

# OPUS 2

## INTERNATIONAL

Grenfell Tower Inquiry

Day 4

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1 Thursday, 30 January 2020  
 2 (10.00 am)  
 3 SIR MARTIN MOORE-BICK: Good morning, everyone. Welcome to  
 4 today's hearing. Today we're going to hear opening  
 5 statements on behalf of the bereaved, survivors and  
 6 other residents of the Lancaster West Estate.  
 7 So, without more ado, I shall invite Ms Barwise to  
 8 make an opening statement. Thank you.  
 9 Opening statement on behalf of BSRs Team 1 by MS BARWISE  
 10 MS BARWISE: Good morning, sir. Good morning, madam.  
 11 The bereaved, survivors and residents come to you in  
 12 the confident expectation, based on the Chair's  
 13 exhaustive and exacting Phase 1 report, that you and  
 14 your team will leave no stone unturned in seeking to  
 15 establish where responsibility lies for the disaster.  
 16 The BSR know that the factors which led to the fire  
 17 are complex, interwoven and deep seated. Responsibility  
 18 lies in more than one place. Any adequate explanation  
 19 of a disaster on this scale is not susceptible to  
 20 simplistic or one-dimensional narratives, and the BSR  
 21 are confident the Inquiry will be wary of any attempts  
 22 to advance them.  
 23 Your starting point is Module 1, which will be  
 24 concerned with the detail of how the 2012 to 2016  
 25 refurbishment was carried out. But, as this is the

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1 opening of Phase 2, and given the need to identify where  
 2 responsibility for the disaster may lie, I inevitably  
 3 mention, as indeed have others in opening, matters which  
 4 arise in other modules.  
 5 In these submissions, as in our written submissions,  
 6 I propose to address the design of the refurbishment and  
 7 the roles and responsibilities held by the various core  
 8 participants. I intend to do so by examining what those  
 9 core participants now say in order to obfuscate, deflect  
 10 responsibility and blame others for the disaster that  
 11 ensued.  
 12 I will end by addressing the urgency of the need to  
 13 prevent recurrence of such a disaster.  
 14 Before examining the refurbishment, it's necessary  
 15 to look back to the seeds of the fire, which were sown  
 16 before a single drawing was produced.  
 17 The decision to refurbish Grenfell was a product of  
 18 knee-jerk reactions rather than carefully thought out  
 19 plans and decisions. The relevant history is that the  
 20 Lancaster West Estate, within which Grenfell sits, had  
 21 been left to deteriorate. It had received no real  
 22 investment since its inception in the 1970s. Among the  
 23 many problems faced by residents, the tower's heating  
 24 and hot water system was beyond economic repair, and its  
 25 windows provided neither the sound nor insulation

2

1 required by modern standards.  
 2 By 2009, RBKC had engaged consultants to consider  
 3 what to do with Grenfell. The resulting report, the  
 4 Notting Barns South Draft Final Masterplan, recommended  
 5 demolition of the tower and one of the three finger  
 6 blocks. In the event, neither that plan nor any other  
 7 cohesive strategy for investment in the area was  
 8 adopted.  
 9 Instead, RBKC reacted at the last possible moment to  
 10 pressing needs within the area by deciding to construct  
 11 a school for which it could obtain grant funding under  
 12 the government's Building Schools for the Future  
 13 programme. That project was the Kensington Academy and  
 14 Leisure Centre, known as KALC.  
 15 By this point, Grenfell's pressing needs had reached  
 16 such a degree of criticality that they could no longer  
 17 be ignored. Moreover, the adverse effect that the  
 18 construction of KALC would have on Grenfell's residents  
 19 meant that refurbishment was seen as a necessary step to  
 20 assuage the residents, who were by now complaining about  
 21 KALC.  
 22 An obsession with aesthetics which was to dog the  
 23 project began at this early stage. RBKC and the TMO  
 24 feared Grenfell would appear a poor cousin to this brand  
 25 new facility next door. Grenfell was also regarded as

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1 an eyesore by Studio E, the architect RBKC had engaged  
 2 for KALC, who later became the architect of Grenfell.  
 3 Studio E expressed the view that Grenfell created a poor  
 4 quality frontage for KALC, thereby endangering the  
 5 success of the KALC project, which remained RBKC's  
 6 priority throughout. Overcladding Grenfell was seen as  
 7 a solution to RBKC and others' aesthetic concerns.  
 8 The decision to clad the academy, part of the  
 9 £40 million KALC development, in a powder-coated, highly  
 10 combustible core insulating panel set into motion the  
 11 fate of Grenfell's cladding. The contractors at  
 12 Grenfell would later seize upon the cladding used on the  
 13 academy as having set a precedent, saying, "Next door  
 14 are using powder-coated aluminium, so not an inferior  
 15 product", precedent already set. It was an unfortunate  
 16 precedent. The powder-coated aluminium cladding panel  
 17 used on the academy has an unacceptably poor reaction to  
 18 fire, namely Euro class E, and is also an insulating  
 19 core panel, which poses particular risks in the event of  
 20 fire, as indicated by the specific warnings in  
 21 appendix F of Approved Document B.  
 22 Besides aesthetics, another important design  
 23 priority for Grenfell was RBKC's and TMO's desire to  
 24 offset part of the cost of the refurbishment by  
 25 obtaining funding for environmental sustainability.

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

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

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

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

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

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

6

1 professionals being appointed.

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

10 A further breach of the procurement procedures  
 11 occurred in the process used to select the contractor.  
 12 For this, an OJEU procurement process known as the  
 13 restricted procedure was used, but TMO entered  
 14 discussions with Rydon alone prior to the award of  
 15 preferred bidder status, seeking a reduction in costs of  
 16 £800,000, namely the amount by which Rydon's tender  
 17 exceeded TMO's available budget. That private  
 18 negotiation included, amongst other reductions,  
 19 a £243,000 reduction in the cladding costs, involving  
 20 a change from the zinc cladding specified to one of the  
 21 alternative options included within the specification,  
 22 namely aluminium composite panels.

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

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

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

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

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

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

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

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

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

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

1 blame, and which contributed to the loss of life.

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

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

25 On the contrary, each core participant's eyes are

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

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

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

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

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

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

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

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

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

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

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

3 It is argued by many of the core participants that  
4 lack of clarity in Approved Document B, which is the  
5 guidance underlying the building regulations, led to  
6 confusion. As to that, whilst it is true that Approved  
7 Document B, known as ADB, is based on a post-war 1946  
8 document and is not fit for purpose in some fundamental  
9 respects, nevertheless it was sufficiently clear as to  
10 the requirements for a façade on a building over  
11 18 metres tall , as Grenfell was.

12 There are four possible routes to compliance, three  
13 of which derive from ADB. First , either the precise  
14 cladding proposed is tested by a large-scale test  
15 carried out in accordance with BS 8414. Second, the  
16 so-called linear route, which requires that the cladding  
17 should use only limited combustibility insulation , and  
18 the external surface of walls should comply with diagram  
19 40, namely be national class 0 or Euro class B-s3,d2 or  
20 better. Third, a holistic fire engineered study.  
21 Fourth is a route postulated by the Building Control  
22 Alliance technical guidance note 18, namely a desktop  
23 study.

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

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

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

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

25 It appears the designers and contractors fell

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

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

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

1 a positive way due to the flaws in each.

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

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

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

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

25 That was therefore a material alteration within the

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

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

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

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

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

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

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

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

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

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

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

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

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

21

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

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

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

22

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

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

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

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

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

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

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

24

1 Reynobond PE 55 was at best class E and, on  
2 29 June 2011, had been tested as class F, albeit in  
3 subsequent testing it subsequently obtained an E.  
4 Government documents in October 2000 explaining the  
5 correlation between Euro classes and national classes  
6 tell us that class E means the product will flash over,  
7 meaning autoignite within two minutes in fire. In those  
8 circumstances, it is disingenuous for Arconic now to  
9 make the submission that when the standard grey/green  
10 product was tested for reaction to fire, it was capable  
11 of achieving a B.

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

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

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

25

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

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

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

13 "Grenfel Towers [sic] ..."

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

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

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1 cassette as opposed to the riveted version of the panel.

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

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

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

27

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

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

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

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

25 That is not what the fire at Grenfell shows. It

28



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

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

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

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

25 Turning to Celotex. Unlike the other core

29

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

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

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

30

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

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

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

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

16 "The official Celotex view.

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

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

22 At the foot of page 1 he says:

23 "Here is my view."

24 If we scroll down, he says:

25 "... ultimately the specification of this product

31

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

8 He went on:

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

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

19 "Thanks for that.

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

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

25 This, as Celotex well knows, is how its marketing

32

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

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

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

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

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

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

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

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

34

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

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

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

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

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

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

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

36

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

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

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

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

25 Rydon omits to mention that it bore full

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

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

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

25 For this reason, Rydon’s position that it

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

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

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

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

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

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

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

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

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

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

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

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

41

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

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

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

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

25 In Module 6, you will be considering how we may

42

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

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

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

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

43

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

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

7 According to government documents on the correlation  
 8 between the Euro classes and UK national standards in  
 9 2000, A1, A2 and B were considered not to flash over,  
 10 whereas C and D would do so in ten minutes and E within  
 11 two minutes. It is not possible to equate the Euro  
 12 classes to class 0 but the Radar 2 project part 2  
 13 results in May 2000 produced a transposition table  
 14 showing that class 0 might be as low as class E.

15 It is staggering that, despite this knowledge and  
 16 the report of the select committee explaining how  
 17 class 0 could be misunderstood as being a meaningful  
 18 measure of a product's behaviour in fire, we are still,  
 19 20 years later, subject to a meaningless class 0  
 20 criterion.

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

44

1 results were shocking, in that the reports made clear  
 2 that ADB provides no means of calculating the increased  
 3 fire load caused by modern insulation standards to be  
 4 imposed on the façade in the event of a fire escaping  
 5 from a window.  
 6 These reports also reveal that the fire resistance  
 7 requirements for external walls are now no longer  
 8 accurate, given they're based on an immediately post-war  
 9 document which does not take account of the increased  
 10 insulation requirements and therefore results in much  
 11 hotter fires .  
 12 The reports also revealed that sprinklers should be  
 13 installed on buildings much lower than 30 metres, and  
 14 that the provisions of ADB concerning the evacuation of  
 15 those with disabilities are far from adequate.  
 16 All that knowledge acquired between 2000 and 2015,  
 17 and yet nothing was or has been done to cure these  
 18 fundamental problems.  
 19 The amendments made to ADB in 2019 are footling,  
 20 given this backdrop. The way in which successive  
 21 governments have ignored this knowledge and,  
 22 for example, the 2015 suite of reports on ADB were not  
 23 released until halfway through a consultation on ADB in  
 24 2018. This brings into sharp focus the need for the  
 25 reintroduction of the Public Authority (Accountability)

1 Bill . Grenfell is the archetypal example of why candour  
 2 from state and private bodies is a prerequisite to  
 3 everybody's safety .  
 4 Both central and local government have also been  
 5 made aware over the years of the propensity of cladding  
 6 not to comply with ADB and the risks of poor maintenance  
 7 of social housing. One of the recommendations of the  
 8 select committee report in 2000 was that cladding on all  
 9 social housing buildings should be assessed. It seems  
 10 this was not done, given that, in the wake of Grenfell ,  
 11 it had to be done.  
 12 Even though local authorities had some piecemeal but  
 13 important knowledge, it was not brought to bear in  
 14 a cohesive way. By way of example, contemporaneously  
 15 during the Grenfell project , RBKC's head of building  
 16 control, John Allen, emailed his colleague, Hanson in  
 17 March 2014 saying there could be another Lakanal House  
 18 elsewhere. He went on to describe Lakanal as having  
 19 been state of the art , but acknowledged the cause was  
 20 overall worsening of condition through years of neglect .  
 21 Furthermore, TMO's Janice Wray wrote a note in 2013  
 22 on Lakanal. David Gibson was also aware of some  
 23 guidance on Lakanal. Claire Williams even questioned  
 24 the nature of the cladding in 2014, during what she  
 25 called her "'Lacknell' moment". As did Janice Wray in

1 2016, following the Shepherds Court fire .  
 2 Why this collective knowledge did not operate on  
 3 RBKC building control's or TMO's mind and cause them to  
 4 reconsider the Grenfell project under their noses we  
 5 shall hopefully discover in this Inquiry, but one cannot  
 6 help but think that greater candour, including immediate  
 7 publication and dissemination by central and local  
 8 government of fire research reports and reports of  
 9 fires , may have resulted in greater and more widespread  
 10 understanding and less complacency.  
 11 Had the Radar 2000 reports and the 2015 reports been  
 12 released to the public at the time given to government,  
 13 they could have been considered by the whole of industry  
 14 and experts, and the benefits of that data could have  
 15 been fed meaningfully into subsequent consultations on  
 16 ADB. As it is, government was holding, as from 2000,  
 17 what may properly be regarded as a ticking time bomb,  
 18 which it chose not to share with industry and experts,  
 19 thereby rendering all consultations on ADB thereafter  
 20 a meaningless sham.  
 21 The long period in which government has known about  
 22 the flaws in ADB, has known sprinklers were needed in  
 23 buildings lower than 30 metres, has had the  
 24 Hackitt Review and the subsequent 2018 select committee  
 25 report on Hackitt, and yet the resultant trivial

1 amendments to ADB in 2019 are deeply troubling.  
 2 At least , however, ADB does now include the ban on  
 3 anything below A2 in buildings over 18 metres. The  
 4 fundamental flaws I have described are, however, not  
 5 addressed by the 2019 amendments. As will be apparent,  
 6 these matters strongly suggest a likely breach by  
 7 government of Article 2 of the Human Rights Act in  
 8 failing to ensure safe systems to protect the public .  
 9 As a result of these long and inexplicable periods  
 10 of inaction , despite fundamentally important but  
 11 privately held knowledge of danger to the public ,  
 12 promises ten days ago to introduce sprinklers into  
 13 newbuilds above 11 metres and the establishment of  
 14 a building safety regulator and plans for improvement of  
 15 performance standards may be thought to be too little ,  
 16 too late .  
 17 Thank you. Those are my submissions.  
 18 SIR MARTIN MOORE-BICK: Thank you very much indeed. That's  
 19 probably a convenient moment at which to have a short  
 20 break, so we will rise now and resume at 11.30, please.  
 21 Thank you.  
 22 (11.15 am)  
 23 (A short break)  
 24 (11.30 am)  
 25 SIR MARTIN MOORE-BICK: Now, some of the bereaved, survivors

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

6 MS GILL: Yes.

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

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

10 MS GILL: Thank you.

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

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

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

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

25 If we remind ourselves that the Royal Borough of

49

1 Kensington and Chelsea allocated a budget of 9.7 million  
2 for the regeneration works in July 2013, of that  
3 8.5 million was allocated for the construction works.  
4 Initially Leadbitter were considered as the main  
5 contractor, but their costs came in around £12 million,  
6 far in excess of the proposed budget. In March 2014, we  
7 know that Rydon were informed by TMO that their tender  
8 was in the lead, subject to value engineering. Finally,  
9 Rydon were awarded the contract for the refurbishment of  
10 Grenfell Tower for the position of design and build  
11 contractor.

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

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

50

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

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

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

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

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

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

51

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

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

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

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

52

1 did not.  
 2 First, we look at the decision to undergo the  
 3 refurbishment. The initial decision to undergo  
 4 refurbishment was taken by RBKC/TMO. The reasons for  
 5 their decision include, as Claire Williams, who was the  
 6 project manager of TMO, stated, to improve energy  
 7 efficiency and allow residents to control their own  
 8 heating systems and energy, and also to make the  
 9 building more thermally efficient .  
 10 The TMO were the client for the project and they  
 11 were involved in correspondence with the design team  
 12 from the outset. Module 1 witnesses reiterate  
 13 throughout their statements that cost-cutting was the  
 14 key motivator. We submit that their consistent focus on  
 15 cost-cutting led to poor quality of work and, further,  
 16 to the use of unacceptable materials.  
 17 At paragraph 41 of his witness statement,  
 18 Mark Anderson of TMO says:  
 19 "At the time I left the TMO in January 2013 the  
 20 focus was very much on costings and viability rather  
 21 than appointing any specialist contractors."  
 22 Simon Cash, Artelia, states:  
 23 "Value for money is regarded as the key driver for  
 24 the project."  
 25 In email correspondence dated September 2013 between

53

1 Bruce Sounes of Studio E, Claire Williams of TMO,  
 2 Phillip Booth of Artelia and others, Bruce Sounes  
 3 highlights:  
 4 "Budgets force clients to adopt the cheapest  
 5 cladding option."  
 6 Mark Harris of Harley at paragraph 23 of his witness  
 7 statement says:  
 8 "... there was a real focus amongst the various  
 9 stakeholders on value engineering."  
 10 Further, Simon Cash refers to an email chain in  
 11 October 2015 where it is said that:  
 12 "Peter [Maddison] reiterated that the key for him is  
 13 still budget, then quality and finally time ..."  
 14 Zak Maynard, Rydon, at paragraph 13 of his witness  
 15 statement, notes that the TMO made the decision on  
 16 cladding primarily based on cost."  
 17 These are snapshots from correspondence and  
 18 information gathered in the period between mid-2013 to  
 19 late 2015, which demonstrate that cost was the priority  
 20 for RBKC/TMO over and above quality of work. In short,  
 21 as far as they were concerned, our clients' lives were  
 22 not worth it. Their lives were cheap. And our clients  
 23 say this was less of a missed opportunity than a death  
 24 sentence for 72 innocent people.  
 25 Next, testing and certification. As you know,

54

1 Approved Document B is a building regulations document  
 2 which covers fire safety matters within and around  
 3 buildings, and contained within this document are  
 4 provisions which set out the required level of fire  
 5 resistance of materials to be used on the external walls  
 6 of buildings over 18 metres in height. The requirement  
 7 is that of limited combustibility, which refers to the  
 8 susceptibility of the external walls to ignite from  
 9 an external source, and the flame spread, which is  
 10 measured using a system of classification for materials.  
 11 Whilst the class 0 classification exists and is  
 12 often relied upon as the benchmark for fire safety in  
 13 materials within the industry, it is insufficient  
 14 inter alia because the class 0 classification fails to  
 15 consider a material's reaction to fire, meaning its  
 16 combustibility. In this way, as previously stated, the  
 17 class 0 classification is entirely misleading.  
 18 The BBA is an independent and accredited  
 19 certification scheme which testifies to the compliance  
 20 with building regulations. The BBA tested and issued  
 21 a certificate for the accreditation of Reynobond  
 22 Architecture wall panels, and these are the cladding  
 23 panels that were installed in Grenfell Tower.  
 24 Dr Barbara Lane stated that these panels did not meet  
 25 the requirements of Approved Document B. It is clear

55

1 that had these panels been tested correctly, they would  
 2 have been found to be non-compliant with building  
 3 regulations and would not have been installed on  
 4 Grenfell Tower, a missed opportunity.  
 5 Next, manufacture and marketing. Celotex were the  
 6 manufacturers of the PIR insulation boards and, of  
 7 particular importance, RS5000, which was incorporated  
 8 within the cladding system on Grenfell Tower. Celotex  
 9 RS5000 was tested at a BRE test centre in February 2014.  
 10 The test was terminated prematurely as the fire spread  
 11 was too fast that the test could not go on, as it would  
 12 pose a risk to employees and surroundings. This first  
 13 test failed.  
 14 A second test was carried out in May 2014, with  
 15 thicker cladding panels used as part of the set-up.  
 16 This test passed. However, after the test was  
 17 conducted, some major concerns were raised by the  
 18 National House Building Council regarding the materials  
 19 used with the insulation boards. This is because they  
 20 were not a true representation of a typical rainscreen  
 21 cladding system that would be installed on a building.  
 22 Aluminium panels are typically used in conjunction with  
 23 insulation boards as part of cladding systems. However,  
 24 these panels were not used as part of this test.  
 25 A different type of cladding panel was used.

56

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

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

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

25 It is clear that Arconic should have recognised that

57

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

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

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

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

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

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

58

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

6 Studio E, the architects in the main design team,  
 7 were involved in the project from inception. Studio E  
 8 prepared the National Building Specification in  
 9 January 2014, which included not less than  
 10 150 millimetres for spandrel panels and 80 millimetres  
 11 for columns of Celotex insulation. It was Bruce Sounes  
 12 who suggested the cladding material change from zinc to  
 13 aluminium, which was the material actually used on the  
 14 tower, when the TMO requested a value engineering  
 15 exercise to take place. What this essentially meant was  
 16 cost-cutting, so that materials which should have been  
 17 identified by Studio E as being unsafe and unsuitable to  
 18 be used on the tower were not.

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

59

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

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

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

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

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

60



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

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

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

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

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

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

61

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

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

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

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

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

62

1 on fire safety measures.

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

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

25 Moving to the next topic, the supply of materials,

63

1 including the Reynobond ACM panels and PIR insulation.

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

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

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

64

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

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

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

65

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

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

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

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

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

66

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

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

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

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

67

1 workmanship would not have contributed to the events of  
2 14 June 2017. A missed opportunity.

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

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

68

1 effective co-ordination is what resulted in this  
 2 cladding being installed on the tower.  
 3 These are some of the questions that need to be  
 4 addressed by the Inquiry.  
 5 Turning back to the four themes that we identify  
 6 above, the issue of cost-cutting, the lack of  
 7 co-ordination, the competence of contractors and the  
 8 culture of buck-passing, we invite the Inquiry to ensure  
 9 that this does not continue during the proceedings.  
 10 Finally, sir, madam, whilst we have identified at  
 11 least 15 key missed opportunities on the part of those  
 12 involved in the refurbishment of Grenfell Tower, we note  
 13 that there has actually been a missed opportunity for  
 14 this Inquiry, and that is to recognise the issues of  
 15 race and social class which we on behalf of our clients  
 16 argue should be an integral part of this Inquiry.  
 17 Whilst it may be argued that race and class do not  
 18 readily fall to be considered within this module, we ask  
 19 the question: would the issues of cost-cutting, budget  
 20 restraints, lack of compliance of building regulations  
 21 arise if the make-up of the residents of Grenfell Tower  
 22 had been different, namely if they had been wealthy and  
 23 white?  
 24 Thank you.  
 25 SIR MARTIN MOORE-BICK: Thank you very much.

69

1 Now, then, Mr Stein, I think we are going to hear  
 2 from you next, aren't we?  
 3 MR STEIN: Sir, madam, yes.  
 4 SIR MARTIN MOORE-BICK: Thank you very much.  
 5 Opening statement on behalf of BSRs Team 2 by MR STEIN  
 6 MR STEIN: Yesterday, the people of the Grenfell Tower and  
 7 the Walk were outraged by an application which has all  
 8 of the appearance of looking like an attempt to pull  
 9 a fast one made by some of the firms who want to have  
 10 whatever they might say from the witness box not be used  
 11 against them in any future prosecution. They want the  
 12 protection of an undertaking from the Attorney General  
 13 worded in the following way:  
 14 "No oral evidence a person may give before the  
 15 Inquiry will be used in evidence against that person in  
 16 any criminal proceedings or for the purpose of deciding  
 17 whether to bring such proceedings."  
 18 Yet those self-same companies have provided what  
 19 they wanted to say in their statements. No such  
 20 undertaking was asked to cover those statements, but  
 21 they are clearly scared of what they know they have to  
 22 face in this witness box.  
 23 Why make this application now? Why wait until we  
 24 are in the middle of the opening part of Phase 2 of this  
 25 Inquiry, well over a year after the close of Phase 1 in

70

1 December 2018?  
 2 Our response to this application will be dealt with  
 3 on Monday. So let me simply say that the people we  
 4 represent are furious. Like you, Chair, I could use  
 5 other words. They are furious that this application has  
 6 been made at this time. Do the companies who have made  
 7 this application still not understand? Do they still  
 8 have no respect, no regard and no feeling for those who  
 9 have lost so much?  
 10 Over the last few days, we have listened to the  
 11 litany of excuses and the revolving door of the blame  
 12 game, but we have yet to hear anyone other than RBKC,  
 13 who have made some admissions, or Celotex, who in their  
 14 statements have blamed a few bad apples, say that they  
 15 have done wrong.  
 16 Why is that? Surely they and their lawyers can read  
 17 and understand the evidence which has been disclosed in  
 18 documents and statements and emails within this Inquiry.  
 19 Surely they can understand what went wrong. So why have  
 20 no admissions been made to their own failures?  
 21 Well, perhaps there is no real mystery. Imagine the  
 22 financial consequences of making admissions to their own  
 23 businesses. Think about the drop in trade, the loss of  
 24 profit, the insurance implications. Think about the  
 25 sackings and resignations, and think about what

71

1 admissions could do to accelerate civil claims.  
 2 In comparison to that, spending part of their  
 3 profits or the insurance companies avoiding large  
 4 payouts now and fighting all the way is much more  
 5 attractive. But make no mistake, these commercial  
 6 considerations don't seem so attractive to the people of  
 7 the Grenfell Tower, who have a right to the truth.  
 8 There were 72 people and many people injured at the  
 9 Grenfell Tower fire. We will be considering their fate  
 10 and what happened to them during the following modules  
 11 of this Inquiry. The companies responsible killed those  
 12 72 people as sure as if they had taken careful aim with  
 13 a gun and pulled the trigger.  
 14 Let us remember the youngest they killed, Logan, the  
 15 unborn son of Marcio and Andreia, who was delivered  
 16 stillborn whilst his mum lay in a coma, and who died in  
 17 the womb as a result of smoke and cyanide poisoning.  
 18 Let us remember the many other families. I only mention  
 19 a name that comes to mind: the Choucairs, an entire  
 20 family practically wiped out.  
 21 Those companies responsible killed when they  
 22 criminally failed to consider the safety of others.  
 23 They killed when they promoted their unsuitable,  
 24 dangerous products in the pursuit of money and a place  
 25 within the market. And they killed when they entirely

72

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

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

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

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

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

73

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

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

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

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

74

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

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

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

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

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

75

1 300 buildings still had the same cladding as the tower.

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

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

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

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

25 Responding to those figures , Grenfell United said :

76

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

4 Grenfell United went on to say:  
5 "It is only a matter of time before another tragedy  
6 happens, and the blame will lie solely at the  
7 government's door."

8 It took far too long for Commissioner Cotton to be  
9 ousted by the Mayor, despite our call for her immediate  
10 resignation at the close of the Phase 1 hearings in  
11 2018. Now, the appointment of Commissioner Andy Roe on  
12 10 December by the Mayor of London, Sadiq Khan, was  
13 a late but at least welcome step, as it should be  
14 recalled he was amongst the senior firefighters at the  
15 Grenfell Tower fire ground, and he recognised quickly  
16 after he attended that the stay-put policy must be  
17 abandoned. On his appointment, Commissioner Roe stated:

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

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

1 Brigade is carried out as effectively and swiftly as  
2 possible.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 In December 1999, the select committee on  
8 environment, transport and regional affairs stated,  
9 following a cladding fire in Irvine, Ayrshire, on  
10 11 June, where William Linton died and four others were  
11 taken to hospital, as regards the evidence provided to  
12 them before their committee:

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

17 The select committee went on, and they said:

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

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

81

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

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

17 They go on to say:

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

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

82

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

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

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

83

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

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

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

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

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

84

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

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

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

85

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

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

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

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

86

1 the commissioner of the London Fire Brigade.

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

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

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

87

1 thanks.

2 Sir, those are our submissions.

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

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

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

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

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

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

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

17 Opening statement on behalf of BSRs Team 2 by MR WILLIAMSON

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

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

25 First of all, there must be accountability. The

88

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

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

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

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

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

89

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

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

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

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

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

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

90

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

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

9 Then these words:

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

12 "Accordingly we are likely to reprocur [the] scheme  
13 via OJEU!

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

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

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

91

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

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

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

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

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

92



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

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

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

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

93

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

3 However, it is not of course only RBKC who should be  
4 held to account for the selection of dangerous materials  
5 for this refurbishment. Unfortunately, Max Fordham and  
6 Studio E managed between them to specify Celotex  
7 insulation . Celotex actively promoted its RS5000  
8 insulation as "acceptable for use in buildings above  
9 18 metres height". However, as the Inquiry's expert  
10 Paul Hyett explains, this claim was both erroneous and  
11 misleading. In fact, PIR insulation does not meet any  
12 of the definitions for materials of limited  
13 combustibility set out in table A7 of ADB2. It is  
14 combustible. However, Celotex's deceit provides no  
15 shelter for Studio E or Max Fordham or Rydon or Exova.  
16 They should all have known that this product did not  
17 comply with the building regulations .

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

94

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

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

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

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

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

95

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

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

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

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

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

96

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

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

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

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

97

1 submitted by far the lowest tender at just over  
2 £9 million, compared with other tenders in excess of  
3 £10 million. RBKC, the TMO and Artelia decided to  
4 proceed with this contractor, which had scored so poorly  
5 on the pre-qualification exercise and whose tender was  
6 so far below that of their rivals.

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

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

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

98

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

4 Crucially, the strategy simply did not engage with  
5 the cladding issues at all. What did Exova think they  
6 were doing about fire safety for the refurbishment works  
7 which they had been engaged to consider? Their  
8 submissions essentially suggest that they were mere  
9 spectators. So when Rydon came into this project in  
10 2014, there was no fire strategy and no clarity as to  
11 Exova's future role.

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

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

99

1 the minutes and no contact or appointment was ever made.

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

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

18 These points will no doubt be much developed in the  
19 evidence, but by way of example only, consider design  
20 team meeting number 1 which was held on site on  
21 13 August 2014. The attendants including  
22 Simon Lawrence, Bruce Sounes and Neil Crawford of  
23 Studio E, Daniel Anketell-Jones and Kevin Lamb of  
24 Harley. This was an ideal opportunity to review where  
25 the project was on fire strategy, the design choices

100

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

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

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

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

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

101

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

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

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

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

25 Sir, if that's a convenient moment.

102

1 SIR MARTIN MOORE-BICK: If that suits you.

2 MR WILLIAMSON: I am about halfway through.

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

6 (12.57 pm)

7 (The short adjournment)

8 (2.00 pm)

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

11 MR WILLIAMSON: Thank you.

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

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

103

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

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

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

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

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

24 They say this:

25 "It is widely acknowledged by authoritative sources

104

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

8 That remains the key question for this Inquiry to  
 9 answer.

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

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

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

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

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

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

25 In more recent times, many public projects have

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

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

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

16 The Inquiry needs to be very well aware of the  
 17 history here, particularly of the Lakanal House fire,  
 18 which various people have referred to. As the Phase 1  
 19 report notes, a major fire occurred at Lakanal House in  
 20 2009. There was serious loss of life; six people died.  
 21 The coroner's recommendations were considered and  
 22 extensive, and included the need to address the  
 23 requirements of building regulations B4. Nothing much  
 24 happened as a result.

25 As the Lakanal Inquest was nearing its conclusions,

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

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

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

14 The TMO were clearly giving these issues some  
 15 consideration in 2013, as the Grenfell project gathered  
 16 pace. For example, Janice Wray of the TMO noted in May  
 17 2013 that:

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

25 In June 2013, Wray prepared a briefing note on

1 Lakanal House, which observed that -- {TMO10016215/3},  
 2 please:  
 3 "Tragically this fire resulted in 6 deaths which  
 4 clearly led to much discussion about the cause, the  
 5 contributing factors and most importantly what action is  
 6 required to ensure fire safety in high-rise residential  
 7 blocks ... Further, I have also outlined the TMO's  
 8 current position/approach ..."

9 And one of the matters she mentioned was:  
 10 "Review Approved Document B of the Building  
 11 Regulations - clear reference to External Fire Spread."

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

16 Most poignantly of all, Claire Williams of the TMO  
 17 actually invokes the spectre of Lakanal in  
 18 November 2014, when she wrote to Artelia about the  
 19 cladding. That's at {ART0003046/2}. She said:

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

109

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

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

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

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

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

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

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

110

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

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

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

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

111

1 emails to similar effect.

2 The urgency of the task is not in doubt.

3 For example, Rydon are still working on large public  
 4 housing projects and were, until very recently, still  
 5 being allowed to bid for or work on high-rise buildings.  
 6 There have also been, as Mr Stein referred to, a number  
 7 of well publicised fires where the cladding has been  
 8 a substantial contributing factor.

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

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

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

112

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

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

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

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

113

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

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

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

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

114

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

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

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

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

25 It then explained the system was tested and gave

115

1 a description of it, and then said this :

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

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

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

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

25 Equally, our clients wish to emphasise the

116

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

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

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

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

117

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

4 They went on to say:

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

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

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

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

118

1 On that same day, the GTLA asked Laura Johnson:  
 2 "Who is going to pay the ultimate price for the  
 3 anticipated negligence of KCTMO, the RBKC or the  
 4 residents of Grenfell Tower?"

5 In April 2017 the GTLA wrote again to Laura Johnson,  
 6 referring to a fire which had happened in the building  
 7 in 2010 due to poor maintenance, and that email referred  
 8 to a petition calling for an independent investigation  
 9 by an independent adjudicator, health and safety  
 10 inspector and Fire Brigade inspectors to carry out  
 11 a full health and safety inspection of the premises.  
 12 That was but a matter of weeks before the fire. The  
 13 petition was signed by many residents. It was delivered  
 14 by hand by Mr Shah Ahmed, chair of GTLA, to  
 15 Councillor Feilding-Mellen and to Robert Black on  
 16 30 May 2017, only two weeks before the fire. It should  
 17 be noted in this regard that Mr Ahmed and the GTLA had  
 18 been raising concerns about fire safety to no avail  
 19 since 2010.

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

119

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

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

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

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

120

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

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

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

17 And also that they should:

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

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

121

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

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

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

10 MR LAIDLAW: I am, sir, yes.

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

13 Application in respect of an undertaking from the Attorney

14 General touching upon self-incrimination

15 Submissions by MR LAIDLAW

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

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

122

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

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

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

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

123

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

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

11 MR LAIDLAW: Yes, and I accept that.

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

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

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

124



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

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

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

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

125

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

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

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

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

126

1 be in peril unless this issue is addressed.

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

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

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

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

22 MR LAIDLAW: Yes.

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

127

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

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

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

25 MR LAIDLAW: Certainly.

128

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

4 MR LAIDLAW: Yes.  
5 Can I then accept that invitation and highlight from  
6 the application the essential features of the letter,  
7 and I'll provide paragraph numbers to that document.

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

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

1 proceedings.

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

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

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

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

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

1 charged.

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

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

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

22 I quote from the document:

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

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

3 "2. Paragraph 1 does not apply to:

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

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

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

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

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

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

12 MR LAIDLAW: Yes, I agree with that.

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

16 MR LAIDLAW: Certainly.

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

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

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

25 MR LAIDLAW: Yes.

133

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

2 MR LAIDLAW: It would go wider than that.

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

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

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

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

15 SIR MARTIN MOORE-BICK: Right.

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

18 SIR MARTIN MOORE-BICK: Thank you.

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

134

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

3 SIR MARTIN MOORE-BICK: Thank you.

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

11 SIR MARTIN MOORE-BICK: Yes, thank you.

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

135

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

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

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

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

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

136

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

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

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

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

137

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

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

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

14 Then at paragraph 24 from *Rio Tinto Zinc*, this :

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

19 I move on a little :

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

138

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

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

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

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

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

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

139

1 that you will have to consider.

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

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

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

140

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

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

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

141

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

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

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

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

142

1 starkly , to which I should draw attention.

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

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

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

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

143

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

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

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

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

144

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

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

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

23 MR LAIDLAW: Yes.

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

145

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

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

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

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

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

146

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

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

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

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

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

147

1 evidence?

2 MR LAIDLAW: Yes, it is.

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

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

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

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

148

1 prosecuted.

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

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

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

149

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

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

19 And importantly these words:

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

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

25 My position in support of the proposed undertaking

150

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

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

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

151

1 Have you got it handy?

2 MR LAIDLAW: I have, thank you.

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

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

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

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

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

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

14 MR LAIDLAW: Yes, I will.

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

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

152

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

153

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

154

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

155

1 SIR MARTIN MOORE-BICK: Please feel free to do so.  
 2 Thank you.  
 3 Thank you all very much. 10 o'clock on Monday,  
 4 then, please.  
 5 (3.21 pm)  
 6 (The hearing adjourned until 10 am on  
 7 Monday, 3 February 2020)

156



	INDEX	
		PAGE
1		
2		
3	Opening statement on behalf of BSRs	.....1
4	Team 1 by MS BARWISE	
5		
6	Opening statement on behalf of BSRs	.....49
7	represented by Imran Khan &	
8	Partners by MS GILL	
9		
10	Opening statement on behalf of BSRs	.....70
11	Team 2 by MR STEIN	
12		
13	Opening statement on behalf of BSRs	.....88
14	Team 2 by MR WILLIAMSON	
15		
16	Application in respect of an	.....122
17	undertaking from the Attorney	
18	General touching upon	
19	self -incrimination	
20		
21	Submissions by MR LAIDLAW	.....122
22		
23		
24		
25		

157

158

<p><b>A</b></p> <p>a1 (2) 43:25 44:9</p> <p>a2 (2) 44:9 48:3</p> <p>a7 (1) 94:13</p> <p>apsas (1) 24:3</p> <p>abandoned (1) 77:17</p> <p>ability (5) 29:18 30:14 106:11 120:16 146:15</p> <p>abjectly (1) 101:18</p> <p>able (7) 30:7 49:4 62:11 76:12 131:4 144:8 154:14</p> <p>above (11) 30:8 32:11 48:13 54:20 57:7 69:6 90:13 92:18 94:8 115:19 116:3</p> <p>absence (3) 21:23 96:1 115:8</p> <p>absent (1) 151:8</p> <p>absolutely (3) 16:11 19:19 102:16</p> <p>absurd (1) 28:20</p> <p>ac (1) 138:1</p> <p>academy (4) 3:13 4:8,13,17</p> <p>accelerate (1) 72:1</p> <p>accept (7) 39:5 66:23 123:9 124:11,14 129:5 149:12</p> <p>acceptable (3) 22:5 94:8 115:18</p> <p>acceptance (1) 127:16</p> <p>accepted (5) 19:12 32:6 66:25 96:14 122:25</p> <p>accepting (1) 113:14</p> <p>accepts (3) 19:18 34:5 38:21</p> <p>access (3) 87:16 121:19 144:24</p> <p>accompanied (1) 115:6</p> <p>accordance (4) 15:15 67:7 96:10 101:17</p> <p>according (7) 20:16 23:5 44:7 52:14 58:25 68:10 102:11</p> <p>accordingly (1) 91:12</p> <p>account (9) 18:19 45:9 62:2 75:7 80:16 89:2 94:4 110:22 147:17</p> <p>accountability (6) 45:25 87:24 88:25 89:17 105:19,24</p> <p>accountable (1) 51:25</p> <p>accounted (1) 61:22</p> <p>accreditation (1) 55:21</p> <p>accredited (1) 55:18</p> <p>accuracy (1) 147:21</p> <p>accurate (3) 23:23 45:8 62:8</p> <p>achieve (6) 27:5 28:1 33:22 57:12 87:25 126:10</p> <p>achieved (1) 14:24</p> <p>achieving (3) 25:11 36:14 85:10</p> <p>acknowledged (4) 19:9 33:16 46:19 104:25</p> <p>acknowledgement (1) 142:20</p> <p>acknowledges (1) 63:12</p> <p>acknowledging (1) 11:13</p>	<p>acm (15) 64:1,16 91:25 92:12,18,22 93:21 94:18,22 95:11,15 96:7,25 97:2 104:8</p> <p>acquired (1) 45:16</p> <p>across (1) 14:11</p> <p>acted (1) 35:5</p> <p>acting (2) 64:4 123:23</p> <p>action (6) 78:7 109:5 111:17 117:16,23 118:5</p> <p>actions (3) 10:23 30:2 52:1</p> <p>actively (1) 94:7</p> <p>activity (1) 78:17</p> <p>acts (1) 133:22</p> <p>actual (4) 73:20,20,21 78:10</p> <p>actually (11) 39:2 57:11 59:13 63:10 68:7 69:13 85:18 109:17 114:24 140:8 146:17</p> <p>acute (1) 143:17</p> <p>adb (27) 15:7,13 16:11 27:24 31:7 32:1 35:10,15 38:13,18 43:15,23 44:22,24 45:2,14,19,22,23 46:6 47:16,19,22 48:1,2 96:11 115:10</p> <p>adb2 (1) 94:13</p> <p>add (2) 76:11 151:21</p> <p>added (2) 50:25 123:8</p> <p>adding (1) 19:13</p> <p>addition (1) 101:23</p> <p>additional (3) 90:8 128:13 135:7</p> <p>additionally (1) 16:20</p> <p>additive (1) 95:8</p> <p>address (10) 2:6 17:3 18:4 19:21,25 88:5 107:22 112:17 120:13 136:15</p> <p>addressed (10) 6:7 8:23 35:14 48:5 49:13,18 66:21 69:4 127:1 128:17</p> <p>addressing (4) 2:12 11:3 13:18 14:19</p> <p>adds (1) 126:2</p> <p>adequacy (4) 11:20 44:23 120:9,10</p> <p>adequate (4) 1:18 45:15 79:7 101:15</p> <p>adequately (3) 15:2 18:3 29:16</p> <p>adhered (1) 108:12</p> <p>adjourned (1) 156:6</p> <p>adjournment (1) 103:7</p> <p>adjudicator (1) 119:9</p> <p>administer (1) 107:9</p> <p>administered (1) 106:20</p> <p>administration (1) 68:9</p> <p>admirable (1) 5:22</p> <p>admissible (2) 148:7 149:4</p> <p>admission (3) 13:5 115:5 147:10</p> <p>admissions (7) 71:13,20,22 72:1 101:20,23 102:2</p> <p>admit (1) 30:1</p> <p>admits (2) 12:25 30:3</p>	<p>admitted (3) 30:9 101:21 134:8</p> <p>admitting (1) 42:8</p> <p>admonishment (1) 42:6</p> <p>ado (1) 1:7</p> <p>adopt (6) 9:22 32:22 54:4 92:11 111:18 152:24</p> <p>adopted (5) 3:8 11:16 35:7,21 107:1</p> <p>adopts (1) 24:1</p> <p>advance (2) 1:22 130:23</p> <p>advanced (1) 37:8 148:13</p> <p>adverse (5) 3:17 21:3 102:23 125:6 145:4</p> <p>adversely (1) 8:12</p> <p>advice (17) 9:20 10:24 20:10,15 21:6,12,18,19,21 39:13 40:2,3,5,17 62:25 92:14 120:11</p> <p>advise (3) 28:2 39:6 85:25</p> <p>advised (1) 8:5</p> <p>advisers (1) 90:17</p> <p>advises (1) 9:9</p> <p>advising (2) 19:14 29:20</p> <p>advocate (1) 121:18</p> <p>advocated (1) 111:17</p> <p>advocating (1) 22:8</p> <p>aesthetic (3) 4:7 36:15,20</p> <p>aesthetics (3) 3:22 4:22 93:1</p> <p>affairs (1) 81:8</p> <p>affect (6) 63:12,22 82:21 87:23 106:11 134:10</p> <p>affected (5) 6:12 8:12 74:19 113:21 133:21</p> <p>afforded (3) 137:20 138:17 141:16</p> <p>afoot (1) 126:17</p> <p>afraid (1) 124:21</p> <p>after (21) 8:10 20:14 22:20 37:1 56:16 67:15,18 70:25 75:25 77:16 80:7,22 83:16 101:8,13 107:7 111:23 124:24 145:19 153:16 154:23</p> <p>afternoon (1) 139:12</p> <p>afterwards (1) 147:8</p> <p>again (9) 75:8 119:5 121:24 135:10 139:19,25 147:4 152:16 153:21</p> <p>against (30) 12:9,12 36:10 70:11,15 78:17 81:3,4 82:25 83:10 102:16 112:25 116:13 122:7 124:6 129:25 130:6 131:24 135:14 137:17 138:24,25 139:1 148:7,22,24,24 149:3 150:15,17</p> <p>agent (1) 110:14</p> <p>ageros (1) 142:23</p> <p>aggressive (1) 33:6</p> <p>ago (7) 12:17 48:12 103:23 123:22 124:22</p>	<p>125:13 131:12</p> <p>agonising (1) 36:15</p> <p>agree (5) 8:9 102:11 118:23 133:12 148:9</p> <p>agreed (4) 5:6 37:15 83:24 99:20</p> <p>agreement (3) 5:6 76:5,6</p> <p>agrees (1) 35:19</p> <p>agrment (1) 95:6</p> <p>ahead (1) 77:18</p> <p>ahmed (2) 119:14,17</p> <p>aid (1) 146:17</p> <p>aim (2) 5:22 72:12</p> <p>aimed (2) 42:18 150:11</p> <p>akin (1) 28:13</p> <p>alarming (1) 75:24</p> <p>albeit (3) 25:2 30:1 79:24</p> <p>alerted (2) 65:5 110:19</p> <p>alerting (1) 64:6</p> <p>alia (1) 55:14</p> <p>allen (1) 46:16</p> <p>alliance (2) 15:22 16:15</p> <p>allocated (2) 50:1,3</p> <p>allow (2) 53:7 128:15</p> <p>allowed (5) 60:12 76:18 86:8 97:25 112:5</p> <p>allparty (2) 83:18,20</p> <p>alluding (1) 41:13</p> <p>almost (8) 18:21 26:1 37:9 52:4 60:22 103:23 134:4 147:14</p> <p>alone (3) 7:4,14 74:3</p> <p>along (3) 136:13,15 142:6</p> <p>already (16) 4:15 22:11 57:14 67:19 83:3 94:18 101:1,24 112:14,21 116:11 130:25 136:6 140:9 147:24 153:10</p> <p>also (48) 3:25 4:18 9:16,18 14:1,2 20:8 24:18 25:12 28:9 33:6 34:22 38:24 45:6,12 46:4,22 53:8 61:3 64:15 65:17 66:3,15 76:8 77:22 80:8 84:5 87:8 91:4 92:19,25 94:21 97:20 102:20 109:7 110:24 112:6 114:6,14 121:17 123:16 125:20 127:7 130:23 137:2 142:7 145:14 149:24</p> <p>alteration (1) 18:25</p> <p>alternative (2) 7:21 106:21</p> <p>alternatively (1) 23:17</p> <p>although (5) 42:19 99:19 122:20 144:10 150:6</p> <p>altogether (1) 107:3</p> <p>aluminium (11) 4:14,16 7:22 36:16 56:22 57:19 59:13 64:9,10 76:17 92:12</p> <p>always (6) 31:18 35:8 90:13 104:5,6 150:8</p> <p>ambit (1) 132:18</p> <p>ambitious (2) 103:14,15</p> <p>amended (1) 38:2</p>	<p>amendments (3) 45:19 48:1,5</p> <p>among (2) 2:22 12:24</p> <p>amongst (9) 7:18 19:3 54:8 61:4 77:14 121:4 126:11,16 133:5</p> <p>amount (4) 7:16 59:21 88:22 116:20</p> <p>amounted (2) 19:9 20:20</p> <p>amounting (1) 144:1</p> <p>amounts (1) 8:25</p> <p>amplified (1) 109:14</p> <p>analysis (11) 18:9 21:15,23 39:17,18,20 50:12 110:25 146:19 149:21 150:5</p> <p>anderson (1) 53:18</p> <p>andor (2) 21:25 41:25</p> <p>andreia (1) 72:15</p> <p>andy (2) 77:11,24</p> <p>anger (1) 123:14</p> <p>animals (1) 73:16</p> <p>anketelljones (1) 100:23</p> <p>another (17) 4:22 46:17 60:6 62:14 63:18 64:14 77:5 83:8,25 89:9 93:17 104:12 108:1 121:6 142:3 147:9 149:3</p> <p>anothers (1) 52:16</p> <p>answer (16) 12:9 79:14 81:25 104:22 105:9 110:16 130:7,17 136:2,6 138:13,22 139:5 144:9 145:22 147:20</p> <p>answered (2) 61:2 145:20</p> <p>answering (4) 125:25 137:17 138:8 146:16</p> <p>answers (6) 68:15 131:5 137:14 141:13 144:18 146:9</p> <p>anticipate (1) 116:6</p> <p>anticipated (1) 119:3</p> <p>anticipation (1) 75:16</p> <p>anxiety (2) 92:25 123:14</p> <p>anxious (1) 119:21</p> <p>anybody (1) 127:9</p> <p>anyone (5) 24:6 71:12 90:20 120:2 147:8</p> <p>anything (15) 11:24 29:6 43:1,4 48:3 86:3 104:16 113:13,20 114:5 124:23 126:10 151:22 154:17 155:22</p> <p>anyway (2) 42:13 154:9</p> <p>anywhere (1) 102:17</p> <p>apart (2) 134:4 154:12</p> <p>apollo (1) 108:10</p> <p>apology (3) 122:17 123:5 128:11</p> <p>appalling (1) 118:9</p> <p>apparatus (1) 93:7</p> <p>apparent (5) 33:14 48:5 97:16 113:4 150:10</p> <p>apparently (2) 7:3 143:8</p> <p>appeal (2) 137:9,25</p> <p>appear (9) 3:24 16:5 22:4 27:6 35:13 73:23 88:19 100:3 122:17</p>	<p>appearance (8) 12:18 70:8 93:4,22 94:1,20 124:14 146:17</p> <p>appeared (1) 22:15</p> <p>appears (10) 6:1 13:17 16:25 22:19 36:13 85:22 113:25 114:8 116:19 138:15</p> <p>appease (1) 40:23</p> <p>appendix (1) 4:21</p> <p>apples (1) 71:14</p> <p>applicants (2) 101:15 135:10</p> <p>application (39) 12:16,21 60:4 70:7,23 71:2,5,7 79:1 80:4,9,16 86:23 122:5,9,13 123:5,6 124:10,19 126:14,18,20 127:21 129:6 134:17 135:23 136:10 140:3 141:9,22 147:4 148:12,19 149:12 152:19 154:8 155:16 157:16</p> <p>applications (2) 101:15,16</p> <p>applied (3) 50:24 94:22 96:10</p> <p>applies (4) 125:5 130:24 137:2,6</p> <p>apply (4) 26:25 27:11 132:3,24</p> <p>appoint (6) 39:22 40:10,15 98:8 99:23 121:18</p> <p>appointed (4) 7:1 22:23 39:6 51:13</p> <p>appointing (2) 40:7 53:21</p> <p>appointment (8) 59:23 77:11,17,22 86:12 100:1 114:16,17</p> <p>appraisal (1) 93:6</p> <p>appreciable (5) 135:15 139:4,7 140:5,25</p> <p>appreciates (1) 134:20</p> <p>apprehend (1) 138:11</p> <p>approach (12) 9:22 11:16 13:15 20:5 24:2 29:23 37:6 90:25 103:14 116:12 120:24 131:13</p> <p>approaches (2) 84:22 149:25</p> <p>approaching (2) 124:1 126:11</p> <p>appropriate (8) 32:21 36:9 41:10 67:23 95:23 111:7 148:9 151:1</p> <p>approval (2) 101:16 137:9</p> <p>approvals (1) 59:4</p> <p>approve (2) 31:10 37:3</p> <p>approved (14) 4:21 5:20 6:6 15:4,6 36:4 37:9 55:1,25 57:15 95:10 101:7 102:20 109:10</p> <p>approving (1) 37:2</p> <p>april (7) 23:13 27:18 31:8 39:23 99:13 102:22 119:5</p>	<p>archetypal (1) 46:1</p> <p>architect (8) 4:1,2 7:4 59:20 96:13 106:16,19,24</p> <p>architects (6) 7:7 33:12,16 59:6 106:23 107:5</p> <p>architectural (3) 97:11 98:15 114:7</p> <p>architecture (2) 55:22 93:6</p> <p>arconic (29) 24:3,4,4,10,15,21 25:8,12,14,20,21 26:3,22 27:2,13,14,17,23 28:2,8 57:19,25 64:10,12 94:21 95:14,19 115:16 116:22</p> <p>arconics (5) 24:13 26:14 28:19 29:12,18</p> <p>area (4) 3:7,10 121:1 137:21</p> <p>areas (5) 13:23 82:18 135:13,13 151:21</p> <p>arent (1) 70:2</p> <p>arguable (2) 22:21 143:6</p> <p>arguably (3) 8:12 13:13 134:11</p> <p>argue (3) 69:16 141:16 143:19</p> <p>argued (2) 15:3 69:17</p> <p>argues (1) 24:15</p> <p>argument (3) 22:20 38:9 112:12</p> <p>arguments (1) 35:9</p> <p>arise (6) 2:4 12:14 28:22 69:21 128:12 136:1</p> <p>arisen (2) 127:11 149:23</p> <p>arises (1) 143:18</p> <p>arising (3) 13:12 145:4,14</p> <p>armed (1) 25:12</p> <p>arms (1) 100:15</p> <p>arose (1) 40:25</p> <p>around (13) 19:5 22:12 42:9 50:5 55:2 60:17 62:21 66:7 68:24 80:24 97:14 102:17 115:9</p> <p>arrangement (1) 59:1</p> <p>arrangements (1) 121:14</p> <p>array (1) 73:14</p> <p>arrogance (1) 12:22</p> <p>art (1) 46:19</p> <p>art000030462 (1) 109:19</p> <p>art00006252 (1) 91:3</p> <p>artelia (16) 53:22 54:2 68:4,18 91:2 92:6 97:24 98:3,24 100:2,16 109:18 110:2,12,12 114:22</p> <p>article (1) 48:7</p> <p>asbestos (1) 109:24</p> <p>ascertain (2) 30:14 143:20</p> <p>ashton (3) 61:19 62:10,22</p>
--	---	---	---	---	--	--

ask (12) 60:25 61:9  
68:6 69:18 79:2 84:25  
86:12,21 100:3 112:11  
139:11 154:11  
asked (19) 8:2 20:11  
21:7 59:24 60:18 61:1  
65:1 67:16 70:20  
86:10 112:16 119:1  
127:14 143:7,24  
145:19 150:2 152:22  
155:6  
asking (2) 109:21  
145:12  
asks (2) 25:21 84:21  
aspect (3) 16:6 30:9  
127:16  
aspects (8) 11:13 19:16  
22:13 30:3,18 44:24  
58:10 128:6  
assert (1) 34:1  
asserted (3) 92:21  
115:17 151:12  
assertion (2) 57:8  
116:21  
assertions (1) 148:11  
asserts (3) 22:21  
40:12,19  
assessed (1) 46:9  
assessing (1) 84:22  
assessment (4) 9:24  
17:22 86:9 95:21  
assessments (5) 9:22  
10:14 62:3 63:4,11  
assessor (3) 9:16 14:14  
63:2  
assets (1) 90:5  
assist (3) 23:22 146:7  
149:16  
assistance (4) 116:9  
138:2 144:20 153:4  
associated (1) 96:7  
association (4) 20:7  
104:21 105:5 121:15  
assuage (1) 3:20  
assume (2) 38:15 41:16  
assumed (1) 63:17  
assumes (2) 38:10  
41:19  
assurance (2) 95:24  
150:14  
assure (1) 126:17  
assuring (1) 150:11  
attached (1) 147:25  
attempt (3) 51:17 70:8  
110:21  
attempts (1) 1:21  
attend (3) 67:10 129:10  
134:13  
attendance (3) 79:12  
80:5 86:24  
attendants (1) 100:21  
attended (3) 67:13  
77:16 99:12  
attention (5) 104:6  
115:14 131:7 136:14  
143:1  
attitude (4) 9:1 19:15  
60:12 81:13  
attorney (12) 12:10  
70:12 122:13 123:25  
124:2 129:23 131:3,20  
141:11 144:13 149:14  
157:17

attractive (2) 72:5,6  
august (1) 100:21  
austerity (1) 106:8  
authoritative (1) 104:25  
authorities (7) 46:12  
78:8 107:2 128:13  
135:7 136:13 140:4  
authority (11) 13:7  
45:25 89:22,22  
106:17,18,22 118:8  
137:10 138:2 143:13  
autoignite (2) 25:7 44:5  
autumn (1) 125:15  
avail (2) 119:18 126:21  
available (4) 7:17 9:8  
126:23 149:20  
avenue (1) 117:7  
avert (1) 110:17  
avoid (8) 11:23 12:1  
19:16 113:14 121:6  
145:14 151:10,13  
avoided (3) 31:6 52:22  
101:12  
avoiding (2) 72:3  
146:15  
avoids (2) 145:7 146:2  
award (5) 5:2,2,19 7:14  
8:10  
awarded (1) 50:9  
aware (19) 10:12 11:4  
17:7 20:1 22:4  
27:18,23 31:3 32:5  
39:21 40:1 41:11  
42:19 46:5,22 96:6  
107:16 111:9 117:19  
awareness (1) 142:21  
away (3) 89:4 99:25  
140:22  
awful (1) 28:21  
ayrshire (1) 81:9

**B**

b (13) 4:21 6:6 15:4,7  
24:25 25:11 27:5 44:9  
55:1,25 57:16 95:10  
109:10  
b1 (3) 14:25 19:22 22:9  
b2 (1) 19:22  
b3 (1) 19:22  
b4 (10) 14:25 18:4  
19:23,25 20:21 21:23  
36:18 39:16 99:2  
107:23  
b5 (2) 14:25 19:22  
back (8) 2:15 32:16  
60:23 69:5 82:20  
118:6 130:22 154:7  
backdrop (1) 45:20  
backed (1) 105:25  
background (3) 81:4  
83:1,5  
bad (5) 20:12 24:18  
41:15 71:14 147:14  
baha (1) 131:21  
balance (2) 6:20 132:12  
balvinder (1) 49:4  
ban (1) 48:2  
bank (3) 136:12,21  
147:5  
barbara (4) 55:24 57:21  
66:3 67:20  
barking (1) 73:8  
barns (1) 3:4

barriers (19) 21:7,10  
41:1,14 42:9,11,14  
62:22 66:5,9 67:20  
102:3,5,7,8,12  
115:9,12,14  
barwise (7) 1:7,9,10  
80:22 98:20 116:10  
157:4  
based (10) 1:12 10:23  
15:7 34:25 44:4 45:8  
54:16 84:15 91:6  
134:22  
basic (4) 38:16 97:16  
130:9 141:15  
basis (7) 59:25 90:9  
124:1 127:23 136:18  
145:22 150:20  
battleship (1) 36:16  
bba (8) 16:8 26:22  
27:2,15 28:5 55:18,20  
95:23  
bco (1) 37:13  
bear (2) 46:13 128:21  
bears (3) 38:22 40:16  
142:14  
became (7) 4:2 20:1  
27:17 40:1 75:11  
97:16 125:20  
become (5) 6:21 27:23  
82:15 122:20 144:14  
bedevilled (1) 89:23  
before (22) 2:14,16  
14:19 20:14 49:14  
65:18 70:14 77:5  
80:17,24 81:12,20  
83:7 84:6 118:6  
119:12,16 122:16  
127:10 131:23 145:20  
154:11  
began (3) 3:23 67:15  
91:21  
begin (3) 82:12 88:19  
112:13  
beginning (2) 26:9  
112:14  
begins (1) 24:4  
behalf (24) 1:5,9 49:3,8  
61:13 69:15 70:5  
79:22 88:17 89:5  
96:14 122:5,9,21  
124:3 125:2 126:6  
140:3 154:12,22  
157:3,6,10,13  
behaved (1) 24:21  
behaving (1) 14:7  
behaviour (5) 6:9 11:21  
22:13 42:17 44:18  
behaviours (3) 12:22  
30:22 73:11  
behest (1) 91:22  
behind (4) 5:13 73:6  
102:18 116:7  
being (52) 7:1 10:11,19  
11:16 12:5,11 16:13  
17:7 19:12,16 21:7  
22:19,22 27:19 31:19  
34:11 35:21 38:14,17  
39:18 44:17 50:17  
57:7 59:17,22  
63:15,21 69:2  
78:23,24 87:20 90:5  
96:3 111:14 112:5  
120:18 123:18 124:10

132:17 133:5 136:16  
138:12 139:3 143:4  
144:8 147:1,2  
148:12,15,17 151:11  
154:9  
belatedly (1) 42:8  
believe (3) 81:18  
117:23 123:1  
believes (1) 138:23  
below (3) 6:16 48:3  
98:6  
benchmark (1) 55:12  
benefit (4) 127:20  
128:4 139:22 147:23  
benefits (1) 47:14  
bereaved (10) 1:5,11  
48:25 73:6 88:18  
105:21 123:13 146:5  
153:11,25  
berry (1) 12:6  
beryl (2) 60:4 66:2  
besides (1) 4:22  
best (9) 25:1,13 27:14  
28:20 109:13 124:20  
126:9 128:20 155:19  
better (10) 8:23 12:25  
15:20 30:17 34:15  
85:10 117:9 129:2  
151:9 152:9  
between (19) 6:5 13:21  
17:23 25:5 31:11  
36:15 44:8 45:16  
50:19 51:5 53:25  
54:18 68:14 94:6  
100:8 101:20 126:4  
132:13 137:12  
beyond (7) 2:24 8:14,15  
10:19 51:4 98:19  
139:15  
bid (1) 112:5  
bidder (1) 7:15  
bill (1) 46:1  
bimonthly (1) 10:2  
bisby (2) 28:12 94:25  
bit (1) 124:9  
bite (1) 133:10  
bizarre (1) 37:5  
black (2) 118:21 119:15  
blades (1) 26:20  
blakeman (1) 121:9  
blame (16) 2:10 11:1,18  
24:11 42:7 51:18  
52:4,13 61:4 71:11  
77:6 95:4 113:13  
115:6,11,15  
blamed (1) 71:14  
blaming (2) 24:12,17  
blandishments (1) 75:8  
blissfully (1) 29:13  
block (4) 83:17 89:10  
97:19 106:2  
blocks (10) 3:6 73:9  
74:1,13,22 78:4 83:21  
86:6 97:13 109:7  
blog (1) 118:6  
blood (2) 52:15,16  
blush (1) 22:4  
board (4) 86:10,13 95:5  
115:23  
boards (7) 56:6,19,23  
64:2 65:5,10 111:23  
boasting (1) 34:14  
bodies (4) 46:2 97:9

135:23 148:10  
body (3) 11:19 78:12  
133:4  
bolton (1) 73:9  
bomb (1) 47:17  
book (1) 142:23  
booth (4) 27:19 54:2  
110:2,6  
bore (4) 9:13 13:23  
37:25 93:17  
bores (1) 93:16  
borough (8) 49:25  
65:24 93:3,19 94:2  
106:16,19,24  
borrow (1) 144:1  
borrowing (1) 140:4  
both (28) 5:4 9:13  
14:12 18:14 20:14  
27:6,8 30:18,22 35:21  
37:21 41:20 42:2  
43:11 46:4 66:22 67:6  
68:21 89:13 94:10  
96:12 97:24 100:10,15  
103:14 115:15 134:23  
152:17  
bottom (4) 25:18,19  
31:13 130:23  
bought (1) 64:4  
bound (4) 123:10 127:9  
138:22 141:6  
bounds (1) 139:15  
box (4) 9:20 70:10,22  
148:4  
boyes (2) 137:24 138:5  
br (2) 32:12 115:24  
brackets (1) 152:8  
brand (1) 3:24  
brave (1) 74:16  
bre (9) 5:3 30:5 44:22  
56:9 81:22,25  
82:3,10,11  
breach (4) 7:10 48:6  
108:7 134:11  
breaches (3) 108:23  
129:16 142:21  
breadth (2) 135:18  
143:17  
break (4) 48:20,23  
88:12 103:3  
breath (1) 115:11  
breecam (2) 5:2,19  
brentwood (1) 13:9  
brexited (1) 73:15  
briefing (2) 108:21,25  
briefly (2) 42:5 144:16  
brigade (11) 10:2 73:13  
76:7,13 77:19 78:1,9  
79:6 87:1 105:1  
119:10  
brigades (3) 9:20  
155:5,8  
bring (6) 23:25 70:17  
111:11 117:25 128:16  
132:1  
bringing (1) 26:4  
brings (1) 45:24  
britain (1) 104:14  
british (2) 85:14 95:5  
broad (11) 129:14  
130:22 132:19 134:16  
136:9 141:18 142:15  
146:14 149:13 151:4,9  
broader (2) 104:12

150:14  
broadest (1) 150:16  
broadly (1) 17:1  
broadness (3) 135:24  
141:1 149:10  
broken (1) 142:11  
brokenshire (1) 84:9  
brought (3) 46:13 83:2  
111:14  
bruce (4) 54:1,2 59:11  
100:22  
brushed (1) 36:16  
bs (3) 15:15 30:4 44:1  
bs3d2 (1) 15:19  
bsr (4) 1:16,20 24:4  
128:15  
bsrs (16) 1:9 49:8 70:5  
73:22 88:17 89:12  
123:16 127:14 141:13  
146:9 154:13,22  
157:3,6,10,13  
buck (3) 51:19  
104:16,17  
buckpassing (7) 43:3  
51:16,24 69:8 112:22  
113:12 126:4  
budget (8) 7:17 37:15  
50:1,6,16 54:13 68:10  
69:19  
budgets (2) 54:4 92:11  
build (18) 5:6 22:23  
37:24 38:2,6 41:19  
42:2 50:10 58:9,23  
100:11 103:20 106:14  
107:1,4,7 113:24  
114:4  
building (120) 3:12  
5:3,25 6:4 7:6 9:6  
11:12 13:2,24  
14:13,18,21,23  
15:5,10,21 16:15,22  
17:14,16,21 18:8,24  
19:1,6,14 22:5,12 24:7  
27:20 29:9,15 31:4,21  
33:4,13,19 37:8 39:7  
40:23,24 41:3,6,8,9  
46:15 47:3 48:14 53:9  
55:1,20 56:2,18,21  
57:2,24 58:5,20 59:4,8  
60:3,11 61:8,18 62:13  
63:13,16 64:13,24  
65:13,22,23,24,25  
66:2,15,20 67:4 69:20  
74:7 75:16,20  
81:22,24 82:13,16,20  
83:15,20,23 84:10  
85:6,21 89:21,22  
94:2,17 97:17  
101:3,13,17,18,25  
102:1,19 103:21 104:4  
106:9 107:23  
108:7,12,22 109:10  
114:1 115:13 116:5  
119:6 127:17 134:10  
142:8  
buildings (27) 26:17  
33:3,9 43:21 45:13  
46:9 47:23 48:3 55:3,6  
57:7,9 74:2,24  
76:1,12,21,24 82:7  
84:20,22 85:1 94:8,24  
95:18 112:5 115:18  
burden (1) 107:7

burdens (1) 134:21  
burning (3) 28:15,16  
29:5  
bushel (1) 111:23  
business (1) 84:16  
businesses (1) 71:23  
bypass (1) 82:21

**C**

c (2) 18:13 44:10  
cabinet (1) 87:4  
calamitous (1) 97:4  
calculating (1) 45:2  
calculations (2)  
30:13,15  
call (3) 77:9 80:16  
84:19  
called (8) 46:25 83:19  
105:22 129:9  
137:10,22 138:10  
144:19  
calling (2) 80:1 119:8  
calls (3) 37:7 73:22  
126:5  
calorific (1) 28:16  
came (8) 50:5 91:19  
92:22 93:10,14,21  
99:9 113:10  
camps (1) 17:1  
candid (2) 10:20 101:20  
candour (4) 42:16 46:1  
47:6 113:15  
cannot (10) 10:5 34:3  
40:12 43:9 47:5 52:15  
73:24 89:9 123:18  
149:7  
cant (3) 118:11 123:24  
126:21  
cap (1) 6:16  
capable (2) 5:24 25:10  
capacity (1) 122:20  
capture (1) 120:12  
carbon (1) 5:9  
care (12) 13:8,12 35:6,7  
36:6 38:4 51:8,9 65:2  
96:14 133:20 142:3  
careful (4) 8:9 30:23  
72:12 95:21  
carefully (5) 2:18 31:6  
106:7 111:5 149:12  
careless (1) 9:17  
carelessly (1) 134:9  
carers (1) 74:4  
carl (4) 9:16 10:15  
63:2,9  
carried (11) 1:25 15:15  
23:16,21 29:7 30:4  
56:14 61:20 65:23  
78:1 96:3  
carry (6) 51:14 90:21  
118:18 119:10 129:17  
144:1  
carrying (2) 38:6 104:4  
cases (3) 139:13 143:4  
150:7  
cash (3) 53:22 54:10  
68:21  
cassette (10) 24:16  
27:1,7,8,12,13,16  
28:7,19 94:24  
catalogue (1) 102:6  
catastrophic (4) 49:21  
97:19 106:12 117:23

<p><b>cate (1)</b> 61:17</p> <p><b>caught (1)</b> 62:15</p> <p><b>causative (5)</b> 23:8 30:2 31:2 34:2 42:13</p> <p><b>cause (9)</b> 12:20 24:17 44:21 46:19 47:3 80:25 109:4 123:11,13</p> <p><b>caused (3)</b> 12:23 45:3 124:15</p> <p><b>caution (2)</b> 125:20 129:11</p> <p><b>caveat (2)</b> 18:16 32:22</p> <p><b>cavities (1)</b> 102:9</p> <p><b>cavity (21)</b> 21:6,9 41:1,14 42:9,11,14 62:21 66:5,9 67:20 96:8 102:3,5,7,8,12,18 115:9,12,14</p> <p><b>cel000000083 (1)</b> 115:21</p> <p><b>cel00001406 (1)</b> 31:13</p> <p><b>cel000014061 (1)</b> 32:17</p> <p><b>celotex (44)</b> 5:13 29:25 30:1,3,6,7,22,23 31:3,5,9,16,17 32:2,25 33:6,15,15,18 34:5,7,9,11,13,14,21 35:22 52:12 56:5,8 57:1,3,17 59:11 64:3 71:13 94:6,7 113:18 115:16,17,18,22 116:22</p> <p><b>celotexes (9)</b> 30:18 31:12,14 32:17 33:10,22,25 34:18 94:14</p> <p><b>central (5)</b> 43:11,15 46:4 47:7 74:2</p> <p><b>centre (5)</b> 3:14 16:21 22:19 56:9 89:12</p> <p><b>century (1)</b> 104:14</p> <p><b>ceo (1)</b> 13:24</p> <p><b>cep (7)</b> 26:19,20 64:9,11,15 65:2 91:24</p> <p><b>certain (5)</b> 19:15 42:21 44:6 116:20 151:7</p> <p><b>certificate (11)</b> 16:8 26:23 27:3,6,7,11 28:5 55:21 66:24 95:7,23</p> <p><b>certification (6)</b> 54:25 55:19 96:5,11 105:15 115:20</p> <p><b>certified (1)</b> 96:10</p> <p><b>ch (1)</b> 137:23</p> <p><b>chain (4)</b> 54:10 110:19 138:21 144:2</p> <p><b>chair (8)</b> 29:13 71:4 79:9,21 80:3 86:10 87:6 119:14</p> <p><b>chairman (2)</b> 79:20 88:20</p> <p><b>chairs (1)</b> 1:12</p> <p><b>challenged (2)</b> 32:23,24</p> <p><b>challenges (1)</b> 77:18</p> <p><b>chance (6)</b> 52:24 85:10 110:17 120:4,5 153:12</p> <p><b>change (26)</b> 7:20 43:2,6 59:12 73:20,20,23 78:10,10,15,19,23,24 79:4,9 80:15,19,19 84:5 86:18,20 89:8 91:23 103:13,15 104:8</p> <p><b>changed (1)</b> 106:10</p>	<p><b>changes (13)</b> 18:7 20:24 22:16 31:20 37:16 39:18 63:12,21 86:22 105:11 111:7,8 116:4</p> <p><b>character (1)</b> 38:8</p> <p><b>characteristics (1)</b> 95:16</p> <p><b>charge (1)</b> 148:24</p> <p><b>charged (4)</b> 130:25 131:1 132:5,8</p> <p><b>charging (1)</b> 140:21</p> <p><b>charity (1)</b> 74:17</p> <p><b>cheap (1)</b> 54:22</p> <p><b>cheaper (3)</b> 91:24,25 104:10</p> <p><b>cheapest (3)</b> 54:4 92:11 97:21</p> <p><b>cheaply (1)</b> 104:1</p> <p><b>cheapness (4)</b> 91:20 92:19,23 97:21</p> <p><b>check (7)</b> 23:15 38:18 64:7 66:8,9 100:17 110:15</p> <p><b>checked (2)</b> 64:12 66:12</p> <p><b>checking (2)</b> 61:8 114:15</p> <p><b>checks (1)</b> 108:9</p> <p><b>chelsea (1)</b> 50:1</p> <p><b>chief (2)</b> 75:22 118:21</p> <p><b>chin (1)</b> 32:4</p> <p><b>choice (6)</b> 67:2 78:25 91:19 92:18,20 93:16</p> <p><b>choices (3)</b> 100:13,25 101:2</p> <p><b>choosing (1)</b> 104:10</p> <p><b>chose (2)</b> 41:11 47:18</p> <p><b>choucairs (1)</b> 72:19</p> <p><b>christopher (1)</b> 144:22</p> <p><b>circumlocution (1)</b> 111:22</p> <p><b>circumstances (7)</b> 12:13 25:8 33:25 134:13,23 138:9 143:8</p> <p><b>circumvented (1)</b> 6:14</p> <p><b>civil (4)</b> 72:1 127:5 130:12 132:4</p> <p><b>clad (1)</b> 4:8</p> <p><b>cladding (98)</b> 4:11,12,16 5:14 7:6,19,20 9:18 15:14,16 16:9,18,21 18:15,17,19,21,23 20:2 21:3,5,7,11,15,17 26:21,23 31:11,18 34:20 35:2 36:21,22 38:11 39:19 40:20 43:22 46:5,8,24 52:20 54:5,16 55:22 56:8,15,21,23,25 57:19 59:12 60:20 62:1,18 64:4,9,11,20,24 65:9,11 66:10,17 69:2 74:1,14 75:19 76:1,17,22 80:23 81:6,9,14 82:9,15 83:11,22 84:4 91:23,25 92:12 95:13 96:13,20 99:5 100:10 101:1 102:23 105:1 109:19,20,24 110:9,21 112:7 115:11 120:14</p> <p><b>claimed (1)</b> 24:10</p>	<p><b>claiming (2)</b> 122:6 139:21</p> <p><b>claims (5)</b> 66:8 67:9 72:1 116:22,23</p> <p><b>claire (7)</b> 46:23 53:5 54:1 58:25 68:19 109:16 110:5</p> <p><b>clapton (1)</b> 73:8</p> <p><b>clarification (3)</b> 40:25 110:8 154:12</p> <p><b>clarified (2)</b> 98:16 114:12</p> <p><b>clarify (1)</b> 62:24</p> <p><b>clarity (4)</b> 15:4 43:12 80:23 99:10</p> <p><b>class (32)</b> 4:18 15:19,19 16:9,10 24:24,25 25:1,2,6,13 27:14,25 28:1,6 43:13,17 44:2,12,14,14,17,19 55:11,14,17 57:13,14 69:15,17 87:16 95:10</p> <p><b>classes (5)</b> 25:5,5 44:4,8,12</p> <p><b>classic (1)</b> 138:4</p> <p><b>classification (5)</b> 55:10,11,14,17 116:2 classifications (1) 43:24</p> <p><b>clause (2)</b> 38:2,3</p> <p><b>clear (32)</b> 13:3 15:9 16:11,14,20 18:14 29:5 34:7 37:2 40:6,8,21 41:7 45:1 51:6 55:25 57:8,25 58:19 65:15 74:23 88:21 95:6 98:17 102:2 109:11 112:19 113:7 122:20 125:21 132:13 140:2</p> <p><b>clearest (2)</b> 80:7 81:4</p> <p><b>clearly (12)</b> 10:2 12:16 19:18 27:15 32:12 40:16 43:2 70:21 91:15 108:14 109:4 153:23</p> <p><b>clerk (2)</b> 67:4,22</p> <p><b>clerks (1)</b> 61:7</p> <p><b>client (7)</b> 20:11 23:17 33:19 37:20 53:10 67:5 80:8</p> <p><b>clients (22)</b> 23:19 49:15,20 52:6,14 54:4,21,22 69:15 73:1 88:23 89:8 92:11 106:6 112:10 116:16,25 117:5,10 119:20 120:4 154:24</p> <p><b>close (4)</b> 28:14 37:10 70:25 77:10</p> <p><b>closely (1)</b> 142:14</p> <p><b>closers (3)</b> 8:19,21,23</p> <p><b>closure (2)</b> 23:14,25</p> <p><b>co (1)</b> 58:13</p> <p><b>code (1)</b> 148:25</p> <p><b>codes (1)</b> 65:24</p> <p><b>cognitive (1)</b> 10:11</p> <p><b>coherent (1)</b> 110:21</p> <p><b>cohesive (2)</b> 3:7 46:14</p> <p><b>coincidence (1)</b> 13:5</p> <p><b>collate (1)</b> 121:20</p> <p><b>colleague (1)</b> 46:16</p> <p><b>colleagues (1)</b> 121:10</p> <p><b>collective (2)</b> 47:2</p>	<p>121:13</p> <p><b>colloquially (1)</b> 139:22</p> <p><b>colour (2)</b> 95:25 96:4</p> <p><b>colours (2)</b> 93:17 95:9</p> <p><b>column (1)</b> 111:20</p> <p><b>columns (2)</b> 59:11 66:7</p> <p><b>coma (1)</b> 72:16</p> <p><b>combination (4)</b> 28:23 29:9 40:20 142:18</p> <p><b>combustibility (13)</b> 15:17 16:12,19 24:9 27:22 35:20,24,25 36:3 55:7,16 57:23 94:13</p> <p><b>combustible (12)</b> 4:10 5:13,15 18:22 28:22 29:10 31:5 76:22 83:22 94:14,23 105:4</p> <p><b>combustion (2)</b> 28:13 29:2</p> <p><b>come (13)</b> 1:11 41:21 42:2 86:7 91:24 97:21 104:5 118:6 124:9 130:22 140:12 153:16 154:25</p> <p><b>comes (1)</b> 72:19</p> <p><b>comfort (2)</b> 16:7 102:21</p> <p><b>coming (3)</b> 23:23 124:17 140:15</p> <p><b>command (1)</b> 76:9</p> <p><b>commencement (1)</b> 49:11</p> <p><b>commencing (1)</b> 52:3</p> <p><b>commended (1)</b> 155:7</p> <p><b>comment (2)</b> 120:6 125:6</p> <p><b>commentators (1)</b> 76:7</p> <p><b>commented (1)</b> 77:22</p> <p><b>commenting (1)</b> 13:2</p> <p><b>comments (2)</b> 66:10 102:23</p> <p><b>commercial (7)</b> 72:5 97:15 106:18 114:9 126:4,12 146:10</p> <p><b>commission (1)</b> 89:20</p> <p><b>commissioned (2)</b> 43:19 44:22</p> <p><b>commissioner (10)</b> 77:8,11,17,23 78:8 79:6,12 80:6,13 87:1 132:10</p> <p><b>commitment (5)</b> 76:4 78:18,19,25 80:18</p> <p><b>commits (1)</b> 142:3</p> <p><b>committed (4)</b> 87:7 125:19 133:3 151:18</p> <p><b>committee (12)</b> 43:20 44:16 46:8 47:24 81:7,12,17 82:4 85:24 86:3 90:2,24</p> <p><b>committees (1)</b> 86:2</p> <p><b>common (2)</b> 28:17 113:6</p> <p><b>commonplace (1)</b> 145:2</p> <p><b>commons (3)</b> 43:20 111:18,19</p> <p><b>communicate (2)</b> 62:6 155:24</p> <p><b>communication (1)</b> 76:10</p> <p><b>communities (4)</b> 75:10 77:20 78:21 84:8</p>	<p><b>community (2)</b> 87:13,19</p> <p><b>compact (1)</b> 121:16</p> <p><b>companies (15)</b> 43:5 70:18 71:6 72:3,11,21 73:3,11 75:1 81:1 82:25 83:4,7,9 148:14</p> <p><b>company (8)</b> 34:9 125:2 126:19 138:1 143:10,14 149:5,7</p> <p><b>compared (2)</b> 28:17 98:2</p> <p><b>comparison (1)</b> 72:2</p> <p><b>compartment (2)</b> 44:24 82:21</p> <p><b>compartmentation (4)</b> 63:7,10,22 108:18</p> <p><b>compartments (1)</b> 63:13</p> <p><b>compel (1)</b> 86:24</p> <p><b>compelled (1)</b> 138:12</p> <p><b>competence (2)</b> 60:8 69:7</p> <p><b>competent (2)</b> 38:5 51:14</p> <p><b>competently (1)</b> 62:17</p> <p><b>competition (1)</b> 6:24</p> <p><b>competitive (2)</b> 6:18 7:2</p> <p><b>complacency (2)</b> 12:22 47:10</p> <p><b>complacent (1)</b> 9:1</p> <p><b>complain (1)</b> 99:2</p> <p><b>complaining (1)</b> 3:20</p> <p><b>complaints (4)</b> 84:15 120:9,10,16</p> <p><b>complaintscommunication (1)</b> 120:8</p> <p><b>complete (2)</b> 62:5 100:12</p> <p><b>completed (1)</b> 23:11</p> <p><b>completely (2)</b> 20:15 24:19</p> <p><b>completes (1)</b> 122:3</p> <p><b>completion (2)</b> 66:24 68:12</p> <p><b>complex (1)</b> 1:17</p> <p><b>complexity (1)</b> 38:8</p> <p><b>compliance (28)</b> 14:21 15:12 16:1,6,13,17 17:2 36:1,7 37:7 38:22 39:6 41:23 55:19 58:21 59:2 60:6,11,20,25 61:5,7,18 64:6 65:12 67:16 68:16 69:20</p> <p><b>compliant (9)</b> 9:6 29:8 60:3 63:16,18 64:7,24 65:21 115:10</p> <p><b>complied (1)</b> 64:13</p> <p><b>comply (12)</b> 15:18 17:6 27:24 35:14 41:25 46:6 57:23 58:5 62:12 75:20 94:17 114:18</p> <p><b>complying (1)</b> 5:24</p> <p><b>components (5)</b> 16:18 31:20 52:20 116:3,4</p> <p><b>composite (6)</b> 7:22 18:15,21 21:16 76:17 92:12</p> <p><b>comprehensive (1)</b> 98:9</p> <p><b>compromised (3)</b> 8:4 11:11,14</p> <p><b>compulsion (1)</b> 79:10</p>	<p><b>conceive (1)</b> 143:24</p> <p><b>concentration (1)</b> 104:11</p> <p><b>concept (1)</b> 102:14</p> <p><b>concern (9)</b> 81:1 91:18 92:4,23 93:14,25 121:21 125:25 146:25</p> <p><b>concerned (17)</b> 1:24 16:6 22:10 54:21 90:20 98:23 100:16 101:10 110:19 117:10,18 125:9 129:14 133:9 150:21 153:3 155:12</p> <p><b>concerning (1)</b> 45:14</p> <p><b>concerns (10)</b> 4:7 56:17 65:6 112:10 116:16,16 118:13 119:18 121:20,23</p> <p><b>conclude (1)</b> 11:9</p> <p><b>concludes (2)</b> 23:22 153:19</p> <p><b>concluding (1)</b> 42:18</p> <p><b>conclusion (3)</b> 21:1 28:20 137:8</p> <p><b>conclusions (2)</b> 23:24 107:25</p> <p><b>concrete (1)</b> 18:20</p> <p><b>condemned (2)</b> 73:10,16</p> <p><b>condition (4)</b> 18:24 19:10 21:4 46:20</p> <p><b>conditions (4)</b> 22:7 73:15 74:5 118:1</p> <p><b>conduct (3)</b> 11:20 82:2 127:8</p> <p><b>conducted (4)</b> 7:2 56:17 119:25 125:23</p> <p><b>conducting (1)</b> 63:4</p> <p><b>conductivity (1)</b> 30:12</p> <p><b>confidence (1)</b> 154:4</p> <p><b>confident (3)</b> 1:12,21 26:11</p> <p><b>configured (1)</b> 28:23</p> <p><b>confined (1)</b> 39:8</p> <p><b>confines (1)</b> 10:18</p> <p><b>confirm (2)</b> 65:20 147:21</p> <p><b>confirmed (2)</b> 18:9 20:25</p> <p><b>confirming (1)</b> 26:8</p> <p><b>confirms (1)</b> 57:22</p> <p><b>conflict (2)</b> 6:5 126:3</p> <p><b>conforming (1)</b> 42:16</p> <p><b>confront (1)</b> 145:9</p> <p><b>confused (2)</b> 35:12,13</p> <p><b>confusion (8)</b> 13:20 15:6 32:15 43:13 62:21,22,24 68:24</p> <p><b>conjunction (1)</b> 56:22</p> <p><b>connection (3)</b> 105:10,10 106:6</p> <p><b>connexion (1)</b> 137:15</p> <p><b>conscious (1)</b> 99:16</p> <p><b>consciously (1)</b> 114:9</p> <p><b>consensus (1)</b> 126:11</p> <p><b>consequence (3)</b> 91:18 106:2 146:4</p> <p><b>consequences (8)</b> 9:25 28:22 71:22 90:15 97:19 106:12 123:4 145:4</p> <p><b>consider (31)</b> 3:2 9:23</p>	<p>11:20 14:21 38:22 50:23 55:15 60:8 61:3 63:15 67:16 68:13 72:22 79:1 86:12 99:7 100:19 105:11 106:8 107:12 111:5 119:24 128:10 129:22 131:19 140:1 144:4 148:8 149:11 150:3 155:15</p> <p><b>considerable (3)</b> 92:25 95:1 139:20</p> <p><b>consideration (10)</b> 15:25 50:17 80:10 108:15 122:22 128:2 132:17 141:10 143:15 149:15</p> <p><b>considerations (2)</b> 72:6 89:25</p> <p><b>considered (22)</b> 16:2 18:7 20:23 31:21 36:14 38:19 44:9 47:13 50:4 57:14 58:21 63:10 65:14 69:18 74:25 93:10,21 107:21 116:5 143:5,21 150:8</p> <p><b>considering (4)</b> 36:17 42:25 72:9 111:10</p> <p><b>considers (4)</b> 19:21,24 20:17 35:1</p> <p><b>consistent (2)</b> 13:15 53:14</p> <p><b>conspired (2)</b> 132:7,10</p> <p><b>constabulary (1)</b> 75:23</p> <p><b>constant (4)</b> 50:19 51:17 74:20 103:17</p> <p><b>constantly (1)</b> 120:23</p> <p><b>construct (1)</b> 3:10</p> <p><b>constructing (1)</b> 24:7</p> <p><b>construction (20)</b> 3:18 11:10 28:17 29:3 50:3 51:6 58:10 60:17 61:2 67:6,15,19 85:23,25 96:17 102:13,15 104:13 105:12 120:25</p> <p><b>constructive (1)</b> 11:22</p> <p><b>constructed (1)</b> 20:6</p> <p><b>consultancy (1)</b> 61:14</p> <p><b>consultant (2)</b> 91:2 98:8 98:15,21 99:24 114:20</p> <p><b>consultation (8)</b> 45:23 84:18,24 85:7 120:2 121:2,6,13</p> <p><b>consultations (2)</b> 47:15,19</p> <p><b>consulted (2)</b> 37:9 62:25</p> <p><b>consumers (1)</b> 57:6</p> <p><b>contact (7)</b> 23:17 26:20 39:24 99:14,17,20 100:1</p> <p><b>contained (5)</b> 18:16 23:6 27:8 28:11 55:3</p> <p><b>containing (1)</b> 108:19</p> <p><b>contemplate (1)</b> 89:9</p> <p><b>contemporaneous (2)</b> 19:7 114:22</p> <p><b>contemporaneously (1)</b> 46:14</p> <p><b>contends (1)</b> 39:9</p> <p><b>contested (1)</b> 67:8</p> <p><b>context (8)</b> 19:7 22:15</p>
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64:20 128:23 134:25  
 135:23 142:2 143:18  
**continue (4)** 51:24 69:9  
 118:13,14  
**continued (4)** 68:12  
 95:12,14 113:16  
**continues (1)** 104:16  
**continuing (2)** 22:22  
 33:22  
**continuously (2)** 51:19  
 77:3  
**contract (11)** 5:7 6:17  
 8:10 16:24 37:14 38:3  
 50:9 68:8 106:15,20  
 107:9  
**contracted (1)** 67:3  
**contractor (26)** 6:22  
 7:11 8:5 22:23 37:19  
 38:6,21,22 39:22  
 41:19 42:2 50:5,11  
 58:9,23 59:23 65:8  
 96:21 97:20 98:4  
 99:12 106:19 107:8  
 108:8 113:25 114:4  
**contractors (29)** 4:11  
 14:15 16:4,5,25 17:5  
 26:18,24 28:2 30:21  
 33:1,11,16 36:11  
 37:11 42:22 51:10,13  
 53:21 57:20 58:12  
 60:9 65:19 69:2 90:21  
 97:24 100:11 108:11  
 114:21  
**contracts (1)** 6:22  
**contractual (1)** 96:16  
**contractually (1)** 59:1  
**contrary (5)** 11:25 23:1  
 29:17 119:23 151:18  
**contrast (1)** 120:24  
**contribute (2)** 82:15  
 133:4  
**contributed (5)** 11:1,14  
 68:1 92:24 108:24  
**contributing (4)** 8:13  
 95:2 109:5 112:8  
**contribution (2)** 10:8  
 98:18  
**contributory (2)** 97:6  
 121:23  
**contrition (1)** 113:22  
**control (32)** 13:2 14:18  
 15:21 16:15 19:6,14  
 22:12 33:4 37:8 40:23  
 41:3 46:16 53:7 58:20  
 59:4 60:3 61:8 65:23  
 66:1,3,15,20 85:19  
 89:22 101:3,13,18,25  
 102:1,20 106:10  
 115:13  
**controls (1)** 47:3  
**convenience (1)** 7:3  
**convenient (6)** 48:19  
 88:8,12,16 102:25  
 135:12  
**conversation (1)** 94:19  
**conversations (1)** 32:5  
**conviction (2)** 127:6  
 135:2  
**cooney (1)** 61:17  
**cooperative (1)** 12:4  
**coordinate (2)** 58:17  
 114:20  
**coordination (5)** 51:3,4

68:14 69:1,7  
**coordinator (1)** 39:9  
**copied (2)** 18:13 41:13  
**copying (1)** 110:6  
**core (21)** 2:7,9 4:10,19  
 11:17,25 12:18,24  
 13:16 14:20 15:3 24:8  
 29:25 42:17 52:5 95:8  
 97:13 122:6 152:21  
 154:1,13  
**cored (3)** 28:4 29:8  
 95:15  
**corner (1)** 155:22  
**coroners (2)** 107:21  
 109:12  
**corporate (16)** 13:16  
 14:7 42:17 52:4,7,9,15  
 89:1 112:16 116:6  
 122:18 126:21 133:4  
 135:22 148:10 149:6  
**corporates (10)** 42:7  
 43:2,3 89:5 113:11,19  
 116:12,20 134:24  
 148:17  
**correct (2)** 9:22 35:7  
**corrected (1)** 34:19  
**correctly (2)** 56:1  
 131:15  
**correlation (2)** 25:5  
 44:7  
**correspondence (8)**  
 41:13 51:7 53:11,25  
 54:17 68:22 111:25  
 124:13  
**corroborative (2)**  
 138:21 144:3  
**cost (16)** 4:24 8:1,4  
 40:16 54:16,19 89:24  
 90:14,18 91:16,19  
 94:20 104:3,9,11  
 107:7  
**costcutting (9)**  
 50:15,17,21 51:2  
 53:13,15 59:16  
 69:6,19  
**costings (1)** 53:20  
**costs (5)** 7:15,19 50:5  
 91:1 109:21  
**cotton (1)** 77:8  
**council (4)** 56:18 57:2  
 85:14 108:2  
**councillor (4)** 118:17  
 119:15 121:9,9  
**counsel (14)** 11:17  
 13:19 24:20 34:18  
 42:6 49:2 79:13 80:22  
 117:4 124:24 149:17  
 153:11,25 154:1  
**countries (1)** 24:24  
**courage (1)** 76:4  
**course (33)** 8:13 63:5  
 84:2 94:3 107:1  
 110:15 112:19 117:7,8  
 120:20 123:9 126:6  
 127:20 128:15,20  
 130:21 132:6 135:16  
 136:1 140:22 141:20  
 142:5,9,13 145:15  
 146:14,18 148:25  
 151:21,23 153:15,17  
 154:22  
**cousin (1)** 3:24  
**cover (1)** 70:20

**covers (1)** 55:2  
**cp (1)** 149:6  
**cpd (1)** 7:9  
**cps (6)** 52:7,9,15  
 126:4,12 146:10  
**cpsc (1)** 85:24  
**cracks (1)** 60:13  
**crap (2)** 19:10 22:2  
**crawford (6)** 60:15,18  
 61:6 100:22 101:4,6  
**created (3)** 4:3 141:24  
 142:8  
**creating (2)** 61:15 66:7  
**credit (1)** 24:10  
**crewe (1)** 73:8  
**criminal (19)** 12:12,14  
 70:16 106:5 127:6  
 129:12,16,25 130:8,16  
 131:25 133:5 139:14  
 140:7 142:4 143:18  
 145:6 148:6 150:12  
**criminally (1)** 72:22  
**criminate (1)** 137:13  
**crisis (1)** 105:17  
**criteria (3)** 36:18,20  
 115:24  
**criterion (1)** 44:20  
**critical (1)** 60:15  
**criticality (1)** 3:16  
**critically (2)** 11:5  
 100:13  
**criticised (4)** 59:19  
 66:2,15 103:24  
**criticism (2)** 12:13 20:5  
**crown (2)** 93:8,9  
**crucial (1)** 105:4  
**crucially (2)** 99:4  
 115:19  
**cruelly (1)** 73:17  
**cti (2)** 128:15 146:24  
**ctis (1)** 150:3  
**culture (8)** 19:3 21:24  
 22:11 30:22 43:2 61:3  
 69:8 89:23  
**cumbersome (1)** 145:24  
**curated (1)** 5:3  
**cure (1)** 45:17  
**current (8)** 5:8 12:5  
 16:14 17:24 42:20  
 43:6 65:24 109:8  
**currently (1)** 120:7  
**custodial (1)** 129:17  
**cut (1)** 22:20  
**cuts (1)** 106:9  
**cyanide (1)** 72:17

---

**D**

---

**d (2)** 44:10 60:22  
**daily (1)** 86:6  
**dame (4)** 86:10,12  
 103:22,24  
**danger (8)** 48:11 83:1  
 107:4 138:12 140:5,25  
 141:5 151:10  
**dangerous (10)** 34:20  
 52:21 72:24 74:14  
 78:4 94:4 95:12,20  
 100:10 117:25  
**dangers (7)** 21:21 42:20  
 81:5 82:8 83:10 84:4  
 96:6  
**daniel (1)** 100:23

**data (6)** 27:15 30:11  
 47:14 76:15 115:17,20  
**database (1)** 109:21  
**date (2)** 41:20 62:9  
**dated (3)** 9:8 23:13  
 53:25  
**david (2)** 46:22 85:13  
**day (6)** 95:19 96:23  
 104:19 110:6,13 119:1  
**day311820 (1)** 136:8  
**days (4)** 48:12 71:10  
 81:2 82:24  
**daytoday (2)** 60:16  
 84:16  
**dclg (1)** 29:7  
**deaf (1)** 73:23  
**deal (12)** 82:2 101:2  
 112:9 131:11 134:14  
 135:12,17,25 146:20  
 147:3 150:22 151:22  
**dealing (5)** 28:3 34:5  
 89:17 111:6 155:10  
**dealt (2)** 71:2 141:8  
**death (4)** 54:23 61:1  
 74:6 143:8  
**deaths (3)** 87:21 109:3  
 143:16  
**debate (1)** 111:18  
**debates (1)** 111:20  
**deborah (2)** 25:20 26:7  
**deceit (1)** 94:14  
**december (6)** 29:20  
 71:1 77:12 81:7  
 125:1,8  
**decide (2)** 136:19  
 145:21  
**decided (9)** 6:16 78:18  
 80:18 90:24 91:23  
 98:3 100:14 114:9  
 154:19  
**deciding (4)** 3:10 9:10  
 70:16 131:25  
**decision (12)** 2:17 4:8  
 53:2,3,5 54:15 79:25  
 80:1 99:16  
 137:4,23,24  
**decisionmakers (1)**  
 33:19  
**decisionmaking (4)**  
 50:13,18 52:18 91:17  
**decisions (8)** 2:19  
 49:14,20 50:15 85:21  
 91:15 140:19,21  
**declared (1)** 141:19  
**dedicated (1)** 96:3  
**dedication (1)** 76:4  
**deed (2)** 42:10 114:16  
**deemed (1)** 32:3  
**deep (2)** 1:17 76:13  
**deeper (1)** 22:3  
**deepest (1)** 113:20  
**deeply (2)** 48:1 102:14  
**default (1)** 16:3  
**defend (1)** 52:7  
**defined (3)** 6:9 21:5  
 36:19  
**definitely (1)** 108:23  
**definition (1)** 134:5  
**definitions (1)** 94:12  
**deflect (1)** 2:9  
**deflection (1)** 115:6  
**degree (2)** 3:16 21:9  
**delay (2)** 12:20 131:7

**delegate (2)** 114:3,5  
**delegated (1)** 35:15  
**deliberate (1)** 57:2  
**deliberately (1)** 39:25  
**deliver (4)** 77:20,24  
 104:1 144:6  
**delivered (3)** 72:15  
 105:6 119:13  
**delivering (1)** 34:15  
**delivery (2)** 58:24 125:3  
**demolition (1)** 3:5  
**demonstrable (1)** 51:9  
**demonstrate (4)** 54:19  
 57:13 134:25 144:12  
**demonstrated (1)**  
 112:24  
**demonstrates (1)** 34:22  
**demonstration (1)**  
 74:23  
**den (4)** 136:12,21  
 147:5,18  
**denial (3)** 11:15 13:5,17  
**denied (1)** 50:12  
**denies (1)** 30:2  
**department (7)** 13:3,7  
 75:12 93:24 101:13,14  
 106:10  
**depend (3)** 32:1 74:15  
 154:7  
**depended (1)** 23:3  
**depends (1)** 154:21  
**deregulated (1)** 112:21  
**deregulation (1)** 106:8  
**derivative (2)** 150:15,16  
**derive (1)** 15:13  
**derived (1)** 44:2  
**describe (1)** 46:18  
**described (16)** 7:24  
 17:10 30:6 31:12 36:6  
 48:4 57:1 84:19  
 105:24 108:6 112:18  
 114:22 117:20 127:4  
 130:9 138:4  
**description (4)** 34:1  
 39:2,4 116:1  
**deserve (1)** 78:7  
**design (66)** 2:6 4:22  
 5:1,6 11:10 17:16  
 18:12 19:16 20:22  
 21:22 22:23 35:9  
 36:22,23 37:1,4,23  
 38:1,2,6,11,15,17  
 39:7,10,11  
 41:18,20,22,25 42:2  
 50:10 51:5 53:11  
 58:8,10,23 59:6,21  
 61:11 62:15 65:17  
 67:8,17 68:12,20 85:9  
 96:17 98:15  
 100:11,12,13,19,25  
 102:12 106:14  
 107:1,4,7,10 110:21  
 113:24 114:4,20  
 115:11 120:14  
**designed (1)** 95:9  
**designed (3)** 106:16  
 127:15 134:21  
**designer (3)** 31:21  
 38:12 116:5  
**designers (11)** 5:18  
 16:3,5,25 26:24 28:3  
 30:21 33:1 34:3,16  
 37:12

**designing (2)** 104:4  
 114:1  
**designs (1)** 114:18  
**desire (2)** 4:23 5:1  
**desk (1)** 154:25  
**desktop (2)** 15:22 16:3  
**despite (18)** 10:11 17:7  
 19:20 29:19,22 44:15  
 48:10 52:10 73:13  
 77:9 80:20 97:25  
 102:19 109:12,12  
 112:23 119:22 124:21  
**detail (5)** 1:24 60:5  
 93:22 142:13 151:3  
**detailed (2)** 113:2 116:3  
**details (1)** 20:1  
**deteriorate (1)** 2:21  
**determination (1)** 76:4  
**determine (1)** 68:7  
**determined (2)** 37:12  
 120:1  
**determining (2)** 85:17  
 98:13  
**developed (2)** 100:18  
 113:17  
**development (3)** 4:9  
 37:3 93:19  
**device (1)** 148:13  
**diagram (2)** 15:18 27:24  
**diagrams (1)** 27:8  
**dickens (1)** 111:22  
**dictated (1)** 36:18  
**didnt (4)** 35:3 100:3,3  
 124:13  
**died (5)** 72:16 81:10  
 83:17 107:20 108:6  
**diesel (1)** 28:14  
**difference (2)** 17:23  
 31:11  
**different (5)** 56:25  
 69:22 90:25 134:25  
 149:25  
**difficult (4)** 82:23  
 116:10 134:22 143:23  
**difficulties (1)** 117:1  
**difficulty (2)** 145:8,12  
**dignified (1)** 73:22  
**diligence (1)** 92:17  
**diminish (1)** 37:19  
**direct (3)** 121:19  
 137:18 150:12  
**directed (1)** 153:10  
**directing (1)** 68:23  
**direction (2)** 115:7,16  
**direction (4)** 5:11 34:5  
 68:17 102:18  
**director (3)** 85:13 90:1  
 93:19  
**disabilities (1)** 45:15  
**disappear (1)** 140:19  
**disappointing (1)** 34:21  
**disaster (11)** 1:15,19  
 2:2,10,13 11:24 12:23  
 14:9 43:1 100:7  
 110:17  
**discharge (2)** 141:12  
 151:5  
**discharging (1)** 101:19  
**disciplines (2)** 14:11,13  
**disclose (1)** 139:6  
**disclosed (4)** 51:7 65:12  
 68:6 71:17  
**disclosing (1)** 124:8

**disclosure (2)** 23:12  
 51:16  
**discover (1)** 47:5  
**discovering (1)** 8:19  
**discredit (1)** 12:21  
**discrepancies (1)** 30:4  
**discuss (3)** 26:21 91:25  
 92:8  
**discussed (2)** 59:23  
 78:14  
**discussing (1)** 96:7  
**discussion (3)** 50:19  
 60:11 109:4  
**discussions (5)** 7:14  
 90:16 92:3 93:23  
 146:24  
**disingenuous (3)** 25:8  
 29:23 40:9  
**dismaying (1)** 73:14  
**disorders (1)** 10:11  
**disregarded (1)** 6:11  
**disruption (3)** 123:11  
 131:7 146:2  
**dissemination (1)** 47:7  
**dissented (1)** 92:15  
**dissipate (1)** 140:18  
**distinct (1)** 139:4  
**distinction (1)** 132:13  
**distinctions (1)** 137:12  
**distress (1)** 123:14  
**distributor (1)** 31:9  
**distributors (2)** 26:17  
 32:17  
**diversity (1)** 87:13  
**document (25)** 4:21  
 5:20 15:4,7,8 33:15,20  
 36:10 45:9 49:24  
 55:1,1,3,25 57:16 80:9  
 90:2 95:10 96:22  
 109:10 129:7 130:17  
 131:22 132:12 149:19  
**documentation (3)**  
 102:13,15 113:5  
**documents (13)** 6:6  
 17:19 20:18 23:2,4  
 25:4 39:14 44:7 71:18  
 113:3 114:23 124:8  
 139:6  
**does (30)** 11:7,9 13:3  
 23:20 26:15,17 30:1  
 33:25 35:11 36:24  
 37:19 38:23,23 40:10  
 41:25 45:9 48:2 51:24  
 57:23 69:9 86:3 90:19  
 94:11 120:12,13  
 126:10 132:3 140:4  
 147:18 149:8  
**dog (1)** 3:22  
**doing (7)** 78:18 98:17  
 99:6 100:17 114:13  
 134:9 153:24  
**dom2 (1)** 37:23  
**dominated (1)** 93:22  
**done (20)** 12:25 16:8  
 30:13 39:18 40:13  
 45:17 46:10,11 63:23  
 64:20 67:24 71:15  
 101:6 110:23 114:20  
 120:19 123:18 124:7  
 125:2 135:1  
**dont (12)** 72:6 86:16,17  
 88:13 109:25 123:21  
 128:22 153:20

154:16,22 155:1,13	95:22 97:11 98:25	133:1,18,24	41:16 43:20 44:24	<b>everyone (7)</b> 1:3 35:19	61:15,17 84:20,22,25	<b>express (4)</b> 11:6 96:15
<b>door (9)</b> 3:25 4:13	100:4,9,15,23	<b>employers (4)</b> 16:23	130:5 136:17,24	40:8 74:10 75:13	138:22 139:7 144:3	102:21 113:20
8:19,21,23 13:11,14	102:1,14,22 113:2	41:16 110:14 132:23	139:22 141:14	113:13 128:5	<b>exists (3)</b> 55:11 127:25	<b>expressed (3)</b> 4:3 5:21
71:11 77:7	114:11,17 115:12	<b>emptor (1)</b> 32:22	<b>entity (2)</b> 122:19 126:21	<b>everything (1)</b> 118:7	144:10	139:17
<b>doors (1)</b> 8:18	<b>earlier (6)</b> 27:23 52:2	<b>empty (2)</b> 78:5 80:20	<b>entry (1)</b> 8:24	<b>evidence (48)</b> 9:1 12:11	<b>exonerate (2)</b> 28:10	<b>expresses (1)</b> 10:21
<b>doubling (1)</b> 26:1	123:10 125:14 126:15	<b>emulate (1)</b> 111:22	<b>enumerating (1)</b> 13:4	13:4 15:24 20:2 23:11	36:24	<b>expressing (2)</b> 31:7
<b>doubt (9)</b> 27:17 51:4	146:22	<b>enable (1)</b> 129:2	<b>envelope (2)</b> 65:7 82:19	30:22 34:20,22 65:15	<b>exonerated (1)</b> 22:22	93:25
100:18 112:2 114:9	<b>earliest (1)</b> 140:20	<b>encapsulated (1)</b> 92:15	<b>envelopes (1)</b> 16:22	67:1 70:14,15 71:17	<b>exova (60)</b> 14:16	<b>expression (1)</b> 32:20
123:16 126:15 127:14	<b>early (10)</b> 3:23 8:13,25	<b>encompass (1)</b> 87:15	<b>environment (2)</b> 43:7	73:3 80:1 81:5,11 83:2	17:9,15,24	<b>expressly (3)</b> 6:6 13:11
139:23	10:3 33:15 76:19	<b>encouraged (1)</b> 144:18	81:8	84:19,21 100:19	18:13,18,22	<b>exprime (1)</b> 87:5
<b>douglas (1)</b> 137:10	93:15 94:21 95:11	<b>encouragement (1)</b>	<b>environmental (3)</b> 4:25	112:12 127:12 129:24	19:3,13,18	<b>extend (3)</b> 130:21
<b>down (10)</b> 19:4 25:24	127:11	5:12	5:2,8	130:12 131:23,24	20:1,9,11,15,17,18	134:4,12
26:10 31:24 43:25	<b>earning (1)</b> 74:25	<b>encouraging (1)</b> 66:25	<b>epidemic (1)</b> 14:10	132:6 136:18,25 137:3	21:6,11,12,18,20,24	<b>extended (1)</b> 22:12
74:10 76:8 90:12	<b>ears (1)</b> 73:23	<b>end (9)</b> 2:12 22:18	<b>episode (1)</b> 110:24	138:10 145:5,5	22:1,4,7,17,21	<b>extensive (2)</b> 107:22
91:14 142:11	<b>earth (1)</b> 74:11	40:24 85:16 86:19	<b>epitomising (1)</b> 20:13	148:1,4,5,23,24	23:1,11,15,19,22 24:2	116:8
<b>dozen (1)</b> 114:3	<b>eco (1)</b> 5:4	117:3,25 121:8 140:21	<b>equal (2)</b> 80:2 150:17	149:3,4 150:13,15	39:6,22,24 40:2,4,18	<b>extent (6)</b> 14:5,19 21:4
<b>dr (14)</b> 8:20 17:10,19	<b>economic (1)</b> 2:24	<b>endangering (1)</b> 4:4	<b>equally (4)</b> 11:4 116:25	151:16 154:5,6 155:5	61:13 62:4,16,25	38:10 52:12 126:3
19:20,24 20:5,9,12,17	<b>edges (1)</b> 66:6	<b>ended (1)</b> 24:5	142:15 143:23	<b>evidencegathering (1)</b>	94:15 96:6	<b>external (26)</b> 15:1,18
23:5 55:24 57:21 66:3	<b>edition (2)</b> 98:19 142:24	<b>endless (1)</b> 80:20	<b>equate (1)</b> 44:11	140:20	98:12,16,22	16:12 18:4,8 20:21
67:20	<b>editions (1)</b> 98:22	<b>endorsed (1)</b> 102:14	<b>era (1)</b> 106:15	<b>evidences (1)</b> 19:23	99:2,5,14,17,20	21:14 22:15 23:7
<b>draft (3)</b> 3:4 149:15	<b>education (1)</b> 97:14	<b>energy (3)</b> 53:6,8 78:25	<b>erroneous (1)</b> 94:10	<b>evidential (1)</b> 143:21	100:4,15 101:8 113:3	27:24 30:14 40:18
152:10	<b>effect (16)</b> 3:17 13:2	<b>enforcement (1)</b> 142:24	<b>error (2)</b> 152:6,10	<b>eviscerating (1)</b> 19:20	114:13 115:1,13	43:21 45:7 55:5,8,9
<b>drafted (3)</b> 34:13	18:8 19:11 20:24 21:3	<b>engage (8)</b> 8:6 33:18	<b>errors (2)</b> 89:19 102:12	<b>ewhc (1)</b> 137:23	117:3 145:15	58:13
114:23 120:7	22:16 23:7 30:2 31:2	41:12 99:4 106:23	<b>es (3)</b> 37:1,21 60:22	<b>exacting (1)</b> 1:13	<b>exam (3)</b> 30:24	98:13 109:11
<b>dragging (1)</b> 77:3	34:2 41:4 78:13 112:1	113:8 145:13 151:8	<b>escape (2)</b> 22:9 135:2	<b>exactly (4)</b> 110:14	117:3 145:15	<b>extract (1)</b> 113:7
<b>drain (1)</b> 90:13	122:21 138:17	<b>engaged (7)</b> 3:2 4:1	<b>escaping (1)</b> 45:4	112:25 114:13,15	<b>examine (1)</b> 129:20	<b>extremely (3)</b> 134:16,22
<b>dramatic (1)</b> 117:17	<b>effective (6)</b> 42:14	61:13 99:7 102:20	<b>especially (4)</b> 61:5 65:4	<b>examination (3)</b> 30:24	<b>examined (3)</b> 14:4	149:18
<b>draw (4)</b> 115:13 131:7	63:11 69:1 108:18,19	106:19 127:18	106:21 121:21	117:3 145:15	100:13 101:16	<b>eyes (1)</b> 11:25
136:14 143:1	145:11	<b>engagement (2)</b> 85:11	<b>essential (3)</b> 38:14	<b>examine (1)</b> 129:20	<b>examining (4)</b> 2:8,14	<b>eyesore (1)</b> 4:1
<b>drawing (5)</b> 2:16 138:3	<b>effectively (5)</b> 14:6 33:8	120:3	87:14 129:6	<b>examined (3)</b> 14:4	12:2 126:7	
139:9,17 147:4	62:6 78:1 90:8	<b>engaging (1)</b> 81:2	<b>essentially (7)</b> 10:23	100:13 101:16	<b>example (31)</b> 8:18 10:7	<b>F</b>
<b>drawings (4)</b> 37:2	<b>effectiveness (1)</b> 14:3	<b>engineer (6)</b> 14:16	39:1 58:9 59:15 99:8	<b>examining (4)</b> 2:8,14	13:23 17:9 31:8 45:22	<b>f (3)</b> 4:21 25:2 43:25
102:24 114:15 115:11	<b>efficiency (2)</b> 5:21 53:7	17:10 33:20	124:6 153:12	12:2 126:7	46:1,14 61:6 74:25	<b>faade (4)</b> 15:10 38:21
<b>drawn (2)</b> 78:24 150:23	<b>efficient (1)</b> 53:9	40:7,11,14	<b>establish (5)</b> 1:15 36:1	<b>example (31)</b> 8:18 10:7	84:18 100:19 103:23	45:4 63:12
<b>draws (1)</b> 130:12	<b>effort (3)</b> 57:3 85:18	<b>engineered (2)</b> 15:20	78:12 136:19 147:15	13:23 17:9 31:8 45:22	105:13 106:9 108:16	<b>faades (2)</b> 58:12 64:3
<b>dressed (1)</b> 7:23	89:3	16:2	<b>established (4)</b> 36:2	46:1,14 61:6 74:25	111:16 112:3	<b>fabric (1)</b> 82:13
<b>drills (1)</b> 74:8	<b>egregious (1)</b> 17:9	<b>engineering (7)</b> 7:24 8:7	60:21 131:4 144:15	84:18 100:19 103:23	113:1,3,24 115:7,17	<b>fabricated (1)</b> 64:16
<b>dripping (1)</b> 29:5	<b>either (10)</b> 15:13 17:1	50:8,18 54:9 59:14	<b>establishing (1)</b> 137:1	105:13 106:9 108:16	116:19 118:16 119:22	<b>fabrication (3)</b> 24:15
<b>drive (2)</b> 5:9,11	23:15 29:9 82:13	114:7	<b>establishment (4)</b> 5:3	111:16 112:3	125:11 126:7 127:13	64:15,17
<b>driven (1)</b> 61:11	114:1 120:6 121:15	<b>engineers (2)</b> 33:24	48:13 81:22 108:22	113:1,3,24 115:7,17	136:4 151:17	<b>face (4)</b> 13:3 27:6 67:1
<b>driver (4)</b> 53:23	141:19 154:6	114:12	<b>estate (3)</b> 1:6 2:20	116:19 118:16 119:22	<b>examples (2)</b> 149:24	70:22
91:10,20 104:7	<b>elect (1)</b> 113:11	<b>england (1)</b> 76:21	108:1	125:11 126:7 127:13	150:5	<b>faceted (2)</b> 2:23 10:4
<b>drop (1)</b> 71:23	<b>electric (1)</b> 138:1	<b>enlarged (1)</b> 79:18	<b>euro (9)</b> 4:18 15:19	136:4 151:17	<b>exceed (1)</b> 5:19	<b>facefixed (1)</b> 92:13
<b>droplets (2)</b> 28:16 29:5	<b>electrical (1)</b> 58:14	<b>enormous (1)</b> 116:7	24:24,25 25:5 43:24	<b>examples (2)</b> 149:24	<b>exceeded (1)</b> 7:17	<b>facilitative (1)</b> 39:1
<b>due (8)</b> 18:1 24:23 29:4	<b>elements (2)</b> 23:16	<b>enough (6)</b> 51:14 67:11	44:4,8,11	150:5	<b>exception (1)</b> 52:11	<b>facilities (1)</b> 39:8
80:10 84:2 92:17	27:21	78:10 85:2 117:3	<b>european (4)</b> 6:20	<b>exceed (1)</b> 5:19	<b>exceptions (1)</b> 113:18	<b>facilities (1)</b> 81:23
119:7 130:21	<b>eliminated (1)</b> 107:3	146:14	24:23 43:24 73:16	<b>exceeded (1)</b> 7:17	<b>excess (2)</b> 50:6 98:2	<b>facility (1)</b> 3:25
<b>duration (2)</b> 67:11	<b>elm (1)</b> 108:11	<b>enquired (1)</b> 63:20	<b>evacuation (2)</b> 10:9	<b>exception (1)</b> 52:11	<b>excessive (1)</b> 81:15	<b>factor (6)</b> 91:16 95:1
140:17	<b>else (3)</b> 104:11 147:8	<b>ensue (1)</b> 100:8	45:14	<b>exceptions (1)</b> 113:18	<b>exchanges (1)</b> 102:21	97:7 104:4 112:8
<b>during (12)</b> 10:2	151:22	<b>ensued (2)</b> 2:11 5:15	<b>even (19)</b> 7:5 20:1	<b>excess (2)</b> 50:6 98:2	<b>excluded (1)</b> 134:5	121:24
46:15,24 63:11 68:3	<b>elsewhere (2)</b> 46:18	<b>ensure (34)</b> 5:23 9:6,7	27:23 36:17 38:15	<b>excessive (1)</b> 81:15	<b>exclusion (2)</b> 8:7 18:17	<b>factors (4)</b> 1:16 8:14,16
69:9 72:10 73:4 93:23	128:3	23:9,17 33:8 48:8	39:7 41:13 46:12,23	<b>exchanges (1)</b> 102:21	<b>exclusively (1)</b> 51:1	109:5
117:8 125:15 141:20	<b>email (11)</b> 7:7 19:7	49:17 51:24 57:3 60:1	52:12 96:7 101:11	<b>excluded (1)</b> 134:5	<b>excuse (4)</b> 5:23 10:1	<b>failed (21)</b> 17:6,25 18:3
<b>dust (1)</b> 89:10	25:18,19 26:7 41:2	61:18 62:5 65:23	104:3 106:5 117:18	<b>exclusion (2)</b> 8:7 18:17	123:18 126:13	28:2 36:7,8 39:25
<b>duties (4)</b> 36:23 132:22	53:25 54:10 102:21	67:24 68:9 69:8 74:21	126:11 134:12 142:25	<b>exclusively (1)</b> 51:1	<b>excuses (1)</b> 71:11	40:10 56:13 57:12
133:1,17	110:19 119:7	75:13 77:20,25 83:14	147:20	<b>excuse (4)</b> 5:23 10:1	<b>execution (1)</b> 6:8	58:5 59:4 60:13 62:4,6
<b>duty (5)</b> 13:8,12 83:9	<b>emailed (1)</b> 46:16	84:10 87:10 89:8	<b>evening (3)</b> 12:8 127:11	123:18 126:13	<b>executive (1)</b> 93:19	72:22 83:13 95:6
113:15 133:19	<b>emails (2)</b> 71:18 112:1	98:10 107:9 108:10	146:24	<b>excuses (1)</b> 71:11	<b>exercise (8)</b> 20:4 38:4	101:18 102:1 142:2
<b>dwelling (1)</b> 108:19	<b>emerge (2)</b> 50:13 135:6	109:6 114:18 118:8,10	<b>event (10)</b> 3:6 4:19	<b>execution (1)</b> 6:8	51:1,2 59:15 79:10	<b>ailing (6)</b> 9:23 21:13
	<b>emergence (1)</b> 126:3	121:13 145:10	13:10,13 14:25 45:4	<b>executed (2)</b> 93:19	98:5 120:5	27:15 48:8 115:12
<b>E</b>	<b>emergency (2)</b> 10:9	<b>ensured (3)</b> 6:24 60:6	74:14 111:13 117:24	118:21	<b>exercised (1)</b> 38:18	134:9
	76:10	96:9	127:11	<b>exercisable (1)</b> 79:19	<b>exercising (1)</b> 79:22	<b>failings (4)</b> 10:25 13:4
<b>e (64)</b> 4:1,3,18 7:4,5	<b>emerging (1)</b> 17:4	<b>ensuring (7)</b> 9:13 39:11	<b>events (4)</b> 10:22 11:8	<b>exercise (8)</b> 20:4 38:4	<b>exhaustive (1)</b> 1:13	76:13 89:1
12:6 14:17 21:8	<b>emissions (1)</b> 5:9	59:2 61:7 64:23 67:6	68:1 97:15	51:1,2 59:15 79:10	<b>exist (1)</b> 140:4	<b>fails (5)</b> 14:2 25:12
25:1,3,6,13 26:21	<b>emphasise (1)</b> 116:25	108:18	<b>eventually (2)</b> 35:22	98:5 120:5	<b>existence (1)</b> 140:7	34:22 39:5 55:14
27:14 28:20 34:24	<b>emphasised (3)</b> 82:8	<b>entered (1)</b> 7:13	94:22	<b>existing (17)</b>	<b>existing (17)</b>	<b>failure (23)</b> 9:21
35:1,3,12,12,17	105:20 120:23	<b>entering (1)</b> 96:8	<b>ever (3)</b> 75:14 100:1	17:13,16,21 18:20,24	19:10 22:2,6 23:3	10:8,11 19:21,24
36:1,5,13,25 37:2,5	<b>employed (2)</b> 40:4	<b>entire (1)</b> 72:19	104:15	17:13,16,21 18:20,24		40:17 59:20 66:16,23
40:2,4,11 42:12	106:16	<b>entirely (6)</b> 10:20 40:9	<b>every (9)</b> 27:21 30:14	19:10 22:2,6 23:3		74:21 79:8 80:19
44:10,14 54:1	<b>employee (2)</b> 133:19	55:17 72:25 120:1	52:4,9 57:3 67:25 85:9			83:23 86:22 95:7,8
59:6,7,17,19 60:1,5	134:8	153:14	90:12 133:19			
61:12 62:6 64:22	<b>employees (8)</b> 12:6 19:8	<b>entitle (1)</b> 138:7	<b>everybody (1)</b> 134:4			
91:21,24 92:6	56:12 68:18 132:24	<b>entitled (10)</b> 10:5 38:15	<b>everybodys (1)</b> 46:3			
93:11,15 94:6,15						

98:7,8 108:8 115:5,13  
121:22 127:16  
**failures (9)** 10:1 13:6  
71:20 76:8,9 102:6,19  
106:4 113:9  
**fairness (1)** 141:15  
**faith (1)** 147:14  
**fall (2)** 51:20 69:18  
**fallacy (1)** 34:23  
**falling (1)** 73:23  
**false (2)** 20:22 132:6  
**familiarity (1)** 38:13  
**families (5)** 72:18 74:4  
87:22 105:21 108:6  
**family (4)** 72:20 74:8,19  
111:24  
**fanciful (1)** 139:16  
**far (24)** 6:9 45:15 50:6  
54:21 60:24 77:8  
80:19 84:12,13 86:2  
91:16 97:21 98:1,6,23  
101:20 111:12 125:8  
133:7,9 134:3 139:15  
140:13 153:2  
**fast (2)** 56:11 70:9  
**fate (3)** 4:11 72:9  
108:13  
**fault (9)** 8:22 13:1,1  
19:18 20:9 27:15 42:8  
52:12 133:3  
**fbu (1)** 106:7  
**fear (1)** 74:22  
**feared (1)** 3:24  
**feature (3)** 30:20 92:4  
93:20  
**features (2)** 93:4 129:6  
**february (3)** 56:9 108:4  
156:7  
**fed (1)** 47:15  
**fee (1)** 98:12  
**feeds (1)** 68:17  
**feel (3)** 49:15 107:5  
156:1  
**feeling (1)** 71:8  
**feels (1)** 75:13  
**fees (2)** 6:16,21  
**feet (1)** 77:3  
**feildingmellen (1)**  
119:15  
**fell (4)** 16:25 59:21 60:1  
99:25  
**fellow (1)** 133:24  
**felt (2)** 39:12 117:2  
**few (5)** 71:10,14 81:2  
82:24 101:20  
**fibre (1)** 32:23  
**fifthly (1)** 96:6  
**fighting (1)** 72:4  
**figure (1)** 93:17  
**figures (2)** 76:20,25  
**filled (1)** 143:21  
**final (4)** 3:4 92:20  
101:11 112:9  
**finally (12)** 36:21 41:15  
50:8 51:16 54:13 68:3  
69:10 87:2 96:12  
126:9 146:4 149:10  
**financial (4)** 71:22  
105:16,17 116:7  
**find (6)** 88:11,16 93:24  
118:23 124:9 137:12  
**finding (1)** 87:23  
**finds (1)** 17:19

**finer (1)** 106:5  
**finger (1)** 3:5  
**finished (1)** 88:13  
**fire (193)** 1:16 2:15  
4:18,20 5:24 6:1,3  
8:14,25  
9:2,4,5,10,12,14,15,16,20,21,22,23,24  
10:2,14,16,22 11:9  
13:25 14:10,14,16,25  
15:20 16:2  
17:10,13,15,17,20,22,24  
18:3,5,9 19:25  
20:7,19,21 21:9,13,14  
22:15 23:2,4,7 24:22  
25:7,10 28:19,25  
29:6,11,23 32:13  
33:20,24 39:15  
40:7,11,14,18 41:1  
43:10,21,25  
44:18,25,25 45:3,4,6  
47:1,8 49:14,22  
55:2,4,12,15 56:10  
61:13,14,15,16,17,20,21  
62:10,13  
63:1,2,4,11,17 66:13  
72:9 73:7,13,18,19  
74:6,8,15 75:21,24,25  
76:3,7,13 77:15 78:8  
79:6 80:25 81:9,15,19  
82:5,9,16,20  
83:5,17,18,24 84:2,7  
87:1 92:3 93:10  
95:2,3,8,16 96:24,25  
98:8,9,13,19  
99:6,10,24 100:25  
101:7 102:17 104:20  
105:1,3,15 107:17,19  
108:5,19,20,23,23,24  
109:3,6,11  
110:8,20,22 114:12  
115:2,3 116:2 118:14  
119:6,10,12,16,18  
120:10,15,24 127:17  
129:12 134:13,14  
142:2,8 155:4,8,11  
**firebreaks (1)** 62:21  
**firefighter (1)** 9:19  
**firefighters (3)** 74:16  
76:2 77:14  
**firefighting (1)** 82:23  
**fires (9)** 5:16 43:14  
45:11 47:9 73:8 80:23  
83:6 89:10 112:7  
**firestopping (1)** 41:14  
**firm (3)** 21:25 49:1  
106:23  
**firmly (3)** 12:1 60:21  
117:23  
**firms (1)** 70:9  
**first (28)** 15:13 16:16  
17:13 22:4 23:1 30:4  
32:14 34:25 35:10  
37:19 50:15 53:2  
56:12 62:9 66:4 86:7  
88:25 89:17 90:16  
98:19 101:9 104:5  
112:12 115:23  
124:12,20 125:22  
144:17  
**firstly (4)** 20:12 95:5  
135:13 146:20  
**fit (7)** 15:8 33:3 35:1,11  
41:17 66:7 67:21

**five (4)** 17:19 20:18  
73:8 135:22  
**fivepoint (1)** 111:17  
**fixed (1)** 12:1  
**flagged (1)** 19:2  
**flagship (1)** 34:12  
**flame (7)** 15:2 29:16  
44:4 55:9 82:19  
109:22,25  
**flames (3)** 76:18 82:12  
96:8  
**flammability (3)**  
24:13,19 29:19  
**flammable (1)** 74:1  
**flash (3)** 25:6 44:5,9  
**flat (1)** 108:20  
**flats (3)** 73:9 74:13  
76:17  
**flaw (1)** 18:2  
**flawed (8)** 9:24 17:20  
20:6 22:24,24 35:9  
36:11 102:14  
**flawless (1)** 6:10  
**flaws (3)** 18:1 47:22  
48:4  
**flexible (2)** 103:14,16  
**floor (1)** 32:14  
**floors (1)** 82:21  
**flow (1)** 28:15  
**fluid (1)** 28:14  
**focus (7)** 45:24 50:19  
53:14,20 54:8 104:6  
128:16  
**focusing (1)** 36:17  
**follow (1)** 128:7  
**followed (5)** 16:13,17  
90:11 99:20 110:12  
**following (13)** 15:25  
16:4 47:1 70:13 72:10  
81:9 83:24 84:1  
105:16 108:2 121:10  
135:13 144:16  
**follows (2)** 120:7 143:3  
**foot (1)** 31:22  
**footling (1)** 45:19  
**footnotes (1)** 27:9  
**force (4)** 6:17 20:8 54:4  
92:11  
**fordham (2)** 94:5,15  
**fordhams (1)** 100:9  
**forecast (1)** 25:22  
**forget (1)** 73:5  
**forgive (1)** 42:24  
**form (7)** 5:23 18:21  
75:9 94:24 102:16  
122:24 143:17  
**formal (2)** 98:18 121:13  
**formally (1)** 8:9  
**formed (1)** 66:17  
**former (1)** 12:5  
**forms (2)** 137:6,19  
**formulation (2)**  
120:6,12  
**forthright (1)** 79:14  
**forward (7)** 39:25 77:23  
99:15 111:11,14 117:1  
154:10  
**forwarded (2)** 21:8  
118:20  
**forwarding (1)** 92:1  
**found (7)** 29:14 49:24  
56:2 74:18 75:19  
76:21 127:25

**four (15)** 15:12,25  
34:25 35:9 37:18  
52:17 63:5,5 69:5  
81:10 125:17,24  
135:20 140:9 151:2  
142:24  
**fourth (3)** 15:21 35:6  
142:24  
**fourthly (2)** 21:6 95:22  
**fr (2)** 28:1 35:22  
**fr5000 (2)** 35:25 36:3  
**fragmentation (3)**  
104:13 105:11 106:13  
**frame (1)** 90:21  
**frames (2)** 64:10,16  
**framework (3)** 84:11  
105:24 121:5  
**frank (4)** 79:3 131:5  
144:18 145:3  
**fras (1)** 63:5  
**free (2)** 40:5 156:1  
**freely (1)** 144:8  
**french (3)** 25:20,21 26:7  
**friday (1)** 139:12  
**fridays (1)** 153:20  
**friends (1)** 74:9  
**froehlich (3)** 25:20,21  
26:7  
**front (1)** 22:19  
**frontage (1)** 4:4  
**fuel (2)** 28:18 29:2  
**fuelled (1)** 5:14  
**fulfilled (1)** 107:10  
**fulfilling (1)** 146:8  
**full (16)** 21:19 37:25  
40:14 49:24 60:4  
64:20 79:3 86:8  
111:24 112:18 113:7  
118:19 119:11 126:3  
131:5 144:18  
**fulltime (1)** 106:17  
**fully (7)** 17:7 19:21 96:9  
117:17 129:20 152:17  
155:6  
**function (3)** 13:22 39:1  
65:22  
**functional (4)** 14:23  
18:4 19:22 36:18  
**functionality (1)** 7:25  
**functions (1)** 13:21  
**fundamental (10)** 15:8  
18:2 34:25 45:18 48:4  
60:19 85:15 102:12  
108:7 113:9  
**fundamentally (3)** 9:21  
17:20 48:10  
**funding (4)** 3:11 4:25  
5:4 124:21  
**funds (1)** 124:23  
**furios (2)** 71:4,5  
**further (27)** 7:10 9:1,2  
10:7 26:10 27:17  
44:21 53:15 54:10  
60:9 63:17,20 67:12  
79:7 82:7 87:3 88:5  
98:22 108:21 109:7  
134:12 136:2,11,13  
138:15 140:11 154:7  
**furtherance (1)** 129:19  
19:24 24:15 26:22  
44:21 46:21  
**future (10)** 3:12 18:10  
39:16 70:11 86:9

89:16 99:11 101:1  
103:21 129:25  

---

**G**

---

**gained (1)** 144:25  
**game (4)** 11:18 42:7  
52:4 71:12  
**gaps (2)** 66:7 143:21  
**gardens (1)** 108:12  
**gather (2)** 89:10 126:10  
**gathered (2)** 54:18  
108:15  
**gave (4)** 12:7 102:21  
115:25 148:23  
**general (16)** 12:10  
13:16 22:17 67:4 68:3  
70:12 90:14 121:21  
122:14 129:23 131:3  
132:25 133:17 141:11  
144:14 157:18  
**generally (5)** 11:3 32:5  
89:15 95:3 120:18  
**generate (1)** 28:15  
**genuinely (1)** 52:6  
**geof (1)** 26:20  
**get (13)** 19:5 22:11  
26:12,16 32:6 33:3,4  
37:12 41:5 74:12 83:9  
110:8 117:5  
**getting (2)** 40:5 41:7  
**gibson (1)** 46:22  
**gill (5)** 49:4,6,9,10  
157:8  
**give (15)** 21:19 27:15  
61:6 70:14 120:23  
131:4,23 138:11  
143:16 144:18  
150:13,14 152:11  
153:12 155:5  
**given (35)** 2:1 5:8 8:2  
15:25 18:16,20  
21:11,12,22 37:1  
38:14 39:18 40:9  
43:10 44:21 45:8,20  
46:10 47:12 61:10  
65:10,16 66:11 87:13  
101:4 124:1 132:6  
136:3 137:14 139:20  
143:10 147:17 148:4  
149:3 151:16  
**gives (8)** 12:10,17 26:14  
92:19 116:15 125:24  
135:20 142:22  
**giving (3)** 8:5 108:14  
144:9  
**gladly (1)** 136:2  
**goal (1)** 49:17  
**gobain (1)** 34:10  
**going (20)** 1:4 12:16  
18:22 39:25 49:5 70:1  
75:13 88:4 99:15  
116:9 119:2 122:4,8  
124:6 128:11 135:12  
151:20 153:21,22  
155:11  
**gone (3)** 88:22 96:25  
111:1  
**good (8)** 1:3,10,10  
20:14 31:8 42:9 75:1  
85:2  
**governed (1)** 63:8  
**governing (1)** 14:25  
**government (20)** 25:4  
43:11,15 44:7,21 46:4

47:8,12,16,21 48:7  
74:2,3 75:9,10 76:15  
77:2 83:19 84:1  
111:10  
**governments (4)** 3:12  
45:21 77:7 83:23  
**governs (2)** 127:8  
151:19  
**grange (1)** 145:16  
**grant (1)** 3:11  
**granted (3)** 131:10,21  
150:9  
**gravity (1)** 58:7  
**great (2)** 40:5 138:16  
**greater (4)** 47:6,9 65:2  
96:13  
**green (2)** 7:8 105:22  
**grenfel (1)** 26:13  
**grenfell (105)** 2:17,20  
3:3,24,25  
4:2,3,6,12,23  
5:11,17,18 6:16 7:4  
9:24 12:23 13:14 14:9  
15:11,24 16:15  
17:1,11 19:4 22:13  
23:3 25:16 26:19,24  
27:19 28:3,21,25  
30:21  
34:3,6,8,11,11,14,17  
37:11 43:10  
46:1,10,15 47:4  
49:12,22 50:10,25  
55:23 56:4,8 57:17,21  
69:12,21 70:6 72:7,9  
73:2,7,18  
75:2,4,18,19,25  
76:8,25 77:4,15,21  
78:3,9 79:15 80:25  
84:7 85:3,11 86:5,16  
87:13,19 90:4 94:23  
95:25 102:5 104:20  
105:22 108:15 109:13  
117:16,22 118:5 119:4  
120:17,20 121:6  
123:14 129:13 132:25  
143:25  
**grenfells (3)** 3:15,18  
4:11  
**grey (1)** 36:16  
**greengreen (1)** 25:9  
**ground (2)** 32:14 77:15  
**grounds (4)** 7:3 29:15  
138:11,23  
**group (7)** 80:8 83:19,20  
117:16,23 118:5  
137:22  
**growing (2)** 28:18 33:23  
**gtla (6)** 104:21 118:16  
119:1,5,14,17  
**guess (1)** 32:2  
**guidance (21)** 6:4 14:22  
15:5,22 16:14,16,20  
17:7,8,24 27:20 35:10  
41:9,24 46:23 59:3  
81:24 82:5,7 128:14  
135:8  
**guide (5)** 20:7,9,10,13  
31:19  
**guilt (2)** 136:19 137:1  
**gun (1)** 72:13  

---

**H**

---

**hackitt (5)** 47:24,25  
73:10 86:10 103:22

**half (4)** 26:5 77:1 100:6  
111:22  
**halfway (2)** 45:23 103:2  
**hand (2)** 80:12 119:14  
**hallmark (1)** 14:9  
**hand (2)** 80:12 119:14  
**hands (1)** 52:15  
**handy (1)** 152:1  
**hanging (1)** 74:5  
**hanson (1)** 46:16  
**happen (3)** 24:1 111:2  
121:24  
**happened (11)** 8:1 12:2  
36:13 37:11 43:23  
72:10 80:24 98:15  
107:24 111:12 119:6  
**happening (1)** 11:19  
**happens (1)** 77:6  
**happily (1)** 152:24  
**har00005851 (1)** 96:22  
**hard (2)** 87:25 88:22  
**hardly (1)** 142:12  
**harley (56)** 12:5 14:17  
21:8 34:6,20 35:8  
36:21 40:25 41:2,3,21  
42:3,5,9,16 54:6 58:12  
64:3,6,10,22  
65:5,7,10,15  
92:8,17,21,22 95:11  
96:20,23 97:1  
100:9,24 101:25  
102:13 114:15  
115:7,15 122:18,19  
124:25 125:8,14,17  
126:7,25 133:6 134:8  
135:17 140:6,8,12  
142:14 144:20  
**harleys (6)** 34:19  
37:2,23 38:20 42:11  
124:25  
**harm (2)** 13:13 42:13  
**harris (1)** 54:6  
**hasnt (1)** 32:13  
**hastily (1)** 6:8  
**haunt (1)** 118:6  
**havent (4)** 40:4 118:12  
154:17,21  
**having (19)** 4:13 42:15  
46:18 65:14 76:24  
80:2 95:19 110:2  
116:24 125:18,18  
127:21 128:10  
132:5,7,10 136:3  
137:14 145:12  
**hazard (1)** 29:11  
**head (3)** 31:14 46:15  
102:8  
**headings (1)** 139:24  
**heads (1)** 74:5  
**healy (1)** 111:16  
**health (16)** 40:21 42:1  
74:18 105:2,7  
118:1,18,19 119:9,11  
132:21 133:20 141:24  
142:6,24 143:12  
**hear (15)** 1:4 70:1 71:12  
86:16,17 122:5 131:18  
135:9 153:10,22,24  
154:5,6 155:8,19  
**heard (7)** 32:9 50:22  
94:21 106:14 117:11  
154:15,20  
**hearing (6)** 1:4 52:7  
73:3 116:18 119:24

156:6  
**hearings (3)** 73:5 77:10  
 117:8  
**heart (6)** 84:11 85:8  
 87:20 89:21 91:15  
 105:20  
**heartening (1)** 34:18  
**heat (4)** 28:13 29:1  
 30:11,15  
**heath (1)** 118:10  
**heating (3)** 2:23 7:6  
 53:8  
**heavily (2)** 58:19 66:15  
**heed (1)** 90:18  
**height (5)** 55:6 57:7,10  
 94:9 115:19  
**held (7)** 2:7 48:11 51:25  
 89:2 94:4 100:20  
 115:1  
**help (4)** 43:9 47:6 121:6  
 128:5  
**helpful (5)** 127:25 135:5  
 149:18 150:1 152:12  
**helpfully (1)** 152:17  
**hence (1)** 34:12  
**here (9)** 31:23 49:4  
 104:18 107:5,17  
 152:13 153:5,7 154:9  
**hereafter (1)** 104:21  
**herein (1)** 132:2  
**hes (1)** 49:3  
**high (4)** 28:16 94:1  
 95:18 97:22  
**higher (1)** 5:16  
**highlight (1)** 129:5  
**highlighted (1)** 78:11  
**highlights (1)** 54:3  
**highly (5)** 4:9 60:15  
 67:8 74:1 94:23  
**highrise (7)** 7:5 38:11  
 76:20 83:16 86:6  
 109:6 112:5  
**himself (2)** 133:21  
 138:17  
**hindsight (1)** 121:7  
**hire (1)** 118:17  
**hired (1)** 108:11  
**history (5)** 2:19 83:6  
 107:17 117:13 119:20  
**hoban (2)** 65:25 66:8  
**hold (1)** 75:7  
**holding (1)** 47:16  
**holistic (3)** 15:20 16:2  
 95:21  
**homemade (1)** 74:9  
**homes (3)** 74:23 104:2  
 120:19  
**honest (1)** 145:3  
**honestly (2)** 11:20  
 144:8  
**hoods (1)** 74:9  
**hook (1)** 73:4  
**hope (6)** 42:24 49:16  
 122:25 135:4,8,24  
**hopefully (1)** 47:5  
**hoping (2)** 23:24 128:14  
**horizontal (1)** 102:8  
**horrifying (1)** 11:8  
**hospital (1)** 81:11  
**hotter (1)** 45:11  
**hours (1)** 76:19  
**house (18)** 13:9,11 26:9  
 43:20 46:17 56:18

57:2 83:16,24 89:11  
 107:17,19 108:5,23  
 109:1,23 111:18,19  
**households (1)** 76:16  
**housing (25)** 46:7,9  
 73:15 75:10 78:7 79:4  
 80:12 83:16 84:8,17  
 85:4,22 86:4,14,25  
 87:16 89:15  
 90:1,1,5,24 106:1  
 112:4 120:18 121:2  
**however (27)** 19:2  
 24:11 29:13 42:10  
 44:4 48:2,4 56:16,23  
 63:14 66:21 92:23  
 94:3,9,14 98:7 109:21  
 110:24,25 111:1  
 112:23 113:5  
 115:10,19 120:12  
 123:2,2  
**huge (1)** 88:22  
**human (2)** 48:7 89:19  
**hyett (7)** 35:6 36:6  
 59:19 60:15 94:10  
 102:11 125:6  
**hyetts (2)** 60:18 126:1

---

**idea (1)** 84:23  
**ideal (1)** 100:24  
**ideas (1)** 84:21  
**identifiable (1)** 73:23  
**identified (14)** 51:11  
 52:21 59:17 60:14  
 63:19 65:2 66:13  
 68:17 69:10 84:6  
 94:25 112:17 113:10  
 151:14  
**identifies (2)** 20:13 90:4  
**identify (9)** 2:1 36:7  
 52:25 62:11 68:21  
 69:5 124:16 128:11  
 129:8  
**identifying (1)** 39:10  
**ie (1)** 105:3  
**ignite (1)** 55:8  
**ignorance (1)** 21:22  
**ignore (1)** 118:14  
**ignored (11)** 3:17 17:4  
 45:21 60:25 73:1 83:6  
 109:15 113:15 117:14  
 118:9 119:21  
**ignores (2)** 24:20 84:12  
**ii (1)** 132:8  
**ill (4)** 32:22 129:7  
 130:22 143:2  
**illmanaged (1)** 97:10  
**illustrate (1)** 141:23  
**im (8)** 32:24 78:3 88:9  
 122:4 124:21 127:9  
 151:20 155:9  
**image (1)** 6:10  
**imagine (3)** 71:21  
 128:22 133:10  
**immediate (2)** 47:6  
 77:9  
**immediately (4)** 42:10  
 45:8 122:16 132:18  
**immunity (2)** 148:16  
 150:22  
**impact (3)** 93:12,13  
 98:14  
**imperative (2)** 5:2,8

**imperfect (2)** 66:7  
 67:21  
**impinge (1)** 82:12  
**implement (1)** 78:24  
**implementation (3)**  
 78:12 103:13 107:14  
**implemented (5)** 89:8  
 105:13 107:13 111:3,8  
**implications (1)** 71:24  
**implicit (1)** 96:15  
**implied (3)** 36:23 41:21  
 42:2  
**importance (4)** 6:1 56:7  
 127:3 146:5  
**important (29)** 4:22  
 8:21 11:6 28:9 40:22  
 46:13 48:10 50:17  
 62:4 89:13 90:14  
 91:8,16,18 93:5,20  
 95:1 101:4 102:2  
 104:4,8 117:12 121:1  
 123:3 128:12 130:14  
 135:5 138:20 148:15  
**importantly (4)** 109:5  
 125:15 149:4 150:19  
**impose (2)** 14:23 142:9  
**imposed (2)** 38:3 45:4  
**imposes (1)** 5:20  
**impossible (4)** 141:10  
 143:19 147:12,15  
**impressed (1)** 81:15  
**imprisonment (1)** 142:5  
**improbable (1)** 139:2  
**improve (2)** 7:25 53:6  
**improved (3)** 86:1  
 105:18,23  
**improvement (2)** 48:14  
 121:5  
**imran (3)** 49:1,9 157:7  
**inaccurate (1)** 62:25  
**inaction (1)** 48:10  
**inactivity (1)** 78:6  
**inadequate (1)** 86:23  
**inadequately (1)** 74:16  
**inappropriateness (1)**  
 95:17  
**inception (2)** 2:22 59:7  
**incident (1)** 76:9  
**inclination (1)** 137:16  
**include (11)** 14:13  
 31:18 48:2 53:5 80:13  
 84:24 86:4,15 99:24  
 132:21 133:24  
**included (7)** 7:18,21  
 34:10 39:10 59:9  
 98:13 107:22  
**includes (2)** 23:12 41:23  
**including (13)** 8:3 21:16  
 38:18 43:17 47:6 64:1  
 85:9 95:5 100:21  
 102:6 106:5 124:24  
 143:8  
**incompetence (4)** 14:10  
 19:23 117:19,24  
**incompetent (1)** 14:20  
**inconvenient (1)** 123:3  
**incorporated (3)** 5:5  
 16:23 56:7  
**incorrect (2)** 34:19  
 41:18  
**increase (5)** 25:15 90:9  
 139:7 147:14,19  
**increased (2)** 45:2,9

**increasing (2)** 37:16  
 90:10  
**increasingly (2)** 24:22  
 25:14  
**incredibly (1)** 66:11  
**incriminate (3)** 137:18  
 138:8 143:11  
**incriminating (1)** 137:7  
**indefensible (1)** 52:8  
**independent (7)** 55:18  
 63:2 107:8 118:18  
 119:8,9 121:18  
**index (1)** 157:1  
**indicate (1)** 151:6  
**indicated (3)** 4:20 33:2  
 122:4  
**indicates (1)** 150:6  
**indication (2)** 128:1  
 140:13  
**indications (1)** 124:5  
**indicative (1)** 78:20  
**indifference (1)** 103:25  
**individual (6)** 105:19  
 106:4 126:1 133:9  
 143:13 148:22  
**individuals (17)**  
 51:17,19 68:19,22  
 106:2 122:23 125:5,9  
 126:24,24 133:6,6  
 134:24 135:15,17  
 140:23 148:17  
**induction (1)** 39:23  
**indulge (2)** 112:22  
 113:11  
**indulges (1)** 11:18  
**industries (1)** 105:13  
**industry (9)** 16:14 20:7  
 43:19 47:13,18 55:13  
 84:3 104:13 105:12  
**ineptitude (1)** 117:24  
**inevitable (1)** 146:2  
**inevitably (4)** 2:2 12:20  
 18:22 42:23  
**inexplicable (1)** 48:9  
**inferior (1)** 4:14  
**inferno (2)** 5:14 29:4  
**inflict (1)** 118:2  
**influenced (1)** 30:21  
**inform (1)** 80:13  
**information (14)** 9:20  
 54:18 62:1,5,7  
 64:21,22 65:16 73:14  
 87:3 99:3 136:18,25  
 137:3  
**informed (2)** 17:25 50:7  
**ingredients (1)** 100:7  
**inherent (2)** 6:5 24:19  
**inhouse (1)** 107:2  
**initial (3)** 17:16 53:3  
 61:10  
**initially (1)** 50:4  
**injured (2)** 72:8 83:17  
**innate (1)** 29:18  
**innocent (2)** 54:24  
 116:21  
**innocuous (1)** 143:9  
**innovative (2)** 84:21,23  
**input (3)** 39:11 85:17  
 120:18  
**inquest (3)** 74:18  
 107:25 108:4  
**inquiries (10)** 78:13  
 79:11,18 87:9 130:11

131:8 132:9 144:12  
 149:23 150:5  
**inquiry (114)** 1:21  
 10:20 11:18 12:4,7,18  
 14:4 23:23 29:24  
 30:24 42:19 43:4 47:5  
 49:12,17 50:23  
 51:12,23 52:3 60:25  
 61:3,9 67:12 68:6,13  
 69:4,8,14,16 70:15,25  
 71:18 72:11 77:21  
 78:21 79:2,14,17,20  
 80:11,17 81:16 82:3  
 83:7 86:21,24  
 87:10,12,20 88:24  
 89:4,7,14  
 103:13,18,20 104:22  
 105:8,11,20 106:7  
 107:12,16 110:25  
 111:4,13,21  
 112:10,11,14,20  
 113:22 117:2,4,6,12  
 119:22 120:1 121:25  
 123:4,8,11,17 126:6  
 127:8 129:20,25  
 131:6,21,24 132:6,15  
 134:19 141:12  
 143:20,22 144:6,21,24  
 145:8 146:3,5,18  
 148:23 149:18,20  
 150:4,13,21  
 151:3,16,19 154:2,18  
**inquiries (11)** 35:6 42:6  
 75:18 77:24 79:10  
 94:9 116:9 140:21  
 141:2 144:25 146:8  
**inquisitor (1)** 145:3  
**insist (2)** 83:7 101:15  
**insisted (2)** 39:17 96:2  
**insofar (3)** 16:5 22:8  
 138:5  
**inspection (3)** 66:5  
 118:19 119:11  
**inspections (2)** 67:14,18  
**inspector (6)** 32:9 33:5  
 37:9 75:23 118:18  
 119:10  
**inspectorate (1)** 75:23  
**inspectors (2)** 31:4  
 119:10  
**install (1)** 64:3  
**installation (5)** 64:18  
 65:7,9,22 66:10  
**installed (6)** 45:13  
 55:23 56:3,21 65:19  
 69:2  
**installers (1)** 65:5  
**installing (2)** 65:14,20  
**instance (1)** 104:9  
**instead (9)** 3:9 7:2  
 10:21 19:12 21:18  
 36:16,19 40:2 78:15  
**instilled (1)** 20:21  
**institutional (1)** 89:19  
**instructed (1)** 67:18  
**instruction (2)** 19:10  
 99:3  
**instructions (6)**  
 17:12,15 80:7 90:25  
 117:5 153:13  
**insubstantial (1)** 139:5  
**insufficient (3)** 55:13  
 57:15 60:5

**insulating (2)** 4:10,18  
**insulation (38)** 2:25  
 5:12,13,15,23 15:17  
 16:10,12 18:15,19  
 21:16 28:9 29:10  
 30:5,12 31:5 32:10  
 35:19 36:2,9 40:20  
 45:3,10 56:6,19,23  
 59:11 64:1,2 65:4,10  
 82:6 83:11 84:4  
 94:7,8,11 100:10  
**insurance (3)** 71:24  
 72:3 96:2  
**integral (2)** 52:18 69:16  
**integrity (2)** 63:13,22  
**intend (1)** 2:8  
**intended (2)** 62:19  
 118:17  
**intending (1)** 49:2  
**intent (2)** 36:14 107:10  
**intention (3)** 12:8 77:2  
 126:5  
**intentions (1)** 109:13  
**inter (1)** 55:14  
**interest (5)** 40:7 126:3  
 146:12 149:24 155:15  
**interested (1)** 122:9  
**interests (1)** 93:8  
**internal (3)** 23:13 33:14  
 82:13  
**internally (3)** 91:2  
 96:21,23  
**interrupt (1)** 127:19  
**interview (2)** 129:10  
 140:15  
**interviewed (7)** 125:20  
 129:10 133:7  
 140:9,10,10,13  
**interviewing (2)** 140:8  
 141:20  
**interviews (3)**  
 125:16,23 140:11  
**interwoven (1)** 1:17  
**intimating (1)** 12:7  
**into (27)** 4:10 5:5 16:23  
 17:1 18:19 24:16  
 42:23 44:23 45:24  
 47:15 48:12 59:21  
 62:2 68:17 78:13  
 82:20 85:17,19 88:22  
 99:9 102:18 108:4  
 113:16 120:4,18  
 129:12 143:2  
**intrinsically (1)** 50:21  
**introduce (1)** 48:12  
**introduced (1)** 105:16  
**introduction (1)** 99:12  
**invalidate (1)** 8:8  
**invariably (1)** 37:10  
**investigated (3)** 87:21  
 131:6 151:5  
**investigating (2)** 41:8  
 141:21  
**investigation (10)** 75:5  
 119:8 129:12,14  
 135:18 140:7,18  
 141:2,17 142:5  
**investment (3)** 2:22 3:7  
 90:8  
**invitation (2)** 123:25  
 129:5  
**invite (11)** 1:7 50:23  
 51:12,23 60:25 61:3

67:12 68:13 69:8  
 129:22 131:18  
**invited (3)** 61:9 129:10  
 140:15  
**invoke (1)** 12:8  
**invokes (1)** 109:17  
**involve (3)** 80:14  
 133:15 144:7  
**involved (12)** 6:15  
 14:12,15 22:1 24:7  
 26:16 53:11 59:7 61:4  
 69:12 82:15 101:9  
**involvement (1)** 84:13  
**involves (1)** 42:23  
**involving (2)** 7:19  
 125:17  
**irvine (1)** 81:9  
**isnt (1)** 147:22  
**issued (5)** 16:16 18:14  
 55:20 98:22 116:3  
**issues (29)** 11:3 49:18  
 52:25 60:13 62:14  
 63:19 67:23  
 68:17,20,23 69:14,19  
 87:16 93:18 98:13  
 99:5 101:24 106:8,13  
 108:14 110:22 112:18  
 116:24 129:22 141:3  
 142:13 144:7 151:3,4  
**item (1)** 34:10  
**iterations (2)** 17:17  
 20:19  
**itll (1)** 32:24  
**its (111)** 2:14,22,24  
 6:11 10:8,23  
 11:7,20,21 13:1,2  
 14:5,6,14,20 19:13,19  
 20:5,6,18 22:9 23:10  
 24:7,8,10,12,16,21  
 25:13 26:16,17,20  
 27:6 28:10,20  
 29:6,19,20,22,23 30:7  
 32:25 33:7,8  
 34:7,9,23,24 35:5 36:8  
 37:17,17,19,20,20,22,23  
 38:2 39:3,4,6 40:6,9  
 41:7,15 42:9 52:15  
 55:15 58:1 64:6 82:9  
 85:19 89:13  
 94:7,19,20 95:12,12  
 96:10 103:13,14  
 106:11,11 107:25  
 111:10 114:3  
 123:10,17 125:12  
 127:7,24 133:10  
 134:17 135:12 137:4  
 141:12,18 142:13  
 144:6 146:14,19  
 147:5,6,21,22 148:4  
 149:20 151:10 152:19  
 155:9,11  
**itself (13)** 5:22 8:16  
 10:21 34:21 39:13  
 42:15 81:25 89:14  
 110:25 111:13 123:17  
 126:21 151:16  
**ive (1)** 126:25

---

J

**jagged (1)** 66:6  
**jams (1)** 102:7  
**james (1)** 84:9



janice (3) 46:21,25  
108:16  
january (8) 1:1 10:3  
53:19 59:9 75:11,22  
84:19 111:20  
jarratt (1) 50:22  
jct (1) 38:2  
jenrick (2) 75:11 79:5  
job (4) 32:9 62:16 63:3  
106:11  
john (6) 46:16 65:25  
66:8 67:3,17 111:16  
johnson (6) 89:25 90:23  
91:4 118:20 119:1,5  
joint (1) 13:23  
jonathan (2) 67:9 93:16  
journal (1) 6:20  
js (1) 58:13  
judge (2) 145:20 147:11  
judgements (1) 65:18  
judging (1) 138:17  
judgment (7) 13:8  
136:11 137:8,21  
139:10,25 147:5  
judith (4) 86:10,12  
103:22,24  
july (3) 34:12 50:2  
89:25  
june (12) 16:16 25:2  
33:15 49:22 52:23  
68:2 76:3,19 81:10  
93:23 108:25 112:13  
juniors (1) 124:25  
justified (2) 117:17  
148:24  
justify (1) 52:8

**K**

calc (8) 3:14,18,21  
4:2,4,5,9 6:15  
kctmo (3) 117:25 118:7  
119:3  
keen (3) 5:18 91:5 92:9  
keep (1) 100:15  
kensington (2) 3:13  
50:1  
kept (1) 103:17  
kevin (2) 12:6 100:23  
key (21) 16:18 31:19  
33:18 37:18 49:18  
50:12 52:19,23  
53:14,23 54:12 60:13  
69:11 91:10,20 93:17  
104:7,21 105:8 112:24  
120:13  
khan (5) 49:1,9 77:12  
79:5 157:7  
kicking (1) 91:6  
killed (8)  
72:11,14,21,23,25  
73:5 75:1 81:20  
kind (4) 60:19 110:16  
126:17 153:9  
kneejerk (1) 2:18  
knew (11) 18:13 24:21  
26:22 27:14 34:16,20  
61:24 83:4 84:4 94:21  
95:11  
know (35) 1:16 12:19  
35:4 40:4 50:7 54:25  
58:3,3 70:21 85:3,5  
87:24 93:9 96:20,25  
101:18 109:21,23,25

118:8 122:17,18  
123:21 124:12,13  
127:2 132:15 134:19  
143:20 147:4 148:20  
153:10 154:23,23  
155:13  
knowhow (2) 114:7,10  
knowing (1) 21:24  
knowingly (1) 22:1  
knowledge (15) 25:13  
28:19 31:4,6 35:3,18  
40:19 43:10,14 44:15  
45:16,21 46:13 47:2  
48:11  
known (18) 3:14 6:19  
7:12 15:7 18:23 21:4  
30:15 43:15,17  
47:21,22 58:2  
83:1,1,10 94:16  
104:10 143:4  
knows (1) 32:25

**L**

l (2) 5:20 6:6  
labour (1) 111:16  
lack (16) 15:4 31:3,5  
42:10 43:12 51:3,4,8,9  
68:25 69:6,20 99:2  
102:6,7 115:14  
lacked (2) 97:12,16  
lacking (1) 86:23  
lacknallsic (2) 109:23  
110:10  
lacknell (1) 46:25  
laid (1) 152:16  
laidlaw (35)  
122:8,10,15,16 124:11  
127:19,22 128:9,25  
129:4 133:12,16,25  
134:2,4,12,16,19  
135:4,12 145:23 146:1  
148:2,6  
152:2,6,9,12,14  
153:1,5,7,14,17  
157:21  
lakanal (16)  
46:17,18,22,23  
83:16,24 84:2 89:11  
107:17,19,25 108:5,22  
109:1,13,17  
lamb (3) 12:6 100:23  
101:4  
lambda (6)  
30:10,11,16,20 31:1  
34:14  
lamentable (1) 108:8  
lancaster (2) 1:6 2:20  
landlord (2) 117:25  
118:9  
landlords (1) 121:3  
lane (13) 8:20 17:10,19  
19:20,24 20:9,12,17  
23:5 55:24 57:21 66:3  
67:20  
lanes (1) 20:5  
language (2) 22:2 140:4  
large (4) 72:3 95:4  
112:3 152:20  
largely (2) 84:12 131:20  
largescale (2) 15:14  
16:1  
last (13) 3:9 71:10  
74:18 81:2 82:24 84:8

85:7 110:17 111:18  
124:24 125:16 126:2  
150:6  
late (11) 12:7 37:10  
48:16 54:19 60:14,24  
77:13 123:9,18 124:17  
144:22  
lateness (2) 126:13  
148:12  
later (13) 4:2,12 5:5  
6:21 41:5 44:19 77:1  
83:22 99:22 110:6  
147:1,9,20  
latest (1) 27:18  
latitude (3) 137:20  
138:16 139:20  
laudable (2) 5:9 42:16  
launched (1) 84:18  
laura (6) 89:25 90:23  
91:4 118:20 119:1,5  
lawfully (1) 130:5  
lawrence (4) 58:15  
99:14 100:22 110:5  
lawrences (1) 41:2  
lawyers (5) 71:16 89:6  
116:8 128:22 147:11  
lay (4) 61:10 72:16  
86:13,15  
layer (2) 27:21 30:14  
layers (2) 68:11 89:4  
lead (3) 50:8 106:4  
136:5  
leadbitter (4) 50:4  
90:20 91:5,14  
leaders (1) 115:1  
leading (5) 9:24 10:22  
41:1 67:21 82:20  
learn (1) 83:12  
learned (1) 82:24  
leaseholders (3) 104:20  
118:3,11  
least (18) 5:11 16:7  
21:20 38:16 48:2  
52:19 62:10 69:11  
73:8 77:13 78:15  
122:25 124:17 128:14  
131:18 134:11 144:1  
150:17  
leave (5) 1:14 37:7  
129:1 150:20 151:12  
leaves (1) 153:3  
led (15) 1:16 5:11 11:12  
15:5 30:7 49:21 50:16  
52:19 53:15 62:24  
66:6 89:1 102:5 109:4  
120:15  
left (10) 2:21 13:11,14  
29:13 49:16,18 53:19  
73:6 74:3 89:10  
legal (4) 12:1 13:6  
130:15 154:13  
legally (1) 36:22  
legislation (8) 6:14 9:6  
59:2 111:12 118:2  
134:20,21,23  
legislative (2) 111:15  
121:5  
legitimate (1) 37:6  
leisure (2) 3:14 97:14  
length (2) 37:21 100:15  
less (5) 47:10 54:23  
59:9 74:25 117:11  
lesser (2) 8:1 52:12

lest (1) 27:17  
let (5) 71:3 72:14,18  
73:5 76:8  
lethal (1) 108:5  
lets (2) 76:11 134:8  
letter (2) 124:3 129:6  
letters (1) 26:2  
level (6) 14:10 38:16  
55:4 85:9 111:15  
138:5  
liability (5) 12:1 13:6,17  
106:5 142:10  
liable (1) 36:22  
liberty (1) 130:9  
lie (6) 2:2 12:7 26:14  
33:25 77:6 92:19  
lies (3) 1:15,18 126:8  
lieu (1) 78:17  
life (8) 10:8 11:1,15  
61:1 74:19,19 87:15  
107:20  
lifts (2) 9:18,19  
light (1) 148:11  
lighter (2) 28:14 29:2  
like (12) 11:24 36:7  
43:1 70:8 71:4 73:12  
106:15 124:23  
134:14,22 150:22  
155:14  
likely (16) 6:12 14:1  
19:14 21:3 23:8 29:3  
37:14 48:6 62:24  
63:23 91:12 133:10  
138:25 145:2 146:7  
155:13  
likened (1) 67:9  
limit (1) 141:4  
limited (19) 15:17  
16:11,18 24:8 27:22  
35:20,24,25 36:3  
52:11 55:7 57:22  
94:12 106:17 113:18  
121:2 124:20 137:22  
142:6  
limiting (1) 144:5  
line (4) 31:19 32:12  
86:14 101:11  
linear (5) 15:16  
16:4,13,17 35:20  
lines (1) 101:2  
link (2) 138:21 144:2  
linked (1) 50:21  
linton (1) 81:10  
list (4) 26:10 34:9  
142:13 151:4  
listed (1) 116:4  
listen (1) 121:22  
listened (1) 71:10  
listening (3) 128:6,21  
152:18  
lists (1) 26:8  
litany (2) 71:11 117:19  
literally (1) 83:4  
literature (3) 16:10  
30:6 33:2  
little (11) 7:8 48:15  
90:18 111:12  
113:1,4,23 127:3  
135:9 138:19 146:22  
live (5) 73:15 74:22  
78:4 84:25 120:17  
lived (3) 74:20  
120:17,22

lives (7) 11:12 54:21,22  
63:23 74:15,23 87:21  
living (12) 73:25  
74:3,13,22,24 75:1  
76:11,16 85:4 86:6,14  
118:1  
lj (1) 139:12  
load (1) 45:3  
load (11) 13:7 43:11  
46:4,12 47:7 74:3  
75:10 77:19 78:8  
106:17 107:2  
logan (1) 72:14  
london (10) 73:13  
76:7,13 77:12 78:8  
79:5,6 83:18 86:25  
87:1  
long (8) 47:21 48:9 77:8  
88:10 113:2 118:6,8  
153:7  
longer (3) 3:16 23:10  
45:7  
longstanding (1) 126:23  
look (7) 2:15 9:2 40:6  
53:2 91:22 93:1 154:9  
looked (2) 36:7 65:14  
looking (2) 70:8 109:20  
looks (1) 77:23  
loop (1) 22:21  
lords (2) 13:9,11  
lose (1) 87:19  
loss (7) 10:8 11:1,12,14  
30:15 71:23 107:20  
lost (2) 63:24 71:9  
love (1) 32:14  
loved (1) 87:22  
low (2) 44:14 125:11  
lower (3) 30:16 45:13  
47:23  
lowest (1) 98:1  
loyalty (1) 113:22  
lunch (1) 103:4

**M**

madam (8) 1:10 49:11  
51:22 52:14 69:10  
70:3 88:18 103:12  
maddison (3) 54:12  
91:3,4  
main (10) 33:16,21  
41:19 42:1 50:4  
59:6,23 88:23 106:19  
128:23  
mainly (1) 93:11  
maintained (2) 8:24  
68:4  
maintenance (3) 46:6  
119:7 121:4  
majestys (1) 75:23  
major (7) 56:17 73:8  
81:13 83:19 107:19  
108:11 123:17  
majority (2) 61:4 150:7  
maker (1) 148:7  
makes (5) 22:17 29:5  
37:5 41:15 147:11  
makeup (1) 69:21  
making (15) 10:4 19:9  
22:1 65:17 71:22 77:2  
79:1 80:4,6,8 82:22  
85:21 124:8 126:18  
137:4  
manage (1) 58:17

managed (3) 94:6 96:12  
100:9  
management (15)  
9:11,14 14:13 39:1  
50:16 68:3,8,11 73:13  
85:16 89:15 118:7  
119:25 120:5 121:19  
manager (4) 23:15 39:8  
53:6 60:16  
managers (3) 68:5  
105:15 114:24  
managing (1) 114:25  
manipulation (1) 8:10  
mann (2) 137:21 139:18  
manner (1) 28:24  
manpower (1) 106:9  
mansfield (3) 123:12,16  
154:12  
manufacture (1) 56:5  
manufactured (1) 64:2  
manufacturer (2) 5:12  
95:24  
manufacturers (4)  
42:22 56:6 65:16  
81:14  
many (34) 2:23 8:16,18  
10:10 11:16 12:17,24  
14:14 15:3 17:2,5 35:2  
49:12,15 63:23 66:11  
72:8,18 73:14 75:5,7  
76:6 80:21 81:1,19  
89:1 97:8 106:25  
112:21 113:2 119:13  
128:21 129:8 149:22  
march (6) 26:19 41:2  
46:17 50:6 91:24  
118:16  
marcio (1) 72:15  
margin (2) 26:4 95:1  
marginalise (1) 114:10  
mark (2) 53:18 54:6  
marked (1) 120:24  
market (3) 30:7 57:18  
72:25  
marketed (2) 35:25  
57:6  
marketing (6) 29:20  
30:6 32:25 33:7,10  
56:5  
markets (2) 24:23 25:14  
martin (51) 1:3  
48:18,25 49:7 69:25  
70:4 88:3,8,15  
103:1,3,9 122:2,11  
123:21 127:19,23  
128:19 129:1  
133:8,13,23  
134:1,3,7,15,18  
135:3,11 145:17,24  
147:22 148:3 151:24  
152:3,7,11,15  
153:2,6,9,15,18  
154:15,19,25  
155:3,14,18,21 156:1  
marvel (1) 43:9  
massage (1) 19:15  
massively (1) 107:3  
masterplan (1) 3:4  
matched (1) 23:19  
material (25) 18:25  
30:12 50:12  
57:13,13,16,22 58:4,8  
59:12,13 61:11 65:4

68:6 84:5 91:23 92:12  
94:19 101:24 105:1  
123:25 125:24 138:22  
142:19 144:3  
materials (42) 28:17,22  
29:20 53:16  
55:5,10,13,15 56:18  
58:22 59:16,22,25  
60:2,11 62:1,12,17  
63:15,25 64:17,19  
65:12,14,17,19,20  
66:17 67:7,16 68:16  
81:24 83:11 85:22  
91:19 93:17 94:4,12  
97:5 100:10 104:10  
120:21  
matter (14) 57:4,9  
59:22 77:3,5 99:25  
100:4 110:4 119:12  
124:12 128:6 131:11  
139:21 141:15  
mattered (2) 91:21  
93:13  
matters (12) 2:3 48:6  
55:2 87:20 101:3  
109:9 111:5 117:8  
121:21 129:20 151:4,7  
matthews (1) 142:23  
max (2) 94:5,15  
maynard (1) 54:14  
mayor (9) 77:9,12,19,22  
79:5,13 80:6,13 86:25  
mean (6) 35:12 38:23  
74:5 105:25 106:4  
147:18  
meaning (4) 19:1 25:7  
44:5 55:15  
meaningful (1) 44:17  
meaningfully (1) 47:15  
meaningless (2) 44:19  
47:20  
meanings (1) 50:20  
means (7) 19:13 22:9  
25:6 38:9 45:2 84:3  
141:25  
meant (4) 3:19 59:15  
102:13 124:23  
measure (6) 23:25  
32:13 43:25 44:3,18  
78:17  
measured (3) 55:10  
73:22 97:24  
measures (2) 63:1 108:9  
mechanical (1) 58:13  
mechanism (1) 111:7  
meet (11) 5:19 25:22  
55:24 57:15 65:24  
94:11 95:25 105:2  
115:23 125:3 134:24  
meeting (6) 10:3 39:23  
92:19 99:13,19 100:20  
meetings (4) 99:22,25  
100:2,5  
member (2) 79:21 87:4  
members (5) 80:2  
87:7,14 155:4,8  
membership (3)  
86:2,13,15  
memoranda (1) 111:24  
men (1) 140:8  
mental (1) 74:18  
mention (8) 2:3 14:2  
23:20 25:12 33:6

37:25 72:18 125:21  
**mentioned (3)** 8:15  
 109:9 112:15  
**menzies (4)** 60:4  
 66:2,10,16  
**mere (1)** 99:8  
**merely (2)** 24:17 120:16  
**merrygoround (2)**  
 112:22 113:12  
**met (2)** 92:8 105:6  
**met000457502 (1)**  
 121:11  
**met0005316123 (1)**  
 25:19  
**met0005316124 (1)**  
 25:17  
**metal (2)** 18:21 21:16  
**metres (15)** 15:11 26:3  
 29:21 30:8 33:3 45:13  
 47:23 48:3,13 55:6  
 57:7,10 94:9 95:18  
 115:19  
**metropolitan (2)**  
 129:11 141:19  
**mid2013 (1)** 54:18  
**middle (2)** 27:10 70:24  
**midseptember (1)** 40:1  
**might (20)** 13:20 37:7  
 44:14 70:10 101:12  
 121:6 128:1,18  
 134:10,12 136:19  
 137:1 141:3  
 143:6,20,21 147:8  
 149:16 151:11 155:14  
**military (2)** 132:5 152:4  
**millett (6)** 112:14,25  
 126:5 127:13 145:16  
 153:15  
**milletts (1)** 113:7  
**millimetres (2)** 59:10,10  
**million (9)** 4:9 26:4,5  
 41:6 50:1,3,5 98:2,3  
**mind (6)** 47:3 72:19  
 119:21 128:8,21  
 137:16  
**mindful (1)** 87:8  
**minimise (1)** 14:5  
**minimising (2)** 81:14,21  
**minister (9)** 78:7  
 79:4,12 80:5,12 84:8  
 85:23 86:25 87:5  
**minute (1)** 99:18  
**minutes (6)** 25:7  
 44:10,11 52:3 100:1  
 111:23  
**mirrors (1)** 32:20  
**misconceptions (1)**  
 34:25  
**misdescription (1)**  
 30:25  
**misdirect (1)** 68:20  
**misguided (1)** 68:15  
**misleading (10)** 11:6  
 18:11 24:2 26:25 34:1  
 37:18 39:4 55:17  
 94:11 116:22  
**mismanagement (1)**  
 8:17  
**misrepresentation (2)**  
 18:6 20:20  
**missed (18)** 17:21 27:10

52:19 54:23 56:4  
 57:18 58:6 59:5 60:6  
 62:14 63:18 64:7,14  
 65:6,21 68:2 69:11,13  
**misspecification (1)**  
 95:5  
**misstatement (2)** 23:6  
 30:19  
**mistake (1)** 72:5  
**mistakes (2)** 20:17  
 109:13  
**misunderstood (1)**  
 44:17  
**mobility (2)** 10:10 74:4  
**model (1)** 107:1  
**modern (3)** 3:1 45:3  
 86:14  
**module (17)** 1:23 8:22  
 10:19 11:3 42:24,25  
 53:12 69:18 81:4 82:2  
 86:19 93:18  
 116:20,24,24 120:4  
 155:10  
**modules (4)** 2:4 49:19  
 72:10 120:1  
**moment (18)** 3:9 5:10  
 46:25 48:19 79:24  
 88:16 96:19 102:25  
 110:10 124:22 125:12  
 127:20 128:20 131:12  
 151:25 152:11  
 155:9,24  
**monday (21)** 24:21 42:5  
 71:3 92:21 96:15  
 125:22 127:10 128:17  
 135:8 152:13  
 153:6,7,12,21,22,24  
 154:5,10 155:19  
 156:3,7  
**money (5)** 53:23 72:24  
 90:12 91:10 92:5  
**monitored (1)** 111:3  
**monitoring (1)** 111:14  
**month (1)** 76:15  
**months (4)** 12:17 67:15  
 123:22 140:15  
**moorebick (51)** 1:3  
 48:18,25 49:7 69:25  
 70:4 88:3,8,15  
 103:1,3,9 122:2,11  
 123:21 127:19,23  
 128:19 129:1  
 133:8,13,23  
 134:1,3,7,15,18  
 135:3,11 145:17,24  
 147:22 148:3 151:24  
 152:3,7,11,15  
 153:2,6,9,15,18  
 154:15,19,25  
 155:3,14,18,21 156:1  
**mooted (1)** 124:10  
**more (40)** 1:7,18 9:21  
 17:4 32:21 33:14  
 37:14 39:20 40:13  
 47:9 52:2 53:9 65:1  
 67:9 72:4 75:6,25,25  
 76:16 82:23 86:17  
 89:14 93:21 101:8  
 106:22,25 112:15  
 117:18 118:24 128:11  
 133:10 135:5,25  
 137:24 139:15  
 142:12,25 145:2

150:13 155:12  
**moreover (2)** 3:17 97:4  
**morning (9)** 1:3,10,10  
 80:23 92:8 98:21  
 122:4 136:7 153:24  
**most (16)** 6:25 17:9  
 22:24 40:22 50:17  
 60:19 75:12 91:16  
 95:1 104:3 109:5,16  
 111:6 129:16 142:14  
 146:5  
**mostly (1)** 155:11  
**motion (1)** 4:10  
**motivator (1)** 53:14  
**motive (1)** 103:25  
**moussa (1)** 131:21  
**mouth (1)** 34:1  
**move (2)** 74:10 138:19  
**moving (2)** 63:25 75:15  
**mp (3)** 75:11 79:5 87:5  
**mps (1)** 125:23  
**ms (16)** 1:7,9,10  
 49:4,6,9,10 50:22  
 66:10,16 80:22 98:20  
 116:10 145:16 157:4,8  
**much (36)** 5:12,16  
 10:18 12:21 43:10  
 45:10,13 48:18 53:20  
 69:25 70:4 71:9 72:4  
 85:9,18 88:3  
 100:15,18 101:21  
 103:3 104:10 107:23  
 109:4 113:17 116:19  
 117:11 122:1,2 125:2  
 152:13 153:3,18  
 154:21 155:7,15 156:3  
**muirie (1)** 27:19  
**multimember (1)** 79:20  
**multioccupancy (1)**  
 74:24  
**multiple (1)** 82:22  
**multistorey (1)** 82:6  
**mum (1)** 72:16  
**murphy (1)** 13:9  
**must (22)** 6:7 14:24  
 16:4 18:22 22:6 23:22  
 27:25 36:3 77:16  
 85:5,17 86:8 87:18  
 88:25 89:2,7,12 104:5  
 121:24 136:6 138:9  
 147:14  
**mustwin (1)** 34:8  
**myriad (1)** 142:7  
**myself (1)** 124:16  
**mystery (1)** 71:21

---

**N**

---

**naive (1)** 43:4  
**name (1)** 72:19  
**named (1)** 105:25  
**namely (13)** 4:18 6:19  
 7:16,22 15:19,22  
 22:15 23:3 33:11,19  
 69:22 79:4 129:20  
**narrative (1)** 26:14  
**narratives (1)** 1:20  
**narrow (2)** 150:10  
 151:11  
**national (7)** 15:19 25:5  
 43:17 44:8 56:18 57:2  
 59:8  
**nationally (1)** 6:3  
**natural (1)** 18:18

**nature (10)** 9:18,23  
 38:11 46:24 93:25  
 120:8 127:24 129:13  
 138:10 145:11  
**nbs (2)** 36:8,9  
**nearing (1)** 107:25  
**necessarily (1)** 120:21  
**necessary (15)** 2:14  
 3:19 8:17 9:10,14  
 14:20 35:14 40:3 59:3  
 87:11 96:1 101:1  
 138:24 143:12 150:8  
**necessity (1)** 60:8  
**need (31)** 2:1,12 5:23  
 9:2 14:4 31:20  
 39:10,20 40:6 43:7  
 45:24 49:12 64:6 69:3  
 78:12 80:16 84:5  
 85:3,4 87:6,10 103:18  
 105:18 107:22 116:4  
 120:23 134:25 135:9  
 150:20 151:7 152:15  
**needed (6)** 7:25 9:2  
 33:18 39:21 47:22  
 62:7  
**needs (8)** 3:10,15 42:19  
 43:2 103:20 107:16  
 111:5 142:12  
**negative (3)** 90:6,9,10  
**neglect (2)** 46:20 118:1  
**negligence (3)** 20:3  
 36:25 119:3  
**negligent (5)** 18:5  
 20:16,20 21:13 23:6  
**negligently (1)** 23:5  
**negotiation (1)** 7:18  
**neil (5)** 60:15,18 61:6  
 68:21 100:22  
**neither (7)** 2:25 3:6  
 35:24 110:11 127:2,9  
 149:5  
**net (1)** 90:6  
**never (12)** 32:20 41:11  
 42:14 57:16 87:19  
 97:1 98:15,18  
 99:19,20 100:13  
 114:12  
**nevertheless (3)** 15:9  
 34:21 139:2  
**newbuilds (1)** 48:13  
**news (1)** 137:22  
**newspapers (1)** 137:22  
**next (16)** 3:25 4:13  
 17:25 54:25 56:5 58:8  
 61:13 63:25 64:15  
 65:7,22 70:2 115:11  
 125:5 139:24 154:3  
**nhbc (2)** 31:9 32:5  
**nice (1)** 137:15  
**night (2)** 10:16 11:9  
**noncombustible (4)**  
 18:20 27:22 29:10  
 32:11  
**noncompliance (5)** 19:5  
 21:25 29:19 41:11,12  
**noncompliant (6)** 19:17  
 22:8 28:5 29:14 56:2  
 95:10  
**none (9)** 10:1,17 13:21  
 61:22 101:6 113:8,19  
 152:22 155:4  
**nor (10)** 2:25 3:6 7:6  
 16:2,2 35:24 66:9 99:2

110:12 140:14  
**normal (1)** 38:21  
**norske (4)** 136:12,21  
 147:5,18  
**noses (1)** 47:4  
**note (12)** 15:22 16:16  
 17:17 46:21 66:21  
 69:12 82:10 87:2  
 108:25 121:7 149:17  
 150:3  
**notebook (1)** 101:7  
**noted (5)** 33:17 57:21  
 101:6 108:16 119:17  
**notes (8)** 16:14 54:15  
 62:22 66:3 67:20  
 79:18,23 107:19  
**nothing (7)** 27:3 43:13  
 45:17 89:17 99:1  
 107:23 111:2  
**notice (2)** 135:9 152:3  
**noticed (1)** 66:5  
**noticing (1)** 37:13  
**notified (1)** 125:18  
**noting (1)** 62:20  
**noting (1)** 3:4  
**notwithstanding (1)**  
 81:18  
**novated (4)** 6:23 37:22  
 107:6 114:17  
**novation (2)** 37:1  
 114:16  
**november (6)** 18:12  
 22:20 34:10 93:5  
 109:18 117:16  
**nowhere (2)** 33:14 87:3  
**npv (2)** 90:9,10  
**number (16)** 50:12  
 92:15 95:4 100:20  
 112:6,10 116:15 122:6  
 123:7 125:19,22  
 126:11 131:8 144:12  
 149:19 152:20  
**numbers (2)** 123:8  
 129:7  
**numerous (2)** 114:22  
 129:15

---

**O**

---

**o (1)** 44:14  
**oath (2)** 147:10,21  
**obfuscate (1)** 2:9  
**obfuscation (1)** 89:4  
**objection (1)** 139:8  
**objective (2)** 91:7  
 126:17  
**objectives (1)** 6:9  
**obligation (11)** 22:22  
 38:3,10,23,24 41:21  
 42:3 98:9 123:1  
 127:18 136:6  
**obligations (7)** 6:11  
 20:6 37:21,22,23 39:3  
 96:16  
**obscure (1)** 86:2  
**observe (2)** 127:9,16  
**observed (4)** 11:18  
 109:1 131:15 136:22  
**observing (1)** 42:13  
**obsessed (1)** 90:18  
**obsession (4)** 3:22  
 92:18,24 104:9  
**obtain (4)** 3:11 5:4  
 40:17 62:4

**obtained (4)** 25:3 39:12  
 148:21 149:22  
**obtaining (1)** 4:25  
**obvious (8)** 8:18  
 24:6,14 35:19,21  
 36:23 77:1 135:25  
**obviously (2)** 132:24  
 133:24  
**occurred (5)** 7:11 43:10  
 104:20 107:5,19  
**oclock (4)** 88:11,14  
 103:4 156:3  
**october (11)** 18:14 25:4  
 54:11 62:9 67:14  
 75:19 97:22 98:20  
 99:23 125:7,16  
**offence (15)**  
 130:8,19,25  
 132:4,5,9,11 133:2,3  
 134:6 139:14 142:4  
 143:20 151:15 152:5  
**offences (14)** 125:19  
 128:1 129:15,17  
 132:16,19,21 133:5  
 141:21,23 142:6,8  
 143:18 151:17  
**offending (2)** 43:5 133:5  
 145:17  
**offered (1)** 128:10  
**office (2)** 87:4 111:22  
**officer (5)** 19:6 22:12  
 37:8 40:23 41:4  
**officers (1)** 19:14  
**official (3)** 6:20 31:16  
 111:24  
**offset (1)** 4:24  
**often (1)** 55:12  
**ojeu (3)** 6:19 7:12 91:13  
**ok (1)** 32:10  
**old (2)** 137:9,24  
**omission (5)** 19:23  
 30:11 42:8 89:19  
 142:20  
**omissions (1)** 133:22  
**omits (2)** 33:6 37:25  
**omitted (1)** 62:2  
**once (9)** 6:22 20:1  
 37:8,14 57:5 82:12  
 107:5 112:15 138:15  
**onedimensional (1)** 1:20  
**ones (2)** 130:14 143:9  
**ongoing (3)** 27:19 37:3  
 83:23  
**onto (4)** 26:17  
 33:3,12,13  
**open (3)** 13:11,14 31:17  
**opening (33)** 1:4,8,9  
 2:1,3 10:21 11:5 12:3  
 24:10 29:12 37:17  
 49:2,8 70:5,24 88:5,17  
 92:21 99:17 101:21  
 102:17 110:13 113:17  
 114:2 115:8 122:3  
 125:4,21 126:2  
 157:3,6,10,13  
**openings (2)** 82:18  
 115:9  
**openly (1)** 35:15  
**operate (1)** 47:2  
**operating (2)** 23:13  
 106:11  
**opinion (1)** 85:1  
**opportune (1)** 5:10

**opportunities (3)**  
 52:20,24 69:11  
**opportunity (20)** 8:6  
 17:22 54:23 56:4  
 57:18 58:6 59:5 60:7  
 62:14 63:18 64:8,14  
 65:6,18,21 68:2 69:13  
 100:24 116:17 136:14  
**opposed (1)** 27:1  
**opposition (1)** 121:9  
**optimism (1)** 51:23  
**option (4)** 32:4 54:5  
 91:25 92:12  
**options (3)** 7:21 26:21  
 32:23  
**oral (12)** 12:11 24:10  
 66:22 68:4 70:14  
 92:21 99:17 110:13  
 114:1 115:8 131:23  
 152:22  
**order (16)** 2:9 5:18  
 9:12,15 13:25 14:2  
 19:5,16 22:4 27:24,25  
 28:10 62:1 79:11  
 117:4 151:5  
**orders (1)** 125:3  
**ordinary (2)** 134:23  
 145:17  
**organisation (4)** 50:16  
 81:23 97:2 104:15  
**organisations (2)** 51:18  
 89:1  
**origin (1)** 108:20  
**original (3)** 17:23 36:25  
 82:5  
**originally (2)** 35:22  
 90:21  
**osborne (1)** 12:6  
**others (25)** 2:3,10 4:7  
 8:7 11:22  
 24:11,12,14,18 35:16  
 52:13 54:2 72:22  
 78:17 81:10 85:12  
 93:11 95:20 113:3  
 114:8 124:19 132:7,10  
 147:23 150:24  
**otherwise (5)** 5:16 40:5  
 68:6 122:24 145:8  
**ought (4)** 19:1 39:17  
 122:16 131:17  
**ourselves (1)** 49:25  
**ousted (1)** 77:9  
**outcome (5)** 36:15  
 83:14 87:25 111:21  
 154:8  
**outcomes (1)** 14:24  
**outline (8)** 17:17 18:3  
 19:25 21:13 23:4  
 39:15 98:19 99:1  
**outlined (3)** 101:25  
 109:7 112:15  
**outlining (1)** 128:5  
**outraged (1)** 70:7  
**outset (5)** 6:11 17:11  
 36:8 53:12 61:12  
**outside (1)** 97:1  
**over (29)** 8:18 14:3  
 15:10 25:6 26:5 29:21  
 33:3 41:4 44:5,9 46:5  
 48:3 54:20 55:6 57:10  
 63:5 66:1 70:25 71:10  
 74:5 77:1 82:24 90:6  
 95:18 98:1 106:3



property (1) 90:2  
 prophetic (1) 117:17  
 proposal (4) 19:16  
 23:16 92:22 98:12  
 proposals (4) 19:9  
 84:14 102:24 105:14  
 propose (2) 2:6 7:9  
 proposed (26) 10:13  
 15:14 17:14 18:7,16  
 20:23 21:17 22:6,16  
 23:6 31:11 50:6 58:2  
 61:21,23,25 62:11  
 84:9,12 86:11 105:12  
 131:16 149:15  
 150:1,25 151:25  
 proposing (1) 111:11  
 prosecute (2) 136:20  
 137:4  
 prosecuted (2) 143:6  
 149:1  
 prosecuting (1) 143:13  
 prosecution (20) 70:11  
 75:6 126:1 132:4  
 135:16 136:19,23  
 137:1,3 139:14,25  
 143:5,12,16 144:10  
 145:6 148:17 149:7  
 151:15 152:4  
 prosecutors (1) 148:25  
 prospect (3) 39:16 89:9  
 123:12  
 protect (2) 48:8 137:17  
 protection (8) 70:12  
 102:16 126:22,23  
 135:14,20 141:15  
 149:6  
 protested (1) 83:22  
 provide (21) 17:22  
 20:16 28:18 39:13  
 61:14 82:19 93:8 94:1  
 98:9 112:18 123:18,19  
 124:1 127:13 128:12  
 129:7 131:13 135:6  
 141:13 144:20 149:6  
 provided (13) 2:25  
 39:15 59:25 61:25  
 68:8 70:18 81:11  
 98:10 102:16 114:17  
 117:3 125:13 132:1  
 provider (1) 33:20  
 providers (1) 33:23  
 provides (4) 23:14 45:2  
 81:23 94:14  
 providing (4) 20:9 78:19  
 141:14 146:9  
 provision (10) 102:4  
 115:2 133:3,18 134:16  
 135:21 146:6,21,25  
 152:4  
 provisions (3) 45:14  
 55:4 87:8  
 public (16) 6:14,17  
 45:25 47:12 48:8,11  
 106:25 112:3  
 129:20,25 131:6,8  
 144:12 146:11 149:22  
 150:5  
 publication (1) 47:7  
 publicised (1) 112:7  
 publicly (3) 9:8 80:10  
 141:19  
 published (3) 75:18  
 76:20 103:23

publishing (1) 75:14  
 pull (1) 70:8  
 pulled (1) 72:13  
 pulling (1) 33:13  
 punishable (1) 142:4  
 purchased (2) 64:11  
 65:9  
 purchasers (1) 95:16  
 purely (1) 36:20  
 purpose (14) 9:5 15:8  
 35:2,11 41:18 58:2  
 62:19 70:16 101:14  
 126:18 129:19 131:25  
 133:23 146:19  
 purposes (1) 141:12  
 pursuant (2) 17:12,15  
 pursued (1) 112:20  
 pursuit (2) 72:24 95:24  
 push (3) 33:12,16 78:20  
 pushers (1) 33:8  
 pushpull (1) 33:10  
 puts (1) 142:25  
 putting (3) 85:8 117:1  
 139:21

**Q**

qb (1) 136:12  
 qc (3) 108:5 112:14  
 114:2  
 qualified (2) 6:25 38:5  
 qualities (1) 34:16  
 quality (12) 4:4 6:12  
 51:10 53:15 54:13,20  
 67:6,23,25 94:1 96:16  
 104:1  
 queens (2) 49:2 80:22  
 query (1) 21:8  
 question (34) 8:22 10:6  
 14:21 37:6 60:19  
 69:19 92:3 105:4,8  
 110:16 113:9 117:12  
 123:17,22 127:15  
 128:9 130:7,17  
 137:6,17 138:8,18  
 139:11 141:3 142:17  
 143:7,22,24  
 145:19,21,21 148:16  
 150:1 151:24  
 questioned (3) 19:12  
 46:23 79:13  
 questioning (3) 136:4  
 141:4 151:6  
 questions (23) 8:3  
 12:10 49:12,16 61:1  
 65:1 68:15 69:3 79:14  
 81:25 104:22  
 117:2,5,6 125:25  
 136:2 137:12,13,15  
 144:6 145:13 146:16  
 147:20  
 quick (1) 110:2  
 quickly (4) 66:14 77:15  
 96:25 103:25  
 quite (4) 141:10 147:9  
 152:20 155:9  
 quotation (1) 137:10  
 quote (4) 82:10 131:22  
 139:19 145:1  
 quoted (2) 98:20 137:9

**R**

race (4) 32:14 69:15,17  
 87:16  
 radar (3) 43:18 44:12  
 47:11  
 radical (1) 103:16  
 rage (1) 12:23  
 rainscreen (6) 5:14  
 18:15 31:18 56:20  
 102:9,18  
 raise (2) 118:13 128:10  
 raised (9) 56:17 104:19  
 110:1 116:20 123:22  
 127:10 131:12 147:1,2  
 raises (1) 49:12  
 raising (2) 117:7 119:18  
 ran (1) 68:10  
 range (2) 59:25 141:21  
 ranging (1) 129:15  
 rapid (2) 7:9 75:21  
 rapidly (1) 76:18  
 rarest (1) 43:5  
 rather (9) 2:18 35:13  
 40:23 41:8 42:7 53:20  
 96:25 104:1 135:10  
 rbk00001862 (1)  
 104:22  
 rbk000003652 (1) 90:3  
 rbkc (37) 3:2,9,23 4:1,7  
 9:13 13:2,21 14:2,5,18  
 47:3 50:15 52:11  
 65:22 66:21 71:12  
 89:21 90:1,11 91:15  
 93:6,14,17 94:3 97:8  
 98:3 101:20 108:1,11  
 113:18 117:14  
 118:14,20 119:3  
 121:9,22  
 rbkcs (10) 4:5,23  
 13:15,19,21,24 46:15  
 93:24 101:13 106:9  
 rbkctmo (2) 53:4 54:20  
 reach (1) 141:7  
 reached (3) 3:15 21:2  
 44:6  
 reacted (2) 3:9 82:3  
 reaction (4) 4:17 25:10  
 43:25 55:15  
 reactions (1) 2:18  
 reactive (1) 84:14  
 read (11) 18:6 49:5  
 52:9,10 71:16 95:22  
 131:17 133:13 143:2  
 150:3,24  
 reader (2) 29:12 113:6  
 readily (1) 69:18  
 reading (1) 18:18  
 reads (1) 133:18  
 ready (5) 49:7 64:18  
 74:10 103:10 122:12  
 real (18) 2:21 54:8  
 71:21 77:18 78:16  
 83:1,1,1,10 92:17 117:7  
 120:12,13,15 139:3,6  
 140:5,24 144:9  
 realised (1) 62:17  
 realistically (1) 140:14  
 really (6) 67:2 90:12  
 91:21 93:13 97:8  
 113:8  
 reams (1) 51:7  
 reason (7) 24:8 38:25  
 75:21 80:18 132:15  
 139:15 146:13

reasonable (8) 35:5  
 36:5 38:4 81:20  
 133:20 138:11,23  
 142:3  
 reasonably (2) 130:5  
 135:1  
 reasons (11) 22:25  
 30:20 33:21 40:15  
 53:4 86:21 114:9  
 124:17,18 151:2  
 153:22  
 recalled (1) 77:14  
 receive (1) 140:14  
 received (2) 2:21 124:4  
 receiving (2) 59:3 80:7  
 recent (9) 23:12 75:12  
 106:25 131:8,21  
 137:24 144:12 149:22  
 150:13  
 recently (3) 78:14 112:4  
 124:14  
 reception (1) 87:23  
 recites (1) 37:21  
 recognise (4) 11:2  
 34:22 66:16 69:14  
 recognised (5) 57:25  
 77:15 87:6 130:10  
 136:6  
 recognising (1) 40:3  
 recollection (1) 60:10  
 recommend (3) 89:7  
 95:12 103:19  
 recommendation (1)  
 87:8  
 recommendations (15)  
 43:8 46:7 77:20,25  
 78:13 85:24 103:15,20  
 107:11,12,21  
 111:2,3,4 121:10  
 recommended (3) 3:4  
 16:16 93:7  
 reconsider (1) 47:4  
 record (2) 62:23 143:3  
 recorded (4) 10:15  
 39:23 93:15 99:13  
 records (2) 28:15 33:21  
 recreational (1) 97:15  
 rectified (3) 63:19  
 67:24 76:14  
 recurrence (3) 2:13  
 11:23 43:1  
 recurring (1) 92:10  
 red (1) 26:2  
 reduce (2) 5:9 9:4  
 reduced (1) 107:3  
 reducing (1) 108:20  
 reduction (4)  
 7:15,19,23 8:4  
 reductions (1) 7:18  
 reds (1) 68:21  
 refer (1) 113:2  
 reference (20) 16:23  
 20:7 36:20 43:16  
 85:20 103:17 109:11  
 111:19 129:21  
 131:6,14 135:19  
 141:2,24 142:11  
 146:8,23 149:16  
 151:2,6  
 references (4) 49:24  
 128:13 135:7 137:23  
 referred (10) 10:9 39:16  
 65:11 96:23 103:22,24

107:18 111:9 112:6  
 119:7  
 referring (1) 119:6  
 refers (3) 54:10 55:7  
 64:17  
 reflect (4) 5:10 11:20  
 49:19 112:11  
 reflected (2) 5:1 6:3  
 reflective (2) 11:16 39:3  
 reform (4) 9:12 13:25  
 73:19,21  
 reformation (1) 80:15  
 reforms (1) 75:17  
 refurbish (1) 2:17  
 refurbishment (32) 1:25  
 2:6,14 3:19 4:24 6:13  
 8:15 9:3 11:11  
 14:12,16 17:12,14,18  
 50:9 53:3,4 58:11  
 61:5,16,20,21 64:11  
 69:12 83:13,15 94:5  
 96:18 98:10 99:6  
 105:6 121:8  
 refurbis (1) 61:23  
 refuse (3) 12:9 130:6,16  
 refused (2) 21:19 96:4  
 refusing (1) 31:10  
 regard (4) 71:8 97:9  
 119:17 145:12  
 regarded (5) 3:25 47:17  
 53:23 91:10 139:14  
 regarding (5) 9:17  
 34:13 56:18 84:20  
 93:16  
 regardless (1) 148:8  
 regards (3) 80:4 81:11  
 94:18  
 regeneration (1) 50:2  
 regime (3) 86:1 105:16  
 106:10  
 regional (1) 81:8  
 regret (1) 10:22  
 regular (1) 74:8  
 regularly (1) 67:11  
 regulation (9) 59:2  
 65:25 84:6,13,16 86:9  
 99:2 105:23,23  
 regulations (43) 5:25  
 6:4,18 14:22,23 15:5  
 17:6 19:1 22:5 27:20  
 29:9,15 39:7 41:9  
 43:12 55:1,20 56:3  
 57:24 58:5 60:12  
 61:19 62:13 63:16  
 64:13,25 65:13 69:20  
 75:20 83:20,24 85:7  
 94:17 97:18 101:17  
 107:23 108:7,12  
 109:11 120:21 127:17  
 142:9,21  
 regulator (2) 48:14  
 86:11  
 regulatory (15) 9:12  
 13:25 35:1 42:21 43:6  
 84:10,11,14 86:14  
 105:18 106:10 125:19  
 129:16 132:19 142:8  
 reinforced (1) 108:21  
 reintroduction (1)  
 45:25  
 reiterate (1) 53:12  
 reiterated (1) 54:12  
 reject (1) 50:22

rejected (2) 19:17 32:3  
 rejecting (1) 40:24  
 rek (1) 60:9  
 relate (1) 27:6  
 related (5) 68:20 94:19  
 97:18 98:8 106:13  
 relates (3) 27:3 112:12  
 116:3  
 relating (3) 18:17 96:16  
 151:16  
 relation (12) 18:8 20:21  
 34:6 42:8 58:10 63:17  
 89:14 102:2 111:4  
 122:6 124:7 136:24  
 relationships (1) 33:23  
 relativity (1) 23:12  
 release (1) 60:21  
 released (5) 45:23 47:12  
 76:15 80:10 102:15  
 relentless (1) 89:3  
 relevance (1) 135:21  
 relevant (12) 2:19 14:19  
 37:11 38:13 41:23  
 50:19 93:18 98:18,23  
 114:19 138:4,6  
 reliable (1) 23:23  
 reliance (7) 13:6 21:21  
 92:16 114:11 115:16  
 149:2 150:21  
 reliant (1) 114:7  
 relied (4) 34:3 55:12  
 58:19 65:15  
 relies (1) 28:8  
 reluctance (1) 37:16  
 rely (8) 10:5 99:18  
 124:6 130:5 137:1,4  
 145:18 146:15  
 relying (1) 26:24  
 remain (2) 24:4 140:23  
 remained (2) 4:5 98:24  
 remains (1) 105:8  
 remarkable (1) 101:8  
 remarkably (1) 102:19  
 remarks (2) 42:18 136:7  
 remember (3) 72:14,18  
 125:1  
 remind (1) 49:25  
 reminder (3) 42:20  
 79:23 87:18  
 reminding (1) 42:18  
 remit (2) 51:21 63:14  
 remorse (1) 11:7  
 remote (1) 139:4  
 remove (5) 8:19 43:16  
 76:23 126:16 141:5  
 removed (1) 57:18  
 removes (1) 146:14  
 render (1) 95:9  
 rendering (1) 47:19  
 renders (1) 28:20  
 renewal (1) 7:6  
 repair (1) 2:24  
 repairs (1) 8:17  
 repeat (1) 147:10  
 repeated (1) 109:14  
 repeatedly (1) 145:15  
 replaced (1) 87:5  
 replacement (1) 109:24  
 replicates (1) 131:20  
 reply (4) 26:7 31:14  
 32:17 85:6  
 report (37) 1:13 3:3  
 8:20 18:10,13 19:20

28:15 29:4 43:20  
 44:16 46:8 47:25  
 60:22 61:16,16,18  
 62:10 66:4 74:17  
 75:15,18 76:2,6 77:21  
 82:4 88:21,22 89:9  
 90:4 91:6 103:21  
 107:19 111:11 113:10  
 116:2 125:7 126:1  
 reported (3) 90:1 91:2  
 148:18  
 reporting (1) 90:24  
 reports (14) 44:23  
 45:1,6,12,22  
 47:8,8,11,11 61:21  
 62:5,7 73:10,12  
 represent (10) 30:11  
 67:5 71:4 78:15,22  
 79:16 122:19 124:25  
 126:20 149:5  
 representation (2)  
 56:20 122:24  
 representatives (1)  
 154:14  
 represented (5) 17:21  
 18:23 49:1,8 157:7  
 reproach (1) 10:20  
 reprocore (1) 91:12  
 request (3) 79:9 86:21  
 118:23  
 requested (2) 7:23  
 59:14  
 require (4) 30:23 79:25  
 88:10 153:8  
 required (26) 3:1 6:18  
 9:11,21 10:12 17:3  
 20:10 21:9,14 23:9,10  
 27:20 28:1 36:2  
 40:12,15 41:9 55:4  
 57:12 105:7 109:6  
 111:6 114:16 117:9  
 145:22 147:20  
 requirement (7) 5:4  
 15:1 18:4 24:25 36:18  
 55:6 109:22  
 requirements (25)  
 5:20,21,25 14:24,25  
 15:10 16:24 19:22  
 31:7 32:1,12 35:15  
 38:13 41:16 45:7,10  
 55:25 57:15 65:25  
 96:1,11 97:17 105:3  
 107:23 114:19  
 requires (5) 15:16 23:15  
 89:2 121:2 142:17  
 requiring (2) 6:15 16:11  
 requisite (1) 97:12  
 rescue (2) 75:24 83:19  
 research (6) 5:3 43:18  
 44:25 47:8 81:22  
 108:22  
 reserved (1) 116:24  
 resident (3) 86:7 134:10  
 154:1  
 residential (2) 76:21  
 109:6  
 residents (38) 1:6,11  
 2:23 3:18,20 10:10,14  
 49:1 53:7 69:21 73:14  
 74:18 82:9  
 84:10,12,17 85:8  
 86:4,8 88:19 93:2  
 105:5 108:1 118:13

119:4,13 120:3,8,9,20 121:15,18,20,23 123:13 132:25 146:6 153:11 resignation (1) 77:10 resignations (1) 71:25 resist (3) 15:2 29:16 30:15 resistance (5) 21:9 41:1 44:25 45:6 55:5 resolution (1) 142:17 resolving (1) 144:15 resourced (2) 89:5 117:11 resources (2) 107:2 116:7 respect (17) 49:13 68:15 71:8 89:15 121:3 122:13 124:12 125:3,6 129:11 135:16,20 136:17 140:2,24 145:9 157:16 respects (3) 15:9 37:18 149:19 responded (3) 42:5 76:3 118:21 responding (1) 76:25 response (9) 71:2 75:15 84:24 105:21 110:11 111:10 120:10 123:23 124:4 responses (1) 43:3 responsibilities (4) 2:7 51:20 67:4 68:25 responsibility (33) 1:15,17 2:2,10 9:13 11:15 13:18,23 19:19 37:3,20 38:1 40:17 41:20 42:11 59:21 60:1 61:7 66:25 83:8,14 100:12 101:2,19 104:15 113:13,14,19 114:5 115:3 118:10 126:8 142:19 responsible (19) 13:24 14:1 58:9,24 59:1 61:17 63:4 64:23 65:8 72:11,21 75:7 79:3 81:13 83:12 106:1 113:25 114:14,24 rest (2) 21:22 136:15 restraints (1) 69:20 restricted (1) 7:13 result (11) 8:8 16:3 29:3,22 43:24 48:9 50:25 72:17 102:15 107:24 142:16 resultant (1) 47:25 resulted (6) 6:25 17:23 47:9 68:14 69:1 109:3 resulting (2) 3:3 51:10 results (6) 5:15 44:13 45:1,10 93:5 144:16 resume (2) 48:20 103:4 retained (2) 7:4 17:11 retainer (1) 37:22 retardance (2) 109:22 110:9 retardant (2) 95:8 109:25 retract (2) 147:9,12 retractable (1) 147:12	return (2) 89:3 124:25 returning (1) 6:8 reveal (1) 45:6 revealed (2) 45:12 76:15 revenue (1) 26:4 reverse (1) 134:21 reverted (1) 95:24 review (10) 47:24 64:19 73:10 83:19,23 84:1 100:24 103:17 109:10 110:3 revised (2) 82:4,7 revised (2) 19:25 93:8 revisit (1) 36:23 revolved (1) 97:14 revolving (1) 71:11 reynobond (9) 25:1,23 28:4 29:14 55:21 57:19 64:1,9 94:22 riba (1) 105:14 rightly (1) 66:2 rights (1) 48:7 rio (4) 137:25 138:14 139:10 144:2 rise (8) 48:20 116:15 125:25 135:20 142:22 143:16 144:9 154:11 risible (1) 28:11 risk (53) 9:16,22 10:14 14:14 37:13 40:21,24 42:1 43:13,21 56:12 63:2,4,11 83:1,21,25 84:20,22 85:4,5,6,15,17,18,21 86:8 105:3 125:10,14 126:6 134:22 135:16 137:23 138:5,16 139:3,4,5,7,8,13,13 140:18 141:5 142:22 143:16 144:1,9 147:2,13,14,19 risks (5) 4:19 17:22 46:6 81:14,21 rivals (1) 98:6 riveted (6) 24:16 27:1,7,8,16 28:6 robert (4) 75:11 79:5 118:21 119:15 rock (1) 32:23 roe (4) 77:11,17,24 79:6 role (20) 13:22 14:3,5 19:13 28:10 37:1 39:4,7,9 52:18 58:17 67:5,9 68:7,9 93:10 99:11 106:24 143:10,14 roles (2) 2:7 68:25 rolled (1) 99:25 room (1) 128:2 rooted (1) 8:16 roskills (1) 139:10 round (1) 88:11 route (8) 15:16,21 16:4,13,17 35:21 82:19 106:21 routes (2) 15:12 16:1 rowan (2) 67:3,17 royal (1) 49:25 rs5000 (27) 30:5,8,25 31:9,10,12 32:3,6,24 33:17,18,21 34:2,6,12 35:22,24 36:4 56:7,9	57:4,5,9,17 94:7 115:18,22 rubric (1) 133:17 rules (1) 117:6 ruling (2) 144:24 149:8 run (1) 50:13 running (4) 88:11 104:12 123:3 146:3 ryd00023468 (1) 110:7 rydon (80) 7:14 12:6 14:17 22:22 24:20 36:24 37:17,21,22,23,25 38:3,14,20,23,23 39:2,5,9,12,14,17,21,24,25 40:1,3,6,9,10,12,12,14,16,17 41:10,11,15,20 42:3,4 41:10,11,15,20 42:3,4 50:7,9 54:14 58:8,11,15,19,23 59:1 73:11 94:15 96:12,14 97:20,23,25 98:25 99:9,12,14,15,19,23 100:11 101:25 102:22 105:2,6 110:4,6 112:3 113:3,24 114:2,4,6,8 115:15 rydons (8) 5:5 7:16 16:24 38:25 39:7 41:2,7 58:17	saucers (1) 104:25 save (2) 74:16 132:1 savills (1) 90:4 saving (1) 92:5 savings (2) 90:14 91:22 saw (4) 19:13 34:11 52:2 109:13 saying (7) 4:13 46:17 77:23 96:23 128:7,8 129:3 scale (2) 1:19 8:14 scanell (1) 93:24 scared (1) 70:21 scheme (4) 55:19 84:10,12 91:12 school (1) 3:11 schools (1) 3:12 scope (16) 23:18 38:7 90:17 119:25 129:14 130:21 132:19 135:14 136:3,8 141:1,18 144:5 150:2,17 151:12 score (1) 111:23 scored (2) 97:23 98:4 screen (1) 128:4 screens (1) 155:1 scroll (5) 25:17,24 26:6 31:24 32:16 scrutiny (4) 14:3,4 38:17 90:2 seated (1) 1:17 seaward (7) 154:11,17,21 155:2,13,17,20 second (15) 15:15 17:14 23:9 30:9 32:2 35:3,17 39:5 56:14 87:4,14 91:18 100:6 103:12 139:24 secondly (6) 20:15 51:3 89:7 95:11 135:15 145:7 secretary (2) 75:9 111:17 section (21) 21:14 39:16 66:4 79:11,17 87:9 121:1 130:10,12 132:9,21,25 133:1,2,10,11,14,17 134:11 136:9 151:18 sections (1) 95:23 sector (1) 105:17 sectors (1) 43:19 security (1) 20:22 see (13) 25:19,25,25 26:6 31:14 84:13 109:15 125:8 127:23 132:18 138:9 153:6 154:2 seeds (1) 2:15 seeing (2) 11:21 154:10 seek (14) 28:10 51:12 88:23 114:14,18 131:19 146:9 149:7,9,14 150:10,14 151:9,23 seeking (19) 1:14 7:15 12:15,19 13:1 22:11 24:11 40:2,25 42:15 52:7 62:23 116:12 124:20 126:22 129:23 131:2 144:23 145:10 seeks (5) 6:10 14:5	113:13 142:20 148:20 seem (8) 16:6 17:3 72:6 90:19 92:4 100:16 110:12 151:7 seemed (2) 99:15 100:14 seems (13) 8:2 19:2 46:9 83:5 92:14 93:13 97:13 98:16,25 101:9 110:22 114:24 137:2 seen (6) 3:19 4:6 52:10,10 94:18 106:22 seize (1) 4:12 select (9) 7:11 43:20 44:16 46:8 47:24 81:7,17 82:4 100:9 selected (3) 95:25 97:11,20 selection (7) 8:12 58:8 61:11 64:19 94:4 97:4 101:24 selective (1) 30:10 selectively (1) 150:23 selfanonymised (1) 24:3 selfemployed (1) 132:23 selfincrimination (20) 12:9 116:13 122:7,14 124:7 125:10 130:6,22 135:14 136:3,8 140:5,25 141:5 142:22 147:2,13 149:8 150:18 157:19 selfsame (1) 70:18 sell (3) 26:3,15 33:17 selling (1) 58:1 semantics (1) 20:4 seminal (1) 23:2 senior (5) 65:25 77:14 105:15 121:19 155:12 sense (5) 20:22 103:15 105:3 128:22 146:11 sensible (2) 133:13 144:5 sent (2) 27:19 34:9 sentence (1) 54:24 sentences (1) 129:18 separate (2) 13:22 17:12 separation (1) 13:20 september (5) 53:25 57:11 86:19 92:6 99:22 series (1) 137:7 serious (8) 10:25 19:23 20:2,17 62:21 81:19 107:20 129:16 seriously (2) 18:11 65:13 served (1) 125:7 service (2) 126:2 155:11 services (8) 23:10,18 61:14 68:9 75:24 76:10 85:14 115:2 set (18) 4:10,13,15 14:23 25:15 29:5 55:4 82:3 94:13 115:24 127:21 129:20 132:16 136:9 141:22 142:12 144:16 151:3 setting (1) 85:6 setup (1) 56:15 seven (3) 26:9 44:23 67:15	several (2) 68:11 111:23 shah (1) 119:14 shall (8) 1:7 15:1 24:4 47:5 88:13 133:19 154:5 155:7 sham (1) 47:20 shame (1) 73:24 shant (3) 152:15 153:20 154:6 share (3) 40:16 47:18 113:6 shared (3) 97:1 124:19 126:8 sharp (2) 45:24 85:16 shaw (1) 139:12 sheet (2) 115:17,20 shelter (1) 94:15 shepherds (1) 47:1 shift (2) 83:8 150:10 shocked (1) 52:6 shocking (1) 45:1 short (6) 48:19,23 54:20 103:7 111:21 146:20 shortcomings (2) 19:19 36:24 shortly (1) 75:14 should (96) 6:24 9:9 11:19,19 12:17 15:17,18 16:18 17:25 21:1,2,12,18,20 22:14 23:17 24:13 35:20 39:5 41:3 42:3,4,12 43:16,23 45:12 46:9 51:20 52:21 57:5,16,25 58:2,21 59:16 60:20 62:11,15 63:9,20 64:12 65:2,5,13,24 66:12,20 67:22 69:16 77:13 81:19 85:19 86:7 87:2 88:15 94:3,16,24 95:20,23 96:2,8,12 97:8 103:14,16,17,18 104:3,6 105:11 106:7 107:12 110:14,19 111:13,21 117:11 119:16,21,25 121:12,17 127:9 136:14 138:16 139:5,8 141:16 143:1 145:22 149:13,14 151:15 152:19 155:21 shoulder (1) 83:13 show (3) 76:20 138:24 143:13 showing (1) 44:14 shown (2) 21:20 102:24 shows (5) 28:21,25 29:1 32:15 51:16 sic (1) 26:13 sidelined (4) 22:18 23:1 90:22 119:22 sig (4) 31:9,15 64:2 65:10 sight (1) 87:19 sign (1) 113:23 signed (3) 105:5 119:13 147:24 significance (1) 22:3 significant (8) 8:25 10:7 27:21 29:11 40:16 85:18 93:9 123:7 signoff (2) 41:5,8	signs (3) 78:16 86:20 109:14 sill (1) 102:8 similar (6) 29:2 38:7 106:24 108:13 112:1 131:9 similarly (2) 24:2 149:2 simon (7) 53:22 54:10 58:15 68:21 99:14 100:22 110:5 simplistic (1) 1:20 simultaneously (1) 82:22 since (9) 2:22 10:12 43:15 57:17 73:7,18 116:17 119:19 124:4 sincerely (2) 23:24 122:24 single (2) 2:16 52:4 singularly (1) 97:9 sir (83) 1:3,10 48:18,25 49:7,11 51:22 52:14 69:10,25 70:3,4 75:22 76:2 79:9 88:2,3,8,15,18 102:25 103:1,3,9,12 122:2,10,11,18 123:21 125:12 127:19,23 128:19 129:1,22 132:14 133:8,13,23 134:1,3,7,15,18 135:3,11,19 141:6 143:15 144:5,22 145:17,24 146:21 147:16,22 148:3,20 150:2 151:24 152:3,7,11,15 153:1,1,2,6,9,15,18 154:11,15,19,25 155:3,14,18,20,21,24 156:1 sit (4) 74:11 87:6 153:20,21 site (7) 31:11 66:4 67:6,10,11,13 100:20 sits (1) 2:20 sitting (2) 128:2 153:20 situation (2) 22:2 144:11 six (5) 83:17 107:20 135:13,24 151:20 size (2) 38:7 44:25 skill (7) 35:5,7 36:5 38:4 51:8,9 87:11 slightly (1) 139:21 slip (1) 60:13 small (1) 94:24 smallest (1) 27:9 smoke (5) 8:25 32:15,20 72:17 74:9 smooth (2) 123:3 146:2 snapshots (1) 54:17 socialled (4) 8:6 15:16 33:10 34:8 social (15) 46:7,9 69:15 73:14 83:16 84:17 85:4,13 86:4,14 87:16 89:15 106:1 120:17 121:3 society (1) 73:25 sold (3) 25:14 58:4 64:5 sole (1) 104:3 solely (1) 77:6
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S

sabotaging (1) 12:18 sackings (1) 71:25 sacks (1) 111:24 sadiq (2) 77:12 79:5 safe (7) 48:8 65:21 75:13,13 77:2 83:15 104:2 safer (3) 78:20 84:5 103:21 safety (65) 5:24 6:1,3 8:3 9:7,12,15 11:11 13:25 14:10,25 23:2 40:21 42:1 44:25 46:3 48:14 55:2,12 62:13 63:1,17 72:22 73:19,21 74:8 75:17 83:19 85:14 86:7 90:18,19 92:3 93:22 94:20 98:20 99:6 104:5 105:2,7,15 106:1,3 109:6 110:22 114:12 115:2,3 118:1,10,14,18,19 119:9,11,18 120:10,24 132:22 133:20 141:25 142:3,7,24 143:12 saint (1) 34:10 sales (4) 25:15,22 26:1 33:2 same (12) 14:7 35:23 62:24 76:1 85:11 90:23 98:24 110:6 119:1 137:8 141:14 148:3 samples (1) 92:1 sanction (1) 127:7 sanctions (1) 106:4 sarah (1) 93:24 satisfactory (2) 96:2,5 satisfied (2) 23:18 78:22 satisfy (2) 40:23 41:22 satisfying (1) 64:5
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<p>solicitors (1) 123:23                  solution (2) 4:7 115:22                  solutions (2) 34:15                  86:18                  something (8) 12:25                  52:25 91:23 123:19                  134:9,9 146:17 153:16                  son (1) 72:15                  soon (2) 73:15 127:13                  sophisticated (1) 89:6                  sorrow (1) 11:7                  sort (7) 123:22 128:1                  131:9 148:13 149:8                  151:1,8                  sought (15) 52:13 99:18                  115:15 131:9                  141:12,23 146:7                  148:16,17 150:7,9                  151:9,11,14,21                  sound (2) 2:25 85:15                  sounes (4) 54:1,2 59:11                  100:22                  source (3) 28:18 55:9                  82:14                  south (2) 3:4 83:18                  sown (1) 2:15                  Spain (1) 24:24                  spandrel (1) 59:10                  speak (3) 117:4 120:4                  144:8                  speaking (3) 122:21,23                  124:16                  specialist (7) 39:10,11                  53:21 58:12 96:20                  106:22 114:21                  specialists (2) 65:11                  92:17                  specific (3) 4:20 63:21                  112:17                  specifically (2) 32:23                  68:20                  specification (14) 7:21                  9:8 21:11,19 31:25                  36:8,10,19 39:19 59:8                  67:8 93:21 110:1,3                  specified (6) 7:20 33:9                  35:22 36:4 41:17                  42:12                  specifiers (1) 33:8                  specify (6) 33:13 36:8                  94:6 95:7 96:4 115:12                  spectators (1) 99:9                  spectre (1) 109:17                  speed (2) 7:3 78:25                  spending (1) 72:2                  spent (2) 81:2 90:12                  spoil (1) 42:9                  spoken (1) 154:23                  spokesperson (1)                  111:16                  sponsoring (1) 126:20                  sports (1) 97:14                  spread (25) 15:2 18:5,9                  20:21 21:14 22:15                  23:7 29:16 40:18                  43:21 44:3 55:9 56:10                  66:14 75:21 76:18                  81:15 82:16,20 95:2,3                  98:13 108:20,24                  109:11                  spreading (1) 28:18                  sprinklers (4) 19:11                  45:12 47:22 48:12</p>	<p>square (1) 26:3                  squarely (1) 51:20                  squeezed (1) 107:6                  staff (3) 10:13 35:5                  99:19                  stage (14) 3:23 18:13                  37:8,15 51:6 60:22                  62:15 67:17 101:11                  123:24 124:1 140:20                  147:1 151:22                  staggering (2) 44:15                  74:2                  stain (1) 73:24                  stairs (1) 74:10                  stakeholder (1) 85:10                  stakeholders (1) 54:9                  stance (2) 13:16 37:17                  stand (2) 147:25 154:6                  standard (3) 16:22 25:9                  35:7                  standards (12) 3:1                  43:17 44:1,3,8 45:3                  48:15 59:3 85:23,25                  96:17 105:7                  starkly (1) 143:1                  start (4) 61:2 81:3                  89:23 121:14                  started (3) 52:4 67:19                  140:8                  starting (4) 1:23 17:20                  25:18 36:11                  starts (1) 32:13                  stated (7) 53:6                  55:16,24 57:14 77:17                  81:8 85:15                  statement (28) 1:8,9                  10:21 18:11,18                  49:3,5,8 53:17 54:7,15                  58:16 60:10 62:23                  70:5 88:6,17 125:4                  138:4 147:7,17,23,25                  148:7 157:3,6,10,13                  statements (21) 1:5                  9:17 10:4 53:13                  70:19,20 71:14,18                  80:20 112:17,24                  113:1,6 122:3 124:8                  125:13 126:2 131:14                  135:22 146:21,25                  states (9) 53:22 58:15                  60:4,9 61:6 63:14                  67:13,15 68:6                  stating (1) 9:18                  status (1) 7:15                  statute (1) 127:8                  statutory (6) 17:7 41:23                  78:13 114:19 125:19                  150:5                  stayput (2) 63:8 77:16                  steer (1) 93:16                  stein (8) 70:1,3,5,6                  111:9 112:6 116:11                  157:11                  step (3) 3:19 77:13                  137:19                  steps (3) 67:23 81:20                  137:7                  still (21) 12:23 26:11                  27:19 44:18 54:13                  71:7,7 73:25 74:13                  76:1,11,16 86:5 87:2                  88:10 112:3,4 138:22                  147:25 148:5 151:12</p>	<p>stillborn (1) 72:16                  stock (1) 90:6                  stokes (8) 9:16                  10:1,3,5,15 63:2,9,20                  stone (2) 1:14 49:18                  stood (1) 91:14                  stopping (2) 96:24                  108:23                  stops (1) 104:17                  storeys (1) 82:22                  story (1) 104:12                  strange (1) 100:3                  strategies (1) 19:4                  strategy (40) 3:7                  9:4,5,9                  17:13,16,17,20,24                  18:3,16 19:25                  20:18,20 21:14 22:9                  23:4 33:1,7,11 39:15                  61:13,15,16,18,20,21                  62:10 98:9,11,20,22                  99:1,4,10 100:25                  101:7 102:4 110:20                  115:3                  stress (1) 74:20                  strict (2) 96:10 142:9                  striking (1) 92:2                  strong (2) 93:16 137:16                  stronger (2) 105:19                  121:5                  strongly (3) 22:21 48:6                  140:11                  struck (1) 155:3                  structure (1) 132:20                  struggle (2) 32:6 113:7                  studio (58) 4:1,3 7:4,5                  12:6 14:17 21:8 26:21                  34:24 35:1,3,12,12,17                  36:1,5,13,25                  37:1,2,5,21 40:2,4,11                  42:12 54:1                  59:6,7,17,19 60:1,5,22                  61:12 62:6 64:22                  91:21,24 92:6                  93:11,15 94:6,15                  95:22 97:11 98:25                  100:4,9,15,23                  102:1,14,22 113:2                  114:11,17 115:12                  study (4) 15:20,23 16:2                  34:13                  sub (1) 42:1                  subcontract (1) 37:24                  subcontracted (1)                  58:11                  subcontracting (1)                  37:20                  subcontractor (4) 14:6                  36:21 41:19 96:13                  subcontractors (5)                  14:17 33:7 38:16,17                  114:21                  subject (6) 21:15 44:19                  50:8 106:17 117:6                  130:10                  submit (11) 53:14 59:4                  60:24 62:4 101:15                  117:8 136:16 140:2,24                  142:16 143:15                  submitted (4) 60:5 98:1                  110:13 154:17                  subpar (1) 51:10                  subsequent (4) 25:3</p>	<p>47:15,24 149:7                  subsequently (2) 25:3                  36:20                  substance (1) 28:12                  substantial (3) 112:8                  117:13 121:23                  substantially (1) 14:11                  success (2) 4:5 33:22                  successfully (1) 115:23                  successive (2) 17:24                  45:20                  suffer (3) 85:3,5 108:13                  suffered (1) 10:10                  sufficient (3) 78:23,24                  118:25                  sufficiently (1) 15:9                  suggest (19) 23:20                  40:10,11 48:6 51:1,3                  58:6 74:21 83:12 86:7                  99:8 127:17 131:2                  136:5 143:23 144:4                  146:11 147:16 151:6                  suggested (9) 13:19                  28:6,9 59:12 60:2                  95:19 110:3 121:11                  135:24                  suggesting (3) 20:24                  23:22 88:15                  suggestion (5) 27:2                  37:5 50:23 85:22                  92:20                  suggestions (1) 11:23                  suggests (2) 68:22                  140:11                  suitability (2) 58:21                  94:20                  suitable (6) 6:25 30:8                  32:3 57:7,9 58:1                  suite (2) 44:23 45:22                  suits (1) 103:1                  summary (2) 49:23                  86:19                  summer (3) 63:3 93:23                  124:24                  superior (1) 44:1                  superlow (1) 34:14                  supervision (1) 82:1                  supervisor (1) 67:10                  supplemental (2)                  117:1,5                  supplied (4) 57:20                  64:2,9 95:20                  suppliers (3) 57:6 64:4                  114:21                  supply (2) 63:25 95:14                  supplying (1) 58:4                  support (6) 106:6 123:7                  124:19 150:25 152:23                  155:4                  supported (1) 152:20                  supporting (1) 84:21                  suppose (1) 155:21                  supposed (5) 92:16                  98:17 114:13                  137:12,14                  sure (6) 72:12 78:3                  86:20 88:9 110:1                  155:9                  surely (3) 71:16,19                  85:15                  surface (4) 15:18                  27:3,25 44:3                  surprise (2) 124:9,15</p>	<p>surprising (1) 66:11                  surprisingly (1) 61:22                  surroundings (1) 56:12                  surveyor (1) 66:1                  survivors (9) 1:5,11                  48:25 88:19 105:21                  123:13 146:6                  153:11,25                  susceptibility (1) 55:8                  susceptible (1) 1:19                  suspected (1) 125:18                  suspects (1) 140:23                  suspicion (1) 126:16                  sustainability (2) 4:25                  6:2                  sweeping (1) 89:7                  swiftly (2) 78:1 115:6                  switching (1) 24:24                  sympathy (2) 11:7                  113:21                  symptomatic (1) 29:23                  system (34) 2:24 18:17                  19:8 20:2 21:5,16,23                  22:6,8 24:25 31:11                  35:1 42:21 52:20                  55:10 56:8,21 62:18                  64:4,20,24 66:17                  80:15 82:15 85:8,9,25                  95:13 102:10                  105:19,22,23 115:25                  117:9                  systemic (2) 8:21,22                  systemised (1) 16:22                  systems (6) 27:9 43:22                  48:8 53:8 56:23 84:15</p>	<p>technicality (1) 7:9                  technicals (1) 31:14                  technology (1) 16:21                  telling (2) 9:5 102:22                  tells (2) 29:7 83:3                  temperature (1) 44:6                  temperatures (1) 5:16                  temptation (1) 112:21                  ten (2) 44:10 48:12                  tenant (1) 50:16                  tenants (4) 117:15                  118:2,11 121:3                  tend (2) 130:7,18                  tendency (6) 44:5                  137:13,18 143:11                  150:10,14                  tender (7) 7:16 37:14                  39:14 50:7 97:25                  98:1,5                  tendered (2) 36:11 63:3                  tenderers (1) 59:24                  tenders (2) 59:24 98:2                  tending (1) 138:8                  tension (4) 135:19                  142:17 144:10,15                  term (2) 50:20 142:4                  terminated (1) 56:10                  terms (35) 98:7 103:17                  104:19 108:2 115:10                  124:14 125:24 129:21                  130:13 131:5,16                  132:20 134:17 135:19                  136:22 137:11 138:6                  140:17 141:2,18                  142:1,11 146:4,7,8,14                  147:6 148:6 149:15,21                  150:4 151:2,5,10,25                  terence (1) 61:19                  terrible (2) 11:24 22:3                  terrifying (2) 74:6                  117:22                  terse (1) 113:4                  test (24) 15:14 16:1                  27:15                  30:4,6,7,19,25,25                  31:12,17 34:2                  56:9,10,11,13,14,16,16,24                  57:4,5 96:1,3                  tested (10) 15:14                  25:2,10 27:13 55:20                  56:1,9 57:11 96:9                  115:25                  testifies (1) 55:19                  testing (5) 25:3 29:7                  54:25 81:23 86:1                  tests (2) 43:24 82:1                  thank (29) 1:8                  48:17,18,21 49:7,10                  69:24,25 70:4 88:3                  103:3,5,11 122:1,2,11                  134:18 135:3,11                  152:2,10,12 153:3,18                  154:9 155:20,20                  156:2,3                  thanking (1) 88:20                  thanks (2) 32:19 88:1                  thats (23) 41:6 48:18                  87:18 102:25 105:10                  109:19 110:7 117:20                  121:11 122:5 126:13                  133:10 136:7                  145:17,25 147:23                  152:6,6,10,12,24</p>	<p>155:6,13                  theme (3) 103:12                  104:12 112:9                  themes (4) 17:5 50:13                  52:18 69:5                  themselves (8) 41:22                  58:20 60:2 64:5 98:18                  113:15 114:23 115:1                  thereafter (1) 47:19                  thereby (3) 4:4 33:13                  47:19                  therefore (23) 10:18                  13:15 18:25 22:7                  30:13 39:17 41:10                  43:7,25 45:10 49:4                  50:23 57:23 60:1                  64:23 75:6 79:25                  100:6 116:6 117:10                  119:20 120:14 150:20                  theresa (1) 87:5                  thermal (3) 5:21 30:13                  82:6                  thermally (1) 53:9                  thermoplastic (1) 29:1                  theyre (3) 45:8 107:13                  128:22                  thicker (1) 56:15                  thing (5) 40:22 97:6                  130:17 147:7 150:24                  thinner (1) 34:15                  third (6) 15:20 35:5                  36:5 51:8 58:18 141:1                  thirdly (6) 20:18 40:19                  89:12 95:14 125:15                  135:18                  thomas (2) 75:22 76:2                  thorough (1) 110:25                  thoroughly (1) 24:18                  though (4) 7:5 46:12                  68:5 97:4                  thought (5) 2:18 8:2                  48:15 98:25 117:22                  thousands (1) 83:21                  thread (1) 113:6                  threat (2) 12:14 86:6                  three (9) 3:5 15:12                  17:17 18:2 20:19                  61:20 88:23 99:18                  146:20                  thresholds (1) 6:17                  through (13) 26:17,20                  45:23 46:20 51:5                  60:13,17 103:2 104:12                  121:15,15 125:9                  140:22                  throughout (6) 4:6                  50:13 53:13 65:11                  81:16 145:15                  thursday (1) 1:1                  thus (7) 82:10,22 111:3                  133:7 136:23 139:20                  140:13                  ticking (1) 47:17                  tie (1) 74:10                  tier (1) 17:10                  time (26) 16:14 18:12                  20:8 22:18 30:23 32:7                  47:12,17 50:18 53:19                  54:13 68:10 71:6 73:7                  77:5 90:23 92:10                  93:18 102:21 114:13                  117:3,15 122:11                  126:10 141:14 147:9</p>
---	--	---	--	--	---	--

times (4) 104:6 106:25  
112:21 114:3  
timescale (1) 78:21  
timetable (3) 78:16,20  
80:11  
timing (2) 12:15,20  
tinderbox (1) 76:12  
tinto (4) 137:25 138:14  
139:10 144:2  
tired (3) 78:5,5,6  
tirelessly (1) 77:19  
title (1) 67:8  
tmo (73) 3:23 6:8,14,15  
7:2,13 8:2,5,17,19  
9:12  
10:1,5,12,13,19,25  
11:7,9,15 12:5 13:21  
14:1,3,6,14 17:11  
38:1,15,24 39:3 42:4  
50:7,22 53:6,10,18,19  
54:1,15 58:25 59:14  
61:14 68:19,23 90:17  
91:3,22 92:6,21  
97:8,24 98:3,12,24  
99:17,20 100:2,16  
108:1,14,16 109:16  
117:14 118:14,22,24  
120:25 121:15,19,22  
123:23 124:3  
tmo100162153 (1)  
109:1  
tmo1003871410 (1)  
108:8  
tmo100479331 (1)  
117:20  
tmorbkc (1) 120:9  
tmos (13) 4:23 6:9 7:17  
9:1,16 10:7,21 11:13  
13:15,22 46:21 47:3  
109:7  
today (4) 1:4 87:2  
91:25 153:19  
todays (1) 1:4  
together (3) 11:21  
74:10 139:17  
told (6) 28:12 31:9 40:3  
75:4 83:25 92:6  
tomas (1) 60:9  
tomorrow (2) 153:20  
155:25  
too (13) 11:16 12:1  
37:10 48:15,16 56:11  
60:14,24 77:8 90:22  
149:19 151:11 153:1  
took (8) 11:8 40:22  
52:23 77:8 96:15,21  
110:5 125:17  
topic (2) 63:25 68:3  
topics (1) 146:20  
torches (1) 74:9  
total (1) 19:22  
touch (1) 151:7  
touches (1) 142:18  
touching (4) 122:14  
143:7,25 157:18  
towards (10) 68:23  
78:19,20 79:8  
81:14,20 86:19 121:8  
137:7,19  
tower (67) 3:5 8:17 9:4  
23:3 25:16 28:21  
34:11 49:12,22  
50:10,25 55:23 56:4,8

57:17,21 59:14,18  
63:11 66:18  
69:2,12,21 70:6 72:7,9  
73:2,7,18,25 74:22  
75:2,4 76:1,3,8  
77:15,21 78:3,4,9  
79:15 80:14,25 83:21  
84:7 85:3 86:5,16  
87:13 89:10 90:4  
93:1,7 94:23 97:13,19  
102:5 104:20 106:2  
119:4 120:17,20  
123:14 129:13 132:25  
143:25  
towers (3) 2:23 26:13  
75:19  
track (1) 25:21  
tracking (1) 92:9  
trade (1) 71:23  
tragedy (12) 28:21  
49:21 52:22 77:5  
83:25 89:2,18 92:25  
97:7 101:12 117:14  
121:24  
tragic (2) 11:8,12  
tragically (1) 109:3  
trained (2) 66:8,9  
training (1) 73:12  
transformation (1)  
77:25  
transition (1) 86:11  
transparent (2) 6:24  
8:11  
transport (1) 81:8  
transposition (1) 44:13  
trenchant (1) 111:1  
trespass (1) 42:23  
tribunal (1) 127:2  
trigger (1) 72:13  
trivial (1) 47:25  
trouble (1) 152:16  
troubled (2) 9:3 36:1  
troubling (4) 17:4 48:1  
98:25 100:4  
true (8) 15:6 39:3 56:20  
57:8 78:11 81:24  
84:15 105:3  
truly (1) 117:22  
truth (3) 72:7 114:8  
147:25  
try (12) 32:2 147:8  
trying (3) 41:5 52:8  
83:7  
tuesday (4) 12:8 27:2  
146:24 154:6  
turn (5) 31:13 103:12  
130:2 135:4 139:24  
turning (6) 24:3 29:25  
34:24 37:17 42:5 69:5  
type (4) 56:25 78:5  
82:9 141:11  
typical (1) 56:20  
typically (1) 56:22

U

uk (9) 25:15,22 26:9  
27:20 44:1,8 58:4,5  
64:13  
ulterior (1) 126:17  
ultimate (2) 73:1 119:2  
ultimately (5) 5:6 31:25  
92:20 120:15 146:7  
unable (1) 39:12

unacceptable (1) 53:16  
unacceptably (1) 4:17  
unanswered (2) 49:16  
68:14  
unavoidable (1) 89:18  
unaware (1) 29:13  
unborn (1) 72:15  
unchecked (1) 12:23  
uncontrollable (1) 29:3  
undeniable (1) 11:10  
undercover (2) 144:23  
149:18  
undergo (2) 53:2,3  
underline (1) 148:22  
underlined (1) 116:12  
underlying (3) 6:4 15:5  
63:8  
undermined (1) 74:19  
understand (17) 49:3  
71:7,17,19 88:4  
122:18 123:6 128:16  
129:2 132:13 133:8  
145:10 148:15,20  
152:24 153:14,23  
understandably (1)  
142:15  
understanding (5) 17:8  
47:10 97:17 144:19  
153:1  
understands (1) 127:3  
understatement (4)  
30:10,19 31:1 58:7  
understood (2) 17:3  
40:14  
undertake (4)  
67:3,14,18 87:12  
undertaken (4) 62:16  
76:23 108:10 118:24  
undertaking (34)  
12:11,15 70:12,20  
122:13 129:23 130:4  
131:3,16,19,20 135:24  
141:11 144:13,17,23  
145:7 146:6,13  
148:8,21  
149:6,11,13,14  
150:2,25  
151:1,8,10,11,14,25  
157:17  
undertakings (8) 12:19  
131:9 149:22  
150:7,9,11,14,16  
undertook (4) 39:22  
57:1 63:5 99:23  
undoubtedly (3) 27:10  
74:15 136:4  
undying (1) 113:21  
unerring (1) 29:18  
unfabricated (1) 27:4  
unfolded (1) 97:15  
unforthcoming (1)  
113:4  
unfortunate (1) 4:15  
unfortunately (3) 85:20  
86:1 94:5  
ungrammatical (1)  
111:25  
union (3) 6:20 155:5,8  
united (4) 76:25 77:4  
85:11 105:22  
unjustifiable (1) 52:8  
unjustified (1) 10:4  
unless (6) 12:10 31:10

107:13,13 111:2 127:1  
unlike (1) 29:25  
unlikely (1) 24:1  
unlimited (1) 124:23  
unpopular (1) 123:2  
unprotected (1) 82:18  
unrepresented (1)  
145:10  
unreserved (1) 122:17  
unsafe (5) 35:2,5 59:17  
73:17 104:10  
unsatisfactory (1) 35:11  
unsuitable (8) 28:4  
29:21 52:22 59:17  
62:12,18 66:18 72:23  
unsurprisingly (1) 74:17  
untenable (1) 34:24  
until (15) 8:9 21:5,19  
45:23 60:14 70:23  
112:4 116:17 124:13  
125:1,8 140:19 153:11  
154:23 156:6  
untuned (2) 1:14 49:18  
unusual (1) 144:11  
unwilling (1) 155:5  
upheld (1) 139:8  
upon (29) 4:12 7:7 9:10  
11:20 34:4 55:12  
73:23 79:18 81:15  
82:12 91:6 92:16  
99:18 103:20 112:11  
114:7,11 115:17 118:2  
122:14 127:23 130:12  
139:9 142:14,18  
146:15 149:3 150:21  
157:18  
upset (1) 41:3  
upward (1) 95:2  
urgency (2) 2:12 112:2  
urgent (3) 43:7 78:12  
111:6  
urgings (1) 119:23  
used (30) 4:12,17 5:24  
7:11,13 12:12 24:22  
28:23 33:7,9 35:23  
38:16 55:5  
56:15,19,22,24,25  
57:16 59:13,18 62:18  
63:16 70:10,15 94:24  
105:2 114:2 131:24  
138:24  
useful (1) 79:23  
uses (1) 20:9  
using (5) 4:14 33:11  
39:24 55:10 99:15  
utmost (1) 58:7  
uvalues (4) 5:22  
30:16,17 34:15

V

v (4) 13:9 137:10,22,25  
valid (1) 27:5  
value (13) 7:23 8:6  
19:13 28:16 38:8  
50:8,18,25 53:23 54:9  
59:14 90:6 91:10  
valueadding (1) 50:21  
values (6)  
30:10,11,16,20 31:1  
34:14  
variants (1) 114:3  
variation (1) 8:9

various (5) 2:7 12:5  
44:23 54:8 107:18  
vault (1) 111:24  
vehemently (1) 33:17  
ventilate (1) 116:17  
ventilation (2) 19:8  
22:9  
version (3) 27:1,13  
32:22  
versions (1) 18:2  
versus (2) 41:14 62:21  
vertical (2) 95:2 102:6  
via (3) 43:21 91:13 96:8  
viability (1) 53:20  
viable (1) 41:22  
victims (2) 23:25  
116:21  
views (1) 49:20  
vigour (1) 112:20  
vilify (1) 73:12  
visible (1) 94:1  
visual (3) 93:8,12,13  
vital (1) 62:6  
voice (3) 117:11,12  
126:25  
volition (1) 43:6  
volume (1) 111:20  
volunteered (1) 21:6

W

wait (2) 70:23 75:5  
wake (1) 46:10  
walk (2) 70:7 75:4  
wall (4) 15:1 27:21,25  
55:22  
waller (2) 136:12,21  
wallers (1) 147:5  
walls (7) 15:18 16:12  
30:15 45:7 55:5,8 82:6  
walsh (3) 155:21,23,24  
war (1) 81:3  
warn (4) 21:13 36:23  
42:3 127:18  
warned (6) 10:2 21:21  
42:3,4 112:25 118:12  
warning (6) 10:4 95:15  
109:14 110:24 117:17  
136:5  
warnings (4) 4:20 81:5  
82:3 83:5  
warranted (1) 101:23  
warranty (2) 33:20,23  
wary (1) 1:21  
washed (1) 52:16  
watching (2) 73:4 128:3  
water (1) 2:24  
way (33) 6:12 8:4 14:7  
18:1 30:5 31:6 34:7  
42:21 45:20 46:14,14  
51:5 55:16 60:17  
70:13 72:4 85:7 93:8  
100:19 108:19 117:14  
125:11 126:7 128:14  
131:4,19 135:25  
140:10 144:5,13,15  
145:17 146:15  
waylands (1) 26:9  
ways (3) 12:1 36:6 97:8  
wealthy (1) 69:22  
website (2) 144:25  
149:20  
week (3) 52:2 111:19  
126:2

weekly (1) 67:14  
weeks (2) 119:12,16  
weight (1) 148:4  
welcome (2) 1:3 77:13  
wellheeled (1) 93:2  
went (12) 32:8 34:7  
46:18 71:19 76:5 77:4  
81:17 92:15 97:6  
115:20 118:4 120:13  
west (2) 1:6 2:20  
westinghouse (1)  
137:25  
whatever (2) 70:10  
128:19  
wheelchair (1) 74:11  
whereas (2) 24:25 44:10  
whereby (1) 68:18  
whilst (20) 5:22 11:2  
12:13 15:6 27:18  
28:15 34:18 36:21  
42:15 49:15 55:11  
61:24 62:22 66:24  
69:10,17 72:16 123:18  
141:14 146:16  
white (4) 67:9,13,24  
69:23  
whole (8) 36:12 41:5  
47:13 64:24 80:2  
87:11 141:21 150:24  
wholly (2) 44:1 102:1  
whom (8) 6:15 11:17  
28:3 88:19 125:6  
140:24 143:13 155:4  
whose (3) 89:1 98:5  
140:3  
widely (1) 104:25  
widened (1) 103:18  
wider (4) 64:22 75:16  
134:1,2  
wideranging (1) 103:16  
widespread (3) 47:9  
85:10 113:9  
wilful (1) 21:24  
wilfully (2) 17:6 22:8  
william (1) 81:10  
williams (10) 46:23 53:5  
54:1 58:25 68:19  
109:16 110:3,5,11,16  
williamson (11)  
88:4,7,9,13,17,18  
103:2,9,11 122:2  
157:14  
win (4) 5:2,18 25:15  
34:8  
window (8) 45:5  
64:10,16 82:18  
102:7,8,17 115:9  
windows (4) 2:25 16:21  
42:9 96:8  
windsor (1) 75:22  
winning (1) 7:7  
wiped (1) 72:20  
wisdom (1) 121:7  
wise (1) 112:23  
wish (7) 88:19 116:25  
136:19 137:1,4 144:20  
153:15  
wishes (1) 145:18  
withdrawal (1) 29:22  
witness (31) 53:17  
54:6,14 58:16 60:10  
62:23 70:10,22 112:23  
113:5 127:5,15,18

130:24 136:16,24  
137:20 138:7,10,12,16  
143:4,9,19,24 144:17  
145:18 147:16,19  
148:4 149:3  
witnesses (29) 38:20  
53:12 113:8 116:14  
117:4 122:19 123:7  
125:17 126:7 129:9,24  
130:4 131:4,13 133:9  
140:3,6,12 141:4,16  
142:15 144:8,20  
145:2,9 150:11  
152:21,21 153:22  
witness (1) 150:15  
womb (1) 72:17  
wonder (2) 128:4,17  
wondered (1) 152:5  
wondering (1) 74:11  
wont (5) 118:5 128:4  
153:23 154:23 155:1  
worded (1) 70:13  
wording (3) 22:14 98:23  
151:10  
work (31) 51:10 53:15  
54:20 58:11,18 65:23  
87:24 88:22 96:18  
97:14,15 105:14  
106:22 108:6 112:5  
113:22 114:20 118:24  
125:2 126:24  
132:14,22  
133:1,18,20,22 140:21  
141:25 142:7 143:25  
153:19  
worked (6) 19:4 33:1  
81:4 126:24 143:14  
146:10  
working (7) 26:11 63:6  
76:10 77:19,24 82:25  
112:3  
workmanship (2) 67:7  
68:1  
workrelated (1) 143:16  
works (23) 22:6 23:7  
27:18 38:1,7,8 50:2,3  
58:13,14 61:8,9  
67:4,5,22 76:23 90:17  
97:7 99:6 108:11  
114:1 115:4 143:9  
world (3) 80:24 115:1  
126:9  
worried (1) 93:11  
worse (4) 19:10 22:2,7  
117:19  
worsening (3) 18:23  
21:4 46:20  
worst (2) 97:23 98:7  
worth (4) 54:22 62:20  
74:25 107:14  
worthy (1) 82:9  
wrapped (1) 76:17  
wray (4) 46:21,25  
108:16,25  
wriggle (1) 73:4  
wright (1) 58:13  
write (2) 129:22 130:3  
writing (5) 9:4 80:9  
110:8 127:21 154:17  
written (9) 2:5 49:23,24  
51:22 66:22 101:21  
107:15 115:8 124:4  
wrong (8) 22:17 32:12

71:15,19 92:16 97:6  
111:1 120:14  
**wrongdoing (4)**  
30:1,3,9,18  
**wrongly (3)** 39:9 63:17  
68:23  
**wrote (6)** 46:21 51:22  
108:1 109:18 118:16  
119:5

**Y**

**year (11)** 25:25 26:2  
70:25 74:18 75:8 85:7  
86:20 99:22 124:24  
125:13,16  
**years (21)** 8:18 25:25  
35:3 44:19 46:5,20  
60:22 63:5 66:1,11  
75:6,7,25 77:1 81:1  
90:6 101:8 103:23  
140:16,22 150:6  
**yesterday (12)** 13:19  
50:22 68:4 70:6 99:17  
103:22 108:21 122:4  
123:12 124:10 136:7  
148:18  
**yet (27)** 6:1 19:18  
23:11 27:17 28:2  
39:25 45:17 47:25  
52:10 62:13 70:18  
71:12 75:8 76:22 89:9  
93:10 97:1 98:15  
100:13 101:9 109:12  
114:3,12 116:22  
130:25 154:17 155:13  
**youngest (1)** 72:14  
**youre (2)** 40:5 129:2  
**yourself (1)** 128:15

**Z**

**zak (1)** 54:14  
**zinc (9)** 7:20 18:15  
59:12 91:23 104:8  
137:25 138:14 139:10  
144:2  
**zone (1)** 102:18

**0**

**0 (17)** 15:19 16:9,10  
27:25 28:6 43:13,17  
44:2,12,17,19  
55:11,14,17 57:13,14  
95:10

**1**

**1 (43)** 1:9,13,23 8:20  
10:19 11:3 23:13 24:5  
28:8,13,14 29:4  
31:14,22 32:16 39:23  
49:15,19 53:12 70:25  
75:15,18 76:6 77:10  
88:11,14,21 93:18  
94:25 100:20 102:22  
107:18 111:4,11  
113:10 116:20,24  
117:2 131:23 132:3  
151:2 157:3,4  
**10 (7)** 29:21 77:12 98:3  
117:6 131:2 156:3,6  
**1000 (1)** 1:2

**101 (1)** 101:22  
**105 (1)** 121:1  
**106 (1)** 101:22  
**10k (1)** 41:4  
**11 (3)** 48:13 66:4 81:10  
**1115 (1)** 48:22  
**1130 (2)** 48:20,24  
**12 (3)** 50:5 131:11  
147:3  
**12135 (1)** 142:25  
**122 (2)** 157:16,21  
**1257 (1)** 103:6  
**13 (2)** 54:14 100:21  
**135 (3)** 32:12 82:10  
115:24  
**14 (4)** 52:23 68:2 76:19  
130:12  
**15 (3)** 52:19 69:11  
75:22  
**150 (1)** 59:10  
**1516 (1)** 123:22  
**16 (2)** 131:17 141:22  
**164m (1)** 90:10  
**18 (13)** 15:11,22 16:16  
30:8 33:3 48:3 55:6  
57:7,10 94:9 95:18  
115:19 142:1  
**1885 (1)** 26:4  
**18m (3)** 32:10,11,14  
**1946 (1)** 15:7  
**1968 (1)** 130:13  
**1970s (1)** 2:22  
**1974 (3)** 133:2 134:20  
142:6  
**1978 (1)** 138:1  
**1985 (1)** 121:2  
**1988 (1)** 82:5  
**1999 (3)** 81:7 82:4  
136:12

**2**

**2 (29)** 2:1 11:5 23:24  
24:5 34:10 44:12,12  
48:7 49:11,17 70:5,24  
82:2 88:17,18,23  
103:4 116:18,24 117:9  
119:24 129:9 132:2,3  
140:23 151:4 155:9  
157:11,14  
**20 (4)** 44:19 75:11  
83:17 150:6  
**200 (1)** 103:8  
**2000 (9)** 25:4 43:15,22  
44:9,13 45:16 46:8  
47:11,16  
**2003 (1)** 82:8  
**2005 (5)** 9:12 13:25  
79:11 87:9 132:9  
**2006 (1)** 130:11  
**2007 (1)** 9:8  
**2009 (4)** 3:2 83:18 84:1  
107:20  
**2010 (5)** 23:13 63:3  
119:7,19 137:22  
**2011 (3)** 24:21 25:2  
94:21  
**2012 (9)** 1:24 18:14  
20:14 25:25 26:19  
62:9 63:6 93:5 98:20  
**2013 (18)** 18:12 22:20  
46:21 50:2 53:19,25  
60:23 82:8 89:25  
91:1,24 92:6 93:15  
97:22 108:4,15,17,25

**2014 (26)** 16:16 22:23  
25:25,25 26:2 30:5  
31:12 34:2,10 39:23  
40:1 46:17,24 50:6  
56:9,14 59:9 67:14  
93:23,23 99:10,13,23  
100:6,21 109:18  
**2015 (15)** 20:7 21:7  
27:23 31:8 34:12 41:2  
44:22 45:16,22 47:11  
54:11,19 62:10 95:11  
102:22  
**2016 (9)** 1:24 10:3  
27:18 29:20 47:1 63:6  
105:6,16 117:16  
**2017 (11)** 29:7 33:15  
49:22 52:23 57:11  
68:2 76:3,19 118:16  
119:5,16  
**2018 (5)** 45:24 47:24  
71:1 77:11 112:13  
**2019 (3)** 45:19 48:1,5  
**2020 (5)** 1:1 75:11,22  
84:19 156:7  
**21 (4)** 79:11,17 111:20  
152:3  
**21000 (1)** 76:16  
**211 (1)** 130:10  
**217 (1)** 38:2  
**21st (1)** 104:13  
**23 (5)** 25:18,19 26:6  
54:6 138:3  
**234 (1)** 111:20  
**24 (1)** 138:14  
**243000 (1)** 7:19  
**25 (1)** 139:9  
**26 (1)** 139:18  
**27 (3)** 108:4 149:21  
150:3  
**271 (1)** 136:12  
**285 (1)** 137:8  
**289 (2)** 136:21 147:6  
**29 (2)** 25:2 26:19  
**2952 (1)** 137:23

**3**

**3 (7)** 8:22 86:19 120:4  
132:21 133:11 151:9  
156:7  
**30 (7)** 1:1 41:2 45:13  
47:23 66:1 90:6  
119:16  
**300 (1)** 76:1  
**31 (1)** 125:7  
**315 (1)** 76:22  
**321 (1)** 156:5  
**33 (1)** 133:1  
**340k (1)** 90:7  
**35 (2)** 132:9 151:18  
**36 (1)** 133:2  
**37 (1)** 133:3

**4**

**4 (5)** 23:14 112:13  
142:13 144:24 151:14  
**40 (4)** 4:9 15:19 27:24  
58:15  
**41 (1)** 53:17  
**450 (1)** 76:20  
**476 (1)** 44:1  
**49 (1)** 157:6

**5**

**51 (1)** 79:19  
**547 (1)** 138:1  
**55 (2)** 25:1 29:14  
**574 (1)** 138:1

**6**

**6 (5)** 42:24,25 44:1  
109:3 129:8  
**60 (1)** 60:17  
**65000 (1)** 26:3  
**670 (1)** 111:20  
**69 (1)** 149:21

**7**

**7 (6)** 34:10 44:2 49:19  
132:25 133:10 141:8  
**70 (2)** 149:25 157:10  
**72 (4)** 54:24 72:8,12  
75:1  
**76 (1)** 76:23  
**77 (1)** 149:25  
**7a (2)** 133:14,17

**8**

**8 (2)** 87:9 130:2  
**80 (1)** 59:10  
**800000 (1)** 7:16  
**8414 (2)** 15:15 30:4  
**85 (2)** 41:6 50:3  
**88 (1)** 157:13

**9**

**9 (9)** 98:2 125:13  
130:23 131:14 135:22  
136:9,15 146:21,25  
**911 (1)** 9:8  
**97 (1)** 50:1