**Fire in the high rise: governance, ownership and safety**

**Dr Edward Kirton-Darling[[1]](#footnote-1)**

It is still too early for any definitive statements about what happened at Grenfell Tower, but – as was immediately clear – we know the fire killed a large number of the poorest residents of one of the world’s richest cities, and devastated the lives of many others. As the fire continued to burn, serious criticisms of the management of the building were highlighted by tenant activists and fire safety experts, leading to urgent questions about the safety of other high-rise blocks and the announcement of a public inquiry. While the main focus of political and media discussion has been the cladding following the recent refurbishment,[[2]](#footnote-2) concerns have also been raised around potentially inadequate boxing around pipework, the possible lack of an alarm, the availability of escape routes, and around the advice and information given to residents on what to do in the event of a fire – both at the time that the fire broke out and in advance. Less widely discussed, and the focus of this comment, is the critical role that tenure and political conceptions of ownership can play in relation to regulation and fire safety in blocks like Grenfell Tower.

At the time of writing, the terms of the public inquiry have not been finally settled, but the looming inquiry has already provided a basis for those in senior positions at Kensington & Chelsea to cease public discussion of the circumstances surrounding the fire. A meeting of the Cabinet, which, until the press forced entry through the High Court, was due to be held in private to avoid ‘potential public disorder’ was subsequently closed so that any discussions would not prejudice the public inquiry.[[3]](#footnote-3) Similarly, requests from tenant activists for an independent consultant's report from 2005 into failures with emergency lighting have been met with a refusal based on a concern about doing or disclosing anything which might prejudice the public inquiry.[[4]](#footnote-4) However, on the morning of 15 June, two weeks before the intense scrutiny and widespread criticism of the approach of Kensington & Chelsea led to his resignation, then-leader Nick Paget-Brown did speak to various media outlets. In one interview, on the Today programme on Radio 4,[[5]](#footnote-5) when pushed on what the responsibility of the local authority was towards residents in the building, he stated the Council would always ensure its own properties are inspected by the fire service and that there are national regulations about fire safety. He concluded that normally a fire in a flat is contained, but that hadn’t happened in this case and there needs to be a thorough investigation, including looking at the guidance.

As many have noted, the fire at Grenfell Tower is eerily reminiscent of the horrible afternoon in 2009 in which 3 women and 3 children died in a fire at Lakanal House in Camberwell. Dayana Francisquini, her daughter Thais and son Felipe, and Helen Udoaka and her 20-day-old daughter Michelle died while they sheltered together in the bathroom of Flat 81, while Catherine Hickman died on her own in the lounge of Flat 79. At the end of the inquests into their deaths, the jury returned damning narrative verdicts,[[6]](#footnote-6) finding that opportunities to do fire risk assessments were missed, a recent refurbishment had not provided adequate resistance to fire, opportunities to escape had been missed because residents were not aware of escape routes, and there were failings by the fire service to locate and rescue all six victims.

While there are many apparent similar features of the two fires, two of the particular issues raised in the interview with Councillor Paget-Brown were central to the inquests into the deaths at Lakanal House; the question of inspection of properties for fire safety, and the related question of the adequacy of guidance in relation to fire safety. An analysis of the outcomes of the inquest in relation to these issues reveals worrying parallels between responses to the two fires and points to the need to closely attend to the terms of reference of the inquiry into Grenfell.

Following the conclusion of the Lakanal House inquest, the Coroner, Frances Kirkham CBE, sent letters[[7]](#footnote-7) to those who might be able to prevent similar deaths in future, including Southwark, the Department for Communities and Local Government (DCLG), and the London Fire Service.[[8]](#footnote-8) In these letters, she noted that various actions could be taken to avoid future deaths, including the retrofitting of sprinklers and revision of the ‘difficult’ advice on Building Regulations to make it ‘intelligible’ to all those involved in construction, maintenance and refurbishment of buildings.[[9]](#footnote-9) Following the deaths at Grenfell Tower, the points the Coroner makes in these letters to avoid future deaths are being widely discussed.

However, less attention has been given to the way in which those letters, and their responses, highlight tensions and ambiguities over the governance of high-rise buildings; issues which are evident once more in the comments of Councillor Paget-Brown.

One specific finding by the jury was that internal modifications to the flat Catherine Hickman lived in made more than a minimal contribution to her death. Ms Hickman was a private tenant in a flat which had been bought under the Right to Buy scheme. The modifications had been undertaken by the leaseholder, and had been approved by Southwark as the freeholder, but with a recommendation that they be checked for fire safety by Southwark’s Building Design Services. This check did not take place.

The Coroner suggested in her letter to Southwark that they review the way in which they carried out fire risk assessments, including in relation to internal inspections of flats.[[10]](#footnote-10) In her letter to DCLG, she noted that despite the publication of guidance by the Local Government Association,[[11]](#footnote-11) uncertainty remained about the scope of inspections which should be undertaken in high rise buildings, including clear guidance on internal inspections of properties.[[12]](#footnote-12)

Southwark and DCLG both responded in May 2013. Southwark’s response confirmed that they had rolled out annual inspections within properties but distinguished between their own properties, and leasehold properties sold under the Right to Buy.[[13]](#footnote-13) They stated that flats bought from Southwark under the Right to Buy did not include a specific right of access to check the internal layout of the property. This lack of access meant they could not check for modifications, framing Right to Buy leaseholders as a problematic barrier to the Council’s duty to manage the risk of fire in all their properties. The implication of Councillor Paget-Brown’s reference to inspection of their own properties is that Kensington & Chelsea’s leases similarly lack powers of entry to check for modifications, and further that the council see their responsibility and powers in the same terms.

In contrast, DCLG responded to state that the guidance by the Local Government Association addressed the issues raised by the Coroner, and suggested that the guidance ‘takes a practical approach to ensuring that those responsible for the safety of residents and others in purpose build blocks can take a comprehensive and pragmatic approach to managing risk effectively.’[[14]](#footnote-14) Southwark and the Coroner for the Lakanal House inquests – and presumably, Councillor Paget-Brown given his call for guidance to be included in the Grenfell Tower inquiry – would not agree, and detailed analysis of the guidance suggests it is entirely reasonable for local authorities to continue to feel uncertainty about the proper approach to internal inspection of leasehold properties.[[15]](#footnote-15)

However, DCLG’s response ignores this explicitly voiced concern, a response which is underpinned by a political commitment to the autonomy of Right to Buy lessees. The approach of DCLG, gleaned from an analysis of the LGA guidance they have approved, downplays the possibility of powers of entry under a lease[[16]](#footnote-16) and instead places emphasis on the powers to enter to assess for hazards under the Housing Act 2004. Importantly, such powers are to be used when there is a reason to suspect modifications, and so may not arise in the circumstances of everyday management identified by the Coroner and Southwark. As a result, instead of a role proactively managing the internal aspects of the leasehold flat, the prioritisation of privacy by DCLG resigns the local authority to a residual position with public law powers to be invoked in the exception.

The refusal of the responses to hear each other re-exposes the near 40-year conflict between a central government which has sought to promote Right to Buy and lessen risks and obligations for leaseholders, and local government, who have sought to shift risk onto the shoulders of those who have exercised the right to buy.[[17]](#footnote-17) In this long-rumbling debate, ideological arguments about a property owning citizenry vie with frustration over the management headaches caused by leaseholders keen to avoid spending on major works, while the often marginal ownership of Right to Buy leaseholders, particularly in high rise flats, is pushed to the sidelines.[[18]](#footnote-18) While the potential vulnerability of such lessees does not appear in the narratives of either local or national government, the needs of the even more vulnerable (legally, and potentially financially and physically) private tenants of Right to Buy leaseholders like Catherine Hickman entirely disappears. Critically, the responses to the Coroner expose this regulatory gap but the inquest is incapable of addressing it. Instead the lacuna is exposed as a deliberate strategy of governance, the letters reaffirming a deregulatory framing promoted by central government and (sometimes reluctantly) acceded to by local government. The outcome is that the property bought under the Right to Buy appears in each high rise block as a dangerous hole in the – already thinly spread – protective blanket provided by the local authority, and, as any safety in such blocks is necessarily collectively instituted, the result is that all are less safe.

The exchange of letters after the Lakanal House inquest vividly demonstrates the inadequacy of the inquest system as a place for exposing, analyzing and responding to these ideological tensions. The narrow focus on the causes of death which characterizes the inquest jurisdiction means the forum is not capable of engaging with the broader underlying contexts, and the lack of any capacity to follow up on concerns meant the exchange of letters did little but quietly expose the yawning gap between local and national government. These institutional features expose the flaws in the arguments of those who called for an inquest rather than an inquiry, and highlight the importance of ensuring the terms of reference of the inquiry are not drawn too narrowly.

It might be that Right to Buy played no part in the Grenfell Tower fire, but it is telling that the first instinct of the freeholder is to allude to the differential tenure of the residents – and the potential issues caused by differential tenure. As such, the comments of Councillor Paget-Brown highlight the role the investigation will inevitably provide as a space for the assertion of official discourses about safety and responsibility, disconnecting the fire from the underlying politics which are part of the explanation why so many died.

The outcome of the Lakanal House inquest suggests that such terms of reference must include an engagement with those underlying political issues, including analysis of the ways in which tenure impacts on the management of high rise blocks. Critically, they must be broad enough to answer the questions being raised by many survivors and bereaved about race, inequality and class, and to ensure the inquiry is able to produce a complete understanding of how and why the fire at Grenfell Tower killed so many people. The alternative is a partial and limited inquiry which would – as with other inquiries into contentious deaths – present failings as individual, temporary and technical. As Phil Scraton, Sherene Razack and others have demonstrated,[[19]](#footnote-19) a narrow approach results in the prominence of narratives which disassociate and decontextualise death. In such an event, the outcome is an inquiry which is likely to fail to hear the voices and win the trust of those – the bereaved, the survivors, the tenant activists – who experienced the horror of the fire at first hand.

1. Kent Law School, University of Kent, ek276@kent.ac.uk I would like to thank Caroline Hunter for her invitation to take part in this special edition, and the SLSA for publishing the blog which this piece is based on. Any errors in it are my own. The research is taken from a longer chapter on the fire at Lakanal House to be published in early 2018, E. Kirton-Darling, “Safe and sound: precariousness, compartmentalisation and death at home” chapter in *Law and the Precarious Home: Socio-Legal Perspectives on the Home in Insecure Times* (ed. C. Hunter, H. Carr, B. Edgeworth), Hart, 2018 (forthcoming). [↑](#footnote-ref-1)
2. including questions of whether the cladding met building regulations, on which see Carr in this volume [↑](#footnote-ref-2)
3. See statement of RB Kensington & Chelsea, 29 June 2017, available at https://www.rbkc.gov.uk/newsroom/all-council-statements/council-statement-following-cabinet-meeting-29-june [Accessed 19 July 2017]. [↑](#footnote-ref-3)
4. See correspondence posted on Grenfell Action Group blog, available at https://grenfellactiongroup.wordpress.com/2017/07/17/kctmo-housing-management-for-the-people-by-the-people/ [Accessed 19 July 2017]. [↑](#footnote-ref-4)
5. Available at http://www.bbc.co.uk/programmes/p055vlp3 [Accessed 19 July 2017]. [↑](#footnote-ref-5)
6. The inquisitions on each of the six deaths – including the jury’s narrative – is available here: https://www.lambeth.gov.uk/elections-and-council/lakanal-house-coroner-inquest [Accessed 19 July 2017]. [↑](#footnote-ref-6)
7. A power contained in Rule 43 of the Coroners Rules 1984 (SI 1984/552), now replaced by the duty to provide Prevention of Future Deaths report contained in Coroners and Justice Act 2009 (c.25), Schedule 5, para 7. [↑](#footnote-ref-7)
8. The letters, and responses, are all available here: https://www.lambeth.gov.uk/elections-and-council/lakanal-house-coroner-inquest [Accessed 19 July 2017]. [↑](#footnote-ref-8)
9. Letter from Coroner for Lakanal House Inquests to DCLG, 28 March 2013. [↑](#footnote-ref-9)
10. See Letter from Coroner for Lakanal House Inquests to Southwark, 28 March 2013. These obligations are contained in the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541). [↑](#footnote-ref-10)
11. Local Government Association, ‘Fire Safety in Purpose-Built Blocks of Flats’ July 2011. [↑](#footnote-ref-11)
12. Letter from Coroner for Lakanal House Inquests to DCLG, 28 March 2013. [↑](#footnote-ref-12)
13. Letter from Southwark to Coroner for Lakanal House Inquests, 23 May 2013. [↑](#footnote-ref-13)
14. Letter from DCLG to Coroner for Lakanal House Inquests, undated (received 20 May 2013). [↑](#footnote-ref-14)
15. See E. Kirton-Darling, “Safe and sound: precariousness, compartmentalisation and death at home” chapter in *Law and the Precarious Home: Socio-Legal Perspectives on the Home in Insecure Times* (ed. C. Hunter, H. Carr, B. Edgeworth), Hart, 2018 (forthcoming). [↑](#footnote-ref-15)
16. As, for example, is found in Clause 3(5), The Leasehold Advisory Service “The Right to Buy Sample Lease”, [www.lease-advice.org.uk/documents/Sample\_RTB\_lease.pdf](http://www.lease-advice.org.uk/documents/Sample_RTB_lease.pdf) [↑](#footnote-ref-16)
17. See S. Blandy & C. Hunter, “The Right to Buy: Examination of an exercise in allocating, shifting and re-branding risks” (2011) 33(1) Critical Social Policy 17. [↑](#footnote-ref-17)
18. See H. Carr “The Right to Buy, the Leaseholder and the Impoverishment of Ownership” (2011) 38(4) Journal of Law & Society 519, and C. Jones & A. Murie *The Right to Buy: Analysis & Evaluation of a Housing Policy* 2006. Oxford: Blackwell Publishing. [↑](#footnote-ref-18)
19. See, inter alia, P. Scraton “Lost Lives, Hidden Voices: ‘Truth’ and Controversial Deaths” (2002) 44(1) Race and Class, 44(1) 107 and S. H. Razack “Timely deaths: Medicalizing the deaths of Aboriginal people in police custody” (2011) 9 Law, Culture and the Humanities 352. [↑](#footnote-ref-19)