

CHAIRMAN’S RESPONSE
to
SUBMISSIONS on EXPERT EVIDENCE
made by
RUSSELL-COOKE

1. In their written submissions dated 10 January 2018 Mr. Andrew Arden Q.C. and Mr. Justin Bates on behalf of Russell-Cooke have asked me to reconsider the decision in paragraph 38 of my Response to the submissions made at the procedural hearing on 11 and 12 December 2017. In particular, they ask me to agree in principle that the core participants for whom they act (described by them as the victim core participants) should be granted public funding to enable them to instruct an appropriate building professional (surveyor, architect or engineer) to give them expert advice in relation to the condition of Grenfell Tower. That is the area of investigation in respect of which the Inquiry has instructed Dr. Barbara Lane as an expert witness.
2. In paragraph 38 of my Response I said:

“I am well aware that at present many of the bereaved, survivors and local residents do not have confidence in the work being done by the Inquiry and I understand that they wish to monitor what is being done and to satisfy themselves that the advice the Inquiry is receiving is sound. Copies of the instructions given to the Inquiry’s experts have in fact already been made available to all core participants and biographical summaries of the experts will be provided soon. However, as I have already said, it is the function of the Inquiry to carry out the investigations into all aspects of the matters falling within its Terms of Reference and it is for that reason that the Minister’s Determination, which governs the provision of public funding to those

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taking part in the Inquiry, provides that an award shall not be made in respect of investigative work undertaken by an applicant's recognised legal representative or in relation to obtaining an expert's report unless the Chairman has given his express written permission in advance for such work to be undertaken (paragraph 2.8). Having regard to that, I cannot simply make an award to the bereaved, survivors and local residents to enable them to duplicate the work of the Inquiry. In those circumstances I think it best to begin by making a first round of experts' reports available to all core participants as soon as reasonably practicable, together with an invitation to identify any respects in which it is thought that further advice is required. If the bereaved, survivors and local residents think that they need to take advice from someone in order to respond to that invitation, they can apply for an award to enable them to do so. If a reputable expert is prepared to confirm in writing that he or she differs from one of the Inquiry's experts in a significant respect, a further application can be made for an award to cover the cost of obtaining a report from that person. Taking the matter in stages should ensure that in appropriate cases core participants can have access to public funding to pursue any material disagreements between experts, should they arise."

3. The purpose of the present application appears most clearly from paragraphs 6 and 10 of the submissions. In paragraph 6 counsel say that the victim core participants wish to ensure that all aspects of the building's condition which bear upon the fire are considered and addressed and that in order to do so they need to be able to understand and evaluate the conclusions reached by Dr Lane. However, they submit that her report can only be assessed by someone who has the appropriate skills and is familiar with the building, both in its original condition and any subsequent modifications. Such a person, they say, would also need to have conducted an inspection of the building in its current condition.
4. In paragraph 10, having referred to the Interim Report of the Independent Review of Building Regulations and Fire Safety chaired by Dame Judith Hackitt, counsel say:

"The victim CPs cannot engage with the condition of the property unless their advisors are in a position to compare the Inquiry's expert report to the property itself. *It is assumed that Dr Lane's report will (entirely properly) appear comprehensive and reasoned on its face (so far as she*

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considers relevant), but that does not mean that it is comprehensive; it will not address what it does not see, e.g. the hidden aspects referred to above. Even if it were to identify a considerable number of factors to which it may draw critical attention, that does not mean it has identified them all. How fully and accurately Dr Lane has addressed the property is incapable of being determined by looking at her report alone; it can only be assessed by comparing it to the block in terms of its construction, the refurbishment programme and other works (so far as can be ascertained from on site inspection, plans, specifications, architect's instructions authorising variations, and references or details which identify unauthorised variations). (Emphasis added.)

5. I think it is clear from these passages that what the applicants have in mind is the instruction of an expert to examine the building and the various documents relating to its construction and modification with a view to checking that Dr. Lane has carried out her work properly and has not missed anything. They say in paragraph 11 of their submissions that that is not about duplicating the work of the Inquiry, but it seems to me that it clearly is. The risk of undocumented departures from plans and specifications in the fabric of the building was well recognised before the publication of the Hackitt Report and is something of which Dr. Lane can be assumed to be aware.

6. I fully accept that the victim core participants are entitled to participate in the Inquiry's processes to the extent necessary to safeguard their legitimate interests. That is their right under article 2 of the European Convention on Human Rights and it has been said many times that they must be allowed to play a full part in the Inquiry. However, as I pointed out in paragraph 38 of my Response, it is the Inquiry's responsibility to carry out whatever investigations it considers necessary in order to discharge its terms of reference. Core participants, whether corporate or individual, are not expected to undertake that work and will not be given permission to call expert evidence, save in exceptional circumstances. In order to discharge its investigative responsibility the Inquiry may appoint suitably qualified persons, acting as experts, to examine and report on particular aspects of the

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matters to which the Inquiry relates. That it has done and their opinions will form part of the evidence before the Inquiry.

7. The victim core participants have an interest in ensuring that the Inquiry carries out its role in these matters properly. They are therefore entitled to express their views on the choice of expert and the terms of his or her instructions. However, their right to take such part in the Inquiry as is necessary to safeguard their legitimate interests does not extend to instructing experts of their own at public expense to shadow the work of any experts instructed by the Inquiry.
8. A summary of Dr. Lane's background and experience has been made available to all core participants, as has a copy of her instructions. It is not suggested that she is not suitably qualified to act as an expert in relation to the matters on which she has been instructed; nor has it been suggested that her instructions are too narrow or inappropriate in any respect. If she had not been instructed by the Inquiry, she is someone whom the victim core participants might well have wished to instruct on their own behalf, but if they had done so, they would presumably accept her findings and conclusions without seeking a second opinion. In effect, that is where they currently stand. Unless the victim core participants have some positive reason for thinking that there are flaws in her report, for them to instruct another expert to enable them to check Dr. Lane's findings would simply be to duplicate the work she has done.
9. In paragraph 14 of their submissions counsel say that to refuse funding to the victim core participants to enable them to obtain expert assistance at this stage will place them at a disadvantage in relation to other core participants, who have the resources to obtain expert advice without calling on public funds. There would not therefore be the "equality of arms" which Counsel to the Inquiry had led to expect.

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10. I think the position in relation to experts is clear. In his closing remarks at the hearing on 12 December 2017 Mr. Millett Q.C. pointed out that the task of investigation is one for the Inquiry, not for the core participants. Any core participant, whether personal or corporate, who wishes to call an expert witness will have to make out an exceptional case for being allowed to do so. In that respect there will be equality of arms. However, counsel also recognised that it might be necessary to take steps to enable the victim core participants to decide whether in any given case additional expert assistance might be required. That might, for example, involve the provision of funds to allow them to obtain preliminary advice from a suitably qualified person in the light of the report produced by the Inquiry's expert. There was no suggestion that the Inquiry would provide funds for carrying out work which covers the same ground as that of the Inquiry's own experts.
11. That is in substance what I said in paragraph 38 of my Response and it remains my view. I am therefore not willing to make an award of funding to enable the victim core participants to instruct their own expert to duplicate the work of Dr. Lane by covering the same ground as that which she will cover in her report.
12. However, I recognise that, unlike the governmental and corporate core participants, the victim core participants do not have the resources to obtain expert advice of any kind in relation to matters which call for technical expertise. They are therefore likely to be placed at a relative disadvantage in assessing the opinions of the Inquiry's experts, in formulating any questions to be asked of them, and in taking part in any debate arising out of the matters raised in the experts' reports. In order to ensure that that they are able to participate in the Inquiry on an equal footing, therefore, I am willing to make available to the victim core participants as a whole the funding necessary to enable them to engage one expert in each main discipline represented by the Inquiry's experts to advise them on matters falling within the

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relevant field, whether they arise out of the reports produced by those experts or questions put to them by, or at the instigation of, other core participants.

13. As far as Dr. Lane's report is concerned, those advising the victim core participants can consider with the benefit of such advice whether there appear to be any credible grounds for thinking that it may be incomplete or flawed in any respect. If they can identify any such grounds, it may be appropriate to provide funding for a preliminary opinion to be obtained from another (independent) expert, but that will have to be the subject of a separate application. In the light of any such opinion, consideration can be given to what further steps may be appropriate.

14. In the light of this ruling I look forward to receiving as soon as possible applications from the victim core participants for funding to enable them to instruct expert advisers of their choice.