether a witness has already been charged with an offence or is yet to be

charged.

Then in paragraph 10, we suggest that the seeking of an undertaking from the Attorney General is an established way by which witnesses are able to give full and frank answers, and permits the terms of reference of a public inquiry to be investigated without delay and disruption to proceedings. We draw attention to a number of recent public inquiries where undertakings of a similar sort sought in this case were granted.

At paragraph 12, we deal in part with the matter that you raised with me a moment ago, in other words the previous approach of the witnesses, which was to provide Rule 9 statements without any reference, as you correctly observed, to this privilege.

Then in terms of the proposed undertaking, can I go to paragraph 16, and perhaps I ought to read that out so all can hear what it is that we at least invite you to consider and seek by way of undertaking from the Attorney. This largely replicates the undertaking which was granted in the recent Baha Mousa Inquiry. I quote from the document:

"1. No oral evidence a person may give before the Inquiry will be used in evidence against that person in any criminal proceedings or for the purpose of deciding

whether to bring such proceedings save as provided in paragraph 2 herein:

"2. Paragraph 1 does not apply to:

"i. A prosecution (whether for a civil offence or a military offence) where he or she is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or

"ii. In proceedings where he or she is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence."

Then in the balance of the document -- because I understand the very clear distinction between your work, sir, and that of the police in their parallel inquiry, so there is no reason why you would know about this -- we set out some of the offences which are under consideration, the point being, as you with your experience will see immediately, that the ambit and the scope of these regulatory offences is very broad in terms of their structure.

The offences include section 3 of the Health and Safety at Work Act. So these are the duties of employers and the self-employed to persons other than their employees, so that would obviously apply to the residents of Grenfell Tower. Section 7, the general

duties of employees at work. Then section 33, which is the offence section of the 1974 Act. 36, which is the fault provision. 37 is the offence committed by the body corporate, and those who may contribute to that offending being amongst the possible criminal offences which the individuals, or the Harley individuals, have thus far been interviewed about.

SIR MARTIN MOORE-BICK: Just to understand where this takes us, as far as individual witnesses are concerned, I imagine it's section 7 that's likely to bite more than section 3.

MR LAIDLAW: Yes, I agree with that.

SIR MARTIN MOORE-BICK: Would it be sensible just to read out section 7(a), and perhaps explain what that could involve?

MR LAIDLAW: Certainly.

So section 7(a) the rubric is, "General duties of employees at work", and the provision reads:

"It shall be the duty of every employee while at work to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work."

SIR MARTIN MOORE-BICK: And "other persons" for this purpose would obviously include his fellow employees --

MR LAIDLAW: Yes.

SIR MARTIN MOORE-BICK: -- but would it go wider than that?

MR LAIDLAW: It would go wider than that.

SIR MARTIN MOORE-BICK: How far would it go?

MR LAIDLAW: It could extend to almost everybody apart from that which is excluded from the definition of the offence.

SIR MARTIN MOORE-BICK: So would it be your submission that an employee of, let's say, Harley, who admitted to failing to do something or doing something carelessly which might affect a resident in the building, would be arguably, at least, in breach of this section?

MR LAIDLAW: Yes. And it might even extend further in the circumstances of a fire to those who were to attend to deal with the fire and the like.

SIR MARTIN MOORE-BICK: Right.

MR LAIDLAW: So it is a provision which is extremely broad in terms of its application.

SIR MARTIN MOORE-BICK: Thank you.

MR LAIDLAW: I say this -- I know that the Inquiry appreciates this -- this legislation, the 1974 Act legislation, is designed with reverse burdens and the like, and to be risk based, to be extremely difficult legislation in ordinary circumstances for both individuals and corporates to meet. Certainly in a different context, you would need to demonstrate that

you had done all that was reasonably practicable to escape conviction.

SIR MARTIN MOORE-BICK: Thank you.

MR LAIDLAW: Can I then turn, in the hope that this is helpful, to what are perhaps the more important of the points which emerge, and, as I said, to provide some additional references to the authorities and the guidance, in the hope that on Monday you will simply need to hear from those who have had so little notice rather than me or indeed other applicants again.

SIR MARTIN MOORE-BICK: Yes, thank you.

MR LAIDLAW: I was going to deal, if it's convenient, with the following areas, and there are six areas: firstly, the scope of the protection against self-incrimination; secondly, whether the individuals are at an appreciable risk of prosecution, and in that respect I can of course only deal with the position of the Harley individuals; thirdly, the breadth of the police investigation and, sir, your terms of reference, and then the tension that that gives rise to in respect of the protection; four, the relevance to the issue of the provision of the Rule 9 statements; five, the position of the corporate bodies in the context of the present application; and, six, the broadness of the suggested undertaking. I hope in that way I will deal with the more obvious points

which arise, and if I have not, then of course I will gladly answer any further questions.

So the scope of self-incrimination. Having given you an example of questioning which would undoubtedly lead to a warning, as we suggest, that there was no obligation to answer, it must be recognised, as already you have in your remarks yesterday morning -- that's {Day3/1:18-20} -- that the scope of self-incrimination is broad, as we have set out at section 9 of the application.

But there are further passages in the judgment of Lord Justice Waller in Den Norske Bank [1999] QB 271, along with further authorities on this point, which I should draw attention to, so all have the opportunity to address these, along with the rest of paragraph 9. The principle, we would submit, being that a witness is entitled to claim the privilege in respect of any piece of information or evidence on the basis of which the prosecution might wish to establish guilt or decide to prosecute.

At page 289 of Den Norske Bank, Lord Justice Waller observed in these terms:

"Thus, it is not simply the risk of prosecution. A witness is entitled to claim the privilege in relation to any piece of information or evidence on which the

prosecution might wish to rely in establishing guilt. And, as it seems to me, it also applies to any piece of information or evidence on which the prosecution would wish to rely in making its decision whether to prosecute or not."

It applies to any question which forms part of a series of steps towards a potentially incriminating conclusion. At page 285 of the same judgment, the Court of Appeal quoted with approval from a very old authority called Paxton v Douglas, and the quotation is in these terms:

"I find the distinctions between questions, supposed to have a tendency to criminate, and questions, to which it is supposed answers may be given, as having no connexion with the other questions, so very nice, that I can only say, the strong inclination of my mind is to protect the party against answering any question, not only that has a direct tendency to incriminate him, but that forms one step towards it."

As to the latitude afforded to the witness in this area, there is the judgment of Mr Justice Mann in a case called Phillips v News Group Newspapers Limited [2010] EWHC 2952 (Ch), with the references in that decision to the very old case of Boyes and the more recent decision of the Court of Appeal in Rio Tinto Zinc v Westinghouse

Electric Company [1978] AC 547, and it may be that 574 of that authority will be of particular assistance.

At paragraph 23 there is a passage drawing from what is described as the classic statement of the relevant level of risk in Boyes, and that, insofar as is relevant, is in these terms:

"To entitle a witness to the privilege of not answering a question as tending to incriminate him, the court must see from the circumstances of the case and the nature of the evidence which the witness is called to give that there are reasonable grounds to apprehend danger to the witness from his being compelled to answer."

Then at paragraph 24 from Rio Tinto Zinc, this:

"There is the further point. Once it appears that a witness is at risk, then great latitude should be afforded to him in judging for himself the effect of any particular question."

I move on a little:

"It may only be [and these are perhaps important words] one link in the chain, or only corroborative of existing material, but still he is not bound to answer if he believes on reasonable grounds that it could be used against him. It is not necessary for him to show that proceedings are likely to be taken against him, or

would probably be taken against him. It may be improbable that they will be taken, but nevertheless, if there is some risk of their being taken - a real and appreciable risk - as distinct from a remote or insubstantial risk, then he should not be made to answer or to disclose the documents ... Where there is a real and appreciable risk - or an increase of an existing risk - then his objection should be upheld."

Then at paragraph 25, and drawing upon Lord Roskill's judgment in Rio Tinto Zinc, it was said:

"I think that the right question to ask is that posed by Shaw LJ on Friday afternoon. Can exposure to the risk of penalties (or in other cases to the risk of prosecution for a criminal offence) be regarded as so far beyond the bounds of reason as to be no more than a fanciful possibility?"

Drawing that together, this was the view expressed by Mr Justice Mann at paragraph 26 in Phillips, and again I quote:

"Thus, considerable latitude is given to the person claiming the privilege and, putting the matter slightly colloquially, he is entitled to the benefit of any doubt."

So I turn next to the second of my headings: the possibility of a prosecution, which again is a judgment

that you will have to consider.

It is clear, we would submit, that in respect of the witnesses on whose behalf the application is made, there does exist, borrowing the language from the authorities, a real and appreciable danger of self-incrimination.

May I take the Harley witnesses. There is a parallel criminal investigation in existence, and the interviewing of the Harley men has actually started. Four of them have already been interviewed. Those who have been interviewed were interviewed in a way which strongly suggests that further interviews, as one would expect, are to come. Those of the Harley witnesses not thus far interviewed have had no indication at all, and nor realistically will they receive one, that they will not be invited to interview in the coming months or years.

In terms of the duration of the parallel police investigation, and whether that risk may dissipate or disappear, no decisions will be made by the police until at earliest when the evidence-gathering stage of the Inquiry's work is at an end. So charging decisions are some years away, and right through the course of Phase 2, these individuals will remain suspects in respect of whom there is, we would submit, a real and appreciable danger of self-incrimination.

Third, the broadness of the scope of the police investigation, of the Inquiry's terms of reference and the table of issues, and the question whether it might be possible to limit the questioning of the witnesses at risk so as to remove the danger of self-incrimination, which is bound to be an issue that you, sir, will want to reach a view about.

This is dealt with at paragraph 7 of the application, and we make the submission for your consideration that it would be quite impossible, without an undertaking from the Attorney General of the type sought, for the Inquiry to discharge its purposes and to provide the answers to the BSRs which they are plainly entitled to, whilst at the same time providing the protection which, as a matter of basic fairness, the witnesses, as we argue, should be afforded.

Can I explain the point. The police investigation is very broad in terms of its scope. The Metropolitan Police have declared, either publicly or during the course of the interviewing process, that they are investigating a whole range of offences, some of which are set out at paragraph 16 of the application. The offences -- and we have sought to illustrate that by reference to some of those created by the Health and Safety at Work Act means -- and this is at

paragraph 18 -- that in practical terms and in the context of this fire, any person who has failed to take reasonable care for the safety of another commits a criminal offence potentially punishable by a term of imprisonment. But the investigation is not of course limited to 1974 Act offences. Along with the Health and Safety at Work Act, there are also a myriad of regulatory offences created by the building and the fire regulations, some of which, of course, impose strict liability.

The terms of reference, as broken down -- and it hardly needs me to say this -- and set out in more detail in the list of issues, and of course it's issue 4 which most closely bears upon the position of the Harley witnesses, are equally and very understandably broad.

The result is, as we submit -- and this is the tension that requires resolution -- that any question which touches upon or may, in combination with other material, point to responsibility for an act or omission, or which seeks an acknowledgement as to the awareness or not of the regulations or breaches of them, gives rise to the risk of self-incrimination.

There is a passage in Matthews and Ageros' book, Health and Safety Law and Enforcement, fourth edition, at paragraph 12.135, which puts the position even more

starkly, to which I should draw attention.

That paragraph -- and I'll read it into the record -- is as follows:

"In cases where it is known a witness is being considered for prosecution, or there is a possibility that he or she might be prosecuted, it is arguable that any question he or she is asked touching on the circumstances of the death, including apparently innocuous ones such as who the witness works for or what his or her role in a given company is, may have a tendency to incriminate. This is because in any health and safety prosecution it will be necessary for the prosecuting authority to show whom the individual worked for and what was his or her role in the company."

So, as we submit for your consideration, sir, work-related deaths give rise to the risk of prosecution in a particularly acute form because of the breadth of the criminal offences which arises in that context. It is impossible, we would argue, for any witness or indeed the Inquiry to know or ascertain which offence might be considered or which evidential gaps might be filled by any question posed at the Inquiry.

Equally, we would suggest, it is difficult to conceive of any question asked of such a witness touching on his work at Grenfell Tower which would not

at least carry the risk of amounting -- and I borrow the words from Rio Tinto Zinc -- to "one link in the chain, or only corroborative of existing material".

So there is, we would suggest, for you to consider, sir, no sensible way of limiting the scope of the questions if this Inquiry is to deliver on its promise and to properly explore the issues, which would involve the witnesses being able to speak freely and honestly without the answer giving rise to a very real risk of prosecution. This is the tension which exists, although it is not an unusual situation, as the experience of a number of other recent public inquiries demonstrate. It is by way of an undertaking from the Attorney General, as we point out, which has become the established way of resolving that tension, with the following results. Can I just set these out briefly.

First, if there is an undertaking, the witness is encouraged to give full and frank answers, which have been called for, and, as is my understanding, is the assistance the Harley witnesses wish to provide to your Inquiry.

As the late Sir Christopher Pitchford said, when seeking an undertaking in the Undercover Policing Inquiry -- this is paragraph 4 of his ruling, and access to this can be gained from that inquiry's website -- and

I quote:

"It is a commonplace that witnesses are more likely to be frank and honest with their inquisitor if there will be no adverse consequences to them arising from their evidence, such as the use of their evidence in a criminal prosecution."

Secondly, if there were an undertaking, it avoids the difficulty which the Inquiry will otherwise have to confront, particularly in respect of witnesses who are unrepresented, of seeking to ensure they understand the nature of the privilege and that they make effective use of it. Having regard to the difficulty of asking questions which would not on one view engage the privilege, it will also avoid that issue arising repeatedly throughout the course of the examination by Mr Millett and Ms Grange.

SIR MARTIN MOORE-BICK: That's because, in the ordinary way, the witness, if he wishes to rely on the privilege, would have to do so after the question has been asked and before he answered it, and the judge -- or in this case I -- would have to decide on a question by question basis whether he should be required to answer or not.

MR LAIDLAW: Yes.

SIR MARTIN MOORE-BICK: Which would be a very cumbersome procedure, but that's what it would be.

MR LAIDLAW: Yes, and you have the point, and the point is it avoids the inevitable disruption to the smooth running of the Inquiry.

Then finally in terms of a consequence, and perhaps of most importance to the Inquiry and to the bereaved, survivors and residents, the provision of an undertaking in the terms sought is likely to assist ultimately in fulfilling the Inquiry's terms of reference, and in providing the BSRs with the answers they seek from the commercial CPs and those who worked for them, and in that sense would be, we would suggest, in the public interest.

The reason for that is this: if the undertaking in its terms is broad enough, that removes of course the ability to rely upon the privilege as a way of avoiding answering questions. So whilst it may not have the appearance of something which will actually aid the course of the Inquiry, my submission would be that, on analysis, that is its purpose.

Just three short topics to deal with. Firstly the provision of the Rule 9 statements, sir, the point you made to me a little earlier.

Reference was made to that very issue in our discussions with CTI on Tuesday evening, to the provision of the Rule 9 statements, without any concern

at that stage being raised, or indeed later, about the risk of self-incrimination being raised.

We deal with that at paragraph 12 of the application, as you know, drawing again on Lord Justice Waller's judgment in Den Norske Bank. It's at page 289. It's in these terms:

"It is one thing for a person to make a statement to the police or anyone else which he might afterwards try to retract. It is quite another for him some time later to be made to repeat any admission on oath in court in the presence of a judge and his own lawyers. It makes the potentially retractable impossible to retract. If there is a risk of self-incrimination and if there is no bad faith a 'no increase in risk' must be almost impossible to establish."

Sir, we would suggest that the fact that a witness has previously given an account in a statement -- in Den Norske it was to the police -- does not mean that there is no increase in the risk if that witness is later required to answer questions about or even to confirm its accuracy under oath.

SIR MARTIN MOORE-BICK: It's right, isn't it, to point out for the benefit of others that the statement that's already been made and signed, I think possibly with a statement of truth attached to it, will still stand as

evidence?

MR LAIDLAW: Yes, it is.

SIR MARTIN MOORE-BICK: It may or may not have the same weight as evidence given from the witness box, but it's there still in evidence.

MR LAIDLAW: Yes, and in terms of the criminal proceedings would be admissible against the maker of the statement, regardless of any undertaking that you consider to be appropriate. Yes, I agree.

The position of the bodies corporate -- and I make this submission in light of some of the assertions made about the lateness of the application and that being some sort of device which is to the advantage of the companies.

It is important to understand what is not being sought. There is no question of immunity from prosecution for individuals or corporates being sought, as was reported yesterday and overnight. There is no power to do that and that is not what the application seeks, as I know that you, sir, understand. The undertaking, if obtained, would simply prevent the use against -- and I underline the word -- an individual who gave evidence at the Inquiry. If there is other evidence against him and a charge is justified against the code for prosecutors, then of course he may be

prosecuted.

Similarly, there is no prohibition on the reliance upon evidence given by a witness against another person if the evidence is admissible. Perhaps importantly from my position and the company I represent, neither would an undertaking provide any protection to a corporate CP in any subsequent prosecution. The company cannot seek any sort of ruling about self-incrimination and does not seek that.

Finally, I have got the broadness of the undertaking, because you will want to consider carefully, if you are minded to accept the application we make, how broad the undertaking should be and whether you should seek from the Attorney an undertaking in the terms of the proposed draft for your consideration.

On this issue, it might assist to have reference to the note on submissions prepared by counsel to the Undercover Police Inquiry, which is an extremely helpful document in a number of respects. As I say, that too is available on the website for that inquiry. It's paragraphs 27 to 69, and the analysis of the terms of the undertakings obtained in many recent public inquiries where this issue has arisen, which may be of particular interest. There are also examples where different approaches were taken at paragraphs 70 to 77.

It may be helpful, on the question of the proposed scope of the undertaking that you, sir, are asked to consider, to read from paragraph 27 of CTI's note in that inquiry, and that is in these terms:

"Analysis of examples of statutory public inquiries over the last 20 years indicates that although undertakings have been sought in the majority of cases, it has not always been considered necessary. Where undertakings have been sought and granted, there is an apparent shift from the tendency to seek narrow undertakings aimed at assuring witnesses that there will not be any direct use in criminal proceedings of any evidence they give to the Inquiry, to a more recent tendency to seek broader undertakings to give assurance against the derivative use of a witness's evidence. The broadest of these derivative use undertakings are at least equal in scope to the privilege against self-incrimination ..."

And importantly these words:

"... and therefore leave no need or basis for reliance upon privilege at the Inquiry concerned."

They go on then to deal with immunity and the like, but I have drawn selectively from the paragraph, so others will have to read the whole thing.

My position in support of the proposed undertaking

is that the undertaking of that sort is appropriate for these four reasons: (1) the terms of reference in this Inquiry and the detail of the issues as set out in the list of issues are broad; (2) the matters to be investigated in order to discharge the terms of reference plainly, we suggest, indicate that questioning will need to touch on matters which seem certain to engage the privilege, absent an undertaking of the sort sought; (3) it will be better to seek a broad undertaking in terms of its wording, to avoid the danger of too narrow an undertaking being sought, which might leave the scope of privilege still to be asserted, which would not then avoid the problem which we have identified; and, (4) if an undertaking is to be sought, it should not preclude a prosecution for an offence relating to the evidence given to the Inquiry itself, for example perjury or any other of the offences committed contrary to section 35 of the Act which governs this Inquiry.

I'm going to pause there, because those are the six areas I sought to add to, and if there is of course anything else I can deal with at this stage, then of course I will seek to do so.

SIR MARTIN MOORE-BICK: Well, I just have one question at the moment about the terms of the proposed undertaking.

Have you got it handy?

MR LAIDLAW: I have, thank you.

SIR MARTIN MOORE-BICK: I notice that in paragraph 2.1 the provision is made for a prosecution for a military offence, and I wondered whether that was --

MR LAIDLAW: That's an oversight. That's an error.

SIR MARTIN MOORE-BICK: So one could just take out the words in brackets?

MR LAIDLAW: Yes. That would be -- yes, that is a better draft. Thank you. That's an error.

SIR MARTIN MOORE-BICK: Just give me a moment. (Pause)

Well, Mr Laidlaw, that's very helpful, thank you very much indeed. Will you be here on Monday?

MR LAIDLAW: Yes, I will.

SIR MARTIN MOORE-BICK: It may be that I shan't need to trouble you again, because you have laid out the case very fully, and if I may say so very helpfully, both for me and for those who have been listening.

It's right that I should say that the application has been supported by quite a large number of other witnesses, or potential witnesses, and core participants, but none of them asked to make oral submissions in support of it. I think they would happily adopt what you have said, that's as I understand it.

MR LAIDLAW: Yes, sir. That is my understanding too, sir.
SIR MARTIN MOORE-BICK: So I think as far as you are concerned, it just leaves for me to thank you very much for your assistance.
MR LAIDLAW: Not at all. As I say, I will be here --
SIR MARTIN MOORE-BICK: We'll see where we go on Monday.
MR LAIDLAW: Yes, I will be here on Monday as long as you require.
SIR MARTIN MOORE-BICK: That is very kind, because as you know, I have already directed that I will not hear counsel for the bereaved, survivors and residents until Monday, essentially to give them a chance to take proper instructions.
MR LAIDLAW: I entirely understand.
SIR MARTIN MOORE-BICK: Of course, Mr Millett, who may wish to say something about it, will have to come after them.
MR LAIDLAW: Yes, of course.
SIR MARTIN MOORE-BICK: Right. Thank you very much indeed.
Well, that concludes the work we have for today. We don't sit on Fridays, so we shan't be sitting tomorrow.
We are going to sit again on Monday. Now, we were going to hear witnesses on Monday, but for the reasons which I think you all now clearly understand, we won't be doing that. On Monday morning I will hear submissions from counsel for the bereaved, survivors and

resident core participants, and from Counsel to the Inquiry, and at that point we will see where we are and what we do next.
I think I can say with some confidence that not only shall we not hear evidence on Monday, but as things stand we shan't hear evidence on Tuesday either. Whether we have to put things back further may depend in part on the outcome of this application.
Anyway, thank you all for being here. I look forward to seeing you on Monday.
MR SEAWARD: Sir, before we rise, could I ask a point of clarification. Apart from Mr Mansfield on behalf of the BSRs, would other core participants' legal representatives be able to --
SIR MARTIN MOORE-BICK: Do you want to be heard on this? I don't think --
MR SEAWARD: We haven't yet submitted anything in writing to the Inquiry.
SIR MARTIN MOORE-BICK: Have you decided whether you want to be heard or not?
MR SEAWARD: No, we haven't. It very much depends on what is said on behalf of the BSRs, which of course we don't know and they won't know until after they have spoken to their clients, so ...
SIR MARTIN MOORE-BICK: Yes. Come up to the desk, because

you won't be on the screens if you don't.
MR SEAWARD: Sorry.
SIR MARTIN MOORE-BICK: I was very struck by the fact that none of the people whom you support, members of the Fire Brigades Union, were at all unwilling to give evidence as fully as they were asked to, and I think that's very much to be commended. Whether we shall be expecting to hear from any members of the Fire Brigades Union in Phase 2 I'm not quite sure at the moment. It's possible, because we have got a module dealing with the fire service, but I think it's mostly going to be concerned with more senior people.
MR SEAWARD: Yes. That's likely, but we don't know yet.
SIR MARTIN MOORE-BICK: Yes. Well, you might like to consider whether you have much of an interest in this application.
MR SEAWARD: Yes, indeed.
SIR MARTIN MOORE-BICK: If you think you do, then probably it would be best to hear you on Monday.
MR SEAWARD: Thank you, sir. Thank you.
SIR MARTIN MOORE-BICK: I suppose I should have -- Mr Walsh is over there in the corner. Is there anything you want to say, Mr Walsh?
MR WALSH: Not at the moment, sir, no, but I may communicate with your team tomorrow.

SIR MARTIN MOORE-BICK: Please feel free to do so.
Thank you.
Thank you all very much. 10 o'clock on Monday, then, please.
(3.21 pm)
(The hearing adjourned until 10 am on Monday, 3 February 2020)

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