

# Characterising (and closing?) the accountability-capability gap in complex procurement

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# Introduction

Dame Judith Hackitt's 2018 review of the disaster identified that “*procurement sets the tone*” for relationships between clients, designers and contractors

“*Inadequate specifications, focus on low cost or adversarial contracting, can make it difficult (and most likely, more expensive) to produce a safe building*”

# Agenda

- What happened?
- What was missing?
- What next?

**What happened?**

# (Persistently) Poor Construction Industry Norms

- Low profit margins and fierce competition
- A prioritisation of time and cost over quality, putting safety at risk of being compromised
- Dysfunction flagged in Latham Review (1994), Egan Review (1998), Wolstenholme Review (2009), Farmer Review (2016) and Hackett Review (2018)

*“A **lack of clear roles and responsibilities**, and **ambiguous regulations** and guidance allow the market to **procure without building safety in mind**; there is no requirement or incentive to do so. Alongside this, **unhelpful behaviours** such as **contract terms** and **payment practices** which prioritise speed and low-cost solutions, exacerbate this situation. These characteristics provide **poor value for money and poor building safety outcomes.**”*

– Dame Judith Hackett, Independent Review of Building Regulations and Fire Safety

# Social Values?

- Public authorities [should] have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes. -**Public Services (Social Value) Act 2012**
- However, the current approach to tendering and contracting reinforces price-focused behaviours

Q: *“Were there any discussions ever within Rydon to your knowledge about how **safety** should not be compromised when conducting this value engineering exercise?”*

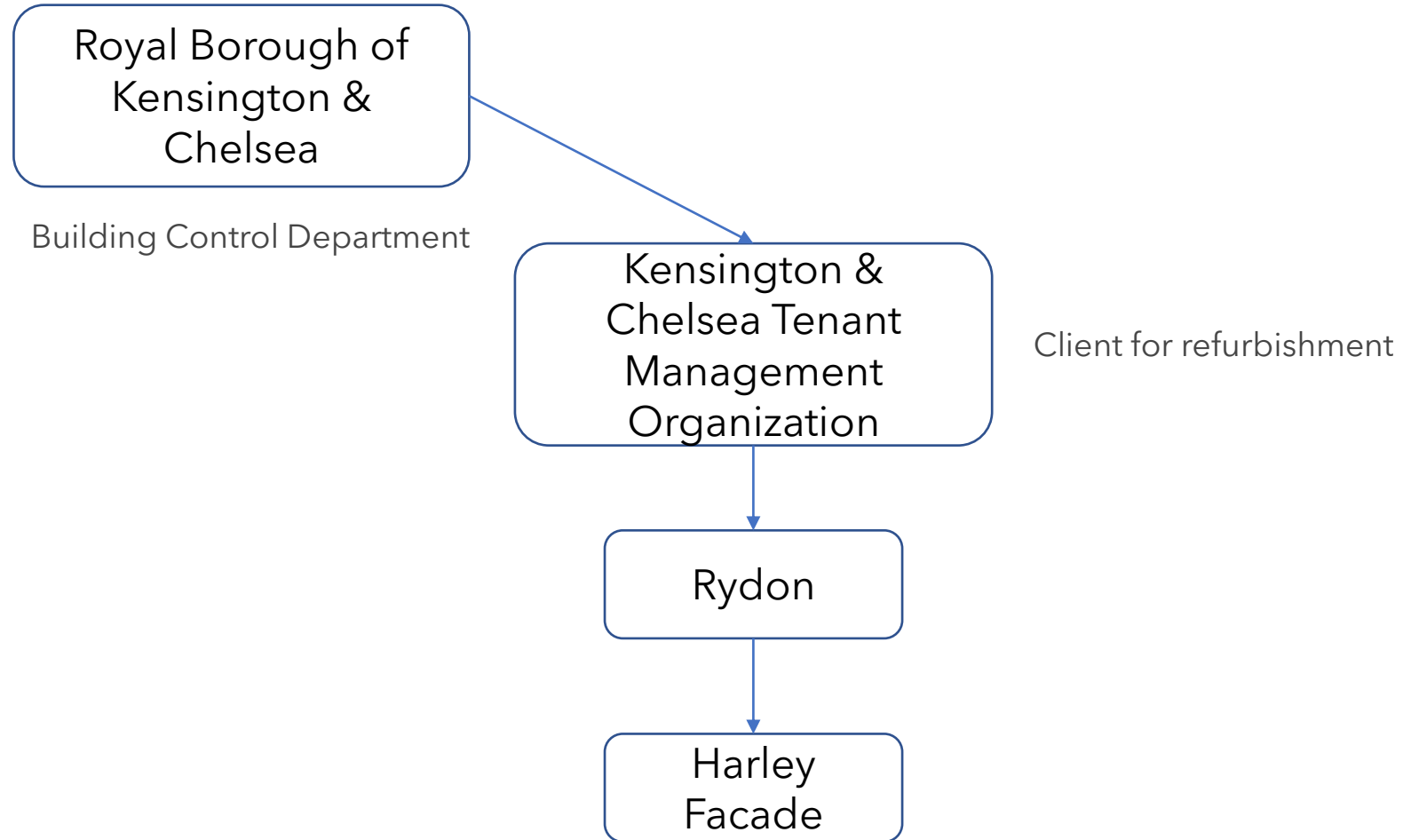
A: *Not specifically, **no***

Q: *...On the Grenfell Tower project, [value engineering] was, wasn't it, purely a **cost-saving** exercise?*

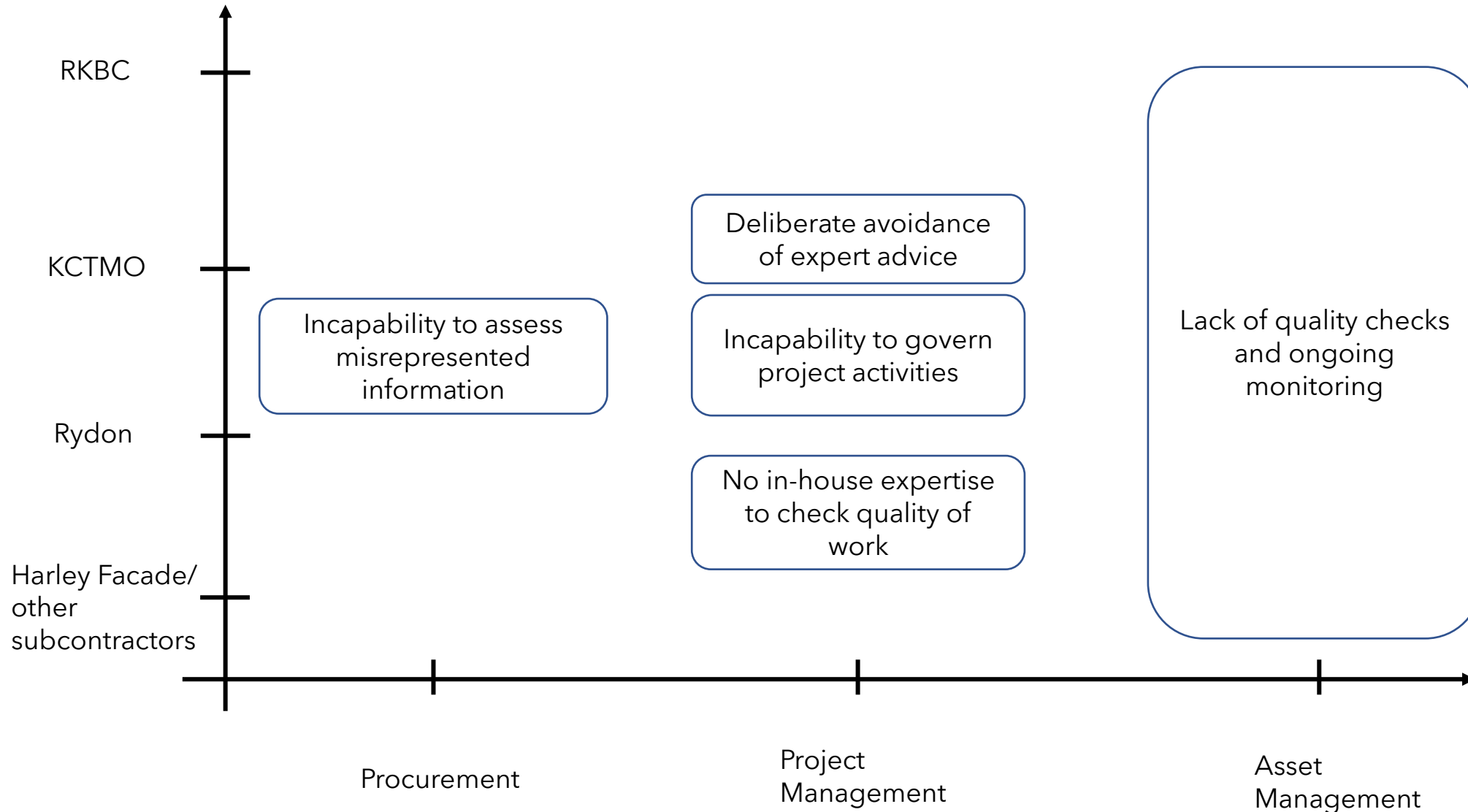
A: *That was the idea, **yeah***

-Zak Maynard, Commercial Manager, Rydon, Grenfell Tower Inquiry

# Procurement Map for the Refurbishment Contract



# Multi-level, Multi-stage Manifestation of Procurement Incapability





# Incapability: Knowledge Asymmetry

## Misrepresentation of the quality of material by the supplier

*“Lawrence (Commercial Manager, Rydon) said the plastic-filled panels ‘would create no problem because the materials used were completely inert and **would not burn at all.**’ The **meeting accepted his assurances** in this regard, and **nothing came to my notice** subsequently prior to the fire **to question that these assurances were not accurate.**”*

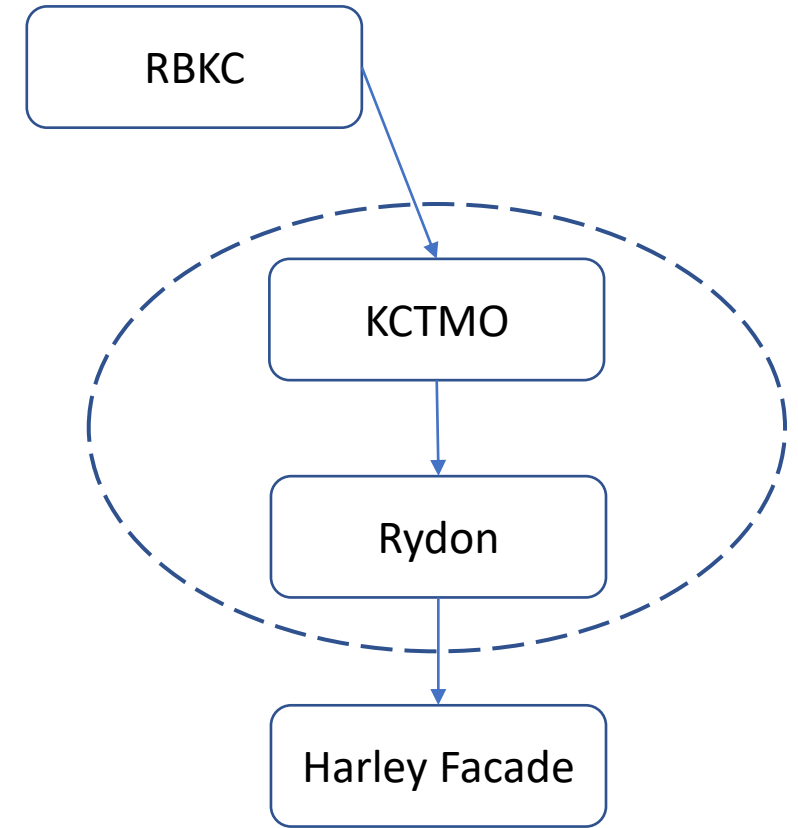
-David Gibson (Head of Capital Investment, KCTMO)

## Supplier’s misrepresented capabilities

*“In the document used to win the tender for the Grenfell Tower project dated February 2014, Mr Millett said there were up to **six inaccuracies in Mr O’Connor’s CV, overstating his experience and knowledge.**”*

## Inaccurate bid by the supplier

*“Grenfell main contractor Rydon has been accused of **keeping its client in the dark** so it could **recover £212,000 after accidentally underbidding the job because of an ‘adding-up error’** [...] because of a mistake by one of its estimators”*

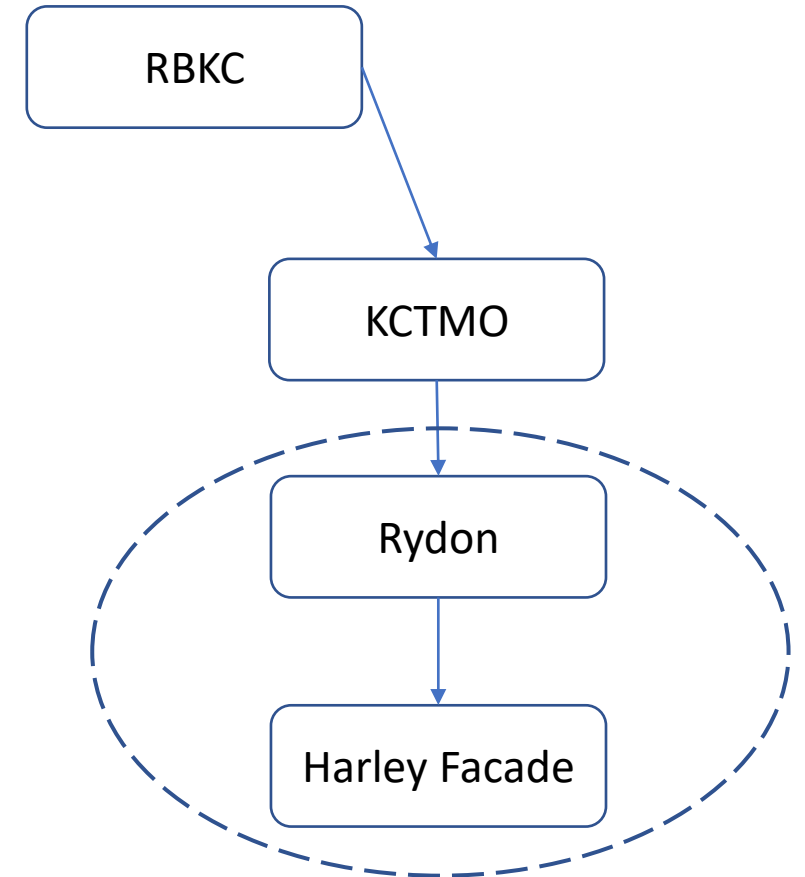


# Incapability: (Cascading?) Knowledge Asymmetry

## Supplier's lack of in-house expertise

Rydon's senior manager on the Grenfell recladding job admitted the firm relied on specialist subcontractors and designers to fulfil its contractual obligation to ensure the project was safe.

***"[...] lacked the in-house expertise to check the work of these subcontractors and relied on third parties for this as well."***



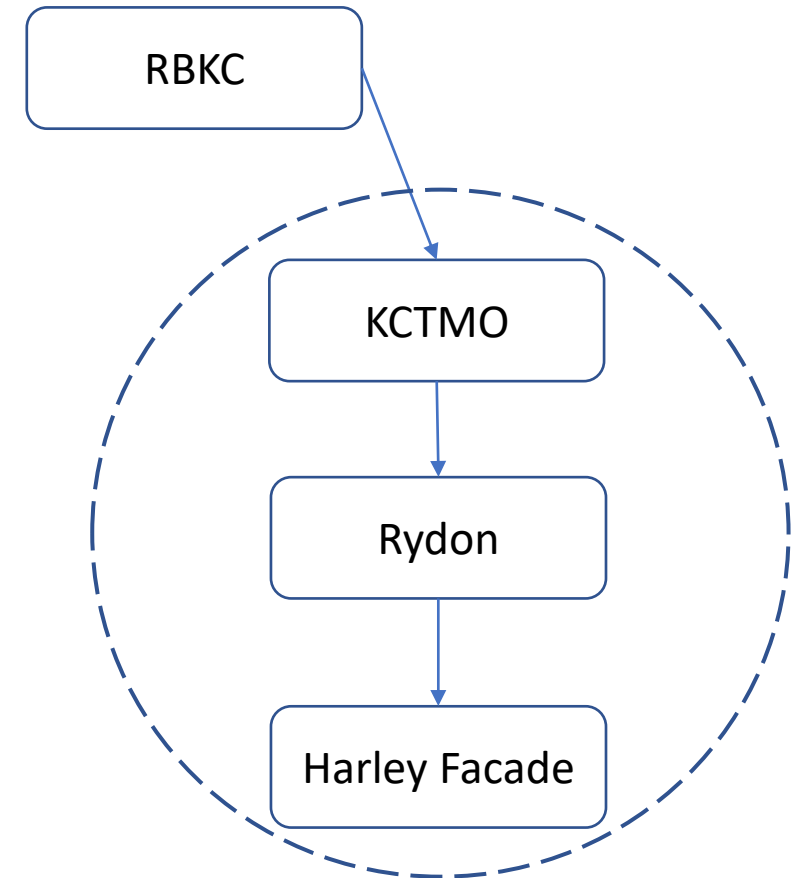
# Deliberate Incompetence?

## Deliberate avoidance of advice by TMO to save costs

Philip Booth, a project manager at consultants Artelia, explained how the firm had advised Kensington and Chelsea Tenant Management Organisation (KCTMO) that **the services of a ‘client design advisor’ (CDA) was necessary to assist on a project as complex as Grenfell.**

*[...] “I think she was reassured that there were specialist cladding designers coming in and there were warranties which related to the products. I said yes, but you will still need to sign it off.” [...] “I was saying that while you might know social housing and what the right thing is for a kitchen. A CDA will be able to do everything, otherwise you will have to do it yourself.”*

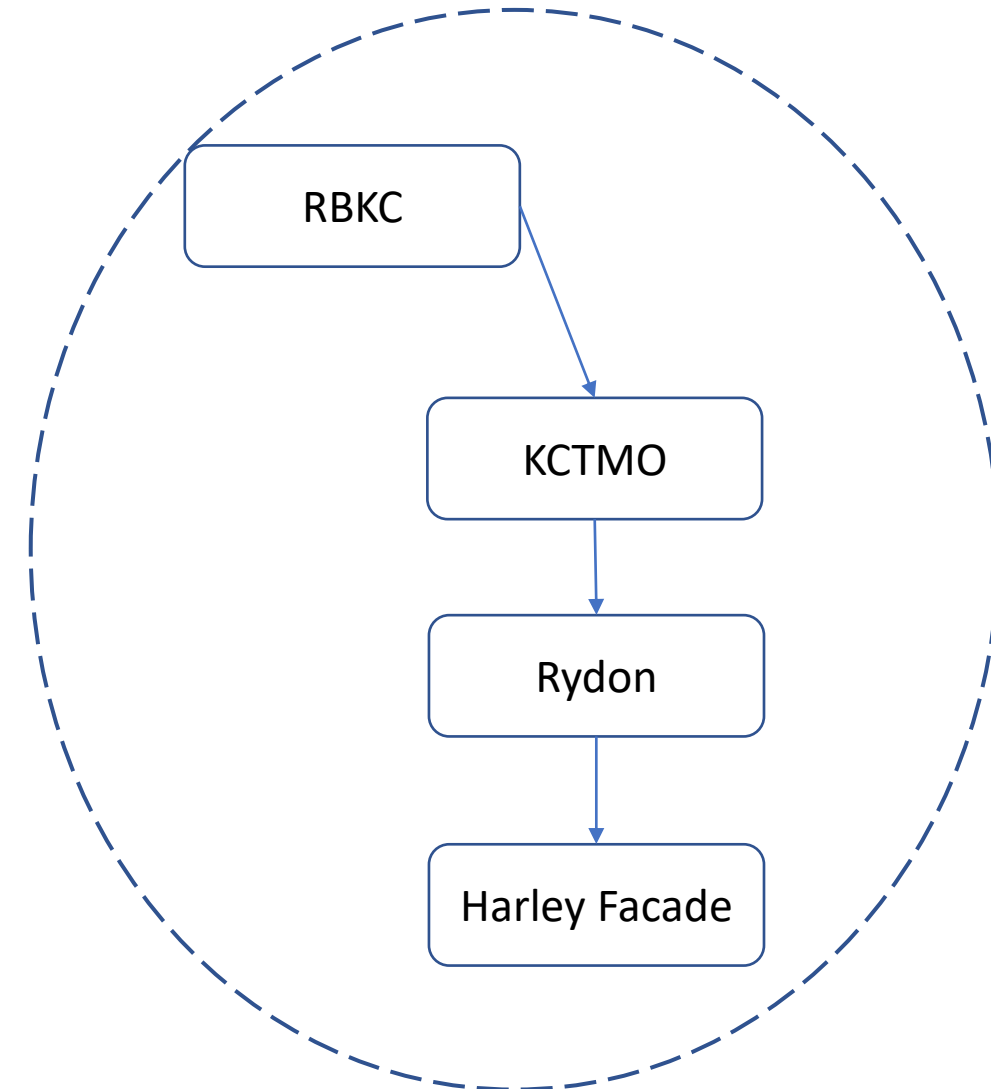
-Philip Booth (Project Manager, Artelia)



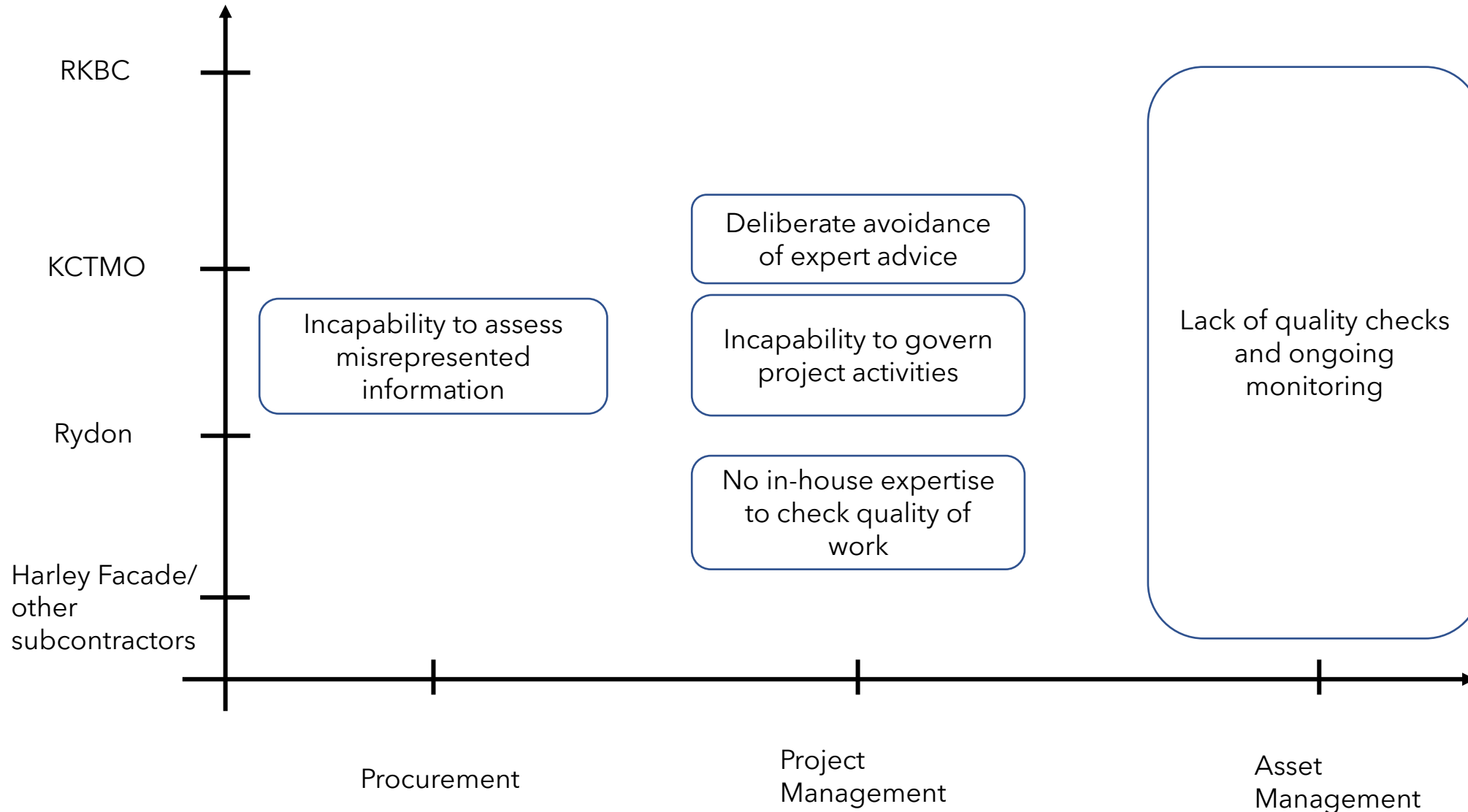
# The Growing Bubble of Procurement incapability

*“Ultimately it (Rydon) was **relying on the local authority’s building control department to sign off the work**”*

- Commercial Manager, Rydon



# Multi-level, Multi-stage Manifestation of Procurement Incapability



**What was missing?**

# Effective contractual go

Given information asymmetry between  
governance is needed to address:

- Search costs
- Monitoring/enforcement costs

“there was no system for subcontractors to report these deliveries to Rydon as they were “tried and tested subcontractors”. He added **it wasn't his role to have knowledge of what was going through the site.**”

- Rydon's project manager

“It is important, in my opinion, to explain that there seems to be a **misunderstanding in what my role, and by association, that of my employers JRP, was on the Grenfell Tower project.** [...] My role is site inspector. **I don't check for compliance; I check that the person who is doing compliance, which is building control, is inspecting and, if they have any issues, then follow them up.**”

- The Clerk of Works

Grenfell Tower renovation works are inspected 16 times by council building control officers, **but checks fail to prevent the use of the flammable cladding blamed for spreading the fire.**

Fire destroys five storeys of Shepherd's Court tower, London. **Rapid spread of fire is linked to external cladding.**

Grenfell Tower management company KCTMO with a 'notification of deficiencies'. **The issues raised include breaches in internal compartmentation.**

London Fire Brigade writes to local authorities **advising them to check cladding materials for fire safety in light of Shepherd's Court fire.**

2014-2016

August 2016

November 2016

April 2017

# Professionalisation

- Furthering purchasing competence (Heslop, 2011)
  - Individuals' motivation
  - Dedication to work and initiative
  - Self-regulation
- Ethical obligations and provision of public interests (Paisey and Paisey, 2020)



# What next?

- Relational vis-à-vis traditional (adversarial) contracting.
  - Unintentional vis-à-vis deliberate incompetence.
- Professionalisation vis-à-vis regulation.
- More reviews?