



SPECIAL ISSUE ARTICLE

# Marginalisation, Grenfell Tower and the voice of the social-housing resident: a critical juncture in housing law and policy?

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## Abstract

This paper draws on historical institutionalism to consider the impact of housing-policy responses following the Grenfell fire on the marginalisation of the social-housing resident. We consider three specific policy responses: reform focused on conditions of rented properties; the social-housing White Paper; and building regulation and building-safety reforms. We suggest that, in historical institutionalist terms, each is part of a matrix of reform in which understandings of the social-housing resident play a critical role. We argue that rather than the fire provoking a paradigm shift in the recognition that government accords to the ignored and stigmatised citizens who live in social housing, the policy initiatives to date indicate a much more limited adjustment of policy within a normal frame. We suggest that this is because housing policy is dominated by a consumerist ideology that is self-reinforcing and ignores the social, economic and political complexity of tenure.

**Keywords:** Grenfell Tower; historical institutionalism; housing policy; resident voice

## 1 Introduction

The fire should have provoked change. Almost immediately, as the smoke continued to rise, as the pictures continued to lead news bulletins around the world, allegations of the contemptuous dismissal of resident concerns about the safety of the tower became the story. Officially acknowledged in the concession of a public inquiry – with a prime minister citing resident worries that ‘their voice will not be heard’ in the government’s response – the failure to listen to those who live in social housing became political as it had never been before.

Abrupt change is possible in historical institutionalism scholarship at critical junctures. Our central concern in this paper is with the possibility of change: whether (and, if so, how) the fire provoked a critical juncture that opened a policy window in relation to social-housing residents. We suggest that, if the fire at Grenfell Tower did represent a moment in which different possibilities could be envisaged – and it is hard to imagine a starker example – pre-existing ways of thinking significantly limited subsequent government proposals and stifled change. Our argument is that responses to the fire conceptualised the social-housing resident – in our thinking an institution – as a universalised tenant, subject to (and thus seeking to exit) an inferior tenure, in which the only significant relationship is a dyadic one with a superior landlord. Framed primarily in individualist terms, as a legally responsible consumer and holder of individual, enforceable rights, it is a response that perpetuates the marginalisation of the resident of social housing, failing to engage with the complexity of contemporary social housing or the lived experiences of those who make their homes within those buildings.

Our paper is in four substantive parts. Historical institutionalism has been little explored in socio-legal studies, and we open with an outline of scholarship in this area, before examining the institution

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of the social-housing resident, identifying both legal rights and policies on tenant voice as key elements.

We then analyse three responses to the fire: reform focused on conditions of rented properties; the social-housing White Paper; and building regulation and building-safety reforms. These have been selected on the basis that they were identified by the government as well as others as important initiatives. They represent apparently disparate elements in the policy portfolio, but our suggestion is that, in historical institutionalist terms, each can be understood as part of a matrix of reform in which understandings of the social-housing resident play a critical role.

## 2 Historical institutionalism and the social-housing resident

Historical institutionalism is one of three new institutionalisms (alongside rational choice and sociological institutionalisms) recognised as emerging from the previous behavioural perspectives of the 1960s and 1970s (Hall and Taylor, 1996). Although there are overlaps, each ‘paint[s] quite different pictures of the political world’ (*ibid.*, p. 936) and has different methodological assumptions and different relations between structure and agency (Hay and Wincott, 1998). Historical institutionalism ‘is a research tradition that examines how temporal processes and events influence the origin and transformation of institutions that govern political and economic relations’ (Fioretos *et al.*, 2016, p. 1). It has particular concerns with the maintenance and adaptation of institutions (Sanders, 2006, p. 42). Importantly for our purpose, the notion of an institution is defined broadly as ‘formal or informal procedures, routines, norms and conventions embedded in the organization structure of the polity or political economy’ (Hall and Taylor, 1996, p. 938; see also March and Olsen, 2006, p. 3); or, as Streeck and Thelen (2005, p. 9) put it, institutions are ‘building blocks of social order ... organizing behaviour into predictable and reliable patterns’. While the focus of historical institutionalism is commonly structures and ideas, Guy Peters *et al.* (2005) demonstrate the significance of politics and dissensus between political parties in plotting ways forward. And, as Hay and Wincott (1998, p. 954) suggest, there is room for agency:

‘Actors are strategic, seeking to realize complex, contingent and often changing goals. They do so in a context which favours certain strategies over others and must rely upon perceptions of that context which are at best incomplete and which may very often reveal themselves inaccurate after the event.’

One of the tenets of historical institutionalism is, by way of reflection on the past, that institutions are self-reinforcing and, in short, path-dependent (Pierson, 2000). In so doing, they shape our ideas and create boundaries around the possible range of interventions. They produce taken-for-granted assumptions about the social world. There are lengthy periods of stability enabling institutions to reproduce themselves over time. These periods are said to give way to change during turbulent formative moments, commonly referred to as ‘critical junctures’, or ‘punctuated equilibria’ (Guy Peters *et al.*, 2005, p. 1289), although it is also important that such junctures can be incremental (*ibid.*). During these junctures, the policy window opens and the range of possible solutions broadens, albeit that range is ‘defined by prior conditions, even though within the limits of those conditions, actors have real choices’ (Capoccia, 2016, p. 92). While a critical juncture may appear to be a single event that produces a crisis, most usually these single events reflect longer-term processes of change unfolding by and large incrementally (Streeck and Thelen, 2005). This insight suggests that pre-crisis shifts constrain post-crisis change (Fioretos *et al.*, 2016, p. 14) and a failure to recognise this produces a Conservative bias (‘the widespread propensity to explain what might seem to be new as just another version of the old’: Streeck and Thelen, 2005, p. 3).

Nevertheless, institutions are not static – they are dynamically and situationally in action. Policy can and does change, but the levels at which change occurs is different. In classic terms, Hall (1983) suggested that changes to the paradigm policy framework (of ideas and standards,

instrumentation and problematisation) can occur at three levels. First-order change was characterised as incremental, second-order change as moving one step further in terms of strategic action, but both involve continuities of policy-making; they are ‘normal policymaking’ and ‘normal science’ (Hall, 1983, p. 279). Third-order change is paradigm change involving discontinuities. In essence, our paper considers the extent to which that third-order change has occurred as a result of the fire.

Historical institutionalism has not made an impact in socio-legal studies (cf. McEvoy, 2011, pp. 355–356), although there have been incursions in housing studies (Lowe, 2004; Bengtsson, 2015; and, most recently, Crook and Kemp, 2019); but it has considerable potential for understanding socio-legal processes of change and stasis in institutions. If we take (say) Lowe’s perhaps idiosyncratic historical institutionalist study of tenure restructuring during the late Victorian period through to the end of the twentieth century, which explains the residualisation of public housing and the growth of owner-occupation, we can add that certain liberalising legislative interventions catapulted owner-occupation to prominence – most particularly the role of the Law of Property Act 1925 as producing simplification devices as well as liberalising the mortgage market; the Housing Act 1980 in creating the right to buy; and the deregulating Building Societies Act 1986 – while, at the same time, demonstrating the significance of building societies in these processes (see e.g. Boddy, 1980; 1989).

The hegemony of the idea of ‘home ownership’ has been much discussed in housing and socio-legal studies, with both disciplines stressing its discursive power (see e.g. Gurney, 1999; Carr, 2011; Fox, 2006). Indeed, it is easy to characterise UK housing-policy shifts since the coalition government as verging on the mono-tenurial, such has been the importance accorded to home ownership. This would be too simplistic however. The increasing unaffordability of owner-occupation, which accelerated following the global financial crash, has provoked a series of government initiatives that to an extent have re-regulated the private rented sector – although rents remain tied to the market (Carr and Alcock, 2020). And, despite the fixation on home ownership, the (social) construction of social housing has shifted since the 1970s at the level of policy and ideas (see e.g. Jacobs *et al.*, 2003). The Thatcher–Major governments (1980–1997) produced a paradigmatic shift from mass housing towards a residual model of provision (Harloe, 1995). The right to buy stimulated one of the most significant tenure shifts towards home ownership. Equally significantly, there has been a gradual shift towards regarding social housing as ‘ambulance housing’ (Fitzpatrick and Pawson, 2014; Fitzpatrick and Watts, 2017) – that is, a time-limited tenure for some of the most vulnerable – and discursively constructing it as problem housing – through strategies to deal with issues such as anti-social behaviour, which emphasise the otherness of social-housing occupiers (Jacobs *et al.*, 2003). Simultaneously, the large-scale financialisation of social housing, together with the use of private-sector management techniques and large-scale outsourcing, has produced an ‘accountability vacuum’ in which residents’ safety has taken second place to other values (Hodkinson, 2019).

One consequence of shifts in ideas about social housing has been an incremental development in ways of thinking about residents. There has been an uneven shift in that thinking which is based on rather different understandings of the motivation of tenants – drawing on the terms used by Le Grand (1997): on the one hand, residents can be seen as ‘knaves’ or ‘knights’ (either as rational, self-interested or public-spirited altruists) or, on the other hand, as ‘pawns’ (passive recipients of landlord bounty). These shifting constructions have been in action for the past forty years. Their construction as ‘passive recipients of landlord bounty’ (Gilroy, 1998) became problematic in contrast to the active and responsible players required by the market – the homeowner and the private renter. In response to that perceived passivity and irresponsibility, social tenants were reconstituted as consumers, customers and/or citizens, with assumptions of voice, whose benchmarks were assumed by policy-makers to be the equivalent of private renters or owners (Carr and Cowan, 2015; Cairncross *et al.*, 1997, pp. 104–107). This process, as yet, is patchy and incomplete, as the way in which the Grenfell residents were treated both before and after the fire demonstrates.

These ways of thinking about tenure and tenants are, for our purposes, institutions in their own right in housing policy. They organise ways of thinking about the housing settlement. They cannot be conceived separately – although sometimes they are by policy-makers (particularly when one thinks

about the Cameron governments' monotenurial housing policy) – because they interact in dynamic ways. It is best to think of them as part of the matrix, or ratio, through which housing policy is produced. So, for example, the shift in thinking about council tenants in the 1970s as perhaps knavish consumers led inexorably to their right to buy their home – shifts that we turn to examine in more detail in the next section.

### 3 The social-housing resident as an institution

There are two ways in which the concerns of residents of social housing have been given institutional substance. The first is through legal rights, the second through resident voice.

#### 3.1 Legal rights and the social-housing resident

It is well rehearsed that local-authority tenants had no specific statutory rights prior to the Housing Act 1980. The presumption was that the local authority, in contrast with the discredited private landlord, would be a benign provider of housing. It was also important that local authorities were not prevented from carrying out broader housing duties such as slum clearance by the exercise of individual rights. A growing belief that the welfare state was insufficiently responsive to the needs of its citizens and that it had not delivered what it promised stimulated a call for legal rights for local-authority tenants that crossed political party divide (Yates, 1981; Loveland, 1992). The Housing Act 1980 gave council tenants security of tenure as well as a number of other rights, most of which had already been promised by the outgoing Labour administration.

However, the Housing Act 1980 is best remembered for its implementation of the right to buy, which became definitive of the Thatcher government elected in 1979. The right to buy produced residualisation of the tenure and marginalisation of the residents (Forrest and Murie, 1990). The right to exit the tenure and achieve the superior status of owner-occupier provided a persistent reminder of the second-class status of tenants and significantly reduced their collective power. There was something else that was a consequence of the right to buy. Many former council properties were bought by buy-to-let landlords. The homogeneity of tenure under which individuals resided in social-housing estates was therefore compromised – social-housing spaces have become increasingly a mix of owner-occupied, privately rented as well as socially rented properties. The growth of shared ownership introduces further complexity (MHCLG, 2021a). Yet policy has been slow to catch up with this new reality (see e.g. Kirton-Darling (2018) in the context of fire safety).

Moreover, the security given to social tenants soon became questioned. New Labour – pre-occupied with social exclusion, antisocial behaviour and crime – introduced probationary periods for new tenants, who had to prove that they deserved lifelong security, and demoted tenancies, for those alleged to have behaved in an antisocial way (Anti-social Behaviour Act 2003, on which see Flint and Nixon (2006)). The irremovability of secure tenants, in contrast with the mobility of the private-sector tenant, became a particular focus of the post-2010 Conservative-led coalition government that introduced further flexibilities into social housing, enabling social landlords to offer fixed-term renewable tenancies. These powers were ramped up by the Housing and Planning Act 2016. Legal rights for the residents of social housing have, over a relatively short period of time, become complex and conditional. As Fitzpatrick and Watts (2017, p. 1035) point out, this has consequences:

‘The imposition of (fixed term tenancies) in new council tenancies is likely to contribute to the (further) distancing of the social housing sector and its residents from the perceived mainstream of society, reinforce their stigmatisation, and may also serve to undermine community stability and work incentives, even if (as expected) few tenancies are actually ended.’

Consequently, there are two relevant law and policy dynamics – a retrenchment in the rights and security of tenure of residents, and an as-yet incomplete shift towards social housing as providing

short-term accommodation as emergency provision, enabling residents to move (or return) to the private sector.

### 3.2 Voice and the social-housing resident

Our starting point for understanding current interventions around resident voice is once again the Housing Act 1980 (for a fuller history, see Hague (1990)). Alongside, and perhaps as a necessary accompaniment to, the introduction of the right to buy, the Act imposed certain duties on local authorities to consult tenants on various matters. Carr *et al.* (2001, p. 160) suggest it was one of the first acts designed specifically ‘to make welfare provision more responsive to consumer wants while simultaneously disempowering local authorities’. The Housing Act 1988 built on the 1980 Act by providing a collective right for tenants, but with a distinct ideological twist: whilst tenants could decide by a majority vote to exit local-authority control in favour of another landlord, they were offered financial incentives to do so, and the collective decision operated to reduce their individual rights as their legal status would shift from a secure to an assured tenancy (see Pawson and Mullins, 2010). These moves however were provoked more by a desire to weaken local authorities than to promote participation (Ginsburg, 1989).

Those initial forays into resident voice are best understood as responding to a marginalisation conceptualised as the consequence of exclusion from the market, either owner-occupation or private renting. The dominant strategy was exit from the tenure though the right to buy and tenant’s choice, with tenant voice being a more muted intervention. Moreover, there were no concessions to the complexity of tenant’s voice; not all tenants are in the same position, with the necessary social and economic capital required for participation or have a desire to participate and action on tenant voice did not acknowledge that other residents of social housing might have significant stakes in its effective management and mutual interest in collective exercises of voice. Nobody has disputed the significance of tenant participation. However, the participation agenda has lengthy roots and diverse models – there is, at least, a certain tension in the literature that suggests that landlords view tenants as engaging in tenant-participation initiatives out of self-interest, whereas tenants view landlord’s engagement as cynical legitimisation exercises (see Cairncross *et al.*, 1997). Beyond traditional authorities in which tenant participation was limited, two models of participation dominated, although there was a spectrum between them. They differed in how they viewed the tenant – as a citizen or as a consumer. The consumerist model regarded tenant participation as an individualist enterprise, providing information, surveying needs and individual meetings. The citizenship model relied on tenants as collective dialogue, compromise and rights. Consequently, the implementation of these provisions proved problematic, at least initially.

New Labour’s communitarian interests informed its approach to a different version, understood as tenant empowerment. It introduced compulsory Tenant Participation Compacts from April 2000. These provided an organisational framework for tenant participation in decision-making about their homes and were explained by the government department as responding to a need ‘to involve local people in shaping the future of their own communities, to make government programmes and initiatives more responsive to local needs and aspirations, and to tackle social exclusion’ (DETR, 1999, para. 1.5). In other words, participation was a top-down policy designed to achieve and legitimise policy goals, rather than promoting involvement in policy design. At the same time, New Labour promoted a managerialist ethos for housing management ‘based upon the efficacy of market processes and the introduction of audit, accountability and performance measurement’ (Flint, 2004, p. 895). The purpose was to make housing providers increasingly transparent and accountable to central government and to tenants. Hickman (2006) suggests that this resulted in little change in the power dynamic between tenants and local authorities.

The possibility of a different, more democratic, approach to tenant participation only emerged under Brown’s leadership of the Labour Party when the Tenant Services Authority (TSA) became the new regulator of affordable housing, placing tenant voice at the centre of its activities (inspired

by Cave (2007)). At the same time, National Tenants Voice was established with the aim of strengthening the collective role of social tenants through research, advocacy and information. These initiatives were rapidly extinguished when the coalition government abolished them as part of its bonfire of quangos. Value for money, it appears, was inconsistent with New Labour's co-regulatory ethos. The TSA was replaced by the regulator of social housing, which takes a more bureaucratic performance management approach to tenant empowerment. National Tenant Voice was not replaced.

There are three points to take from this. First, it appears that, whatever the rhetoric, resident voice appears an optional extra playing only a contingent role in housing policy. Second, voice is mobilised at a time of crisis – a panacea for whatever is understood by government to be the dominant problem/crisis of social housing at the time (Carr *et al.*, 2001). Third, although tenure structures are complex, the policy-imaginary remains wedded to a universalised figure of the tenant of social housing, increasingly imagined as a consumer being provided with performance information about their landlord to drive improvement (see DCLG, 2010, p. 4.16). Simultaneously, tenants were regarded as a problematic population – as the prime minister herself acknowledged: ‘many people living in England’s four million social homes feel ignored and stigmatised, too often treated with a lack of respect by landlords who appear remote, unaccountable and uninterested in meeting their needs’ (MHCLG, 2018, p. 5). Immediately prior to the Grenfell fire, there was no interest in revisiting or re-examining the question of how the voice of the social-housing resident was otherwise to be heard.

#### 4 A critical juncture? Three illustrations

May's foreword to the social-housing Green Paper might have suggested that the fire at Grenfell Tower would mark a sea change in the recognition that government was to accord the ignored and stigmatised citizens who lived in social housing. In a written statement to the House of Commons on 22 June 2017, May said:

‘Mr Speaker, it shouldn't take a disaster of this kind for us to remember that there are people in Britain today living lives that are so far removed from those that many here in Westminster enjoy.

‘That in this tower just a few miles from the Houses of Parliament, and in the heart of our great city, people live a fundamentally different life, do not feel the state works for them and are therefore mistrustful of it.

‘So long after the TV cameras have gone and the world has moved on, let the legacy of this awful tragedy be that we resolve never to forget these people and instead to gear our policies and our thinking towards making their lives better and bringing them into the political process.’  
(*Hansard*, col. 166 (22 June 2017))

Although scholars have noted that emotional responses can characterise policy-making in highly charged environments (Cox and Beland, 2013, p. 314), our argument is that the menu of options for reform has remained limited. There will be change, but this kind of change is no more than, at best, second-order change – that is, an adjustment of policy within a normal frame, ‘without challenging the overall terms of a given policy paradigm, much like “normal science”’ (Hall, 1983, p. 279). And the current policy paradigm, and the privileges it accords to the market, is problematic. It fails to acknowledge the ways in which the right to buy has fractured the social-housing estate. It continues to see the resident of social housing as a council tenant (and therefore holder of a second-rate tenure) and it privileges individualist over collectivist responses, emphasising the private law binary relationship between resident as consumer, able to exercise legally mandated rights, and their immediately superior landlord.

These claims are illustrated in the three examples of policy-making that we now consider: reform focused on conditions of rented properties; the social-housing White Paper; and building regulation and building-safety reforms. These are ongoing processes, and we acknowledge that our analysis is rooted in a particular moment (conceding that there may be the paradigmatic change that is suggested

by the notion of a critical juncture at some later point). Nevertheless, at the time of writing, what appears to characterise policy-making in the aftermath of the fire at Grenfell is its limited range.

## 5 Focusing on conditions

On 16 October 2015, Karen Buck, an opposition Labour MP, addressed the House of Commons to open the second-reading debate on her private member's bill, the Homes (Fitness for Human Habitation) Bill. She noted that since 1885, parliament had required that certain rented properties be fit for human habitation (*Hansard*, col. 614 (16 October 2015)). The latest iteration of that rule was contained in the Landlord and Tenant Act 1985, but was unavailable in practice for nearly all properties by the rent requirements; the implied term only applied to tenancies where the annual rent paid was less than £80 in London, or £52 in the rest of the country. Even by the time of the 1985 Act, these figures were low (not having been updated since 1957); but, by 2015, they were ludicrous.

Few MPs participated in the debate, although Conservative MP Philip Davies spoke at length, arguing that it would cause a lot of grief for private landlords (*Hansard*, col. 625 (16 October 2015)). Effectively filibustered and without government support, the Bill did not get any further and attempts to revive it via a proposed amendment to the Housing and Planning Bill were blocked in January 2016.

In July 2017, in the immediate aftermath of the Grenfell Tower fire, Buck was again selected to bring forward a private member's bill. This time, her bill received cross-party support and won government backing. Grenfell Tower loomed large in the debates, with many MPs referring to it in their contributions, including – for example – Conservative MP Will Quince, who argued that

‘We must never again have a situation in which genuine issues, particularly those relating to safety, are not tackled by landlords. When tenants feel unsafe, landlords have to take action. They must listen; no ifs, no buts. That is what the Bill will do. It will empower tenants so that when they tell a landlord that the condition of their property is simply not good enough, the landlord must take notice and resolve the problem. This is not some kind of top-down diktat; it is bottom-up accountability.’ (*Hansard*, col. 1213 (19 January 2018))

This is a clear example of the policy window opening. Where the proposal to mandate basic standards had previously been ignored or actively resisted by government, the fire meant that it was suddenly in favour. It is also an example of path dependency determining policy outcomes. While not seeking to diminish the campaigning that led to it being enacted, it was not a new radical reimagining; it was something that was ‘on the table’, around which parliament could coalesce to demonstrate action, falling squarely into the contemporary understanding of the social-housing resident and the pre-existing paradigm of enforceable private rights.

As it is based on a private, contractual relationship between tenant and landlord, whether social tenant or not, it is an individualised right by way of an implied term familiar in consumer rights. One limitation is that its effective operation requires a proactive tenant bringing potentially evidentially complex legal proceedings, despite limited availability of legal aid. Those who are particularly marginalised will find it hardest to uphold such rights in practice. As Carr and Alcock argued in relation to the reregulation of the private rented sector, it is an understanding of consumerism that emphasises the responsibilities of the tenant and their relationship with the landlord:

‘entitled to a “balanced” relationship with the landlord ... [t]he tenant must be a good consumer. ... He or she must not be over-assiduous in pursuing their rights – there appears to be a very narrow line for judges between the good consumer and the unscrupulous tenant who traps an unwary landlord.’ (Carr and Alcock, 2020, pp. 324–325)

In addition, the problem must lie within the purview of that private relationship. In the context of rights for social-housing residents, the limited imaginary of who resides in social housing leaves

out leaseholders, as well as tenants of such leaseholders. This is because, while a private tenant of a property bought under the right to buy might be able to oblige their immediate landlord to act under the Homes (Fitness for Human Habitation) Act (hereafter, the HFFH Act) (risking potential retaliatory eviction in the process; see Walsh (2021)), they have no direct relationship with whoever owns the block. The common parts fall outside the protections of the HFFH Act. Furthermore, the HFFH Act does not provide clear routes of redress for such tenants where there is a lack of clarity over whether the issues they are concerned about fall within the common parts or not. A private-rented-sector tenant living in a social-housing block who thinks their front door or their windows will not keep them safe from fire is not left with an easy way to ensure their home is safe.

This is significant because, as our research conducted on behalf of Shelter revealed (Cowan *et al.*, 2017), complexities arising as a result of tenure are an important aspect of the marginalisation experienced by social-housing residents. Our research focused on how legislation (and its enforcement) made homes less safe or prevented households from remedying problems. It included a survey that received 947 responses including 642 occupiers, of whom 71 per cent were owner-occupiers, 13 per cent came from social tenants and 11 per cent were from the private rented sector. Many responses to these ostensibly clear and distinct categories flagged the complexities of mixed tenure in social housing. For example, one respondent who described themselves as a ‘social tenant’ explained they were ‘privately renting an ex local-authority flat. Placed in another Borough by LA to meet their requirement to permanently house us due to homelessness’, while one ‘private tenant’ stated they lived in a ‘1st floor studio flat. Housing Association’ and another described themselves as living in ‘ex local authority, now privately rented’.

The research highlighted the interdependence of homes and the absence of effective systems to enable exercise of resident voice. Many responses illustrated problems that could not be pinned down to an individual property but were part of a wider issue with a building, while a common theme across responses was frustration with dispersed responsibilities and, even where responsibility was clear, an inability to get an effective response. This also applied to many situations described to us in which residents had not relied on the private relationship but had sought support from the state using the mechanisms in the Housing Act 2004. This provides for local-authority environmental-health teams to assess potential hazards in the home and take enforcement action where hazards are identified. However, although tenure-neutral, even these tools are tenure-dependent. Environmental-health departments cannot act against their own local authority, leaving local-authority tenants without redress.

Drawing on our analysis, we argued for a culture change. There was an urgent need to move away from the patchily enforced, piecemeal, outdated, complex, tenure-dependent system, for the state to take greater responsibility for the safety of occupiers, all of whom should have enforceable rights to minimum standards. For us, individual rights and a consumerist understanding of the centrality of information provision were insufficient in themselves to improve the lived experience of residents. This contestation about when the state’s responsibility towards a consumer is engaged was starkly illustrated by the next intervention that we explore, which is focused specifically on residents of social housing.

## 6 The White Paper (‘WP’)

‘The Charter for Social Housing Residents ... speaks to safety, to quality, to family, to life free from the blight of crime and antisocial behaviour, to the opportunity to move from rent to ownership, where this is possible. Secretary of State, Foreword to the White Paper.’ (MHCLG, 2021b, p. 7)

The social-housing WP – tellingly entitled *The Charter for Social Housing Residents* – speaks to the issues identified by the Secretary of State in the foreword, producing a new charter for residents against the new policy mantra of ‘levelling up this country, making it fairer for everyone’ (*ibid.*, p. 5). We say that its title is telling because its themes are reminiscent of Prime Minister John Major’s Citizen’s

Charter (the apostrophe being in a critical position, highlighting its individualist ethos), which itself focused on four themes – quality, choice, standards and value (Cabinet Office, 1991). A further telling point lies in the focus of the paper on residents, as opposed to tenants. This suggests a recognition that social-housing spaces include private tenants, leaseholders and shared owners, all of whom have significant voices that have been heard over the years (and again recently, for example, in the alterations to the shared-ownership offer: MHCLG, 2021a). However, as the extracts and quotes that we include below demonstrate, the focus remains on the resident as a social tenant.

The WP draws from and develops (or, perhaps better, waters down) a Green Paper that drew on the views of ‘8,000 conversations and submissions’ with residents and spanned three housing ministers from its announcement to publication (MHCLG, 2018). That innovative approach was obviously a direct response to the perception that policy-makers were out of touch. It reflected an apparently renewed faith in the authenticity of qualitative experiences over less vivid scientific explanations; and, perhaps more importantly, provided the cloak of legitimacy for the proposed action. One strand of that action, announced in the preface to the Green Paper, was the decision not to press ahead with two of the ambulance-type policies in social housing (the move to fixed-term tenancies and sale of high-value social housing).

What underpins both documents, but particularly the slimmed-down WP, is a recognition of the resident as an active consumer, who wishes to assert their individual rights but lacks access to justice (through the ombudsman) and performance information; needs a strong regulator; and wants a good-quality neighbourhood and home, but also to exit into home ownership. All of these have been familiar tropes in social-housing law and policy since the 1990s (at the latest) and the solutions are what we might term ‘Cave-ist’, as they largely follow the critique and approach of Martin Cave in his report on social-housing regulation, which gave rise to the TSA and which the coalition government renounced (see Cowan, 2011).

The WP can be regarded, therefore, as a *volte-face* and a refutation of the coalition government approach with respect to consumer-protection standards. This is ‘normal science’, although the justifications – for a Conservative government returning to a New Labour proactive consumer regulatory ideal – are differently packaged:

‘Introducing routine inspections of landlords can and will play an important role in delivering this more balanced approach [between economic and consumer regulation]. This will give tenants confidence that their landlord is being properly scrutinised, and will ensure that tenants know that protecting their interests is at the heart of the regulatory system.’ (MHCLG, 2021b, para. 55)

As the WP took shape, it became clear that the National Tenants Voice organisation was not to be reinstated. Indeed, although the Green Paper contained considerable detail on tenant-empowerment initiatives, the WP is at best disappointing. It focuses on information asymmetry and administrative justice almost at the expense of tenant participation. The few pages in the WP that address this (pp. 47–49, including one photograph page) do little more than tinker at the edges (with training and professional development, and loneliness programmes). The regulator is expected to require social-housing providers ‘to show how they have sought out and considered ways to improve tenant engagement’ (para. 90), but this is substantially watered down from the extensive discussion in the Green Paper.

What is apparent is that the kind of citizenship vision for social-housing residents envisaged by the WP is the kind of individualised and consumerist approach that is characteristic of ‘blue rinse’ administrative law approaches (Harlow and Rawlings, 2012, pp. 56–70). There is a strong reliance on classic market mechanisms (provision of information) and an enhanced agencification role (for the regulator) that includes audit and inspection of individual providers. The very idea of a charter reinforces that notion of a private-sector, contract-like culture. It should be relatively obvious that social housing does not work like that. Tenants have no choice – if their provider performs abysmally, they have no

ability to move to a different provider (other than through a bureaucratically managed transfer process); usually, they have no choice of provider when they access social housing. In many areas, there is a near-monopoly provider locally.

This problematic also provides an explanation for what is a final oddity in the WP. In a response to stigmatisation and marginalisation, the reference in the closing paragraphs (153–161) to the reinvigoration of various exit mechanisms is, at best, jarring. However, this consideration is entirely consonant with the approach to social housing that has been in place for forty or so years with only a short period of retrenchment. And, in a WP that emphasises a charter approach, the right of exit fits neatly. Rather than an oddity, it is consistent with the government approach continuing the pattern of thought since the foundation of council housing (i.e. its uneven development was regarded as being limited by a desire to sell it). The role of the market and the social-housing resident's relationship to it were questions that were also fundamental to the final post-Grenfell initiative that consider: policy shifts on building safety.

## 7 Building regulation and building-safety reforms

The inadequacy of England's building regulations was immediately implicated in the fire (Apps, 2018). The problematic combustibility of the aluminium composite material cladding used in the refurbishment of the Tower meant there were ramifications across the UK. In a House of Commons statement in September 2017, the then Communities Secretary Sajid Javid indicated that 165 social-housing towers had cladding systems that failed combustibility tests alongside an unknown number of private towers, foreshadowing years of anxiety for thousands of tower-block residents (Javid, 2017). He also announced that other building defects had been uncovered during health-and-safety inspections, cementing beliefs that the fatalities were not an unforeseen accident, but an inevitable consequence of a failed regulatory system.

The focus on building regulations revealed two problems. First, there was a lack of clarity about the meaning of the regulations. While government insisted that the type of cladding used on Grenfell Tower and many other high-rise residential buildings was prohibited, many industry experts claimed that it was permitted. There were unfavourable comparisons made with European and American regulations. Nor could the government claim surprise. It had been alerted to the problematic nature of cladding on refurbished buildings by the inquest into the Lakanal House fire in 2009, which included a finding by the jury that the external panelling had contributed to the deaths of six people (Kirton-Darling, 2018, p. 189).

The other problem with building regulations was that there was no clear responsibility for non-compliance; indeed, it appeared there was a culture of minimal compliance. The government had a role in this. During the 1980s, there had been a shift from prescribed standards to an outcomes-based system of regulation that in effect placed industry rather than government as the main arbiter of safety. The explanation was the need to encourage innovation, but a preference for a privatised market model of governance also informed the shift. So, for instance, local-authority building-control officers had to compete with private providers, not only driving down prices, but also creating competition around minimising compliance. Since the 1980s, a rhetoric of deregulation had permeated government that was intensified by a populist onslaught following the election of the coalition government in 2010. There was a lot then at stake for the government; acknowledging the failure of building regulations risked accepting the failure of the dominant mode of government.

The Hackitt review, set up in July 2017, was therefore an important initial response to the Grenfell Tower fire. There was nothing in the terms of reference that suggested the review was going to reject rather than reform the existing regulatory model. Its purpose was twofold – to make recommendations to ensure that the regulatory system was sufficiently robust and to provide assurance to residents that the buildings they live in are safe and remain so (MHCLG, 2017). Resident confidence was to be a crucial element of restoring trust in building regulations to be achieved by making residents integral

to the regulatory system. That is not to say that Dame Hackitt was not empathetic to the residents. Her foreword to the interim report published December 2017 made this clear:

‘I have been deeply affected by the residents of high-rise buildings I have met and I have learned so much from them. These buildings are their homes and their communities. They are proud of where they live, but their trust in the system has been badly shaken by the events of the last few months. We need to rebuild that trust.’ (Hackitt, 2017, p. 7)

However, there was also something instrumental about her references to the residents:

‘I have been impressed by the reasonableness and pragmatism of the residents I have met despite what has happened. If we are to regain their trust and create a better system for the future, we must do so by engaging them in deciding what solution is right for them in their particular situations, all of which are different given the histories of the many different buildings. There is no doubt that residents want timely resolution of issues but they are also realists and know that things must be prioritised – that means listening to them, involving them and respecting their views.’ (*ibid.*, p. 7)

These residents were not angry, traumatised or depressed. They were reasonable, realistic, pragmatic and patient. This simultaneously acted as a rebuff to those landlords who had failed to engage with residents about building safety and positions residents in relation to the new system of building regulation that Hackitt is proposing. They are legitimate stakeholders and incorporating them into the reformed system provides an essential legitimacy to those reforms.

The interim report described Hackitt’s direction of travel. Evidence from residents was taken seriously. In particular, the interim report recognised that residents had not been heard on fire safety and wanted a greater role and that ‘complexity of tenures and the lack of a national representative tenants’ organisation hinder a constructive relationship between building owners/landlords/managing agents and their tenants or leaseholders’ (*ibid.*, p. 87). Arguing that no voice should be excluded, the final report published in May 2018 made clear that its recommendations applied to all residents, regardless of tenure.

Three themes informed the final report’s proposals on resident voice: reassurance, recourse and responsibilities. Reassurance here means providing safety information to residents and educating them on safe behaviour. It also requires that residents are engaged in decision-making about the building. There are benefits to informed engagement: ‘Residents themselves will often be best placed to support the dutyholder in making decisions that impact on the safety of the building and can help the dutyholder to meet their wider duties’ (Hackitt, 2018, p. 67); and ‘Informed residents can play a key role in monitoring the performance of safety systems and holding building owners to account for weaknesses in performance’ (*ibid.*, p. 68).

Recourse means ensuring that resident complaints about building safety are heard. What was proposed is that the building managers identify someone to whom the residents can complain and residents need to be assured that those complaints will not lead to negative consequences. It suggests that unresolved complaints go to a regulator – a beefed-up housing ombudsman was envisioned. There is some consideration of legal routes of redress – the report recognises that the law does not ‘necessarily provide the quick and accessible route to redress that residents require’ (*ibid.*, p. 69). It makes no recommendations for improving the law but notes the Housing (Fitness for Human Habitation) Bill (which at the time was being debated in parliament).

It is no surprise that resident responsibility is a key theme of the reform proposals, even though there has been no suggestion that resident irresponsibility played any part in the fire. It appears impossible in policy discourse to decouple resident rights from resident responsibilities. The report addresses frequently voiced complaints from social landlords about the difficulties of getting access to individual

flats as well as the importance of residents maintaining safety features in their homes. What appears as common sense serves as a reminder of the contingency of resident empowerment.

There are important references to the need for cultural change within the report; what needs to change is a culture of ‘a “race to the bottom” caused either through ignorance, indifference, or because the system does not facilitate good practice’ (*ibid.*, p. 5). It is easy to overlook this extraordinary indictment of contemporary building regulation which suggests that flagrant disregard for the health and safety of residents has been institutionalised. The report depoliticises and sanitises this conclusion; and, rather than examining its causes, including the role played by the market, it accepts the status quo grafting reform onto the existing infrastructure. Indeed, the flat-footedness of the politics of the report is demonstrated by its failure to ban combustible cladding, which threatened to undermine the credibility of the report (Wilmore, 2018).

Instead, the report’s headline conclusion is consumerist – building regulations are not ‘fit for purpose’. Consumerism frames the reform proposals. There are significant gaps in the analysis. How, for instance, do the individual rights of consumers work within the more collective rhetoric of resident empowerment? Moreover, consumerism imagines a homogeneous educated and time-rich citizenry as well as a properly functioning market. It is unconvincing as a tool to protect the lives of the heterogeneous, frequently time-poor and vulnerable residents of social housing.

The Building Safety Bill, introduced into parliament in July 2021, puts the Hackitt proposals into statutory form. The Bill sets out a pyramid of responsibilities with a new regulator, part of the Health and Safety Executive, at its apex. The regulator will be responsible for the new regime, overseeing the registration and inspection of higher-risk buildings (buildings over eighteen metres) and with significant powers, for instance, to authorise remedial works, stop non-compliant projects and institute special measures for failing projects. At the building level, ‘Accountable Persons’, usually the owners or managers of the buildings, will have legal responsibilities for the safety of the building. Accountable Persons must appoint Building Safety Managers, who will be responsible for the day-to-day management of fire and structural safety in the building. At the base of the pyramid are the residents of higher-risk buildings, who will be obliged to keep their property in good repair, co-operate with the managers to fulfil building-safety duties and not hinder or damage fire-safety works or equipment. Accountable Persons will have rights to enter residents’ dwellings and issue enforcement notices, which will be enforceable in the courts. Resident involvement is built into every level of the pyramid, with the regulator, the Accountable Person and the Building Safety Manager all obliged to consult with them.

The Bill represents a policy shift – building safety was not on the political agenda prior to the fire and deregulation appears to have been sidelined. Moreover, the involvement of residents provides the opportunity for a collective voice to be heard, which may be harder to resist post the fire. But the shift we would suggest is minor in comparison, for instance, with the market-oriented shift in the 1980s from prescribed to outcomes-based building-safety standards. The market remains at the heart of the system and resident interests will have to compete with industrial priorities such as cost-effectiveness and innovation.

## 8 Conclusion

In a fin-de-siècle lecture, Malpass (1999) argued that housing policy had declined in significance. The housing problems of the twentieth century had either disappeared or changed shape – gross housing shortages were no longer at postwar levels, the quality of existing housing stock had improved and the conditions that led to public involvement in housing had evaporated. Housing policy had been overtaken in significance by social security and crime concerns.

We would suggest that Malpass overstates his case. The consequences of poor and unaffordable housing retain policy potency, as the Grenfell Tower fire illustrates. And the problem of the marginalised occupier has become increasingly relevant as the effects of residualisation and de-industrialisation on the social-housing estate and its residents have intensified.

In this paper, we have drawn attention to the centrality of the marginalised resident as it has emerged after the Grenfell Tower fire. Historical institutionalism – and specifically understanding the social-housing resident as an institution – has allowed us to draw together three distinct threads of the contemporary housing-policy matrix and reflect upon the extent that the Grenfell Tower fire has been a critical juncture. We accept that it has forestalled the final stages of a transition to ambulance housing (with core Conservative proposals to move to fixed-term tenancies and selling off high-value social housing dropped), it has revived the institution of resident voice (although without the underpinning infrastructure abolished by the coalition government) and the massive injustice of outdated tenants' rights to fitness for human habitation has been remedied. These are not insignificant changes and they may perhaps be precursors to more dramatic policy changes, aided for instance by the publication of the final report from the Grenfell Tower Inquiry.

However, as we have demonstrated, there is a sense in which the 'normal science' of housing policy has continued: technical legal change, reinforcing existing individual rights that have been decimated by the decline of legal aid; reinstating principles of tenant participation that had been in place between 2008 and 2010, and that were based on consumerist principles; the imposition of a building regulator working to principles of rights and responsibilities, framed by a discursive logic of consumerism and fitness. Each of our examples demonstrates how amendments to the technical and bureaucratic statutory schemes make a significant contribution to the depoliticisation of the Grenfell fire (cf. Nelken, 1985).

For us, the policy imagination has been limited not by the kinds of exogenous factors to which Malpass referred, but by a consumerist ideology that now appears to be self-reinforcing and ignores the social, economic and political complexity of tenure. The consumerist model adopted continues a train of political thinking that would be familiar to a housing-policy analyst in the 1990s. That model cements the belief that education and information are the antidotes to asymmetry in the market-place (Howells, 2005).

There is a further change that should be noted: the way in which policy-makers have gone about their roles. They have sought to avoid the appearance of top-down approaches. The kinds of evidence-gathering in which Hackitt and the government engaged for the Green Paper demonstrated a desire for social-housing residents' voices to be heard. And while this was not the approach taken with the 2018 Act, in the sense that it was a technical legal change assumed to be of benefit to tenants and based on ideas of common sense and decency (who, after the Grenfell fire, could be against the idea that homes should be fit for human habitation?), it fitted the principles of tenant empowerment within a contractual framework. In each of these instances, an individualist conception, incorporating a consumerist approach and with a limited state, has been the governing prism through which those voices have been interpreted. In the context of the egregious failure of housing policy demonstrated by the Grenfell fire, we should be fully mindful of the limits of this framing: it assumes that the market is a meaningful template for the management of social housing, it universalises the resident of social housing as a tenant of a social-housing landlord and relies for its legitimacy on the voice of the individualised, responsibilised tenant whose rational next step is to exit the tenure.

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