Neutral Citation Number: [2021] EWHC 3095 (TCC)

Case No: E50MA016

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
TECHNOLOGY AND CONSTRUCTION COURT (QB)

Manchester Civil Justice Centre
Date handed down: 19 November 2021

Before His Honour Judge Stephen Davies sitting as a High Court Judge
Between :

BLUE MANCHESTER LIMITED	**Claimant**
- and -	
(1) BUG-ALU TECHNIC GMBH	
(2) SIMPSONHAUGH ARCHITECTS LIMITED	**Defendants**

Paul Darling QC and Edward Hicks (instructed by **Freeths LLP**, Birmingham) for the **Claimant**
Felicity Dynes (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**, Sheffield) for the **First Defendant**
Rachel Ansell QC and Charles Pimlott (instructed by **Keoghs LLP**, Liverpool) for the **Second Defendant**
Nicola Atkins (instructed by **Wedlake Bell LLP**, London EC4V) for Deansgate Freehold Limited, the **Claimant** in HT-2019-MAN-000043

Hearing date: 12 November 2021

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APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII. The date and time for hand-down is deemed to be 9:30a.m. on Friday 19 November 2021.
I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

The application to strike out or re-draft witness statements

1. The principal issue for this judgment is the application by the claimant in case E50MA016 [**BML**] to strike out paragraphs of the trial witness statements as served by the second defendant [**SHA**] which, it contends, do not comply with the provisions of (a) Practice Direction 32 - Evidence [**PD32**]; or (b) Practice Direction 57AC - Trial witness statements in the Business and Property Courts [**PD57AC**]. The first defendant [**BUG**] is neutral. The claimant in the associated action [**DFL**] is supportive of the claimant's position.

2. BML contends that SHA has, despite agreeing to serve compliant witness statements, failed to do so and that if the offending paragraphs were allowed to stand its preparation for and conduct of the trial of liability and causation, listed for 3 weeks in May 2022, would be prejudiced. It contends that if the offending paragraphs are not struck out then SHA ought to be ordered to serve compliant versions under a debarring order.

3. SHA contends that its trial witness statements are fully compliant and that BML's application is wholly misconceived and ought to be dismissed. If, contrary to its case, there are any non-compliances it contends that they are minor and technical and would not prejudice BML in its preparation for or conduct of the trial so that no sanction is reasonably required.

4. The complaints are many and widespread and the arguments have ranged far and wide, so that there was insufficient time to give an oral ruling on the day of the hearing. The submissions also reveal that the parties are at odds as to the proper approach to PD57AC, so that I must begin by addressing the points of principle which divide them before deciding the individual objections.

5. I should explain briefly that these claims concern the failure of certain shadow box units [**SBUs**] in the cladding of the Beetham Tower, Deansgate, Manchester [**the Tower**]. The question as to whether BML, as tenant of that part of the tower which comprises the Hilton Hotel, or North West Ground Rents Ltd, as the landlord and predecessor to DFL, was responsible for repairing the defects in the SBUs was the subject of an earlier claim which went to trial and in respect of which this Court gave judgment in 2019: Blue Manchester Ltd v North West Ground Rents Ltd [2019] EWHC 142 (TCC). In the current litigation BML and DFL both seek to recover damages from BUG as cladding subcontractor and from SHA as project architect. The claims are denied. The main contractor was Carillion Construction Limited who is, of course, in liquidation and not a party to this litigation.

6. An unusual feature of the case is that since neither BML nor DFL were involved in the design or construction of the Tower, and are claiming as the beneficiaries of collateral warranties provided by BUG and SHA, they are unable to adduce witness evidence as to the design or construction phases. BUG has, effectively, no witness evidence of any significance to give either. Accordingly, when the time came to exchange witness statements, only SHA served any witness statements of any substance. It did so from 5 witnesses, all of whom save one are still with SHA, and all of whom were involved with the project at various stages in its life. An objection was taken on service as to

their compliance and, without prejudice to SHA's position that the objection was misconceived, it agreed to serve revised versions. Criticisms were made of these as well, which were rejected and, accordingly, this application was issued. Witness statements were served in support and against and the main arguments for and against have been summarised in the written and oral submissions of counsel, with helpful schedules provided by both summarising the objections taken to the various paragraphs.

The relevant principles applicable to trial witness statements in the Business and Property Courts

7. In her recent judgment in Mansion Place Limited v Fox Industrial Services Ltd [2021] EWHC 2747 (TCC) O'Farrell J provided a most helpful summary at [22-38] of the relevant rules for trial witness statements as found in PD32 and PD57AC. It would be superfluous for me to repeat that summary in this judgment.

8. In her summary O'Farrell J also referred to two earlier authorities. In the first, JD Wetherspoon Plc v Harris [2013] EWHC 1088 (Ch), the then Chancellor, Sir Terence Etherton, set out the general principles applicable to factual witness statements at [38-41]. It is plain that his analysis influenced the conclusions and approach of the Working Party responsible for the drafting of PD57AC. In the second, more recent, case of Mad Atelier International BV v Mr Axel Manes [2021] EWHC 1899 (Comm), Sir Michael Burton CBE (sitting as a Judge of the High Court) held that PD57AC does not change the law as to admissibility of evidence or overrule previous authority as to what may be given in evidence, albeit that it was "obviously valuable in addressing the wastage of costs incurred by the provision of absurdly lengthy witness statements merely reciting the contents of the documentary disclosure and commenting on it".

9. O'Farrell J also gave some useful guidance at [49-50] to parties where a dispute as to compliance with PD57AC arises. In short, parties are encouraged to reach agreement, failing which they should make an application, which might be determined on the documents or at a hearing, but at a time and in a manner which "does not cause disruption to trial preparation or unnecessary costs". She noted that: "The court does not wish to encourage the parties to engage in satellite litigation that is disproportionate to the size and complexity of the dispute. Often, the judge will be best placed to determine specific issues of admissibility of evidence at the trial when the full bundles and skeletons are before the court". She observed that in that case - as in this - the application had taken a full day to argue and that in future "serious consideration should be given to finding a more efficient and cost-effective way forward".

10. This application was issued and listed before O'Farrell J's decision. Given the number of objections taken and the arguments advanced it is unlikely that it could have been dealt with appropriately solely on the documents or at significantly less court time. However, it is to be hoped that as PD57AC becomes more familiar to practitioners and as the principles become clearer such heavily contested, time-consuming and expensive applications become the exception rather than the norm. Parties in Business and Property Court [**BPC**] cases who indulge in unnecessary trench warfare in such cases can expect to be criticised and penalised in costs.

11. Finally, one can see from O'Farrell J's judgment that whilst the court will be astute to strike out offending parts of a trial witness statement it will not do so where that is not reasonably necessary.

Thus, at [51] she refused to strike out a sentence referring, irrelevantly, to negotiations about the contract sum, on the basis that it was a "very brief reference to background matters and the court does not consider it necessary to strike it out". In contrast, at [53] and [54] she had no hesitation in striking out comment on correspondence and argument on a point in the case.

12. I now address the competing over-arching submissions of Mr Darling QC leading Mr Hicks for BML and Ms Ansell QC leading Mr Pimlott for SHA.

13. Mr Darling contended that there were six overriding requirements with which trial witness statements must comply, which were as follows:

(i) They must, if practicable, be in the witness's own words and must not be expressed in the third person. This follows from PD32 par. 18.1, with which BPC trial witness statements must comply - see par. 3.3.

(ii) They cannot include opinion about the meaning of a document, unless the witness' contemporaneous belief about the meaning of the document is a relevant issue in the case. This follows from the overriding statements in pars. 3.1 and 3.2 as to the content of trial witness statements and from the Statement of Best Practice [**SBP**] forming the Appendix to PD57AC, at pars.2.2, 2.3(1) and 3.4(2).

(iii) They cannot include argument. This follows from pars. 3.1 and 3.2 and SBP par. 3.6(2).

(iv) They cannot quote at any length from documents, take the court through the documents or set out a narrative derived from the documents: SBP par. 3.6(1) and (3).

(v) They must state which statements are made from the witness's own knowledge and which are matters of information or belief, and must state the source for the latter: PD32 par. 18.2. This obligation is not satisfied merely by the confirmation of compliance required by PD57AC par. 4.1, where the witness confirms that the witness statement "sets out only my own personal knowledge and recollection, in my own words".

(vi) They must state, if practicable, on important disputed matters of fact, how well they recall the matters addressed and whether, and if so how and when, their recollection has been refreshed by reference to documents, identifying those documents: SBP par. 3.7.

14. He submitted that, whilst trifling non-compliances with these requirements might be ignored, substantial contraventions should be dealt with, on the basis that otherwise the other party would be hampered in pre-trial preparation and in conducting the trial process, which processes would thereby be rendered more inefficient - see par. 12.1.4 of the current TCC Guide. He gave the example of a trial advocate having to decide whether or not to risk not cross-examining on parts of witness statements which appeared to contravene these requirements but contained assertions on important contested issues. He gave the further example of a trial advocate having to waste time eliciting information from the witness about whether or not she had a recollection on an important issue based on her own independent recollection or on documents (and if so which), when that information could and should have been provided in the statement itself.

15. Finally, he submitted that SHA's witness statements betray a significant failure to follow these requirements. He submitted that they are clearly not drafted in the witnesses' own words or, to a very large extent, in the first person. He submitted that the witness statements are drafted in the same style. He submitted that it was reasonably clear that they had all been drafted by the same professional hand. He submitted that they all breached the requirements of PD32 and PD57AC in numerous respects.

16. In her response, Ms Ansell QC did not take issue with the six overriding requirements identified by Mr Darling, which I accept accord with the provisions identified. However, there were some important differences of emphasis in her submissions.

17. As to the first, whilst she accepted that a trial witness statement must, if practicable, be in the witness's own words, she observed that SBP par. 3.13 permits the legal representative to take primary responsibility for drafting the witness statement. She also submitted that the requirement for the statement to be expressed in the third person should not be read so literally as to require every sentence to begin with the nominative pronoun "I" if it was obvious from the witness statement, read fairly as a whole, that this was clearly what the witness was saying.

18. As to the second, she observed that by virtue of SBP par. 2.3 a witness was entitled to give evidence as to what she thought about something at some time in the past, which could be anything that is relevant, and which may include her understanding of a document (SBP par 3.4(2)). Thus, the limit on evidence in relation to documents is not absolute and is subject to important exceptions.

19. As to the third, whilst she did not quarrel with the injunction against argument, she submitted that a witness who, whether personally or though his employer, is a defendant to a claim, particularly a defendant to a professional negligence claim where a professional reputation is at issue, is entitled to explain why he acted as he did. She referred to SBP par. 4, which permits a witness to give evidence about "what they would or would not have done or thought if the facts, or their understanding of them, had been different".

20. As to the fourth, whilst she acknowledged the injunction against quoting at any length from documents, taking the court through the documents or setting out a narrative derived from the documents, she noted that SBP par. 3.4 allows reference to documents "where necessary" and that the three examples given in that paragraph are not said to be exhaustive ("it will generally not be necessary …"). She submitted that there were many cases where it was necessary for a witness to refer to documents where otherwise it would be difficult to understand the evidence which the witness would give about what, for example, she did or said after seeing that document and why she did so.

21. As to the fifth, she submitted that since the whole thrust of PD57AC is to make clear that that a trial witness statement may only give evidence of matters of fact on which the witness has personal knowledge, then since a confirmation to this effect is part of the required witness confirmation of compliance, it may be assumed that the witness has personal knowledge unless the contrary is stated or obviously appears from the witness statement in question.

22. As to the sixth, she emphasised that the requirement only applies in relation to "important disputed matters of fact" and "if practicable" and that, since the witness confirmation of compliance requires

the witness to confirm compliance "on points that I understand to be important in the case", the obligation was satisfied if the witness complied only in relation to those matters which he believed to be important, whether rightly or wrongly.

23. Much of what Ms Ansell said is also borne out by the references which she made to PD57AC. It seems to me that the major differences between the parties are ones of emphasis and that in the majority of cases it ought to be relatively easy to decide whether or not there has been a breach which is more than merely trivial and, if so, whether any - and if so what - particular sanction from the menu of options contained in PD57AC par. 5.2 is required.

24. However, there are some issues raised by Ms Ansell upon which I must express a view, which can most usefully be explained by reference to some of the sections of the trial witness statements which are said by BML to contravene PD32 and/or PD57AC.

25. As to her first point, it was drawn to my attention that a number of the witness statements contain identical or very similar statements in respect of particular issues. It is difficult to see in my judgment how this could ever occur if the requirements of PD57AC are conscientiously complied with. To take an example, both Mr Green at [8] and Ms Trott at [5] said that "the Schumann Smith specification clearly defines the roles and responsibilities of each party in such an arrangement in a way that a standard NBS specification does not". Mr Green also said at [8] that "SHA appointed Schumann Smith to produce the Specification because of their expertise in producing specifications for complex Design and Build projects with Specialist Contractor Designed element", as did Mr Fleming at [7]. It cannot be coincidence that precisely the same words were used. In my judgment, the fact that a legal representative is permitted to take primary responsibility for drafting a witness statement does not justify departing from the clear requirement that the witness statement should, where practicable, be in the witness's own words assuming compliance with the detailed requirements of PD57AC pars. 3.9 to 3.13 in relation to the taking of witness statements for represented parties. Moreover, it is difficult to see any justification for any part of any witness statement not being expressed in the first person.

26. Further, as to the importance of compliance with the first and fourth requirements identified by Mr Darling, it is useful to take as a concrete example the first objection raised by BML, which was to par. 5 of Mr Green's witness statement. Having in par. 4 explained that he was the project architect and involved from concept design stage through to completion, he said this in par. 5:

> "CCL [*the main contractor, Carillion*] was involved in the Project from the outset. The intention from the outset was that the Contract would be negotiated between CCL and Beetham [*the employer*], managed by Qubed as the Employer's (Beetham's) Agent. Negotiations between CCL and Beetham took place throughout 2003, with CCL involved in Design Team Meetings from the very beginning of the Project. CCL released a series of individual tender packages for the Project during the course of 2003, with the aim of agreeing a Guaranteed Maximum Price for delivering the Project, which would form the basis for the formal Contract. The tender packages incorporated designs, specifications and reports produced by SHA and the other consultants and included a specific package relating to the external envelope of the building. Those tenders were open book, with CCL, Beetham and Qubed all involved in the review and agreement of tender package information and tender returns."

27. Mr Darling complained that this is all written in the third person and does not state whether it is from Mr Green's own knowledge or from information or belief, so that it is not possible to know whether each separate assertion is Mr Green's own evidence, based on his own knowledge, or comment put into his mouth by others. He complained that, even assuming it is from personal knowledge, it is unclear whether Mr Green is giving this evidence from his own unaided recollection or from having been referred to the contemporaneous documents and, if so, which. He complained for example that the reference to the "intention from the outset" does not enable anyone to know whose intention is being referred to and, if not Mr Green's, whose and what basis Mr Green has for saying so. He complained that he, or any other trial advocate, would have to waste valuable time in preparation for and in actual cross-examination in having to ascertain from Mr Green whether or not each assertion in this paragraph was or was not a statement of fact made from his own personal knowledge and, if so, the basis for the recollection.

28. Ms Ansell submitted that this complaint is without foundation, because it is clear from the witness statement as a whole, and in particular from Mr Green's explanation of his role and involvement at par. 4, that this is him giving evidence about his own personal knowledge. She submitted that this section of the witness statement is relevant background, rather than evidence about important disputed factual issues in the case, so that there is no need to comply with SBP par. 3.7.

29. In my judgment this is a good example of the problems which arise when a witness statement is not prepared with the requirements of PD32.18 and PD57AC clearly in mind. I am prepared to accept that it is possible to make an educated guess that if Mr Green was asked about this paragraph he would say that is made from some combination of his own general recollection of events (albeit probably imperfect, since they go back almost 20 years now) and his having been referred to SHA's contemporaneous project documents, in particular no doubt the design team meetings and tender packages referred to in this paragraph. However, if PD32.18 and PD57AC are followed conscientiously, it ought not to be necessary for anyone reading this part of this witness statement to have to make an educated guess. I should say that, as will become clear, this is not an isolated paragraph; Mr Green's witness statement is replete with similar sections.

30. Complying with these requirements does not, contrary to Ms Ansell's submission, mean that every section of every witness statement must contain a separate introduction, confirming whether it is made from personal knowledge or based on information or belief and, if so, stating the source, as well as stating whether it is made by reference to unaided recollection (and, if so, how good is the recollection) or by being referred to documents and, if so, identifying each one and when and how it was referred to.

31. In this case, for example, it would be sufficient in my view for Mr Green to have continued on from his introductory paragraph 4 to explain, assuming this is the case, that the contents of his witness statement are all based on a combination of his personal recollection of events from 2002 to 2006, stating in general terms how well he recalled events overall, together with a re-reading of the contemporaneous documents. The documents he has referred to when preparing his witness statement should be identified in the list of documents provided to comply with PD57AC par. 3.2 ("a witness statement must … identify by list what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in their trial witness statement").

32. It appears that in this case SHA's solicitors took the decision to serve a composite list of documents which did not separate out the documents to which each individual witness had been referred. There was a complaint about this in BML's solicitors' letter dated 16 June 2021, which SHA's solicitors do not appear to have answered. The complaint is included in Mr Marsden's witness statement relation to Mr Fleming's witness statement but not, it would appear, in relation to the others. None of the witness statements actually refer to this list. Since par. 3.2 quoted above requires that the trial witness statement itself must identify by list the documents referred to, it cannot be acceptable in my view for a list which is not even referred to in the witness statement simply to accompany the witness statement. Whilst there may be cases where a composite list could be justified, that would be the exception rather than the rule.

33. However, I accept that the court should be realistic about what is required. If in this case there had been proper compliance with par. 3.2 and if paragraph 5 was worded so that each paragraph or separate part of it (if addressing a separate topic) used first person wording showing that this was the recollection of the witness rather than comment, such as "I was aware at the time that …", then in my view BML could have had no real cause for complaint. In particular, BML could not have expected Mr Green to comply with SBP par. 3.7 in respect of the points covered, since I accept that this paragraph is not addressing important disputed matters of fact. Thus, compliance with PD57AC should not be onerous, so long as the witness statement is produced from the outset with these fundamental requirements well in mind.

34. Further, I do not accept that Mr Green is to be given the benefit of the doubt because he has signed the witness statement confirmation of compliance. As Mr Darling submitted, a witness cannot mark his own homework, at least not where it is obvious from the product of the homework that there is a real doubt whether or not the student has even properly attempted to answer the question asked. In short, it is the significant failure to comply with PD32 and PD57AC which leads to ambiguity and which leaves the reasonable reader in real doubt exactly what the witness is saying. In the past this was doubtless seen by some professional drafters of witness statements as a positive achievement. There can be no doubt that under PD57AC that is not an acceptable aim or outcome.

35. Further, if the witness statement had complied with PD32 and PD57AC as regards the statement about the intention from the outset, then it would have been easy to see at a glance whether this was based on personal knowledge or was pure comment, as well as whether the remainder of the paragraph was anything more than simply a retrospective narrative of and recital from documents.

36. I have already noted that the touchstone of including reference to documents in witness statements is that the evidence is relevant and the reference necessary. Par. 5 does contain some irrelevant narrative, although it is very far from the worst offender in SHA's witness statements. Thus, I accept that it contains a core relevant section which explains, by reference to a limited number of documents, Mr Green's understanding of and involvement in the procurement process, in particular about how the external envelope was the subject of a separate tender package. There could be no complaint about that if this is all that the paragraph did and if it was clear from the paragraph and the list of documents to which documents Mr Green had been referred. Even if there was some modest additional unnecessary reference to other documents or unnecessary quotation from those documents, it would be unnecessary and disproportionate in my view to ask the court to strike out that limited offending material.

37. In the other sections where SHA's witnesses referred at some length to a narrative derived from documents and quoted extracts from them, Ms Ansell submitted that these sections were necessary because at some point within the section or at the end, or even elsewhere in the witness statement, the witness said something which was given context by the narrative. I would accept that in principle it may be necessary to refer to a document or documents in order to explain other evidence, but this should be no more than is necessary and in a number of cases SHA's witness statements go far beyond what is necessary.

38. To take an example, pars. 14 through to 24 of Mr Fleming's witness statement contain what can fairly be said to be a classic old style narrative recital of and extracts from a series of meeting notes and correspondence in which the concerns of Wintech, the cladding façade consultant, about the need for BUG to provide acceptable test data and CCL's decision about whether or not to retain Wintech as consultant were raised. Ms Ansell submitted that this was "saved" because, at the beginning of par. 24, Mr Fleming stated that he had sent the final email in the chain "following discussions with Mr Green" and at the end he said that "As far as I can recall I did not receive any response to this email". However, in the absence of any basis for considering that the content of the discussions was relevant or that there was any issue as to whether there was any response, it cannot sensibly be said in my judgment that any of this section meets the test of necessity. This, in my view, is a very good illustration of lawyers needing to be prised away from the comfort blanket of feeling the necessity of having a witness confirm a thread of correspondence, because otherwise it might in some way disappear into the ether or be ruled inadmissible at trial.

39. Instead, Mr Fleming could simply have explained in his statement that he was aware at the time, from attendance at meetings and receipt of emails and meeting notes over the period from 1 April 2014 to 14 June 2014, that Wintech was concerned that test data was required to prove that the cladding system for Beetham Tower was compliant, that BUG had taken steps to do so, and also that he had advised CCL that it was SHA's view that it should retain the services of Wintech to provide façade consultancy support, but that to his knowledge CCL had not informed SHA whether or not they had done so, although he was aware that they continued to be copied into emails. At trial that narrative will be in evidence without the need for Mr Fleming to give his summary of its content in his witness statement. <u>If</u> Mr Fleming was able to give any additional <u>relevant</u> evidence about what he thought or said or did at the time in response to these meetings and emails then he could, of course, do so, but that not what he has done.

40. As to compliance with SBP par. 3.7, I accept that the obligation to state how well the witness recalls the matters addressed and providing details of documents used to refresh memory is only in relation to important disputed matters of fact and is qualified by the words "if practicable". However, in my view a witness cannot glibly assert that it is not practicable to comply so as to justify wholesale departure from this important requirement. If there is apparent non-compliance the witness would have to justify why it is not practicable to do so. Ms Ansell suggested that it would be impracticable when a witness has also been asked to assist at earlier stages, for example in replying to a pre-action letter of claim or in drafting the defence. For myself, I do not see why a witness who is asked for such assistance by legal representatives and who is provided with, or refers to, documents for such purpose should be unable, at the point of producing the trial witness statement, to comply regardless of whether they had also previously been provided with or referred to those documents.

41. Nor do I accept that a witness can rely on her own subjective view of what is important to avoid compliance. I also accept that the witness confirmation of compliance states that "on points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when" (emphasis added). However, I am unable to accept the argument that compliance with this requirement means that it is solely for the witness herself to decide whether or not a point is important. It is understandable that a witness can and should only be asked to certify compliance in relation to points which she thinks important. However, that does not mean that the court cannot intervene where it is plain that in fact there has not been compliance in relation to a point which is, on any objective analysis, important. I am prepared to accept that the court should not be too ready to assume that a point is important if it appears, from an overall reading of the witness statement, that the witness has made a conscientious effort to comply. However, if there has been a failure to comply in relation to a number of obviously important disputed issues then it is difficult to see why the court should give the witness the benefit of the doubt more widely.

42. Finally, I do not accept that there is some principle that a witness against whom allegations are made, whether directly or indirectly, and whether in a professional negligence claim or otherwise, is thereby given carte blanche to disregard PD32 or PD57AC by replying to the allegations in a way which includes argument, comment, opinion and/or extensive reference to or quotation from documents. As Mr Darling observed, a trial witness statement is but one part of the material deployed by the party and available to the court at trial. The defence to the allegations will be pleaded. The allegations will be responded to in opening and closing submissions. Such submissions will also pick up the relevant material from the relevant documents which address such allegations. In heavy cases there may be some provision permitting the party, at some suitable time, to serve an additional chronological narrative derived from the documents and trial witness statements, suitably cross-referenced to both, so that the judge can see how the party puts its case at trial. There may also be expert evidence in response to such allegations. In any event, there is no justification for the trial witness statements to respond to the allegations other than in compliance with PD32 and PD57AC.

43. Having made those global observations I turn to address the specific allegations made in the Appendix to this judgment, stating where and how the witness statements need to be re-drafted. For reasons of time and space I do not set out or separately address the points made for and against, other than in the most summary of form. I do however set out the witness statements in the Appendix so that the reader can see what changes I have required and understand why I have required them to be made. I remind myself that the process needs to be speedy and cost-effective, and that judges should resist becoming embroiled in the minutiae of these complaints save where unavoidable.

44. I am satisfied that the non-compliances do not justify striking out the witness statements. That is a very significant sanction which should be saved for the most serious cases. There is a sufficient core of compliant material in each witness statement and it is true, as Ms Ansell submitted, that they are not particularly lengthy witness statements which are particularly egregious in their non-compliance. I also bear in mind that they were almost certainly prepared, and in one case signed, before PD57AC came into force. That is not an excuse, since those practising in the Business and Property Courts were, or should have been, aware of PD57AC for many months before it came into force, and since there was a sensible agreement between the legal representatives under which SHA's solicitors

agreed to provide re-drafted witness statements which were compliant, insofar as any were not, in order to avoid the need for the application. These points are, however, mitigation.

45. Finally, I agree with BML that there needs to be an unless sanction, which - to be proportionate - will bite in relation to any individual sections of the individual witness statements which remain non-compliant in an non-trivial way. In the course of the hearing I suggested that compliant witness statements should be served by 5pm on 10 December 2021.

46. I also indicated that I would deal with costs, both as to principle and as to summary assessment, on the papers once this judgment had been produced.

BML's application for relief from sanctions

47. In summary, the position is that the original directions order gave permission for all parties to serve supplemental witness statements, strictly limited to responding to matters contained in the other parties' witness statements as served. The timetable for so doing was extended by agreement, finally to 13 August 2021. By 6 July 2021 SHA's solicitors had made clear, in response to BML's solicitors' complaints, that they were not going to make any further revisions to their amended witness statements served on 25 June 2021. BML issued its application in relation to SHA's witness statements on 17 August 2021. Its application dated 17 August 2021 sought 21 days from the date of service of compliant witness statements to serve any witness statements in response. The point was taken that to be an in-time application it ought to have been made by 13 August 2021. On 10 September 2021 BML made an application for relief from sanctions in that respect, as it needed to given the deadline for serving responsive witness evidence and the implied sanction imposed thereby.

48. Such applications are, of course, to be considered and determined by reference to the well-known three stage approach in Denton v TH White [2014] EWCA Civ 906. It cannot realistically be disputed that the delay is both serious and significant and that there is no good reason for the failure. The application which was made on 17 August 2021 ought to have been made well before or by the latest on 13 August 2021, and there was no good reason not to do so. Worse still, BML's solicitors also took the view, which in my view was completely misconceived, that the timetable as regards the next step, namely expert evidence, could not be pursued until after this matter was resolved. Because of a delay in processing the application due to court staff shortages, but also because the urgency of resolving the application was not brought to the attention of the court staff or, through them or directly, to me, it was not listed until 12 November 2021, which was unfortunate.

49. I will deal separately with the costs of the application in relation to extending the timetable for expert evidence. However, as regards the current application for relief from sanctions, I am not satisfied that taking into account all relevant circumstances BML is entitled to relief from sanctions. The context is that BML decided, plainly for good reasons by reference to PD57AC, that it was unable to serve compliant trial witness statements from any witnesses in relation to the substantive issues in the case. It has not identified any issues in the witness statements served by SHA which it could claim to have been taken completely by surprise and in respect of which it can and should serve witness statement evidence in response. Whilst I have accepted many of its essential complaints as regards SHA's witness statements, that does not mean that it could not have identified and served witness statements in response to those parts to which it did not object and reserved its position by

making an in-time application as regards the content of any revised witness statements. That is what it should have done. If BML insists that SHA strictly complies with the procedural rules as regards SHA's witness statements then BML cannot expect special indulgence if it fails to comply with the procedural rules itself.

50. In all the circumstances I refuse relief from sanctions, with the result that BML is not entitled to serve any witness statement evidence in response. For the reasons stated above I do not consider that it will suffer any injustice as a result but, if it does, that is entirely of its own making.

51. It follows, I am satisfied, that BML must also pay the reasonable costs of both defendants in relation to this unsuccessful application, which I will summarily assess on the basis of paper submissions if not agreed, although I have no doubt that any such reasonable costs ought to be extremely limited.

The costs of BML's application for a revision to the expert timetable

52. Because the parties have been able to agree a sensible revision to the timetable for expert evidence, based on my clearly expressed view that it could not be justified to delay that process any further by reference to any further delay whilst SHA served revised trial witness statements, all that I need to deal with is costs, which I said that I would deal with in principle whilst leaving summary assessment over on the basis of paper submissions.

53. As I have already said, in my judgment there was simply no excuse for BML seeking to defer the timetable for expert evidence by reference to the disagreement about SHA's trial witness statements. Moreover, they failed to engage with the correspondence from the solicitors for SHA and BUG in relation to the need to progress the expert evidence. By July 2021 the timetable had already become compressed from that set in November 2020, due to repeated extensions. The timetable as now agreed gives the experts and the parties very little scope for further delay without prejudicing a reasonable pause between the end of the expert process and the beginning of the trial preparation process, especially if the completion of the expert process provides further impetus for any settlement negotiations. Although on 5 November 2021 BML's solicitors informed the other parties that, following the substitution of DFL as claimant in the associated action, it had been agreed that they would instruct experts jointly and they needed to agree on the identity of those experts, that could not have been a justification or excuse for their refusal to engage or explain from July 2021 onwards, not least because they did not raise it as an issue until 5 November 2021.

54. Although Mr Darling submitted that the application and costs associated with it were really in the nature of a case management exercise and, thus, should be costs in the case, I do not accept that submission. The fact that the defendants adopted a reasonable approach to agreeing the proposals in order to move matters forwards should not be held against them. This was an application which should never have been needed or made.

55. In the circumstances, I am satisfied that BML must also pay the reasonable costs of both defendants in relation to this application, which I will summarily assess on the basis of paper submissions if not agreed, although I have no doubt that any such reasonable costs ought to be extremely limited and I do not, as currently minded, see any basis for BUG or SHA to recover any significant costs as regards the preparation of their respective solicitors' witness statements or their written submissions this being an extremely straightforward matter.

Appendix

Par.	Content.	Changes required / allowed.
	Witness statement of David Green	
1	I make this statement in connection with proceedings brought by Blue Manchester Limited ("BML") and North West Ground Rents Limited ("NWGR") against SimpsonHaugh Architects Limited ("SHA") and Bug-Alu Technic GmbH ("BUG"). I am aware that SHA is also a party to proceedings brought by Carillion Construction Limited (in Liquidation) ("CCL") against SHA and BUG, and that those proceedings are currently stayed by the consent of the parties.	None.
2	This statement is the statement I provided on 8 April 2021, with amendments made pursuant to paragraph 1 of the Consent Order agreed between the parties on 22 June 2021. For completeness, I attach my original statement dated 8 April 2021 as Exhibit DPG1, with the amendments shown in red.	None.
3	I understand that NWGR is the freeholder of Beetham Tower, Manchester, and that BML is the long leaseholder of the Hilton hotel, which forms part of Beetham Tower. The remaining parts of Beetham Tower comprise of residential accommodation and a penthouse apartment situated at the top of Beetham Tower.	None.
4	I am an architect and partner at SHA. I joined SHA in 1992 and qualified as an architect in 1993. I first became involved in the Beetham Tower project ("the Project") in late 2002/early 2003 at the concept design stage of the Project. I was involved throughout the Project, and as Project Architect was responsible for SHA's team working on the Project from inception to completion. I worked under the direction of Ian Simpson and Rachel Haugh and alongside my colleagues (Helen Trott and Nick Fleming) on the Project, in an architectural team of around 6 to 7 people. I had not worked with the main contractor for the Project, CCL, or the client for the Project, Beetham Landmark Manchester Limited ("Beetham") prior to my involvement with the Project.	Expand and include reference to the matters identified in paragraph 31 of the judgment and refer to and attach the required list of documents.
5	CCL was involved in the Project from the outset. The intention from the outset was that the Contract would be negotiated between CCL and Beetham, managed by Qubed as the Employer's (Beetham's) Agent. Negotiations between CCL and Beetham took place throughout 2003, with CCL involved in Design Team Meetings from the very beginning of the Project. CCL released a series of individual tender packages for the Project during the course of 2003, with the aim of agreeing a Guaranteed Maximum Price for delivering the Project, which would form the basis for the formal Contract. The tender packages incorporated designs, specifications and reports produced by	Reword if able in first person to confirm personal knowledge. Otherwise remove or justify inclusion [**standard first person requirement**] Explain whose intention it was from the outset.

	SHA and the other consultants and included a specific package relating to the external envelope of the building. Those tenders were open book, with CCL, Beetham and Qubed all involved in the review and agreement of tender package information and tender returns.	
6	SHA was appointed by Beetham as Architect for the Project, in relation to the design of the Shell and Core of the Building and the Residential Accommodation forming part of the Development as set out in the Architect's Deed of Appointment dated 5 March 2004 ("the Appointment"). The Appointment was thereafter novated to CCL by way of a Deed of Novation also dated 5 March 2004. On 24 May 2006, SHA entered into a warranty agreement with Beetham Hotels Manchester Limited. I was aware of these documents and was involved in commenting on the wording of them, although the detailed review and agreement of the documents was the responsibility of my colleague Rachel Haugh.	Irrelevant narrative and evidence of contract negotiation, but not so serious as to require removal or redrafting.
7	I recall that a point of discussion in agreeing the Appointment documents related to the wording of the clause relating to the extent to which SHA was responsible for the Detailed Design post novation. The wording of clause A8.4.2 of the Appointment relating to Stage 4 of the Project (Development of the Detailed Design) was specifically amended and agreed with Beetham to state that SHA was only responsible for completing the Detailed Design for those elements of the Project not defined as Specialist Contractor Designed. This made it clear that SHA was not responsible for the Detailed Design carried out by Specialist Sub- contractors.	Evidence about changes to standard form arguably relevant and admissible. Last sentence - redraft to make clear (if such be the case) that this was witness's understanding at time, as if so arguably relevant and admissible.
8	Pursuant to the Appointment, SHA prepared a specification for the Project ("the Specification"). The Specification was produced by Schumann Smith as consultants to SHA, with direction, assistance and input from the SHA team including my colleague, Helen Trott. SHA appointed Schumann Smith to produce the Specification because of their expertise in producing specifications for complex Design and Build projects with Specialist Contractor Designed elements. The Schumann Smith specification clearly defines the roles and responsibilities of each party in such an arrangement in a way that a standard NBS specification does not. Schumann Smith had also worked with SHA as consultants to produce the specification for a project known as Holloway Circus ("the HC Project"), working for the same client, Beetham, and same project manager, Qubed. BUG had been successful in winning this sub-contract, working with main contractor Laing O'Rourke. I was not involved in the HC Project, but was aware of the progress of the project and, given the similarities between the two projects, did discuss the developing detailing and specification of Holloway Circus with my colleague Stuart Mills (who was leading the HC Project) on a number of occasions as we developed designs for the Beetham Tower in Manchester.	Standard first person requirement. Explain what witness means by "standard NBS specification".
9	The Specification was discussed in detail and agreed with both CCL and Beetham prior to issue of the sub-contract tender documentation of which it formed a part. I attended detailed meetings with Steve	Standard first person requirement.

	Sharkey and Nicola Atkins of CCL, Mark Connolly of Beetham, Ian Grant of Qubed and Richard Jackson of Schumann Smith, where we ran through the Specification line for line to make sure that the Specification was aligned with the Main Contract Preliminaries, which had been prepared by Qubed and with which there was initially some overlap. Schumann Smith made amendments to the Specification in line with comments made by Beetham, Qubed and CCL. It was clear from the meetings I attended that Beetham and CCL were aware that the Detailed Design of the curtain walling/cladding for the Project would be prepared by the Specialist Sub-Contractor appointed by CCL, and that both agreed that this was the appropriate way to proceed.	
10	Following a detailed tender, tender review and value engineering process, BUG was appointed by CCL in or around March 2004 as a Specialist Sub-Contractor ("SSC") to design and install the curtain walling/cladding.	None.
11	The drawings produced by SHA in relation to the curtain walling and/or SBUs had been provided to indicate the visual intent only. BUG were appointed by CCL to complete the Detailed Design of these elements and satisfy the performance requirements detailed in the Specification. This is confirmed by the note present on all of SHA's drawings in relation to the curtain walling and SBUs which provides: "INDICATIVE DETAILS TO INDICATE DESIGN INTENT ONLY. ALL TO ENVELOPE CONTRACTOR'S DESIGN …DRAWING TO BE READ IN CONJUNCTION WITH ISA SPECIFICATION"	Standard first person requirement. If the only basis for this statement is the note on the drawings then this par. is not strictly necessary but as long as this it made clear it can remain.
12	All parties were aware, throughout the Project, where responsibility lay with regard to the design of the curtain walling. This was also confirmed during a Design Meeting for the Project on 24 June 2004. During this meeting, I advised that any comments made on BUG's drawings by SHA in relation to the envelope cladding were of an architectural nature only (i.e. in relation to compliance with the design intent, aesthetic appearance, coordination and compliance with the Planning Approval) and not in relation to the performance of the curtain walling/cladding system.	Standard first person requirement. If in reality the only basis for this statement is the design team meeting then the witness should say so. If the only basis is a minute of that meeting then this par. is not necessary.
13.	Technical assembly and performance aspects of the curtain walling/cladding were the responsibility of BUG as the SSC. The responsibility for commenting on BUG's Detailed Design was shared between a number of parties. CCL employed an Envelope Manager, Edward Gillon, to manage the curtain walling package. It was my understanding that CCL also appointed Wintech Limited ("**Wintech**") as façade consultants to advise on the technical performance of the proposals put forward by BUG. Other consultants, such as those responsible for acoustic engineering, structural engineering, thermal modelling and environmental design also had a role in commenting on the drawings of the curtain walling package. These comments were collated by CCL's Design Manager, Jon Gaskell, who gave BUG's drawings a status, based on his review	Standard first person requirement. Sentences 1, 2 and 4 are important issues and witness must comply with SBP par. 3.7 as regards them.

	of the comments as a whole, and confirmed whether BUG could proceed to manufacture	
14.	In an email to CCL on 11 July 2005, I reiterated that SHA was only appointed to complete the Detailed Design for those elements of work which were not defined as Specialist Contractor Designed in the Employer's Requirements, and that SHA was not, therefore, responsible for the Detailed Design of the curtain walling/cladding. CCL responded to this email on 25 August 2005 acknowledging that the design responsibilities of the SSCs were covered in the subcontracts and the appointments.	Strictly this is not a necessary reference to documents but on balance it can remain.
15.	SHA was also asked by CCL, in an email dated 4 June 2004, for SHA's thoughts on the merit of Wintech continuing to provide façade consultancy support to CCL. I discussed this email with my colleague, Nick Fleming, and he wrote to CCL on 14 June 2004 confirming that Wintech's support had been invaluable in its interrogation of the performance of BUG's curtain walling package, and confirming that SHA would only be commenting on the visual appearance of the cladding system. He recommended retaining Wintech in their advisory role and including them in the drawing approval process due to their expertise in assessing the performance integrity of the system. I was not aware at the time that Wintech was not retained by CCL. They continued to be copied in on minutes and correspondence by CCL. In reviewing BUG's submittals, we continued to caveat our comments with a note that confirmed that our comments related to visual and functional criteria only and that we were unable to comment on the performance integrity of the external cladding system and associated works including the integrity of interface details due to the specialist nature of the works	All irrelevant and unnecessary reference to documents and must be deleted (especially since addressed by Mr Fleming, who did have direct involvement) save for (1) sentence 4, which can remain with date added; and (2) final sentence, which must have standard first person requirement.
16.	During the tender stage of the Project, I attended a meeting on 9 October 2003 to discuss potential changes to the Specification in relation to the curtain walling/cladding system of Beetham Tower that had been generated during discussions between Beetham and CCL as part of an envelope value engineering exercise. It was my understanding at the time that the tender returns were over the budget for the cladding package. SHA was asked to comment on whether the number of tests provided for in the Specification in relation to the curtain walling/cladding system could be reduced. Our view, stated at the meeting, was that it would be a mistake to reduce the testing requirements below those outlined in the Specification and the meeting concluded that the matter would need to be referred to the SSC responsible for designing, installing and warranting the system.	Save for standard first person requirement for last sentence, compliant.
17.	It was my understanding at the time that, in response to the value engineering suggestion, BUG proposed using the curtain walling system used on the HC Project and suggested that the previous independently certified test data prepared for the HC Project could be relied upon by CCL and BUG in accordance with H11 of the Specification.	Compliant.

18.	Testing was one of the agenda items in the early Envelope Design Meetings, generally attended by Helen Trott and/or Nick Fleming alongside representatives of CCL, BUG, Wintech, Beetham and Qubed and the BUG test data was discussed by CCL, Wintech and BUG at these meetings. I did not attend all of these meetings but did attend a meeting on 15 April 2004 when test data was discussed. Whilst I did not attend all of the early Envelope Design Meetings, I did receive copies of the minutes of all Envelope Design Meetings as Project Architect. SHA did not have the expertise as architects to pass any substantive comment on the test data produced by BUG, which we understood was assessed by Wintech as façade consultants to CCL.	Standard first person requirement. Witness must state whether final sentence represented his personal belief at the time and, if not, it must be removed as comment.
19.	SHA understood that the system tested for the HC Project was the basis for BUG's design. I recall that BUG confirmed that this was the case on a number of occasions, for example in a response to comments raised by Manchester City Council Building Control ("**MCCBC**") on the BUG curtain walling system on 23 August 2005 (copied to me by email on 30 September 2005 from CCL), in which MCCBC asked for track records on different projects where this type of curtain wall system had been designed, constructed and maintained successfully for similar type(s) of tall buildings, BUG confirmed that the HC Project was 100% similar to the Beetham Tower Project.	Standard first person requirement for first sentence. Second sentence is unnecessary reference to and comment to documents and should be deleted.
20.	During the envelope value engineering exercise which took place during the tender stage of the Project, SHA was also asked to comment on whether the finish to the envelope framing could potentially be changed from anodised aluminium (as specified) to polyester powder coating ("PPC"). I was aware that the curtain walling framing at Holloway Circus had a powder coated finish and that we had specified anodised aluminium on the Project in an attempt to achieve an upgrade in terms of appearance on Holloway Circus, i.e. for visual rather than for performance reasons. SHA indicated that, given that powder coated framing was used at Holloway Circus, and on other projects that we were aware of, this change would be acceptable to SHA in principle from a visual perspective - if a cost saving could be achieved, but indicated that SSC feedback was required given that the SSC appointed (BUG) would be responsible for the envelope design.	Standard first person requirement in first and last sentences. Must state source of knowledge in second sentence. Third sentence is important and must comply with SBP par. 3.7.
21.	Section H11.1301 of the Specification provides that BUG, via CCL, would provide full details for all EWS Curtain Walling/Cladding types and that tender submittals would include a summary of deviations from the Employer's Requirements. I recall that a Schedule of Discrepancies and Divergences ("**the Schedule**") was agreed between Beetham (as the client/Employer for the Project), Qubed (as Beetham's agent for the Project), CCL (as the main contractor for the Project) and the fund monitor for the Project. This was confirmed in an email to me from Qubed on 22 April 2004. The Schedule also formed part of CCL's Contractor's Proposals and was a Contract Document.	Unnecessary reference to documents and remove.

22.	The Schedule confirms that Beetham agreed to a change from natural silver anodised aluminium for the finish to the curtain walling framing, as specified in the Specification, to a PPC finish to the curtain walling framing in a standard non- metallic colour.	As 21.
23.	In late June 2004, I was made aware of a proposal by BUG to upgrade from Drylac 17 (which I understood to be the powder coating used on the HC Project) to Drylac 58 for the external elements of the aluminium framing of the Beetham Tower Project. BUG, as SSC, informed SHA that this was a superior finish, which they were proposing because of its superior weathering qualities. I understood that Drylac 58 was being applied to external elements of the framing, and therefore assumed that Drylac 58 would not be used on the SBU framing, which is an internal element as it sits behind the weatherproof line. I do not believe that the drawings that SHA received of the SBUs for comment from BUG identified which components were coated in Drylac 17 and which were coated in Drylac 58.	Must state source of his belief in last sentence.
24.	The colour of the PPC used to coat the aluminium frames that the SBUs were bonded to was RAL7016. This was accepted by SHA for visual appearance only on 22 June 2004.	Standard first person requirement.
25.	BUG confirmed at an Envelope Design Team meeting on 21 July 2004 that the powder coating systems would be independently tested. I did not attend this meeting but received a copy of the minutes of the meeting at the time.	Unnecessary reference to narrative document but do not require removal.
26.	During an Envelope Design Meeting I attended on 23 June 2004, BUG confirmed that a 25 year warranty for the external powder coated elements of Beetham Tower could be obtained, providing a yearly cleaning regime was implemented. BUG also confirmed that the internal powder coating would be as per the HC Project (Drylac 17).	Standard first person requirement for second sentence.
27.	I do not believe that SHA were copied in on details of this process, but during 2005 and 2006, in our role as agent for the application for approval under the Building Regulations, I was copied into correspondence between BUG and CCL in relation to requests for design information from BUG to satisfy queries raised in relation to Approved Document A: Structure by MCCBC's Structural Engineer on BUG's design. This included email correspondence from BUG to CCL dated 29 September 2005 forwarded to me by my colleague Nick Fleming on 10 October 2005, email correspondence from BUG to CCL dated 4 November 2005 copied to me, email correspondence from BUG to CCL dated 14 November 2005 copied to me, email correspondence from CCL to BUG dated 18 November 2005 copied to me, email correspondence from CCL to BUG dated 16 January 2006 copied to me, email correspondence from CCL to BUG dated 7 February 2006 copied to me, email correspondence from CCL to BUG dated 23 February 2006 copied to me, email correspondence from CCL to BUG dated 13 March 2006	Reference to documents more extensive than reasonably necessary but will not require removal. Standard first person requirement for final sentence.

	copied to me, email correspondence from CCL to BUG dated 10 April 2006 copied to me and email correspondence from CCL to BUG dated 12 April 2006 copied to me. I understood from this correspondence that the structural sealant used by BUG to bond the SBUs to the aluminium frames was Dow Corning DC993. As part of their submissions to Building Control, BUG provided case studies relating to projects involving similar glass facades where Dow Corning DC933 had been used successfully.	
28.	The correspondence between BUG/CCL and Building Control was prolonged and extensive and I may not have been copied in on all of it. Much of the discussion was about the structural performance of the silicone sealant and was very technical in nature. SHA did have a role in coordinating the communication process in order to achieve the Building Regulations Approval and I did have to send emails to BUG and CCL trying to encourage a resolution of outstanding issues relating to the silicone bond, but it was always made clear that BUG/CCL were responsible for this element of the design. For example, I emailed CCL's Design Manager Jon Gaskell, on 24 August 2005 to confirm that I had had a brief conversation with Warren Hope (from Building Control) on 24 August 2005 in relation to a comment made by MCCBC's structural engineer, Asit Sarkar, in response to a submission of information relating to the cladding, recommending the introduction of some form of safety clip device in the design of the glass panels in order to enhance their overall stability.	First two sentences are his comment on documents he did not see at the time and should be removed. Second part of third sentence beginning "but it was always made clear" is comment and should be removed. Fourth sentence may remain as a necessary introduction to par. 28.
29.	During this conversation I asked Building Control to confirm whether they had an absolute requirement for mechanical restraint in relation to the curtain walling/cladding (they had previously confirmed to SHA, following a query from one of the cladding subcontractors during the tender process, that they did not). During this conversation Warren Hope confirmed that MCCBC's position had not changed and that structural silicone was acceptable to Building Control, provided that BUG could prove that the glazing would stay in place given the forces/pressures/movements exerted on the cladding long term. He advised that if BUG could provide a robust engineering justification answering questions raised by MCCBC's Structural Engineer then Building Control would not require mechanical restraints in addition to the silicone.	Compliant in context of pars. 28 and 30.
30.	My email to CCL on 24 August 2005 detailed this conversation and was forwarded on to BUG by CCL, with a request for BUG to issue the relevant information in order to satisfy Building Control's query. Detailed packages of information were issued by BUG in response.	Standard first person requirement.
31.	Included within the documents that I saw at the time that were submitted to Building Control by BUG to provide this justification were detailed calculations from Dow Corning relating to the bond between the structural silicone DC933, the powder coated aluminium and the glass and confirmation that BUG were following all of the procedures within Dow Corning's Quality Assurance Guide, which included substrate tests, adhesion testing and compatibility testing.	Unnecessary detailed reference to the content of these documents. All that the witness should say is that he saw these documents at the time and (if he wishes and he

	These documents were attached to an email from BUG to CCL dated 29 September 2005 copied to my colleague Nick Fleming, which was forwarded to me by Nick on 10 October 2005. BUG's letter to Jon Gaskell at CCL dated 29 September 2005 (copied to me by email on 30 September 2005 by CCL), which forwarded some of the specific information regarding structural silicone for onward transmission to Building Control, also extended an offer to CCL to review BUG's quality documentation file during CCL's next visit to BUG's factory in Kennelbach. I do not know whether that review took place but I recall that CCL did visit the BUG factory regularly to review the progress of the works.	can) his state of mind at the time having seen and read them.
32.	On 22 November 2006, I received a letter from MCCBC confirming that the structural submission (including BUG's submissions regarding the curtain walling design) was satisfactory in respect of compliance with Part A of the Building Regulations for the Project and BUG's curtain walling design.	Unnecessary reference to a document and delete.
33.	On 25 October 2005, I sent an email to BUG and CCL expressing concern at the amount of condensation that was visible in the SBUs during a site visit that day. During the early stages of construction of the Project, BUG had advised SHA that condensation had occurred in the SBUs due to the fact that they had been stored by BUG horizontally. SHA was assured by BUG that once the SBUs had been in place vertically for a period of time the condensation would disappear and would not reoccur as the cavity behind the glass was ventilated, although some of the units which had condensation in the cavity during SHA's site visit on 25 October 2005 had been on the building for several months. I asked BUG to confirm in this email why the condensation was occurring and what they were doing to ensure that the cause of the condensation was addressed to prevent it reoccurring in the future.	Standard first person requirement in second and third sentences. Subject to this reference to documents on balance acceptable.
34.	I chased a response to my email of 25 October 2005 on 5 November 2005 as condensation was visible again in the SBUs in several locations across the façade during a site visit on 4 November 2005 and I was concerned in relation to the visual appearance of the SBUs as a result of this.	Compliant.
35.	On 14 November 2005, BUG responded to my queries in relation to condensation in the SBUs advising that condensation can occur due to quick temperature changes, and that the SBUs had holes for air circulation and to allow the system to "breathe" which would dissolve the condensation. BUG advised that to reduce or avoid condensation, it would have been necessary to drill bigger holes into the SBUs connected to a direct airflow to the outside, but that this would have meant a higher risk of dust coming into the SBUs which would have resulted in debris in between the surfaces.	Unnecessary recital from document and remove.
36.	On 11 September 2008, a glass unit failed on the 23rd floor at Beetham Tower. I was made aware of this by an email I received from the	Irrelevant reference to documents but so long

	facilities manager for Beetham Tower on 10 October 2008. I am unaware of the cause of this failure. The email asked about the strategy for glass removal for Beetham Tower. I responded to this email on 13 October 2008 advising that this information would need to be procured from the Specialist Designers responsible for the design of the cladding (BUG).	as second sentence if reworded to make clear, if such be the case, that this was his state of knowledge at the time, on balance can stay.
37.	On 11 July 2014, I called the building management team at Beetham Tower to enquire about the pressure plates that had been fitted on the face of the building as we had no knowledge of the reasons for this. The person I spoke to informed me that they had found some defective SBUs, and that pressure plates had been fitted to these as a precaution. They also informed me that as a further precaution, they were going to fit pressure plates to all the SBUs. The individual I spoke to was unaware whether this was a temporary measure pending a permanent repair, or whether the pressure plates would be left in place permanently. He was also unaware what the nature of the defect was.	None.
38.	I am aware from discussions with my colleague Rachel Haugh that, following the fitting of the pressure plates, SHA was asked, between June 2015 and November 2016, to comment from an aesthetics perspective on remedial proposals put forward by CCL and BUG in relation to the defects identified with the SBUs, and that my colleagues Ian Simpson and Rachel Haugh were invited to attend meetings with CCL to discuss this. I did not attend any of these meetings.	None.
	Witness statement of Nick Fleming	
1.	I make this statement in connection with proceedings brought by Blue Manchester Limited ("BML") and North West Ground Rents Limited ("NWGR") against SimpsonHaugh Architects Limited ("SHA") and Bug-Alu Technic GmbH ("BUG"). I am aware that SHA is also a party to proceedings brought by Carillion Construction Limited (in Liquidation) ("CCL") against SHA and BUG, and that those proceedings are currently stayed by the consent of the parties.	None.
2.	This statement is the statement I provided on 9 April 2021, with amendments made pursuant to paragraph 1 of the Consent Order agreed between the parties on 22 June 2021. For completeness, I attach my original statement dated 9 April 2021 as Exhibit NEF1, with the amendments shown in red.	None.
3.	I am an architect and partner at SHA. I joined SHA in 1999 and qualified as an architect in 2001. I first became involved in the Beetham Tower project ("the Project") during the concept design stage. I had not worked with the main contractor for the Project, CCL, or the client for the Project, Beetham Landmark Manchester Limited ("Beetham") prior to my involvement with the Project.	None.

4.	I am aware that the claims brought against SHA by BML and NWGR concern the alleged failure of shadow box units ("SBUs") designed by BUG. I understand that the SBUs included the use of structural silicone sealant attaching glass to polyester powder coated ("PPC") aluminium curtain wall framing.	General observation and may remain.
5.	I worked alongside my colleagues (Dave Green and Helen Trott) on the Project, in an architectural team of around 6 to 7 people. I was involved full time on the Project through to early 2005, when I moved on to work on another project undertaken by SHA, but I do recall engaging with Dave in relation to the Project after this time and continuing to have some involvement with the Project.	None.
6.	My role in the Project involved assisting with the development of the concept design and assisting with the production of outline design intent drawings for the tender stage of the Project, which were developed to detailed design stage by the specialist sub-contractor (BUG) appointed by the main contractor (CCL) to design and install the façade for the Project. I was also involved in the review of BUG's detailed design for alignment with the design intent drawings. This review related to commenting on the architectural aspects of BUG's design, primarily its aesthetic appearance and dimensional coordination.	None, but to ensure compliance generally, and as with Green, expand to include reference to the matters identified in paragraph 31 of the judgment and refer to and attach the required list of documents.
7.	The specification for the Project ("the Specification") was produced by Schumann Smith as consultants to SHA, with direction, assistance and input from the SHA team including my colleague, Helen Trott. SHA appointed Schumann Smith to produce the Specification because of their expertise in producing specifications for complex Design and Build projects with Specialist Contractor Designed elements. The Schumann Smith specification clearly defines the roles and responsibilities of each party. Schumann Smith had also worked with SHA as consultants to produce the specification for another project SHA was involved with (Holloway Circus), working for the same client (Beetham) and the same project manager (Qubed) as the Beetham Tower project. BUG had been successful in winning the Holloway Circus subcontract, working with main contractor Laing O'Rourke. I was involved in the early concept design of Holloway Circus but not the detailed design, specification and project delivery stages.	Standard first person requirement in all but last sentence. Must either make clear third sentence was his belief at the time or be removed as comment.
8.	It was my understanding at the time that BUG was responsible for the detailed design, performance and installation of the curtain walling/cladding on the Project. It was also my understanding that all parties were aware where responsibility lay with regard to the design of the curtain walling.	Compliant.
9.	It was my understanding at the time that, during the early stages of the Project, CCL appointed Wintech Ltd ("Wintech") as façade engineering consultants to review and comment on BUG's design and technical performance submittals for the Project.	Compliant.

10.	Throughout the duration of the Project, CCL were responsible for managing the BUG design, submittals, and review process. Comments on BUG submittals were made by various parties and collated by CCL. CCL Design Managers reviewed all comments provided by the various parties, provided final comments, and gave BUG submittals a status confirming whether BUG could proceed to manufacture.	Standard first person requirement.
11.	SHA review of BUG submittals related to comments on aesthetic appearance and coordination only. This was understood by CCL and was clearly communicated in SHA response to all BUG submittals. SHA did not comment on BUG's technical design or technical performance submittals due to the specialist nature of the works. In addition to Wintech, other specialist consultants, including acoustic, fire, structural and environmental engineering consultants, were also involved in the review of BUG's design and performance submittals.	Standard first person requirement. Subject to compliance, on the borderline between compliant evidence and comment but will allow to remain.
12.	Within their team, CCL also employed a specific façade package manager. Based on my recollection of events, the façade package manager took the lead within CCL with regard to management of all façade quality assurance and testing procedures for CCL.	Standard first person requirement first sentence.
13.	During the early stages of the Project, I was invited to attend envelope design meetings on behalf of SHA. One of the first meetings I attended was on 27 January 2004. The notes of the meeting state that BUG was to issue all test information generated from the Holloway Circus project to be used on the Beetham Tower Manchester project. Based on my recollection, it was my understanding at the time that the external cladding system used on the Holloway Circus project was the basis for BUG's design on the Project.	Compliant.
14-24		See the observations in the main body of the judgment. SHA may either adopt the approach suggested there or proceed as follows.
14.	On 1 April 2004, I was copied into an email from Wintech to CCL stating that the test data from Holloway Circus should only be used if it truly reflected the detail at the Beetham Tower project. Wintech also expressed a concern in this email that details may change as a result of drawing audits and that the test data from Holloway Circus may not be relevant which they said could result in a risk that the proposed construction may have defects which would not be detectable by methods other than project testing.	Unnecessary narrative and comment from a document which must be removed.
15.	On 8 April 2004, I attended another envelope design meeting on behalf of SHA, during which it was confirmed that test data was required that was rebranded for the Manchester Hilton (Beetham Tower) project to	Standard first person requirement in relation to the second sentence

	prove compliance and that BUG was responsible for actioning this. The notes of the meeting indicate that this related specifically to BUG's trickle vent detail.	and the witness needs to make clear that he is referring to the note which he saw at the time rather than making after-the-event comment.
16.	As part of Wintech's review of BUG's design and technical submittals, during an envelope design meeting on 29 April 2004, which I attended, BUG was asked to review the detail of the Dow Corning gasket to ensure that they were happy with the typical details of the seals and the possibility of water resting on the seal. This was due to concerns raised by Wintech in or around March 2004 relating to this. The notes of the meeting state that BUG were meeting Dow Corning the following week to discuss the details.	Standard first person requirement in relation to all sentences and the witness needs to make clear that he is referring to the note which he saw at the time rather than making after-the-event comment.
17.	The notes of the meeting on the 29 April 2004 also state that BUG was also asked during the meeting to confirm that the PPC coating guarantees obtained by BUG fully complied with the Specification for both internal and external locations. The date for actioning this request was referred to as 7 May 2004.	As 16.
18.	On 6 May 2004, I was copied into an email from CCL to BUG with comments from Wintech relating to issues with BUG's design. This email referred to BUG's proposed re-glazing solution for the double glazed units and Wintech's concerns relating to water being able to sit on the structural silicone gaskets raised previously with BUG, and asked how the gaskets were installed continuously to provide a robust seal.	Unnecessary narrative and comment from document.
19.	During an envelope design meeting on 13 May 2004, BUG confirmed that all details relating to the Dow Corning gaskets had been reviewed with Dow Corning and that Dow Corning had no concerns in relation to this. The notes of the meeting state that BUG also confirmed that they would issue all details to Dow Corning going forward for them to review.	As 16.
20.	On 21 May 2004, I was copied into an email from Wintech to CCL, in which Wintech stated that they were still concerned in relation to the durability of the structural silicone seals and the possibility of water lodging against the structural seals without proper ventilation. Wintech advised that this would cause accelerated degradation of the structural seals which could lead to premature breakdown and/or failure of the structural bond.	As 18.
21.	On 24 May 2004, I was copied into an email from CCL to BUG requesting BUG's formal response to the issues raised by Wintech in relation to the structural seals.	As 18.
22.	On 4 June 2004, CCL sent an email to me and my colleague,	As 18.

	Dave Green, informing us that (for costs reasons) CCL were considering whether or not to continue receiving input from Wintech in their advisory role on the Project. CCL referred to the fact that Wintech had initially been engaged on a preliminary basis at CCL's expense, in the hope that it would help Beetham to appreciate the value/need for façade consultancy support, but that Wintech's involvement had helped CCL identify issues with BUG's design, which may not have been recognised without Wintech's involvement. CCL invited our comments on the merits of Wintech's support and indicated that this would be taken into account before making a final decision as to Wintech's further involvement.	
23.	On 7 June 2004, I was copied into an email from BUG to CCL, attaching comments from BUG in response to queries raised by Wintech on BUG's design. This response referred to the Dow Corning gasket detail being superseded, with the revised detail now showing a structural sealant detail with an additional water resistance silicone detail that had been clarified by BUG with Dow Corning. The minutes of envelope design meeting no.8 on 9 June 2004 (which I attended on behalf of SHA) suggest that BUG was still to formally respond to Wintech's concerns in relation to the Dow Corning gasket seal detail. This was raised again in envelope design meetings attended by me on 23 June 2004 and 21 July 2004.	As 18 as regards the email and as 16 as regards the meetings and notes.
24.	Following discussion with Dave Green, I responded to CCL's email of 4 June 2004 on 14 June 2004, stating that the support offered by Wintech had been invaluable in its interrogation of the performance integrity of the cladding system, but that regardless of Wintech's future involvement, SHA's understanding was that BUG would remain ultimately responsible for the performance integrity of the cladding system, and that as CCL was aware, SHA was only able to comment on the visual appearance of the cladding system. The email recommended retaining Wintech in their current advisory role and including them in the drawing approval process due to their expertise in assessing the performance integrity of the system. As far as I can recall, I did not receive any response to this email. CCL continued to include Wintech in correspondence beyond this date.	The extract from the email is unnecessary and should be removed. Standard first person requirement in relation to last sentence.
25.	During their involvement in the Project, as far as I was aware, Wintech did not raise any queries in relation to the bonding of the structural silicone sealant to the PPC or make any suggestion that PPC was inappropriate for use in the Project.	Compliant.
26.	On 22 June 2004, I spoke to Richard Jackson from Schumann Smith with regard to BUG's proposed PPC coating products in his capacity as a consultant to SHA in relation to Schumann Smith's production of the Specification. I cannot recall the details of this call, but this was followed up with an email from Richard to me on 23 June 2004. In this email, Richard recommended obtaining a copy of the warranty agreement between BUG and their chosen approved applicator of the PPC, who I understood was Lippert Metallbeschichtung GmbH	Compliant. Extract from email is on balance reasonably necessary to understand subsequent pars.

	("Lippert").	
27.	Richard also recommended obtaining confirmation of the nominated independent inspector appointed by BUG to undertake an inspection of the actual extrusions being coated with PPC and to produce a report confirming compliance with the Specification and the PPC manufacturer's written warranted procedures for application and quality, to include sample testing from the line. Richard also noted in his email that the Tiger Dylac 58 appeared to be a more suitable product than the Tiger Drylac 17 proposed by BUG for Holloway Circus for external application.	As 26.
28.	I attended an envelope design meeting on 23 June 2004 on behalf of SHA, the notes from the meeting indicate the product data sheets for Tiger Drylac Series 17 and Series 58 were issued by BUG at the meeting together with certificates. I made a handwritten note on the data sheets to confirm that I had discussed Richard Jackson's email dated 23 June 2004 with BUG at this meeting, and that additional information was required from BUG in relation to the performance integrity of the PPC. I followed this up with an email to BUG on 24 June 2004, copied also to CCL, attaching Richard Jackson's email of 23 June 2004.	Compliant.
29.	During an envelope design meeting on 21 July 2004 (which I attended on behalf of SHA), BUG provided further information from Lippert in relation to the warranties provided by them and confirmed that a 25 year warranty for the external powder coated elements could be provided providing a yearly cleaning regime was implemented. BUG also confirmed that the internal powder coating would be as per the Holloway Circus specification (i.e. Drylac 17). The use of Drylac 17 for internal elements was also confirmed by BUG in an email to my colleague (Gary Colleran) copied to me on 30 August 2004.	On balance, references reasonably necessary.
30.	As far as I can recall, at the time I understood that BUG were proposing to use Tiger Drylac 58 PPC coatings for use on external façade components only (i.e. those components that would be exposed to the weather). I do not recall the use of Tiger Drylac 58 PPC coatings being proposed by BUG for SBU framing components at this time.	Compliant.
31.	BUG confirmed during the meeting on 21 July 2004 that the powder coating systems would also be independently tested. CCL would have managed this process directly with BUG and it is not something I would have been involved in.	Compliant.
32.	On 28 April 2005, I was copied into an email chain between CCL and BUG in relation to "ripperling" visible in the SBUs. This email chain included an email from BUG to CCL on 28 April 2005 in which they confirmed that the SBU system was the same as the system used on the Holloway Circus project.	First sentence reasonably necessary as context for next par. Second sentence irrelevant extract from document and should be removed.

33.	On 19 July 2005, I emailed CCL copying in BUG to inform them that the PPC finish to the external cladding system within the sample room on Level 4 of the Project was in variation to BUG's sample for Drylac 58 and was not visually acceptable. I noted that there were surface scratches, visible extrusion lines and an orange peel effect, and asked CCL to instruct BUG as necessary to address the issues and to ensure that they were not endemic throughout BUG's works. These comments related to the visual appearance of the PPC samples only.	So long as witness states whether the facts stated in the email were derived from his own personal knowledge at the time and, if not, the source, compliant.
	Witness statement of Helen Trott	
1.	I make this statement in connection with proceedings brought by Blue Manchester Limited ("BML") and North West Ground Rents Limited ("NWGR") against SimpsonHaugh Architects Limited ("SHA") and Bug- Alu Technic GmbH ("BUG"). I am aware that SHA is also a party to proceedings brought by Carillion Construction Limited (in Liquidation) ("CCL") against SHA and BUG, and that those proceedings are currently stayed by the consent of the parties.	None.
2.	This statement is the statement I provided on 8 April 2021, with amendments made pursuant to paragraph 1 of the Consent Order agreed between the parties on 22 June 2021. For completeness, I attach my original statement dated 8 April 2021 as Exhibit HT1, with the amendments shown in red.	None.
3.	I am aware that the claims brought against SHA by BML and NWGR concern the alleged failure of shadow box units ("**SBUs**") designed by the specialist sub- contractor (BUG) appointed by the main contractor (CCL) to design and install the SBUs. I understand that the SBUs included the use of structural silicone sealant attaching glass to polyester powder coated ("**PPC**") aluminium.	General introduction and no need to remove.
4.	I am an architect and partner at SHA. I joined SHA in 1993 and qualified as an architect in 1993. I had day-to-day involvement in the Beetham Tower project ("the Project") for the tender stage, specifications and early stages post contract (particularly in relation to the cladding package) of the Project. During the tender stage of the Project, I also worked alongside Schumann Smith, who produced the architectural specification for the Project ("the Specification"). I also attended some envelope design meetings during the tender stage of the Project and early stages post-contract alongside my colleagues Dave Green and Nick Fleming.	Compliant, but to ensure compliance generally, and as with Green, expand to include reference to the matters identified in paragraph 31 of the judgment and refer to and attach the required list of documents.
5.	SHA appointed Schumann Smith to produce the Specification because of their expertise in producing specifications for complex Design and Build projects with Specialist Contractor Designed elements. The Schumann Smith specification clearly defines the roles and responsibilities of each party in such an arrangement in a way that a standard NBS specification does not.	As par. 8 Green.

6.	Schumann Smith had also worked with SHA to produce the specification for another project SHA was involved with (Holloway Circus). This project involved the same client as the Beetham Tower project (Beetham Organisation) and the same project manager (Qubed). BUG was appointed as the specialist sub- contractor responsible for the design of the curtain walling/cladding of the Holloway Circus project, working with the main contractor Laing O'Rourke. I was not involved in the Holloway Circus project, although I recall that the specification for the Beetham Tower project was produced not long after this.	Standard first person requirement - assuming in the light of last sentence that the witness can say this from her own personal knowledge at the time.
7.	The Specification was produced by Schumann Smith as consultants to SHA, with direction, assistance and input from the SHA team. My role involved sitting down with Schumann Smith and talking through the scheme and the particular requirements of the Project. This would have included describing the thermal, acoustic or fire, and other performance requirements which had been determined in discussion with engineering consultants we also referred Schumann Smith to reports produced by the specialist consultants and the Specification placed the obligation on the Contractor to design the works in accordance with the requirements set out in these reports. My understanding at the time was that the consultants' reports detailing performance requirements were issued to the tendering subcontractors as part of CCLs tender packages. My role also included providing a description of the Project from a visual perspective to Schumann Smith. This would have included the requirement for an anodised finish to the aluminium curtain walling framing. This would have looked different visually to the PPC aluminium curtain walling framing later designed by BUG, after the change from anodised aluminium to PPC aluminium was agreed between CCL and the Employer for the Project (Beetham).	Compliant. The references to "would have" are unsatisfactory but since this is not an important issue there is no need to comply with SBP par. 3.7.
8.	BUG was appointed by CCL to complete the Detailed Design of the curtain walling/cladding. My understanding was that CCL also appointed Wintech Ltd as façade consultants to advise on the technical performance of BUG's design. I was not aware at the time of the Project that CCL did not retain Wintech to advise in this capacity following the early stages of the Project.	Although first sentence not in first person, no need to amend since remainder compliant.
	Witness statement of Richard Jackson	
1.	I make this statement in connection with proceedings brought by Blue Manchester Limited ("**BML**") and North West Ground Rents Limited ("**NWGR**") against SimpsonHaugh Architects Limited ("**SHA**") and Bug-Alu Technic GmbH ("**BUG**"). I am aware that SHA is also a party to proceedings brought by Carillion Construction Limited (in Liquidation) ("**CCL**") against SHA and BUG, and that those proceedings are currently stayed by the consent of the parties.	None.
2.	I am aware that the claims brought against SHA by BML and NWGR concern the alleged failure of shadow box units ("**SBUs**") designed by	General introduction acceptable.

	BUG. I understand that the SBUs included the use of structural silicone sealant attaching glass to polyester powder coated ("**PPC**") aluminium curtain walling frames.	
3.	I am the Commercial Partner at SHA. I joined SHA in May 2014. I first became involved in the Beetham Tower project ("**the Project**") in 2003 during the tender stage of the Project. I was working at Davis Langdon Schumann Smith ("**Schumann Smith**") at this time.	Compliant, but to ensure compliance generally, and as with Green, expand to include reference to the matters identified in paragraph 31 of the judgment and refer to and attach the required list of documents.
4.	Schumann Smith provided a consultancy service to SHA in relation to the production of the architectural specification for the Project ("**the Specification**"). Schumann Smith were well known for providing specification consultancy services to many leading architects reflecting the increasingly complex design requirements of projects and the use of specialist sub-contractor design. This type of specification documentation had also been used on a project known as Holloway Circus. Schumann Smith had also worked with SHA to produce the specification for the Holloway Circus project. BUG was appointed as the specialist sub- contractor responsible for the design of the façade/curtain walling in relation to the Holloway Circus project. I understand that PPC aluminium curtain walling was also used by BUG on this project.	Standard first person requirement. If witness does not have first had knowledge of Holloway Circus then he must state source of knowledge.
5.	Section H11 of the Specification ("Curtain Walling/Cladding") provides that the main contractor, CCL, was required to obtain the services of a specialist sub- contractor to complete the detailed design of the curtain walling/cladding. I understand that BUG was the specialist sub-contractor appointed by CCL to complete the detailed design of the curtain walling/cladding and the SBUs for the Beetham Tower project.	Standard first person requirement. Extract from specification may remain on that basis, as many second sentence, so long as witness confirms, if he can, that this was his understanding at the time.
6.	Section H11.1307 of the Specification allows for the use of previous independently certified test data, provided the specialist sub-contractor appointed to undertake the detailed design of the curtain walling (BUG) can demonstrate the curtain walling systems meet the specified performance requirements of the Project. The Specification requirements form part of the contractual obligations for BUG to comply with the Employer's Requirements. BUG's contract was with CCL to ensure that the requirements were fulfilled.	Unnecessary extract and comment and should be removed.
7.	On 22 June 2004, I received a telephone call from Nick Fleming at SHA. I cannot recall the exact details of this call, but I followed it up with an email to Nick on 23 June 2004. In this email, I recommended	Unnecessary extract from narrative - the witness need only say

	asking BUG to provide further information in relation to the PPC they intended to use for coating the internal and external elements of the envelope framing for the Project. This included seeking confirmation of the nominated independent inspector appointed by BUG to undertake an inspection of the actual extrusions being coated (and to produce a report confirming compliance with the Specification).	that in the email he made various recommendations and observations.
8.	I also noted that the product data sheet for the PPC being applied to the external elements (Tiger Drylac 58) described it as a powder coating offering superior weatherability.	As 7.
9.	On 11 July 2005, I was copied into an email from Dave Green at SHA to CCL. In this email Dave Green referred to SHA only being appointed to complete the detailed design of the Project for those elements of work which were not defined as Specialist Contractor Designed in the Employer's Requirements. He also confirmed that SHA was not responsible for the detailed design of the curtain walling/cladding.	Unnecessary narrative and extract from document.
10.	On 23 August 2005, I received a telephone call from Dave Green at SHA. I cannot recall the exact details of this call, but I followed it up with an email to Dave on 23 August 2005. In this email I referred to the issue of consideration of glass retention to the structural silicone bonded glazed units, and in particular H11.2103 of the Specification which provides that where structural silicone is specified as the preferred means of panel fixation, it is the visual intent achieved by this method of fixing that is required by SHA, but the means of retention required to satisfy the performance requirements is the responsibility of BUG.	As 7.
11.	I also referred to several testing clauses set out in the Specification (H11.1311, 1312, H11.1316 and Z25.1401) which all required substantial consideration/input into the completion of BUG's design.	As 7.
12.	On 24 August 2005, I was copied into an email from Dave Green to CCL (also copied to BUG). In this email he referred to a brief conversation he had had with Building Control in relation to mechanical restraints following a query from one of the cladding sub-contractors during the tender process. He relayed the details of the conversation in which Building Control confirmed that structural silicone would be acceptable to them providing the contractor could prove that the glazing would stay in place given the forces/pressures/movements exerted on the cladding long term. He explained that Building Control required a robust engineering justification from BUG to answer queries raised by Building Control on BUG's design to avoid the need for mechanical restraints. I am aware that BUG's design was subsequently approved by Building Control in or around November 2006.	As 9.
	Witness statement of Rachel Haugh	

1.	I make this statement in connection with proceedings brought by Blue Manchester Limited ("BML") and North West Ground Rents Limited ("NWGR") against SimpsonHaugh Architects Limited ("SHA") and Bug-Alu Technic GmbH ("BUG"). I am aware that SHA is also a party to proceedings brought by Carillion Construction Limited (in Liquidation) ("CCL") against SHA and BUG, and that those proceedings are currently stayed by the consent of the parties.	None.
2.	I am an architect and partner at SHA. I joined/cofounded SHA in 1987 and qualified as an architect in 1991. I was not directly involved on a day-to-day basis in the Beetham Tower project ("the Project"), but was kept aware of developments on the Project by my colleagues Dave Green and Nick Fleming who were involved on a day-to-day basis in the Project, alongside an architectural team of 6 to 7 people.	Compliant, but to ensure compliance generally, and as with Green, expand to include reference to the matters identified in paragraph 31 of the judgment and refer to and attach the required list of documents.
3.	I am aware that the claims brought against SHA by BML and NWGR concern the alleged failure of shadow box units ("SBUs") designed by the specialist sub-contractor (BUG) appointed by the main contractor (CCL) to design and install the SBUs. I understand that the SBUs included the use of structural silicone sealant attaching glass to polyester powder coated ("PPC") aluminium.	General introduction acceptable.
4.	On 11 July 2014, I was copied in on an internal email from my colleague, Dave Green, advising that he had had a brief conversation with somebody in the building management team at Beetham Tower in relation to defective SBUs and repairs that were being carried out to the SBUs. I cannot recall what happened after this, but do recall being invited to attend a meeting with CCL at the end of May 2015 to discuss CCL's remedial proposals for the SBUs.	As 3.
5.	On 3 June 2015, I attended a meeting with my colleague (Ian Simpson) and Sarah Hopes (a commercial director at CCL). SHA's notes of the meeting refer to the attendees as IRS (Ian Simpson), RJH (myself) and SH (Sarah Hopes).	Compliant.
6.	During this meeting, Sarah Hopes advised that it had been found that the SBU detailing was failing as a result of faults within the PPC used by BUG. She did not advise whether any testing had been undertaken to determine the cause of the defects, although she confirmed that BUG (who had been taken over by Strabag) was committed to resolving the issue.	Compliant.
7.	During the meeting on 3 June 2015, Sarah Hopes asked whether SHA would be willing to assist in the design of a remedial solution for the SBUs. I confirmed that SHA would be willing to comment on remedial	Compliant, save that witness must state whether second sentence

	options proposed by CCL. This was from an aesthetics perspective only, as SHA did not have the expertise as architects to comment on anything other than the visual appearance of the proposed remedial solution. There was no suggestion during this meeting (or at any time thereafter) that CCL and/or any other party was looking to SHA for a contribution towards the cost of the remedial works.	was stated at meting and if so by whom.
8.	On 18 September 2015, I received an email from Sarah Hopes advising that she had an update on the remedial solution proposed by CCL, and inviting me to attend a meeting with her and CCL's technical services director (Steve Brunswick). I attended further meetings with CCL in September/October 2015 and May 2016 to discuss CCL's proposed remedial solution. Following the meeting with CCL on 17 May 2016, I received an email from Steve Brunswick on 25 May 2016 attaching copies of drawings produced by BUG for the proposed remedial works to the SBUs.	Unnecessary narrative and extract from documents.
9.	On 23 October 2016, I received a further email from Steve Brunswick advising that CCL had been progressing testing of the proposed remedial solution and was at the final stages of testing. He confirmed that CCL had discussed the proposed remedial solution with Manchester City Council's Planning Department and that they were happy with the proposal. He also asked for confirmation that SHA was happy with CCL's proposed solution.	As 8.
10.	I responded to this email on 14 November 2016, confirming that SHA was happy with the proposed solution from a visual point of view. Steve Brunswick responded to me on 16 November 2016 thanking me for my email. I did not receive any further correspondence from CCL in relation to the remedial works designed by BUG following this.	As 8.