

Grenfell Tower Inquiry

CHAIRMAN'S RESPONSE

to

SUBMISSIONS made on 21 MARCH 2018

1. On 21 March 2018 a second procedural hearing was held to consider various matters relating to the conduct of the Inquiry and to make further preparations for the start of evidential hearings. Several of the core participants who attended the hearing had provided written submissions in advance and addressed me on a number of different points. I also heard a small number of core participants who had not provided written submissions. A list of those from whom I received written or oral submissions is annexed. Other core participants attended the hearing but chose not to make submissions of any kind. Once again, I am grateful to counsel for the three main groups of bereaved, survivors and residents for their co-operation in allocating responsibility for different topics among themselves. That did much to ensure that the hearing was conducted efficiently, with a minimum overlap between speakers and within the time allowed.
2. By the date of the hearing some of the points raised in the written submissions had been overtaken by events or by discussions between the Inquiry team and those representing the bereaved, survivors and residents. Co-operation of that kind has been increasingly fruitful; such discussions provide a valuable means of resolving difficulties and what in some cases are no more than misunderstandings. I hope that it will be possible to build on it as we continue to make preparations for the hearings at which I shall be taking oral evidence. Inevitably, however, some questions remained outstanding and as on the previous occasion I shall respond to the various submissions I received compendiously under the headings that follow.

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The inquest function

3. Mr. Friedman Q.C. and others impressed on me once again the importance, in their clients' eyes, of making findings of fact sufficient to meet the requirements of an inquest which satisfies the state's obligation under article 2 of the European Convention on Human Rights, thereby making it unnecessary for the coroner to continue the inquests which she has suspended for the time being. In the course of his submissions Mr. Friedman drew my attention to the reports of the inquiries into the King's Cross fire chaired by Mr. Desmond Fennell Q.C. and the Piper Alpha disaster chaired by Lord Cullen and contrasted the state of the law in England and Scotland at the relevant times. Under Scots law it was possible at the time of Lord Cullen's report for him to make findings of a kind that would satisfy the requirements of an inquest and he did so. As a result of recent legislation the position is now the same in England and counsel urged me to take a similar course.

4. As I have said on more than once occasion (see, in particular, paragraph 48 of my response to the submissions made at the previous directions hearing), I can see much force in that submission and I hope that it will be possible for the Inquiry to achieve that outcome. On the basis of the material currently available, I do not foresee any significant difficulty in making findings of the kind made by Lord Cullen in the Piper Alpha report, which may be sufficient to meet the requirements of an investigation that complies with article 2. Mr. Friedman indicated that those who instruct him might be able to provide some assistance to the Inquiry team in obtaining and presenting the evidence that would be required for that purpose and I hope that the possibility of co-operation in that way can be pursued in discussions between them. I can foresee some potential difficulty in making extensive and detailed findings about the movements of each of the deceased in the period leading up to his or her death, but I remain hopeful that it will prove possible to make sufficient findings of fact without imposing an

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unreasonable burden on all those involved or undue delay to the progress of the Inquiry itself.

Technical issues

(a) Toxicology and toxicity

5. Miss Stephanie Barwise Q.C. submitted that the Inquiry should investigate the extent to which deaths were caused by toxic smoke and gases of different kinds generated by the combustion of materials in the cladding with a view to determining the suitability of such materials for use in residential buildings. She submitted that the Inquiry should therefore seek the assistance of an expert toxicologist in order to determine that question. She also submitted that the Inquiry should investigate the effect of smoke and gas on those who had escaped from the building, the firefighters and those who lived in buildings close to Grenfell Tower.

6. Toxicology reports have been prepared in respect of 20 of the deceased and the Inquiry team will examine each of them. At the present time those reports consider the role which may have been played by the inhalation of carbon monoxide and the contribution that it may have made to the deaths. I accept, however, that it is important to know how the various materials used in the cladding behave in a fire, and what gases and particulates they produce, and I intend to instruct a suitably qualified expert to assist me in answering that question. I shall also give further consideration to the need to have further tests carried out on the remains of the deceased (where that is possible) with a view to establishing the precise concentration of different toxins in their blood or tissues. However, since it was not possible to carry out a post mortem examination on the majority of the deceased, I think it would be desirable to obtain an expert opinion on the effects of the different products in the form of smoke and gas resulting from the combustion of the various materials used in this case, since it may enable me to make a confident determination of the cause of death in those cases.

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7. However, an investigation into the actual or potential effects of the fire on the health of those who escaped from the tower, the firefighters and residents of neighbouring buildings, either immediate or in the long term, would introduce a whole new area of investigation which, in my view, does not fall within the Inquiry's current Terms of Reference. For that reason the detailed questions to which it would give rise have not been identified in the published List of Issues and hitherto no one has suggested that they should have been. Public Health England was asked to investigate this question immediately after the fire and has been testing air quality and other potential threats to public health. In those circumstances I do not propose to seek evidence of a kind that would be relevant to such an investigation.

(b) Electrical surges

8. In 2013 the residents of Grenfell Tower experienced electrical surges which are said to have caused damage to domestic appliances. As a result, some suspect that the fire was caused by an electrical surge. Miss Barwise submitted that the Inquiry should investigate that possibility.
9. On the basis of the examination of the electrical appliances and the electrical installation in the kitchen of flat 16 carried out thus far, no evidence has yet come to light which suggests that any of the appliances had been affected by an electrical power surge in the period immediately before the fire broke out. I am therefore not currently intending to obtain further expert evidence on this question, but will keep the position under review.

(c) Non-compliance and the scope of Phase 1

10. Miss Barwise and Mr Mansfield Q.C., among others, touched on the scope of Phase 1 and the issues on which the Inquiry expects to receive evidence during the initial hearings. As far as the bereaved, survivors and residents and the firefighters are concerned, I am happy to confirm that they are welcome to give the whole of their

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evidence at one time in order to avoid the need to attend on a second occasion for the purposes of Phase 2. I have repeatedly made it clear that the Inquiry team as a whole will do whatever it reasonably can to ensure that the process of giving evidence is made as straightforward as possible.

11. As far as the scope of Phase 1 is concerned, the extent to which the building complied with the requirements of the relevant legislation will be the subject of expert evidence and everyone involved will be able to understand what factual questions do or do not arise for consideration at that stage. However, this is one area in which the boundary between Phase 1 and Phase 2 must remain flexible. It may be that some of the evidence obtained by the Inquiry in Phase 1 will bear on questions that can more conveniently be answered at a later stage. As I have previously said, I wish to preserve a significant degree of flexibility so that the management of the investigation and the production of reports can be undertaken in the most effective manner, but I agree that at least some of the questions identified in section 8 of the List of Issues should be addressed as part of Phase 1. Having said that, whatever the final decision on the scope of the issues to be addressed in the initial report, those witnesses who wish to give all their evidence during the Phase 1 hearings will be allowed to do so.

12. Mr Mansfield also raised a question about the scope of opening statements. I do not wish to be unduly prescriptive about that, but I think that it is likely to be more helpful to other core participants, to the public at large and to me and my assessors if counsel keep them as succinct as possible and direct them primarily to the issues that lie at the heart of Phase 1.

Disclosure

13. A number of counsel touched on the question of disclosure. I do not think it necessary to say much by way of response because Counsel to the Inquiry made it clear that a

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significant proportion of the documents that are relevant to Phase 1 of the Inquiry had already been disclosed through the Relativity platform and that he expected the rest to be disclosed by the middle of April. In addition, a substantial body of documents to which the experts have referred in their reports will be disclosed together with those reports within a matter of days. The Inquiry has received over 330,000 documents so far, with no doubt more to come. Weeding out duplicates and documents that are plainly irrelevant and redacting personal information in order to comply with the Inquiry's obligations under the Data Protection Act is a huge task. It is proceeding as quickly as reasonably possible and I should like to express my thanks to all those members of the Inquiry team who are working very hard to complete the task in a thorough, efficient and timely manner. It needs to be borne in mind, however, that most of those documents relate to matters which the Inquiry will be addressing in Phase 2. Although I understand that core participants would like to see them as soon as possible, I do not think that there is the same degree of urgency attached to them as there is to the documents bearing on the matters to be investigated in Phase 1. I can confirm that it is, and always has been, the Inquiry's intention to disclose documents in tranches as and when they become available.

14. Mr. Weatherby Q.C. asked that Inquiry produce inventories of the documents received from the different providers and schedules of documents which the Inquiry team consider to be irrelevant or duplicates. However, to comply with that request would impose a significant additional burden on the Inquiry team and one which I do not think it is necessary for it to shoulder in order to enable the bereaved, survivors and residents to participate effectively in the Inquiry.
15. The Inquiry is moving as quickly as it can to disclose firefighters' contemporaneous notes and witness statements, transcripts of calls to the emergency services (all duly redacted) and, where appropriate, audio files, as Counsel to the Inquiry explained in his opening remarks. The Inquiry is investigating the extent to which communications

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between the various emergency services were recorded and will update the core participants in due course.

16. Two specific categories of documents that Mr. Weatherby identified were those relating to complaints made by tenants to the Tenant Management Organisation and housing files. In his second Statement Mr. Millett Q.C. explained that the housing files had been provided to the Inquiry in hard copy form in January. They extend to some 18 boxes of lever-arch files. On examination it was found that many of the files contained highly personal information and that in some cases they contained documents relating to premises other than those to which they ostensibly related. The material contained in the housing files is unlikely to be relevant to the matters being investigated in Phase 1 and I do not therefore consider it to be a sensible use of the Inquiry's resources to accelerate the task of examining them. The Inquiry team will disclose them as soon as it can, subject to carrying out the work to which I have referred.

Position statements

17. Mr. Weatherby noted the absence of a position statement from Kingspan, some of whose products were used in the refurbishment of the tower. The call for position statements was directed to core participants, of which Kingspan is not at present one. I have asked the Inquiry team to contact the company with a view to obtaining an explanation of its position. I shall give further thought to the best way of developing the Inquiry's understanding of the nature of the position being adopted by the different bodies involved in the design and execution of the refurbishment of the tower. That might be by way of further position statements or by requests for statements pursuant to section 9 of the Inquiries Act 2005. Statements of the latter kind would, of course, unquestionably stand as evidence to the Inquiry.

Arrangements for calling witnesses

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18. Mr. Stein Q.C. on behalf of the bereaved, survivors and residents raised a number of questions relating to the calling of witnesses. Without in any way intending to detract from the value of his submissions, or from those of Mr. Walsh Q.C. who raised similar concerns in relation to the firefighters, I do not think that this is a subject which calls for a detailed response. I have made it clear that I am anxious to ensure that witnesses are able to give their best evidence and to do so without suffering distress. In some cases that may present a significant challenge, but the Inquiry intends to make a wide range of measures available to achieve that goal. They are set out in the Vulnerable Witness Protocol which has been published on the Inquiry's website and it is unnecessary to describe them here. I am, however, happy to confirm that a witness who wishes to take advantage of one of the available procedures will not be required to support that application with medical or other professional evidence. In the ordinary way confirmation from the recognised legal representative that the witness will find giving oral evidence openly at the hearing so difficult that it would detract from the quality of their evidence, together with an indication of the measures that are suggested, will be sufficient. It is important for the efficient running of the Inquiry, however, that notice be given to the Inquiry team as early as possible of any special requirements. For its part the Inquiry team will do its best to give as much advance notice as possible of the dates and times at which it wishes to call witnesses to give evidence. In this regard we are particularly conscious of the need to give plenty of notice in relation to the attendance of firefighters.
19. I was pleased to hear Mr. Stein confirm that those who act for the bereaved, survivors and residents intend to discuss with the Inquiry team the best way of responding to young people who may wish to give evidence. Giving evidence is likely to be a stressful experience and we have a responsibility to keep their best interests well in mind. In general I think it likely that practical questions of the kind touched on by Mr Stein can best be resolved by discussions between legal representatives and the Inquiry team.

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Dame Judith Hackitt's Review of Building Regulations and Fire Safety

20. Finally, Mr. Stein drew attention to the fact that the bereaved, survivors and residents have no formal involvement in the review of building regulations being conducted by Dame Judith Hackitt. He asked that they should be provided with funding to enable them to make submissions to that review, perhaps supported by expert advice, on equal terms with the industry bodies from whom contributions have been sought.
21. I understand why those whom Mr. Stein represents would like to have a voice in Dame Judith's review, but I cannot make an award of funding in respect of the costs of doing so. My powers are circumscribed by section 40 of the Inquiries Act 2005 and the Ministerial Statement, neither of which extends to awarding funding for matters outside the scope of the present Inquiry. I have no doubt that the Inquiry will wish in due course to consider the outcome of Dame Judith's review and at that stage the bereaved, survivors and residents will have an opportunity to scrutinise her report and make whatever submissions about her conclusions they consider appropriate. For similar reasons I must also decline Mr. Stein's request to speak to Dame Judith on behalf of his clients and others in their position. Those who instruct him are, of course, free to do so, but I do not think it would be right for me to do that.

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ANNEX

At the hearing for directions on 21 March 2018 the Chairman received written and oral submissions from the following in addition to Richard Millett Q.C., Counsel to the Inquiry:

Counsel	Solicitors	Core Participant
Amy Clarke	MPS Legal Directorate	Metropolitan Police Service
Danny Friedman Q.C. & Stephanie Barwise Q.C.	Bhatt Murphy; Bindmans; Hickman & Rose; Hodge, Jones & Allen; Thanvi Natas	Bereaved, survivors and local residents
Michael Mansfield Q.C. & Leslie Thomas Q.C.	Anthony Gold; Birnberg Peirce; Deighton, Pierce Glynn; Duncan Lewis; Hanover Bond Law; Hudgell Solicitors; Janes; Russell- Cooke; Saunders Law; Saunders Solicitors; Slater & Gordon;	Bereaved, survivors and local residents;
Pete Weatherby Q.C. & Sam Stein Q.C.	Bishop, Lloyd & Jackson; Howe & Co; Oliver Fisher Solicitors	Bereaved, survivors and local residents
James Maxwell-Scott Q.C.	DWF	RBKC
James Ageros Q.C.	Kennedys Law	TMO
Anne Studd Q.C.	Transport for London	Mayor of London
Jim Sturman Q.C.	Clyde & Co	CEP Architectural Facades
Stephen Walsh Q.C.	Miles Smith, Head of Legal and Democratic Services	LFEP A
Martin Seaward	Thompsons	Fire Brigades Union

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Louis Browne Q.C.

Burton Copeland

Fire Officers' Association

Stephen Hockman Q.C.

DLA Piper

Arconic Architectural
Products S.A.S

As at the previous hearing, those who made submissions were assisted by other counsel and solicitors whom I have not named but whose contribution should be acknowledged.