

**FBU’s Response to the Application of 28/01/20 brought by  
Harley Façades Limited and others**

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- 1) The FBU reserves its final position on this application pending
  - a) the submissions to be made on behalf of the BSRs on Monday 3<sup>rd</sup> February 2020, and
  - b) the position of the MPS
  
- 2) The FBU supports a full and open inquiry, and supports the BSRs in their quest for the truth about what happened. They are at the centre of this Inquiry and the FBU will support their response to this application. This is not yet known. The FBU would also wish to know the MPS’ response to this application, in particular its view of the effect if any of granting the application would have on Operation Northleigh.

**Meanwhile, and subject to the above:**

- 3) The FBU opposes the application. The FBU contends Harley Façades and those joining them in this application should be left to make their own application to the Attorney General if they chose to do so. In considering any such application the Attorney General will take into account the refusal of this application and the reasons given by the Chairman therefor.
  
- 4) In the meantime, the Inquiry should proceed as planned. The witnesses can claim to exercise the privilege against self incrimination in response to questions if they chose to do so. The Panel can draw inferences from the evidence viewed as a whole, including the refusal to answer any particular questions. There is no need to give a warning against self incrimination for witnesses who are represented by lawyers who are already, or soon will be, fully aware of the provisions of section 14 of the CEA’68 and sections 17 and 21 of the IA’05. There

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will be occasions when the Chairman will have to determine whether or not a witness should be required to answer a question or should be entitled to claim privilege against self incrimination. It is likely that after a few such decision making processes, the principles underlying the Chairman’s decisions will become clear and the process will not cause undue delay.

### **Brief reasons for FBU’s opposition to this application:**

- 5) The FBU is concerned that, if this application is granted, there will be seen to be different rules for witnesses in Phases 1 and 2.
- 6) Harley appears to have no locus. It is the privilege of any person, not of a body corporate.
- 7) The FBU questions the bona fides of those applying for the undertaking in light of the timing of the application, seeming calculated to cause delay, disruption and distress.
- 8) The established way to give full and frank evidence is to go into the witness box and truthfully answer questions.
- 9) Firefighters and control room staff in Phase 1 faced same dilemma, but chose to assist the Inquiry with full and frank evidence. They found themselves at the epicenter of this disaster on 14<sup>th</sup> June 2017: they tried to help then, and have tried to help this Inquiry since.
- 10) The Panel would be confronted by an extra layer of complexity in their decision making if the application is granted: what allowance should be made for the fact that the evidence given orally to the Inquiry was given under the terms of the undertaking, instead of being without condition. The Inquiry would have to assess the weight of evidence of Ph.2 witnesses given with or without the AG’s undertaking.

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- 11) There should not be a difference in the treatment of witnesses in Phase 1 and 2. There were no grounds for making the application in Phase 1, firefighters and control room staff were not interviewed under caution. Similarly, there should be no difference between the treatment of witnesses from corporate bodies joining this application, and those that do not. Instead, all witnesses called to give oral evidence to the Inquiry should be encouraged to answer all of the Inquiry’s questions and to do so truthfully. That is what the LFB and the FBU did in Phase 1 and that is what the FBU will do in Phase 2 also.

### **If however the application succeeds in part:**

- 12) Then the FBU would contend the scope of any undertaking to be sought from the Attorney General should be drawn as tightly as possible and qualified as set out below, so that it is clear beyond doubt that the evidence given by one witness may be used to further a prosecution of another person:

*1. No oral evidence a person may give before the Inquiry will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings save as provided in paragraph 2 herein:*

*2. Paragraph 1 does not apply to:*

*i. A prosecution where he or she is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*

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

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by that person to the Inquiry.”

Martin Seaward, Counsel for the FBU

3<sup>rd</sup> February 2020

IN THE GRENFELL TOWER INQUIRY

Chaired by  
**SIR MARTIN MOORE-BICK**

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