

CHAIRMAN'S RESPONSE

to

SUBMISSIONS

made at the

PROCEDURAL HEARING on 3 SEPTEMBER 2018

1. At the conclusion of the hearing on 2 August 2018 I stated that I would hold a brief procedural hearing on 3 September 2018 in order to consider submissions on the following four matters:
 - (i) the nature of and the limits on the evidence to be adduced from senior officers of the London Fire Brigade (LFB) as part of Phase 1;
 - (ii) the programme for taking evidence from the bereaved, survivors and residents (BSRs) and the approach to any special arrangements which might be needed for them or others, if it had not been possible to reach agreement on that question by then;
 - (iii) the preparation and presentation of the evidence necessary to discharge the article 2 function in relation to each of the deceased, and the programme for carrying that out; and
 - (iv) the approach to be taken to identifying and formulating potential recommendations arising out of the Phase 1 evidence.
2. I invited written submissions in advance, limited to 5 pages in length. In the event I received submissions from counsel and solicitors representing the three established groups of BSRs and from 11 other core participants. Copies of those submissions will be published on the Inquiry's website. Some of these submissions strayed into areas on which I had not invited submissions, which accounts in part for the volume of material I have had to consider.
3. I received further oral submissions during a short hearing on 3 September. A transcript of the proceedings is available on the Inquiry's website. Having now had an opportunity

to consider the submissions made to me, both orally and in writing, I am in a position to respond to them. I do not intend to respond in great detail. It will be sufficient to deal with the main points raised in relation to each of the four matters I have outlined above, although I shall also address some of the other points made by core participants.

(i) The evidence to be adduced from senior LFB officers in Phase 1

4. The principal focus of the questioning of the firefighters who have given evidence so far has been their involvement in fighting the fire and rescuing occupants of the building, but in order to put their evidence in context they have inevitably been asked about their training, experience and familiarity with various aspects of the LFB's policy documents so far as relevant to the events at Grenfell Tower. With a few exceptions they have not been asked to deal with broader questions relating to the organisation or equipping of the LFB. It would have been inappropriate to stray into areas of that kind at this stage, both because most of those witnesses were not of sufficient seniority to have responsibility for such matters and because the questions which the Inquiry is seeking to answer in Phase 1 relate to the origin of the fire, the means by which it spread to the whole building with terrible loss of life, and the response of the emergency services.

5. Some of the core participants have submitted that senior LFB officers who will be giving evidence in the coming weeks should be asked to deal with a broader range of questions going well beyond their personal involvement in the events of 14 June 2017. In general, I do not think that would be appropriate. Questions relating, for example, to the organisation and operation of the LFB, the process of updating policies, the procurement of equipment, the role of Babcock as the provider of training, and the training of firefighters generally naturally fall within the scope of Phase 2. They have not been covered systematically in the witness statements taken by the police, which were, understandably, directed to an investigation of a different kind, and further disclosure and analysis of documents will be required in order to investigate them. It would be unsatisfactory both for the Inquiry and for the officers themselves for them to be questioned about matters of that kind without having first provided witness statements addressed to such issues which take into account, among other things, the relevant documents. It would also risk substantially extending the scope of Phase 1 with the consequent risk of unacceptable delay.

6. However, I agree with counsel for the G4 group of BSRs that it would be appropriate for senior officers to be asked about their understanding, as at 14 June 2017, of matters directly relevant to their handling of the events of that night. They include training and policy on matters such as fighting fires in high-rise buildings generally, knowledge of the risk of an outbreak of fire in the building envelope and how to respond to it, breaches of compartmentation in high-rise buildings, the response to emergency calls from members of the public and the management of fire survival guidance (FSG), the reasons for and the operation of the so-called ‘stay put’ policy, the means of organising mass evacuation and its associated risks, and command and control generally (including the use and effectiveness of radio and computer equipment). They should be asked about all of these to the extent that they bear on the actions and decisions taken on the night of the fire. In this context the boundary between Phase 1 and Phase 2 is not clear cut and, as I have indicated in the past, a flexible approach must be adopted. I shall rely on Counsel to the Inquiry to decide where the line should be drawn in relation to any given witness. Counsel for core participants will, however, be able to suggest lines of questions, as they do now.
7. There are some matters which the Inquiry will want to investigate with senior officers but which in my view should certainly be left over to Phase 2. For example, whether the existing structure, management and funding of the LFB affected its fire-fighting capability generally (an area of questioning suggested by counsel for the G11) is a matter which in my view should be pursued, to the extent appropriate, at that later stage. Recent evidence suggests that other matters, such as the procurement and maintenance of equipment required for effective communication and the management of fire-fighting operations, both on the fire-ground itself and between the fire-ground and the control room, should also be investigated in Phase 2. I think it inevitable, therefore, that it will be necessary to ask some senior officers who have given or will give evidence in Phase 1 to return to give further evidence in Phase 2 and that the Inquiry will also wish to hear from others from whom no statements have yet been taken.
8. Counsel for the G3 and the G11 submitted that they should be allowed to question the senior officers of the LFB in the interests of participation by their clients and as a means of achieving a sound factual basis for the Inquiry’s findings. I am afraid I do not agree. The Inquiry Rules make it quite clear that, subject to the provisions of rule 10 itself,

witnesses are to be questioned by Counsel to the Inquiry. There are good reasons for that. Counsel to the Inquiry is likely to have the best understanding of what information is most likely to assist the Inquiry's work and those who are called to give evidence can have confidence that they will be questioned by a neutral advocate who brings the same approach to bear consistently in relation to all witnesses. In any event, there can be no question but that the initial examination of witnesses should be carried out by Counsel to the Inquiry and if the task is carried out properly (and I have no reason to think that it will not be), few, if any, questions of relevance should remain to be asked. Core participants are welcome to draw attention to any lines of questioning which they think ought to be pursued and they will be carefully considered. That is how matters have been carried on so far and I see no reason to depart from the present arrangements. Moreover, if counsel for some core participants were allowed to question witnesses otherwise than in accordance with rule 10, the same liberty would presumably have to be extended to counsel for all the other core participants. That would not be conducive to the efficient and timely conduct of the Inquiry. It would also mean that witnesses would have to face examination from a wide range of different questioners, which is unlikely to be an effective way of obtaining their best evidence. Consistency of approach would require that those of the BSRs who were called to give evidence would be open to questioning as well by each of the other core participants' counsel, including the LFB, the Fire Brigades Union (FBU) the Council and the Tenant Management Organisation (TMO). In my view that would be an undesirable consequence. I shall therefore allow questioning of witnesses otherwise than by Counsel to the Inquiry only in accordance with rule 10 of the Inquiry Rules.

9. Having said that, the suggestion made by counsel for the G3 that core participants should have an opportunity to propose to Counsel to the Inquiry specific lines of questioning to be put to the witnesses and, if necessary, to seek to persuade Counsel to the Inquiry of their merit strike me as sensible. However, as I pointed out in the course of argument, it depends on those lines of questioning being put forward well in advance. Core participants have been asked to submit lines of questioning 5 working days in advance, but in practice they have not always done so. That makes it very difficult to implement effectively a process of the kind that the G3 have asked for. To date, as I have said, core participants (and principally the recognised legal representatives (RLRs) for the BSRs) have sent written questions to the Inquiry team in advance of a witness being called, and

have put forward further questions to Counsel to the Inquiry while the witness is giving evidence. Where questions have been received in time to be considered properly by Counsel to the Inquiry, that approach appears to me to have worked well and it has had the advantage of enabling Counsel to the Inquiry to exclude duplication, refine the questions, tailor them to the witness and (for the most part) adhere to the timetable.

(ii) BSR witnesses

10. There appears to be a large measure of agreement about the arrangements that should be made to ensure that BSR witnesses and others who may be vulnerable in one respect or another are able to give their evidence with a minimum of distress and inconvenience. On 2 August 2018 the Solicitor to the Inquiry wrote to Saunders Solicitors representing all core participants responding to their letter of 19 July 2018 concerning the evidence of control room staff. In her letter she outlined a procedure for ensuring that all vulnerable witnesses receive the support they need. In substance, she suggested that, in the case of those who are willing and able to give evidence, I should decide in the light of representations from RLRs what steps should be taken to enable them to do so to best advantage. Only in the case of those who are said to be too vulnerable to give evidence in any manner was it suggested that a formal process, including the production of medical reports, should be necessary. As far as I am aware, those suggestions have met with general approval and I propose to implement them unless there are good reasons in any individual case to do otherwise.

11. On 2 August 2018 the Solicitor to the Inquiry also wrote to RLRs of those of the BSRs whom the Inquiry is minded to call as witnesses. That letter was intended to give them advance notice of the Inquiry's intentions and to begin the process of ensuring that all vulnerable witnesses receive appropriate support. Regrettably, some RLRs were unable to respond within the time requested by the Inquiry and indeed some responses are still awaited. In order to ensure that effective arrangements can be made for the provision of interpreters and special measures, such as a live video link, the Inquiry team needs the prompt assistance of the RLRs of the individuals in question. It should now be possible for them to inform the Inquiry within a matter of days whether any particular witness is thought to need an interpreter or some form of special measures.

12. Although it was not a topic on which I invited further submissions at the procedural hearing, it was suggested by counsel for many of the BSRs and also by the FBU and the Mayor of London that another venue should be found for the purposes of taking the BSRs' evidence because (it is said) there is insufficient space available at Holborn Bars to accommodate all those who may wish to attend. I agree that it is important to ensure that as many of those who wish to do so can attend the hearings at which BSRs give evidence. I therefore asked the Secretary to the Inquiry to investigate once again the availability of alternative venues, including the Millennium Hotel in Gloucester Road. His investigation has revealed that there is no suitable alternative venue capable of accommodating a four week hearing in a month's time with the provision of the minimum physical and communications infrastructure that would be required. It will therefore be necessary to take the BSRs' evidence at Holborn Bars, but I shall continue to do my best to ensure that all those who have a proper interest in the Inquiry and who wish to attend the hearings can do so and are able to follow the proceedings as closely as possible.
13. Counsel for the G3 and G11 submitted that they themselves, rather than Counsel to the Inquiry, should examine the witnesses whom they represent. That, it is said, would make the process less daunting for them and enable them to give the best evidence of which they are capable.
14. As I have already said, rule 10(1) of the Inquiry Rules is quite clear on this point. Counsel to the Inquiry has responsibility for calling as witnesses those whom he thinks can provide information which is likely to assist the Inquiry in performing its task. He is better placed than anyone else to understand what evidence will and will not assist the Inquiry and to frame appropriate questions accordingly. He has a general responsibility for organising the witnesses and ensuring that the proceedings are conducted efficiently. Rule 10(2), to which attention has been drawn in correspondence, applies only where a witness has already been questioned by Counsel to the Inquiry, but in any event I do not think it would be conducive to the efficient and timely running of the Inquiry to allow a succession of different counsel representing individual witnesses to take control of the conduct of that part of the proceedings. The approach suggested by counsel for the BSRs cannot be confined to their clients, since similar considerations could be said to apply equally to witnesses closely associated with other core participants. Rule 10 makes provision for recognised legal representatives to apply for permission to ask questions of

a witness and counsel for the G11 has indicated that he may in due course apply to do so. I need say no more about that at this stage, other than that I shall consider any such applications as and when they are made.

15. Concern has been expressed by counsel for the G3 and G11 about the number of BSRs that will be called to give evidence. The Inquiry team has carefully considered the statements provided by the BSRs and is minded to call as witnesses those who appear likely to provide the greatest insight into the development of conditions within the tower during the course of the fire. (Other matters, such as the handling of complaints by the TMO and the authorities' response to the tragedy, will be dealt with later in the proceedings.) Their evidence about the fire itself is likely to provide direct evidence of a kind that will assist the experts and me in understanding why the fire developed as it did. Not all those who have made statements will be called to provide oral evidence, but I am happy to make it clear, as I have on previous occasions, that all the statements which the BSRs have provided to the Inquiry will become part of the formal record of evidence and will be published in due course. In response to the request made by counsel for the G3 a list of those of the BSRs whom the Inquiry is currently minded to call has now been circulated together with a provisional programme.

(iii) The article 2 function

16. There appears to be a broad consensus that much, though probably not all, of the evidence bearing on the findings required to discharge the state's responsibility under article 2 of the European Convention on Human Rights will have become available by the close of Phase 1. Counsel for the G4 proposed that the lawyers acting for the bereaved should take the lead in marshalling the evidence surrounding the circumstances in which their loved ones died. He also proposed that time should be set aside for a hearing at which the evidence relating to each deceased could be publicly drawn together and presented. Those suggestions were supported by counsel for the G3 and after due consideration have been welcomed by Counsel to the Inquiry.
17. I also welcome those suggestions. In my view it would greatly assist the work of the Inquiry for the evidence that will by then have emerged over the course of many weeks to be drawn together and presented in that way. Although I must necessarily retain responsibility for the Inquiry's findings, detailed submissions, supported by a written

analysis in whatever form is most convenient, are likely to be of the greatest assistance when it comes to drafting that part of the Inquiry's report. In my view a process of that kind, in which all those representing BSRs would no doubt wish to collaborate, would best be carried out after the evidence at Phase 1 is complete and closing submissions on other issues have been made. Further consideration will have to be given to more detailed directions required to implement that process efficiently, but it would be helpful to start planning it now.

18. I also think it right that in connection with this particular aspect of the Inquiry's work counsel for each of the BSRs who lost loved ones in the fire should be able to address me on the evidence bearing on the issues relevant to article 2, so far as relevant to the individual deceased, rather than leaving that task to Counsel to the Inquiry. That said, I would expect there to be close liaison between counsel for the BSRs and Counsel to the Inquiry about the timetabling, nature and content of their oral submissions.
19. Questions were raised about how the Inquiry should deal with the evidence contained in the 999 calls made by the deceased and other residents of the tower during the fire. The Inquiry has already made it clear that it will play recordings of 999 calls to a witness only if there is an evidential justification for doing so and that remains the position. Transcripts of the 999 calls are available and provide most, if not all, of the relevant evidence. Accordingly, any application to play a recording to a witness must be made in writing supported by reasons. Whether there is a need to play the recording of any particular 999 call in the context of article 2 hearings is a matter that can be discussed in due course between Counsel to the Inquiry and counsel for the BSRs.

(iv) Interim recommendations

20. Counsel for the G4 identified three categories of systemic flaws that he said would justify making recommendations at an early stage, but, having not been invited to do so, he refrained from putting forward any concrete proposals. Nonetheless, he made it clear that he would welcome a formal process by which all core participants could make suggestions for consideration by others, leading in due course to a short hearing at which they could be discussed. He suggested that the Inquiry should set a date for potential recommendations to be tabled by core participants and for responses to be received.

21. It is necessary to bear in mind that the evidence, even at Phase 1, is still far from complete and I am cautious about making recommendations of any kind without being confident that they are grounded in reliable evidence, have been duly considered by other core participants and have the support of the Inquiry's experts. That which is obvious (even "blindingly obvious") to one person is often far from obvious to another. However, given the importance of identifying as soon as possible any measures that have emerged from the evidence before the Inquiry so far and appear to be capable of significantly improving the safety of those living or working in other tower blocks, I think it would be helpful to begin examining the various proposals that have already been made, together with any others that may come to mind. Counsel for the G3 suggested that the starting point for any consideration of interim recommendations should be for the LFB to tell the Inquiry what steps it has already taken or proposes to take in response to the fire. That suggestion was supported by Counsel to the Inquiry, who suggested adding to the list the Ministry of Housing, Communities and Local Government (MHCLG), the Home Office and the Mayor of London, and I am happy to adopt it.
22. I am therefore minded to suggest the following timetable:
- (i) by Friday 26 October 2018 the LFB, MHCLG, Home Office and the Mayor shall each serve on the Inquiry a position paper describing in reasonable detail the actions they have already taken to address questions of public safety raised by the fire, the rationale behind them, and any further steps which they currently plan to take. The position paper should be supported by documentary evidence and should identify the person or persons within the organisation principally responsible for the steps described;
 - (ii) by Friday 14 December 2018 all core participants who wish to do so shall send the Inquiry their proposals for interim recommendations;
 - (iii) by Friday 11 January 2019 all core participants who wish to do so shall send the Inquiry their comments on the proposals;
 - (iv) by Friday 18 January 2019 the Inquiry's experts shall produce short reports containing their views on the subject of proposed interim recommendations;
 - (v) during the week beginning Mon 28 January or Monday 4 February 2019 there be a hearing to consider submissions on interim recommendations and any oral expert evidence that may be required.

23. The reason I have suggested a date for submissions as late as mid-December is in order to allow for the fact that the Inquiry needs to hear from its experts on the Phase 1 issues in order to consider any urgent interim recommendations. On the present timetable I hope that by mid-December the expert evidence at Phase 1 will have been completed and core participants will have had a fair opportunity to consider it. I appreciate that some may consider the proposed timetable to be too leisurely, but if it becomes apparent that important recommendations might be made in the interim without the need for further evidence or discussion with interested parties, I will of course consider them urgently.

24. Although I had invited submissions only on the approach to be taken to identifying and formulating potential recommendations, counsel for some of the BSRs and also counsel for the FBU put forward specific proposals for recommendations which they submitted ought to be made as a matter of urgency. Counsel for the G3 suggested that I should recommend an immediate moratorium on the use in cladding systems of high-rise buildings of any materials that do not fall in terms of combustibility within European Class A1. However, the government has recently held a public consultation on its proposal to prohibit the use of combustible materials in the envelope of high-rise buildings and one of the questions raised in that consultation was whether the minimum standard of materials should be Class A1 or A2. The difference between the two is relatively narrow and in those circumstances I do not think that it would be helpful, without the benefit of further evidence, to recommend an immediate moratorium on the use of Class A2 materials pending the government's response to the consultation. That should not, however, prevent that suggestion from being included in the process to which I referred earlier.

25. The G11 have also provided the Inquiry with an extensive list of suggested recommendations, all of which they say are manifestly obvious and do not call for any further evidence or consultation. Not everyone, however, agrees with that view, or at least no clear consensus among core participants has yet emerged about any of those suggested recommendations. They too can be considered within the context of the procedure I have outlined above.

26. The FBU put forward a number of suggested recommendations for improving the operational response of the LFB to fires in high-rise residential buildings. It appears from the LFB's submissions, however, that some have already been, or are about to be, implemented and the others can be considered within the context of the procedure I have indicated above.

Disclosure

27. Although disclosure was not one of the matters for discussion at the hearing, counsel for the G3 chose to raise the matter, complaining that the Inquiry had so far disclosed to the core participants less than 5% of the documents it had obtained. It is unfortunate, in my view, that the unqualified nature of his remarks was liable to mislead people into thinking that the Inquiry is deliberately withholding from core participants documents that are relevant to the matters currently under consideration in Phase 1. That is not the case, as Counsel to the Inquiry has made clear. The vast majority of the documents relevant to Phase 1 have been disclosed. A small number still remain to be disclosed, having come into the possession of the Inquiry only very recently; they are currently going through the Inquiry's review processes and will be disclosed as soon as possible thereafter. It is true that, viewed overall, only a small proportion of the total number of documents (just under 400,000) obtained by the Inquiry so far have been disclosed, but present indications are that the vast majority of those documents that have not yet been disclosed are relevant, if at all, only to the issues that will be considered in Phase 2. All documents received by the Inquiry have to be reviewed in order to weed out those that are irrelevant or duplicates and the remainder have to be reviewed in accordance with the Redactions Protocol in order to ensure that the Inquiry complies with its obligations under the Data Protection legislation. That is a time-consuming task, but the Inquiry team is making all reasonable efforts to ensure that it is completed as quickly as possible. Documents will be disclosed to core participants as soon as they become available and in good time for the Phase 2 hearings. Counsel to the Inquiry will make a short statement on this subject in the very near future.