

Grenfell Tower Inquiry

The Attorney General's Office
102 Petty France,
London,
SW1H 9EA

By email only

20 February 2020

Dear Sirs,

Re: Grenfell Tower Inquiry – Request for Attorney General's undertaking

Thank you for your letter of 18 February 2020 in which you raise a number of questions relating to the scope of the undertaking being sought by the Panel, in particular its extension to both legal and natural persons. I have discussed it with the Chairman who has personally approved the contents of this letter.

Before answering your questions it may help if I explain the circumstances which gave rise to the Panel's concern about the position of companies. It is well established that a company can itself both answer questions and claim privilege against self-incrimination if the answer would tend to expose it to a risk of prosecution: see *Triplex Safety Glass Co Ltd v Lancegaye Safety Glass (1934) Ltd* [1939] 2 K.B. 395. Some of those from whom we intend to take evidence carry on business through limited liability companies apparently incorporated for that purpose. The classic example of the practice is that of a Mr A B who carries on business through a company AB Ltd of which he is the sole or principal shareholder and the sole director. Sometimes he is also the sole operative. These are sometimes described as "one man" companies. In such cases when Mr A B gives evidence about his involvement in a

13 Bishop's Bridge Road, London, W2 6BU
General enquiries - Tel: 0800 121 4282: contact@grenfelltowerinquiry.org.uk
Legal enquiries - Tel: 0800 234 6070: solicitor@grenfelltowerinquiry.org.uk

Grenfell Tower Inquiry

project he is inevitably giving evidence about his personal involvement and about the involvement of the company, since he embodies the company and for all practical purposes the two are indistinguishable. In the more common case of a company which has several shareholders or officers it can be difficult to ascertain who embodies the company for any particular purpose, but there may still be someone who embodies the company to the extent necessary to make their answers to questions attributable to the company and therefore the company's own answers.

The Panel is keen to ensure that witnesses answer questions fully and frankly and does not want to be confronted with the argument that the answers given by a witness are to be attributed to (i.e. are to be regarded as given by) the company which is entitled to claim privilege against self-incrimination. For this purpose it is important to draw a distinction between answers given *by* the company (which can be given only by someone who embodies the company for that purpose) and answers given by a witness which *affect* the company's position (which may be given by anyone who has relevant evidence to give).

Against that background I turn to answer your questions as follows:

1. A witness whose relationship with a company was and remains so close that their answers would be attributed to the company would give evidence both in a personal capacity and in their capacity as representative of the company. The clearest example is that of the witness who carries on business through a "one man" company, as described above. It would not be possible to ask the witness to answer the question only in a personal capacity.
2. The Inquiry is not actively seeking evidence from corporate entities in their own right, since it believes that it can obtain all the evidence it needs from individuals. However, there is a risk that some individuals may be so closely identified with a corporate entity that their answers to questions may be

Grenfell Tower Inquiry

capable of being attributed to the corporate entity itself, which would be entitled to make an independent claim to privilege against self-incrimination. In *Triplex Safety Glass Co Ltd v Lancegaye Safety Glass (1934) Ltd* (sup.) the Court of Appeal held that as a matter of law companies are entitled to the same protection against self-incrimination as individuals (see per Du Parcq L.J. at pages 408-409).

3. For the reasons given above the Inquiry is concerned that there are circumstances in which the relationship between a company and the person giving evidence will be so close that it will not be possible to draw a meaningful distinction between answers given in a purely personal capacity and answers given as representative of the company. In such a case the Inquiry would have no choice but to receive the evidence in both capacities. The situation is most likely to arise when evidence is given by someone who carried on business through a “one man” company and continues to do so. It may not be limited to such cases, but the number of instances in which the problem is likely to arise is thought to be small.

It would be very disruptive of the Inquiry’s proceedings if witnesses were to object to answering questions on the grounds that their answers could be treated as having been given by their company which was not obliged to incriminate itself. Since the undertaking we seek is intended only to provide protection to individuals equivalent to that which would be available in the form of the privilege against self-incrimination, the effect of including companies within its scope would simply ensure that, if and insofar as they could be regarded as having given evidence, they would also be protected against self-incrimination to the same extent as under the general law.

Grenfell Tower Inquiry

I am writing to you separately under confidential cover in respect of your request for the list of witnesses and (subject to what I say in the next paragraph) the other information you seek in the last paragraph of your letter. The reason I am doing so is that the Inquiry does not publish its full lists of witnesses very far in advance; and for Modules 2 and 3 it is not known whether any individual will say that they suffer from a medical condition which would render them vulnerable for the purposes of the Inquiry's Vulnerable Witness Protocol and, if so, the nature or gravity of any condition.

However, I should say that the size of the company concerned (however measured, whether in terms of capitalisation, gross revenues, or perhaps numbers of employees) is not itself material to the question whether and when a company is entitled to invoke privilege against self-incrimination. The important question is whether the relationship between the witness and the company is, at the time that the witness is giving evidence, so close that they are indistinguishable from each other for the purposes of the answer being elicited from the witness.

Yours faithfully

Caroline Featherstone

Caroline Featherstone
Solicitor to the Inquiry

13 Bishop's Bridge Road, London, W2 6BU
General enquiries - Tel: 0800 121 4282: contact@grenfelltowerinquiry.org.uk
Legal enquiries - Tel: 0800 234 6070: solicitor@grenfelltowerinquiry.org.uk