

IN THE MATTER OF THE GRENFELL TOWER
INQUIRY BEFORE SIR MARTIN MOORE-BICK

RESPONSE SUBMISSIONS ON BEHALF THE CLIENTS REPRESENTED BY
TEAM 2

INTRODUCTION

1. These submissions are made on behalf of the Core Participants (CPs) comprising of Bereaved family members, survivors and residents of the Grenfell Tower disaster, represented by 13 legal representatives (RLRs). They are in response to the application dated 27th January 2020 made on behalf of a number of corporate witnesses, requesting that the Inquiry make an application to the Attorney General (AG) for undertakings. The terms are set out at **para 16 page 5** of the application.
2. Our general proposition is that we oppose this application. We will expand upon these submissions orally at the hearing on Monday 3rd February 2020.
3. The Inquiry has an obligation under Article 2 ECHR to conduct a full investigation. This means full disclosure and giving evidence to the Inquiry. The Chairman's direction on 20th December 2017 for government and non-government organisations to provide the Inquiry with position statements setting out the role played by each of the core participants who were involved in the management and refurbishment of Grenfell Tower, was an acknowledgment of the need for candour by the State and corporate organisations appearing before the inquiry. This application clearly deviates from this duty and undermines accountability.
4. Further, the purpose of this Inquiry is to uncover the truth. When conducted with candour, rigour and transparency, a Public Inquiry can illuminate and shine a light on facts and opinions that are frequently hidden from public view. If the corporate CPs in this Inquiry truly

recognise its importance, purpose and ramifications, they will wholeheartedly accept their responsibility to be candid.

5. For those who remain unfamiliar with the concept of the duty of candour, in the wake of the Hillsborough inquests, the Public Accountability Bill (the Hillsborough Law) was drafted, as a piece of legislation which sought to promote transparency and accountability and to combat institutional defensiveness. It codifies existing duties of candour in requiring public authorities, public officials and private entities fulfilling public functions to assist court proceedings, inquiries and investigations and to act with transparency, candour and frankness. The Bill strives amongst other things:

- to set a requirement on public institutions, public servants and officials and on those carrying out functions on their behalf,
- to define the public law duty on them to assist courts, official inquiries and investigations;

6. The importance of this duty cannot be emphasised enough. We would remind the corporate witnesses that they have a duty of candour, which they should not only understand and acknowledge but actively engaged with. We invite them to reflect upon this and to reconsider proceeding with their application.

7. Despite the protestation from the corporate CPs apologising for the lateness of the application, the timing is highly questionable. It shows an complete disregard for the BSRs and the integrity of this Inquiry and was timed to cause maximum hurt to those we represent and disruption to the Inquiry. In that regard they have been successful.

8. The reasons we are opposed to the application are as follows:

- (i) An examination of the recent history of such applications shows that the situation is far more nuanced than portrayed in the corporate CPs' application.
- (ii) The application itself is disingenuous.
- (iii) Those who or may be responsible for this catastrophe, should not be allowed to set the agenda, the terms, the framework, and pace of the Inquiry.
- (iv) Future criminal proceedings and investigations should not be compromised by decisions made now.
- (v) The detrimental impact upon the BSRs.

SUBMISSIONS

THE LAW:

9. The application makes rather sweeping statements in its analysis of the approach and outcomes on such applications as these in previous public inquiries. We submit that the picture is a somewhat more nuanced.

10. The **Baha Mousa Inquiry**, is heavily relied upon in the application on the issue of undertakings. Further analysis of that particular case would be instructive. A witness' right of protection from self- incrimination is preserved by s.22 of the Public Inquiries Act 2005. The Chairman is being invited to seek an undertaking from the AG preventing the use of evidence given by witnesses to this Public Inquiry against them in future criminal proceedings. The applicants have submitted that the practice of seeking undertakings from the Attorney General is an established way by which witnesses are able to give full and frank answers and permits the terms of reference to be fully investigated without delay to proceedings. They have cited several Public Inquiries in which undertakings have been granted and have invited the Chairman to seek the AG's undertaking in the terms granted by Baroness Scotland QC in the Baha Mousa Inquiry. It is important to highlight several distinguishing features between the Baha Mousa Inquiry from Grenfell Tower:

(i) Firstly, Baha Mousa Inquiry was primarily concerned with the circumstances surrounding the death in 2003 of, Baha Mousa and the treatment of others detained with him in Basra, Iraq, by soldiers of the 1st Battalion the Queen's Lancashire Regiment and took into account investigations that had already taken place.

(ii) Secondly, the undertaking from the Attorney General was sought and obtained in the first instance by the Chairman Sir William Gage. Having obtained the undertaking from the AG he invited submissions as to whether it was necessary to seek other undertakings from the MoD to which he received representations seeking an extension of the AGs undertaking to which there were mixed responses; support by some and a neutral position on behalf of the 10 detainees. The Chairman having considered the representations, sought an extension to the existing undertaking granted by the AG.

(iii) Thirdly, the Inquiry which opened in October 2008 was preceded by several investigations, including Court Martial charges in respect of 7 soldiers who were charged with

Baha Mousa's death, which started in September 2006, 3 years after Baha Mousa's death. The charges against the officers included manslaughter, perverting the course of justice and inhuman and degrading treatment. One of the officers had pleaded guilty to the charge of inhuman treatment and the others were either acquitted or the charges dropped. The Court Martial ended in 2007.

(iv) Taking each point in turn and applying to this matter, firstly, 72 people lost their lives as a result of the fire at Grenfell tower, hundreds of people lost their homes and the entire Lancaster West Estate has been affected by the events of 14th June 2017 – the largest fire in London since the 2nd world war.

(v) Secondly, the Chairman (GTI) having considered the evidence disclosed to date had not considered it necessary to seek to obtain undertakings from the Attorney General in respect of any of the witnesses as was the case in Baha Mousa. It is also important to note that a neutral position was taken by counsel on behalf of the 10 detainees.

(vi) Thirdly, criminal/court martial proceedings preceded the Baha Mousa inquiry. This is not the case in the present Inquiry where criminal investigations are running parallel and the evidence from the Inquiry will inform the criminal investigations and ultimately any charging decisions. The Inquiry commenced 5 years after Baha Mousa's death; Grenfell Tower inquiry opened in September 2017 – 3 months after the tragic events of 14th June 2017.

(vii) Additionally, the organisations and witnesses on whose behalfs the applications for the undertakings are being made have all expressed their commitment to cooperating with the Inquiry and commitment to candour – this is an important distinction from Baha Mousa and indeed, the other Inquiries to which reference has been made and reliance sought as to the practice of obtaining undertakings from the Attorney General.

11. It is important to note that a mere assertion of the privilege is insufficient; the Court must be satisfied that there is a reasonable ground to apprehend a real and appreciable danger to the witness and not one of an insubstantial character. A mere claim of privilege even when based on legal advice is insufficient. The Court must be satisfied that such a danger exists from all the circumstances of the case and the nature of the evidence the witness is being called to give. [**Archbold 12-4**].

12. It is not lost on us all, that to date, the applicants have yet to (a) identify the witnesses in respect of whom the application is sought, (b) the evidence in respect of which self-incrimination is asserted (c) their reason for claiming self-incrimination. A general category of witnesses from organisations boldly ascertaining that they are at risk of self-incriminating themselves if they give evidence is insufficient and does not satisfy requisite threshold.

13. We note the Chairman's observation that a similar request was made by the TMO 15/16 months ago and that they were invited to provide a basis for approaching the Attorney General [transcript 30.1.2020 Day 4 pages 123 -124 lines 21- 25; 1 -10].

14. Respectfully, the explanation for the timing and rationale of the application appears to be (a) financial – there was limited funding for counsel between the end of summer and December, (b) Mr Hyett's report is critical of witnesses and (c) 4 Harley witnesses were interviewed by the police in October 2019 [transcript 30.1.2020 Day 4 pages 124 -125 lines 21- 25; 1 -23] by the MET for potential offences. Again, these are in general terms without sufficient specificity to satisfy the Chairman that the application should be referred to the AG.

15. It is also instructive to look at the **Grainger Inquiry**. Mr Grainger was killed just after 7pm on March 3, 2012, when he was shot in the chest by a single bullet from a Heckler and Koch MP5 sub-machine gun fired by a police marksman known as Q9, as he sat behind the wheel of a stolen red Audi in a car park in the village of Culcheth near Warrington.

(i) In January 2014 the CPS announced that they would be prosecuting Chief Constable Peter Fahy under health and safety legislation over the shooting, and a full public inquiry was concluded July 2019.

(ii) The report, written by His Honour Judge Thomas Teague QC following the 14 week inquiry found serious mistakes and failures which led to the death of Anthony Grainger, but found the shooting was not unlawful and it stopped short of recommending any further action should be taken against any of the police officers involved.

(iii) The Chair made the application to the AG: *"The undertaking I seek is to the effect that in any future proceedings against a witness to the Inquiry, no evidence that he provides to the Inquiry shall be used against him."*

The AG refused the application and the police officers all answered questions.

THE APPLICATION IS DISINGENUOUS

16. The rationale behind these applications is that undertakings will foster better evidence. Unfettered and freed from the concerns that their Inquiry evidence will be used in future criminal proceedings, the witness will give full and frank answers to questions. However, the conduct of the corporate CPs in this Inquiry illustrates that such a proposition to be misplaced in this case. The position statements, witness statements and opening statements filed on their behalf have for the most part been bland, anodyne documents, the polar opposite of full and frank, they were sparse and scant.

17. There is an inherent contradiction in the approach of the corporate CPs. All protest their lack of responsibility for any wrongdoing or culpability. They all say, “we did nothing wrong” and point the finger elsewhere, to other corporate CPs for blame. The corporate CPs have created and fostered a climate of denial which is both unhealthy and counter to the aims and purpose of this public inquiry.

18. We submit that this application is disingenuous and belies its true basis. There are legitimate questions raised by the timing of this application:

-Is there outstanding disclosure that leads to self- incrimination that the Inquiry and CPs have not yet seen?

-If those seeking undertakings did nothing wrong and are blameless as they have been stating for so long, and as recently as last week in the opening statements, why the sudden and pressing need for the protection afforded by undertakings?

-Are we therefore now to expect new position statements and opening statements from these witnesses in which they tell “the truth”; thus rendering their previous efforts with regards to these statements, at best misleading and at worst simply untrue.

Position statements, Opening statements and Candour

19. The application also wholly undermines the pledges of candour and commitment to fully cooperating with the Inquiry which these organisations have given in the position statements to the Inquiry, witness statements, opening statements and in the case of Harley, public statement on its website in the days following the fire.

20. The TMO in their position statement [9th February 2018], expressed their commitment to providing evidence to the Inquiry in an open and transparent way:

TMO welcomes the Public Inquiry and is fully supportive of its objective to obtain clear, reliable evidence and to learn all possible safely lessons so as to minimise the chance that such a tragedy will ever be repeated.

TMO is committed to providing full and frank evidence to the Inquiry in an open and transparent way. It has offered to the Inquiry all of its documentation without reservation or exception. This documentation was captured within four days of the fire occurring and was locked down and fully captured by independent IT specialists. A copy in both its raw state and processed state (making it fully searchable) was provided to the police and offered to the Inquiry.

All TMO staff employed at the time of the fire and those who are former staff have fully committed themselves to providing whatever evidence the Inquiry seeks from them and do so in an open and transparent way. [TM000837466]

21. **Studio E** in their position statement of 9th February 2018 confirm that “*it will fully cooperate with the Inquiry...*” [SEA00014232]

22. **Osbourne Berry**, in their position statement of 27th February 2018 professed acting in fulfilment of their duty of candour in declaring their knowledge of the financial difficulties of Harley Curtain Limited and its impact on the installation of the cladding [OSB000000084].

23. **Rydon’s** concluding paragraph in its position statement of 9th February 2018 confirms: “*Rydon remains committed to cooperating fully on matters with which it can assist the Inquiry.*”

24. In the opening statement made on behalf of **Kevin Lamb**, it was stated, “Kevin Lamb is committed to assisting the Inquiry in completing its important work” [KLA00000001].

25. Ray Bailey, Managing director at **Harley Facades** said this, of Grenfell, in a statement on behalf of the company, published on their website following the fire: *this is an incredibly*

*tragic incident. Our thoughts are with the residents and their families who have suffered such a personal loss. We will fully support and cooperate with the investigations into this fire.*¹

26. We are yet to be told whether Ray Bailey, listed to give evidence to this inquiry, and from whom our clients are expecting candour and transparency, is one of the witnesses in respect of whom the undertaking is being sought and if he is, the evidence which may incriminate him.

27. The stark contrast between their professed candour and this request for assurances in order to give evidence suggest that even with undertakings, the corporate and TMO witnesses will in fact be full and frank.

28. Those making this application knew about the refurbishment of the Tower and certainly once the inquiry was announced, the matters which would be under consideration and the scope was clear from the TOR. Importantly they would know whether they would need to seek the protection of undertakings at that early stage. The fact that no such applications were forthcoming at that stage is very telling.

29. Presently, we know those who are making the application dated 27th January 2020, but require the identification of all other witnesses who will be seeking to make such applications. The witnesses named thus far have extremely varied participatory roles in the refurbishment process. This cannot be a blanket request in the application. They have not indicated what witnesses they are asking the undertaking for and we require this information by the morning of 3rd February 2020 at the very latest. That information should include those who have indicated support for the application as well as those who are prepared to be named as primary applicants at this point in time.

30. There is an overwhelming public interest and a global following of this Inquiry and the overriding duty of candour to those most affected must not be discarded. In 128 days of often intense, searching and difficult oral evidence from Firefighters no application was made for undertakings and witnesses did not seek any protection.

¹ <http://www.harleyfacades.co.uk/page/8031/article/727>

HOLDING THE INQUIRY HOSTAGE

31. We submit that those who or may be responsible for this tragedy, should not be allowed to set the agenda, the terms, the framework and the pace of this Inquiry. This application will inevitably lead to delay. Further those making the application have indulged in scaremongering tactics in the event that the Inquiry does not make the application the AG does not grant it.

At **para 11** of their application the Corporate CPs state:

“ Indeed, if no such undertaking is provided, prior to answering any question the answer to which might incriminate the witness, each witness will have to be publicly advised that they do not have to answer the question asked, if the answer might incriminate them. We assume that this warning will have to be administered by the Inquiry Chair in each instance, and will be particularly necessary where the relevant witness does not have the benefit of legal representation at the Inquiry. All of this is likely to have the undesired effect of seriously impeding the Inquiry’s work.”

32. We submit that the law is clear. Everyone has the right against self - incrimination, but it is a narrow privilege. Once sworn you have to answer all the questions, the privilege is a narrow exception. If the AG refuses their application, the onus will be then be back on the corporates witnesses. What our clients want from this Inquiry is the truth - and if part of that truth is some of those responsible won’t come and give evidence in an open way, let that be part of the truth. An undertaking from AG is a blanket that covers up that truth.

33. We submit that the Corporate CPs are presenting the Inquiry with a false choice between the truth premised on receiving the undertaking from the Attorney General and justice in the form of successful criminal prosecutions. In our respectful submission the Inquiry has a third option. If witnesses refuse to answer question on the grounds of the privilege against self-incrimination, the Inquiry is entitled to draw adverse inferences from such silence: *Mohammed Khawaja v Paresh Popat* [2016] EWCA Civ 362. Such adverse inferences would be based on the contents of the documents disclosed by the parties, their witness statements and the late timing of the application given the previously stated intention to assist the Inquiry without any reservation. The BSRs would encourage the Inquiry to adopt a robust approach to any witness who seeks to invoke this privilege if the circumstances justify it and draw appropriate adverse inferences.

COMPROMISING FUTURE PROCEEDINGS.

34. The BSRs welcomed the phase 1 report and hope that the same rigour and depth of analysis will be brought to both the evidential and reporting stages of phase 2.

(i) At the conclusion of this public Inquiry the BSRs and we would hope other CPs will want to see trenchant remarks and recommendations that will be acted upon by government and industry. They do not want to see in years to come, another public inquiry into a fire, with documents from corporations where individuals speak of their concerns and worries and have their “Grenfell moment.” The BSRs want real change in the culture, structure and behaviour of the construction industry. They want the truth uncovered.

(ii) However, crucially at the heart of this tragedy, the BSRs want justice and accountability and are acutely aware that as a Public Inquiry there are limitations on what the panel can say and the ramifications of any recommendations. Justice and accountability may come in future proceedings, notably criminal proceedings. This application inevitably raises the issue of the tension between protection against self- incrimination and the need for the Public Inquiry to uncover all relevant evidence and unearth the truth. However, there is a further tension and analysis that needs to be incorporated, safeguarding evidence to be used in criminal investigations which flow from the inquiry.

35. We submit that any decision made in relation to the grant of and use of undertakings in a public inquiry must therefore be balanced against the need to safeguard a criminal investigation and be extremely mindful of compromising any criminal investigation and/or criminal proceedings yet to come.

36. At **paragraphs 16-17** of their application the Corporate CPs refer to the possible criminal proceedings that could arise:

“For those witnesses who have thus far been interviewed by the Metropolitan Police, or who are awaiting interview, it is plain that the scope of that investigation is very broad. It will include Gross Negligence Manslaughter where applicable.

In addition, they are expressly investigating contraventions of relevant Health and Safety legislation and regulation, including but not limited to those listed below. As you will appreciate these offences are very broad in their application.”

Specially ss. 3, 7, 33, 36 and 37 of the Health and Safety at Work Act 1974. All of the general duties under HSWA 1974 are strict liability offences² subject to the requirement of reasonable practicability.

37. We do not propose to set out detailed submissions in this document in relation to these criminal offences, but it is important to highlight the scope and breath of possible criminal offence that may have been committed and the extent to which a broad spectrum of criminal proceedings would be jeopardised if these undertakings were granted. The criminal investigation and potential proceedings must be safeguarded. We reiterate the central point made earlier in this document, the Corporate CP's do not require an undertaking from the AG to remain mute. Their conduct and behaviour in this Inquiry is indicative of their true intentions, namely to remain either silent or circumvent the Inquiry's objectives regardless of any protection.

38. There is also an ongoing huge, wide ranging and costly police investigation. As early as July 2017, the CPS had already given detectives preliminary legal advice on the corporate manslaughter investigations. In a letter sent in the weeks after the fire, to survivors and the families of those who died the police said *"After an initial assessment of that information, the officer leading the investigation has ... notified Royal Borough of Kensington and Chelsea and the Kensington and Chelsea Tenant Management Organisation that there are reasonable grounds to suspect that each organisation may have committed the offence of corporate manslaughter, under the Corporate Manslaughter and Corporate Homicide Act 2007."*

39. In December 2017—six months after the fire, speaking to the Inquiry at a preliminary hearing on behalf of the MPS, counsel said the police had acquired 31 million documents and had possession of 2,500 physical exhibits. It had taken 2,332 witness statements from 1,144 witnesses, and 383 companies had been identified as having some involvement in or connection to the construction or refurbishment of Grenfell Tower. There were 3,916 investigative tasks or lines of inquiry generated. Moreover, "interviews of further witnesses or of suspects" could not take place until the forensic analysis "of every room within the tower, as well as every inch of the communal areas and, of course, importantly, the outside of the tower" had taken place.

² Save for s 7.

40. Then by March 2019, Scotland Yard publicly stated that they would not be sending files to the CPS until the latter part of 2021, citing the need to wait for the conclusion of the Inquiry. The MPS in a brief statement said that The Met's criminal investigation and the inquiry are "inextricably linked,".

41. We have been surprised by the lack of comment thus far on this application by the MPS who remain CPs in this Inquiry.

42. It is of great concern to those we represent that these proceeding, have the potential to operate as a bar to future criminal proceedings. If the application is granted (a decision of course for the AG) abuse of process arguments would be deployed by the defence in future criminal proceedings. Justice and accountability for the BSRs would be denied if that fundamental issue is not crucially borne in mind. It is not difficult to envisage the myriad ways in which a criminal investigation would be derailed, compromised or effectively abandoned.

IMPACT UPON THE BSRs

43. The BSRs have listened with dignity and forbearance to the fall out concerning the resignation of the panel member Ms Mehra. They have done so again when faced with this application. It is regularly impressed upon the Inquiry that this process and the entire experience is causing BSRs immeasurable distress and there is a danger that with the passage of time that message becomes diluted and those who are listening can become immune to these observations and perceive it simply as ongoing grief. Each communication from RLRs to their clients about issues that emerge from the inquiry in relation to the behaviour of the corporates CPs (either from disclosure, their opening submissions, or otherwise), causes more hurt and harm.

44. Whilst this application is a legal and procedural argument for the lawyers and the Inquiry for our clients it causes renewed psychological harm. For them this process is not a game of tactics and manoeuvres, rather each new set back and delay open unhealed wounds. If the many condolences and sympathies expressed by the corporates CPs in their opening statements are to carry even a semblance of sincerity, they should withdraw the application.

CONCLUSIONS

45. The application is an affront to the families, to the Chair and panel, to the Inquiry. This inquiry is not a game of tactics and clever machinations as those making the application seem to believe. We submit in the strongest terms that it is both a disgrace and an outrage that the potential perpetrators of serious criminal conduct can come before this Inquiry and say in effect *we are sorry for the people who died but it's not our fault, we did no wrong, nonetheless we will not answer certain questions unless we are given the assurances of the undertakings.*

46. We share the Inquiry's deep concerns about the timing of this application. Monday 3rd will be the 5th day of Phase 2 and was due to mark the start of oral witness evidence. Following procedural hearings in the autumn of 2017 and early 2018, this Inquiry sat for 123 days of evidence in 2018. Thereafter, in 2019, there has been ongoing disclosure of documents in preparation for Phase 2. Position statements were served by CPs in 2017. These individuals **were the professionals responsible for the refurbishment.** They planned, designed implemented and oversaw the refurbishments and maintenance of Grenfell Tower. These are the council and TMO officials, the managers, the architects, the designers, the contractors who were in the meetings, in the discussions. They were the authors and recipients of emails, signatories to contracts. They did not have to wait for thousands of pages of disclosure of their own documents within this Inquiry to decide whether or not they would be full and frank in their answers to questions or need to seek undertakings. The application is cynical and calculated and should be rejected.

On Behalf of all Counsel and Solicitors for Team 2

2nd February 2020

GRENFELL TOWER INQUIRY

Position Statement on behalf of the Royal Borough of Kensington and Chelsea Tenant Management Organisation ("TMO").

No words can ever express the feelings of sympathy, remorse and sorrow felt by all staff associated with TMO for the horrific tragedy that occurred at Grenfell Tower on 14 June 2017.

TMO welcomes the Public Inquiry and is fully supportive of its objective to obtain clear, reliable evidence and to learn all possible safety lessons so as to minimise the chance that such a tragedy will ever be repeated.

TMO is committed to providing full and frank evidence to the Inquiry in an open and transparent way. It has offered to the Inquiry all of its documentation without reservation or exception. This documentation was captured within four days of the fire occurring and was locked down and fully captured by independent IT specialists. A copy in both its raw state and processed state (making it fully searchable) was provided to the police and offered to the Inquiry.

All TMO staff employed at the time of the fire and those who are former staff have fully committed themselves to providing whatever evidence the Inquiry seeks from them and do so in an open and transparent way.

Whilst incomparable to the grief suffered by the victims and bereaved families, this tragedy has traumatised and devastated the TMO staff and community who had dedicated themselves to providing support and services to the tenants and leaseholders they served.

Nature of the TMO; involvement of the different departments and committees of the TMO

Section 27 of the Housing Act 1985 gave tenants the right to establish tenant management organisations. Section 27AB was added to the Housing Act 1985 by s.132 Leasehold Reform, Housing and Urban Development Act 1993 and section 27AB came into force on 1 August 1994. It is this provision which conferred on TMOs the right to manage local authority stock.

This legislation was aimed at empowering local communities and TMO was set up to provide services on behalf of residents within housing stock owned by Royal Borough Kensington and Chelsea Council (RBKC). It is a resident-led organisation with a majority of local tenants on its Board. It managed the Council's housing stock. The Board of TMO is empowered independently of RBKC with an internal audit process conducted by RBKC Audit department on behalf of TMO, except on matters relating to the Housing Revenue Account.

The TMO company was incorporated on 20 April 1995 with a Memorandum and Articles of Association that has been developed over time, with a current version dated 11 November 2014. Its principal objective is to manage and maintain the housing stock and ancillary properties of the Royal Borough. It is expected to manage its affairs in accordance with the Modular Management Agreement (“MMA”) dated 28 February 1999 between the RBKC as amended from time to time.

TMO is a separate company to RBKC. It is a not-for-profit company that provides housing services on behalf of RBKC and it was set up by RBKC to manage and improve all or part of its housing stock. Ownership of the housing stock remains with RBKC.

TMO is a company limited by guarantee owned by its 5,600 Members, not shareholders, who are residents of the RBKC housing stock.

TMO manages the housing under the Right to Manage legislation and its roles and responsibilities are set out in the MMA with RBKC. The MMA content is in standard form following Regulations set by the Secretary of State.

TMO is a non-specialist organisation and typical of social housing provider of its size, it engaged specialist contractors and consultants in a range of areas to enable delivery of its roles and responsibilities

The Company is made up of its Members permitted to vote on TMO’s decision-making via the TMO Board consisting of up to 15 Board Members.

By its constitution, the TMO Board is required to consist of 6 Council Tenant Board Members and 2 Leasehold Board Members, or 5 Council Tenant Board Members and 3 Leasehold Board Members plus 4 Council Nominated Board Members and 3 Independently Appointed Board Members.

Resident Board Members qualify as such by having been a tenant for one year or more and are eligible for election to the Board. All Resident Board Members are required to retire from the Board after a three-year term. They may be re-elected to the Board after serving a three-year term but may not serve for longer than nine years in total.

The 4 Council Nominated Board Members are nominated by RBKC and the appointed Board Members are not otherwise Members and are regarded as “independent” Board Members. They usually come from successful businesses to bring their experience and expertise to assist resident and Council nominated Members’ decision-making.

The Chairman of the Board is required to be a resident of RBKC and the resident Board Members as elected by tenants must form the majority of the Board for voting purposes.

All Members of the Board are unpaid. There is a small expense allowance which many Board Members do not take. It is in every sense a Board that operates for the benefit of the community with no financial reward.

The role of a Board Member is therefore aimed at reviewing proposals and making decisions that represent the best interests of the Members they represent.

Board Members also participate in sub-committees, such as Operations and Finance Audit and Risk to consider various discrete operational and financial topics under the chairmanship of a Resident Board Member and with a constitution that has a majority of Resident Board Members.

All day to day operations of TMO were managed by an Executive Team headed by a Chief Executive supported by three teams concerned with Operations, Financial Services and ICT, and People Performance and Governance. The heads of those teams have the title "Executive Director". Each of those teams is supported by a Senior Management Team headed by "Directors" "Assistant Directors" and "Heads". Although the title "Director" is used for Executive and Senior Management positions, none of the holders of these positions is a statutory Director. Organisational Charts identifying each of the positions making up TMO have been provided to the Inquiry.

The Executive Team and its supporting staff managed the housing stock pursuant to decisions made by the Board and its Business Plan.

Kensington and Chelsea TMO Repairs Direct Ltd ("Repairs Direct") was at material times a wholly-owned subsidiary of TMO. It was incorporated in January 2013 with the objective of carrying out repairs to the RBKC housing stock as directed by TMO. The Company was set up with the objective of replacing outsourced suppliers to provide a more efficient and cost-effective means of conducting repairs and maintenance to the RBKC's housing stock.

TMO is for all intents and purposes the Managing Agents of the RBKC housing stock dealing on an agency basis with such matters as rent collection, tenant repairs and maintenance via Repairs Direct Ltd as well as managing communal issues such as community environmental matters, anti-social behaviour. It does so on behalf of RBKC and its tenants.

TMO does not in any way manage the statutory utility companies providing water, gas and electricity to the housing stock nor does it manage the Fire and Rescue Services.

TMO had a Health and Safety policy in place at the time of the fire signed on the organisation's behalf by its Chief Executive. TMO had a specific fire strategy in place which was reviewed and updated during its existence. This was reported to the Finance, Audit and Risk Committee and Board on a regular basis. Health and safety was an identified risk in the Board's Risk Register.

TMO sought to comply with its health and safety and fire safety duties by adopting safety management systems involving policies and strategies, monitoring its safety performance, conducting audits and reporting its safety performance.

Health and Safety performance was monitored by the TMO's Health and Safety Committee attended by a number of its Executive Directors. Health and Safety,

including fire safety, was also a standing item in the Chief Executive's report to the Board meetings.

TMO was responsible for procuring fire risk assessments of the communal areas of the properties it managed. TMO employed a qualified safety professional as its Health, Safety and Facilities Manager to manage this process. This led to TMO engaging C S and Associates Ltd to conduct the fire risk assessments of its stock and give technical advice in relation to fire safety generally. Mr. Carl Stokes from C S and Associates Ltd conducted fire risk assessments on behalf of TMO. Mr. Stokes is a very experienced fire safety professional, properly qualified and fully competent to conduct fire risk assessments of the type requested.

The Regulatory Reform (Fire Safety) Order 2005 requires fire risk assessments to be reviewed regularly so as to keep them up to date, particularly if there was a reason to suspect they are no longer valid or there has been a significant change such as a material alteration to a block of flats. TMO's policy initially required properties to be risk assessed at least every three years but the documentation disclosed to the Inquiry demonstrates that Mr Stokes conducted fire risk assessments at Grenfell Tower on a far more regular basis than that, including a number in quick succession in 2016 when the refurbishment was reaching a conclusion.

Mr Stokes' initial engagement was to conduct fire risk assessments but the documentation disclosed to the Inquiry demonstrates that over time his role extended to looking at discrete issues at the request of TMO. For example, he was asked to look at issues such as the positioning of HIU Units in 2015 and work being conducted by National Grid Gas in 2016/7. Mr Stokes attended in relation to each of these issues at the request of TMO to give technical expertise to respond to concerns raised by residents. These reports were regularly shared with the specific residents who had raised concerns.

TMO held a two-monthly liaison meeting with the London Fire Brigade ("LFB") attended by the local LFB Station Manager and members of the Kensington and Chelsea and Hammersmith and Fulham fire inspection teams. Grenfell Tower was a regular item on the agenda of those meetings with TMO reporting progress of the Tower refurbishment. TMO encouraged the LFB to attend the Tower regularly for the purposes of familiarisation and inspection. The minutes of the Liaison Committee make reference to numerous visits by the LFB to Grenfell Tower prior to the fire.

LFB would also conduct audits of properties in the stock managed by TMO. They would be supplied with copies of the fire risk assessments prepared by Carl Stokes Associates in advance of these audits and had received numerous examples of his risk assessments.

TMO was also required to report its health and safety performance to RBKC as a condition of the MMA for scrutiny by RBKC who also conducted a regular audit of TMO's health and safety performance. At the time of the fire RBKC had given TMO a rating of "Substantial Assurance" for its health and safety performance. Internal Audits were commissioned by the TMO Board using RBKC Audit services covering areas including health and safety and reported to RBKC and its Scrutiny Committee.

Relationships between the TMO and the Council and between the TMO and the commercial core participants and any other relevant external bodies involved in the Grenfell Tower Refurbishment

TMO through its Operations and Assets and Regeneration function managed regeneration works on behalf of RBKC. This included the refurbishment of Grenfell Tower.

In relation to the refurbishment of Grenfell Tower, TMO's role was that of "Client" as defined under the Construction, Design and Management Regulations 2007 (CDM), which were in force when the project commenced. The role of "Client" is outlined in the HSE's Approved Code of Practice and includes making suitable arrangements for managing their project and enabling those carrying it out to manage health and safety risks in a proportionate way. These arrangements include appointing a CDM Coordinator (CDMC) and a principal contractor who have the requisite skills, knowledge, experience and organisational capability; providing all pre-construction information; ensuring that the CDMC prepares a health and safety file for the project and that it is revised as necessary and made available to anyone who needs it for subsequent work at the site. TMO fulfilled its obligations in this regard.

TMO itself has no expertise or role in relation to the works that were undertaken, their design or specification. TMO is not a contractor, architect or technical specialist in respect of any of the construction matters for the project.

As Client, TMO's role was to monitor and manage progress of the refurbishment work against budget to ensure delivery of the programme on behalf of RBKC, the tenants and leaseholders. Its role was also, together with contractors, to liaise with residents, who remained in situ during the works, to facilitate works within residential areas.

The short history of the refurbishment is that RBKC had taken a decision to refurbish Grenfell Tower and allocated money to that project.

The rebuilding of the Kensington Area Leisure Centre ("KALC") was being undertaken directly by RBKC using their contractors Leadbitter and Architects Studio E. It was determined by RBKC that those same contractors and consultants should be engaged for the proposed Grenfell refurbishment works. As of July 2013 RBKC had allocated an overall budget of £9.7m (inclusive of fees) for the regeneration works to Grenfell Tower.

RBKC's decision to refurbish Grenfell was to improve the internal living conditions for the tenants and leaseholders, the communal domestic hot water and central heating systems and other services to be upgraded and renewed including thermal installation, to make the building warmer in winter and cooler in summer. It was a RBKC planning requirement under their Policy Core Strategy CE1 that the refurbishment received a BREEAM rating of 'Very Good'. This was considered to be ambitious and would require a substantial increase in the thermal installation by way of over cladding.

The regeneration works ultimately included:

- Window renewal
- Thermal external cladding to the building
- New entrance lobby
- Communal decoration
- New communal heating system (with individual control)
- Hidden homes - seven new flats
- Relocation of boxing club, nursery, and office accommodation
- Fire safety and ventilation works
- Environmental enhancements

The proposals put forward by Leadbitter for the regeneration works were subsequently considered to be unacceptable by reason of cost and quality and TMO was then invited to put the work out to tender via the Official Journal of the European Union (OJEU) arrangements.

The procurement exercise was conducted under independent consultant overview with the benefit of Artelia Cost Consultant's review of costings and quality. Based on their findings, the contract for the work was awarded to Rydon as Principal Contractor.

Artelia reviewed and scored each of the tenders in full. They concluded that Rydon offered the best balance in terms of quality and value for money. Rydon achieved an overall score for quality assessment of 36.32 against the second best being Durkin at 31.22. As part of their review, Artelia also identified further savings which could be made. One of which was to change the cladding material from zinc to aluminium.

The refurbishment work was a Design and Build contract meaning that all works were to be designed and built by the Principal Contractor with support from its preferred consultants.

Principal Members of the Project Team reporting to the Principal Contractor were known to be:

Studio E	Architect
Taylor Young	Planning Consultant
Appleyards (later Artelia)	Costs Consultant, Employer's Agent and CDM Co-Ordinator

Churchman	Landscape Architect
Curtins	Structural Engineering Consultant
Max Fordham	Services Engineers
Exova Warrington Fire	Fire Engineers

The works themselves were conducted by Rydon, and their sub-contractors and specialist advisers and all were co-ordinated by Artelia and their CDM co-ordinator.

TMO's operational role was to monitor progress and budget in order to pay contractors appropriate to the works completed and to report progress on budget to the TMO Board and to RBKC.

TMO engaged a Clerk of Works from John Rowan and Partners to monitor the site work and report upon progress and quality against budget and to report this to the TMO Board and RBKC.

Residents remained in situ during the refurbishment works and it was TMO's role to keep them informed of progress and, together with Rydon, to liaise with them to accommodate the works being undertaken. TMO kept residents informed primarily by means of monthly Newsletters but also by information leaflets, public meetings, exhibitions with models of the various proposals, drop-in sessions and by personal contact.

TMO played no part in relation to technical decisions concerning cladding, insulation and fire breaks. TMO does not have any technical expertise in this regard and it reasonably relied on the specialist contractors appointed to undertake the project.

Over cladding, insulation and fire breaks were designed and installed by the specialist contractors under the control of Rydon as part of the Design and Build contract and were carried out with approval from RBKC's Planners and Building Control.

TMO is aware that prior to submitting the formal planning application, Taylor Young attended a number of design team meetings and arranged a pre-application meeting with the Planning Department of RBKC. Meetings followed at which representatives of Studio E, Max Fordham and Taylor Young met with RBKC's Planning Department to consider in particular matters relevant to the over cladding comprising rain screen, fire breaks and thermal insulation.

TMO understood that zinc rain screen panels had initially emerged as the preferred choice but following input from the RBKC Architectural Advisory Panel, Studio E reconsidered the Scheme and a redesign was submitted. TMO is aware that in January 2013 the RBKC Planning Department notified Studio E that their proposal was rejected because of the colour of the zinc rain screen. It seems RBKC had a preference for natural materials such as copper.

RBKC's preferred material was more expensive and it was necessary to review the costings.

Studio E reported in their Stage D Report of August 2013 that there was an impasse on the colour and more significantly this led to doubts about the overall affordability of the Scheme.

Consultants convened a number of value engineering meetings aimed at achieving the project within budget and a range of options was considered.

It was part of this exercise that Artelia reviewed costings for the work and identified a number of potential savings. The largest saving was in relation to cladding but this was made conditional upon RBKC Planning Department approval under the reserved matters.

This prompted a reconsideration of choices, including design, colour and specification. All of these matters were determined as between Rydon, Studio E, Artelia and RBKC Planners and Building Control. TMO played no role in this other than to report on the proposals to the residents and the TMO Board.

Discussions centred upon durability and appearance of the over cladding. No issues were ever brought to TMO's attention regarding the specifications of cladding, insulation and its installation, and all were presented as being compliant with relevant Standards and Regulation.

Discussion and debate ensued regarding the colour and method of fixing. TMO had no input into these discussion except where appropriate to seek tenant opinion.

It was reported that the RBKC Planning Department would not accept face fixing and required cassette, and were also continuing to look at possible colours. It was said that lower levels where damage from impact could occur would utilise a different and more robust product. Plans were subsequently submitted by Rydon to RBKC Planners and a final choice of colour and type of fixing was eventually decided with planning permission granted in January 2014, with a series of reserved matters. Condition 3 required that drawings or samples of materials for the external faces of the building be submitted prior to the work on that section commencing.

By July 2014 the issue of the type of fixings was concluded. TMO is aware that face fixing proposals on behalf of Rydon were rejected by RBKC Planning Department. TMO is aware that the decisions in relation to use of a particular style of cladding and its colour were made by RBKC Planners from information provided to them by Studio E, Max Fordham and Taylor Young.

TMO is aware of reports that RBKC Planners and RBKC Building Control visited the refurbishment works regularly to approve the cladding works, the fixing, insulation and fire breaks.

In keeping with its role in managing Fire Safety, TMO engaged the services of C S Stokes and Associates to inspect Grenfell Tower following the refurbishment works there. Mr Stokes reported following his inspection and upon analyses of documents made available to TMO that new fire-rated cladding was fixed to the outface of the building by metal fixings and the whole process was overseen by RBKC Building Control and Officers who had approved and accepted the fixing system and cladding used. He also reported that a “stay put” evacuation policy was in place whereby residents could remain in their own dwelling during a fire incident in the building, unless the fire was in their dwelling or their dwelling was otherwise affected by the fire. He referred to information for Londoners living in high rise properties provided on LFB’s website as provided by the London Fire and Civil Defence Service.

TMO understands that Studio E took their fire safety advice from Exova to formulate fire safety strategies in conjunction with LFB.

TMO is aware that at the outset of the refurbishment work Exova advised Studio E that the proposed building alterations would be subject to The Building Regulations 2010 and in light of the proposed changes a fire risk assessment would be required to meet the requirements of The Regulatory Reform (Fire Safety) Order 2005.

Exova also advised Studio E that to comply with section B3 of the Building Regulations 2010, all new elements of structure will be constructed to have the same standard of fire resistance as that of existing elements and noted that compartment walls and/or floors will be provided between apartments and as between apartments and common areas with 60 minute standard of fire resistance unless they form part of the structural frame of the building where they will have a 120 minute standard of fire resistance.

It was also noted that doorways within compartment walls will be fitted with self-closing doors having a 60-minute standard of fire resistance except where a different standard will be necessary to satisfy B5.

Exova also noted that the proposed changes would have no adverse effect on the building in relation to external fire spread but this was to be confirmed by future analysis. TMO believes that Exova conducted that further analysis and gave such confirmation to Studio E although the precise terms of that confirmation are not known to TMO.

TMO took its own advice from LFB and from C S Stokes and Associates Ltd. The fire risk assessment set out the detail of the approach to fire safety and when required the LFB’s view was sought on specific issues or concerns. Central to those considerations was the LFB’s “stay put” policy and assurances as to the integrity of the compartmentalisation of the units. If it is shown that this integrity was compromised as a consequence of the content or construction of the cladding, insulation and fire breaks then from TMO’s perspective, it was advised that all relevant materials and installation met with applicable Standards and Regulation and had been selected and installed with the approval of RBKC Planners and Building Control.

At no time did TMO advise, nor was it in a position to advise upon, the use of aluminium rain screen or the over cladding as specified being unsuitable. In this regard TMO reasonably relied upon the guidance and recommendations of the experts engaged to consider such matters in conjunction with RBKC Planners. The workmanship, including the fire stopping, was praised by Building Control and the Scheme was completed and the Building Control Certificate was issued following inspections by that department.

TMO operated a formal process for the recording and processing of reports of defects, requests for repairs and such like within tenanted units. The process required these to be logged on a Customer Relationship Management database known as "CRM" and prior to the existence of that database on a system known as "W2". All entries for all properties in Grenfell Tower from both databases have been downloaded and presented to the inquiry by reference to each property.

"Complaints" in TMO terminology is not a report of defect or repair request but a formal "complaint" identified under its policy as an 'expression of dissatisfaction about a service provided' aimed at complaints about the conduct or performance of TMO or Repairs Direct. The process for dealing with these under TMO's Complaints Policy provides for a 3-stage process ahead of any reference to the independent Ombudsman. All documents recording all complaints relevant to Grenfell Tower have been presented to the Inquiry.

All issues, whether described as reports of defects or requests for repairs or complaints and concerns, were processed through formal and authorised procedures made known to the residents. TMO had no formal process for reviewing issues raised other than through these formal channels and/or by direct communication. For reasons of good management TMO intentionally did not formally process public comments made outside of these channels.

All resident issues arising during the refurbishment works were directed to Rydon. The Newsletters to residents in particular identified that if residents had any issues in relation to the refurbishment works then these were to be directed to Rydon's Resident Liaison Officers whose identities and contact details were shown on the Newsletters.

All issues raised by residents were therefore logged, monitored and responded to by Rydon and ultimately their records and responses etc. were reviewed and audited by the Clerk of Works as part of their role in reporting to TMO that quality standards had been met to authorise payment. Any issues arising were dealt with directly between the Clerk of Works, the Principal Contractor and Employer's Agent.

Dated this 9th day of February 2018

Kennedys Law LLP

Solicitors for Royal Borough of Kensington and Chelsea Tenant Management Organisation

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE GRENFELL TOWER INQUIRY

POSITION STATEMENT OF STUDIO E

1. INTRODUCTION

1.1 The two entities relevant to this Position Statement are:

1.1.1 Studio E Architects Limited (**SEAL**); and

1.1.2 Studio E LLP (**SELLP**).

(referred to collectively in this Position Statement as '**Studio E**')

1.2 SELLP initially provided architectural services with regard to the refurbishment of Grenfell Tower that took place during the period 2011-2016 (the **Refurbishment Works**). Due to financial problems unconnected with the Refurbishment Works SELLP was wound up in 2014¹ and SEAL provided the services with regard to the Refurbishment Works.

1.3 This is the Position Statement of Studio E in accordance with the request of the Inquiry dated 2 January 2018. As requested, this Position Statement is intended to:

1.3.1 Describe the nature of Studio E's involvement in the Refurbishment Works;

1.3.2 Identify the parties with whom Studio E entered into relationships in order to carry out its role, describing the purpose of those relationships; and

1.3.3 Identify the key documents relevant to those relationships.

¹ SELLP was dissolved on 6 December 2016.

- 1.4 This document is descriptive of Studio E's involvement only. It is intended to assist parties to the Inquiry to obtain a better overall understanding of the role played by Studio E in the Refurbishment Works. As such, it is necessarily a high-level summary of Studio E's position. Studio E's full position is subject to, and determined by, all the evidence in the Inquiry, including documentary, witness and expert evidence. Studio E will refer to such evidence at the appropriate time to fully address its role and scope of involvement.
- 1.5 The Refurbishment Works involved a number of entities. To assist the Inquiry's overall understanding of the Refurbishment Works this Position Statement focuses on those parties that Studio E considers to be of relevance to the completion of the Refurbishment Works only. As identified below, Studio E's relationship with many of these entities was not contractual, and, save to the extent identified below, Studio E has not seen the appointments governing the interrelationship of those other entities. As such, this Position Statement is based on Studio E's understanding of those relationships, and is accurate to the best of its knowledge and belief.

2. NATURE OF STUDIO E INVOLVEMENT

- 2.1 Studio E was the architect for the Refurbishment Works.

3. RELATIONSHIPS

- 3.1 Studio E's involvement in the Refurbishment Works can be considered in two phases:

3.1.1 **Phase 1:** SELLP was appointed by the Kensington and Chelsea Tenant Management Organisation (**KCTMO**) to provide architectural services to assist the KCTMO to develop its project brief into a scheme with sufficient information that could be put out to tender for a design and build contractor to complete the Refurbishment Works. Phase 1 covered the period December 2011 to in or around Summer 2014.

3.1.2 **Phase 2:** SELLP, and then subsequently SEAL, was appointed by Rydon Maintenance Limited (**Rydon**) to provide architectural services through the construction of the Refurbishment Works. Phase 2 covers the period from in or around April 2014 to July 2016.

Phase 1: Relationships

- 3.2 SELLP was appointed by the KCTMO to provide architectural services.

3.3 SELLP appointed the following sub-consultants:

3.3.1 Matthew Wigan Associates to provide Landscape Architectural services; and

3.3.2 David Bonnett Associates to provide Access Consultancy services

3.4 For the purpose of providing its architectural services during Phase 1 SELLP had direct interaction, to a greater or lesser extent, with the following entities:

3.4.1 Artelia UK (previously Appleyards) (**Artelia**), appointed by the KCTMO, as CDM Coordinator, Employer's Agent, Project Manager and Quantity Surveyor;

3.4.2 Max Fordham LLP, appointed by the KCTMO, as the Building Services Engineer;

3.4.3 Curtins LLP, appointed by the KCTMO, as the Structural Engineer;

3.4.4 Exova Warringtonfire, appointed by the KCTMO, as Fire Consultant;

3.4.5 Jane Simpson Access Ltd, appointed by the KCTMO, to provide Access Consultancy services;

3.4.6 Churchman Landscape Architects Limited, appointed by the KCTMO, to provide Landscape Architectural services; and

3.4.7 IBI Group / Taylor Young, appointed by the KCTMO, as Planning Consultant.

Phase 2: Relationships

3.5 SELLP, and then subsequently SEAL, was appointed by Rydon to provide architectural services.

3.6 SEAL entered a collateral warranty with the KCTMO and Rydon with regard to the services it was providing to Rydon in Phase 2.

3.7 Neither SELLP nor SEAL appointed any sub-consultants in Phase 2.

3.8 For the purpose of providing its architectural services during Phase 2 SEAL had direct interaction, to a greater or lesser extent, with the following other entities:

3.8.1 All the entities listed at paragraph 3.4 above. Studio E understands that these entities remained appointed by the KCTMO, save that we understand there was an intention to novate the appointment of Curtins to Rydon, and that Artelia was

appointed as the Contract Administrator under the Building Contract between Rydon and the KCMTO;

3.8.2 RJ Electric Solutions Limited, appointed by Rydon as electrical sub-contractor;

3.8.3 PSB UK Ltd / Witt UK Group, appointed by Rydon as ventilation sub-contractor;

3.8.4 Harley Facades Limited, appointed by Rydon as the cladding design and build sub-contractor;

3.8.5 JS Wright & Co. Limited, appointed by Rydon as the services sub-contractor;

3.8.6 Silcock Dawson & Partners Ltd, appointed by the KCTMO as the mechanical and electrical clerk of works;

3.8.7 John Rowan and Partners, appointed by the KCTMO as the clerk of works; and

3.8.8 Kensington and Chelsea Borough Council, Building Control.

3.9 Studio E has appointments for SEAL and SELLP, and its sub-consultants.

4. KEY DOCUMENTS

4.1 The key documents relating to the relationships identified in this Position Statement:

4.1.1 The unsigned RIBA Standard Conditions of Appointment, and appendices, sent to the KCTMO by SELLP on 11 November 2013;

4.1.2 The appointment between Rydon and SEAL dated 3 February 2016; and

4.1.3 The undated Collateral Warranty between SEAL, the KCTMO and Rydon.

4.2 Studio E has previously provided these documents to the Inquiry. Further copies can be provided on request.

5. SUMMARY

5.1 This Position Statement provides a description of Studio E's role and relationships relevant to the Refurbishment Works. Studio E will fully cooperate with the Inquiry should it require any further information or clarifications on the facts and matters set out herein.

Dated: 9 February 2018

Osborne Berry Installations Limited ('OBIL')

POSITION STATEMENT

1. OBIL was incorporated in 2002 and provides installation services for windows and cladding to residential and commercial premises. OBIL is a small company and consists of 3 officers namely Grahame John Berry (Director), Mark James Osborne (Director) and Helen Berry (Secretary) and one employee who is employed as a fitter. Grahame and Helen Berry are husband and wife. OBIL does not employ any other persons. OBIL does on occasions sub-contract work and/or use self-employed fitters to assist and undertake work on their behalf.
2. OBIL undertakes work for private individuals, companies and local authorities. OBIL provides the labour and fitters (this includes Mr Berry and Mr Osborne) to carry out the installation process.
3. Prior to the incorporation of OBIL, Mr Berry had worked as a fitter carrying out work for Harley Facades Limited/ Harley Curtain Wall Limited for about twenty years. Mr. Osborne was also working as a self-employed fitter for Harley Facades Limited/ Harley Curtain Wall Limited for about twenty years. OBIL was one of the three preferred teams Harley Facades Limited/ Harley Curtain Wall Limited instructed.
4. OBIL was instructed by Harley Facades Limited to assist in the refurbishment of Grenfell Tower. OBIL were sole contractors in relation to fitting the windows and the cladding to Grenfell Tower.
5. OBIL initially placed a bid for the refurbishment of Grenfell Tower in the sum of £270,000. This figure rose due to extra work required to approximately £325,000.
6. OBIL were supplied all of the cladding and windows to install from Harley Facades Limited/ Harley Curtain Wall Limited. OBIL had no input/ role in the choice of cladding and windows or any other material to be used in the refurbishment of Grenfell Tower. OBIL used their own equipment to install the materials/products.
7. OBIL began work on Grenfell Tower around the end of August 2014 and completed it around June 2016. OBIL did not subcontract the work, however they used normally 8 up to 14 self-employed fitters throughout the installation process.
8. A summary of the installation process was as follows:
 - (i) A Jig was made which was the same as the top and bottom shelf angles which held the windows and horizontal cladding.
 - (ii) The concrete was marked and drilled with 12mm SDS, the puffed out holes were filled with resin to hold the bolts which were set. These bolts were then

‘pull tested’ by an independent company arranged by Harley Facades Limited/ Harley Curtain Wall Limited.

- (iii) Shelf angles were fitted onto the studs and then the windows were fitted to the shelf angles. All windows were then fire foamed in place with EPDM (rubber water proofing) at all edges.
- (iv) Angle brackets were then fitted to the shelf angles and they were then levelled.
- (v) 2 Sheets of celotex which were 80mm deep and horizontal firebreak were installed.
- (vi) Cladding rails were fixed to angle brackets on the shelf angles prior to fitting the horizontal cladding panels.
- (vii) The vertical concrete columns were marked and drilled with 12mm SDS. The holes were puffed out and filled with resin to hold the bolts.
- (viii) Vertical brackets to hold the vertical cladding rails were installed, lined and then levelled.
- (ix) Vertical and horizontal and fire breaks were installed as per elevation drawing.
- (x) The excess fire foam was removed and mastic pointed.
- (xi) Vertical cladding was installed to the rails.

9. In our duty of candour, we would like to inform GTI that OBIL were informed by Harley Curtain Wall Limited that they were experiencing financial difficulties. This had an impact on when the cladding was provided to OBIL for installation. OBIL fitted some cladding but not all and OBIL estimates a gap of nearly two months between item 9(ix) and (x) above being completed. OBIL were told that Harley Curtain Wall were going into administration and ongoing and future work would be contracted Harley Facades Limited. OBIL were told that OBIL installed the cladding after it was provided to them by Rydon Maintenance Limited. OBIL had no control and/or prior notice from Harley Facades Limited/ Harley Curtain Wall Limited, that there was going to be a delay in the delivery of the cladding. The Project manager who had responsibility over the completion timetable and appointing the relevant contractors to work in sequence at Grenfell Tower was Ben Bailey from Harley Facades Limited/ Harley Curtain Wall Limited. GTI might want to consider what impact the exposure of Grenfell Tower for two months might have had on the window, fire foam and vertical and horizontal fire breaks prior to the installation of the cladding and whether it could have in some way affected the integrity of those products and/or when combined together in relation to fire safety.
10. After completion of the installation of windows and cladding, there was an inspection carried out by Ben Bailey from Harley Facades Limited/ Harley Curtain Wall Limited, Rydon Maintenance Limited and the local Council Building Inspector. All confirmed that there were no issues in relation to the installation of the windows and cladding.
11. OBIL did not play any other role in the refurbishment of Grenfell Tower other than outlined above.

12. There was no formal contract between OBIL and Harley Facades Limited/ Harley Curtain Wall Limited due to their established relationship at the time. The Grenfell Tower Inquiry (GTI) have been provided copies of all documents OBIL have in their possession relating to Grenfell Tower (which include invoices for the work carried out at Grenfell Tower). These documents were first provided to the Metropolitan Police Services (MPS). Furthermore, Mr Berry has been seen by the MPS and has provided them with a witness statement to assist them in their investigation and also GTI.

On behalf Osborne Berry Installations Limited

Stephen Rimmer LLP

27 February 2018

THE GRENFELL TOWER INQUIRY

RYDON MAINTENANCE LIMITED'S POSITION STATEMENT

Introduction

1. This is the position statement of Rydon Maintenance Limited ("Rydon"). As indicated in the Deputy Solicitor's letter dated 2 January 2018, the purpose of this statement is to set out the nature of Rydon's involvement in the refurbishment of Grenfell Tower. In particular, this statement:
 - (1) Describes the nature of Rydon's involvement, and that of any associated companies or bodies with whom Rydon entered into relationships (whether contractual or not) and the purpose for which they entered into those relationships, in order to carry out its role.
 - (2) Identifies the key documents governing those relationships.

The Rydon Contract

2. Rydon Group Limited is a privately owned group which carries out construction, development, maintenance and management works throughout England. The group comprises: Rydon Construction Limited; Rydon Homes Limited; Rydon Maintenance Limited; and Ryhurst Limited. Rydon Maintenance Limited was the only part of the Rydon Group which was involved with the refurbishment works carried out at Grenfell Tower.
3. The refurbishment works at Grenfell Tower ("the Project") were subject to a public procurement process. The Royal Borough of Kensington and Chelsea Tenant Management Organisation ("KCTMO") had undertaken a previous procurement process which did not proceed to contract. Subsequently KCTMO published an OJEU notice for the works to which Rydon responded. Tenderers were asked to bid and price against detailed specifications and drawings produced by consultants and specialists employed by or on behalf of KCTMO. This included a detailed specification for the rainscreen cladding. By the time that Rydon submitted its tender dated 13 February 2014, KCTMO had already obtained conditional planning permission for the Project.

4. Following the procurement and tendering process set out above, by a JCT Design and Build Contract (2011 edition) (as amended) and dated 30 October 2014 (“the Rydon Contract”), KCTMO employed Rydon as principal contractor in respect of refurbishment works at Grenfell Tower.
5. The Rydon Contract comprised a number of contract documents, including in particular:
 - (1) The JCT Design and Build Contract (2011 edition) (as amended).
 - (2) The Employer’s Requirements, which comprised “Preliminaries” and “Specification and Design Requirements”. As to the latter, this included:
 - (a) The Architectural Employer’s Requirements. These were contained in the Studio E LLP NBS Specification dated 30 January 2014 (as revised) (“the Studio E Specification”) and the Room Data Sheets. The Studio E Specification set out detailed requirements for the refurbishment works and included Section H92 which specified the technical requirements for the rainscreen cladding, including a limited selection of specified panels and also the insulation.
 - (b) KCTMO’s Mechanical, Electrical and Plumbing Services were contained in the Specification of Max Fordham LLP (“the Max Fordham Specification”) .
6. The nature of Rydon’s works were described more fully in the Employer’s Requirements at Part 2 (A110) of the Rydon Contract as being:

“A10 Project Particulars

Name: Enhancements and improvements to Grenfell Tower.

...

The Works consist of the Design, Construction, Completion and Defects Rectification of the proposed re-cladding and installation of new windows of Grenfell Tower including Mechanical and Electrical installations and remodelling of its lower floors to provide improved accommodation for a nursery, boxing club, offices, new entrance and 7¹ new residential flats and some soft and hard landscaping works surrounding

¹ There were variations to the Rydon Contract, including the provision of two additional flats in the lower floors of Grenfell Tower.

the Tower.”

7. The Rydon Contract (Part 2A) identified a number of other bodies who provided services and/or were connected with the refurbishment works at Grenfell Tower. Those bodies were:
 - (1) Artelia UK as KCTMO’s Agent; CDM Coordinator; Quantity Surveyor.
 - (2) Studio E LLP as Architect, who were originally appointed by KCTMO to provide architectural services, including the provision of the Studio E Specification.
 - (3) Curtins Consulting Limited as Structural Engineer, who were originally appointed by KCTMO to provide structural engineering services.
 - (4) Max Fordham LLP as KCTMO’s Mechanical Engineer, Electrical Engineer and Client Technical Adviser (Services).
8. Under the Rydon Contract, the Date of Possession of the Site was 2 June 2014 (Contract Particulars, Clause 2.3). Practical Completion was certified on 18 July 2016.

Rydon’s contracts/subcontracts

9. As set out above, KCTMO appointed Studio E LLP to provide architectural services, including the provision of the Studio E Specification. Subsequently, Rydon appointed Studio E Architects Limited on terms contained in and/or evidenced by a Deed of Appointment dated 3 February 2016 between Rydon and Studio E Architects Limited. The list of Studio E Architects Limited’s Services was detailed in Annexure A to the Deed of Appointment. Further, Studio E Architects Limited executed a Consultant Deed of Collateral Warranty dated 25 April 2016, wherein KCTMO was named as “Beneficiary”.
10. As set out above, KCTMO appointed Curtins Consulting Limited as structural engineer. Subsequently, Rydon appointed Curtins Consulting on terms contained in and/or evidenced by a Deed of Novation dated 25 April 2016 between KCTMO, Rydon and Curtins Consulting Limited. The list of Curtins Consulting Limited’s Services was detailed in the First Schedule to the Deed of Novation.
11. Further, Rydon entered into various subcontracts in respect of packages of works. In particular:

- (1) **Facades:** Rydon subcontracted the design, supply and installation of the external façade works to Harley Curtain Wall Limited (the contract for which was subsequently novated to Harley Facades Limited by a Novation Agreement dated 10 September 2015). The subcontract documents are contained in and/or evidenced by Rydon's undated letter of intent to Harley Curtain Wall Limited, which expressly incorporated the JCT DOM2 Subcontract Conditions (2011). Further, Harley Facades Limited executed a Sub-Contractor Collateral Warranty by deed dated 25 April 2016 wherein KCTMO was named as "Beneficiary". As to Harley's works:
 - (a) Harley's supply chain for carrying out its works included: fabricator and supplier, CEP Architectural Facades Limited ("CEP"); and Alcoa Architectural Products, now part of the Arconic group (the manufacturer of the installed Reynobond ACM panels).
 - (b) Harley sourced and installed the Celotex insulation panels, which Rydon understands to have been manufactured by Celotex Limited, a subsidiary of the St Gobain Group.
 - (c) The cavity fire barriers were supplied by Siderise.
- (2) **M&E:** Rydon subcontracted the M&E packages to J S Wright & Co Limited, further to an undated letter of intent to J S Wright & Co Limited.

12. Rydon entered into further subcontract packages, including:

- (1) Fire stopping works which were subcontracted to a specialist contractor, GSI Contract Services Limited.
- (2) Dry lining, Plastering & Suspended Ceilings Package which was subcontracted to S.D. Plastering Limited.

Other relationships

13. Further, in carrying out its works under the Rydon Contract there were other bodies and organisations with whom Rydon (and/or its consultants, subcontractors, servants and agents) liaised in respect of the Project. These included:

- (1) ***Clerk of Works:***
- (a) John Rowan and Partners were appointed as Clerk of Works for all construction matters, excluding mechanical and electrical works. It is understood that they were appointed by KCTMO.
 - (b) Silcock Dawson & Partners Limited were appointed as Clerk of Works for mechanical and electrical works. It is understood that they were appointed by KCTMO.

Rydon (and/or its consultants, subcontractors, servants and agents) liaised with the Clerks of Works in respect of its works carried out under the Rydon Contract.

- (2) ***Specialist Fire Advice:*** Exova (UK) Limited (trading as Exova Warringtonfire) (“Exova”) provided expert fire engineering advice in respect of the refurbishment works at Grenfell Tower. It is Rydon’s understanding that Exova was engaged by KCTMO. Exova produced the Fire Safety Strategy for Grenfell Tower and provided detailed advice and specialist input on fire safety during the Project.
- (3) ***Fire Safety Consultant:*** Rydon (and/or its consultants, subcontractors, servants and agents) was required to liaise with Carl Stokes. It is Rydon’s understanding that he was engaged by KCTMO as an independent Fire Safety Consultant. Carl Stokes provided fire safety advice to the Project and produced KCTMO's Fire Risk Assessment for Grenfell Tower.
- (4) ***IBI Group:*** believed to be planning consultants appointed by KCTMO. IBI Group provided planning advice during the Project.
- (5) ***Royal Borough of Kensington & Chelsea Building Control:*** Rydon (and/or its consultants, subcontractors, servants and agents) liaised with Building Control who provided advice and inspected and approved the works carried out under the Rydon Contract.
- (6) ***Royal Borough of Kensington & Chelsea planners and councillors:*** IBI Group (believed to be KCTMO’s planning consultants) liaised, principally through Studio E, on Rydon’s behalf, with RBKC planners and councillors in respect of the works from time to time.

- (7) ***London Fire Brigade:*** Rydon liaised with the London Fire Brigade in respect of fire-related issues.
- (8) ***Cofely:*** Rydon (and/or its consultants, subcontractors, servants and agents) liaised with KTCMO's maintenance contractor for services, from time to time, regarding interface issues.

Conclusion

14. Rydon remains committed to cooperating fully on matters with which it can assist the Inquiry. This statement sets out Rydon's understanding at this stage in its investigations. However, investigations are still ongoing and, to this end, Rydon reserves its right to amend or supplement this statement, if required.

**Nick Young & Fiona Gill
DAC Beachcroft LLP**

**Stuart Catchpole QC
39 Essex Chambers**

**Rachael O'Hagan
39 Essex Chambers**

9 February 2018

THE GRENFELL PUBLIC INQUIRY

OPENING SUBMISSIONS ON BEHALF OF KEVIN LAMB T/A BESPOKE DESIGN FOR PHASE 2, MODULE 1

Introduction

1. At all material times Kevin Lamb was a self-employed designer who has worked in the glazing and cladding industry since 1988. From 2000 to 2017 he traded, as a sole practitioner, as Bespoke Design. In August 2014 he was subcontracted by Harley Curtain Wall Limited and later Harley Facades Limited (hereinafter “Harley”) for their work on the refurbishment of Grenfell Tower.
2. Like many others, Mr Lamb was both shocked and distraught by the fire at Grenfell Tower. He would like, at this stage, to express his deepest sympathies to all those who have been touched by the consequences of that fire.
3. Mr Lamb is committed to assisting this Inquiry in completing its important work. At the outset of this Inquiry Mr Lamb was assisted, in particular in the preparation of his Rule 9 witness statement, by solicitors representing Harley. However, in July 2019 it became apparent that the terms of Harley’s funding did not extend to representation for Mr Lamb, who was a sub-contractor and not an employee of Harley. As a result, Mr Lamb was required to find alternative representation. An application was made to the Chairman and Mr Lamb was designated as a Core Participant on 26 September 2019. Since 8 October 2019 those acting on behalf of Mr Lamb have been reviewing the material relevant to Phase 2, Module 1. Due to the volume of material disclosed, it has not been possible to review all of the documents to date. Nonetheless, this opening statement is prepared in order to assist the Inquiry and all Core Participants.

Progress prior to Mr Lamb's appointment and the selection of materials

4. The Grenfell Tower refurbishment project had been underway since 2012, with Studio E involved as the architects for the project since at least May 2012. Harley began meeting with representatives of Studio E in September 2013 and were formally appointed in July 2014, at which time they were informed that the cladding would be Reynobond ACM.
5. Given that Mr Lamb was not engaged by Harley to work on the Grenfell Tower refurbishment until August 2014, he had no role in the selection of either the cladding material or the insulation for the project. Thus, the decisions to use Reynobond ACM for the rainscreen cladding material and Celotex for the envelope insulation were made prior to Mr Lamb's involvement and did not fall to be reconsidered throughout his time on the project. He now understands that the suitability of those products had been assessed on behalf of Harley by Daniel Anketell-Jones on receipt of the NBS specification.¹
6. To Mr Lamb's knowledge the materials selected were commonplace within the industry at this time and Mr Lamb had no cause for concern about either their performance or combustibility.
7. It was neither necessary nor expected that Mr Lamb, as a sub-contractor, would question decisions made prior to his involvement on the project. Harley was Mr Lamb's client and had more experience in cladding projects on buildings over 18 metres in height. At the very beginning of his work on the project Mr Lamb was given preliminary drawings produced by Harley which were based upon a similar job that had been successfully completed by Harley and reflected the approach to be taken on this project.²
8. We note that Mr Hyett has made no criticism of Harley for the use of those materials which were selected prior to their involvement. There cannot, therefore, be any higher burden placed upon their sub-contracted designer who was engaged after the products were selected.

¹ HAR00010151_003 at para 9

² HAR00010432

9. All materials selected as part of the rainscreen cladding design were included on the Harley Specification C1059-100.³ The materials chosen for the window infill panels were included in the Harley Specification following internal discussions which included consideration of costing and availability.
10. A Styrofoam core, with aluminium coating, was used for the P1 and Kingspan TP10, which had an aluminium coating, for the P2 panels. The selection for the P1 panels was made by Harley who were able to source it from a regular supplier. Mr Lamb suggested the Kingspan TP10 product for the P2 panels, which were to be custom made. Mr Lamb was aware that such materials had been approved by Building Control on other projects with which he had been involved. As such, Mr Lamb had no cause for concern about either the suitability or compliance of either product used in the P1 and P2 panels.
11. The purpose of submitting the Harley Specification C1059-100⁴ was, as with all drawings, for it to be considered and approved by Studio E. Mr Lamb believed that this would include, where appropriate, consultation with fire specialists or the fire strategy. The Harley Specification, with the materials set out therein, was approved by Studio E.
12. At no stage in the project did Mr Lamb have any involvement in, or knowledge of, the materials used inside Grenfell Tower, including the window reveals. In addition, Mr Lamb was not involved in the installation and did not inspect the works.

Mr Lamb's drawings

13. Mr Lamb was contracted by Harley to provide General Arrangements, Schedules and Fabrication drawings for the refurbishment of the external facade of Grenfell tower⁵. Mr Lamb's involvement commenced on 20 August 2014 and concluded in or around late April 2016.

³ HAR00008991_0001

⁴ HAR00008991_0001

⁵ HAR00010415

14. Mr Lamb was not the Principal Designer on the project. Throughout his involvement Studio E retained the role of Principal Designer. Mr Lamb's role was limited to producing drawings for the construction of the external façade, including the rainscreen cladding and envelope insulation, and fabrication drawings to aid in the manufacture of the components required.
15. Mr Lamb agrees with Daniel Anketell-Jones' observation that, within the construction industry, there is a generally accepted hierarchy where the senior design team, comprising the architects, consultants (fire, acoustic and structural) and Building Control, sit at the top. Below them sit the main contractor (in this case Rydon), and the subcontractors (Harley) sit below that. The opinion of the senior design team is deferred to by everyone sitting below them.⁶
16. The Harley drawings, produced by Mr Lamb, were discussed in detail within Harley before their submission to Studio E. Ray Bailey provided conceptual input from his many years of experience and Daniel Anketell-Jones, with the benefit of an MSc in Façade Engineering, provided technical and structural engineering input.
17. Mr Lamb's drawings were based upon, and were required to reflect, the Studio E drawings. The key aspects of those designs were included in drawing 1279 (06) 110 Revision 00, 'Proposed Typical Bay Plans, Section & Elevation', dated 24th September 2013⁷ and Detail Section Sheet 1 1279 (06) 120 00 dated 26th September 2013⁸.
18. Mr Lamb was aware that architects' drawings are produced and developed through a lengthy process which includes consultation with experts, including structural engineers, acoustic experts and fire experts. Mr Lamb was not privy to, nor provided with the results of, such consultations. In addition, prior to the tendering process, there is often a prolonged dialogue with Building Control. In light of the above, Mr Lamb's drawings did not deviate significantly from the drawings prepared by the architects.

⁶ HAR00010149_006 at para 26

⁷ KL/9- HAR00010447

⁸ KL/10- HAR00010424

19. In his report, Mr Hyett has concluded that the drawings provided by Studio E did not show “*sufficient information to construct the project to completion*”.⁹ The main principles relating to the external façade design should have been developed and resolved by the architects, Studio E, prior to the project being put out to tender and certainly prior to the appointment of sub-contractors. These should have included detailed arrangements and product specification, including insulation, cavity barriers, rainscreen cladding and window infill panels. In Mr Hyett’s view, the designs, as provided to Mr Lamb on his appointment, failed to meet this standard.¹⁰
20. In addition, by the time of Mr Lamb’s appointment, neither the NBS Specification nor the entirety of the Studio E drawings reflected the prevailing intention for the project. For example, the NBS Specification included four different cladding options for the choice of cladding and had not been refined to reflect a complete external façade package following the selection of ACM.¹¹ The NBS Specification still indicated that face fastened solutions were permitted,¹² when there was, by this time, a decision to use a cassette configuration. At least one Studio E drawing still showed a riveted system.¹³

The review process

21. The drawings were submitted, on behalf of Harley, to Studio E for consideration. It was reasonable to expect that the review conducted by Studio E, in accordance with good practice and ISO 9001 Quality Assurance, comprised both design reviews and technical reviews; which focus on compliance and performance objectives, including fire safety.¹⁴
22. Development of the designs was led by the architects. In addition to the initial designs, Studio E provided feedback on the drawings submitted, both in writing and during design meetings. On occasion the written feedback provided was detailed. It was not concerned with aesthetics alone.¹⁵ There could be multiple versions of the same drawings (see

⁹ PHYR000003_0054 at Para 3.7.31

¹⁰ PHYR000003_112 at para 3.10.6

¹¹ ART00001964_063

¹² ART00001964_063

¹³ SEA00002499

¹⁴ PHYR0000006_037

¹⁵ For example SEA00002853_002 and 004, 006

C1059 200 Rev I¹⁶ and C1059 301 Rev F¹⁷). As a result, Mr Lamb reasonably assumed that Studio E were properly reviewing the drawings provided.

Cavity Barriers

23. As an example of the review process relating to cavity barriers, in his report Mr Hyett has confirmed that ensuring that cavity barriers complied with Building Regulations was the responsibility of Studio E.¹⁸
24. In this regard, throughout Mr Lamb's experience in the industry it has not fallen to him to design a cavity barrier system, in the sense of determining the placement of cavity barriers so as to comply with building regulations. Whilst cavity barriers are products to be included within the drawings, it is reasonable to expect that the architect, often in conjunction with a fire consultant, has determined where cavity barriers will be required. Such a decision will involve the consideration of the building as a whole and a building's overall fire strategy.
25. Mr Hyett confirms that it was for Studio E and not for Harley, or indeed Mr Lamb, to fully explore and, in principle, resolve the issue of closing the cavity around the window openings. It is submitted that this would extend to resolving the issue of cavity barriers at the architectural crown. A fully worked out strategy, prepared in conjunction with a fire consultant, should have been prepared and reflected in the tender documentation. As Mr Hyatt opines, "*this is not... a matter that can be left for later resolution by the cladding sub-contractor.*"¹⁹
26. Mr Lamb's drawings, on behalf of Harley, did not include cavity barriers at the window openings. The drawings included vertical cavity barriers along the compartment wall and the columns, and horizontal cavity barriers along the compartment floor. Those drawings were consistent with, and prepared to reflect, the material provided to Mr Lamb. Mr Lamb was not provided with any drawing, document or instruction to indicate that cavity

¹⁶ HAR000008465

¹⁷ HAR00008901

¹⁸ PHYR0000006_062 at para 5.4.25(g)

¹⁹ PHYR000003_067 at para 3.8.13

barriers were to be placed around the windows in this project. In this regard he was provided with, inter alia:

- a. The Studio E drawings²⁰, which shows cavity barriers along compartment walls and floors only;
- b. The NBS Specification for Windows at L10, which makes no mention of cavity barriers around the window²¹;
- c. The Harley quote for works²², which listed only Horizontal Cavity barriers to the concrete floor slab and Vertical cavity barriers to the columns.

27. There was extensive correspondence between Studio E, Building Control, Exova and Rydon in relation to cavity barriers. And yet, the placement of the cavity barriers, or their absence around the window openings, was never queried. It was reasonable for Harley, and Mr. Lamb, to expect that, were they required, this would have been raised. Further, the cavity barriers, as drawn, were approved by Studio E and expressly approved by Building Control on 1 April 2015²³.

28. Mr Lamb was provided with very little assistance, or guidance, for the design of the architectural crown from the Studio E drawings. In particular, those drawings did not clearly indicate the need for a cavity barrier immediately beneath the crown. Mr Hyett concluded that Studio E's drawings, which Mr Lamb was required to translate, were "*inadequate and insufficiently thought through.*"²⁴ As with all drawings, Mr Lamb's drawings for the crown were submitted to Studio E and comments were provided in response. No question was raised as to the absence of additional cavity barriers.²⁵

29. In this regard, Mr Lamb would agree with Ray Bailey's statement that Diagram 33 of Approved Document B is not a useful guide for this particular project which is not a "*common building situation.*"²⁶ Unlike the image in diagram 33, there was no habitable space within the tower's roof.

²⁰ SEA00002499

²¹ ART00001964_141

²² HAR00010155_006-007

²³ SEA00013076

²⁴ PHYR0000004_90 at para 4.3.81

²⁵ HAR00006711_001-003

²⁶ HAR00010184_021 at para 82

30. It is to be noted that the terms of Approved Document B2 are not prescriptive. They provide one means of satisfying the necessary building regulations “*for some of the more common building situations*” but “*there may well be alternative ways of achieving compliance with the requirements.*”²⁷
31. Whilst preparing his drawings, Mr Lamb was not sufficiently informed about the wider refurbishment, nor, indeed, qualified, to identify whether the proposed works at Grenfell Tower complied with Building Regulations. Ultimately, that decision is taken by Building Control Officers or Approved Inspectors. Neither did Mr Lamb have any role in speaking with Building Control, or submitting material for their consideration; though he would have expected that others, such as Studio E or Artelia, to have been in contact with them.
32. Unlike other parties involved in the design process Mr Lamb did not have access to a fire consultant, although he was aware there was a fire strategy in place. Mr Lamb did not know anything about the broader refurbishment plans, including the finish for the internal window reveals.
33. Studio E was under a duty to check the drawings supplied by Harley for a compliant cavity barrier system²⁸ and, as such, it was reasonable for Mr Lamb to expect that they were doing so.

Conclusion

34. We hope that this Opening Statement will assist the Inquiry in understanding the role that Kevin Lamb and Harley undertook in the refurbishment project at Grenfell Tower and how their involvement fitted in with that of other parties.

David Whittaker QC
Nikita McNeill
2 Hare Court

6 January 2020

²⁷ ADB2 at 12.5-12.9 and see PHYR000003_0007 at para 3.2.6

²⁸ PHYR000003_111 at para 3.10.3

OPUS 2

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Grenfell Tower Inquiry

Day 4

January 30, 2020

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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

1

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

3

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.

4

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.

5

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

7

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.

8

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.

9

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

10

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

11

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

12

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.

13

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

14

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

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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

18

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

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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.

20

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

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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

23

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

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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

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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

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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,

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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)

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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

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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

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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)

(A short break)

24 (11.30 am)

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

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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

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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

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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

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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

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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

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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,

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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

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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.

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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

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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

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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

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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

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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

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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

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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,

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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.

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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

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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,

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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 :

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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 !"

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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,

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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."

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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

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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.

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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.

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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

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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

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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

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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

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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

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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,

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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.

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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

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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

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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

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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

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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.

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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

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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

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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

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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*

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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

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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

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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.

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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

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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

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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

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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

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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.

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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

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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

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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

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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.

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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 CTI'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

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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.

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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.

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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

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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

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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.

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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)
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The Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

Rulings (First Directions Hearing)

1. At the directions hearing on 3 December 2008 I heard submissions on applications made by various parties. This document sets out my rulings on these applications and my reasons for them.

Background

2. I preface my rulings with a short summary of the background. This Inquiry arises out of an incident which occurred in Iraq on 14/16 September 2003 when ten Iraqi nationals were detained by the First Battalion of the Queen's Lancashire Regiment (1 QLR). In the course of their detention a number of the detainees sustained injuries and one, Baha Mousa, died. In 2006 seven members of 1 QLR were tried by Court Martial. One, Corporal Payne, pleaded guilty to an offence of inhuman treatment contrary to s.51(1) of the International Criminal Courts Act 2001 and was sentenced. He was acquitted of manslaughter. All six other accused men were acquitted of all offences with which they were charged.
3. On 14 May 2008, the then Secretary of State for the Ministry of Defence announced that a public inquiry would be held into the circumstances surrounding the death of Baha Mousa. I was invited to chair the Public Inquiry. The terms of reference are:

"To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any number of the 1st Battalion, the Queen's Lancashire Regiment in Iraq in 2003, and to make recommendations."

Applications for undertakings

4. On 15 October 2008 I made an opening statement, in the course of which I gave a brief outline of the procedures the Inquiry would adopt. I also announced that in the interests of obtaining from witnesses the fullest co-operation and frankest account of the events which had occurred, I had sought and obtained from the Attorney-General an undertaking in respect of witness evidence in the following terms:

"An undertaking in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence, nor

any document or information produced by that person to the Inquiry, will be used in evidence against him or her in any criminal proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), except:

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

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

I went on to invite written submissions on the question of whether it was necessary or desirable for me to seek a similar undertaking from the Permanent Secretary at the MoD in relation to the taking of administrative action against Crown servants who may give evidence before me.

5. In response to this invitation a number of written representations were submitted on behalf of different groups of interested parties and individuals. As yet the question of representation has not been definitively resolved. For these reasons, where necessary, I shall refer hereafter to the different groups in broad terms. These broad terms and reference to individuals should not be taken as any indication of what will be the likely final representation.
6. The written representations seek the following:
 - (1) an extension of the Attorney-General’s undertaking incorporating:
 - (a) an undertaking that evidence given by a witness will not be used “... to the prejudice of that person in any criminal proceedings (or for the purpose of investigating or deciding whether to bring such proceedings) except proceedings where he or she is charged with having given false evidence in the course of this Inquiry ...”
 - (b) an undertaking that no application will be made on behalf of the crown, under the hearsay provisions of the Criminal Justice Act 2003, to adduce evidence given

before this Inquiry by a witness against any other witness in the Inquiry in criminal proceedings.

- (2) the above undertakings be replicated by undertakings given by the DPP.
- (3) an undertaking be given by the Permanent Under-Secretary of the MoD and/or by the Heads of the Armed Services in the following terms:

No material provided by a witness to the Inquiry will be used in any administrative proceedings (including AGAI 67 (Army) Action or QR 1027 (RAF) Action as appropriate) to his detriment in the future or against any other witness to the Inquiry.

- (4) an undertaking by the Secretary of State for the Home Department and the Attorney-General, on behalf of the Government, that no record of evidence given, nor a copy of any report produced by the Inquiry will be formally or informally transmitted to a foreign state or a foreign court or tribunal.
- (5) an undertaking by the Secretary of State for Defence that in the event of proceedings being taken against any witness in overseas proceedings the Secretary of State will provide and fund legal assistance to the witness in relation to such proceedings.

- 7. Before turning to the specific written representations made on behalf of the broad groups and individuals I set out, so far as is material to these applications, the statutory background and legal principles which are not in dispute.

The statutory provisions

- 8. The Inquiry is set up under section 1 of the Inquiries Act 2005 (the Act). It is being conducted by me as Chairman without other member(s). It was set up on 1 August 2008 with terms of reference as above. Proceedings in the Inquiry are conducted in accordance with sections 17 to 23 of the Act. Section 17 provides:

“17 Evidence and procedure

- (1) Subject to any provision of this Act or of the rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.
- (2) ...

- (3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and also with the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."

Section 21 provides powers to the Chairman to require production of evidence. It reads in the material parts:

"21 Powers of chairman to require production of evidence etc.

- (1) The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice –
 - (a) to give evidence
 - (b) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;
 - (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.
- (2) ...
- (3) ...
- (4) A claim by a person that –
 - (a) he is unable to comply with a notice under this section, or
 - (b) it is not reasonable in all the circumstances to require him to comply with such a notice, is to be determined by the chairman of the inquiry, who may revoke or vary the notice on that ground.
- (5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection(4)(b), the chairman must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information."

9. Section 22 preserves the right of a witness to refuse to give evidence or produce documents which may incriminate him. It reads:

“22 Privileged information etc.

- (1) A person may not under section 21 be required to give, produce or provide any evidence or document if –
 - (a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or
 - (b) the requirement would be incompatible with a community obligation.
- (2) ...”

The legal principles

10. It is, of course, not in dispute that any witness in this Inquiry has a right to refuse to answer questions or produce documents which may tend to incriminate himself or herself. The boundaries of the privilege against self-incrimination are however less clear (see below).
11. It is also not in dispute that subject to a possible common law discretion (see *Brannigan v Davison* [1997] AC 238) and a statutory discretion (see s.21(5) above) a witness has no such right or privilege against self-incrimination in respect of foreign criminal proceedings.

The written representations

12. Written representations have been submitted by the following:
 1. Counsel instructed by Kingsley Napley & Co on behalf of those soldiers the subject of the Court Martial (the CM 7);
 2. Counsel instructed by the Treasury Solicitor on behalf of Crown Service servants (including soldiers other than the CM7);
 3. Counsel instructed on behalf of the Ministry of Defence (the MoD);
 4. Counsel instructed on behalf of the Ten Detainees (the Ten Detainees);
 5. Counsel separately instructed on behalf of the CM7 as follows:

Counsel for Colonel Mendonca, counsel for Major Peebles, counsel for WO Davies, counsel for Sergeant Stacey and

Kingsman Fallon, counsel for Corporal Payne and counsel for Corporal Crowcroft.

13. All save those representing the MoD and the Ten Detainees support the representations for which counsel, Mr James Dingemans QC, for the CM7 contends, namely in respect of 6(1) to (5) above. I shall indicate where those representing the MoD and the Ten Detainees agree or disagree with the above representations.
14. At this juncture, it is necessary for me to stress that the procedure of the Inquiry is inquisitorial and not adversarial. It follows that where there is agreement between counsel for all parties it is not appropriate for me simply to accept the agreed position. I have to be satisfied that, within the statutory framework, what is being proposed is appropriate.

I shall deal with the representations in the order in which they appear above.

1. The proposed extension of the Attorney-General's existing undertaking.

15. As appears above this proposal is in two parts. In the first limb the proposal by Mr Dingemans is that I should seek an undertaking from the Attorney-General in the form set out in 6(1)(a) above.
16. Mr Dingemans' representations and submissions are supported and adopted on behalf of all parties save for the Ten Detainees, represented by Mr Rabinder Singh QC and Counsel, Mr David Barr, representing the MoD. The latter two counsel, whilst not supporting this proposal, do not oppose it. The proposal is very similar to an undertaking given by the relevant authorities in the Bloody Sunday Inquiry (BSI). Its purpose as outlined by Mr Dingemans, is to make clear that the privilege against self-incrimination is not confined simply to incriminating answers given by a witness but extends to any answer which might risk a prosecuting authority taking a step to investigate criminal proceedings and the decision whether or not to bring criminal proceedings.
17. Having carefully considered the written representations and the oral submissions, I decided that it would be appropriate for me to seek an extension to the existing undertaking given by the Attorney-General. My reasons for doing so are as follows.
18. The privilege against self-incrimination has been said to be "a basic liberty of the subject" (see *Rank Film Distributors v Deo Info Centre*

[1982] AC 380). It is preserved for the purpose of a public inquiry under s.22 of the Act. In order to avoid witnesses exercising this privilege and thereby thwarting this Inquiry in its efforts to elicit the truth, I requested the Attorney-General to give the existing undertaking.

19. The boundaries of the privilege against self-incrimination have been the subject of a number of judicial decisions. It now seems clear that it extends to evidence which may form steps towards the case which the prosecution may wish to establish and material upon which the prosecution may wish to rely in deciding whether to prosecute. It is less certain that it extends to questions which a witness might answer but which are not even steps towards the case which the prosecution might wish to establish but which open up a line of inquiry which would lead to incriminating evidence from other sources.
20. In *Saunders v The United Kingdom* [1997] BCC 872, the European Court of Human Rights said:

“70 ... However, the Government have emphasised, before the Court, that nothing said by the applicant in the course of the interviews was self-incriminating and that he had merely given exculpatory answers or answers which, if true, would serve to confirm his defence. In their submission only statements which are self-incriminating could fall within the privilege against self-incrimination.

71. *The Court does not accept the Government’s premise on this point since some of the applicant’s answers were in fact of an incriminating nature in the sense that they contained admissions to knowledge of information which tended to incriminate him (see paragraph 31 above). In any event, bearing in mind the concept of fairness in Article 6 (art 6), the right not to incriminate oneself cannot reasonably be confined to statements of admission of wrongdoing or to remarks which are directly incriminating. Testimony obtained under compulsion which appears on its face to be of a non-incriminating nature – such as exculpatory remarks or mere information on questions of fact – may later be deployed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused or evidence given by him during the trial or to otherwise undermine his credibility. Where the credibility of an accused must be assessed by a jury the use of such testimony may be especially harmful. It follows that what is of the essence in this context is the use to which*

evidence obtained under compulsion is put in the course of the criminal trial.”

21. Waller LJ in *Den Norske Bank v Antonatos* [1999] QB 271, in a judgment with which the two other members of the Court of Appeal agreed, said (at p.289A):

“Thus, it is not simply the risk of prosecution. A witness is entitled to claim the privilege in relation to any piece of information or evidence on which the prosecution might wish to rely in establishing guilt. And, as it seems to me, it also applies to any piece of information or evidence on which the prosecution would wish to rely in making its decision whether to prosecute or not.”

He also cited with approval the judgment of Kirby P in *Accident Insurance Mutual Ltd v McFadden* 31 NSWLR 402, in which Kirby P said:

“... I can only say, the strong inclination of my mind is to protect the party against answering any question, not only that has a direct tendency to incriminate him, but that forms one step towards it ...”

22. In the light of these decisions, in my judgment, an extension to the present undertaking, in a suitable form, would provide further protection to a witness against self-incrimination. Having reached that conclusion, for the reason which caused me to seek the existing undertaking, it seemed to me sensible and appropriate to invite the Attorney-General to extend her undertaking. I am quite satisfied that this added protection for a witness ought further to encourage witnesses to be frank in their evidence to the Inquiry.
23. As a result of informal discussions with the Attorney-General she has agreed to give an undertaking in the form set out in the letter at annex A to this document. The form of her undertaking does not follow precisely the form canvassed in oral submissions, but I am quite satisfied that it meets appropriately the submissions made by counsel on this issue.
24. The second limb of Mr Dingemans’ proposed extension seeks an undertaking from the Attorney-General that evidence given by any witness to the Inquiry will not be used by way of hearsay evidence pursuant to the hearsay provisions of the Criminal Justice Act 2003 against any other witness in the Inquiry. This further extension of the

Attorney-General's undertaking is supported by those appearing for other soldiers who may be witnesses in the Inquiry.

25. Mr Dingemans accepts that such an undertaking is unprecedented. He also accepts that it does not engage directly the privilege against self-incrimination. However, he submits that as a matter of principle, undertakings provided in the context of public inquiries need not be limited to the privilege against self-incrimination. He further submits that such an undertaking might encourage witnesses, not themselves involved in any misconduct but who had observed others so engaged, to give evidence about what they had seen. He submits that such an undertaking might assist in breaching what the Judge Advocate in the Court Martial proceedings described as "the wall of silence".
26. Mr Rabinder Singh in his written representations described Mr Dingemans' representations on this issue as "staggering and deeply disappointing". I would not myself go so far as to describe Mr Dingemans' submissions on this issue in those terms, but I am quite satisfied that I should reject the request for this extension of the Attorney-General's undertaking. All counsel agree that a balance has to be struck between measures taken by the Inquiry to promote an environment which will enable it to discover the truth and the public interest enshrined in Articles 2 and 3 of the European Convention on Human Rights. In regard to the latter the Inquiry must so far as possible not only establish the facts, but do so in such a way that those responsible for what occurred may be held accountable.
27. In my judgment it is neither necessary nor appropriate to invite the Attorney-General to give this proposed undertaking in respect of hearsay evidence. The Inquiry has power to compel witnesses to give evidence. The process of examination and cross-examination of witnesses is, in my view, sufficiently robust to determine where the truth lies. Where it is appropriate to do so, I will not shrink from drawing inferences from witnesses who choose to remain silent. In addition, as Mr Singh points out, the Criminal Justice Act 2003 provides some safeguards in respect of the admissibility of hearsay evidence. Whilst I recognise that if given the protection of this undertaking some witnesses, who would not otherwise give a truthful account of what they knew of the events of 14/16 September 2003, may decide to do so. Nevertheless in my view this is not sufficient to outweigh the public interest in preserving the right of prosecuting authorities to use statements made in the Inquiry for the purposes of any subsequent appropriate proceedings. Soldiers are public servants who should feel obliged to tell the truth. There is the potential for this Inquiry to uncover some very serious misconduct by some personnel. In the

circumstances, in my opinion, it is wholly inappropriate to limit the use of the evidence of some witnesses in subsequent proceedings against another witness or witnesses.

2. An undertaking by the DPP.

- 28.** The CM7 supported by other groups of soldiers invite me to request the DPP to replicate undertakings given by the Attorney-General. The reason for this request is to prevent the DPP from taking proceedings in the event that the Attorney-General's powers to consent to prosecutions are restricted, if not removed, by provisions of the proposed Constitutional Renewal Bill. Neither the Ten Detainees nor the MoD sees the necessity for such an undertaking. They submit that it is inconceivable that any DPP would take proceedings in the face of such an undertaking given by the Attorney-General. They further submit that if such proceedings were taken there would be available to the Defence a substantial ground for a successful abuse argument.
- 29.** In my judgment there is considerable force in the submissions of the Ten Detainees and the MoD. Nevertheless, in an excess of caution I see no reason not to seek such an undertaking from the DPP and I propose to do so. Accordingly, I approached the DPP with the object of obtaining such an undertaking. The result has been that the DPP has given an assurance on this issue which is set out in a letter from his office which is attached at annex B to this document.

3. The administrative undertaking

- 30.** The CM7, supported by other groups of soldiers, invite me to request from the Permanent Under-Secretary in respect of civil servants, the Chief of the Naval Staff for the Royal Navy, the Chief of the General Staff for the Army, and the Chief of the Air Staff for the Royal Air Force, in respect of service personnel, an undertaking that no evidence given by a witness, orally or in writing, should be used against him or her in disciplinary proceedings. The form of the undertaking, it is submitted, should mirror the undertaking given by the Attorney-General in respect of criminal proceedings. Mr Dingemans submits that such an undertaking is necessary. He relies on the fact that there may be many soldiers who are fearful of giving evidence which may implicate superior officers and comrades. Many will fear that their evidence, implicating others, may adversely affect their subsequent careers in the armed forces. Mr Dingemans points to the fact that similar undertakings were given in the Hutton Inquiry and in the Rosemary Nelson Inquiry.

31. Mr Garnham QC, on behalf of soldiers other than the CM7, seeks an undertaking in the same terms as that sought by Mr Dingemans but including an undertaking restricting the use of the evidence of one witness against another witness in disciplinary proceedings.
32. Lord Thomas QC, representing Major Peebles, one of the CM7, supports the submissions made by Mr Dingemans and Mr Garnham. In addition to the submissions and representations made by Mr Dingemans and Mr Garnham he relies on the fact that Major Peebles has already faced a court martial which acquitted him of an offence not an offence under civil law. Lord Thomas submits that this distinguishes Major Peebles from witnesses in the Hutton and BS Inquiries. In the circumstances he submits that it would be unfair if Major Peebles were to be put at risk of facing disciplinary proceedings as a result of evidence given either by him or another witness to this Inquiry. Ms Isabel Hogg, solicitor for WO Davies, makes a similar written submission on his behalf.
33. The MoD and the Ten Detainees oppose such an undertaking. Their submissions are very similar to those made by them in respect of the proposed hearsay extension to the Attorney-General's undertaking.
34. Before the directions hearing counsel to the Inquiry drafted and circulated for discussion two forms of undertaking which sought to protect witnesses from disciplinary proceedings arising from admissions in evidence to the Inquiry of a previous failure or failures to disclose to the authorities knowledge of misconduct by other witnesses. One form was similar to the undertakings given in the Hutton and Rosemary Nelson Inquiries. The other was narrower in scope.
35. My conclusion on this issue is that it would be appropriate for me to seek such an undertaking, but only one of limited scope. I recognise that there may be soldiers and possibly civil servants who would be more likely to give truthful and complete evidence if their evidence was protected from use in disciplinary proceedings against them, or against others. Common sense indicates that a witness who had previously failed to disclose what he or she knew of what happened on 14/16 September 2003 might very well be unwilling to disclose it to the Inquiry if it might lead to disciplinary proceedings being brought against him or her and/or against a superior officer or comrade. But in my judgment, any undertaking should be limited to such failure to disclose. To go further would protect a witness from disciplinary or administrative proceedings if he or she admitted to other and possibly more serious misconduct. In such circumstances it seems to me wholly

inappropriate that the authorities should be prevented from using that evidence in disciplinary or administrative proceedings against the witness or any other witness. Such a restriction would, in my view, unreasonably restrict the ability of the authorities to hold accountable by disciplinary or administrative proceedings those who had been guilty of misconduct. Nor do I think it unfair that any witness who was a defendant in the Court Martial proceedings should be at risk of administrative proceedings despite the fact that he was acquitted of charges made against him in the Court Martial.

36. Mr Dingemans made one further submission on this issue. He submitted that the undertaking he sought was akin to the protection given to witnesses in Employment Tribunals who are protected from the consequences of giving evidence in employment tribunal proceedings. He cited "The Employment Equality (Religion or Belief) Regulations 2003" as an example of protection from discrimination by victimisation for giving evidence in connection with proceedings in an Employment Tribunal.
37. I do not accept this as a parallel. A witness giving evidence of his own misconduct cannot properly complain of victimisation if disciplinary action is taken against him in respect of that misconduct. So far as career prospects are concerned, it is pointed out by counsel for the MoD that a witness who believes his career prospects may have been hindered can invoke the service complaints procedure under the Armed Forces Act 2006.
38. For the reasons above I invited the Permanent Under-Secretary and the Chief of the Naval Staff, the Chief of the General Staff and the Chief of the Air Staff to give an undertaking in a limited form. The undertaking which I sought was as follows:

"If written or oral evidence given to the Inquiry by a witness who is a former or current member of HM Forces or a former or current MoD civil servant may tend to indicate that:

- (1) the same witness previously failed to disclose misconduct by himself or some other person, or
- (2) the same witness gave false information on a previous occasion in relation to such misconduct,

then the MoD undertakes that it will not use the evidence of that witness to the Inquiry in any administrative action (for military personnel) or disciplinary proceedings (for civil servants) against

that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.”

I have received responses which indicate that the above office-holders are prepared to give the relevant undertaking. Their responses are set out at annexes C, D, E and F.

4 and 5. The foreign proceedings undertaking

- 39.** The CM7 and the other groups of soldiers seek undertakings providing protection in respect of possible proceedings in foreign courts (see (4) and (5) in paragraph 6). It is submitted that evidence given at the Inquiry may be indicative of conduct which has a potential for a finding of torture. Mr Dingemans in his written representations helpfully set out the reasons why as a result of evidence given in the Inquiry some soldiers may be at risk of proceedings in the International Criminal Court (ICC) and in a foreign court on the basis that they were guilty of the offence of torture.
- 40.** For the purposes of my ruling on these issues I am prepared to accept that it is possible that the evidence may be sufficient to establish that some soldiers committed the crime of torture as defined by Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT). I am also prepared to accept, as Mr Dingemans submits, that the crime of torture is universal in nature and capable of being prosecuted by any state regardless of where it occurred (see *R v Bow Street ex parte Pinochet (No.3)* [2000] AC 147 and *A and others v SSHD (No.2)*[2006] 2 AC 221 at para 333).
- 41.** Such an alleged crime may therefore give rise to proceedings in the ICC or proceedings in another State. Mr Dingemans submits that the fear of such proceedings may inhibit witnesses from giving truthful evidence. Accordingly the undertakings which he seeks are:
- (1) an undertaking that no record of evidence given at the Inquiry, nor any other evidence, nor a copy of any Report given by the Inquiry will be formally or informally transmitted to a foreign state or a foreign court or tribunal; and
 - (2) an undertaking that legal assistance will be provided and funded in respect of overseas proceedings against any witness.

42. It is accepted by Mr Dingemans and counsel for the group of other soldiers that there is no privilege against self-incrimination in respect of criminal proceedings in a foreign court or tribunal, but that there is a discretion afforded by the common law and s.22(5) of the Act to excuse a witness from answering questions which might incriminate him or her in proceedings subsequently instituted in a foreign court. Therefore, Mr Dingemans submits that it is appropriate for the undertakings to be given. In any event, he reserves the right of any witness to apply to the Inquiry for the right to refuse to answer questions which might incriminate him in respect of possible criminal proceedings in a foreign court.
43. There are, in my opinion, practical difficulties in relation to the undertaking set out in 41(1) above. In order to comply with the requirement of transparency, the Inquiry proceedings will be available to the general public on the Inquiry's website. The website will include witness statements and evidence. In due course the Inquiry Report will be published on the website. In these circumstances, it seems to me that any undertaking in the form sought would be of no value to a witness. The material will be freely available to any person or State.
44. Secondly, by Article 9 of UNCAT, the United Kingdom, as a signatory to the Convention, is bound to give another State "... the greatest measure of assistance in connection with criminal proceedings brought ..." in respect of offences of torture "... including the supply of all evidence at their disposal necessary for the proceedings". A failure by the United Kingdom to provide assistance could be construed as a breach of the Convention. A similar obligation in relation to the ICC is provided by Article 93(1) of the Rome Statute of the International Criminal Court.
45. There are other reasons why such a blanket undertaking should not be sought. Firstly, so far as the ICC is concerned, Article 17 of the Rome Statute provides restrictions on the admissibility of cases to be brought before it. It reads:

"Issues of admissibility"

1. *Having regard to paragraph 10 of the Preamble and Article 1, the Court shall determine that a case is inadmissible where:*
 - (a) *The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;*

- (b) *The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;*
- (c) *The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3;*
- (d) *The case is not of sufficient gravity to justify further action by the Court.”*

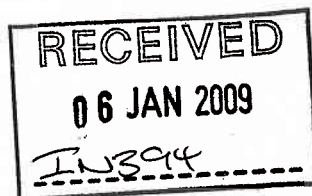
Article 20(3) provides a rule against double jeopardy.

- 46. It is apparent from the above that any prosecution in the ICC would face formidable hurdles. Counsel for the MoD attached to their written representations a letter dated 9 February 2006 signed by the Chief Prosecutor of the ICC which demonstrates that any case arising out of the events with which the Inquiry is concerned is very unlikely to be considered sufficiently grave to justify further action by that Court.
- 47. Finally, so far as proceedings in the ICC are concerned, Article 55(1)(a) of the Rome Statute and Rule 74 of the Rules of Procedure and Evidence suggest that evidence amounting to self-incrimination is unlikely to be admitted where a witness has been compelled to give such evidence.
- 48. So far as possible proceedings in another state are concerned, the state most likely to institute such proceedings is Iraq. However, counsel for the MoD have annexed to their written representations the Coalition Provisional Authority Order Number 17 which provides, for all Coalition Personnel, immunity from Iraqi Legal Process for acts which are crimes under the Parent State's jurisdiction. Torture is such a crime in England and Wales (see s.51 and Schedule 8 Art.8(2) International Criminal Courts Act 2001).
- 49. In addition, Counsel for the MoD point out that the privilege against self-incrimination is an international norm (see Article 14(3)(g) of the International Covenant for Civil and Political Rights and Art.6 of the ECHR).

50. Thus, in my view, the prospect of proceedings against any witness in this Inquiry, either before the ICC or in another state, are remote.
51. As to the undertaking to provide for funding and legal assistance to a witness prosecuted in the ICC or another state, Queen's Regulations for the Army provide a right to legal assistance from the Armed Forces Criminal Legal Aid Authority.
52. Balancing the impracticability of the proposed undertaking ((1) in para 41 above) together with, as I find it, the remote possibility of proceedings being taken in the ICC or in another state against the need for accountability in respect of those responsible for misconduct, I unhesitatingly conclude that the balance comes down against seeking such undertakings. I repeat what is set out earlier in this ruling, in my opinion, the procedures of the Inquiry are quite sufficiently robust to compel witnesses to give evidence and for the truth to be discerned.
53. I should add that if during the course of these proceedings a witness claims that his answers may incriminate him or her in respect of possible foreign proceedings, I shall, of course, consider any application to remain silent on its merits. Such an application will involve a consideration of all relevant factors and the exercise of my discretion. It will involve the Inquiry taking into account, among other things, the public interest (see s.21(5) of the 2005 Act).
54. I am grateful to all counsel for their written and oral submissions on the above issues.



THE RT HON SIR WILLIAM GAGE
CHAIRMAN, BAHA MOUSA PUBLIC INQUIRY
6 January 2009



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Duncan Henderson
The Baha Musa Public Inquiry
PO Box 64355
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EC1P 1PN

Our ref: ADV/213/08

Date: 31 December 2008

Dear Duncan,

THE BAHAMOUS INQUIRY: SELF-INCRIMINATION

Sir William Gage wrote to the Attorney General in relation to an extended undertaking. This matter has been discussed extensively at Official level and with Gerard Elias QC. The Law Officers have both now had the opportunity to consider the matter and the Attorney has agreed to the following undertaking:

This is an undertaking in respect of any person who provides evidence to the Inquiry relating to a matter within its terms of reference, including oral evidence, any written statement, any written statement made preparatory to giving evidence, and any document or information produced to the Inquiry.

1 No evidence a person may give before the Inquiry, will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), save in such proceedings as are referred to in paragraph 2 herein:

2 Paragraph 1 does not apply to:

- (i) A prosecution (whether for a civil offence or a military offence) where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*
- (ii) Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence"*

3. Where any such evidence is provided to the Inquiry by a person, it is further undertaken that, as against that person, no criminal proceedings shall be brought (or

continued) in reliance upon evidence which is itself the product of an investigation commenced as a result of the provision by that person of such evidence.

If I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely

Kristin Jones

KRISTIN JONES

C W P Newell
Principal Legal Advisor



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The Rt Hon Sir William Gage
Chairman
Baha Mousa Public Inquiry
Finlaison House
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5 January 2009

Dear Sir William,

I refer to my letter to you dated 10 December 2008 and to subsequent exchanges of email between Gerard Elias QC, Duncan Henderson and myself. In particular, I refer to Duncan Henderson's email to me of 31 December 2008, to which he attached a copy of a letter that he had received that day from the Attorney General's Office (AGO). The letter from the AGO contained the wording of a revised form of undertaking that the Attorney General had provided for the purposes of your inquiry.

Having read the revised form of undertaking; and having previously been consulted as to its content; I am happy to confirm, on behalf of the Director of Public Prosecutions (DPP), that he and successive DPPs would honour the undertaking without question or qualification.

Yours sincerely,
Chris Newell

CHRIS NEWELL

RECEIVED

22 DEC 2008

IN 358

SIR BILL JEFFREY KCB



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PERMANENT UNDER-SECRETARY OF STATE

D/PUS/2/45 (711)

Dear Bill

19 December 2008

When we spoke last week you indicated your belief that an undertaking in respect of possible administrative or disciplinary action against witnesses will assist you to fulfil your terms of reference.

In recognition of this, I give the following undertaking:

If written or oral evidence given to the Inquiry by a witness who is a former or current MoD civil servant may tend to indicate that:

- (1) the same witness previously failed to disclose misconduct by himself or some other person, or
- (2) the same witness gave false information on a previous occasion in relation to such misconduct,

then I undertake that the MoD will not use the evidence of that witness to the Inquiry in any disciplinary proceedings against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

I enclose similar undertakings from the Commander-in-Chief Fleet, on behalf of the Chief of the Naval Staff, for the Royal Navy, the Chief of the General Staff for the Army and the Chief of the Air Staff for the Royal Air Force.

Yours ever
Bill Jeffrey

BILL JEFFREY

The Rt Hon Sir William Gage
Chairman
The Baha Mousa Public Inquiry



Admiral Sir Mark Stanhope KCB OBE
Commander-in-Chief Fleet

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CNS/6/5

The Right Honourable Sir William Gage
Chairman
The Baha Mousa Public Inquiry

18 December 2008

Dear Sir William,

In a discussion with the Permanent Secretary last week you indicated your belief that an undertaking in respect of possible administrative action against witnesses in the Baha Mousa inquiry will assist you to fulfil your terms of reference.

In recognition of this, I give the following undertaking on behalf of the Chief of Naval Staff:

If written or oral evidence given to the Inquiry by a witness who is a former or current member of the Royal Navy may tend to indicate that:

- (1) the same witness previously failed to disclose misconduct by himself or some other person, or
- (2) the same witness gave false information on a previous occasion in relation to such misconduct,

then I undertake that the Royal Navy will not use the evidence of that witness to the Inquiry in any administrative action against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

Yours sincerely,

Mark Stanhope



ARMY

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GS/06/06 (CGS)

The Rt Hon Sir William Gage
 Chairman
 The Baha Mousa Public Inquiry

19th December 2008

BAHA MOUSA INQUIRY - PROVISION BY THE ARMY OF UNDERTAKINGS IN RESPECT OF FUTURE ADMINISTRATIVE AND DISCIPLINARY ACTION AGAINST WITNESSES

In a discussion with the Permanent Secretary last week you indicated your belief that an undertaking in respect of possible administrative action against witnesses will assist you to fulfil your terms of reference.

In recognition of this, I give the following undertaking:

If written or oral evidence given to the Inquiry by a witness who is a former or current member of the Army may tend to indicate that:

- (1) the same witness previously failed to disclose misconduct by himself or some other person, or
- (2) the same witness gave false information on a previous occasion in relation to such misconduct,

then I undertake that the Army will not use the evidence of that witness to the Inquiry in any administrative action against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

From: Air Chief Marshal Sir Glenn Torpy GCB CBE DSO ADC BSc(Eng) FRAeS FCGI RAF



Chief of the Air Staff

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CAS/10

The Rt Hon Sir William Gage
Chairman
The Baha Mousa Public Inquiry

18 December 2008

Dear Sir William,

In a discussion with the Permanent Secretary last week you indicated your belief that an undertaking in respect of possible administrative action against witnesses will assist you to fulfil your terms of reference.

In recognition of this, I give the following undertaking:

If written or oral evidence given to the Inquiry by a witness who is a former or current member of the Royal Air Force may tend to indicate that:

- (1) the same witness previously failed to disclose misconduct by himself or some other person, or
- (2) the same witness gave false information on a previous occasion in relation to such misconduct,

then I undertake that the Royal Air Force will not use the evidence of that witness to the Inquiry in any administrative action against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

Yours sincerely,
Glenn Torpy

